

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. No. 277/2001

Date of order: 06.05.2002

1. Ved Prakash s/o Shri Man Singh, aged 47 years
2. Rakesh Kumar s/o Shri Nihal Chand, aged 39 years
3. Sajjan Singh s/o Shri Shivchand Ram, aged 37 years
4. Sudama Singh s/o Shri Hansa Singh, aged 38 years.
5. Satyapal Singh s/o Shri Shankar Singh, aged 43 years
6. Nagina Ram s/o Shri Sharwan, aged 43 years
7. Rahmatullah s/o Shri Rajbali Miya, aged 47 years
8. Bhagwan Singh s/o Shri Faguni Ram, aged 48 years
9. Girish Chand s/o Shri Ram Krishna, aged 39 years
10. Shyam Narayan s/o Shri Ramdhani, aged 40 years
11. Amarnath s/o Shri Hariram, aged 36 years
12. Ramjilal s/o Shri Malaram, aged 42 years
13. Mohd. Ibrahim s/o Shri Fazrudeen, aged 39 years
14. Richpal Singh s/o Shri Munshi Ram, aged 52 years
15. Inder Kumar s/o Shri Keshav Dutt, aged 43 years
16. Mohal Lal s/o Shri Anant Ram, aged 35 years
17. Rambabu Singh s/o Shri Ramavtar Singh, aged 40 years
18. Yogeshwar Singh Negi s/o Shri Bishan Singh aged 42 years
19. Ram Shanker s/o Shri Nathilal, aged 41 years
20. Kartar Singh s/o Shri Sadhusingh, aged 48 years
21. Subhash Chander s/o Shri Khyali Ram, aged 35 years
22. Mukhram s/o Shri Ramjilal, aged 46 years
23. Jetharam s/o Shri Nathuram, aged 38 years
24. Jiwan Singh s/o Shri Dal Singh, aged 38 years
25. Bhagirath Verma s/o Shri Dhanaram, aged 38 years
26. Suresh Kumar s/o Shri Devilal, aged 34 years
27. Ram Prasad s/o Shri Shimbhu Ram, aged 37 years
28. Baldev Singh s/o Bhagat Ram, aged 44 years

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29. Khargaram s/o Shri Chunilal, aged 40 years
30. Ram Lal s/o Shri Shivilal, aged 43 years
31. Matab Singh s/o Shri Balvir Singh, aged 38 years
32. Subhash Bhatia s/o Shri Banarsi Lal Bhatia, aged 38 years
33. Rambharose Pal s/o Shri Mangul Pal, aged 47 years
34. Magaram s/o Shri Kanaram, aged 39 years
35. Ramdev Mourya s/o Shri Ramadhar, aged 44 years
36. Prakash s/o Shri Bidhram, aged 42 years
37. Vinod Singh s/o Shri Sawai Singh, aged 43 years
38. Kanshi Ram s/o Shri Maruram, aged 36 years
39. Banwari Lal s/o Shri Kishnaram, aged 39 years
40. Rambahal s/o Shri Kuwan, aged 50 years
41. Rohtash Singh s/o Shri Hanuman Prasad, aged 44 years
42. Ram Kumar s/o Shri Brijilal Suthar, aged 37 years
43. Birbal Ram Meena s/o Shri Nanuram Meena, aged 44 years
44. Gopal Singh s/o Shri Jodhsingh, aged 38 years
45. Shivdahan s/o Shri Manoki Ram, aged 45 years
46. Bhupal Ram s/o Shri Gulab Ram, aged 39 years
47. Madan Lal s/o Shri Ramswaroop, aged 38 years
48. Matadeen s/o Shri Jokhu Ram, aged 46 years
49. Mahaveer Prasad s/o Shri Jagram, aged 46 years
50. Lakhiram s/o Shri Gareeb Das, aged 38 years
51. Krishna Kumar s/o Shri Jetharam, aged 35 years.



all working on the post of Fitter General Mechanic in the office of Garrison Engineer, Sri Ganganagar, residents of MFS Key Personal Quarters, Sri Ganganagar.

...APPLICANTS.

V E R S U S

1. Union of India through Secretary to the Govt. Mini of Defence, Rakhsa Bhawan, New Delhi.
2. Commandar Works Engineer, Sri Ganganagar.
3. Garrison Engineer, Sri Ganganagar.

...RESPONDENTS.

Mr. Vijay Mehta, counsel for the applicant.

Mr. S.K. Vyas, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

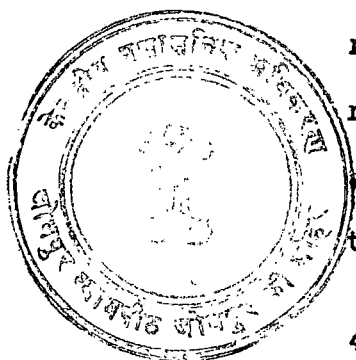
BY THE COURT:

Shri Ved Prakash and 50 Others applicants have filed this Original Application for seeking a direction to the respondents to make payment of night duty allowance to the applicants from the dates they have been performing the night duties after their redesignation.



