

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 374/02

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. O.A. 374/02 Pg. 1 to 3
2. Judgment/Order dtd. 11/08/2003 Pg. 1 to 3 allowed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 374/02 Pg. 1 to 16
5. E.P/M.P. N.I.L Pg. to
6. R.A/C.P. N.I.L Pg. to
7. W.S. re-submitted by the Respondents Pg. 1 to 28
8. Rejoinder Pg. to
9. Reply Pg. to
10. Any other Papers Pg. to
11. Memo of Appearance
12. Additional Affidavit
13. Written Arguments
14. Amendment Reply by Respondents
15. Amendment Reply filed by the Applicant
16. Counter Reply

SECTION OFFICER (Judl.)

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 374 of 2002

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant (s) Md. Maiznur Ali & Ors.

Respondent (s) U.O.I and Ors.

Advocate for the Applicant (s) Mf. S.C. Barua, M.K.Majumdar.

Advocate for the Respondent(s) C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
This is application in form C. F. S. No. 501- deposited vide L. No. 5266/02 Dated 8.8.02 Dy. Registrar 23	28.11.02	<p>Heard Mr. M.K. Mazumdar learned counsel for the applicant and also Mr. A. Deb Roy, Sr.C.G.S.C. for the respondents.</p> <p>Issue notice of Motion. Returnable by four weeks.</p> <p>Issue notice on the respondents to show cause as to why the interim order as prayed for shall not be granted. Returnable by four weeks.</p> <p>In the meantime the Respondents are directed not to make recovery of the Night Duty Allowances as as paid to the applicants.</p> <p>List on 3.1.03 for Admission. Endeavour shall be made to dispose the O.A. at the admission stage.</p> <p>1m 3.1.02</p> <p>Due to vacance, the case is adjourned to 31.12.2003 for my office</p>

Nice-Chairman

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31.1.2003 Heard Mr. M.K. Mazumdar, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

No reply so far filed by the respondents. The application is admitted. Call for the records.

No fresh notice need not to be issued. The respondents may file written statement within four weeks from today. List the matter on 28.2.2003 alongwith O.A. No. 9/2003 for orders.

Vice-Chairman

mb

28.2.2003

Put up again on 28.3.2003 for order.

No written statement

has been filed

bb

Vice-Chairman

28.3.2003 Heard Mr. M.K. Mazumdar, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

The respondents are allowed further four weeks time to file written statement. List the matter on 2.5.2003 for orders alongwith O.A. No. 9/2003.

Vice-Chairman

mb

2.5.2003

Heard Mr. M.K. Mazumdar, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

Put up the matter again on 9.6.2003 to enable the respondents to file written statement. In the meantime, interim order dated 28.11.2002 shall continue.

Vice-Chairman

Order dtd 2/5/03
Communicated to
the parties concerned

6/5

9.6.2003 No written statement so far filed by the respondents. The application may now be listed for hearing on 25.7.2003. In the meantime, the respondents may file written statement, if any.

10.7.03

mb

W/S Submitted
by the respondents.

Vice-Chairman

25.7.2003 Present : The Hon'ble Mr. N.D. Dayal, Administrative Member.



Mr. S. Das, learned counsel appearing on behalf of Mr. M.K. Mazumdar, learned counsel for the respondents prayed for adjournement of the case. Prayer is allowed. List again on 11.8.2003 for hearing.


Member

mb

11.8.2003 Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

18.8.2003
Copy of the order
has been sent to
the D/Secy. for I&B
The file to the
L/Advocates for
the parties.


Vice-Chairman

pg



Aug 2003

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / R.A. No. 374 . . . of 2002.

DATE OF DECISION 11-8-2003.

Fig. 1. The 3.2 μ Region

ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

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

ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON^T 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 Hobble Vice-Chairman

4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 374 of 2002.

Date of Order : This the 11th Day of August, 2003.

