

10/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 183/96

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet.....OA.....Pg. 1.....to...X.....
2. Judgment/Order dtd. 29.8.196.....Pg. X.....to...separate order written.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....183/96.....Pg. 1.....to...28.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg.....to.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Bahh
30.1.18

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 183 196

Sri K.C. Sharma & Co. Applicant(s)

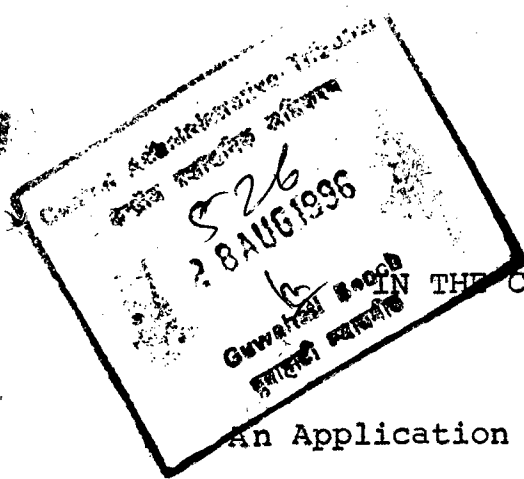
VS-

Union of Andhra Pradesh Respondent(s)

Mr. J.L. Sankar, Mr. Chanda Advocates for the applicant(s)

Mr. S. Ali, Sr. C.G.S.C. Advocates for the Respondent(s)

Office Notes	Date	Courts' Orders
<p>This application is in form and within time C. F. of Rs. 50/- deposited vide I.P.O. No. 3468/11 Dated 22.8.96</p> <p><i>[Signature]</i> 29.8</p>	29.8.96	<p>Mr M.Chanda for the applicants. Mr S.Ali, Sr.C.G.S.C for the respondents.</p> <p>Mr Chanda seeks permission to withdraw this application with liberty to file fresh application and without prejudice to the contentions raised in this application.</p> <p>Prayer is allowed. Application is disposed of on withdrawal.</p>
<p>30.8.96</p> <p>Copy of order issued to the L/Advocates of the parties vide D. No 2979, 2980 Dtd. 2.9.96</p> <p><i>[Signature]</i> 29.8</p>	pg	<p><i>[Signature]</i> Member</p>



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

An Application under Section 19 of the Administrative
Tribunals Act, 1985.

Filed by The applicant
through M. Chandra
28.8.96. p.d.v.

O.A. No. 183/96

Sri K.C.Sharma & Ors.

-versus-

Union of India & Ors.

I N D E X

Sl. No.	Annexure	Particulars	Page No.
1	-	Application	1-18
2	-	Verification	19
3	1	Judgement & Order dt. 8.2.91	20-23
4	2	Judgement & Order dt. 23.7.92	24
5	3	O.M. dated 12.1.96	25-27
6	4	Letter dated 27.8.96	28

Date : 28.8.96.

Filed By :

(Signature)

Advocate

Copy is handed over
to Shri S. Ali
Sr. C.A. S.C.
(Signature)
p.d.v.

Kamakhya Chandra Sharma

1. Particulars of the Applicants

- Include Adv.*
1. Shri A. Manta K. C. Sharma.
 2. " S.K.Biswas
 3. " B.B.Saha
 4. " G.C.Datta
 5. " B.Saikia
 6. " D.D.Deka
 7. " B.R.Boro
 8. % U.C.Pathak
 9. " E.Ahmed
 10. " P.R.Nag
 11. Smt. K.Nag
 12. Shri K.Ravidas
 13. Smt. K.Rahman
 14. Shri B.C.Kalita
 15. " P.Boro
 16. " H.N.Borah
 17. " ~~K.C.Sarma~~ Shri A. Manta.
 18. " B.Lahkar
 19. " G.K.Sarmah
 20. " R.Kalita
 21. Smt. S.L.Devi
 22. Shri K.R.Boro
 23. " P.R.Paul
 24. " A.K.Das
 25. " D.S.Choudhury
 26. " R.Dhar
 27. Smt. S.Sarmah
 28. " ~~Shri~~ P.R.Barua
 29. " P.R.Dhar
 30. " D.Sinha Roy
 31. " G.C.Terong
- Include Adv.*

