

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 125/96.....

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SECTION OFFICER (Judl.)

Kalish

29/1/98

DA No. 125/96
MP No. (DA)
RA No. (DA)
CP No. (DA)

In Rajen Thapa & ors. APPLICANT(S)
VERSUS
MOG & ors. RESPONDENT(S)

Mr. A.K. Purkayastha Advocate for the applicant.
" MC Mazumdar
" A.C. Chaudhary

Mr. S. Ali, Sr. C.G.S.C Advocate for the Respondents.

Office Notes Set Court's Orders

This application is in
form and within time
C. F. of Rs. 50/-
deposited vide
IPO/BB No 345952
Dated 15.7.96

16.7.96
12-8
16.7.96
Dy. Registrar.

Mr A.K.Purkayastha requests for taking up this application as unlisted on the ground of urgency as the pays of the applicants are being withheld. Mr S.Ali, Sr.C.G.S.C wants time for instruction.

List on 23.7.96 for consideration of admission.

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Member

pg

23.7.96 Mr. A.K.Purkayastha present for the applicants.

None for the respondents.

Learned counsel Mr. A.K. Purkayastha moves this application. Heard him for admission.

The applicants numbering 27 as mentioned in para 1 in this application are civilian employees under the Eastern Air Command, Indian Air Force Shillong. Their grievances in this O.A. is regarding the denial of Special (Duty) Allowance (in short SDA) and recovery of amount of SDA paid

8/8/96
Copy of order issued
to the parties vide
D. No. 2578 to 2584
of 13.8.96.

8/8

OFFICE NOTE

DATE

COURT's ORDER

23.7.96 to them. They have sought permission to join together in this single application. Permission is granted in terms of rule 4 (5) (a) of CAT Procedure Rules 1987. However this O.A. will cover only the 26 applicants excluding the applicant No. 18, Shri Shyamal Kumar Deb, who has not put his signature in the Vakalatnama. This application will also not cover Smt. N. Bhowmik and Sri B. Bhattacharjee though they have signed the Vakalatnama because their names are not included as applicants in this O.A.

The applicants are resident of North Eastern Region and they have been appointed in North Eastern Region.

They had not submitted any application before the Central Administrative Tribunal on the issue of Special (Duty) Allowance earlier as a result of which they had obtained any order in their favour. These applicants were paid Special (Duty) Allowance since the inception of the scheme for payment of the aforesaid allowance under the Office Memorandum No. 20014/3/83/E.IV dated 14.12.1983 issued by the Ministry of Finance, Department of Expenditure and subsequent circulars and Office Memoranda on the subject. However according to the applicants payment of SDA to them was stopped since April, 1996. The Ministry of Finance, Department of Expenditure had issued an Office Memorandum No. 11(3)/95-E.II(B) dated 12.1.96 with the following effective directions based on the decision of the Hon'ble Supreme Court in Civil Rule No. 3251 in Union of India & Ors. Vs. S. Vijay Kumar & Ors. decided on 20.9.94 [This decision was reported in (1994) 28 ATC 598].

"7. In view of the above judgement of the Hon'ble Supreme Court, the matter has been examined in consultation with the Ministry of Law and the following decisions have been taken:

i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived ; &

ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered."

OFFICE NOTE

DATE

COURT's ORDER

23.7.96 The applicants made representation dated 12.4.96 for waiving recovery of Special (Duty) Allowance to SOA HQ EAC IAF C/o 99 APO signed by Shri N. Khati, Leader IVth Level (JCM) Council, HQ EAC (U), AF, C/o 99 APO. This representation was rejected by the HQ EAC/1606/1/SDA/PC dated 7.5.96. Again the applicants represented on 14.6.96 with reference to the aforesaid order dated 7.5.96. Further, on 24.6.96 another representation was made signed by the said Shri N. Khati, one of the applicants in this O.A., in the capacity as leader IVth level (JCM) Council, HQ EAC (U), AF C/o 99 APO with reference to the previous representations dated 12.4.96 and 14...6.96. In this representation dated 24.6.96 while seeking for waiving of recovery of the SDA the applicants have placed the following points for consideration of the competent authority of the respondents.

" (a) The affected civilian employees have not opposed to stoppage of payment of SDA in view of the directive issued by the Supreme Court. However, the recovery action for payment already made despite Supreme Court order since 20 Sept 94 and for the delayed action on the part of the Govt. is considered beyond justice and much against the welfare of the innocent staff and their families.

(b) Whereas, the Govt. have agreed to waive off the recovery toward payment of SDA made since Nov'83 till Sep'94 (almost 11 years) as per directive of the apex court on their fair judgment obviously to avoid financial hardship to the affected employees, the payment made thereof after Sep'94 should also have been waived on similar stand taken by the Supreme Court, being no fault on the part of the employees concerned.

(c) It is learnt from the reliable source that though the payment of SDA has been stopped in respect of the employees of the office of the GE (AF) and CE (AF), no recovery thereof is being made at this stage. The payment of SDA to the staff of various other Central Govt Deptt are however still in force.

(d) Notwithstanding the above, civilian employees of this HQs are willing to surrender the payment of SDA made since Sep'94, if the Govt. still insist for recovery of the same after re-examination of our genuine grievances. However, recovery of SDA may be effected on instalment basis at the rate equivalent to the reate of payment made thereof, i.e. 12½% of the basic pay p.m."

OFFICE NOTE

DATE

COURT's ORDER

23.7.96 This representation is pending disposal of the respondents.

In this O.A. it has been stated that there was no specific direction issued by the Hon'ble Supreme Court in the aforesaid decision authorising the Government to recover any amount of SDA paid from those employees who had been paid SDA for the earlier period. There was no cut off date being fixed by the Hon'ble Supreme Court and recovery of the amount from any employee treating the date of judgement to be the cut off date. Further that the respondents have misconstrued the decision of the Hon'ble Supreme Court.

As already mentioned above the representation dated 24.4.96 (Annexure X to this OA) had not been disposed of by the HQ Eastern Air Command, Indian Air Force C/o 99 APO. It will be seen from the aforesaid representation that applicants have not opposed to stoppage of payment of SDA in view of the decision of the Hon'ble Supreme Court in the aforesaid case. Their contention is that the payment made after September, 1994 should have also been waived by the respondents on similar stand taken by the Hon'ble Supreme Court as there was no fault on the part of the employees concerned. They have also cited that in other departments recoveries of SDA paid have not been made. They further stated that they are willing to surrender the payment of SDA paid since September, 1994, if insisted upon, provided that their genuine grievances are re-examined by the respondents. They have also offered for recover of SDA on instalment basis as mentioned therein.

In view of the fact that this representation dated 24.6.96 has not been disposed of by the respondents this present application under Section 19 of the Administrative Tribunals Act, 1985 is not admitted. The application is disposed of with the direction to the respondents to dispose of on merit the aforesaid representation dated 24.6.96 within one month from the date of receipt of copy of this order by the respondent No. 3, Air Officer, Commanding-in-Chief, HQ Eastern Air Command IAF, Shillong. While disposing of the representation dated 24.6.96 the respondents shall allow the applicants to be heard in person.

OFFICE NOTE

DATE

COURT'S ORDER

23.7.96

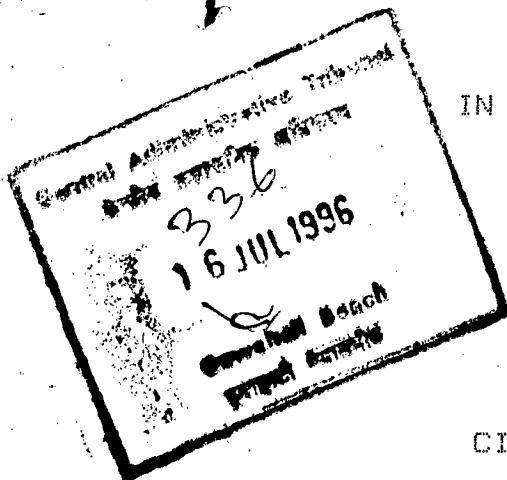
Mr. A.K.Purkayastha submitted that the salary of the applicants for the month of June, 1996 has not been paid because of the issue of Special (Duty) Allowance being involved. The respondents are hereby directed to release the salary of the applicants with effect from the month of June 1996 upto the date of disposal of the representation pending disposal of the representation dated 24.6.96.

