

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

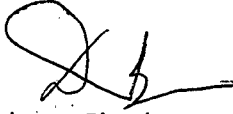


ORDER SHEETAPPLICATION NO. R.A - 3 OF 1998
OA 209/97Applicant(s) Dr. U.K. Mishra & ORs
-VS-

Respondent(s) Union of India & ORs

Advocate for Applicant(s) Mr. B.K. Sharma,
Mr. S. Sarma,

Advocate for Respondent(s)

Notes of the Registry	Date	Order of the Tribunal
<p>This Review application is filed by Mr. B.K. Sharma ady. on behalf of the applicants against the judgement and order dated 5-12-97 passed in OA 209/97, in the Court of The Honble Vice Chairman.</p> <p>The final order was communicated on 23-12-97.</p> <p>Hence this application is in time.</p> <p>And for favour of kind admission.</p> <p><i>[Signature]</i> Deputy Registrar (A) Central Administrative Tribunal Guwahati 28.1</p> <p>This case is mentioned in Court, as shown as unlisted matters.</p>	28.1.98	<p>This Review Application has been filed for review of the common Judgment passed in O.A.209/97 and 208/97. Application is admitted.</p> <p>List on 6.3.98 for further orders.</p> <p>Mr B.K.Sharma, learned counsel appearing on behalf of the review petitioners also prays for an interim order. Issue notice on the opposite party to show cause as to why the interim prayer shall not be granted. Notice is returnable by one month. Meanwhile the judgment sought to be reviewed, so far as the applicants are concerned shall remain suspended.</p> <p><i>[Signature]</i> Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
	6.3.98	On the prayer made on behalf of Mr. S. Ali, learned Sr C.G.S.C., the case is adjourned till 20.3.98. Interim order shall continue.
	nkm MS 9/3	 Vice-Chairman
Requisite copies have been filed. 28.1.98	20.3.98	On the prayer of Mr S. Ali, learned Sr. C.G.S.C., this case be listed for hearing on 3.7.98. Meanwhile the respondents may file written statement.
Requisite has been received on 28.1.98 and issued to the respondents by Regdt. Post vide Dispatch No. 269-71 dt. 2.2.98	nkm MS 23/3	 Vice-Chairman
Received copy of order dt. 28.1.98 Signature of Anna Associate 29.1.98	3-7-98	On the prayer of Mr. S. Ali, learned Sr. C.G.S.C. the case is adjourned till 11-9-98 for hearing.
3.3.98 Notice duly served on Regdt No. 2.1.	lm MS 6/7	 Vice-Chairman
10.3.98 Copy of order dt. 6.3.98 issued to the counsel of parties.		

11-3-99

Written statement
has been filed

JS
11/2/99

25-3-99

Written statement has
been filed

JS
25/3

22-4-99

Written statement has
been filed

JS
22/4

27-5-99

Written statement-
has been filed

JS
27/5

1-7-99

Written statement- has
been filed

JS
1/7

9-9-99

Written statement- has
been filed

JS
9/9

12-3-99 On the prayer of the
counsel of parties case
is adjourned to 26.3.99.

By order
[Signature]

26-3-99

On the prayer of counsel for
the parties case is adjourned to
23-4-99.

[Signature]
Vice-Chairman

trd.

JS
30/3/99

23.4.99

Mr. B.K.Sharma is reported to be
sick therefore he is unable to attend
court today. For the ends of justice the
case is adjourned till 28.5.99.

[Signature]
Vice-Chairman

trd

JS
26/4/99

28.5.99

On the prayer of Mr S. Sarma
learned counsel for the applicant the
case is adjourned till 2.7.99.

[Signature]
Vice-Chairman

trd

JS
31/5/99

2.7.99

On the prayer of Mr S.Sarma, learned
counsel for the petitioner the case is
adjourned to 10.9.99.

[Signature]
Vice-Chairman

pg

JS
9/7/99
12.9.99

Matter relates to 2/3. Placed before
the 2/3 for fixing a date of hearing
9/10/99

8-7-98

Received by the Hon'ble
RA is placed to Board.

This case is related to
subject matter of SDA.
Other cases of the same nature
are pending before the
Division Bench.

Therefore, the RA 8/98 may
be fixed before the Division
Bench along with other matter.
Placed before the Hon'ble
B.C. to the order.

by

1) Notice duly served
on R. Nos. 1 & 2.
2) No. W/S has been filed.

10/8

1) Notice duly served
on R. Nos. 1 & 2.
2) W/S has not been filed.

10/9

1) Notice duly served on
R. Nos. 1 & 2.
2) No. W/S has been filed.

11/4

24.12.98

Written statement
has been filed by the
respondents at page
No. 21-26.

18-2-99

Written statement
has been filed.

18/2/99

18-2-99

8-7-98

As this matter involve
important question of law
it will be proper if the
matter is placed before the
Division Bench. Accordingly,
list the case before the
Division Bench on 11-8-98.

By order
(Vice-Chairman)

11-8-98

Put it before Single Bench
on 14-8-98.

Member

Vice-Chairman

lm

12/8

14.8.98

On the prayer of the learned
counsel for the parties this case is
adjourned till 11.9.98.

Vice-Chairman

nkm

12/8

11-9-98

Adjourned to 6.11.98.

By order.

6.11.98

On the prayer made on behalf of
Mr S. Ali, learned Sr. C.G.S.C. the case
is adjourned till 12.2.1999.

Vice-Chairman

nkm

12-2-99

Adjourned to 19.2.99.

By order

19.2.99

On the prayer made on behalf of
Mr B.K. Sharma, learned counsel for the
applicant, the case is adjourned till
12.3.99.

Vice-Chairman

nkm

O.A. 209/96

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Notes of the Registry

Date

Order of the Tribunal

11-11-99

Case is ready for hearing. List for hearing on 8-12-99.

