

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-164/2000 ordered Pg-1 INDEX

disposed date-12/5/2000

O.A/T.A No. 163/2000.....

R.A/C.P No.....

E.P/M.A No. 164/2000.....

1. Orders Sheet. O.A-163/2.000..... Pg..... 1 to 3
2. Judgment/Order dtd. 27/10/2000..... Pg..... 1 to 3 disposed
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 163/2.000..... Pg..... 1 to 13
5. E.P/M.P..... 164/2.000..... Pg..... 1 to 4
6. R.A/C.P..... NIL..... Pg..... to
7. W.S..... Nil..... Pg..... to
8. Rejoinder..... Pg..... to
9. Reply..... Pg..... to
10. Any other Papers..... Pg..... to
11. Memo of Appearance.....
12. Additional Affidavit..... Pg..... 1 to 12
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

2
SECTION OFFICER (JUDI.)

5

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 163/2000

OF 199

Applicant(s) Sree N.C. Deb and others.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. D.K. Bhattacharya

Mr. A. Dasgupta

Advocate for Respondent(s)

C.G.S.

Notes of the Registry	Date	Order of the Tribunal
<p>Form and witness copy C. F. of Rs 50 deposited vide [IPO BII] No. 653880 Dated 18.5.2000</p> <p>TM 101900 B. Dasgupta P. 101900</p> <p>22 - 5 - 2000</p> <p>Service of notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.P.D. Vide D.No. 1417 dt 14/9 Mch-22-5-2000</p>	12.5.2000	<p>Present : Hon'ble Mr.A.K. Misra, Judicial Member.</p> <p>Heard Mr.A. Dasgupta, learned counsel for the applicants and considered the application.</p> <p>Issue notice to the respondents.</p> <p>Returnable by 13.6.00.</p> <p>In the meantime, the operation and recovery in pursuance of the order dated 18th April,2000 is hereby stayed until further orders.</p> <p>List on 13.6.00 for further orders.</p> <p style="text-align: right;">J Member (J)</p>

Notes of the Registry	Date	Order of the Tribunal
Service report are still awaited.	13.6.00	Present: Hon'ble Mr D.C. Verma, Judicial Member Learned counsel Mr M. Chanda for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C for the respondents.
<i>12/6/2000</i> 13/6/00 Notice duly served on respondent No 2.		Learned counsel for the respondents seeks and is allowed one week further time to file written statement. List on 22.6.00 for orders.
<i>22-6-2000</i> Written statement has been filed by the respondents. w/s	22.6.00	<i>8/20</i> There is no banc today. Advised to 2.7.00.
<i>6-7-2000</i> w/s has been filed.	7.7.00	Present: Hon'ble Mr S. Biswas, Administrative Member None for the applicant. Mr A. Deb Roy, learned Sr C.G.S.C. for the respondents. An interim order in this application has already been issued. The application is admitted. The written statement has also been filed. The case is posted for hearing on 3.8.00. Meanwhile the applicant is at liberty to file rejoinder, if necessary.
① w/s has been filed ② Rejoinder has not been filed.	3.8.00	<i>8/20</i> There is no banc. Advised to 26.8.00.
<i>16.9.2000</i>	26.8.00	<i>8/20</i> There is no banc. Advised to 27.9.00.

Notes of the Registry	Date	Order of the Tribunal
① Writ has been filed. ② No. of rejoinder has been filed.	27.9.00	Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman. A prayer for adjournment has been made on behalf of Mr A. Dasgupta, learned counsel for the applicant. Prayer allowed List on 27.10.2000 for exdate hearing.
<i>28/10/00</i> <i>28.10.00</i>	pg	<i>IS 27/9/2000</i>
<u>6.12.2000</u> Copy of the Judgment has been sent to the Office for issuing the same to the applicant as well as to the Mr. C.G.S.C. for the Respondent. <i>IS.</i>	27.10.2000	Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

Notes of the Registry	Date	Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. NO. 163 of 2000

DATE OF DECISION 27.10.2000

Shri M.C. Deb and 12 others

PETITIONER(S)

Mr. D.K. Biswas and Mr. A. Dasgupta

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.163 of 2000

Date of decision: This the 27th day of October 2000

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Shri M.C. Deb and 13 othersApplicants
All are working as Fitter General Mechanic
in the establishment of GE 872 EWS, Agartala.
By Advocates Mr D.K. Biswas and
Mr A. Dasgupta.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. The Engineer-in-Chief,
ARHQ. DHQ,
Kashmir Bhawan, New Delhi.
3. The Controller of Defence Accounts (Pay),
Narangi, Guwahati.
4. The Garrison Engineer,
872 EWS, 99 A.P.O.Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....
O R D E R

CHOWDHURY.J. (V.C.)