2. The case has set out by the applicants in O.A. is that in the year 1994 the applicants were holding the post of Pump House Operator (PHO, for short) and Driver Engine Static (DES, for short). In the year 1994 both these posts i.e. PHO & DES were redesignated as Fitter General Mechanic vide letter dated 6.7.1994. The applicants in particular and other employees in general who were employed on the post of DES & PHO were being paid the night duty allowance upto 14.7.1994. ~~The~~ Some of the persons have also been paid the night duty allowance after this that date. In some cases recovery of the amount paid as night duty allowance ^{was order} and ~~the~~ ^{affected employees} had to approach this Hon'ble Tribunal in O.A. 100/1999 (Ved Prakash and others vs. Union of India and Another) dated 18.1.2001 and this Hon'ble Tribunal vide judgement dated 18.1.2001 was pleased to allow the O.A. and the amount recovered was ordered to be refunded.

3. All the applicants have been said to be performing the night duties which they were performing when they were designated as DES/PHO. It is the case of the applicants that merely on change of their designation the terms and conditions of their service cannot be changed. However, they are being denied the night duty allowance without any reason. The matter has been taken up with the Higher Authorities and vide communication dated 12.12.2000, it has been said that the night duty allowance shall only be payable to FGM only when they are willing to revert back to PHO & DES. It has also been mentioned that there is no designation like PHO & DES in existence and question of reversion to such posts does not arise. The action of the respondents in denying the night duty allowance is arbitrary and discriminatory and violative of Article 14 and 16 of the Constitution of India.



4. The show-cause notices were issued to the respondents on 18.10.2001 and the respondents have filed detailed reply to the O.A. They have in general controverted the stand taken by the applicants in the O.A. It has been said that the matter relating to the judgement dated 18.1.2001 passed in O.A. No. 100/1999 (Ved Prakash and Others vs. Union of India and Another) (Annexure A/3) has been taken up with the Higher Authorities for implementation. It has been further averred that re-designation of the post of DES and PHO was ~~on~~ done as per the verdict of Mumbai Bench of CAT in OA No. 704/90 filed by Shri T. Narayana Murthy and others and for the post of FGM no night duty allowances^{is} payable. It has been further averred that applicants were asked to restore their earlier designation of DES and PHO ~~xx~~ but none of the applicants have given their option,

hence, night duty allowance was denied to the FGM category. Since the applicants have accepted their re-designation in view of the promotional prospectus in the category of FGM and no night duty allowance is payable for the post of FGM category as per the re-instructions in force. Thus, no such allowance can be paid to them. Therefore, the O.A. may be dismissed with no costs.

5. I heard the learned counsel for the parties and have carefully perused the records of this case.

6. The learned counsel for the applicants have drawn ~~on~~ my attention towards one of the recent case i.e. O.A. No. 99/2000 (Lekh Raj and Ors. vs. Union of India and Another) decided on 7.9.2001 by this Hon'ble Tribunal in which two of ~~of~~ the respondents are the same. It has been argued that the judgement covers the controversy in question. The learned counsel for the respondents has vehemently opposed and has submitted that the case in Lekh Raj and Ors. vs. Union of India and Another (Supra) the question regarding restoring the earlier designation to the post of DES and PHO was not discussed and thus that case is distinguishable from the facts of this case. I have considered the arguments of the learned counsel for the respondents and find that once the post of DES and PHO have been re-designated as FGM and that ~~too~~ after a judgement of one of the Bench of the Tribunal (as stated in the very reply by the respondents themselves) it is difficult to understand as to how the old designation can be restored and also as to what purpose would be served especially when the applicants are performing the night duties and carrying out the same duties and responsibilities during the nights as they were doing before the re-designation of their posts. I am in full agreement with the judgement



in Lekh Raj and others vs. Union of India and Another (supra). Since the matter has been dealt with in detail in the said judgement, I am not inclined to discuss the same in detail.

7. In view of the aforesaid discussions, the Original Application is allowed and the respondents are directed to pay the night duty allowance to the applicants from the dates they have been performing the night duties after their re-designation. The respondents shall pay this amount within a period of four months from the date of this order. For any delay beyond four months the applicants are entitled to receive interest at the rate of 9% per annum on the payment dues. No order as to costs.



J.K. Kaushik
(J.K. KAUSHIK)
Judl. Member

kumawat

Part II and III destroyed
in my presence on 12-7-67
under the supervision of
section officer () as per
order dated 12-17-67

Section officer (Record)

by
a/s
R. J. W.
V. K. H.
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