Member

Vice-Chairman

lm

8.12.99

D/B is not available. Adjourn to 19.1.00.

19.1.2000

Division Bench is not available. List on 16.2.2000 for hearing.

Member

pg

16.2.0

Mr. B.K.Sharma submits that similar matter has been fixed on 30.3.00 for hearing therefore he submits this matter may also be listed on 30.3.00 for hearing. prayer allowed.

List on 30.3.00 for hearing.

Member

Vice-Chairman

trd

30.3.00

Adjourn to 24.5.00.

r/o
la.

24.5.00

There is no Bench today. Adjourn 16.8.00.

r/o
la.

16.8.00

There is no Bench. Adjourn to 19.12.00.

r/o
la.

7-12-99

w/ statement - has been filed.

7/12

18-1-2000

w/ statement - has been filed.

18/1

15-2-00

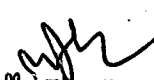

w/ statement - has been filed.

15/2

Notes of the Registry	Date	Order of the Tribunal

Notes of the Registry	Date	Order of the Tribunal
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Notes of the Registry	Date	Order of the Tribunal
<p>18-1-2001</p> <p>Copy of the Judgment has been sent to the D/sec- for issuing the same to the L/Admstrs in the parties'</p> <p>4.1</p>	<p>20.12.00</p> <p>1m</p>	<p>Judgment & Order pronounced in open Court. Kept in separate sheets. Application is disposed of.</p> <div> <div>  <p>Member</p> </div> <div>  <p>Vice-Chairman</p> </div> </div>

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

B.A./~~XXXXXX~~ .3 of 98 . . of

DATE OF DECISION 20.12.00

Mr.U.K.Mishra & 8 others.

PETITIONER(S)

Mr.B.K.Sharma, Mr.S.Sarma

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr.A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE Mr.JUSTICE D.N.CHOUDHURY, VICE-CHAIRMAN

THE HON'BLE MR.M.P.SINGH, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.3 of 1998

Date of Order: This the 20th Day of December 2000.

HON'BLE MR.JUSTICE D.N.CHOUDHURY, VICE-CHAIRMAN
HON'BLE MR.M.P.SINGH, ADMINISTRATIVE MEMBER.

1. Dr.U.K.Mishra, and 8 others.
Geological Survey of India, North Eastern Region and
posted at different stations of N.E.R. such as
Shillong, Itanagar. ... Applicants.

By Advocate Mr.B.K.Sharma, Mr.S.Sarma

-Vs-

1. Union of India & Ors.

By Advocate Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R.

D.N.CHOUDHURY, VICE-CHAIRMAN:

This is an application for review of the order of this Tribunal dated 5.12.97 passed in O.A.No.209 of 96 to limited extend. There were 45 applicants in O.A. No.209 of 96 including the 9 applicants of this Review Application. All the 45 applicants including the 9 applicants belonging to Group A & B of Geological Survey of India are serving in North Eastern Region. The above mentioned applicants assailed the impugned order dated 11.9.96 issued by the Director General, Geological Survey of India on the basis of Office Memorandum dated 12.1.96. The aforesaid O.A. was dismissed by this Tribunal by its order dated 5.12.97. The Tribunal disposed of the aforesaid application holding inter alia, that the applicants are not entitled to get the S.O.A., in the light of the Apex Court order. The Tribunal reached the aforesaid conclusion on the premises that these applicants belonged to the North Eastern Region

contd/-

and therefore, they are not entitled to get the S.O.A.

Heard Mr.B.K.Sharma learned counsel for the petitioner assisted by Mr.S.Sarma learned counsel and they have submitted that the findings of this Tribunal that all the applicants of the aforesaid O.A. are resident of the North Eastern Region was our inadvertant error apparent on the face of the record.

We have perused the pleadings to ascertain the position and from the pleadings in para 4.5, it appears that the averment was made to the effect that the applicant No.1 came from Uttar Pradesh, applicant No.13 Mr.R.C.Sukla came from Madhya Pradesh, applicant No.3 Mr.K.C.Das came from Orissa, applicants 9 and 10 Shri B.Panigrahi and K.C.Das respectively came from Orissa and S.K.Patel came from Orissa, applicants 9,10,17 hailed from Orissa and applicant No.5,8 and 14 Shri Shubhasis Sen, Shri Saibal Ghosh, Smti.Champa Sensarma came from West Bengal and applicant No.15 came from Bihar. The aforesaid statement was admitted in the written statement by the respondents. There is no dispute at any stage that the 9 applicants were not from outside the North Eastern Region and therefore their case is distinguishable. The position is clearly explained in the decision rendered by the Supreme Court in the case of Vijaykumar, as well as the judgment rendered in Civil Appeal No.1597/97 disposed of on 17.2.97, Union of India & Others, Vs.B.Prasad. Since these applicants are posted in the NER from outside the region, they are entitled to get the SDA as per the decision of the Apex Court. This aspect of the matter to the effect that these

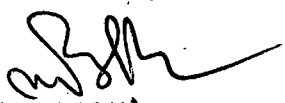
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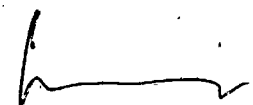
applicants were not residents of N.E. Region were inadvertently overlooked. To that extent the operative part of the judgment concerning the 9 applicants is requires to be modified. Accordingly, the same is modified holding inter alia that these 9 applicants have been posted in the NER from outside the region.

The application is allowed in so far the 9 applicants are concerned and the respondents are directed to grant the SDA as admissible to the applicants above.