The applicants are fourteen in number who are Fitter General Mechanics (FGM for short) working in the establishment of the Garrison Engineer 872 EWS, Agartala. Originally they were holding the post of Pump House Operator (PHO for short) in the Military Engineering Service. They were allowed Night Duty Allowance (NDA for short) for the service they rendered during the night at the rate of ten paise per hour. On such allowance one single PHO used to get a sum of Rs.100/- per month.

2. On 6.7.1994 the PHO was redesignated as FGM. Though their designation was changed, their nature of duty and grade in service remained the same and they continued to get the NDA calculating on the hours of night duty performed by each individual FGM. However, by an order dated 8.4.2000 the concerned officer forwarded the communication No.AAO/GE/872/EWS/32-III dated 4.4.2000 addressed to the Assistant Garrison Engineer E/M and directed to recover the amount in instalments from the affected individuals from their regular pay bills. The memo dated 4.4.2000, annexed to the application, is a communication sent from the Accounts Department addressed to the Garrison Engineer in which it was indicated that the PHO and Engine Driver Static of MES who were redesignated as FGM with effect from 6.7.1994 were not entitled to draw NDA as the category of FGM was not included in the Government Orders issued from time to time.

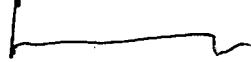
3. Admittedly, the applicants are rendering night duty. The quality of service rendered by the applicants remained the same. In the written statement also the respondents did not dispute the fact that these applicants are to discharge their services during the night for which earlier allowances were paid. Their only ground is that since in the list the new designation did not appear they are not in a position to pay NDA to the applicants. There is no discernible ground for not granting NDA to these applicants for the services rendered by them. However, from the facts it appears that the matter is under scrutiny of the higher authority who have taken up the matter for consideration. In O.A.No.218 of 2000 disposed of on 25.10.2000 which is of similar nature this Tribunal issued direction on the respondents to take a decision in the matter as expeditiously as possible. This case being of similar nature I propose to pass a similar

direction.....

direction. Accordingly the respondents are directed to take a decision on the matter and if necessary to amend the Government order by incorporating the FGM in the Government Order. Till such a decision is arrived at the respondents are directed to continue the payment of NDA to the applicants as was paid earlier. The interim order passed by this Tribunal on 12.5.2000 shall continue till a decision is arrived at.

4. The applicants stands disposed of. It would always be open for the applicants to move this Court, if occasion arises.

No order as to costs.


(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

Central Administrative Tribunal
10 MAY 2000

10
Gauhati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUWAHATI BENCH.

Case No.:- O.A. 163 of 2000.

Sri M.C. Deb & others.

.... APPLICANTS.

- VRS. -

Union of India & Others.

.... RESPONDENTS.

I N D E X

Sl.No.	Documents	Page
1.	Original Application	1 - 9
2.	<u>ANNEXURE- 1 Sr.</u> : Copy of orders dated 19-11-99 and 14-07-99.	10 - 11
3.	<u>ANNEXURE- 2 Sr.</u> : Copies of orders dated 08-04-2000 and 04-04-2000.	12 - 13
4.	Postal Order	
5.	Vakalatnama	
6.	Application under Rule 4(5) filed separately.	

Filed by :


D.K. Biswas, (Agartala)
Advocate

On _____

filed by the applicant through
Advocate //
Signature

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Case No. O.A. 163 of 2000

1. Sri M. C. Deb.
2. Sri P.K. Paul.
3. Sri C. R. Das.
4. Sri K P G K Nair.
5. Sri C.M. Suklabaidya.
6. Sri Sankar Ch. Das.
7. Sri D. K. Dutta.
8. Sri M. K. Das.
9. Sri G. K. Majumdar,
10. Sri S. Gopi.
11. Sri B. N. Prasad.
12. Sri B. R. Deb.
13. Sri S. Sutradhar.
14. Sri C. Mani.

