

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

\* \* \*

Date of Decision: 10.7.97

OA 460/95

1. Balbeer Singh, Valveman, Lalgarh Jatan.
2. Jasveer Singh, Valveman, Lalgarh Jatan.
3. Subhash Chandra, Valveman, Lalgarh Jatan.
4. Umed Singh, Valveman, Lalgarh Jatan.
5. Dharmendra Singh, Valveman, Lalgarh Jatan.
6. Sultan Singh, Valveman, Lalgarh Jatan.
7. Mangat Ram, Mazdoor, Lalgarh Jatan.
8. Rameshwar Lal, Mazdoor, Lalgarh Jatan.
9. Sarji Lal, Valveman, Lalgarh Jatan, District Sriganganagar (Rajasthan).

... Applicants

Versus

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Commandar Works Engineer (Project), District Sriganganagar.
3. Garrison Engineer (Project), Lalgarh Jatan, District Sriganganagar.

... Respondents

CORAM:

HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN

For the Applicants

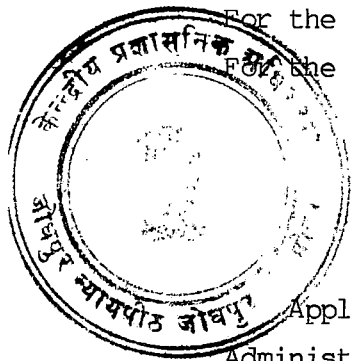
... Mr.Vijay Mehta

For the Respondents

... Mr.Vinit Mathur

O R D E R

PER HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN



Applicants, named above, have filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order, at Ann.A-1, dated 1.8.95, by which the Night Duty Allowance (NDA, for short) paid to them was sought to be recovered. The applicants have also prayed that the respondents be restrained from recovering any amount in compliance of order at Ann.A-1.

2. The applicants' case is that they are working under respondents No.2 and 3 on the post of Valveman and Mazdoor. Applicants No.7 and 8 are serving as Mazdoor. Other applicants are serving as Valveman. They are required to discharge duties during night hours and, therefore, respondent No.3, vide order dated 15.3.94, at Ann.A-2, sanctioned NDA to the applicants. The Pump House Operators were also granted NDA. Applicants have already been paid the NDA. Valveman has now been designated as Fitter General Mechanic. However, respondent No.2 passed an order vide Ann.A-1 dated 1.8.95, by which the NDA to Valvemen and Mazdoors was made applicable w.e.f. 15.4.94 and 2.9.93 respectively, while this allowance was

*Cyber*

ordered to be paid to the Pump House Operators w.e.f. 1.1.86. It has also been stated in the impugned order that payments made prior to the dates mentioned hereinabove shall be recovered. It is stated by the applicants that no show-cause notice or an opportunity of hearing was given to them before issuing the impugned order. The respondents have themselves paid the NDA vide order, at Ann.A-2. The applicants have received the payments and utilised the same.

3. On the other hand, the respondents have stated that as per Government of India, Ministry of Defence, letter dated 15.4.94, Valvemen have been identified for grant of NDA with effect from the date of issuance of the letter i.e. 15.4.94, whereas Mazdoors have been identified for grant of NDA vide Ministry of Defence letter dated 2.9.93 with effect from the date of issuance of the letter i.e. 2.9.93. As such, Mazdoors are eligible for grant of NDA w.e.f. 2.9.93 and the Valvemen are eligible for grant of NDA w.e.f. 15.4.94. It is contended by the respondents that NDA to Valvemen and Mazdoors has been given as per orders of the Government of India. In these circumstances, it is stated by the respondents, the excess amount paid on account of NDA to Valvemen and Mazdoors is being recovered in instalments. It is also stated that NDA to Valvemen and Mazdoors has been paid erroneously prior to 15.4.94 and 2.9.93 respectively and it is, therefore, liable to be recovered.

4. Heard the learned counsel for the parties. Perused the records carefully.

5. It is true that no notice or an opportunity of hearing was ever given to the applicants before issuing the impugned order. The respondents have themselves paid the NDA to the applicants in terms of their own order, at Ann.A-2, dated 15.3.94. The applicant have already received the NDA and utilised the same. The applicants have already performed the night duties which were assigned to them. They were paid the NDA due to discharging duties in the night. The impugned order, at Ann.A-1, appears to be arbitrary and the same has been passed in violation of the principles contained in Article 14 of the Constitution. Under the circumstances, the amount paid to the applicants by way of NDA for performing night duties assigned to them vide Ann.A-2 dated 15.3.94 cannot be recovered from them.

6. In the result, the application is allowed. The impugned order, at Ann.A-1, dated 1.8.95 is quashed. Any amount recovered from any of the applicants pursuant to Annexure A-1 dated 1.8.95 shall be refunded to the applicants within a period of three months from the date of receipt of a copy of this order. N order as to costs.

*C. Krishna*  
(GOPAL KRISHNA)  
VICE CHAIRMAN