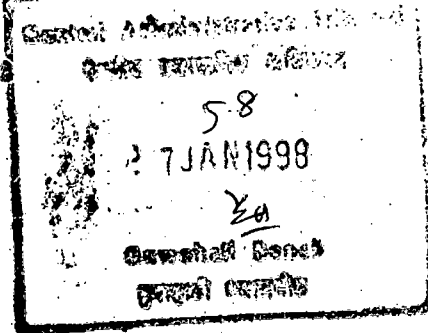
In view of the judgment and order of this Review Petition, the respondents shall now disburse the amounts so far recovered from the 9 applicants, namely, Shri U.K.Mishra, R.C.Sukla, Shri K.C.Das, Shri B.Panigrahi, Shri S.K.Patel, Shri Subhasis Sen, Shri Shaibal Ghosh, Mrs. Champa Sen Sharma, Dr.T.K.Sinha, forthwith they should also be paid the S.D.A. within two months. The judgment and order of the O.A. 209 of 1996 disposed on 5.12.97 is modified only to the extent of these nine applicants mentioned above.

Accordingly, the application is disposed of, there shall however be no order as to costs.


(M.P.SINGH)
ADMINISTRATIVE MEMBER


(D.N.CHOUDHURY)
VICE-CHAIRMAN

LM



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Filed by
Siddhartha
Sinha
Advocate
25-1-98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

Review Application No. 3 of 1998
O.A. No. 209 of 1996

IN THE MATTER OF :

An application under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the CAT (Procedure) Rules, 1987 for review of judgment and order dated 5.12.97 passed in O.A. No. 209/96.

- AND -

IN THE MATTER OF :

O.A. No. 209/96

Dr. U.K. Mishra & Ors. ... Applicants

- VERSUS -

Union of India & Ors.

... Respondents

- AND -

IN THE MATTER OF :

Judgment and order dated 5.12.97
passed in O.A. No. 209/96

- AND -

IN THE MATTER OF :

1. Dr. U.K. Mishra,
2. Shri R.C. Shukla
3. Shri K.C. Das
4. Shri S.K. Patel,
5. Shri D. Panigrahi

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- All are Group A and B officers of Geological Survey of India, North Eastern Region and posted at different stations of N.E.R. such as Shillong, Itanagar etc.

- VERSUS -

2. The Deputy Director General,
Geological Survey of India, N.E.
Region, Shillong.

MOST RESPECTFULLY SHEWETH :

1. That the Petitioners being aggrieved by proposed recovery of Special (Duty) Allowance and stoppage of the same filed the abovenoted D.A. before this Hon'ble Tribunal along with others. The Hon'ble Tribunal while

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admitting the case on 28.1.97 was also pleased to pass interim order as prayed for. The present Petitioners were among the Applicants as Applicants No. 1, 13, 10, 17, 9, 5, 8, 14 and 15 respectively. The Petitioners belong to Group A and B service of Geological Survey of India. Among the Petitioners, the Petitioners No. 1 to 7 are group A offices and Petitioners No. 8 and 9 are Group B officers. The Petitioner No.1 is working in the capacity of Geologist (Senior) ; the Petitioners No. 2 to 7 are working in the capacity of Geologist (Junior) and the Petitioners No. 8 and 9 are working in the capacity of Assistant Geologist and Assistant Chemist respectively.

2. That the Hon'ble Tribunal by its judgment and order dated 5.12.97 has been pleased to dispose of the aforesaid O.A. alongwith some other O.As. with the direction not to recover the SDA already paid prior to the date of issue of the notice in each case. However, in the said order, the Hon'ble Tribunal has not made any direction and/or order as to whether the Petitioners would continue to get the SDA. The Hon'ble Tribunal has endorsed the views expressed by the Apex Court in Civil Appeal No. 572 of 1997. While disposing of the O.A., the Hon'ble Tribunal has not dealt with the various contentions raised in the O.A. more particularly the fact that the Petitioners fulfill the test towards getting SDA as has been laid down in various circulars. The Hon'ble Tribunal having not considered this aspect of the matter, there is error apparent on the face of the record.

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3. That the Petitioners state that they all fulfill the criteria laid down for grant of SDA inasmuch as they not only carry all India transfer liability as one of their service conditions but they have also got all India recruitment zone, all India basis seniority list, all India basis promotion zone etc. unlike other Central Government organisation/ establishments in which the employees merely carry a clause of all India transfer liability which by itself will not entitle them to get SDA unless the other conditions as laid down in the circulars of SDA and in the communication dated 12.1.96 (Annexure-4 to the O.A.). However, while passing the impugned order, this Hon'ble Tribunal has not considered this aspect of the matter which has resulted an error apparent on the face of the record, warranting review of the said order.

A copy of the said order dated 5.12.97 is annexed as ANNEXURE-A.

4. That in the O.A. in paragraph 4.5, it was categorically stated as to how the Petitioners alongwith others have come from outside N.E. Region and that they invariably carry all India transfer liability and they are also transferred through out the country. It was also their case that they have been granted SDA under the Annexure-1 O.M. dated 14.12.83. It was only the Group C and D employees of GSI who were not granted SDA had to approach this Hon'ble Tribunal by filing O.A No. 182/90 and 183/90 which, were allowed by this Hon'ble Tribunal. As against that judgment, SLP was

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preferred in which by Annexure-2 judgment dated 7.9.95 the Apex Court has held that Group C and D employees of GSI working in the N.E. Region are not entitled to SDA. In the said SLP, it was the specific contentions of the Respondents that only Group C and D employees are not entitled to grant of SDA meaning thereby that Group A and B employees of GSI are entitled to the same.