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

1. Md. Maiznur Ali,
2. Md. Abdul Hakim,
3. Sri Prem Nath Singh,
4. Sri Hiteswar Hazarika,
5. Shri Durga Bdr. Chetri,
6. Md. Mukhtar Hussain,
7. Md. Monir Uddin Ahmed.

...Applicants

- Versus -

1. Union of India,
represented by the Secretary to the
Govt. of India, Ministry of Defence,
New Delhi.
2. Engineer In Chief,
Military Engineering Service,
New Delhi.
3. B.S.O. Missamari,
Dist. Sonitpur, Assam.
4. Garrison Engineer,
Missamari,
Dist. Sonitpur, Assam.

...Respondents

By Sri A.Deb Roy, Sr.C.G.S.C

O R D E R

CHOWDHURY J.(V.C)

The seven applicants moved this O.A. assailing the steps taken by the respondents for recovery of amount in respect of payment of Night Duty allowances retrospectively. Admittedly some Night Duty allowances were paid to the applicants upto 18.5.1994. The respondents then took steps for recovering of the allowance in 1994 paid to the Night Guards. Some of such Night Guards knocked the door of this Tribunal by filing O.A.117/94. This Bench set aside the orders vide judgment and order dated 30.8.1996. The respondent No.4, the Garrison Engineer, Missamari issued the order dated 24.11.98 for recovery of the same at a monthly instalment of Rs.100/- per month with effect from 01.01.1999.

instalment of Rs.100/- per month with effect from December 1990 onwards. Twenty four of them again moved this Tribunal which was numbered and registered as O.A.299/98. The said O.A. was finally disposed of by its judgment and order dated 8.9.99 directing the respondents not to make any recovery of any amount already paid to those applicants as Night Duty Allowance. The Tribunal while disposing the said O.A. took into consideration the hardship caused to the employees in retrospectively recovery. The respondents on receipt of the order sought to implement the judgment and order of the Tribunal and sent Signal No.UNCLAS 502107/ELC dated 26.9.2002. The full text of which is reproduced below :

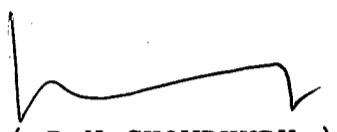
"IMPLEMENTATION OF CAT GUWAHATI JUDGMENT OF 08 SEP 1999 IN OA NO. 299/98 FILED BY SHRI RATAN BARUAH AND 23 OTHERS ()

CDA GUWAHATI CDA GUWAHATI LETTER NO.PAY/34/CONF/117/94 AND 299/98 OF AUG 23 (). THE AUDIT REPORT FURNISHED BY CDA GUWAHATI ON 14 JUL 2000 AMOUNTING TO Rs.3,66,862/- WAS FOR INDIVIDUALS (.) GOVT. SANCTION HAS BEEN ISSUED IN RESPECT OF INDIVIDUALS ONLY WHO WHERE THE APPLICANTS IN THE SUBJECT OA. THE AMOUNT PAID TO INDIVIDUALS OTHER THAN APPLICANTS MAY BE RECOVERED FROM THEIR PAY AND ALLOWANCES AFTER ISSUING SHOW CAUSE NOTICE TO THEM (.) ACCORD PRIORITY."

The fact of the matter in this O.A. is really and truely the same with that of O.A.299/98. The said O.A. was allowed on the basis of the legal policy against retrospective recovery. It took into consideration the financial privation and adversity of the employees that gave a rough ride on the score of retrospective recovery. The communication itself indicated that the respondents authority was implementing the judgment and order passed by the Tribunal in O.A.299/98 disposed of on 8.9.99. As alluded the applicants are similarly situated and therefore they ^{are} also squarely covered by the aforementioned judgment. There is no scope for singling out the applicants from the benefit of the judgment of the Tribunal. The direction issued as per the impugned

Annexure-III communication dated 26.9.2002 is therefore unsustainable in law and quashed and the respondents are directed to refrain from making any recovery of any amount already paid to these applicants as Night Duty allowance.

The application is thus allowed. There shall, however, be no order as to costs.