All are Fitter General Mechanics,
working in the establishment of :
GE- 872 EWS, Agartala.

..... APPETENTS.

- Versus -

1. Union of India.
Represented by the Secretary to the
Govt. of India, Ministry of Defence,
New Delhi.
2. The Engineer in Chief.
ARHQ. DHQ
Kashmir Bhawan
NEW-DELHI - 110011.

...../2.

3. Controller of Defence Accounts(Pay),
Udayan Vihar, Narangi, Guwahati-71.
4. Garrison Engineer,
872 EWS, 99-A.P.O.

..... RESPONDENTS.

PARTICULARS OF THE ORDER AGAINST WHICH
THE APPLICATION IS MADE.

1. Order issued by the Garrison Engineer, 872 Engineers Works Section, 99 APO under No.1021/B/8742/E-1 dated, 08-04-2000 communicating the decision of the CDA, Guwahati and direction to effect recovery of Night Duty Allowance (NDA) from the salary of Pump House Operators (now re-designated as Fitter General Mechanic which was not entitled to them since 06-07-1994. The Order impugned in this application is the order of the CDA, Guwahati issued to the Garrison Engineer, 872 EWS under No. AAO/6E/872/ENG/32 dated, 04-04-2000.

JURISDICTION OF THE TRIBUNAL

2. The Applicants declared that the subject matter of the Order against which they seek redressal is within the jurisdiction of the Tribunal.

LIMITATION

3. The Applicants further declared that the application is within the limitation period prescribed in Sec.21 of the Administrative Tribunal Act, 1985.

FACTS OF THE CASE.

4. The Pump House Operators (for short PHO) serving in the Military Engineering Service (for short MES) were allowed Night Duty Allowance for such hours as they individually worked during the night @ 10 Paise per hour. On such allowance one single Pump House Operator could get a sum around Rs. 100/- in a month.

5. That the P.H.O. were redesignated as Fitter General Mechanic (FGM) w.e.f. 06-07-1994. Their nature of duty and grade in service remaining same, they continued to get the said N.D.A. calculating on the hours of night duty performed by each individual F.G.M.

6. That consequent on the redesignation in the year 1994 the N.D.A. admissible only to those categories which were enlisted to the Government Order issued by the Ministry of Defence. The FGM not being in the list the Army Headquarter, Eastern Command has taken up the matter with the Ministry of Defence so that the FGM may be included in the List of the Government Order for the purpose of N.D.A. But the Ministry of Defence has not yet taken the decision or communicated anything denying the admissibility of N.D.A. to the P.H.O. now redesignated as F.G.M.

7. It would be clear from the letter from the Engineer in Chief referring to the Army Headquarter, Eastern Command letter No. A/20050/NDA/EIC(3) dated, 14th July, 1999 which has been forwarded to the applicants by the Garrison Engineer, 872 EWS under Order No.1020/424/E1 dated, 19-11-1999.

Copies of which letters/orders are annexed and marked as ANNEXURE- 1 Series.

8. It would be relevant to state that the Applicants have been paid the N.D.A. since July, 1994 when they were redesignated, and their bills have been passed by the C.D.A. (Respondent-3) every month during the last six years in the absence of any order to stop the Night Duty Allowance.

9. That suddenly it appears that the C.D.A. (Respondent No.3) asked the GE 872 EWS to stop payment of N.D.A. and also to recover such N.D.A. paid since 06- 07-1994 till date. This communication has been intimated to the Applicants by letter dated, 04-04-2000 and 08-04-2000.

Copies of the letter No. AAO/GE/872/ENG/32 dated, 04-04-2000 and Order No. 1021/B-8742/E1 dated, 08-04-2000 are annexed and marked as ANNEXURE- 2 Series.

10. That as a result of the Order dated, 08-04-2000 the recovery would be started from the monthly salary of the Applicants from the month of April' 2000.