32. Shri V.Thakur
33. " B.Choudhury
34. " A.B.Chakraborty
35. " S.R.Ghose
36. " S.K.Mitra
37. " A.K.Ghose
38. " B.C.Sarma
39. " S.C.Chakraborty
40. " R.K.Paul
41. " B.Sen
42. " D.K.Dey
43. " Phani Das
44. " T.C.Baishya
45. " H.C.Sonowal
46. " R.Ahmed
47. " S.C.Deka
48. " P.C.Sarma
49. " B.K.Roy
50. " A.K.Choudhury
51. " S.A.Laskar
52. " P.C.Rajbongshi
53. " P.Roy
54. " R.C.Talukdar
55. " G.C.Pathak
56. " D.K.Konwar
57. " R.D.Baroi
58. " T.P.Das
59. " H.L.Sharma
60. " K.C.Baishya

Kanak Chandra Sarma

61. Shri G.B.Rough
62. " B.N.Choudhury
63. " T.N.Misra
64. " D.K.Mukherjee
65. " B.R.Kathar
66. " D.Ram
67. " Lalai Kahar
68. " D.D.Sarma
69. " S.R. Lyngdoh
70. " R.L.Baroi
71. " D.Boro
72. " G.G.Roy
73. " S.L.Ram
74. " S.Tripathi
75. " H. Das
76. " N.N.Kalita
77. " M.C.Rajbongshi
78. " K.C.Bania
79. " Harmuj Ali
80. " R.S.Yadav
81. " B.N.Deka
82. " R.N.Jaswara
83. " S.R.Misra
84. " S.N.Sahani
85. " Sushil Ch. Das
86. " H.N.Sharma
87. " K.K.Sharma
88. " Ananda Ch. Das
89. " K. Jakharia
90. " D.R.Das

Kanak Chandra Sarma

91. Shri S.K.Deb
92. " S.R.Datta
93. " R.Rabha
94. " H.C.Roy
95. " N.Mandal
96. " D.C.Jakharia
97. " D.K.Rabha
98. " Biren Roy
99. " Amir Ali
100. " Islam Ali (I)
101. " M.N.Mahanta
102. " Akhil Ch. Das
103. " Rafique Ali
104. " Rafiqur Rahman
105. " N.C.Kalita
106. " K.Pathak
107. " Islam Ali (II)
108. " N.K.Saikia
109. Smt. Kamini Deka
110. Shri Brojen Boro
111. " Atul Ch. Das
112. " Jatin Patgiri
113. " H.Chakravorty
114. " A.C.Kalita
115. " P.R.Boro
116. " B.Hazarika
117. " Hadayat Ali
118. " Nur Islam Ali
119. " Dandi Ram Das
120. " Kashed Ali

Kamak Chandra Sarma

121. Shri Chand Md. Ali
122. " M.R. Bhuyan
123. " Prasanna Das
124. " Ananta Das
125. " Ramesh Kalita
126. " G.C.Das
127. " N.L.Bansfore
128. " N.B.Chett~~ri~~
129. " M.B. Chettri
130. " D.Singh
131. " T.R.Sharma
132. " J.C.Boro

(All the applicants are working under the Deputy Assistant Director General (MS), Govt. Medical Store Depot, P.O. Gopinath Nagar, Guwahati-16 in different capacities as Group 'B', 'C', & 'D' categories).

2. Particulars of the Respondents

1. The Union of India,
(Through Secretary to the
Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan
New Delhi-110011.

