

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1496/199₅

Date of Decision: 21-11-96

~~MES Employees Union & Anr.~~

Petitioner/s

Shri S.P.Saxena

Advocate for the
Petitioner/s

V/s.

Union of India & 4 Ors.

Respondent/s

Shri R.K.Shetty

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M. R. Kolhatkar, Member (A).

Hon'ble Shri

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? x

abp.

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESOT RD,4TH FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.1496/95.

DATED THIS 21st DAY OF NOVEMBER, 96.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member(A).

1. M.E.S. Employees Union,
Regd. Office:595,Narayanpeth,
Pune - 411 030. through its
Gen. Secretary, Shri A.R.Gabriel.
2. Shri V.S.Sonawane,
595, Narayanpeth,
Pune-411 030.

... Applicants.

By Advocate Shri S.P.Saxena.

v/s.

1. Union of India,
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.
2. The Engineer-in-Chief,
Kashmir House,
DHQ PO, New Delhi - 110 011.
3. The Chief Engineer,
Southern Command,
Pune - 411 001.
4. The Garrison Engineer(South),
No.1, Gen. Bhagat Marg,
Pune - 411 001.
5. The Controller of Accounts,
C.D.A. (S.C.),
Pune - 411 001.

... Respondents.

By Advocate Shri R.K.Shetty.

I O R D E R

I Per Shri M.R.Kolhatkar, Member(A) I

In this OA, the applicant No.1 MES Employees Union is a registered and recognised Union and applicant No.2 is an employee who is adversely affected by the Impugned order related to Night Duty Allowance(NDA). The first impugned order dated 27/9/94 pertains to recovery of overpayment made to 4 mates, who were paid NDA from a date earlier than 2/9/93.

The second impugned order at page-18 (Annexure-2) is a letter from Engineer-in-Chief's Branch, Army Headquarters, New Delhi which conveys a decision of the Ministry of Defence that it is not feasible to give retrospective effect from 1/1/86 every time a new category is added to the list of employees eligible for NDA and this intimates that the additional category of employees who were added to the list of categories eligible for NDA vide Government of India of Ministry of Defence Memorandum dated 2/9/93^{at Page-27} would get NDA only from the date of issue of orders and not from 1/1/86.

2. The applicant therefore prays to quash and set aside the impugned order dated 2/11/94 and seeks a declaration that employees of the respondents are to be paid NDA w.e.f. 1/1/86 provided they are detailed for night duty and they receive basic pay upto Rs.2,200/- per month in terms of Government Instructions dated 25/6/92 and to pay arrears of N.D.A. to the employees covered by the earlier prayers.

3. It is not disputed that the Ministry of Defence issued O.M.No.6(4)/88/D(Civ.I) dated 15/3/90 on the subject, "Grant of NDA to civilian staff employed in Establishments under the Ministry of Defence." This OM states that in terms of DOP & T orders dated 4/10/89 on the subject of NDA, NDA may be granted to the categories of employees mentioned in Annexure to this OM. 12 categories of employees in the Army are shown in this Annexure.

4. Thereafter, Ministry of Defence issued addendum dated 25/6/92 (at page-22 of the OA) in which additional 6 categories from the Army were made eligible for grant of NDA. In the addendum, it is stated that it is to take effect from 1/1/86.

M 5. The contention of the applicants is that the DOPT

dated 15/3/90 would include xxx MT Driver Grade I & II by addendum dated 14/9/94 and MT Driver Grade I & II are being paid NDA only with effect from 14/9/94 i.e. the date of issue of orders at Annexure A-6.

8. Further, the Civilian Motor Drivers engaged on duty in night duty hours with hospitals and dispensaries, etc are not being paid NDA even though they are entitled for the same. Further, NDA is being paid to 'Valve-men' under M.E.S. from 2/9/93 and to Engine Static Drivers since 14/11/94. Further the employees working as Refrigeration Mechanics and detailed for duty in hospital are being given NDA from 1/1/86 and some other Refrigeration Mechanics working under respondents are given this allowance only from 1994. All their actions are discriminatory.

9. Counsel for the applicant pointed out that it is not in dispute that there is no difficulty in locating relevant documents for payment of NDA w.e.f. 1/1/86 vide letter dated 31/10/94 (at page-37). Counsel for applicant stated that there is inter-se discrimination between categories of employees in the matter of payment of NDA for example chowkidars are made eligible in terms of OM dated 15/3/90 but chowkidars of the vacant buildings are not eligible for NDA.