5. That the Petitioners had occasioned to approach this Hon'ble Tribunal by filing the O.A. pursuant to Annexure-3 order purportedly issued on the basis of Annexure-4 order dated 12.1.96 by which not only the payment of SDA was stopped but decision to recover the SDA already paid with effect from 20.9.94 was also conveyed. In the O.A. referring to the case of the members of the All India Services who upon their allocation to any of the State cadres in the N.E. Region remained posted through out their service have been granted SDA, it was contended that the Petitioners also fulfill the eligibility criteria such as all India seniority, all India transfer liability and all India recruitment/promotion zone as laid down in the O.M. dated 12.1.96 (Annexure-4 to the O.A.). It was also contended that by Annexure-4 O.M. dated 12.1.96, only the ineligible persons were made the target unlike the Petitioners and other Applicants in the O.A. However, the Respondents without applying their mind to the O.M. dated 12.1.96 passed the impugned order.

6. That non-consideration of the aforesaid factual aspect of the matter has resulted in the impugned order dated 5.12.97 and there is error apparent on the face

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of the record inasmuch as all the above issues have got vital bearing in the matter which the Hon'ble Tribunal have not taken note of by disposing of the O.A. treating the same to be one of those cases in which only the recovery aspect with effect from 20.9.94 was agitated.

7. That the Petitioners as stated above have come from different States outside the N.E. Region and they have all joined in the N.E.R. in public interest after being recruited to all India basis competitive examination. In the impugned judgment, it has been held "the person who belong to North Eastern Region" would not get SDA. The present Applicants also though working in various departments under the Central Government were not outsiders. As per the decision of the Apex Court, they were not entitled to get SDA." This finding is not at all applicable to the Petitioners inasmuch as they do not belong to North Eastern Region and as pointed out above, they belong to the places other than the N.E.R. This is an error apparent on the face of the record and the same requires review of the order dated 5.12.97.

8. That the Petitioners state that the Ministry of Finance by their O.M. dated 20.4.87 as quoted in Annexure-4 O.M. dated 12.1.96 have clarified "all India Transfer liability" by introducing the criteria of zone of recruitment and zone of promotion i.e. those Central Government civilian employees who have been recruited through all India basis recruitment and promotion to those service/cadre /post is done by an all India

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common seniority list basis, will be considered to have all India transfer liability and consequently, eligible to get SDA on posting to any station in N.E.R. The Petitioners are aggrieved by Annexure-3 order dated 11.9.96 by which they have been declared ineligible to get SDA on the ground that Group A and B Officers who on appointment through APSC joined service at any station in N.E.R. would be ineligible to draw SDA thereby the Annexure-4 O.M. dated 12.1.96 has been misinterpreted and applied to the Petitioners. Although in para 2 of the O.M. dated 12.1.96, it is clearly laid down that the Central Government civilian employees having all India transfer liability posted to any station in N.E. Region are eligible for drawing SDA. In para 3 of the O.M. it has been clarified that for the purpose of sanctioning SDA, the all India transfer liability of the members of the any service/cadre or incumbents of any post/group of posts has to be determined by applying the test 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 basis common seniority list for the service/cadre/post as a whole. All the Petitioners having been recruited through all India basis competitive examination conducted by UPSC and for the purpose of their promotion an all India common seniority list is maintained and consequently having all India transfer liability, all of them fulfill the conditions of eligibility for drawing SDA outlined in the said O.M. dated 12.1.96. Even in the leading case

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on SDA as reported in 1994 Supp. (3) SCC 649, the Apex Court has held "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 post to which they were appointed were of "All India Transfer Liability". The Apex Court has answered this issue in the negative holding that SDA is applicable to the non-residents of N.E.R. who come to the N.E.R. on their posting to any station in the N.E.R. This aspect of the matter, the Hon'ble Tribunal having not considered there is error apparent on the face of the order dated 5.12.97.

10. That the Petitioners state that nowhere in the O.M. dated 12.1.96 that the Group A and B officers who on appointment through UPSC join service at any station in the N.E.R. would be ineligible to draw SDA. Apparently, this O.M. has been misinterpreted by the Respondents. Since the Petitioners have been recruited through all India basis competitive examination conducted by UPSC, an all India common seniority list is maintained for promotion and consequently having all India transfer liability, they fulfill all the conditions of eligibility for drawing SDA. In the above referred O.M. dated 12.1.96, it has been mentioned that "the Hon'ble Supreme Court in their judgment given on 20.9.94 (in C.A. No. 3251 of 1993) upheld the submission of the Government of India that Central Government civilian employees who have all India

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Transfer Liability are entitled to the grant of SDA, on being posted to any station in the N.E. 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." This aspect of the matter has also not been considered by the Hon'ble Tribunal, there is error apparent on the face of the order dated 5.12.97 requiring review of the same.

11. That the Petitioners state that Group A and B officers in GSI are recruited through UPSC on all India basis competitive examination. The number of officers recruited in different cadres depend on the number of total vacancies exist for a particular year in the department as a whole, but not against any specific vacancies in different regions. The officers recruited through UPSC are appointed in GSI by the Ministry of Mines on behalf of the President of India. Thereafter the officers are posted in different regions or circles in India, as per the requirements of the Department.

Therefore, some of the officers are posted to N.E.R. whereas some are posted to other regions. It is only a matter of chance that who are posted in N.E.R. out of the total lot and there is no specific reason who are to be posted in N.E.R. This is precisely the reason as to why the members of the all India Service who also come through the UPSC upon their cadre allocation to the N.E. region are entitled to get SDA although unlike the Petitioners they do not have any all India promotion zone and they remain posted in the N.E. region throughout the service career. This

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aspect of the matter having not been considered there is error apparent on the face of the order requiring review of the same. The Hon'ble Tribunal having not considered the judgment referred to above towards disposal of the O.A. and having applied the decision in civil Appeal No. 1572/97 which has got no application in the present case, there is error apparent on the face of the record and accordingly, the order dated 5.12.97 is required to be reviewed.