The application is disposed of. No order as to costs.

60
Member 23/7/96

trd

24/7/96



Rayen Thapa
Fudby Mukherjee
16-7-96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

GUWAHATI

CIVIL APPLICATION NO. 125 OF 1996.

Sri Rajen Thapa & ors.

...Applicant.

-VS-

Union of India & others.

... Respondents.

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Received
copy.
C. S. C. S. C.
16/7/96

Rayen Thapa
Signature of the Applicant.

8

AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL, ACT 1985.

DATE OF FILING - 16-7-96

REGISTRATION NO. - CA 125/96

Signature

Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BRANCH,

GUWAHATI

BETWEEN

Sri. Rajen Thapa and others.

-Vs-

The Union of India and others.

DETAILS OF APPLICANTS

1. (i) Name : Sri Rajen Thapa, ✓
(ii) Fathers Name : Late K.B.Thapa,
(iii) Designation in: Sr. Translator(H)
which employed
(iv) Home Address : Polo Hills, Shillong-1.
- 2. (i) Name : Phasting Lyngdoh, ✓
(ii) Fathers Name : Late P.Nongneng
(iii) Designation in: UDC
which employed
(iv) Home Address : Umlyngko, P.O. Kynton.
Shillong -05.
- 3. (i) Name : Sri Paila Marbaniang, ✓
(ii) Fathers Name : Late K.Singh,
(iii) Designation in: Sr. P.A.
which employed
(iv) Home Address : Taiaw Laitdom, Shillong-2.

Contd...2.

[Handwritten signature]

4. (i) Name : Sri Rathindra Kr. Das, ✓
 (ii) Fathers Name : Late Paresh Chandra Das,
 (iii) Designation in: Sr. P.A.
 which employed
 (iv) Home Address : P.O. Palonghal,
 Vill. Tamulpur,
 Dist. Cachar, Assam.
5. (i) Name : Sri Ramesh Kumar Verma, ✓
 (ii) Fathers Name : Sri M. Verma,
 (iii) Designation in: Store Superitendent
 which employed
 (iv) Home Address : Moti Nagar, Shillong-14.
6. (i) Name : Sri Ajay Kumar Verma, ✓
 (ii) Fathers Name : Late K.P. Katiprasad,
 (iii) Designation in: Storekeeper
 which employed
 (iv) Home Address : SMO 200/11 HQ EAC (U) AF
 Shillong.
7. (i) Name : Sri Yam Bahadur Chettri, ✓
 (ii) Fathers Name : Sri Man Bahadur Chettri,
 (iii) Designation in: Storekeeper
 which employed
 (iv) Home Address : Upper, Shillong.
8. (i) Name : Sri Subhas Thapa, ✓
 (ii) Fathers Name : Late R.B. Thapa,
 (iii) Designation in: Assistant Storekeeper
 which employed
 (iv) Home Address : HQ EAC (U) AF Upper Shillong-9.
9. (i) Name : Sri Mohinder Saikia, ✓
 (ii) Fathers Name : Sumbhunath Saikia,
 (iii) Designation in: Civilian Gazzeted Officer(E)
 which employed
 (iv) Home Address : Mankotia, Dibrugarh, Assam,
10. (i) Name : Sri Sanjiban Roy, ✓
 (ii) Fathers Name : Late L.P. Roy,
 (iii) Designation in: Sr. Translator (H)
 which employed
 (iv) Home Address : Kench's Trace, Upper,
 Mexweltion, Shillong.
11. (i) Name : Sri Inder Singh, ✓
 (ii) Fathers Name : Sri Pyare Lal,
 (iii) Designation in: Sr. Translator(H)
 which employed
 (iv) Home Address : Near Raj Bhawan,
 Compound Shillong-1.

- 12.(i) Name : Sri Arup Kumar Chakraborty,
(ii) Fathers Name : A.K. Chakraborty,
iii) Designation in: Draughtman
which employed
iv) Home Address : Upper Laban, Shillong-04.
- 13.(i) Name : Sri Ramjanam Prasad,
(ii) Fathers Name : Late S.D.Singh,
iii) Designation in: Hindi typist
which employed
iv) Home Address : Pynthar Mukhra, Shillong.
- 14.(i) Name : Sri Ravindra Singh,
(ii) Fathers Name : Sri. S. Singh,
iii) Designation in: Sr. Store Supdt.
which employed
iv) Home Address : Barapathar, Shillong-2.
- 15.(i) Name : Miss Rosina Khongwir,
(ii) Fathers Name : K. Suting
iii) Designation in: Sr. P.A.
which employed
iv) Home Address : Mowkhar, Shillong-1.
- 16.(i) Name : Mrs. Audrilina Nongrum,
(ii) Fathers Name : Late Joseph Baruah,
iii) Designation in : Sr. Store Supdt.
which employed
iv) Home Address : Mawlai, Phudurawrie, Shillong-8.
- 17.(i) Name : Sri Subro Bikash Deb,
(ii) Fathers Name : Sri Sunil Kumar Deb,
iii) Designation in: Steno Grade-III,
which employed
iv) Home Address : Harishabha Para, Laban,
Shillong-4.
- X 18.(i) Name : Shri Shyamal Kumar Deb,
(ii) Fathers Name : Shri Phanindra Kumar Deb,
iii) Designation in: L.D.C.
which employed
iv) Home Address : P.O. & Vill. Dudpatil Cachar,
Silchar-3.
- 19.(i) Name : Miss Dari Melody Tryte,
(ii) Fathers Name : Shri Lerthansung,
iii) Designation in: Steno Grade-II,
which employed
iv) Home Address : Hebran Cottage,
Nongthymai, Shillong-14.

- 20.(i) Name : Miss Isuktimai Rynjah,
 (ii) Fathers Name : Sri. A. Khongjah,
 (iii) Designation in: Steno Grade-II,
 which employed
 (iv) Home Address : Rynjah village, P.O.Umpling,
 Shillong-6.
- 21.(i) Name : Miss Ruth Tryte,
 (ii) Fathers Name : Shri Lerthansung,
 (iii) Designation in: Steno Grade-II,
 which employed
 (iv) Home Address : Herban Cottage, Nongthymai,
 Shillong-14.
- 22.(i) Name : Sri Nicholas Khati,
 (ii) Fathers Name : Philip Khati,
 (iii) Designation in: UDC,
 which employed
 (iv) Home Address : C/o Chandra Tailoring House,
 Lalchand Busti, Nongmynsong,
 Shillong-11.
- 23.(i) Name : Miss Sabina Baruah,
 (ii) Fathers Name : Late K.C. Baruah,
 (iii) Designation in: UDC,
 which employed
 (iv) Home Address : VILL. Umlyngka, Upper
 Shillong-5.
- 24.(i) Name : Mrs Sushma Lama,
 (ii) Fathers Name : D.B. Lama,
 (iii) Designation in: LDC,
 which employed
 (iv) Home Address : Barapathar, Shillong-2.
- 25.(i) Name : Mrs. Pranati Deb,
 (ii) Fathers Name : Late S.C. Deb,
 (iii) Designation in: L.D.C.,
 which employed
 (iv) Home Address : SMO-137/5. HQ EAC(U) Af.
 Upper Shillong-09.
- 26.(i) Name : Sri Ajoy Kumar Dey,
 (ii) Fathers Name : Late U.K. Dey,
 (iii) Designation in: L.D.C.,
 which employed
 (iv) Home Address : Upper Laban, Shillong-4.
- 27.(i) Name : Shri Pranoy Kanti Dey,
 (ii) Fathers Name : Shri P. Dey,
 (iii) Designation in: Painter,
 which employed
 (iv) Home Address : Vill. Nutan Bazar, Beltola,
 Guwahati-28.

Office Address : HQ., EAC, Air Force, Shillong.

v) Address for Service - HQ., EAC, AF, Shillong.
all notice

Details of Respondents.

1.. Union of India

Represented by - Secretary Ministry of Defence
New Delhi.

2. Chief of Air Staff-Air HQ.(VB), New Delhi-11.

3. Air Officer Commanding-in-Chief H.Q.

Eastern Air Command IAF - Shillong.

4. Commanding Officer HQ, EAC (Unit),

Air Force, Shillong.

5. Controller General of Defence, Accounts,

West Block No. - IV

R.K. Puram, New Delhi - 10.