GROUND FOR RELIEF WITH LEGAL PROVISIONS

11. The C.D.A., Guwahati has no authority to decide admissability of NDA, and whether the Pump House Operators being re-designated as Fitter General Mechanic performing the same work and in the same grade shall be denied or allowed the N.D.A. is a matter to be decided by the Ministry. The Audit authority cannot take the administrative decision and as such the Order for deduction to recover the N.D.A. is illegal.

12. That there is no dispute that P.H.O. and F.G.M. are not different in work and grade, and when the Army Headquarter has taken up the matter with the Ministry of Defence to Enlist the category of F.G.M. for the purpose of N.D.A., it is without any jurisdiction and authority the C.D.A (Respondent No.3) has intimated the Garrison Engineer, 872 EWS (Resp.4) to recover the N.D.A. since the redesignation.

13. That until the Government of India, Ministry of Defence communicates the decision about non-admissability of N.D.A. to the Pump House Operators only due to their redesignation the N.D.A. may be stopped, but before that the F.G.M. who are actually the P.H.O. in a different name have to get the Night Duty Allowance as usual.

14. That the Applicants are low paid employees and if recovery is started in compliance of the order of the C.D.A. Guwahati they would be seriously prejudice particularly as in each individual case the recoverable amount would stand in each case around Rs.7000/- such a financial loss is going to be effected without the due process of law, or observing the principle of natural justice.

DETAILS OF REMEDIES EXHAUSTED.

15. The Applicants were intimated only on 9th April 2000 that recovery would be effected as per instructions given by C.D.A. (Respondent No.3) and such deduction would commence by deduction from the salary of May, 2000. This being the situation no representation could be made or Notice served in compliance of Sec.20 of the Administrative Tribunal Act, 1985. Unless this Hon'ble Tribunal admits this application and consider the urgency for which exhausting other remedies is impossible, the applicants would be seriously prejudiced and would be deprived of justice and equity.

MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY
OTHER COURT.

16. The Applicants declare that they have not previously filed any application or Writ Petition or suits regarding the matter in respect of which this application has been

made, before any Court or any other authority or any other bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

RELIEF SOUGHT

17. In view of the facts mentioned in Para-6 above the Applicants pray for the following reliefs :-

- (a) The direction of the C.D.A. (Respondent-3) issued to Garrison Engineer, 872 EWS (Respondent-4) being per-se illegal and without authority has to be declared void and non-est.
- (b) That recovery of the Night Duty Allowance drawn by the Pump House Operators since they are redesignation as Fitter General Mechanic on 06-07-1994 has to be declared void and illegal until the decision is taken by the Ministry of Defence.
- (c) The Pump House Operators and the Fitter General Mechanic being same and identical in the nature of work and grade the Night Duty Allowance @ 10 Paise per hour has to be ordered to continue until a final decision taken by the Ministry.

INTERIM ORDER IF ANY PRAYED FOR

Pending final decision on the application the Applicants seek the following interim relief :-

(a) The Order of the C.D.A., Guwahati communicated by the Garrison Engineer, 872 EWS, 99 APO to effect recovery of N.D.A. paid to the Applicants since 06-07-1994 on being redesignated has to be stayed.

PARTICULARS OF POSTAL ORDERS ETC. FILED IN RESPECT OF THE APPLICATION FEE.

9PO. NOS:

9-F- 655390 -	Rs. 20.00
9-F- 655391 -	Rs. 20.00
17-E -623425 -	Rs. 10.00

LIST OF ENCLOSURES.

1. Annexure - 1 Series : Order of AGE 'T' under No. 1020/424/E1 Dtd. 19-11-1999 and Engineer in Chief , Order dtd.14-7-99.
2. Annexure - 2 Series : Forwarding letter of Garrison Engineer, No.1021/B/3742/E1 Dtd.8-4-2000 and letter No. AAO/6E/872/EWS/32 dtd. 04-04-2000 from CDA.
3. VAKALATNAMA.