12. That if the interpretation of the O.M. dated 12.1.96 and the contentions raised by the Respondents in their written statement are to be accepted, then in that case, a person from the same recruitment batch if transferred to N.E.R. even immediately after joining in any station outside N.E.R. on first appointment, will be considered eligible to draw SDA. A person if transferred to N.E.R. after joining in service on first appointment in any station outside N.E.R. does not confer any special status on him over his batchmates who would have joined in N.E.R. on first appointment on public interest, to be eligible to draw SDA. Both of them are recruited through the same process, belong to the same cadre and have same official status in the Department. All these arguments having not been considered, there is error apparent on the face of the order dated 5.12.97.

13. That the Petitioners state that the contentions raised in the Supreme Court by various categories of employees have been rejected by the Apex Court on the

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ground that they are residents of this region and thus they are not entitled to SDA. Undoubtedly the present Petitioners do not belong to this region which is admitted by the Respondents also. Thus there is no question of equating them with those employees who are local residents of this region. This law regarding SDA laid down by the Apex Court having not been considered by this Hon'ble Tribunal in its order dated 5.12.97, same is required to be reviewed.

14. That the Petitioners state that unlike other cases the Group A and B officers who on appointment through UPSC join service at any station in the N.E. Region are entitled to Travelling Allowance on their first appointment for self and family from their respective home towns to the place of posting in the N.E.R. This implies that the above category of officers from outside N.E.R. even on first appointment are being attracted by the Government with the above financial and service benefits for retaining their service in N.E.R. for a tenure of three years. Other Group A and B officers working in other Department/Ministries with the same test like that of the Petitioners are getting the benefit of SDA. Thus there is no earthly reason as to why the Petitioners should not be entitled to the same.

All the above contentions raised on behalf of the Respondents having not been considered and they having been treated to be at par with the local residents, there is error apparent on the face of the order in question, more particularly in view of the fact that

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the Hon'ble Tribunal has not even obliquely referred to the Annexure-4 O.M. dated 12.1.96 and the aforesaid judgment of the Apex Court on the subject of SDA.

15. That being aggrieved by the aforesaid judgment and order dated 5.12.97 passed in O.A. No. 209 of 1996, the Petitioners beg to prefer this review application on amongst others the following

G R O U N D S

I. For that the vital issues involved in the O.A. having not been considered by the Hon'ble Tribunal, there is error apparent on the face of the order requiring review of the same.

II. For that the most vital aspect of the matter i.e. the Annexure-4 O.M. towards issuance of SDA having not been dealt with and/or considered by the Hon'ble Tribunal, same has resulted in error apparent on the face of the record inasmuch as by the said sanction the Petitioners were held to be entitled to SDA.

III. For that the Petitioners having fulfilled all the criteria laid down for grant of SDA i.e. all India recruitment zone, all India seniority etc. they are entitled to SDA but the Hon'ble Tribunal have not dealt with this aspect of the matter which is an error apparent on the face of the record which requires review of the same.

IV. For that the Hon'ble Tribunal while passing the common order for all the O.As. failed to take into

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account that the O.A. filed by the Petitioners was on a different footing inasmuch as their prayer in the O.A. was not only for setting aside the order of recovery but was also for a direction to the Respondents to continue to pay SDA to the Petitioners.

V. For that there is error apparent on the face of the record inasmuch as none of the contentions raised in the O.A. have been dealt with and the order has been passed relying upon the Apex Court order which is not at all applicable to the facts and circumstances of the instant case and such reliance on a case which is not at all applicable to the instant case is an error apparent on the face of the record which requires review of the order dated 5.12.97. The Hon'ble Tribunal ought to have considered the basic judgment on SDA as referred to above.

VI. For that the Hon'ble Tribunal did not take into account of the fact that the Respondents continued to pay the SDA to the Petitioners and there is no question of recovery of SDA and/or stoppage of the same. This has resulted error apparent on the face of the order and accordingly, same is liable to be set aside and quashed on a review of the same. The Hon'ble Tribunal failed to consider that none of the Petitioners hail from N.E. Region and that they are not locally recruited. As per the own admission of the Respondents, the Petitioners are non-residents of N.E. Region and they have come from outside N.E. Region and accordingly on their posting to N.E. Region, they are entitled to SDA.

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VII. For that the Hon'ble Tribunal did not take into account the points raised by the Petitioners, more particularly the one by which it was pointed out that the embers of the all India Services upon their allocation to the North Eastern States remained posted in the North Eastern Region but they are being paid SDA. Similar is the case of the Petitioners. This aspect of the matter, the Hon'ble Tribunal having not considered the impugned order dated 5.12.97 is liable to be reviewed as there is error apparent of the face of the record.

VIII. For that in any view of the matter, the impugned order dated 5.12.97 passed in O.A. No. 208/97 is not maintainable and liable to be set aside and quashed and the O.A. is required to be heard on merit taking into account all the points raised therein. The Petitioners crave leave of this Hon'ble Tribunal to urge the grounds taken in the O.A. and pointed out above which have not been dealt with by the Hon'ble Tribunal while passing the order dated 5.12.97. There is apparent error on the face of the order inasmuch as none of the aforesaid contentions have been dealt with, more particularly the above referred Apex Court judgment and O.M. dated 12.1.96. It was not a case of making any grievance against recovery alone, but it was a definite case of the Petitioners that they are entitled to SDA. However, the Hon'ble Tribunal clubbed the O.A. of the Petitioners alongwith other O.As. in which only effective prayer was for quashing of the order towards

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recovery of SDA already paid. This has resulted error apparent on the face of the order.

