

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
(Camp sitting at Kavaratti)

O.A. No.442/1997.

CORAM: Thursday This the 22nd day of January, 1998.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN.

S.Kidave, Watchman
Medical Directorate,
Kavaratti,
Union Territory of Lakshadweep. ...Applicant.

(By Advocate Mr. Shafik MA)

Vs.

1. Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi.
2. The Administrator, Union Territory of Lakshadweep, Kavaratti.
3. Director of Medical & Health Services, Union Territory of Lakshadweep, Kavaratti. ... Respondents.

(By Advocate Mr. S. Radhakrishnan)

ORDER

K.M. AGARWAL, CHAIRMAN

Aggrieved by discontinuance of Night Duty Allowance and by the order dated 4.3.1997, (Annexure A-1), for recovery of an amount of Rs.14,443.00 paid as such allowances during 10.7.1991 to 30.4.1996, the applicant has filed this application for quashing the said order and the circular dated 30.12.1996, as also for consequential reliefs.

2. The applicant has been working as a Watchman in the office of the 3rd respondent since 10.7.1991. On the basis of his representation dated 17.7.1995 for Night Duty Allowance pursuant to certain Office Memorandum of the Director of Medical and Health Services, a sum of Rs.11,925.00

Jan.

was sanctioned by the 3rd respondent as Night Duty Allowance for the period between 10.7.1991 to 31.8.1995 by his order dated 7.9.1995 and also paid. Subsequently on the basis of the circular dated 30.12.1996, the Night Duty Allowance was stopped and the impugned order for recovery of the allowances already paid was issued. Being aggrieved, the applicant has filed the said O.A. for the said reliefs.

3. The respondents are resisting the claim on the ground that Night Duty Allowance is not admissible to a Watchman.

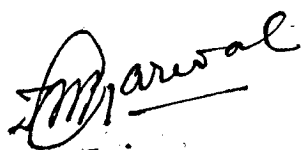
4. After hearing the learned counsel for the parties and perusing the record, it appears to me that the impugned recovery has been ordered, because according to the respondents "night duty is an inseparable characteristic of the job of watchman" and, therefore, he is not entitled to claim any Night Duty Allowance. Office Memorandum dated 4.10.1989, (Annexure A-4), of the Government defines 'Night Duty' as duty performed between 22.00 hours and 6.00 hours. (See paragraph 2(ii) of A-4). In paragraph 2 of his application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has specifically alleged that: "He is doing his duties from 5.30 P.M. to 8 A.M. in the next day." The respondents have not denied this allegation. On the contrary, in paragraph 4 of their reply, they have asserted that: "employees who are performing duty between 5.30 P.M. to 9 A.M. are not eligible for over time allowance". It means that undisputedly the applicant was performing his duties from 5.30 P.M to 8.00 A.M., but the 'Night Duty' meant duty

3m

performed between 22.00 hrs. to 6.00 hrs. as mentioned in Annexure A-4, and not as 'duty between 5.30 P.M. to 9 A.M.' as asserted by the respondents. Annexure R-1 relied on by the respondents is of 22nd of October 1996. It does speak of duty hours of Chowkidars to be 5.30 P.M. to 9.00 A.M. The sanction order dated 7.9.1995, (Annexure A-6), issued by the 3rd respondent was prior in point of time vis-a-vis Annexure R-1 relied on by the respondents. I am, therefore, of the view that the impugned order of recovery cannot be sustained. This view also finds support from a decision of the Supreme Court in **SHYAM BABU Vs. UNION OF INDIA**, (1994) 27 ATC 121 (SC).

5. The learned counsel for the respondents cited a decision of the Supreme Court in **V.GANGARAM Vs. REGIONAL JOINT DIRECTOR**, (1997) 6 SCC 139 to submit that the excess amount paid by mistake may be recovered. However, this case is clearly distinguishable. In the present case, the payment of Night Duty Allowance does not appear to have been made by mistake. Till the date of the sanction order dated 7.9.1995, 'Night Duty' meant duty performed between 22.00 hrs. and 6.00 hrs. Subsequently if the meaning was changed, amount already paid prior to the date of changed meaning cannot be allowed to be recovered.

6. In the result, this application succeeds in part. The impugned order of recovery dated 4.3.1997, (Annexure A-1), is, therefore, quashed. No orders as to payment of Night duty Allowance in future, or as to costs of this application.


(K.M. AGARWAL)
CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: OM No.45/3/95-DMHS(AC) dated 4.3.97 issued by the third respondent.
2. Annexure A4: OM No.12012/4/86-Estt(Allowance) dated 4.10.1989 of the Government of India.
3. Annexure A6: Order No.45/3/95-DMHS(AC) dated 7.9.95 issued by the third respondent.
4. Annexure R1: U.O.No.15015/1/96-Estt.(A1) dated 22.10.96 of the Department of Personnel & Training.

...