(D.N.CHOWDHURY)
VICE CHAIRMAN

pg

केन्द्रीय अधिकारिक नियमदार
Central Administrative Tribunal

NOV 23

संविधान नियम
सुनाम बाबा

IN THE CENTRAL AADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A No. 374 /02.

Md. Mat31/07 Ali & Ors.

- Versus

1. Union of India and Ors.

I N D E X

<u>SlNo.</u>	<u>Particulars</u>	<u>Page</u>
1.	Application	1 - 8
2.	Verification.	9
3.	Annexure-I	10 - 12
4.	Annexure-II.	12 - 15
5.	Annexure-III.	16

For Office Use:

Signature :

Date :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

(An Application under Section 19 of the Administration
Tribunal Act 1985)

O.A.NO. 374 /2002

- BETWEEN -

1. Md. ~~Mazhar~~ Ali,

S/O Late, ~~Saynur~~ Ali

Vill. Saikia Chuburi Muslim Gaon,

P.O. Dekar Gaon,

Dist. Sonitpur.

2. Md. Abdul Hakim

S/O Samir Sheikh.

Vill. Saikia Chubri

Muslimgaon, P.O. Dekargaon,

Dist. Sonitpur

Chowkidar (CVB)

Major Ajit Kumar

3. Sri Prem Nath Sing.

S/O Birjlal Sing,

Vill. Goramari

P.O. Halleswar

Dist. Sonitpur.

File No. 115 Application No.
Through Advocate
Dipak Kanti
18/11/02

4. Sri Hiteswar Hazarika.

S/O Dina Ram Hazarika

Vill. Niz Halleswar.

P.O. Halleswar.

Dist. Sonitpur.

5. Shri Durga Bdr. Chetri

S/O Late, D.B. Chetri

Vill. Nopam.

P.O. Nopam

Dist. Sonitpur. (Assam)

6. Md. Mukhtar Hussain

S/O Habibur Rahman

Vill. Hari Gaon.

P.O. Nikamul.

Dist. Sonitpur.

7. Md. Monir Uddin Ahmed,

S/O Late, Jonir Uddin Ahmed

Vill. Saikia Chuburi Muslim Gaon.

P.O. Dekar Gaon.

Dist. Sonitpur (Assam)

- Versus -

1. Union of India,

(Represented by the Secy to Govt. of
India Ministry of Defence, New Delhi)

Contd...p/3

M. Mangunji

2. Engineer In Chief

Military Engineering Service
New Delhi.

3. B.S.O. Missamari

Dist. Sonitpur, Assam.

4. Garrison Engineer,

Missamari

Dist. Sonitpur, Assam.

1. Particulars of order against which this application is made

A common cause of action arose due to unnecessary harassment for initiating recovery process of Night Duty Allowance paid to the applicants and the order dtd. 10.10.2002 under no. Tele : Mily 6422-C/1053/142/EIC by the Respondent No.4

2. Jurisdiction :

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation

The applicant also declares that the application is within the limitation period as has been prescribed under Section 21 of the Administrative Tribunal Act. 1855.

M. Maignan

Contd...p/4

4. Facts of the case.

(i) That the applicants are the night guard Chowkidar under the Respondent No.4 in the cadre of Group-D. The cause of action and relief sought are similar and as such may join together making R.4(5)(a) of CAT (P) Rule 1987

(ii) That the applicants are Chowkidars who were performing their duty in the vacant buildings and they were paid night duty allowance per month as per the policy decision.

(iii) That the applicants state that the Garrison Engineer, of late, have issued an order against the applicants in pursuant to the direction issued by the Govt. of India, Ministry of Defence vide signal No. UNCLAS-502107/EIC Dtd. 26.9.2002 is going to recover the amount already paid to them.

A Copy of the letter is enclosed as
Annexure-I.

(iv) That the applicants state that this amount was paid voluntarily to them by the Respondents and the applicants have spent the amount that they have received and the recovery will cause hardship to them.