3. PARTICULARS OF ORDERS/ACTIONS AGAINST WHICH THE
APPLICATION IS MADE -

The present application is made against the
following actions.

I. Illegal and arbitrary denial to pay Special
Duty Allowance (SDA) to the members of the Appli-
cant Association.

(II) Illegal and arbitrary denial to give Equal
Pay for Equal Work to the members of the Applicant
Association.

✓(III) Illegal arbitrary decision for recovery of
the Special Duty Allowance w.e.f. 20-9-94.

Contd...6.

✓ (IV) Illegal and arbitrary action deducting the Special Duty Allowance for the period w.e.f. 20-9-94 directly from the current Salary of the members of the Applicant Association from 1-7-96.

✓ (V) Illegal and arbitrary denial of minimum opportunity of hearing,

✓ (VI) Illegal and arbitrary rejection of the representation without any reason deciding to recover the amount w.e.f. 20-9-94.

4. JURISDICTION OF THE TRIBUNAL :

The Applicants declare that the subject matter referred to above against which relief sought for, is within the Jurisdiction of this Hon'ble Tribunal.

5. LIMITATION :

The Applicants declare that the present Application is within the limitation of this Hon'ble Tribunal as prescribed in section 21 of the Central Administrative Tribunal Act 1985.

i). That the Applicants are the citizens of India and at present they are working in the office of Commanding Officer H.O., EAC (Unit), Air Force, Shillong. They are presently residing in Shillong Town. As such they are entitled to be protected under Constitution of India.

Contd...7.

(ii) That the Applicants are the permanent staffs of Indian Air Force and they are civil servants holding the civil Post. They are discharging their duties in connection with the affairs of Central Govt. As such, they are the Central Govt. employees and their service are regulated and governed by the Rules framed by the Central Govt.

(iii) That the Applicants state that, since the rights, interest and subject matter as well as the reliefs sought for by them are same and identical, the Applicants have filed this joint Applicant/ Appeal before this Hon'ble Tribunal. Moreover, all the Applicants are Grade clerical staffs and they are getting Lower Grade of scales and in these days of economic hardships, they are unable to bear the legal expenditure and file separate or individual Appeal before this Hon'ble Tribunal. It is on that consideration Your Lordship may be pleased to permit the Applicants to move this joint petition on their personal behalf and also in behalf of all of them and that alone would meet the ends of justice.

(iv) That the Applicants states that the grievances and the reliefs sought for against such grievances by them are same and identical. More so, the basic question to be decided in the present Appeal and/or the facts of the case of each and

Contd...8.



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8.

every members of the Applicant Association are also same and similar and as such the present joint and composite Appeal petition is maintainable under law and on appreciation of the same your Lordships will be pleased to decide the matter for all of the Applicants. The applicants in that regard crave leave of this Hon'ble Tribunal to produce the name and detailed particulars of all the members before Your Lordships as and when required.

v) That the Appellants state that they have filed a composit/ joint applicants through the Association in representative character but due to some technical defects the said Application was subsequently withdwarn with a liberty to file afresh. The present Application is however, going to be filed by all the Applicants in their personal capacity impleading them selves as the applicants in this Application. And Your Lordships may be pleased to permit the applicants to file the present Application and on consideration of their case, may further be pleased to entertain the same and grant appropriate relief to them.

vi) That the applicants state that, in the present application they have not included any new facts nor have they sought for any new reliefs other than those of the earlier Application and the

Contd...9.

[Signature]

present application does not change the basic character or nature of the earlier application causing any prejudice to the Respondents. The Applicants have only impleaded them in person in place of the Association when the association was the sole applicant in the earlier application representing all the present applicants.

Hence the applicants may be allowed to file the present application before Your Lordship.

vii) That the applicants state that one Sri B. Bhattacharjee and one Smti. N. Bhowmick were appointed in the present department similarly as these of the applicants but the Respondents have continued to pay the SDA to them while stopping the payments to the Applicants since April 1996, in support of the said action, the Respondents intimated the applicants that those two persons although locally recruited but since they were transferred outside the N.E. Region thereafter reported here on transfer, They are entitled to the benefits under the SDA scheme.

(viii) That the Applicants state that in 1984 the Ministry of Finance (Department of Expenditure) Government of India issued a General Circular in respect of all the Central Government Employees posted in North East Region either on

recruitment or on transfer, introducing a new scheme for granting allowance and facilities to them.

(ix) That, thereafter the Govt., of India issued another circular No. AN/XIV/14004/IIIX vol.I dated 5-5-84 CGDA New Delhi clarifying that all civilions Central Govt. employees who have the All India Transfer liability in the event of being posted in North East Region either on transfer or on recruitment shall be elligible for allowances and facilities. And the said allowances will be paid to those staffs during their posting in North East Region.

A copy of the said Notification dated 5-5-84 is annexed as Annexure-I.

x) That the Applicants state that all of them are Central Government Employees Working in Indian Air Force and they have been posted in the North East Region at Shillong.

On the other hand, all the applicants are having all India Service liability including Transfer as provided udner the Rules.

xi) That, the Applicants state that their services are squarely covered by above mentioned circular and accordingly they were being paid the

Contd...11.




Allowances and all other facilities as provided under the said circulars. There was no distinction or classification made between the Applicants who are admittedly locally recruited employees and those employees who were posted on transfer in this North East Region.

xii) That subsequently, the Air Head Quarters R.K.Puram, New Delhi - issued a letter vide Memo No. Air H.Q./24081/269/PP & R-2 dt. 23-3-87. By the said Letter, the Air H.Q forwarded the notification issued by the Ministry of Defence Govt. of India OM. 4(19) 83/D(CIV)-1 dtd. 24-2-87 to all the units of the North East Region.

By the said notification, the Government of India however issued clarification to the effect that all civilian Central Government Employees are eligible to draw the concessions and facilities as envisaged in OM dated. 11-1-84 except the Special Duty Allowance as per Para-1 (III) of the present notification. It was also clarified that, the Special Duty Allowance is applicable only to those Employees having All India Transfer liability irrespective of the fact of being posted in N.E.Region either on transfer or direct recruitment.

A copy of the said letter dated 23-3-87 is annexed herewith as Annexure-II.

Contd...12.



xiii) That on 30-4-87, Ministry of Finance Govt. of India (Deptt. of Expenditure) issued another office Memorandum vide No 20014/8/83.E.IV directing the Heads of all the Department to grant SDA @ 25% of the Basic Pay subject to ceiling of Rs. 400/- per month to all the Central Government Civilian Employees having All India Transfer liabilities on their posting to any station in North Eastern Region considering the said SDA to be in addition to any special pay and/or Deputation(Duty) Allowance.

A copy of the said office memo dated 20-4-1987 is annexed as Annexure-III.

xiv) That the Applicants state that, there was no classification or categorisation amongst the employees coming under the above mentioned scheme and the benefit was sought to be given to all the employees being posted in North East Region either on direct recruitment or on transfer. Thus in order to get the benefits of the said scheme, the employee is required to fulfill the terms and conditions as specified in the Appointment Letter. In support of the said contention, the Applicant craves leave of this Hon'ble Tribunal to annex here a copy of the certificate issued to the Applicants in respect of their option exercised by him accepting the All India Service liability as per the Rule in force. The Applicants state that, although they intended to go on transfer out side N.E Region but there prayer was not

Contd...13.

[Handwritten signature]

considered by the Respondents. As a result a serious discrimination was caused to them to get equal treatment and equal opportunity in the matter of employment as guaranteed under the Constitution of India.

A copy of the certificate dtd. 7-1-84 is annexed as Annexure-IV.

xv) That the Applicants state that, since the date of the inception of the scheme, all of them have been paid the said Special Duty Allowance like that of all other beneficiaries. The Applicants state that, the main object sought to be achieved under the above mentioned Notification (office Memorandum) dated 14-12-83 and 20-3-87 to attract the persons out side the North Eastern Region to work in that region because of inaccessibility and abnormal political situation. Even the 1983 Memorandum starts by saying that the need for granting allowance was felt for attracting and retaining the service of the Competent Officers in that region. On the other hand, the said scheme was introduced by the Government as a measure of incentives to the employees by way of attracting them to remain in that region. Therefore, the person coming from out side N.E. Region on transfer and the persons working in that region on being locally recruited have got the same and similar problems and consequences due to the prevailing political situation of that particular area and it was with that object

 Contd...14.

