

Central Administrative Tribunal
Principal Bench

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O.A. No. 2172/94

New Delhi, this the 16th day of May, 1995.

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HON'BLE SHRI J.P. SHARMA, MEMBER (J)

1. Jagdish S/o Kunden Lal,
R/o TF 3/1, Red Fort, Delhi
Working as Mazdoor with Garrison
Engineer, Red Fort, Delhi.
2. Babu Ram S/o Shri Bhogi Ram,
R/o T3F/2 EME W/Shop
Red Fort, Delhi - working as
Mate with the Garrison Engineer,
Red Fort, Delhi.
3. Chandu S/o Sh. Ranu Ram,
R/o T21/5, EME W/Shop
Red Fort, Delhi working as
Mate with Garrison Engineer,
Red Fort, Delhi.
4. Vishnu S/o Tota Ram,
R/o Vill. Saladpur PO
Morad Nagar Distt.
Ghaziabad working as Mate
with Garrison Engineer,
Red Fort.
5. Des Raj S/o Kiru Ram
R/o T30/1 Transit Camp
M. P. working with Garrison
Engineer, Red Fort, Delhi,
as Mate.
6. Munshi Ram S/o Kalu Ram
R/o H. No. 10623 Andha Mugel,
Partap Nagar Subzi Mandi,
Delhi, working as Mate with
Garrison Engineer, Red Fort,
Delhi
7. Ashok S/o Ram Lal
R/o T-30/3 Transit Camp
Red Fort, Delhi - working
as Mazdoor with Garrison
Engineer, Red Fort, Delhi.
8. Shiv Singh S/o Rattan Singh
R/o 9 F3/3 Inside Red Fort, Delhi
working as Mate with Garrison
Engineer, Red Fort, Delhi.

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9. Om Parkash S/o S. Karam Singh
R/o WZ-860B, Naraina, Delhi-28
working as Mazdoor with Garrison
Engineer, Red Fort, Delhi.
 10. Krishan Gopal S/o Net Ram,
R/o 5A/2 B1 Line R/Fort, Delhi
working as Mate with Garrison
Engineer, Red Fort, Delhi.
 11. Ishwar Lal S/o Jagan Nath,
R/o K/173, Janta Colony,
Jafraabad, Delhi-51, working
as Mate with Garrison Engineer,
Red Fort, Delhi.
 12. Hari Bahadur S/o Dil Bahadur,
R/o T/28/8, Transit Camp,
working as Mazdoor with Garrison
Engineer, Red Fort, Delhi.
 13. Chander Bhan S/o Buddhan,
R/o H. No. 150, Wazirpur JJ
Colony, Delhi-52, working as
Mazdoor with Garrison Engineer,
Red Fort, Delhi.
 14. Madan Kumar S/o Shamal,
R/o T28/7, Transit Camp,
working as Mazdoor with
Garrison Engineer, Red Fort,
Delhi.
 15. Mohd Sharif S/o Nassu,
R/o Wall Cr. 81 Dhobi Line,
Red Fort, Delhi working as
Mazdoor with Garrison Engineer,
Red Fort, Delhi.
 16. Abdul Anis S/o Abdul Aziz,
R/o Wall Cr. 81 Dhobi Line,
Red Fort, Delhi working as
Mazdoor with Garrison Engineer,
Red Fort, Delhi.
 17. Ram Bahadur S/o Ram Ujagar Singh
R/o T17/E/5. Inside Red Fort, Delhi
working as Mazdoor with Garrison
Engineer, Red Fort, Delhi.
- (By Shri B.S. Arora, Advocate)

Applicants

Versus

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Union of India through

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Engineer-in-chief,
Kashmir House, Rajaji Marg,
New Delhi.
3. The Garrison Engineer, M.E.S.
Red Fort, Delhi.