10. Respondents have opposed the OA. According to them, the identification of new categories for NDA is an ongoing process and in view of this new categories can be considered for NDA from the prospective date only. Government of India is fully empowered to add as well as delete any category of workmen for grant of NDA which is essentially a policy matter and this Tribunal is not competent to enter this arena and issue directions to the Government either to add any category or to interfere with the decision of the department as to the date from which NDA is to be paid.

were to grant it orders in respect of grant of NDA/w.e.f. 1/1/86, which is the reference date for the implementation of the recommendations of the 4th pay commission, para-6 of the Ministry of Defence O.M. dated 15/3/90 deals with the computation of the arrears and the only condition for payment of arrears is that Head of the office is to satisfy himself, on the basis of relevant records maintained and produced, that the individual concerned had actually performed night duty and was entitled to NDA in the light of the DOPT orders dated 4/10/89. The denial of the NDA to employees belonging to the categories identified of by the addendum dated 2/9/93, in which the category Mates figures, and Mazdoors who are the members of the applicant union is discriminatory because it discriminates between the categories covered by the O.M. dated 15/3/90 and the category covered by addendum dated 2/9/93. It also amounts to discrimination between the categories of staff added by the first addendum dated 21/6/92 (6 categories under the Head of Army) and the categories of staff newly added by the addendum dated 2/9/93 (5 categories of staff including Mates and Mazdoors).

6. The applicant therefore would contend this amounts to discrimination, which is not based on any intelligible differentia among the categories of staff but merely based on a view taken at some level that it is not feasible to give retrospective effect to the affected employees from 1/1/86, every time a new category is added as eligible for NDA. It is not justified and it is violative of ^{the} / guarantee of equality available to employees xxxxxxxxxxxx under Article 14 of the Constitution.

7. The Counsel for the applicant further argues that the respondents have subsequently issued a clarification that the category of driver included in the original orders

dated 15/3/90 would include xxx MT Driver Grade I & II by addendum dated 14/9/94 and MT Driver Grade I & II are being paid NDA only with effect from 14/9/94 i.e. the date of issue of orders at Annexure A-6.

8. Further, the Civilian Motor Drivers engaged on duty in night duty hours with hospitals and dispensaries, etc are not being paid NDA even though they are entitled for the same. Further, NDA is being paid to 'Valve-men' under M.E.S. from 2/9/93 and to Engine Static Drivers since 14/11/94. Further the employees working as Refrigeration Mechanics and detailed for duty in hospital are being given NDA from 1/1/86 and some other Refrigeration Mechanics working under respondents are given this allowance only from 1994. All their actions are discriminatory.

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10. Respondents have opposed the OA. According to them, the identification of new categories for NDA is an ongoing process and in view of this new categories can be considered for NDA from the prospective date only. Government of India is fully empowered to add as well as delete any category of workmen for grant of NDA which is essentially a policy matter and this Tribunal is not competent to enter this arena and issue directions to the Government either to add any category or to interfere with the decision of the department as to the date from which NDA is to be paid.

11. The most important point urged by Counsel for respondents is that when making categories of workmen eligible for NDA and deciding the date of implementation, the respondents have to consider the financial burden on the National Exchequer which will be imposed by the grant of allowance.

12. In my view it is an unexceptionable proposition that the Government can decide to grant or not to grant NDA, but once the Government decides to grant the NDA and also announces the categories to which it is extended, then the date of effect of the benefit in the categories which are added cannot be varied unless cogent reasons are given for having a separate classification of the employees who would get NDA not from 1/1/86 but from the date of issue of orders. In the present case, I have seen that the order dated 15/3/90 were modified by an addendum dated 25/6/92 and the payment of NDA was made effect from 1/1/86. It would not now be open to the Government to take ^{a stand} that in relation to the staff covered by addendum dated 2/9/93, the order would be effective only from the date of issue and not from 1/1/86 especially when ^{no} difficulty regarding availability of records has not been pleaded and no cogent reasons ^{for differentiation} are given.

13. I am therefore of the view that the members of the applicant union covered by addendum dated 2/9/93 and the addendums dated 14/9/94 (at page-31) and the category of Refrigeration Mechanics some of whom are given NDA only from 1994 vide para-4.14 of OA, are entitled to NDA as from 1/1/86 as in the case of employees notified in OM dated 15/3/90 and OM dated 25/6/92.

14. I am fortified in this view by the judgement of

the CAT, Guwahati Bench, MES Workers Union v/s. Union of India reported at 1996(3) (CAT) SLJ-285. This was a Single Bench judgement and in this/^{OA} a similar grievance was made by the MES workers Union and the Tribunal granted the relief of payment of NDA w.e.f. 1/1/86. The Single Bench in its turn relied on the Division Bench decision of Calcutta Bench xxxxxxxx in OA-1209/94 dated 28/9/95 vide para-8 of the judgement.

15. The further request of the applicants however that employees who are not covered by existing orders (like vacant building chowkidars, civilian motor drivers engaged on hospital duty vide para-4.11 of the application) may also be directed to be made eligible for NDA cannot be accepted. The identification of categories of employees considered eligible for grant of NDA is a matter of policy on which respondents must take a view in their wisdom and it is not for this Court to decide as to which category need to be added to the list already identified.

16. In view of the above, OA is allowed and respondents are directed to pay NDA to members of the applicant union who are eligible for NDA in terms of Government order dated 15/3/90 as modified from time to time including orders and dated 2/9/93/ 14/9/94 xxxxxxxx.e.f. 1/1/86. The respondents are also directed to release the amounts to which the applicants might be entitled as arrears within 4 months from the date of communication of orders and continue the NDA (unless and until to pay in future) xxx the allowance is xxx withdrawn. There will be no orders as to costs.

abp.

M. R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)