14.

the Govt. of India has introduced the scheme to pay SDA to all the employees irrespective of the nature of their appointment and any action in denying the same benefits to any class of the employees under any reason, whatsoever, would be unjustifiable and it would be violative of Article 14 and Article 16 of the Constitution of India.

xvi) That the Applicants state that, in the year 1991 some of the Departments of the Central Government took a decision to suspend the benefits of SDA to a class of the employees and accordingly the said matter went to court for adjudication. The crucial question that was raised before the Hon'ble High Court by the Officers' Association of Reserve Bank of India, Assam Gauhati unit was that, "as to whether the action of the Authority to exclude the local officers from the ambit of the said benefits is arbitrary, illegal and violative of Art 14 and 16 of the Constitution of India while granting the said benefit to the Officers being posted on transfer at Guwahati". The Hon'ble Gauhati High Court however, on consideration of all the aspects of the matter held that the said action of the Reserve Bank Authority is illegal arbitrary and violative of Art. 14 and 16 of the Constitution of India.

Against which a special leave petition was moved before Hon'ble Supreme Court by the Reserve Bank

Contd....15.



of India. But the Hon'ble Supreme Court however, took a reverse view in holding that the denial of the said benefits to local Officers is not arbitrary or violative of Art. 14 and 16 of the Constitution of India.

xvii) That the Applicants state that, in respect of the said subject matter, there was another Appeal before the Hon'ble Supreme Court wherein the point for determination is, "whether the employees who are the resident of North East Region, are entitled to get the S.D.A. and as to whether the denial of the said SDA is arbitrary or unconstitution and discreminatory."

The Hon'ble Supreme Court however without deciding the matter afresh confirmed its earlier decision. The Hon'ble Supreme Court on the other hand, took a very pragmatic view issuing mandatory direction to the Government not to make any deduction or recovery from the employees in respect of the amount already being paid to them. Relevant portion of the said Judgement dated 20-9-94 passed in Civil Appeal No. 3291 of 1993 and Civil Appeal Nos. 61 63 - 81 of 1994 reported in 1994 Supp.(3) SCC 649 (Union of India and others -Vs- S. Bijoy Kumar and others) is enclosed herewith for consideration by this Hon'ble Tribunal.

A copy of the said Judgement passed dated 20-9-94 is annexed as Annexure-V.

Contd...16.



xviii) That the Applicants state that, it appears from the above mentioned Judgement that although the suspension of SDA to the Central Govt. Employees being recruited locally was held by the Apex Court is not arbitrary or discreminatory, Yet, the said question is needed to be reconsidered afresh by this Hon'ble Tribunal in view of the Socio-Economic and Political situation prevailing in this Region. More so, there was no any specific direction issued by the Apex Court in the said decision authorising the Government to recover any amount from those employees already been paid to them towards SDA for any earlier period. There was no cut off date being fixed by the Apex Court and recovery any of any amount from any employees treating the date of Judgement to be the cut off date, is not only illegal, and arbitrary but is also a clear disregard to the said decision of the Highest Court of the land.

xix) That the Applicants state that, having learned about the decision of the Supreme court, the Respondents took an arbitrary decision to suspend the said benefit to the Applicants. Moreover, the Respondents misconstrued the decision of the Apex Court and took an unilateral decision to recover the amount being paid to the Applicants since 1983 w.e.f. 20-9-94 i.e. the date of Judgement.

Contd...17.

[Signature]

xx) That the Applicants state that, in pursuance to said decision the Asstt. Director PP & R-2 issued a Notification to HQ-EAC, IAF, for (CPSO) HQ Maintenance and EA command, IAF vide office Memo No Air HQ/24081/269/PP & R-2 dated 26-2-96 issuing direction to recover the amount paid on account of SDA to all in eligible persons after 20-9-94 and also to stop payment of SDA to those person in view of the Judgement of the Hon'ble Supreme Court datd 20-9-94.

A copy of the said notification dated 26-2-96 is annexed as Annexure-VI.

xxi) That the Applicants states that, the Department has constituted a Council with the object to mitigate the grievances of the employees namely IV Level JCM HQ EAC (U) AF and the representation of the Applicants council was taken up with the Authority for amicable settlement. The said council thereafter forwarded the matter to the S.O.A., H.Q. EAC IAF C/o 99 APO for a decision in to the matter.

xxii) That against the said decision the Applicants filed a representation through their recognised council to the Sr. Officer Administration. H.Q. EAC, IAF C/o 99 APO dated 12-4-96 praying for reviewing the decision and also for withdrawing/waiving the recovery of SDA for the period w.e.f. 20-9-94.

Contd...18.

A copy of the said representation dated 12-4-96 is annexed as Annexure-VII.

xxiii) That the Department without any application of mind and also without any reason whatsoever, rejected the said representation and by letter no. EAC/1606/ 1/SDA/FC dated 7-5-96 intimated the Applicants that no exemption of recovery is possible in view of decision of the Supreme Court.

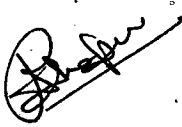
A copy of the letter dated 7-5-96 is annexed as Annexure-VIII.

xxiv) That the said council however, referred the matter once again to the Senior Officer, Administration vide letter dated 14-6-96 and 24-6-96 requesting the Authority to review the said decision and waive of the recovery.

Copies of letter dated 14-6-96 and 24-6-96 are annexed as Annexure-IX and X respectively.

xxv) That the Respondents however, turn down to said prayer of the Applicant and issued an order to the concern authority to deduct the entire amount from the salary of the Applicants w.e.f. 20-9-94. Accordingly, all steps have been taken by the Authorities to deduct the said amount from the current salary of the Applicants to be paid to them for the month of June, 1996.

Contd...19.



The Applicants however, requested the Authority to give a copy of the order regarding the recovery of said SDA but same was denied to them and as such the said order could not have been annexed in this Application. But the fact remains that, since the entire action is arbitrary and contrary to the decision of the Supreme Court the same is needed to be interfered with by way of granting an interim order of stay pending final disposal of this Appeal petition and that too for ends of justice.

7. Submission of the Applicant.

A) That the Applicants submit that, the action of the Respondent is wholly arbitrary and based on discrimination being violative of Article 14 and 16 of the Constitution of India and any order passed on such arbitrary action is liable to be quashed.

B) That the Applicants submit that, the Respondents have seriously misconstrued and defied the direction of the Apex court which has taken away the legal and Constitutional rights to work as well as the livelihood and as such the action of denial is liable to be struck down.

C) That the Applicants submit that, the Respondents have made an unreasonable classification causing a

serious discrimination by way of bringing one set of employees within the perview of the above mentioned scheme while excluding the other set of employees from the scope of the said scheme and that too in an arbitrary and illegal manner and the said unreasonable classification being hit by Article 14,15 and Article 16 of the Constitution of India, is liable to be struck down.

D) That the Applicants submit that, the impugned action of recovery of the amount towards the SDA, already being paid, having been based on total non-application of mind in to the attending facts and circumstances, is liable to be struck down.

E) That the Applicants submit that, the impugned order of recovery and/or denial of S.D.A., having been based on total non consideration of socio-economic and potitical situation prevailing in this N.E.Region is not sustainable in law and liable to be quashed.

F) That the Applicants submit that, although they have the All India Transfer Liability like all other employees posted on transfer in N.E. Region but the Respondents refused to transfer them out side N.E.Region, as and when sought considering the tense political situation and constant mental oppression and also denied the SDA to them and compelled them to remain in this Region

taking the advantage that their means of livelihood is intrically involved and they are not in a position even to leave their job. The said arbitrary action has thus frustrated the basic concept of. " Equal Opportunity and Equal Treatment" in the matter of Employment.

✓G) That the Applicants submit that, the Respondents having fixed the date of Judgement of the Apex Court being 20-9-94 to be the cut-off date for making deduction, of already paid SDA, have acted illegally and arbitrarily flouting and/or defying the mandatory direction of the Highest Court of the land and the said action amounts to not only a serious contempt to court's order but also to denial of legal and Constitutional Rights to work and livelihood and the same is liable to be set aside.

H) That the Applicants submit that the action of the Respondent in making such deduction in disregard to the direction of the Apex Court, has resulted in to serious denial of legal and Constitutional right to work and livelihood as guaranteed under Article 21 of the Constitution of India.