Kanak Chandra Sarma

3. The Deputy Assistant Director General (MS),
Govt. Medical Store Depot, A.K.Azam Road,
P.O. Gopinath Nagar,
Guwahati-16 Respondents.

3. Particulars for which this application is made.

This application is made against the stoppage of payment of Special (Duty) Allowance in pursuance to the Office Memorandum No. 11(3)/95-E.II(B) dated 12.1.96 issued by the Ministry of Finance, Department of Expenditure and also with a prayer for a direction upon the respondents to continue to pay Special (Duty) Allowance in terms of the Judgement and Order dated 8.2.91 passed in O.A. 208/90 and Hon'ble Supreme Court's Order dated 23.7.92 passed in Special Leave Petition (Civil) Appeal No. 9381/92, and also against the letter dated 27.8.96 issued by the Respondent No.3.

4. Limitation

That the applicants declare that this application is made within the prescribed time limit of the Administrative Tribunals Act 1985.

5. That the applicants further declare that the cause of action of this case has been arisen within the jurisdiction of this Hon'ble Tribunal.

Kanak Chandra Sarma

6. Facts of the case :

6.1 That the applicants are citizens of India and they are entitled to all the rights, privileges and protections under the Constitution of India. All the applicants presently serving in the Govt Medical Store Depot, Guwahati in different capacities in the cadre of Group B, C and D.

That the applicants pray for grant of permission to move this application jointly under Section 4(5)(a) of the Central ~~Administrative~~ Administrative Tribunal Procedure Rules, 1987 as the reliefs sought in this application are common.

6.2 That the Govt. of India, Ministry of Finance, Department of Expenditure has granted certain improvement and facilities to the Central Government Civilian Employees working in the North Eastern Region vide Office Memorandum No. 20014/3/83/E.IV dated 14.12.83 and also in terms of Office Memorandum No. 20014/86 F-IV/E.II(B) dated 1.12.88 and also in terms of Office Memorandum issued from time to time. As per the Office Memorandum dated 14.12.83 25% Special (Duty) Allowance of the Basic Pay has been granted to the Central Govt. Civilian Employees working in the North Eastern Region and the same has been changed to $12\frac{1}{2}$ % of the basic pay following Office Memorandum dated 1.12.1988. The ^{some of} applicants of the present application being aggrieved for non-payment of Special (Duty) Allowance approached the Central Administrative Tribunal, Guwahati Bench, through O.A. No. 208/90.

6.3 That the 18 applicants had initially filed the Original ~~/~~ Application before the Hon'ble Tribunal claiming payment of Special (Duty) Allowance (in short SDA) The said application was registered as O.A. No. 208/90 (K.C.Sharma & Ors. Vs. Union of India & Ors.), the said

Kamak Chandra Sarma

application was duly contested by the present respondents and the Original Application 208/90 was decided on 8.2.91 wherein the Hon'ble Tribunal, Guwahati Bench found that the applicants are entitled to for grant of S.D.A. and accordingly it was directed in Para 10 of the said Judgement and Order dated 8.2.91 as follows :

"10. Thus we find that the petitioners are entitled to the Special Duty Allowance which should be paid to each of them calculating the amount to which they are entitled with effect from 1.11.1983 or from the date each of them joined their posts in the North East Region (which ever is later) within 120 days from the date of receipt of a copy of this judgement."

From above, it is quite clear that the Hon'ble Tribunal has granted SDA to the applicants of O.A. 208/90.

A copy of the Judgement and Order dated 8.2.91 is annexed hereto and the same is marked as Annexure-1.

6.4 That the applicants of the original application had to file a Contempt Petition before this Hon'ble Tribunal after expiry of the stipulated period of 120 days during which the respondents were directed to make payment of SDA to the applicants. The C.P. was registered as C.P. 22/91 (O.A. 208/90). However after issuance of Contempt Notice the payment of SDA was made to the applicants of O.A. 208/90. Be it stated that the Original application i.e. O.A. 208/90 was filed by the 18 applicants in representative capacity including the all other serving

Kanak Chandra Sarma

employees of Govt. Medical Store Depot at the relevant time and they are now joined as applicants in the present application.

