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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 387/2004

New Delhi this the 23rd day of March, 2004

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri S.A.Singh, Member (A)

Ordinance Factory Karamchari Union
Murad Nagar, Through its
Jt. Secretary.

1. Bhim Singh Rana
Ticket No. 42 Personal No. 233040
2. Jai Parkash Sharma
Ticket No. 73 Personal No. 233068
3. Mohan Lal Meena
Ticket No. 107 Personal No. 233091
4. Madan Pal Singh
Ticket No. 90 Personal No. 233081

(All working as Darban Category Security
Section Ordinance Factory, Murad Nagar
Ghaziabad (UP)

..Applicants

(By Advocate Shri M.K.Bhardwaj)

VERSUS

Union of India and Ors.

1. The Secretary, Govt. of India,
Ministry of Defence, South Block,
New Delhi.
2. The Director General,
Ordinance Factory Board,
10-A, Auckland Road, Calcutta.
3. The General Manager,
Ordinance Factory, Muradnagar,
Ghaziabad (UP)

..Respondents

(By Advocate Shri S.M.Arif)

O R D E R (ORAL)

(Hon'ble Shri Kuldip Singh, Member (J)

This is a joint application filed by the four
applicants who are working in Durwan category under the
Security Section Ordinance Factory, Murad Nagar.
Applicants allege that they are eligible to draw night

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duty allowance as the post of Durwans involves different nature of duties so they were paid night duty allowance. However, the Ministry of Defence issued an O.M. dated 2.4.1998 wherein it has been stipulated, inter-alia, that the Chowkidars are not entitled for payment of night duty allowance since the normal duties contained an element of night duty. Applicants allege that the nature of duties of Durwan and Chowkidar are totally different as a Chowkidar is required to watch a particular building from outside, whereas the Durwans are not only required to watch the building but they are also required to prevent any attempt of sabotage and loss to the Government property. It is further submitted that the post of Durwan is made particularly for the industrial organization whereas the post of Chowkidar exists in the non industrial organisation and thus while examining the issue of payment of night duty allowances, the respondents have lost sight of the fact that the duty and responsibilities of Durwans and Chowkidar are not similar. Thus, the applicants have prayed that the impugned orders dated 22.8.2000 and 13.12.2003 by which the recovery for night duty allowances having been paid should be quashed and set aside and directions be issued to the respondents to continue to pay the night duty allowance to the applicants.

3. Respondents have filed their reply and contested the OA that the subject matter of night duty



allowances came up before the various Benches of the Tribunal. The learned single bench Member at Hyderabad dismissed the petition. Similarly, the learned Division Bench at Jabalpur had taken up the same issue and dismissed the OA holding that there is no justification for night duty allowance to be accorded to them, as per policy decision which has not been proved to be arbitrary or violative of Articles 14 and 16 of the Constitution as the similar benefits have not been accorded to any other employees of other Ministries. Therefore, the action of the respondents cannot be found fault with or arbitrary.

4. We have heard the learned counsel for the parties and perused the records. Learned counsel for the applicants has placed on record a copy of the learned single Member judgment of the Madras Bench in OA 144/2002 which was decided on 5.2.2003 wherein the Hon'ble Member had come to the conclusion that the order withdrawing the night duty allowance to Durwans is discriminatory one and is violative of Articles 14 and 16 of the Constitution. The learned single Member while distinguishing the duties of Durwans from Chowkidar, was of the view that the nature of duties and responsibilities of Chowkidar in the Defence and that of Durwans working in the Ordnance Factory are different. On the contrary, the Division Bench judgement of the Jabalpur while deciding the OA 63/2003 on 14.3.2002 in Para 4 thereof state that the duties of Chowkidars and Durwans are identical. Similarly,

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single Member judgement of the Hyderabad Bench in OA 1458/2001 dated 12.12.2002 had also referred to the order dated 25.9.2001 issued by the Ministry of Defence, Govt. of India which finds mention that the case had been examined by Sec. D(Fy.II) of the Ministry of Defence in consultation with D(Civ.I) and Ministry of Defence (Finance). A view has been taken that night duty is an inseparable characteristic of the job of "Durwan" and hence they are no different from "Chowkidar" insofar as their job is concerned. The judgement of the single Member of the Madras Bench dated 5.2.2003 distinguishes the duties of Durwans and Chowkidars and has held that the Durwans are entitled to night duty allowances which did not find mention in the judgement of the Division Bench of the Jabalpur Bench which was delivered on 14.3.2002 and also that of Hyderabad Bench which was delivered on 12.12.2002. Thus, the judgement given by the single Member Bench at Madras is per incuriam as the judgement given by the Division Bench of the Jabalpur Bench as well as that of Hyderabad Bench had not been brought to the notice of the Madras Bench. As such the judgement of the single Member bench is not binding on us whereby the Division Bench judgement of the Jabalpur Bench is binding upon us.

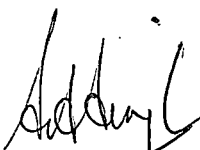
5. Ordinarily we would have referred this matter to the Full Bench but the fact remains that the judgement has been given by the Division Bench of the Jabalpur, whereas the judgement given by the Single

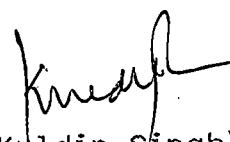
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Member of the Madras Bench do not refer to the judgement of the Jabalpur Division Bench which was decided earlier. Besides that, we are also informed that the judgement given by the single Member of the Madras Bench has been stayed by the Hon'ble Madras High Court. Thus, we find that we have no reason to differ from the judgement given by the Jabalpur Bench and we hold that the applicants who are Durwans their nature of job is not different from Chowkidars which includes the element of night duty and, therefore, they are not entitled to night duty allowance.

6. However, in so far as the recovery of past payment to the applicants is concerned, we find that since payment has been made without any fault of the applicants, the same cannot be recovered from the applicants. Thus the recovery of past payment made if any is stayed.

7. Accordingly, OA fails and is dismissed.


(S.A.Singh)
Member (A)


(Kuldip Singh)
Member (J)

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