(v) That the applicants state that the Garrison Engineer, Missamari on earlier occasion intimated the applicants that there will be recovery of the night duty allowance already paid as monthly installant of Rs.100/- per

Contdp/5

M. Maizzenji

month with effect from Dec./98 and vide OA NO. 299 of 1998 as decided on 8.9.99 this Hon'ble Tribunal it was directed not to recover any amount already paid to the applicants.

A copy of the order paid OA 299/98 is annexed as Annexure-II.

(vi) That the applicants state that in the said OA there were 24 petitioners approuched this Hon'ble Tribunal challenging the decision 1998 and this Hon'ble Court after as theread bare discussion held that this NDA already paid is also not recoverable like other duty allowance and in this regard the Respondent authority have taken steps not to recover.

However vide signal No. UNCLAS. 502107/E IC dated 26.9.2002 sanction of NDA against the 24 other applicants have been communicated with the amount paid to individuals other than applicants may be recovered from their pay allowances after issuing show cause notice to them.

Copy of the order annexed as Annexure-III.

(vi) That being aggrieved with the action and attitude of the Respondent the applicant approuch this Hon'ble Tribunal by filing this application an the following ~~grounds~~ grounds.

M. Maignay
contdp/6

5. Grounds.

(i) For that the impugned order is illegal in as the authority have taken double stand the process of recovery for similarly situated persons.

(ii). For that the office of the Garrison Engineer is going to implet an order of the higher authority respondent which is a illegal one in the content that they are implementing Hon'ble CAT's order is one way and alternatively taken decision to recover the same from the others non applicants.

(iii) For that the authority respondent have taken such decision only on the ground that the ~~present~~ applicants were not party the O.A No. 299/98 wherein a favourable order is passed against the respondent and hence is not maintainable.

(iv) For that Hob'ble Tribunal have already decided the matter of other applicants is OA No.299 of 1998 and the authority repondents also vide their signal dtd. 26.9.2002 decided not to deduct the same amount but the unfortunate action against the ~~present~~ applicants only on this score is liable to set aside.

(vi) For that the action of the respondents is violative of fundamental rights of the applicant as has been guranted under Article- 14,16 and 21 of the constitution of India.

M. M. Muzumdar ^{contd} p/7

(vii) For that at any rate this action of the respondent is not maintainable in the age of law.

6. Details of remedies availed-

That the applicants declare that they have taken recourse of all the remedies available to them but fail to get justice and hence there is no other alternative efficacious remedy available to them but to approach the Hon'ble Tribunal.

7. The Matter not Previously Giled and/or Pending before any Court.

That the applicants further declares that they hav not filed any application regarding the matter before any Court or any other bench of this Hon'ble Tribunal nor any such application is pending.

8. Relief Sought for.

Under the facts and circumstances stated above the applicants pray following relief.

(a) To quash and set aside the order dtd. 10.10.2002. (Annexre-)

(b) To direct the respondent to allow the applicants to enjoy the N.D.A ~~amt~~ and further be pleased to grant similar relief as that of O.A. 299 of 1998.

(d) To grant any other relief as Your Lordship
any deem fit and proper.

(e) Quashed of the application.

9. Interim relief if any.

Under the facts and circumstances, the applicant
prays that Your Lordships may please to pass necessary order
staying the operation of order/letter dated 10.10.2002.
(Annexure -)

10. Particulars of Postal Order.

11. List of enclosures - As stated in the Index.

V E R I F I C A T I O N

I, Sri Maiznur Ali S/O Late Saznur Ali, employee of G.E. Missamari. Do hereby solemnly verify that the statement made in para ...3... and 4.... are true to the best of my knowledge based on record and rests are my humble submission before this Hon'ble Tribunal.

And I sign this verification this .../8/... day of NOV' 02 at Guwahati.

M. Maiznur Ali

D E P O N E N T.

ANNEXURE-I.