That after about 1 year from the date of Judgement of the said Original Application the present respondents have carried the matter on appeal before the Hon'ble Supreme Court by filing a Special Leave Petition against the Judgement and Order dated 8.2.91 passed in O.A. No. 208/90. However Hon'ble Supreme Court was pleased to dismiss the said Special Leave Petition to appeal (Civil) Petition No. 9381/92 by order dated 23.7.92 by a Division Bench of the Hon'ble Supreme Court. The relevant portion of the said order dated 23.7.92 passed in Special Leave Petition to Appeal (Civil) No. 9381/92 as follows :

" UPON hearing counsel the Court made the following

O R D E R

There is a delay of 347 days in filing this S.L.P. for which there is no cogent explanation. Learned counsel for the petitioners submitted that the point involved for decision on merits in the S.L.P. is important and is also involved in some other pending SLPs, one of which is SLP (C) No. 13710/87. In our opinion this cannot be a ground for condonation of the inordinate delay for which no cogent explanation has been offered by the petitioners. I.A. No. 1 for condonation of delay is rejected. Consequently the SLP is dismissed as time barred."

Kanak Chandra Saha

After the dismissal of the Special Leave Petition on the ground of limitation the applicants are continuing to receive the payment of SDA ^{each} at the month in terms of the Office Memorandum No. 20012/3/83-E.IV dated 14.12.1983 and also in terms of the Office Memorandum issued from the Govt. of India, Ministry of Finance for grant of S.D.A. to the civilian Central Govt. employees working in the North Eastern Region.

A copy of the Hon'ble Supreme Court's Order dated 23.7.92 is annexed hereto and the same is marked as Annexure-2.

6.5 Most surprisingly the respondents particularly the respondent No. 3 now decided to stop payment of S.D.A. w.e.f. the month of August, 1996 in pursuance to Office Memorandum issued by the Under Secretary, Govt. of India, Ministry of Finance, Deptt. of Expenditure bearing No. 11(3)/95-E.II(B) dated 12.1.96 and also in terms of an audit objection raised by the auditors of the establishment of ~~Assistant~~ Accountant General (I &E) Assam. This was verbally informed by the Deputy Assistant Director General (MS), Govt. Medical Store Depot, Guwahati and your applicants also learnt reliably that the SDA is deducted from the pay bills of the applicants from the month of August, 1996 and there is also an effort is likely to be made to recover the S.D.A. paid after 20.9.94 in terms of the Para, 6, 7 & 8 of Office Memorandum dated 12.1.96 wherein it is stated as follows :

"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

Kamakhya Chandra Sarma

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 the 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.

Kanak Chandra Saha

~~xxxIntheirapplicationtoemployers~~

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

In view of the above Office Memorandum, the respondents are making effort to stop the payment of SDA as well as for recovery of the SDA paid after 20.9.94, but the said Memorandum is no way connected with th grant of Special(Duty) Allowance to the applicants who are serving in the Govt. Medical Deptt., Guwahati, because the case for grant of SDA has been settled ^{at} rest by the Hon'ble Supreme Court following the order passed in Special Leave Petition to Appeal (Civil) No.9381/92, which was preferred before the Hon'ble Supreme Court by the present respondents against the Judgement and Order dt. 8.2.91 passed in O.A. 208/1990. Therefore the payment of SDA as well as recovery of SDA is amount of Contempt of Court and in this circumstances stated above the Hon'ble Tribunal be pleased to declare that the Office Memorandum Dated 12.1.96 are not applicable to the present applicants and further be pleased to declare that the applicants are entitled to SDA. In view of the Hon'ble Supreme Court's Order dated 23.7.92.