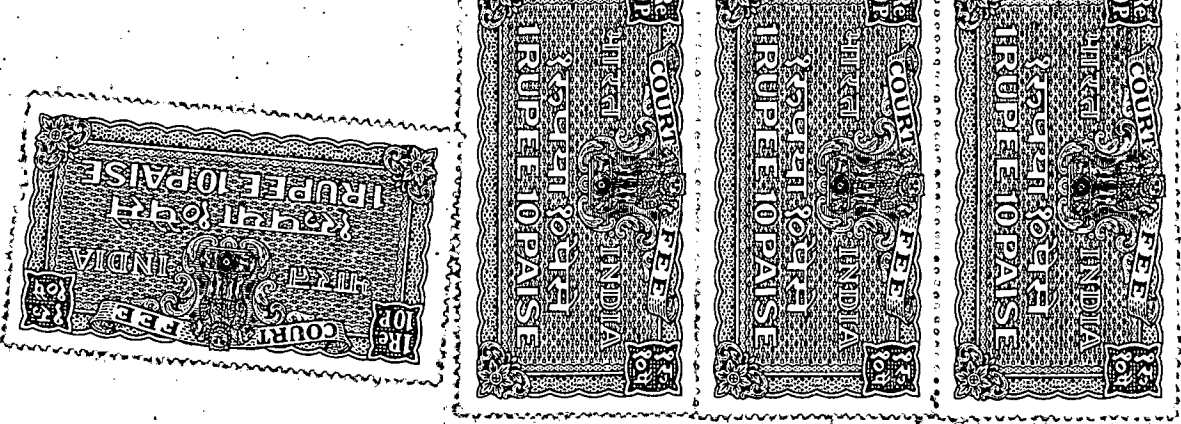
In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to admit this application, call for the records of the O.A. No. 209/96 and upon hearing the parties and on perusal of the records, be pleased to set aside the order dated 5.12.97 passed in O.A. No. 209/96 on a review of the same and be pleased to allow the O.A. and/or be pleased to pass such further order/orders as the Hon'ble Tribunal may deem fit and proper.

- AND -

Pending disposal of this review application, the judgment dated 5.12.97 in O.A. No. 209/96 may be stayed.

And for this, the Petitioners as in duty bound, shall ever pray.

Affidavit....



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I, Shri (Dr.) U.K. Mishra, aged about 43 years, son of Shri L.D. Mishra, presently working as Geologist (Senior) in the office of the Deputy Director General, Geological Survey of India, N.E. Region, Shillong do hereby solemnly declare and affirm as follows :

1. That I am the petitioner No. 1 in the instant review application and as such well conversant with the facts and circumstances of the case. I am also competent and authorised to swear this Affidavit on behalf of all the Petitioners.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 1, 5, 7, 10, 11 are true to my knowledge ; those made in paragraphs 2, 3, 4, 6, 8 being matters of records are true to my information derived therefrom and the rests are my humble submissions.

And I sign this affidavit on this the 20th day of January 1998 at Guwahati.

Identified by me :

U.K. Mishra
DEPONENT

(Dr. U.K. Mishra)

Advocate

S. Sarma
Advocate
27.1.98.

Solemnly affirmed and declared before me by the deponent who is identified by Shri S. Sarma, Advocate on this 20 day of January 1998.

B. Mehta

(B. Mehta)
Advocate

167 Annexure - 1
CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order: This the 5th Day of December, 1997.

Justice Shri D.N.Baruah, Vice-Chairman.

Original Application No. 209 of 1996.

Shri U.K.Mishra & 44 others . . . Applicants
By Advocate Shri S.Sarma

-Versus -

Union of India & Ors. . . Respondents
By Advocate Shri A.K.Choudhury, Addl.C.G.S.C.

O.A.No. 11 of 1997

Meghalaya MES Civilian Employees Union,
Shillong & others. . . Applicants
By Advocate S/Shri J.L.Sarkar & M.Chanda.

- Versus -

Union of India & Ors. . . Respondents
By Advocate Shri G.Sarma, Addl.C.G.S.C.

O.A. No. 22 of 1997.

Shri J.Rai & Ors. . . Applicants
By Advocate Shri M.Chanda

- Versus -

Union of India & Ors. . . Respondents.
By Advocate Shri S.Ali, Sr.C.G.S.C &
G.Sarma, Addl.C.G.S.C

O.A. No. 25 of 1997.

Shri R.B.Limbu . . . Applicant
By Advocate Shri S.Sarma.

- Versus -

Union of India & Ors. . . Respondents.
By Advocate Shri S.Ali, Sr.C.G.S.C.

O.A.No. 31 of 1997.

Shri R.S.Ray & others . . . Applicants.
By Advocate S/Shri J.L.Sarkar & M.Chanda

- Versus -

Union of India & Ors. . . Respondents
By Advocate Shri G.Sarma, Addl.C.G.S.C

O.A. No.35 of 1997.

Shri D.B.Chetri & Ors. . . Applicants
By Advocate S/Shri J.L.Sarkar & M.Chanda

- versus -

Union of India & Ors. . . Respondents
By Advocate Shri G.Sarma, Addl.C.G.S.C

contd..2

17 - 29
CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order: This the 5th Day of December, 1997.

Justice Shri D.N.Baruah, Vice-Chairman.

Original Application No. 209 of 1996.

Shri U.K.Mishra & 44 others . . . Applicants
By Advocate Shri S.Sarma

-Versus -

Union of India & Ors. . . Respondents
By Advocate Shri A.K.Choudhury, Addl.C.G.S.C.

O.A.No. 11 of 1997

Meghalaya MES Civilian Employees Union,
Shillong & others. . . Applicants
By Advocate S/Shri J.L.Sarkar & M.Chanda.

- Versus -

Union of India & Ors. . . Respondents
By Advocate Shri G.Sarma, Addl.C.G.S.C.

O.A. No. 22 of 1997.

Shri J.Rai & Ors. . . Applicants
By Advocate Shri M.Chanda

- Versus -

Union of India & Ors. . . Respondents.
By Advocate Shri S.Ali, Sr.C.G.S.C &
G.Sarma, Addl.C.G.S.C

O.A. No. 25 of 1997.