3
✓I) That the Applicants submit that, the action of the Respondents in making such deduction of already paid SDA w.e.f. the date of Judgement of the Apex Court i.e. 20-9-94 treating it to be a cut off date and also the

refusal to pay the SDA treating the Applicants belonging to a different class without giving opportunity of being heard, amounts to serious violation of well-accepted Principles of Natural Justice and Rule of law frustrating the fairness of Administrative function and the impugned action/order of deduction and/or denial of payment of SDA on that point of view is liable to be set aside and quashed.

J) That the Applicants submit that, the Respondent being a Appellate Authority is vested with lawful duty to decide the matter which involves the valuable rights of the Applicants and every finding of the Respondents while disposing of the representation /Appeal submitted by them, must be founded on just and reasonable cause and the order of rejection o/s the appeal passed by the Respondents not being based on just and proper reason or due application of mind is not sustainable in law.

K) That the Applicants also submit that, the action of the Respondents is contrary to Public Interest in view of the fact that the reason given by them in support of their action, is stained with arbitrariness, unreasonableness and justness rendering the same liable to be quashed.



L) That the Applicants submit that ,the action of the Respondents in making deduction by way of treating 20-9-94 to be the cut off date, is nothing but a total misinterpretation of the decision of the Apex Court and the said action being based on such arbitrary and pernicious decision, is not tenable in law which tantamounts to denial of Legal and Constitutional rights.

M) That the Applicants submit that, the Legitimate, bonafide expectation can not be taken away in a unreasonable or arbitrary manner and denial of the said legitimate expectation for unreasonable and unjust cause is a denial of legal rights and the impugned action/ order being based on such denial, is not at all maintainable in law.

N) That the Applicant submits that, the action of the Respondents not being innocuous or an action simplicitor, rather being based on serious violation of the direction of the Apex Court, is arbitrary unconstitutional and without any authority of law.

O) That the Applicants submit that, the impugned deduction and/or purported deduction of SDA from the current salary of the Applicants w.e.f. the date of Judgement of the Appex Court i.e. 20-9-94 has not only affected the valuable rights of applicants but has also disregarded the decision of the Apex Court, frustrating the sanctity of the Court of justice

rendering the Respondents liable to face the serious consequences.

P) That the Applicants submit that, the decision of the Court regarding the exclusion of the Applicants and all other persons working in various Central Govt. Deptt. in NE Region only on the ground of being local recruitment, is needed to be reconsidered due to the changed socio-economic and political circumstances of that region and since it has got the far reaching effect on the valuable rights of large numbers of Central Govt. Employees, this Hon'ble Tribunal would be pleased to refer the matter to Hon'ble Supreme Court for reconsideration and that alone would meet the ends of justice and protect the rights and interest of those employee.

Q) That the Applicants submit that, the persons working in NER irrespective of the nature of their Appointment or Posting are facing the same hardship due to the situation, socio-economic and political and they are equally entitled under the law to get benefits of the scheme as that of all other employees as specified by the Govt. and on consideration of the greater public interest and the cause of justice, Your Lordships would be pleased to redecide the matter and thereby preserve the sanctity of the Constitution of India.

25.

R) That in any view of the matter, the impugned order or action of non-payment of SDA and/or the deduction of SDA for the period w.e.f. 20-9-94 by ministerpreting the decision of the Apex Court is otherwise bad in law and liable to be struck down.

S) That the Applicants demanded justice but the same was denied by the Respondents.

T) That there is no alternative efficacious remedy and the remedy sought for would be just proper adequate and complete.

U) That this Appeal petition is filed bonafide and for ends of justice.

8. RELIEF SOUGHT FOR

A) In view of the facts and circumstance and legal submissions made in the above mentioned paragraphs, the Applicant prays for following reliefs to be granted by this Hon'ble Tribunal in favour of its members.

a) Quashing and setting aside the purported action and/or impugned order of wilful deduction of SDA already being made to the Applicant member.

b) Quashing and setting aside of purported and/or impugned action of denial to pay the SDA to the Applicants in pursuance to the Government of India Notification dated 14-12-83, 29-10-86 and

Contd...26.

20-4-87 issued from time to time introducing the scheme of SDA to all Central Govt. Employees working in various Central Govt. Deptt. in N.E. Region either on being locally recruited or being posted on transfer.

- c) Quashing or setting aside the impugned order dated 7-5-96 (vide Annex VIII) and/or the decision made therein by the Respondents while rejecting the representation of the Applicants member dated 12-4-96 (vide Annexure-VII).
- d) Quashing or setting aside the impugned action of illegal deduction of SDA to the Applicant's by way of wrong interpretation of the Judgement of the Hon'ble Supreme Court dated 20-9-94.
- e) Declaring prayer for holding the Government of India Notification dated 14-12-83, 29-10-86, and 20-4-87 issued from time to time and also the circular dated 5-5-84 and 23-3-87 to be equally applicable to the Applicants directing the Respondents to pay the SDA to its members and not to make any deduction of SDA for the period already been paid to them with effect from 20-9-94.
- f) Direction to be issued to the Respondents to pay SDA to the Applicant's as per the above mentioned Government Notification and the scheme

specified therein like those employees reported on transfer in N.E.Region and also not to make any deduction of SDA already been paid to him.


- g) A direction or order restraining or forbearing and/or preventing the Respondents from making illegal deduction of SDA already been paid to them.
- h) A direction or order directing the Respondents to withdraw or cancel or recall the impugned order of deduction or non-payment of SDA and/or purported action of making illegal deduction for the period with effect from 20-9-94 or w.e.f. any earlier period and/or purported action or decision of non-payment of SDA to the Applicants members inconsistent with or contrary to the above mentioned Govt. Notification.
- i) Prayer for reconsideration of the decision regarding the applicability of above mentioned Government Circulars and/or prayer for making for referring of the said question to the Hon'ble Supreme court on consideration of public interest and also in the interest of all Central Govt. employees working in this N.E.Region and also for reconsideration of all earlier decisions including the Judgement and order dated 20-9-94 passed by the Hon'ble Supreme Court in



Union of India -Vs- S.Vijay Kumar and other, reported in 1994 supp. 3 SCC 649, on the basis of which the Respondents have started making illegal deduction from the salary of the Applicants members for the period w.e.f. 20-9-94 (i.e.the date of said Judgement) and also denied to pay the SDA to the Applicants members ; and.

9. INTERIM ORDER IF PRAYED FOR

a) The Applicants state that the govt. of India from time to time issued various notifications as mentioned above introducing and/or providing the scheme of Special Duty Allowances to be made to the Central Government Employees working in all the Central Government Departments of the N.E.Region either recruited locally or posted on transfer and in pursuance of the said notifications the applicants are all along being paid the said SDA but subsequently on mis construction or on wrong interpretation of the judgement of the Hon'ble Supreme Court dated 20-9-94 as reported in 1994 supp. 3 SCC - 649, denied to pay the said SDA to the Applicants and also started to recover the amount from their salary w.e.f.the date of the said Judgement i.e. 20-9-94. As such the said arbitrary recovery and/or deduction of



Contd...29.

already paid SDA may be stayed or suspended pending final disposal of the Applicants.

10. DETAILS OF REMEDIES EXHAUSTED

a) The first representation Appeal filed by the Applicants dated 12-4-96 (vide Annexure -VII) before the Sr. Officer Administration H.Q. EACIAF C/o 99 APD praying for reconsideration of the decision of non payment of SDA and of the recovery of SDA for the period w.e.f. 20-9-94.

But the said SDA by impugned order dated 7-5-96 (vide Annexure VIII) rejecting the said representation taken decision of non payment for SDA and illegal recovery w.e.f. 20-9-94 making deduction from salary.

b) Against such order dated 7-5-96 and decision made therein Applicants filed another representation /Appeal dated 14-6-96 for reconsideration of its decision. But the same has been kept pending without any decision and the applicants have not been communicated anything regarding the same till to date.

c) The Applicants again on 14-6-96 & 24-6-96 filed representation/Appeals (vide Annexure-IX & X) respectively made before the said Sr.Officer, Administration with copies to all other Respondents, praying for reviewing the decision in public interest and

Contd...30.