VERIFICATION

四

All working as Fitter General Mechanic in the Office of the Ge 872 EWS, 99 APO, resident of Agartala do hereby verify that the contents of paras 1 to 16 are true to our personal knowledge and paras 16-(a), (b) & (c) believed to be true on legal advice and that we have not suppressed any material fact.

SIGNATURE OF THE APPLECTANTS

1. Mark
2. Jeff
3. Car
4. Elwin
5. Arabelle
6. Adam
7. Sam

8. Ch. Mironal Kante Das.
9. Lyk Maseend.
10. S. Gob.
11. B. B. Basu
12. B. B. Deb.
13. Ch.
14. C. Mani

DATE : 04-May-2000

PLACE : Agartala .

1020/47² 11/E1

AGE E/M

ANNEXURE- 1 **SR. 20**

Garrison Engineer
872 Engr Wks Sec
C/O 99 APO

19 Nov '99

GRANT OF NDA TO PUMP HOUSE OPERATOR
AND DRIVER ENGINE STATIC IN MES

1. A copy of AHQ E-in-C's letter No A/20050/NDA/EIC(3) dtd 14 Jul 99 is forwarded herewith for your information and necessary action.
2. It is also intimated that since FGM categories is not enlisted in Govt order for grant of NDA, a case has been taken up by AHQ, E-in-C's, New Delhi with Ministry of Defence to issue necessary Govt order to grant NDA to those FGM who are employed as PHO and DES.

Encl:-As above.

(Alok)
Capt
AGE 'T'
for Garrison Engineer

Affects Argentine
original
signature
signature
telecast

NDA TO PUMP HOUSE OPERATOR AND
DRIVER/ENGINE STATIC IN MES

ANNEXURE 1 SR.

1. A case regarding admissibility of Night Duty Allowance to PHO and DES consequent to redesignation as FGM was referred to Ministry of Defence by CGOA New Delhi for clarification. Ministry of Defence has however clarified that the Night Duty Allowance is admissible only to those categories which are enlisted to the Government order. A copy of Ministry of Defence ID No 569/99/D(Wks) dated 3 Mar'99 in which said clarification has been communicated to this HQ is enclosed for your information and necessary action.
2. Since ~~xx~~ FGM categories is not enlisted in the govt order for grant of NDA a case has been taken up by this HQ with Ministry of Defence to issue necessary Govt order to grant of NDA to those FGM who are employed as PHO & DES.

Sd/- x x x
(KD Chettri)

SAO
SO 2 Engrs (Pers)
for Engineer-in-Chief

Cla. me C) Repts may go
affect
J. A. Mehta
Advocate

101/114
18 APR 2000
12
Garrison Engineer
872 Engr Works Section
C/O 99 APO

1021/B/ 8742/E1

18 Apr 2000

AGE E/M

GRANT OF NIGHT DUTY ALLOWANCES OF PHO AND
DES OF MES WHO ARE RE-DESIGNATED AS FGM

1. A copy of AAO GE 872 EWS letter No. AAO/GE/872/
EWS/32-III dt 04 Apr 2000 alongwith its connected
enclosures are forwarded herewith for your information.

2. You are hereby directed to recover the amount
in instalments from the effected individuals from
their regular pay bills and report completion.

Mr.
(SSDS Bevli)
Major
Garrison Engineer

Enclo:- Four sheets

Copy to :-

AAO GE 872 EWS - w.r.t his letter cited above for
information.

*Attached
J. S. D.
12/10/00*

(True Copy)

NO: AAO/6E/872/EWS/32

A.A.O., G.E. 872 EWS

PO : 99-APO

To To

Dt : 4-4-2000

The G E 872 EWS
(Local)

Sub : Grant of Night duty allowance to PHO and Engine Driver Static of MES who are redesignated as Fitter General Mechanic

It has been intimated by CDA Guwahati that the category of PHO and Engine Driver Static of MES who are re-designated as Fitter General Mechanic with effect from 6-7-1994 are not entitled to draw night duty allowance as the category of FGM has not been included in the Government Orders issued from time to time.

A list showing names years and amount against the effected individuals is enclosed for necessary recovery action through their Pay-bills please.

Please acknowledge receipt.

Enclo : 3 sheets

Sd/-

A.A.O.