A copy of the Office Memorandum dated 12.1.96 is annexed hereto and the same is marked as Annexure-3.

6.6 That the case of the applicants for entitlement of the SDA have already been settled ~~by~~ long back in the year 1991 and the same was confirmed by the Hon'ble Supreme Court by rejecting the Special Leave Petition.

Kamakh Chandra Sarma

Therefore the question of stoppage of SDA at this stage does not arise at all, and the non-payment is tantamount to Contempt of Court.

6.7 That your applicants further beg to state that all the Group C & D employees of the Department of Govt. Medical Store Depot, Guwahati are members of the Govt. Medical Store Depot Employees Union. The respondents No.3 with reference to a letter of the General Secretary of the aforesaid Union dated 27.8.96, it is intimated the applicants that there is no other alternative except to stop the payment of Special (Duty) Allowance from the month of August 1996 to those who are not eligible as per the Office Memorandum dated 12.1.96 of the Ministry of Finance, Govt. of India and it is further stated that no payment of SDA will be effected to those employees who are not eligible from the month of August, 1996 thereby the respondents No. 3 made it clear that the applicants although saddled with All India Transfer liability but since they are locally recruited and therefore the authorities are not going to pay Special (Duty) Allowance to the applicants. Therefore this impugned letter dated 27.8.96 is also liable to be set aside and quashed.

A copy of the impugned letter dated 27.8.96 is annexed as Annexure-4.

6.8 That this application is made bona fide and for the cause of justice.

7. Reliefs sought for :

In the facts and circumstances stated above the applicants are prayed for the following reliefs :

1. That the Hon'ble Tribunal be pleased to declare that the Office Memorandum No. 11(3)/95-E.II(B) (Annexure-3) dated 12.1.96 not applicable to the present applicants.
2. That the Hon'ble Tribunal be pleased to declare that present applicants are entitled to SDA in terms of Office Memorandum No. 20014/3/83.E.IV dated 14.12.1983 and also in terms of Office M.O.M. dt. 1.12.1988.

*Chandra
P.S.*

Kemak Chandra Sarma

3. That the respondents be directed not to make any recovery of SDA in terms of Office Memorandum dated 12.1.96 vide letter No. 11(3)/95-E/II(B).
4. That the respondents be directed to continue the payment of SDA in terms of Office Memorandum No. 20014/3/83-E.IV dated 14.12.1983 and in terms of O.M. No. 20014/16/86-E.IV/E.II dated 1.12.1988.
5. That the impugned letter issued under letter No. Admn.1068/216 dated 27.8.96 (Annexure-4) be set aside and quashed.
5. To pass any other order or orders as deemed fit and proper under the facts and circumstances stated above.

The above reliefs are prayed on the following amongst other -

- G R O U N D S -

1. For that the applicants are saddled with All India Transfer Liability.
2. For that the Original Application No. 208/90 was decided by this Hon'ble Tribunal vide Judgement & Order dated 8.2.91 in favour of the applicants declaring that the applicants are entitled to SDA.
3. For that the Hon'ble Supreme Court has confirmed that the Judgement and Order dated 8.2.91 passed in O.A. 208/90 by rejecting the Special Leave Petition (Civil) Appeal No. 9381/92 vide Hon'ble Supreme Court's Division Bench Order dated 23.7.92.