Respondents

(Shri M.M.Sudan, Advocate)

Judgement (Oral)

Hon'ble Sh. J.P. Sharma, M(J)

All these applicants are working as Mazdoor/Mate/
Helper with the Garrison Engineer/Electrician, i.e.
respondent No. 3. Their grievance has been that they
are helping the Electrician in the odd hours of the
night and those electricians are paid the night duty
allowance but that was denied to them till the issuance
of the order dated 2nd September, 1993 when their
category was also included for the award of night
duty allowance to those helping Electrician/Linemen/
Wiremen deployed on NDA in M.E.S. It appears that in
pursuance of the award of the night duty allowance by
the Memo dated 2.9.1993/August, 1993/of the Ministry of
Defence O.M. dated 15.3.1990 the dealing authority

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calculated the arrears of the applicants/beneficiaries of the aforesaid O.M. w.e.f. 1.1.1986 and these arrears have been paid. Subsequently, it was found that night duty allowance was to be paid to the applicants with effect from the date of the issuance of the order dated 2.9.1993 and the office has wrongly drawn the arrears of these applicants of night duty allowance assuming the order dated 2.9.1993 to be effective from 1.1.1986. In pursuance to the aforesaid order, the respondents have issued a letter for recovery of the aforesaid arrears by the impugned Memo dated 4.10.1994.

The applicants have filed this application jointly on 31.10.1994 praying for the grant of the relief that O.M. dated 2.9.1993 as well as the order dated 4/10/94 issued by the respondents be quashed and no recovery be effected from the applicants.

On notice, the respondents contested this application and stated that in pursuance of the Ministry of Defence O.M., there was identification of certain categories of night duty allowance which has been a continuous process with the Ministry concerned and it was only in pursuance of this O.M. dated 15.3.1990 that

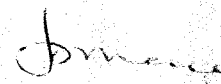
the trade of the applicants was considered and included as an Annexure to the aforesaid O.M. of March, 1990 for payment of the night duty allowance to the category to which the applicants belong. The respondents, therefore, stated that the applicants can get night duty allowance only when their discipline was identified and added as an annexure to the O.M. of 15.3.1990 of the Ministry of Defence. The applicants cannot claim the night duty allowance w.e.f. 1.1.1986. The arrears paid to the applicants under wrong interpretation/understanding of the aforesaid O.M. of 2.9.1993/ August, 93 cannot make a valid payment to the applicants and respondents are within their right to recover the same as a cut of date has been provided which has a nexus to the objects to be achieved. The respondents have further placed reliance on the case of Union of India vs. P.N. Menon & Ors. and also filed a copy of the judgement as Annexure-R-I with the aforesaid counter contesting the claim of the applicants i.e. Civil appeal No. 517/1987 decided by the Hon'ble Supreme Court of India by the judgement dated 17.3.94. In that case the Hon'ble Supreme Court considered the matter of the payment of dearness relief / where a part of the dearness allowance was merged with the dearness pay and a cut of

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duty allowance by O.M. of dated 25.6.92 observing that 'with immediate effect' be deleted from that and The substitute as w.e.f. 1.1.1986/meaning of the word with immediate effect is clear and the Ministry of Defence has only substituted the word w.e.f. 1.1.1986 for the words with immediate effect and therefore, it is not open to the applicants to assume in the order dated 2.9.1993 that the allowance has been granted to them w.e.f. 1.1.1986. The learned counsel for the applicant on instructions from the applicants pointed out that the Valve Men have been granted the benefit of night duty allowance w.e.f. 1.1.1986. The point has not been pleaded in pleadings/^{clearly.} In view of this, the learned counsel for the parties agreed to that the matter may for night duty allowance to the applicants /be re-considered by the respondents whether the night duty allowance is to be made available to the applicants w.e.f. 1.1.1986 or from the date of the order i.e. 2.9.1993. While observing this, it is further observed that the respondents shall consider sympathetically the case of the applicants when they have substituted the words with immediate effect for the word w.e.f. 1.1.1986 in the O.M. of 25.6.1992. It is hereby further illustrated that

the O.M. 25.6.1992 is also with regard to the award of night duty allowance to certain categories of persons in Army, Navy and Air-force. For the Army, 6 discipline have been added; for the Navy, 8 disciplines have been added and for the Air-force, 10 discipline have been added. All these persons have been granted the benefit of night duty allowance w.e.f. 1.1.1986 which is not in dispute. Further, respondents also to consider that the applicants have been paid the arrears by an understanding of the order issued by the Ministry of Defence of August, 1993/2/9/1993 and the arrears have been paid to the applicants who are admittedly the low paid employees and had performed night duty allowance also in the period for which the applicants have been paid. The respondents will, therefore, re-consider all these aspects.

The present application is, therefore, disposed of with direction that the case of the applicants be re-considered for the award of night duty allowance^{w.e.f. 1.1.1986} in the light of the observation made in the body of the Judgement. O.A. disposed of accordingly. Cost on parties.



(J.P.SHARMA)
MEMBER (J)