Shri R.B.Limbu . . . Applicant
By Advocate Shri S.Sarma.

- Versus -

Union of India & Ors. . . Respondents.
By Advocate Shri S.Ali, Sr.C.G.S.C.

O.A.No. 31 of 1997.

Shri R.S.Ray & others . . . Applicants.
By Advocate S/Shri J.L.Sarkar & M.Chanda

- Versus -

Union of India & Ors. . . Respondents
By Advocate Shri G.Sarma, Addl.C.G.S.C

O.A. No.35 of 1997.

Shri D.B.Chetri & Ors. . . Applicants
By Advocate S/Shri J.L.Sarkar & M.Chanda

- versus -

Union of India & Ors. . . Respondents
By Advocate Shri G.Sarma, Addl.C.G.S.C

contd..2

Original Application No. 36 of 1997.

Shri M.B.Dasgupta & Ors. . . . Applicants

By Advocate Shri J.L.Sarkar & M.Chanda.

- Versus -

Union of India & Ors. . . . Respondents.

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

O.A. No.37 of 1997.

Shri B.K.Sinha Choudhury & 163 others . . . Applicants

By Advocate Shri S.Sarma

- Versus -

Union of India & Ors. . . . Respondents

By Advocate Shri S.Ali, Sr.C.G.S.C

O.A.No. 38 of 1997.

MES Workers Union Headquarters
C.W.E and another

. . . Applicants

By Advocate Shri S.Sarma

- Versus -

Union of India & Ors. . . . Respondents

By Advocate Shri S.Ali, Sr.C.G.S.C

O.A. No. 59 of 1997.

Shri K.Prasad & others . . . Applicants

By Advocate S/Shri J.L.Sarkar & M.Chanda

- Versus -

Union of India & Ors. . . . Respondents

By Advocate Shri S.Ali, Sr.C.G.S.C

O.A.No. 71 of 1997.

All Assam MES Employees Union . . . Applicants

By Advocate Sri A.Dasgupta

- Versus -

Union of India & Ors. . . . Respondents

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

O.A. No. 72 of 1997.

Shri P.K.Dutta & Ors. . . . Applicants

By Advocate Shri A.Ahmed

- Versus -

Union of India & Ors. . . . Respondents

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

O.A.No. 208 of 1997.

Shri A.Chakraborty & others. . . . Applicant

By Advocate Shri S.Sarma

- Versus -

Union of India & Ors. . . . Respondents.

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

contd...3

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ORDER

EXTRACT
ANNEXURE-2

BARUAH J(V.C)

All the above Original Applications involve common question of law and similar facts. The applicants had been working at the material time in different posts in the North Eastern Region of different departments under the Central Government and posted at different places. As per the Office Memorandum dated 14.12.1983 persons working in North Eastern Region were entitled to get the Special (Duty) Allowance (SDA for short). The relevant portion of the said circular is quoted below :

"Central Government civilian employees who have all India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/-per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. 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 Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately."



On the basis of the said circular the applicants were given SDA and they receive it. However, in certain cases of similar nature the Central Government approached the Supreme Court by filing Civil Appeal No.1572 of 1997 and other Civil Appeals. The Apex Court disposed of those cases on 17.2.1997 holding interalia that the person who belong to North Eastern Region would not get SDA. The present applicants also though working in the various departments under the Central Government were not outsiders. They belonged to this Region. As per the decision of the Apex Court they

Attested.

Advocate.

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were not entitled to get the SDA. However, the Supreme Court in all the cases held that whatever amount was paid to the employees would not be recovered. In the present case also the applicants who received SDA belong to the North Eastern Region and therefore they are not entitled to the SDA. The Central Government, therefore, wanted to recover the same against which the present applicants have approached this Tribunal.

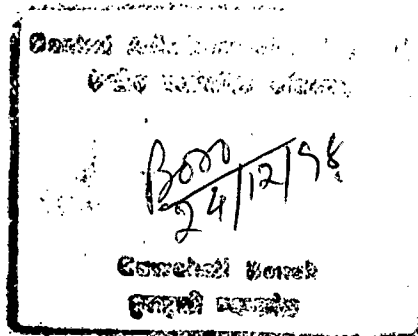
2. Heard Mr J.L.Sarkar, M.Chanda, S.Sarma and Mr A. Ahmed, learned counsel appearing on behalf of the applicants. Learned counsel for the applicants submit that the observation of the Apex Court giving direction to the respondents not to recover the amount which have already been paid to them is also applicable to the present case. Mr S.Ali, learned Sr.C.G.S.C, Mr G.Sarma, learned Addl.C.G.S.C and Mr A.K. Choudhury, learned Addl.C.G.S.C do not dispute this submission. Considering the submissions of the learned counsel for the parties, I am of the opinion that though the present applicants are not entitled to get SDA as held by the Apex Court, the SDA which had already been paid to the applicants shall not be recovered. Mr S.Ali however, points out that in those cases it was ordered not to recover the payment which were earlier to 17.2.1995. The present applicants were not parties to the said decision. In my view the same principle will apply to the present applicants also. Therefore, following the decision of the Apex Court as held in Civil Appeal No.1572 of 1997 arising out of SLP(C) No.14088 of 1996 the respondents are directed not to recover the SDA paid prior to the date of issue of notice in each case. Applications are disposed of accordingly.

Considering the entire facts and circumstances of the case however, I make no order as to costs.

SD/-Vice-Chairman

TRUE COPY

23/12/97
Regional Registrar (01)
Central Administrative Tribunal
New Delhi
23/12



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH, GUWAHATI.

R.A. NO. 3 OF 1998.

O.A. NO. 209 OF 1996.

Filed by:
S. Ali

24/12/98

1. M.D. SINGH
2. Central Administrative Tribunal
3. Gauhati Bench, Guwahati

U.K. Mishra & others.