Kanak Chandra Sarma

4. For that the Judgement and Order dated 8.2.91 passed in O.A. 208/90 has been settled by Hon'ble Supreme Court.
5. For that the Office Memorandum dated 12.1.96 cannot be applicable as regard the payment of Special (Duty) Allowance to the present applicants as the same already been confirmed by the Hon'ble Supreme Court.
6. For that the Office Memorandum issued by the Under Secretary to the Government of India, Ministry of Finance, Deptt. of Expenditure cannot supersede the order of the Hon'ble Central Administrative Tribunal passed in O.A. 208/90 and the Order of the Hon'ble Supreme Court passed in Special Leave Petition (Civil) No. 9381/92 vide Order dated 23.7.92.
7. For that applicants have acquired a valuable and legal right for entitlement of Special (Duty) Allowance interms of the Judgement and Order dated 8.2.91 and 23.7.92.
8. For that the recovery of Special (Duty) Allowance cannot be made in terms of the Office Memorandum dated 12.1.96 as the same was granted on the follwoing Judgement and Order of the Hon'ble Tribunal dt. 8.2.91 and the same was confirmed by the Hon'ble Supreme Court vide order dated 23.7.92.

Kamak Chandra Sarma

9. For that the payment of SDA cannot be stopped following an Audit Objection and in terms of Office Memorandum dated 12.1.96 when the same is extended to the applicants in terms of Judgement and Order dated 8.2.91 and 23.7.92 by the Hon'ble Central Administrative Tribunal and Hon'ble Supreme Court respectively.
10. For that the impugned letter dated 27.8.96 (Annexure-4) issued in the light of O.M. dated 12.1.96 is not legally sustainable and the same is liable to be set aside and quashed.

8. Interims Reliefs Prayed for :

During the pendency of this application the applicants pray for the following reliefs :

1. That the operation of the Office Memorandum bearing No. 11(3)/95-E.II(B) dated 12.1.96 and letter dated 27.8.96 (Annexure-4) be stayed in respect of the applicants till final disposal of this application.
2. That the respondents be directed not to give effect to the Office Memorandum dated 12.1.96 in respect of the applicants.
3. That the respondents be directed to pay Special (Duty) Allowance to the applicants till final disposal of this Original Application.

9. Details of remedy Exhausted:

There is no other rule/law save and except ~~fixing this~~ ~~and~~ filing this application before this Hon'ble Tribunal.

Kanak Chandra Sarma

10. That the matter is not pending before any other Court/Tribunal .

11. Particulars of the Postal Order

- | | | |
|----|------------------|--------------------|
| 1. | Postal Order No. | : 346811 |
| 2. | Date of Issue | : 27-8-96. |
| 3. | Issued from | : G.P.O., Guwahati |
| 4. | Payable at | : G.P.O., Guwahati |

12. Index of Documents is enclosed

13. Enclosures :

As per Index.

Kamak Chandra Sarma

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

I, Shri K.C. Sharma, son of Late Sukdev Sarma aged about 36 years working as Pharmacist cum clerk in the office of the Govt. Medical Store Depot, Gopinath Nagar, Rehabari, Guwahati, applicant in this application and am duly authorised by all the applicants to verify this Application and after going through the application do hereby declare that the statements made in this application are true to my knowledge and belief.

I have not suppressed any material facts.

And I sign this verification on this the 28th day of August, 1996 at Guwahati.

Kanak Chandra Sarma

Signature

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 208 of 1990

Date of decision : the 8th day of February 1991.

1. Shri K.C.Sharma, Pharmacist-cum-Clerk.
2. " Anil Kr. Nandy, SAS Accountant,
3. " Abani Kanta Das, UDC
4. " S.K.Biswas, Office Supdt.,
5. " G.C.Dutta, Asstt. Store Supdt.
6. " A.K.Choudhury, LDC
7. " Amir Ali, Depot Mazdoor,
8. " N.Mandal, Dartari
9. " R.Rahman, Mazdoor
10. " S.L.Devi, UDC
11. " Harmju Ali, Mazdoor
12. " R.Ali, Mazdoor
13. " T.P.Das, Assembler-cum-checker
14. " Mrs. S.Sharma, UDC
15. " B.Kalita, Pharmacist
16. " B.Saikia, Asstt. Store Supdt.
17. " D.D.Deka, -do-
18. " B.N.Deka, Packer

Officer of the Deputy Assistant
Director General, (MS), Govt. Medical
Store Depot, P.O. Rehabari,
Guwahati-8

..... Applicant

-versus-

1. Union of India,
(Through Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi-11.
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi-11.
3. The Deputy Assistant Director General (MS)
Govt. Medical Store Depot, P.O.Rehabari
Guwahati-8

..... Respondents.