Tele: Mily 6422

Garrison Engineer

Missamari (Assam)

C/1053/142 /EIC

10 Oct' 2002

RECOVERY OF NDA AMOUNT

1. The following individual of your unit have been paid the amount as per details shown against each on account of NDA while they were serving in this office. It is intimated by Govt. of India, Min of Def Vide their Signal No. UNCLAS 502107/EIC dated 26 Sept. 2002 (copy enclosed for your ready reference) that the amount of NDA paid to the individual are to be recovered after issuing show cause notice to each individual. As such you are requested to issue show cause notice to each individual before recovery the same and take action to recover the amount under intimation to all concerned:-

Ser MES NO. Name No. and Design	Amount	Unit
a. NYA Durgaa Bdr Chetri Chow (CVB)	3485/-	GE Tezpur
b. NYA MK Daimari	3495/-	GE (AF)
c. NYA Prem Singh	3708/-	- do -
d. NYA Hiteswar Hazarika	3585/-	- do -

*Enclosed below
Mallapandu*

- 2 -

e.	NYA Abdul Hakim	..	3685/-	- do -
f.	NYA Manzur Ali	..	3716/-	GE Tezpur
g.	NYA Maniruddin Ahmad	..	3564/-	- Do -
h.	NYA Mukhtar Hussain	..	3538/-	- do -
j.	NYA Dipak Das (1)	..	3683	- do -
k.	NYA Dipak Das (2)		3622/-	- do -
i.	NYA Tarun Barman	..	2140/-	ACE E/M
m.	NYA Atul Kr. Das	..	2188/-	- do -
n.	NYA Suren Boro	..	1773/-	- do -
o.	NYA Satija Das	..	4401/-	- do -
p.	NYA MB Kharka Chetri	..	4277/-	- do -
q.	NYA Pradip Kalita	..	4511/-	- do -
r.	MES/265951		4016/-	GE Silchar.
	Sri Khargraswar Koch	..		
s.	NYA Santo Ram Kalita	..	4286/-	- do -
t.	NYA Md. Khurshid Ali	..	4329/-	- do -

19 (Ajit Kumar)

Major Garrison Engineer.

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 299 of 98

Date of Order : This the 8th Day of September 1999

HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Sri Ratan Baruah & 23 Ors. Applicant
By Advocate Mr. A. Das gupta, Ms. B. Bairagi.

-VB-

1. Garrison Engineer,
Missamari
Dist. Sonitpur, Assam
2. B.S.O, Missamari
Dist. Sonitpur, Assam
3. Engineer-In-Chief
Military Engineering Service,
New Delhi.
4. Union of India
(Represented by the Secretary to Govt. of India
Ministry of Defence, New Delhi)

By Advocate Mr. B. S. Basumatary, Addl. C.G.S.C.

O R D E R.

G.L. SANGLYINE, ADMINISTRATIVE MEMBER:

24 applicants have submitted this Original Application with a prayer for permission under rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1987. I am satisfied that they fulfil the conditions and permission is granted.

2. The applicants are Chowkidars care of Vacant Buildings(CVB for short). They were paid Night Duty Allowance upto 18-5-1994 but by order dated 18-5-1994 and dated 19-5-1994 recovery of the amounts

paid to them was sought to be made by the respondents. The applicants submitted O.A.No.117 of 1994 in Ratan Baruah and 24 others and by order dated 30-8-1996 the orders were set aside for reasons recorded therein. Thereafter on 24-11-1998 the respondent No.1, Garrison Engineer, Missamari, Assam issued Annexure 'D' order dated 24-11-1998 intimating the applicants that recovery of the Night Duty Allowance paid to them was to be made at monthly instalments of Rs. 100/- per month with effect from December, 1998 onwards. In this present application the applicants have contested against this order at Annexure D. The respondents have not submitted written statement. Mr.B.S.Basumatary, Addl.C.G.S.C. however, appeared for the respondents and made his submission. Heard him and the Mr.A.Dasgupta, learned counsel for the applicants.