- Versus -

Union of India and others.

- AND -

IN THE MATTER OF :

Written statements objection submitted
by the opposite party.

The humble opposite party submit their written
statements as follows :-

1. That before furnishing the perawise comments the review application no. 3/98, it is necessary to explain the background of the main original application no. 209/96. In the original application of O.A. 209/96, Dr. U.K. Mishra and 44 others had filed the application before the Hon'ble Central Administrative Tribunal, Guwahati for grant of SDA, out of which 23 Petitioners belong to Group 'A', and 22 to Group 'B'.

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The Hon'ble Tribunal after hearing on both sides dismissed the U.A. No. 209/96 filed by Dr. U.K. Mishra and 44 others praying for grant of SDA vide judgment and order dated 5-12-97. The present review application has been filed by Dr. U.K. Mishra and 8 other Officers belonging to Group 'A' & 'B' posts who had been selected by UPSC and posted to NER by the department. All the applicants belong to states outside the geographical limits of NER.

2. That the opposite party beg to state that there is no error apparent on the face of the record and as such there is nothing to be reviewed of the impugned judgment.

3. That with regard to statements made in para 1 of the review application it is admitted that the Petitioners were selected through UPSC and joined service directly in GSI, NER. The Petitioners are from states as follows :

(1) Dr. U.K. Mishra from U.P., (2) Sri R.C. Shukla from M.P., (3) Sri K.C. Das from Orissa, (4) Sri S.K. Patel from Orissa, (5) Sri D. Panigrahi from Orissa, (6) Sri Subhasis Sen from West Bengal, (7) Sri Saibal Ghosh from West Bengal, (8) Mrs. Champa Sen Sharma from West Bengal and (9) Dr. U.K. Sinha from Bihar.

4. That with regard to statements made in para 2 of the review application the opposite party have no comments.

5. That with regard to statements made in para 3 of the review application the opposite party beg to state that the applicants in this application fulfils almost all the

the terms and conditions laid down for grant of SDA such as All India Transfer Liability, seniority and promotion on All India basis but they were found ineligible for grant of SDA in terms of para 6 of O.M. dated 12th January, 1996 on the ground that they were selected by the UPSC and posted directly to NER by the department as Group 'A' & 'B' Officers and were not transferred from outside the NER.

6. That with regard to statements made in para 4 of the review application the opposite party beg to state that the same has been replied against para 1. It is also reiterated that Group 'C' & 'D' employee of GSI do not have All India Transfer Liability and are not entitled to SDA. However, there are some Group 'C' employees who were promoted departmentally to Group 'B' and posted on promotion in NER. Though they acquired All India Transfer Liability, they were not given SDA as they had not come on transfer to NER.

7. That with regard to statements made in para 5 of the review application the opposite party beg to state that while the Petitioners satisfied some of the eligibility, ~~xxx~~ criteria as mentioned, they were declared ineligible for grant of SDA in terms of Para 6 of O.M. dated 12th January, 1996, which is quoted below :

"The Hon'ble Supreme Court in their judgment delivered on 29.9.91 (in Civil Appeal No. 2351 of 1993) upheld the submission 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". It is perceived that the Apex Court has clarified the interpretation of the expression "posting to NER" as being "transferred from outside the NER".

Working conditions of AIS officers posted to various state cadres are not identical to Group 'A' & 'B' officers posted in the NER and thus there is no justification of granting SDA to Group 'A' & 'B' officers of GSI, NER based on this analogy.

8. That with regard to statements made in para 6 and 7 of the review application the applicant have no comments.

9. That with regard to statements made in para 8 the opposite party beg to state that while admitting that the Petitioners fulfil the clause of "All India Transfer Liability" in its totality, they were not granted the

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the same on the ground of being directly posted to NER on initial appointment and not having on transfer thereto, as clarified in MOF, OM dt. 12.1.96.

10. That with regard to statements made in para 10 of the review application the same has been adequately replied against para.

11. That with regard to statements made in para 11 of the review application the opposite party have no comments.

12. That with regard to statements made in para 12 of the review application the opposite party beg to state that the petitioners who non residence of NER, were selected through UPSC and were declared ineligible for SDA in terms of Para-6 of O.M. dated 1-12-96 (already quoted in the reply given to the contentions of the Petitioners in Para 5).

13. That with regard to statements made in para 13 of the review application the opposite party have no comments.

14. That with regard to statements made in para 14 of the review application the opposite party beg to state that while admitting it as a matter of record, it is also a fact that some of the Petitioners in the Original Application No. 209/96 belonging to Group 'A' & 'B' were residents of NER, recommended for appointment by the UPSC, while some were departmentally promoted from Group 'C' posts. It is not known which other Group 'A' & 'B' officers working in other Departments/Ministries with the same test like that of the petitioners are getting the benefit of SDA. This needs substantiation by production of relevant documents citing specifically.

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There are other officers belonging to NER who were initially posted outside of NWE and were posted back to NER and were being given SDA on the basis of the clause of ~~the~~ retention of the services of efficient officers as laid down in the O.M. dated 14-11-83 and on the basis of O.M. dated 12-1-96.

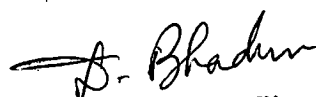
15. That with regard to statements made in para 15 of the review application the opposite party have no comments.

16. The applicant submit that the review application is liable to be dismissed.

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

I, D. Bharali, Director Geological Survey of India Shillong do hereby solemnly declare that the statements made in paras 4, 5, 6, 8, 9, 10, 11, 12, 13 are true to my knowledge and those made in paras 7, 3, 5, 14 are true to my information and the rests are my humble submissions before this Hon'ble Tribunal.

And I, sign the verification on this 21 day of December, 1998 at


D. BHARALI
Director
Geological Survey of India
D E C L A R A N T.