*Attested
Chh
Sd/-*

For the Applicants : Mr. J.L.Sarkar &
Mr. M.Chanda, Advocate
For the Respondents : Mr. G.Sarma, Addl.C.G.S.C.

C O R A M

THE HON'BLE SHRI K.P.ACHARYA, VICE-CHAIRMAN
AND

THE HON'BLE MISS USHA SAVARA MEMBER (A)

1. Whether reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporters or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement?

J U D G E M E N T

ACHARYA J

In this application under Section 19 of the Administrative Tribunals Act 1985 the petitioners (18 in number) were working as Group B, C and D employees in the office of the Deputy Assistant Director General (MS) Government Medical Store Depot, Guwahati pray for a direction to the opposite parties to pay to them Special Duty Allowance as envisaged in Office Memorandum No. 20014/3/83-E.IV dated 14.12.1983. The application is filed on representative capacity which is allowed.

2. Shortly stated the case of the petitioners is that they have been working in the said office and therefore they are employees working in the North Eastern Region. The Ministry of Finance by virtue of the above mentioned office memorandum laid down that the employees serving in the North East Region are entitled to Special Duty Allowance provided that they have an all India Transfer liability. The petitioners by virtue of their condition of service embodied in the letters of appointment are liable for transfer on all India basis

Handwritten signature/initials

Annexure-1 (Contd.)

and therefore they claim to be entitled to Special Duty Allowance. Hence this application with the aforesaid prayer.

3. In their counter the opposite parties maintain that the petitioners are not entitled to any relief because the All India transfer liability has not been effected and the case is barred under Section 20 and 21 of the Administrative Tribunals Act 1985. Hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. J.L.Sarkar assisted by Mr. M.Chanda learned counsel for the petitioner and Mr. G.Sarma learned standing counsel for the Central Government at some length.

5. The admitted facts are that the above mentioned office memorandum had been issued by the Ministry of Finance entitling the employees serving in the North East Region to Special Duty Allowance provided that the employees have an all India transfer liability.

6. It is now to be considered as to whether the petitioners have been saddled with all India transfer liability. We have perused the orders of appointment which have been annexed to the application. Therein it is mentioned 'the appointment carried with it liability to serve in any part of India'. This fact was also not disputed in the counter. The only plea taken in the counter and vehemently argued by Mr. Sarma is that the case is barred by limitation and that transfer has not been in fact effected and that other remedies not having been exhausted, the application is liable to be dismissed under Section 20 of the Administrative Tribunals Act.

7. The Full Bench of the Central Administrative Tribunal~~s~~ has laid down that the employees serving in the North East Region having a liability for transfer to any part of India are

*Attested
by
[Signature]
[Signature]*

entitled to Special Duty Allowance irrespective of the fact as to whether the transfer has been actually effected or not. We are bound by the views of the Full Bench. Therefore, on this account the aforesaid contention of Mr. Sarma deserves no merit and hence rejected.

8. As regards the contention of Mr. Sarma that the case is barred by limitation, we are also unable to accept the said argument because it is a continuous cause of action. Hence limitation does not operate against the petitioners.

9. We also hold that the case is not barred under Section 20 of the Administrative Tribunals Act 1985, as contended by Mr. Sarma because the Parliament has in its wisdom veeted a discretion with the Tribunal making a provision under Section 20 of the Act that 'ordinarily' an application shall not admitted if other remedies are not exhausted'. In a bed roll of Judgments we have given benefit to the petitioners and to many employees and such benefits not having been awarded in favour of the petitioner they have approach the portals of the Court and therefore we would hereby waive this impediment.

