

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 816/92.

Date of Decision : 28-3-1997

B.A.R.C's Employees Association
Tarapur & Another,

Petitioners.

Shri D. V. Gangal

Advocate for the
Petitioners.

VERSUS

Bhabha Atomic Research Centre,
Department of Atomic Energy,
Tarapur.

Respondent.

Shri R. K. Shetty,

Advocate for the
Respondent.

CORAM :

HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)

MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 816/92.

Dated this 25/2, the Tuesday day of March, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

1. BARC'S Employees Association,
Tarapur "BARCEAT",
(registered and recognized)
with its Registered Office at
P.O. Ghivli, Dist. Thane,
Pin Code - 401 502.

2. Gopal Shankar Bhogale,
Tradesman 'G',
42/1, BARC Colony,
Type VI, P.O. TAPS COLONY,
Tal. Palghar,
Dist. Thane - 401 504.

... Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

Bhabha Atomic Research Centre,
Department of Atomic Energy,
Government of India, C.S.M. Marg,
Bombay - 400 039 for the employees
of, employed at BARC the Tarapur
Complex, Tarapur.

... Respondents.

(By Advocate Shri R. K. Shetty).

: O R D E R :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

In this O.A., the applicants have sought reliefs that the respondents be directed to remove the ceiling of Rs. 2,200/- put on the night shift allowances as well as to count the period between 20.00 hours and 6.00 hours as the hours of night working for calculating the night shift allowances and to make payment of the night shift allowances on the basis of 20 minutes weightage per hour working during 20.00 hours and 6.00 hours as against the present ceiling of Rs. 2,200/- for payment of night shift allowance or Night weightage and Night working between 22.00 hrs to 06.00 hours and 10 minutes of weightage per hour

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2. Heard Shri D. V. Gangal for the applicant and Shri R. K. Shetty for the respondents.

3. The contention of the learned counsel for the applicant is, first of all, placing ceiling on getting the night duty allowance of Rs. 2,200/- is unjust and unfair and the applicants have been discriminated with that of the similarly situated employees in the Postal Department, thereby, the O.M. of the department is discriminatory in nature and the same is required to be quashed. As a matter of fact, the present demand of the applicants would amount to pay revision, which on the other hand, the respondents submit that it is only for the Pay Commission to recommend such pay revision and not open to the executive or to the Tribunal to go into the structure of pay given to the employees. They further contend that pay revision is not a function of the Tribunal or any other Court of Law, but only of an Expert Body like the Central Pay Commission or the Central Government, thereby, they contend that this Tribunal has no jurisdiction to entertain the plea of the applicants and the same is required to be dismissed on the point of jurisdiction. It is further submitted that the department has been following the instructions of the D.O.P.T. vide O.M. dated 04.10.1989 wherein following directions were issued for payment of Night Duty allowances.

(i) Wherever the working hours have been arrived at after taking into account the night weightage factor, no further compensation may be admissible

(ii) Night Duty may be defined as duty performed between 22.00 hours and 6.00 hr

(iii) A uniform weightage of 10 minutes may be given for every hour of night duty performed.

(iv) The ceiling of pay for entitlement of Night Duty Allowance shall be Rs. 2,200/- per month. There will, however, be no ceiling for entitlement of Night Duty Allowance in respect of the officials who are, at present getting this benefit.

(v) Night Duty Allowance shall be computed as per the following formula :

(a) For continuous and intensive duty. Rates calculated on the basis of current rates of pay including DA & CCA divided by the number of working hours in a month. For administrative convenience, the pay scales may be fitted into convenient slabs at the option of the department.

(b) For intermittent and excluded Class-III. 2/3rd of the rate worked out under (a) above.

(vi) Where in revising the pay scales of any category and improvement over replacement scale has been granted after taking into account night duty or where the night duty factor has already been taken into account for grant of any allowance such as Nursing Allowance, in the case of Nursus, no further compensation may be allowed for night duty.

The O.M. dated 04.10.1989 was issued pursuant to the recommendations of the Pay Commission and a Committee was constituted to recommend suitable measures on the basis of the IVth Pay Commission. Though the government expressed uniform system of weightage for night duty, however, in view of the suggestions received by the Committee, they have evolved a scheme, which would apply to all the employees and therefore, it cannot be said that the scheme adopted pursuant to the recommendations of the Pay Commission and the unanimous decision taken by the Committee of experts, is arbitrary or unjust. Though the

department had taken up the matter regarding relaxation of the conditions mentioned above with the Ministry of Personnel & Training, which is the nodal Ministry relating to this matter under the Allocation of Business Rules, 1961, who have in turn stated that the recommendations were made by the Expert Committee set up for the purpose in consultation with the representative of Ministries/ Departments and no relaxation can be given at this juncture. Therefore, they contend that it is not the case of the applicants that the department has over-looked the matter/grievances of the applicants. Though they have taken up the matter, the nodal Ministry did not agree to relax the conditions laid down for Night Duty Allowances, thereby, they could not do anything in the matter.

4. During the course of hearing, the learned counsel for the respondents has drawn our attention to the decision of the Apex Court in Indian Railway Service of Mechanical Engineers Assn. & Others V/s. Indian Railway Traffic Services Assn. & Anr. V/s. Union Of India and Indian Railway Traffic Services Association | II LLJ (1993) 539 | wherein it is stated that since the policy decision has been taken by the respondents, it is not open to the applicants to challenge the same. Thereby, this Tribunal cannot entertain the petition on the plea of discrimination or inequality. It was held in that decision that "This is a matter of policy. No Court or Tribunal can compel the Government to change its policy involving expenditure. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not

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permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their Constitutional or Statutory powers and also held that the Tribunal had erred in interfering with the scheme. It has transgressed its limits while questioning the correctness of a policy. Tribunal's order is bound to be reversed.* Even while quoting the Apex Court decision, they have reiterated that the question of pay or equality of post should be determined by the Expert Body like Pay Commission and they would be the best judge to determine the nature of duty and if there has been such determination by the Committee, the court should normally accept and Court should not try to interfere unless it is shown that it is made with extraneous consideration. The learned counsel for the applicant, after the hearing was over, furnished a copy of the judgement of this Tribunal in O.A. No. 215/95 and 267/95 delivered on 18.12.1995 and relied upon stating that the Tribunal had rejected the ceiling placed by the Department in receiving the 'overtime allowance' in view of Section 59(1) of the Factories Act. In that case, the overtime allowance is restricted to Rs. 2,200/- basic pay and once they cross the pay of Rs. 2,200/-, the payment of overtime allowance is unilaterally stopped. Whereas, in the instant case, the night duty allowance is restricted to Rs. 2,200/- together with duty hours, which has nothing to do with the payment of basic pay, as was decided in that case. The present decision of the department is on the basis of the recommendation of the Pay Commission and therefore, the Committee took a decision that night duty allowance cannot exceed Rs. 2,200/- which is a policy decision, which cannot in our view be assailed. Hence there is no merit in the contention.

5. In the light of the above, since the applicants have only stated that they should be paid similar Night Duty Allowances as that of the Postal Department employees, that by itself, does not give a cause of action to the applicants to agitate the matter. Since the matter has been gone into by the expert bodies and have evolved the aforesaid formula, which is applicable to all the employees, therefore, it is not open to the Tribunal to go into the merits of the recommendations of the Committee and in view of the decision of the afore-mentioned Apex Court, we see no merit in the O.A. and the same is dismissed with no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A).


(B. S. HEGDE)
MEMBER (J).

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