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30.

also for disposal of their representation/Appeal by passing a speaking order in accordance with law and also for communication of the decision to be taken in the said representation /Appeal to the Applicants.

d) But till to date the SOA has a neither disposed of neither of those representations nor has taken any decision nor has taken communicated anything to the Applicants.

e) On the other hand, pending final disposal of the Appeal/ Representations as mentioned above, the Respondents illegally and arbitrarily have passed the impugned order of recovery as stated above for the period w.e.f 20-9-94 from the current salary of the Applicants.

And also denied to pay the SDA to them by way of misinterpreting the Judgement of the Hon'ble Supreme Court.

11. That the Applicants further declare that, no Appeal or any case in respect of which the present Application is made in this Hon'ble Tribunal, is pending in any Court of law or before any other authority and/or is any other Tribunal.

12. That the particular of the Bank Draft Postal Order in respect of the present Applicant are given below -

- [Signature]*
- i) No. of IPO - 8 09 345952
 - ii) Name of issuing P.O. - GPO Guwahati

Contd...31.

- iii) Date of Issue - 15-7-96
 iv) Name of P.O. at which payable - Guwahati

13. LIST OF DOCUMENT(S) (ANNEXURES)

1. Circular No. AN/XIV/14004/III/Vol.1 dated 5-5-84 CGDA New Delhi issued by ACGDA - directing the to implement the Government of India Notification regarding the payment of SDA.

(Annexure-I)

2. Circular dtd. 23-3-87 issued CSA AD PP & R-2. Air Officer incharge Administration directing the implementation of the Central Government Notification regarding the payment of SDA to the Applicants members and other.

(Annexure-II)

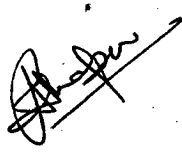
3. O.M.Dtd 20-4-87 vide No. 20014/8/83 E.IV Government of India Ministry of Finance, Deptt. expenditure, providing the payment of SDA to all Central Employees Working in NEA in all C.

(Annexure-III)

4. Certificate of All India Service liability issued by Officers incharge Civil Administration Air force station Jorhat in favour of the member Applicants certifying that the service of the said member has All India Transfer liability as per rule in force.

(Annexure-IV)

Contd...32.



5. Judgement and Order dt. 20-9-94 passed by Hon'ble S.C. in Union of India & others.

(Annexure - V)

6. Circular dtd. 20-2-96 issued by Air HQ. RKP New Delhi regarding the payment of SDA to all civilian Employees of Central Govt. serving in State and Union Territory of N.E. Region.

(Annexure-VI)

7. Representation /Appeal dtd. 12-4-96 submitted by Sri N. Khati leader, IVth Level (JCM) Council HQ. EAC (U), AF, C/o 99 APO to SOA HQ. EAC IAF C/o 99 APO against the illegal recovery of SDA from the salary of Applicant member w.e.f. 20-9-94 in wrong interpretation of Judgement vide Annexure-VI. and also against the decision of Non-payment of SDA.

(Annexure-VII)

8. Impugned order dt. 7-5-96 passed by SOA deviding to make illegal recovery of SDA from the current salary of the Applicants Employee and also for non - payment of SDA.

(Annexure-VIII)

9. Representation/Appeal dt. 14-6-96 made by Applicant and its members before SOA apart the impugned action/or. against not payments SDA and recovery of SDA.

(Annexure- IX)

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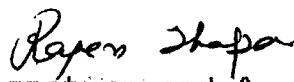
Contd...33.

10. Representation/Appeal dated 24-6-96 submitted by Application and its member to SOA and all other Respondents with a prayer for reconsideration of the decision of non-payment of SDA and recovery declaration of SDA w.e.f 20-9-94 from the salary of the Applicant members.

(Annexure- X)

Verification

I, Sri Rajen Thapa, son of Late K.B. Thapa, do hereby verify that the statement made in paragraphs 1 to 6, 8,9,10,11,12 and 13 of this Application are true to my knowledge belief and information and I sign this verification on this ~~16th~~ day of July 1996.


Signature and Applicant.
(RAJEN THAPA)

Circular No AN/XIV/14004/III Vol I dt 05 May '84 CGDA New Delhi

Sub:- ALLOWANCES AND FACILITIES FOR CIVILIAN EMPLOYEES OF THE CENTRAL GOVT SERVING IN THE STATES AND UNION TERRITORIES OF NE REGION
IMPROVEMENT THEREOF

Ref: This Office circular No AN/XIV/14004/III/Vol-I dt 25 Feb '84 addressed to CDA Gauhati, CDA Patna, CDA(AF) Dohragun, CDA(ORs) North Bherut with a copy to other CGDA.

Clarification received from the Ministry of Finance (Deptt of Exptr) on various points raised by this office on the implementation of the Govt of India Min. of Fin (Deptt of Exptr) OM No 20014/3/83-IV dt 14 Dec 83 are given below for information and guidance.

POINTS OF DOUBTCLARIFICATION

- | | | |
|------|--|--|
| i) | Whether the personnel posted to this region, other on recruitment or on transfer at their own request are eligible for this concession and facilities. | All civilians Central Govt employees with ALL INDIA TRANSFER LIABILITY serving in NE Region are eligible for allowance and facilities contained in these orders, irrespective of whether they were posted in the region on recruitment/transfer before or after the issue of this order. |
| ii) | Whether the Spl(duty) allowance is admissible for duration of service in the region. Irrespective, of whether they are allowed to stay on their own request or otherwise, or will it be restricted to duration of tenure? | So long as eligible staff, serve in the region the allowance will continued to be admissible. |
| iii) | Whether the Spl/(Duty)allowance would be deemed as special pay as defined in FR 9(25). | NO |
| iv) | Whether the term "employees who are exempt from payment of Income Tax" appearing in clause (iii) of Govt order dt 14-12-83 applies only to those who are specially exempt from payment of IT under IT Act (Pg 10(25) of Act. or it applies even to those who are liable to pay income tax by virtue of their salary being less than taxable limit. | It is confirmed that the term applies to personnel who are specifically exempted under IT Act and not to those who are not liable to income tax by virtue of their salary being less than taxable limit. |
| v) | Whether these orders are applicable to all group of Govt servant (by Gp 'A', 'B', 'C' and 'D'). | YES |

2. In elucidation of the necessity for fixing the tenure under para 7(i) of Govt letter dt 14.12.83, it has been stated by the Min. of Fin that these employees sent from outside the NE region for service there should not get left for indefinite period and therefore laying down a tenure was necessary. However, so far payment of special duty allowance to DAD employees is concerned, please refer to clarification at item no (i) above.

PTO

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3. As it is desired that Govt Order dt 14-12-83 should be implemented without delay, immediate action may please be taken to extend the office and facilities to DAD staff serving in NW region.

Please ack receipt.

42

Sd/- X X X
(T. Madhavan)
ACGDA (AF)

2/8

DPP&R/CI/46/87

Tele: 606611/670

Air Headquarters (RKP)
New Delhi - 110066

Air HQ/24081/269/PP&R-2

23 Mar 87

All addressees as per list 'B'

ALLOWANCES AND FACILITIES FOR CIVILIAN EMPLOYEES OF
THE CENTRAL GOVERNMENT SERVING IN THE STATES AND
UNION TERRITORIES OF THE NORTH-EASTERN REGION -
IMPROVEMENT THEREOF.

1. Reference this HQ letter of even number dated 30 Jan 84.
2. Copy/copies of Min of Defence OM No.4(19)83/D(Civ-I) dated 24 Feb 1987, on the above subject is/are forwarded herewith for information and guidance.
3. Addressees may also distribute copies to their lodger units.
4. Please ack.

(Cancelled)
(Nanchal)

CSO

AD PP&R-2.

Copy to :- for Air Officer i/c Administration
PC-3(A), PC-4, Dte of Accts, Dte of Org, Dte of Financial
Planning, PP&R-1, AFCAO New Delhi, AF Standing Establishment
Committee, All members of Staff Side (Third Level Council,
JOM) Air HQ.

Copy of Min of Def OM No.4(19)83/D(Civ-I) dated 24 Feb 1987, on the
above subject.

