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UNION OF INDIA AND ORS.

v.

EXECUTIVE OFFICERS ASSOCIATION GROUP 'C'

FEBRUARY 23, 1995

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[S.C. AGRAWAL AND FAIZAN UDDIN, JJ.]

*Service Law—Allowances—Special Duty Allowance for service in North-Eastern Region—Entitlement of officers belonging to said region—Held: Not entitled to.*

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An office memorandum issued by the Government of India, Ministry of Finance provided for Special Duty Allowance for Central Government employees who had all India transfer liability. The allowance was provided on the recommendation of a Committee in order to attract and retain the services of competent officers in the North-Eastern Region.

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An Association of Group "C" Inspectors of Customs and Central Excise, Shillong alleging that they had all India transfer liability under the Central Excise and Land Customs Department Group (C) Posts Recruitment Rules, 1979 claimed the Special Duty Allowance. The Central Administrative Tribunal ordered payment of the allowance. The Union of India challenged the order contending that the respondents were not entitled to the allowance as they belonged to the North-Eastern Region itself and were recruited and posted to the said region.

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Allowing the appeal, this Court

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**HELD :** The words "attracting and retaining in service" in the opening part of the office memorandum were very significant and suggested only competent officers belonging to a region other than the North-Eastern Region. The intention and spirit behind the office memorandum was to provide an incentive and attraction to competent officers belonging to regions other than the North-Eastern Region to go and serve in the North-Eastern Region which was considered a hard zone. [280-B-C]

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*Chief General Manager (Telecom) v. S. Rajender C.H. Bhattacharjee and Ors., JT (1995) 1 SC 440 and Union of India v. S. Vijaya Kumar and Ors., JT (1994) 6 SC 443, relied on.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3034 of 1995. A

From the Judgment and Order dated 28.5.93 of the Central Administrative Tribunal, Guwahati Bench in O.A. No. 172 of 1991.

N.N. Goswamy, S.D. Sharma, V.K. Verma and D.S. Mehra for the Appellants. B

Krishnamurthi Swami for the Respondents.

The Judgment of the Court was delivered by C

**FAIZAN UDDIN, J.** 1. Delay condoned.

2. Leave granted. The counsel for parties are heard.

3. This appeal has been directed by the appellants against the judgment dated May 28, 1993 passed by the Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as Tribunal) in O.A. No. 172 of 1972. By the said judgment the Tribunal held that the respondents are entitled to Special Duty Allowance in terms of Office memorandum dated December 14, 1983 with effect from the date specifically indicated in the said Office Memorandum and directed the appellants herein to pay and clear the Special Duty Allowance to the respondents herein within 90 days from the date of receipt of copy of the judgment in respect of the arrears due and to release the current Special duty Allowance with effect from the month of June, 1993. D E

4. The respondent No. 1 is an Association of Group (C) Inspectors of Customs and Central Excise under the Collectorate of Customs and Central Excise, Shillong and respondent Nos. 2 and 3 are its President and General Secretary respectively. The respondents approached the Tribunal claiming Special Duty Allowance on the strength of Office Memorandum No. 20014/2/83-E.IV dated December 14, 1983 and the Office Memorandum No. 20014/16/86.IV/E.II(B) dated December 1, 1988 issued by the Ministry of Finance, Government of India. The respondent-Association claimed that its members have all India transfer liability under the Central Excise and Land Customs Department Goup (C) Posts Recruitment Rules, 1979 which were applicable to its members and in pursuance of which three F G H

A of its members had been transferred and one Smt. Lisa L. Rynjan of Shillong had been posted at Goa under the said recruitment Rules and, therefore, they are eligible and entitled to claim Special Duty Allowance. The appellants herein opposed and contested the aforesaid claim of the respondents before the Tribunal. The appellants took the defence by stating that the Office Memorandum No. 20014/3/83.E/IV dated April 20, 1987 had clarified that the Special Duty Allowance is payable only to those officers, incumbents of Group (C) of posts who are having all India transfer liability defined in the said Office Memorandum keeping in view the original Office Memorandum dated March 14, 1983 and that the conditions stipulated in the Recruitment Rules, 1979 referred to above cannot be taken as basis for saddling the respondents or its members with all India transfer liability and consequent payment of Special Duty Allowance to them. The appellants also took the plea that all India transfer liability of the members of any service/cadre or incumbent of any posts/Group of posts is to be determined by applying the tests of recruitment to the service/cadre/post made on all India basis and that mere clauses in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make him/them eligible for grant of Special Duty Allowance in terms of Office Memorandum dated December 14, 1983.