Copy to :

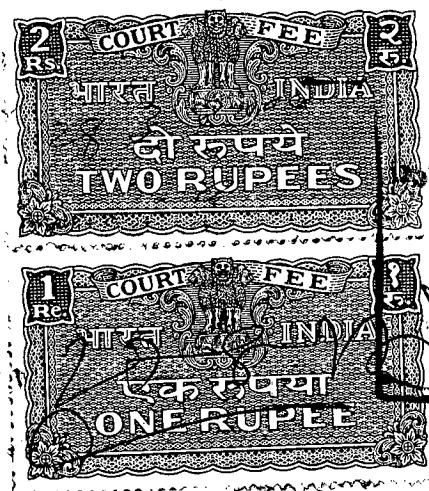
CDA (Pay)

Udayan Vihar

Narangi : Guwahati.

for information with reference to their Circular
No Pay/024/IV/PC/86-VII dated 01-02-2000. No NDA
will be paid to the FGM by their Office.

Attested
Om Prakash Baruah
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Application No.163 of 2000

IN THE MATTER OF :-

Shri N.C. Deb and others

..... Applicants

VERSUS

Union of India and others

..... Respondents

A N D

IN THE MATTER OF :-

Counter Affidavit in opposition
filed by on and behalf of the
Respondents in reply to the
Application of the applicants

contd..... P/2

Quesh
(J. M. GHOSH) 10/6/41
NOTARY, Govt. of India
1653 of 2000
West Tripura.

14
26/6/2000
26/6/2000
(A. DEB ROY)
S. C. C. S. C.
C. A. T. Guwahati Bench
Pradyot Kumar Dhar, L.L.B
Central Control & Scrutiny Standing Committee
1653 of 2000

(2)

AFFIDAVIT

I, Major S.S.D.S.Bevli S/O Shri D.S.Bevli,
residing at Shalbagan, P.S. East Agartala, District-
West Tripura, aged 36 years, by profession Government
service, presently working as Garrison Engineer,
812 EWS, Shalbagan, Agartala, West Tripura, do hereby
solemnly affirm on oath and state as follows :-

1. That I received a copy of application of the applicants in O.A.No.163 of 2000 and I have gone through the contents of the said application and understood the contents thereof. I have been authorised to subscribe this counter Affidavit in opposition by the Respondents and am competent to subscribe this counter Affidavit which I hereby do.

This is true to my knowledge.

2. That I say that the said application of the applicants for reliefs sought therein is mis-conceived

ghost
J. M. GHOSH 10/6/42
NOTARY, Govt. of India.
1953 of 2000
West Tripura.

(3)

bad in law and is not maintainable in its present form and nature. The applicants have no locus to approach this Hon'ble Tribunal with the said application and prayer made therein.

This is true to my belief.

3. That as regards the statements made in the said application in paragraph 1 I say that these are matters of records and are required to be proved by the applicants. The statements made in paragraphs 4, 5, 6, 7, 8, 9 and 10 of the said application are also matters of records and are required to be proved by the applicants.

This are true to my submission.

4. That as regards the statements made in paragraphs 2 and 3 in the said application I submit that the subject matter of the order against which the applicants seek redresses is beyond the jurisdiction of this Hon'ble Tribunal and also the said application of the

Dhoni
J. M. GHOSH 10/6/21
NOTARY, Govt. of India
1363 of 2000
"Test. Not. 2144.

contd... P/4

(4)

applicants is barred by law of limitation prescribed by the Administrative Tribunal Act, 1985 and therefore, the said application of the applicants is not maintainable in law.

This is true to my belief.

5. That as regards the statements made in paragraphs 11, 12, 13 and 14 of the said application I deny that C.D.A., Guwahati has no authority to decide admissibility of Night Duty Allowance(NDA) and/or the Audit authority cannot take the administrative decision and/or the order for deduction to recover the NDA is illegal. I also deny that the intimation by the C.D.A. to the Garrison Engineer, 872 EWS to recover the NDA since re-designation is without jurisdiction. I also deny that until the Government of India, Ministry of Defence communicates the decision about non-admissibility of NDA to the Pump House Operator (P.H.O.) the Fitter General Mechanic(F.G.M.) who are actually the P.H.O. in different names have to

Quesh
M.M. CHOWDHURY, Govt. of India,
1983 of 2000
West Tripura.

contd...P/5

(5)

get the NDA as usual. I further deny that if the recovery is started in compliance of order of the C.D.A., Guwahati the applicants would be seriously prejudiced and/or any financial loss as alleged is going to be affected without the due process of law or observing the principle of natural justice.