Mr.Dasgupta submitted that the applicants were paid the allowance since long and it was only subsequently that the respondents stopped the payment and ordered recovery of the amounts paid. The amounts were paid to the applicants voluntarily by the respondents and the applicants had already spent the amounts received. Recovery of the amounts would cause severe hardship to the applicants. He submitted that in the case of Special (Duty) Allowance paid to the ineligible employees the Hon'ble Supreme Court had held that amounts already paid to them were not to be recovered. He submitted that in this case also the applicants are to be similarly treated and no recovery of the amounts paid need be made.

contd/-

3. In the order dated 30-8-1996 in O.A. No. 117 of 1994 it was held that in terms of the office memorandum No. 6(4)/88/D(Civ.I) dated 15-3-1990 read with letter dated 19-9-1991 Night Duty Allowance was not admissible to CVB. In the present O.A. the contention of the applicants is that no recovery of the amounts paid is to be made. The amounts to be recovered as per Annexure D relate to the period from January 1986 to December 1992. The respondents have not submitted written statement though they have entered appearance and several opportunities were granted to them to submit written statement. They have not therefore seriously contested the application. Despite the aforesaid office memorandum and letter, the respondents continued to pay the Night Duty Allowance to the applicants and thereby created a situation to show before the applicants that they were legitimately entitled to receive the allowance. In my view it is necessary for an employer to act fairly and reasonably in a situation such as in this case where hardship to the employees had been caused by the voluntary action of the authorities by making the payments. Mr. Dasgupta had relied on the decision of the Hon'ble Supreme Court in Union of India & Ors. Vs. S. Vijayakumar and Ors., reported in (1994) 28 ATC 598. In that case Special(Duty) Allowance was paid to the ineligible employees, the Hon'ble Supreme Court had directed that no recovery was to be made of the amounts already paid to them. The payment of Night Duty Allowance to the applicants in the present O.A. is in similar situation with that of the payment of Special(Duty) Allowance referred to. Though the respondents have not explicitly conceded but they have not contested by way of submitting written statement. In the light of the above I direct the respondents to desist from making any recovery of any

contd/-

amount already paid to the applicants as Night Duty
Allowance.

The application is disposed of. No order
as to costs.

LM

Sd/-MEMBER (Adm)

ONE COPY

Section Officer (s),
District Officer (s),
Central Ad. & Appellate Tribunal
City Magistrate, Gurgaon
P.M.D. 1956

A Copy of INDARMY signal No. UNCLAS 502107/ELC dated 26th
Sep, 2002.

From : INDARMY

TO : CE SHILLONG ZONE

CE EAST COMD

UNCLAS 502107/Elc

INFO : CWE TEZPUR

GE MISSAMARI

CDA GUWAHATI.

LEGAL -C

IMPLEMENTATION OF CAT GUWAHATI JUDGMENT OF 08 SEP 1999 IN
*OA NO. 299/98 FILED BY SHRI RATAN BARUAH AND 23 OTHERS ()

CDA GUWATI CDA GUWAHATI LETTER NO.
PAY/34/CONF DL/OA 117/94 AND 299/98 OF AUG 23 (). THE
AUDIT REPORT FURNISHED BY CDA GUWAHATI ON 14 Jul 2000
AMOUNTING TO Rs. 3,66,862/- WAS FOR INDIVIDUALS (.)
GOVT. SANCTION HAS BEEN ISSUED IN RESPECT OF INDIVIDUALS
ONLY WHO WHERE THE APPLICANTS IN THE SUBJECT OA. (THE AMOUNT
PAID TO INDIVIDUALS OTHER THAN APPLICANTS MAY BE RECOVERED
FROM THEIR PAY AND ALLOWANCES AFTER ISSUING SHOW CAUSE
NOTICE TO THEM (.) ACCORD PRIORITY.

Cedars of Lebanon
Mt Hermon

-17-

Date	12 JUL 2003
Central Admin. Trib. Guwahati	
Md. Maizur Ali & Others	
Guwahati Bench	

(A. DEB FOR)
S. C. S.
C. A. T. