

CASE NO.:
Appeal (civil) 3251 of 1993

PETITIONER:
UNION OF INDIA

RESPONDENT:
S. VIJAYKUMAR AND ORS.

DATE OF JUDGMENT: 20/09/1994

BENCH:
KULDIP SINGH & B.L. HANSARIA

JUDGMENT:
JUDGMENT

1994 SUPPL. (3) SCR 716

The Judgment of the Court was delivered by

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

2 . The Tribunal took the aforesaid view because the Office Memorandum dated 14.12.1983 which is on the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region-improvement thereof has stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this office memorandum, if it is read along with what was stated subsequently in office memorandum dated 20.4.1987, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this Region. The office memorandum of 1987 has clearly stated that the allowance would not become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

3. Dr. Ghosh appearing for the respondents contends that the office memorandum of 1983 having not stated what is contained in the memorandum of 1987, a rider cannot be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non-residents, would be violative of doctrine of equal pay for equal work and as such of Articles 14 and 16 of the Constitution.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, alongwith what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found

that incumbents going to the Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North Eastern Region". This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh.

5. The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in Reserve Bank of India v. Reserve Bank of India Staff Officers Association and Others, [1991] 4 SCC 132, to which our attention has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

6. In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor General we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employees, would not be recovered from them in so as the allowance is concerned.

7. The appeals are allowed accordingly. There will be HO order as to costs.