These are true to my submission.

6. That as regards the statements made in paragraphs 15 and 16 of the said application I say that the applicants were intimated on 9.4.2000 as to the decision of recovery of N.D.A. as per instruction given by C.D.A. and therefore, the applicants have no urgency at this delayed stage while they have caused unreasonable delay in presenting their application. Further I submit that as regards statements made in paragraph 16 of the said application the Respondent reserved right to enquire into the matter and submit any result thereof if so advised for which I crave

contd....P/6

Okok
(J. M. GROSH) NO/6/21
NOTARY, Govt. of India.
1853 of 2000
West Tripura.

(6)

leave of this Hon'ble Tribunal.

These are true to my submission.

7. That in reply to the said application of the applicants I submit that as per Government of India, Ministry of Defence letter No.90237/4278/EIC(3)/ 520-LC-V(Civ-I) dated 14th July, 1994, Diesel Engine Static (DES) of Military Engineering Services (MES) is sanctioned to draw Night Duty Allowance (NDA).

On the basis of the above order NDA was paid by the Respondents No.4 to the individuals those who were performed duties between 10 P.M. to 06 A.M. as per rates of calculation as given by the Government of India, Ministry of Defence OM No.6(4)/88 D(Civ-I) dated 15th March, 1990. Further I say that as per Government of India, Ministry of Defence letter No.6(4)/88/D(Civ-I)/Vol.II dated 25th June, 1992 Pump House Operators (PHO) of Military Engineering Services (MES) is sanctioned to draw Night Duty Allowance (NDA) on the basis of above order NDA was paid by

Ghosh
(J. M. GHOSH) 10/6/2015
NOTARY, Govt. of India.
1653 of 2000
West Tripura.

contd... P/7

Abul
SSDS Major FRANCIS SDSS
10/6/2000
Sudarshan Chakraborty, Lt.

(7)

the Respondent No.4 to the individuals who those who were performed their duties between 10 P.M. to 06 A.M. as per rates of calculation as given by the Government of India, Ministry of Defence OM No.6(4)/88-D(Civ-I) dated 15th March, 1990.

These are true to my knowledge gathered from official records.

8. That I further submit that the Government of India, Ministry of Defence has issued an order to the effect that both of the above categories namely Diesel Engine Static (DES) and Pump House Operator has been clubbed and re-designated as Fitter General Mechanic (F.G.M.) with effect from 6th July, 1994. The F.G.M. (re-designated) categories were originally as DES and P.H.O. is not included in the list for grant of N.D.A. as per Government order though both the DES and P.H.O. were included in the list for grant for N.D.A. In view of the same vide letter No.AAO/

Phool
(J. M. GHOSH) 10/6/2000.
contd....P/8
NOTARY, Govt. of India.
1853 of 2000
West Tripura.

(8 .)

GE/872/EWS/32-III dated 4th April, 2000 C.D.A.,
Guwahati has intimated that since the categories of
PHO and DES of Military Engineering Services who
are re-designated as F.G.M. with effect from 6th
July, 1994 are not entitled to draw N.D.A. as the
category of Fitter General Mechanic (F.G.M.) has not
been included in the Government order for such
benefit of N.D.A.

These are true to my knowledge gathered from
official records.

