

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(9)

क्र.अ. (हिन्दी) नियमावली के अनुसार 22 के अन्तर्गत नियुक्त थे

Date of order : 22.9.99.

1. O.A.NO. 129/1998

Muvaji Bhil, Chowkidar, Serving in the Department of Anthropological Survey of India, 16, Madhuban, Udaipur. S/o Shri Lalu Ji Bhil, aged about 48 years, R/o 7-C Madhuban, Distt. Udaipur.

..... Applicant.

2. O.A. No. 130/1998

Nand Lal Dangi, Chowkidar, Serving in Anthropological Survey of India, Western Regional Centre, 16 Madhuban, Udaipur, S/o Shri Gopal Ji Dangi, aged about 43 years, R/o Vill. Manpura, Post Lakhawali, Distt. Udaipur.

..... Applicant.

VERSUS

1. Union of India

through the Secretary, Ministry of Human Resource Development, Department of Culture, Government of India, Shastri Bhawan, New Delhi.

2. The Director

Anthropological Survey of India, Indian Museum, 27 Jawahar Lal Nehru Road, Calcutta.

3. The Deputy Director,

Anthropological Survey of India,
Western Regional Centre,
16, Madhuban, Udaipur.

..... Respondents in both O.As.

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

Mr. Sunil Joshi, Counsel for the applicants.

Mr. K.S.Nahar, Counsel for the respondents.

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PER HON'BLE MR.GOPAL SINGH,ADMINISTRATIVE MEMBER :

The controversy involved in both these cases and the relief claimed is also the same, therefore, both these cases are disposed of by this single order.

2. Applicants' case in brief is that in terms of Government of India order dated 4th October, 1989, they were being paid Night Duty Allowance at the prescribed rates. However, the respondent Department in terms of clarification issued by the Department of Personnel and Training, Government of India, vide their letter dated 13/20th May, 1996 have stopped payment of the said allowance and simultaneously issued orders for the recovery of the Night Duty Allowance paid to the applicants from 1.1.1986 to 31.3.1996 and, therefore, they have challenged the order dated 16.8.1996 and 13/20.5.1996 (Annex.A/2), as also the order dated 13.4.1998 (Annex.A/1).

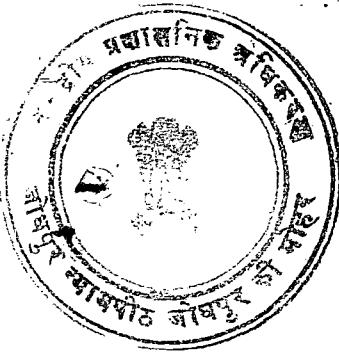
3. Notices were issued to the respondents. They have filed their reply. In their reply, it has been stated on behalf of the respondents that in terms of the clarification issued by the Government of India, vide their letter dated 13.5.1996, the Night Duty Allowance is not payable to Chowkidars (applicants) since Night Duty Allowance is a inseperable characteristic of job of a Chowkidar and, therefore, they have rightly ordered recovery of the Night Duty Allowance paid to the applicants for the period from 1.1.1986 to 31.3.1996.

4. We have heard the learned counsel for the parties and perused the record of the case.



(13)

5. This controversy had earlier come-up before the Bangalore Bench of Central Administrative Tribunal in O.A.No. 1749 of 1995 wherein it was held that :



"To conclude, we are, of the opinion that the 3 conditions as stipulated in the O.M. dated 4.10.1989 not having been fulfilled in the case of the applicants, the applicants are entitled to grant of night duty allowance. The contention of the respondents that the recommendation of the 3rd Central Pay Commission as at para 1(g) of the OM dated 26.11.74, accepted by the Government at that time, is no more in existence and so the argument advanced that where night duty is an inseparable characteristic of the job itself no night duty allowance should be granted is not a valid argument. Under the circumstances denial of night duty allowance to the applicant-chowkidars in the respondent department is not only arbitrary but it is also violative of Articles 14 & 16 of the Constitution of India. We, therefore, hold that the applicant-chowkidars and other chowkidars, if any, in the respondent Department are entitled to night duty allowance if they perform night duty without being allowed any weightage in accordance with the O.M. dated 4.10.1989. As the applicants have approached this Tribunal rather late, we direct the respondents to pay night duty allowance to the applicants from the date prior to one year of the date of this application for the night duty performed by them on the basis of the rates to be determined by the respondents in accordance with cl.(v) of paragraph-2 of the OM dated 4.10.1989. The arrears to be paid to the applicants shall be paid to them within a period of 3 months from the date of receipt of a copy of this order."

6. In the light of the above discussion, we do not find any strong reason to deviate from the stand already taken by the Bangalore Bench of the Tribunal.

7. The respondents letter dated 25.10.1995 (Annex.A/8) deals with the subject matter of the compensatory holidays for the work performed beyond the normal working hours. We do not find any justification to intervene in this matter.

8. The Original Applications are, therefore, allowed with the following directions :-

(i) The order dated 13.4.1998 (Annex.A/1), passed by respondent No. 2 and consequently order dated 16.8.1996 (Annex.A/2), passed by respondent No. 3 are hereby quashed.

(ii) The respondent department is restrained from recovering the amount of Night Duty Allowance paid to the applicants from the period 1.1.1986 onwards.

(iii) The applicants would be entitled to Night Duty Allowance as has been held by the Bangalore Bench of the Central Administrative Tribunal.

9.

The Original Applications are disposed of accordingly.

No orders as to cost.

SD/-
(GOPAL SINGH)
ADM. MEMBER

SD/-
(A.K.MISRA)
JUDL. MEMBER

प्रस्तुति सही प्रतिलिपि
अनुभाग अधिकारी (न्यायिक)
फैसलीय प्रशासनिक अधिकरण
जोधपुर

Mehta