10. Thus we find that the petitioners are entitled to the Special Duty Allowance which should be paid to each of them calculating the amount to which they are entitled with effect from 1.11.1983 or from the date each of them joined their posts in the North East~~x~~ Region (which ever is later) within 120 days from the date of receipt of a copy of this judgment.

11. Thus the application is stands allowed leaving the parties to bear their own costs.

Sd/- (U.Savara)
Member (A)

Sd/- (K.P.Acharya) 8.2.91
Vice-Chairman

Handwritten signatures and initials:
A.H. 1-5
C. Acharya
Sd/-

SUPREME COURT OF INDIA

CC 17069

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil/CA) No.(s) 2417/92

(From the judgment and order dated 8.2.91
Guwahati Bench in OA No. 208/91

of the High Court of C.A.T.

U.D.I. & Drs.

Petitioner (s)

Versus

389385

K.C. Sharma & Ors
With IA No. 1 (Appln. for c/delay in filing SLP)
Date 23.7.92 This/these petition (s) was/were called on for hearing today.

Respondent (s)

CORAM:

Hon'ble Mr. Justice J.S. Verma
Hon'ble Mr. Justice A.S. Anand
Hon'ble Mr. Justice

Certified to be a true copy

Assistant Registrar (Judl.)

30/7/1992
Supreme Court of IndiaFor the petitioner (s) Mr. TC Sharma, Adv.
Mr. CV Subba Rao, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

There is a delay of 347 days in filing this S.L.P for which there is no cogent explanation.

Learned counsel for the petitioners submitted that the point involved for decision on merits in this S.L.P is important and is also involved in some other pending SLPs, one of which is S.L.P (C) No. 13710/87. In our opinion this cannot be a ground for condonation of the inordinate delay for which no cogent explanation has been offered by the petitioners.

I.A. No. 1 for condonation of delay is rejected. Consequently the SLP is dismissed as time barred.

Sunita
(SUNITA TALWAR)
COURT MASTER

Vinod
(VINOD KUMAR)
COURT MASTER

-25-

No.11(3)/95-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan.1996

OFFICE MEMORANDUM

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

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

2. The Government of India vide the above mentioned O.M. dt. 14.12.1983 granted certain incentives to the Central Government civilian employees posted to the N.E. 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 dated 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 ~~xxx~~ (1) 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 appointed 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

*Attended
While
Adv.*

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 ~~upheld~~ delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993) upheld the submissions of the Government of India that ~~transferees of Central Government civilian employees~~ 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 the 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 India Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

Handwritten signature and initials: "H. A. ed" and "M. A. ed" with a circular stamp.

10. Hindi version of this OM is enclosed.

Sd/- C. Balachandran
Under Secy. to the Govt. of India

All/Ministries/Departments of the Govt. of India, etc.
etc.

Copy (with spare copies) to C&AG, UPSC etc. as per
standard endorsement list.

Attested
@ Jule
P.S.

GOVERNMENT OF INDIA
Ministry of Health & Family Welfare
Directorate General of Health Services,
GOVERNMENT MEDICAL STORE DEPOT,
A.K.Azad Road, Gopinath Nagar
Guwahati-781016

No. Admn/1068/216

27AUG 1996

To

The General Secretary
Govt. Medical Store Depot Employees Union
Class-III&IV
Guwahati

Sir,

Reference your letter No. GMSDEW/GHY/SDA/96/17 dated 27.8.96, it is stated that this depot has not other go except to stop the payment of SDA from the month of August'96 to those who are not eligible as per the O.M. No. 11(3)/95-E.II(B) dated 12.1.96 of the Ministry of Finance, Govt. of India and accordingly no payment of SDA will be effected to those staff who are not eligible from the month of August, 1996.

Yours faithfully,

Sd/- G.SUBRAMANIAN
Dy. Asstt. Director General

AH-21-el
Chh
Bh