9. That I further submit that the aforementioned
matters have already been taken up with the Ministry
of Defence by E-in-C's Br. Army Headquarters, New
Delhi regarding admissibility of N.D.A. to P.H.O. and
D.E.S. consequent upon re-designation as F.G.M. The
Ministry of Defence vide their Memo. No. ID No. 569/
99/D(Wks) dated 3rd March, 1999 has clarified that
the N.D.A. is admissible only to those categories

Ghosh
which are enlisted in the Government order. In view

(J. L. CHOSH) 10/6/2K
NOTARY, Govt. of India,
1853 of 2000
West Tripura.

contd... P/9

(9)

of the said since F.G.M. is not enlisted in the Government order for grant of N.D.A. the categories of F.G.M. is not entitled to draw N.D.A. as per Government Order. I further submit that the matter has taken up by the E-in-C's Br. Army Headquarter, New Delhi with the Ministry of Defence for issuing necessary Government Order to grant N.D.A. to those F.G.M. who were earlier designated as P.H.Q. and D.E.S. I further submit that since the present Government order does not permit to pay N.D.A. to F.G.M. categories the payment made earlier i.e. as N.D.A. with effect from 6.7.1994 is required to be recovered from the individuals and the Respondent No.4 cannot continue to make payment N.D.A. as made earlier.

These are true to my knowledge gathered from official records.

10. That in view of the above circumstances and considering financial position of the individuals it was directed by letter No.1021/8742/EI dt.8.4.2000

Ghosh
(J. M. GHOSH) 10/6/2000
NOTARY, Govt. of India
1653 of 2000
West Tripura.

contd...P/10

10/6/2000
Proposed Kumar Dhar
Notary General Government of India

25
10/6/2000
Chittaranjan
Sarkar
ITAC case

33

(10)

to recover the amount in instalment from the individuals from their regular pay bills and therefore, the application of the applicants is not maintainable under the above facts and circumstances.

This is true to my submission.

11. That under the above circumstances the said application of the applicants deserves no consideration and the same is liable to be dismissed in limini.

This is true to my submission.

12. That I humbly submit that the relief sought by the applicants in their said application are untenable and therefore, said application of the applicants is liable to be dismissed.

This is true to my submission.

13. That I say and submit that the said application of the applicants has no merit and deserves to be

dismissed. Other allegations/averments except those

Q. Ghosh
(J. M. GHOSH) 10/6/2000
NOTARY, Govt. of India.
1653 of 2000
West Tripura.

contd....P/11

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(11)

which are specifically admitted in this Counter
Affidavit in opposition are not admitted and required
to be proved by the applicants.

This is true to my submission.

14. That I humbly say that in view of the circumstances the applicants of the said application are not entitled to get any interim order as prayed in their said application.

This is true to my submission.

15. That I further submit that the applicants of the said application have got no *prima facie* case having no chance of any success while the balance of convenience and inconvenience is in favour of the Respondents. Further I submit that without any interim order if the said order of C.D.A., Guwahati is implemented and the Ministry of

Phos. 10/6/46
C. M. CHOUDHURY, Govt. of India.
1853 of 2000
West Tripura.

25

order for allowing N.D.A. to F.G.M., the amount if recovered would be repaid/returned to the F.G.M. in terms of order of the Ministry of Defence and therefore, the applicants of the said application would not be prejudiced in any way in absence of any interim order. In view of the same the prayer for interim order of the applicants is not maintainable in any way.

These are true to my belief and submission.

In acknowledgement whereof I sign this Affidavit before the Notary at Agartala in support of the foregoing Counter Affidavit in opposition in reply to the application of the applicants on this 10/6 day of June, 2000.

The Deponent is identified by me and signed in my presence.

Deponent

Advocate

J. M. GHOSH 10/6/2000
NOTARY, Govt of India
1000 of 2000
West Tripura.

Sh. No. 40/Line 1/2000

AFFIDAVIT
SOLEMNLY AFFIRMED & DECLARED
BEFORE ME

OP. Maj. OY S. S. D. S. Bevli

IDENTIFIED BY ME P. K. Dham, Adv. C. G. S. C.
THIS DAY OF 10th June 2000
AT AGARTALA 3 A.M./P.M.

Jyotirmoy Ghosh

NOTARY, Agartala,

Appointed By Govt. of India

West Tripura,

Regn. No.—1659

10/6/2000

Op. Bevli

10/6/2000

SSDS 10/6/2000

M. Jos

Garrison

I, identified by me

I, Jyotirmoy Ghosh

10/6/2000

Chittaranjan Dhar, M. P. I

Chief Control Government Standing Council,

Central High Court, Agartala Bench.