The undersigned is directed to refer to Ministry of Defence
OM No.4(19)83/D(Civ-I) dated 11-1-84 on the above subject and to
clarify the points of doubt raised about the applicability of
the orders contained therein as under :-

POINT OF DOUBT

CLARIFICATION

- | | |
|---|---|
| <p>1. (i) Whether the personnel posted to this region either on recruitment or on transfer at their own request are eligible for these concessions and facilities.</p> <p>(ii) Whether the Special (Duty) allowance is admissible for duration of service in the region, irrespective of whether they are allowed to stay there at their own request or otherwise. Will it be restricted to the duration of tenure?</p> | <p>(1) All civilian Central Government employees are eligible to draw w.e.f 1-11-83 the concessions and facilities as envisaged in O.M. dated 11-1-84 (except the special duty allowance as per para 1(iii) which is admissible only to those Central Government employees who have all India transfer liability) irrespective of whether they were posted in the region on recruitment/transfer before or after 1-10-83.</p> |
|---|---|

.....334-

*Attended
for signature*

POINT OF DOUBT

CLARIFICATION

(iii) Whether the special (duty) allowance would be deemed as special pay as defined in FR 9(25).

(iii) The special (duty) Allowance may be treated as an allowance and may not be considered as pay for any purpose.

(iv) Whether these orders are applicable to all groups of Government servants (Group 'A', 'B', 'C', & 'D').

(iv) Yes. However, the special (duty) allowance is admissible only to those employees who have all India transfer liability subject to fulfilment of the conditions laid down in para 1(iii) of this Ministry's O.M. dated 11-1-84.

2. This issues with the concurrence of Defence(Finance/AG) vide their u.o. No. 152-PB of 1987.

.....

7/11/84

No.20014/3/83.E.IV
Government of India
Ministry of Finance
Department of Expenditure

1787.
New Delhi, the 20th April, 1987

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A.& N Islands and Lakshadweep - improvement thereof.

The undersigned is directed to refer to para 1 (111) of Ministry of Finance, Department of Expenditure O.M. No.20014/3/83/E.IV dated 14th December 1983 as amended vide Office Memorandum of even number dated 29.10.1986 on the above subject, which is reproduced below:-

1(111) "Special Duty) Allowance

"Central Government civilian employees who have all India transfer liability will be granted a special (duty) allowance at the rate of 25% of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and / or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation Duty Allowance will not exceed Rs.400 p.m. Special Allowances like special compensatory (remote locality) allowance, construction allowance and Project Allowance will be drawn separately".

2. Instances have been brought to the notice of this Ministry where special (duty) Allowance has been allowed to Central Government employees serving in North Eastern Region with the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transfer liability of the members of any Service/Cadre of incumbents of any posts/group of posts has to be determined by applying tests of recruitment zone, promotion zone, etc., i.e. whether recruitment to the feeder cadre/posts has been made on all-India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/posts as a whole. Here clauses in the appointment order as is done in the case of almost all posts in the Central Secretariat etc. to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of special (duty) allowance.

...2/-

C Accts

36-A

3. Financial Advisers of the administrative Ministries/ Departments are requested to review all such cases where special (duty) Allowance has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organisations located in the North East Region which are under administrative control of their Ministries/Departments.

Sd/-xx
(A.N. SINHA)
DIRECTOR (FC)
Tele : 3011819

To

Financial Advisers of all Ministries/Departments.

.....

gmd

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41.

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Annexure IV.

P.A No. 34646 Name Rajen Thapa grade Eds-Inst. hereby accept the "All India Service Liability" as per the rule in force.

This option exercised by me is final.

Officer i/c Civil Admin. Signature of the individual
Air Force Station Jorhat Date :
Date:

OATH OF ALEGIANCE

P.A.No. 34646 Name Rajen Thapa Trade Edu-Inst., do swear by Almighty God/solemnly affirm that I will bear true faith and allegiance to the constitution of India as by Law established and that I will as in duty bound, hostly and faithfully serve in the Air Force of the Union of India and go where ever ordered, by Air Force of the Union of India and go where ever ordered by Air, Land or Sea and that I will observe and obey all commands of the President of the Union of India and the commands of the President of the even to the peril of my life.

Certified that the above named individual took the prescribed oath Affirmation on before me at 10 wing this 2nd day of Nov. 1983.

Signature of person

Signature of attesting
Officer.

attested A.F.Station,
Jorhat.

Attested
Signature

Annexure-VI ✓

1994 supp (3) Supreme court Cases 649
(BEFORE KULDIP SINGH AND B.L.HANSARIA, JJ)

UNION OF INDIA AND OTHERSAppellants.

Versus

S.VIJAYKUMAR AND OTHERS.Respondents.

Civil Appeal No. 3251 of 1993 with Civil Appeal Nos. 6163-81 of 1994, decided on September 20, 1994.

Service Law - Allowance - Special Duty Allowance payable to Central Government employees appointed to posts of All India Transfer Liability in North-Eastern Region - Held, not payable to employee who were residents of that region- Subject of 1983 OM, not decisive of the question - Further held, denial of the allowance to such employees, did not violate Art.14- OMs dated 14-12-1983, 29-10-1986 and 20-4-1987 - Constitution of India, Arts. 14 and 16 - Pay Equal pay for equal work.

Held :

A close perusal of the Office Memorandum dated 14-12-1983, 20-4-1987 and 29-10-1986 clearly show that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. Even the 1982 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers

Contd...43.

*Altered
Signature*

for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government civilian employees who have all India Transfer Liability would be granted the allowance "on posting to any station to the North Eastern Region". This accept is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability.

[From the Judgement and Order dated 29-5-1992 and 9-6-1992 of the Central Administrative Tribunal Ernakulam Bench in R.A. No. 71 of 1992.]

The contention that the denial of the allowance to the residents would violate the equal pay doctrine and Article 14 and 16 of the Constitution is adequately met by the Supreme Courts decision in Reserve Bank of India case. (Para 5)

Reserve Bank of India v. Reserve Bank of India Staff
Officer Assn. (1991) 4 SCC 132 : 1991 SCC (L&S) 1090
: (1991) 17 ATC 295, followd.

Appeals allowd

H-M/13562/SLA

Advocate who appeared in this case :

K.T.S. Tulsi, Additional Solicitor General,
V.C.Mahajan, N.N.Goswamy and Dr. Shankar Ghosh,
Senior Advocates (C.V.S.Rao, Ms A Subhashini, Ms
Sushma Suri, Ms Binu Tamta, S.Wasim A. Qadri S.N.
Terdal, P.Narashimhan, S.. Nandi and D.S. Mahra,
Advocate, with them) for the appearing parties.

Respondent in person in C.A. No. 3251 of 1993.

The Judgment of the Court was delivered by

HANSARIA, J.- The point for determination in this
appeal and in the special leave petitions (which have
our leave) is whether the respondents are entitled to
special duty allowance (hereinafter referred to as
"the allowance"), even though they are residents of
North Eastern Region merely because of the posts to
which they were appointed were of "All India Transfer
Liability". The Tribunal has answered the question in
affirmative. These appeals have been preferred by the
Union of India.

Contd...45.

2. The Tribunal took the aforesaid view because the Office Memorandum dated 14-12-1983 which is on the subject of "Allowances and facilities for civilian employees of the Central Government service in the States and Union Territories of the North Eastern Region - improvement thereof" had stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this office memorandum, if it is read along with what was said subsequently in office memorandum dated 20-4-1987, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this region. The office memorandum of 1987 has clearly stated that the allowance would not become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

3. Dr. Ghosh appearing for the respondents contends that the office memorandum of 1983 having not stated what is contained in the memorandum of 1987, a rider cannot be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who

Attended
All India

were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non residents, would be violative of doctrine of equal pay for equal work and as such of Articles 14 and 1 of the Constitution.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memorandum, along with what was stated in the memorandum dated 29-10-1986 which has been quoted in the memorandum of 20-4-1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said because even the 1982 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the

Contd...47.

*Attent
Memorandum*

incumbent. The 1986 memorandum makes this position clear by saying the Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh.

5. The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in Reserve Bank of India v. Reserve Bank of India Staff Officers' Assn., to which our attention has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

6. In view of the above, we hold that the respondents were not entitled to the allowance and the

impugned judgments of the Tribunal are, therefore, set General we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employees, would not be recovered from them insofar as that allowance is concerned.

7. The appeals are allowed accordingly. there will be no order as to costs.

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Annexure-VIX

Tele : 3010231/7015

Air Headquarters

R.K.Puram

New Delhi-110066.

Air HQ./24081/269/PP&R-2

26th Feb.96.