E 5. After considering the rival contentions the Tribunal observed that the contents of Office Memorandum dated April 12, 1984 as well as the letter No. 7/47/48.EA dated September 28, 1984 have been fully discussed by the Full Bench, Calcutta and held that the real test/criteria for determination is whether all India transfer liability exists and opined that without recalling the Office Memorandum issued in 1983 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw its application to certain other classes. Relying on the said Bench decision of the Central Administrative Tribunal, Calcutta, the Tribunal allowed the application of the respondents by the impugned judgment and granted the relief as stated above against which this appeal has been preferred.

H 6. Learned counsel for the appellants submitted that the Tribunal has failed to appreciate the true meaning, intention and spirit behind the term all India transfer liability which occurred in the Finance Ministry Office Memorandum referred to above and has thus seriously erred in holding

that the members of the respondent-Association are entitled to the Special Duty Allowance. He further submitted that the package of incentives contained in the Ministry's Office Memorandum dated December 14, 1983 (as amended) as based on the recommendations of the committee to review the facilities and allowance admissible to Central Government Employees in the North-Eastern Region and it was with a view to attract and retain competent officers service in the States and Union Territories in the North-Eastern Region that the Government of India on the recommendations of the committee made the provision for Special Duty Allowance to be paid to such officers who come on posting and deputation to North-Eastern Region from other Regions. It was, therefore, submitted that since the members of the respondent-Association belonged to the North-Eastern Region itself who were recruited and posted in the same Region, they were not entitled for Special Duty Allowance.

7. The main source for claiming the Special Duty Allowance is the Office Memorandum dated December 14, 1983 the very first paragraph of which reads as under :-

"The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram have been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows."

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8. A careful perusal of the opening part of the Office Memorandum reproduced above would show that the Government had appointed a Committee under the Chairmanship of the Secretary Department of Per-

A sonnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government Employees serving in the North-Eastern Region so that competent officers may be attracted and retained in the North-Eastern Region States. The use of words attracting and retaining in service are very much significant which only suggest that it means the competent officers belonging to the Region other than the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. The intention of the Government and spirit behind the Office Memorandum is to provide an incentive and attraction to the competent officers belonging to the Region other than the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern Region and the States comprising therein are different from other Regions of the country. The North-Eastern Region is considered to be hard zone for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competent officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office Memorandum in question came up for consideration before this Court in *Chief General Manager (Telecom) v. S. Rajender C.H. Bhattacharjee & Ors.*, JT (1995) 1 SC 440 which was decided by us by judgment dated January 18, 1995 in which this Court took the view that the said Office Memorandas are meant for attracting and retaining the services of competent officers in the North-Eastern Region, from other parts of the country and not the persons belonging to that region where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in J.T. (1994) 6 443 - *Union of India v. S. Vijaya Kumar & Ors.*, In *Vijaya Kumar* (Supra) the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1983 and other related Office Memorandums indicated above, it was held that the purpose of the allowance was to attract persons from outside the North-Eastern Region to work in the North-Eastern Region because of inaccessibility and difficult terrain. In the facts and circumstances stated above the view taken by the Tribunal cannot be upheld and deserves to be

set aside.

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9. For the reasons stated above the appeal is allowed. The impugned order of the tribunal is set aside and the application filed by the respondents before the tribunal for grant of Special Duty Allowance to them is dismissed. In the facts and circumstances of the case, we make no order as to costs.

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Appeal allowed.