HQ. Eastern Air Command, IAF (For CP50)

HQ Maintenance Command, IAF

SPECIAL DUTY ALLOWANCE FOR CIVILIAN
EMPLOYEES OF THE CENTRAL GOVERNMENT
SERVICING IN THE STATE AND UNION
TERRITORIES OF NORTH EASTERN REGION.

1. A copy of Min. of Def. ID No. 4(19)/83-D (Civ.I)
Col II dated 18-1-96 on the above subject is sent
herewith for your information/action please.

(Ranji Lal)

CSO

AD PP & R-2

Copy to :

(SWAC, TC, SAC, CAC, NC, WAC) for info. Pl.

PC-3 A, PC-47, dtd. of Org, AFCAO N.Delhi

Interanl : PP & R-1 dt. of Financial Planning, dt. of
ACCTS.

Ministry of Defence
D(Civ.I)

Subject: Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region-regarding.

A copy of Ministry of Finance (Department of Expenditure) O.M. No. 11(3)/95-E.II(B) dated 12th Jan. 1996 on the above mentioned subject is forwarded herewith for information and necessary action, in so far as civilians paid from Defence Services Estimates are concerned. Hindi version is also enclosed herewith.

R. C. Sharma

(R.C. Sharma.)
Section Officer
Tele. 3012414.

AG/Off 4(Civ)(d)	DGNCC/Pers(C)	DDDE/Admin
Air Hqsrs./PPSR-2	DGAFFS/DG-2(B)	DTD&P(Air)/Admin
WHQ/CP Dte.	The OFB Calcutta	DGTA(Coord)
RSD/Orsn./DOP	DPR	D(JCM)

M of D I.D. No. 4(19)/83-D(Civ.I) Vol.II dated 18.1.96.

Copy to:-

The CGDA; All CSDA; All Sr. Dy. DADS; The DGADS;
The Asstt. Audit Officers (Defence Services), Kirkee,
Kanpur, Bangalore and Allahabad, The Director of Accounts
(Postal) APS Section, Nagpur - 440001,
DFA(AG); DFA(Navy); DFA(AF); DFA(Budget-II); DFA(DE-I)
C.C.A. (Factory) Calcutta.

Copy of Ministry of Finance (Department of Expenditure)
O.M. No. 11(3)/95-E.II(B) dated 12th Jan. 1996 regarding
Special Duty Allowance for civilian employees of the Central
Government serving in the State and Union Territories of
North Eastern Region-regarding.

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II(3) dt. 1.12.88 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

4. Some employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Departments against the Orders of the CAT.

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal no. 3251 of 1993) upheld the submissions of the Government of India that Central Government Civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

7. In view of the above judgement of the Hon'ble Supreme Court, the matter has been examined in consultation with the Ministry of Law and the following decisions have been taken:

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered.

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

9. In their application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

10. Hindi version of this OM is enclosed.

sd/ -

(C. Balachandran)

Under Secretary to the Govt. of India.

into
M. Govt.

Annexure-VII

Shri N. Khati,
Leader
IVth Level (JCM) Council
HQ EAC(U), AF, C/O 99 APO.

Date : 12th April, 96.

To,

S O A
HQ. EAC IAF
C/O 99 APO

RECOVERY OF PAYMAENT OF SDA FROM CIVILIAN
EMPLOYEES

Respected Sir,

I have the honour to seek for your esteemed favour and sympathetic consideration on the grievances of the civilian employees of this HQ and EAC (U) against recovery of payment of SDA.

That Sir, Special Duty Allowance (SDA) were being paid to all civilian employees serving in NE Region, who were having all India Transfer liability determined on the basis of their recruitment zone, promotion zone with a common seniority for the post as a whole. In this connection, Min. of def. OM No. 4(19)/83/D(Civ-I) dated 11 Jan 84 and Min of Fin OM No. 20014/3/83.E.IV dated 20 Apr 87 may pleased be referred. Payment of SDA to the Centrally controlled employees fulfilling the above conditions, were accordingly paid the SDA till date. However, payment of the above allowance to locally controlled GP 'D' staff were ceased w.e.f. July '94, pending further decision of the Govt/Air HQs on their eligibility.

However, in view of the Supreme Court's Judgement on similar case delivered on 20-9-94, the payment of SDA to locally recruited civilian employees has now been stopped with immediate effect, '94 are being made shortly. The Apex Court in their judgment, has held that payment of SDA would not be admissible merely on basis of having all India Transfer Liability, but would be granted to those officers only who have been posted to this region from other region. The Supreme Court in exercising their fair judgement,
Contd...51.

had also directed the Govt. in exercising their fair whatever amounts paid toward SDA from the employees tiate recovery of SDA for the period from Sep., 94 merely on the basis of the Apex court's judgement having delivered discontentment, mental depression and under financial hardship to the effected employees. The payment of SDA should have been stopped immediately on receipt of the above judgement, pending further examination, decision of the Govt.

In view of the above, your august chair is fervently requested to look into the above case with due consideration and suitable action to waive off the recovery of SDA my kindly be accorded in the light of fair stand taken by the Supreme Court in this regards.

Soliciting for your favourable approach and thanking your in anticipation.

Yours faithfully,

Copy to :-

The Commanding Officer : for your kind
HQ EAC(U), AF information and
C/O 99 APO necessary action.

The CGO (A) : -Do-
O i/c PC
Command PC
HQ EAC IAF

51
52

Annexure-IX v III

Tele 223900/2280

HQ Eastern Air Command
Indian Air Force
C/o 99 APO

EAC/1606/1/SDA/PC

7th May 1996.

Shri N. Khati,
Leader
IVth Level (JCM) Council
HQ EAC (U), AF

RECOVERY OF PAYMENT OF SDA FROM
CIVILIAN EMPLOYEES

1. Reference is made to your representation dated 12 apr. 96.

2. Your request for waiving off the recovery of payment of SDA in view of Supreme Court's ruling on 20 Sep. 94 has been examined at appropriate level at this HQ. since the Govt. has clarified that no recovery of SDA is to be made till the date of decision of the Apex Court, and the recovery is to be affected from 21 Sep '94 on ward, this HQ has no option in this case but to affect the recovery as per order of the Govt.

TS Chhatwal
Gp Capt.
C P S O
for S O A

checked
signature

52

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Annexure-X

Shri N. Khati,
Leader
IVth Level (JCM) Council,
HQ EAC(U), AF, C/O 99 APO

Dated : 14th June '96.

To,

SOA
HQ EAC, IAF
C/o 99 APO

RECOVERY OF PAYMENT OF SDA FROM
CIVILIAN EMPLOYEES

Respected Sir,

Most humbly, I beg to draw your kind reference to my application dated 12th Apr '96 with a request for your favourable consideration and suitable action to waive off the recovery of SDA in view of the judgement delivered by Supreme Court on 20 Sep '94 and Govt. delayed decision thereon. It was highly expected that our grievances would be processed to the Ministry for exemption of recovery, being no fault on the part of the employees concerned.

It is, however, regretted that our legitimate demand has not been redressed favourably on the plea that your HQ. has no option on the case by to effect to the undersigned vide your HQ letter No. EAC/1606/1/SDA/PC dated 07 May '96.

May I now, therefore, apprise your honour that as per decision of the affected employees of this HQ and HQ EAS(U), the case is being taken up to the Court of law to seek natural justice on the subject grievances.

Honestly seeking your esteemed apology.

Yours faithfully,

Copy to :-

The Commanding Officer.
HQ EAC (U), AF
C/o 99 APO.

*Attended
Mr. Khati*

Dated 24th June, '96.

S O A
HQ EAC, NIAF
C/O 99 APO
(Through C P S O)

Respected Sir,

In this connection, may I further reiterated on the following points for favour of your kind appreciation and sympathetic action:-

- ↳ payment of

.....52/-

Recd ~~CBT~~
24/6

Your honour is therefore, once again fervently requested to look into the grievances of your employees sympathetically, and case please be taken up with Air HQs/Ministry for their favourable consideration on waiving of recovery. Till receipt of the decision from Air HQ/Ministry, action on recovery may kindly be withheld. Your favourable action in this regards will undoubtedly render sufficient relief and mental satisfaction to the employees concerned.

Thanking you in anticipation,

Yours faithfully,

[Signature]

Copy to :-

Commanding Officer,
HQ EAC(U), AF
C/O 99 A P O

*Attended
M. N. G. N.*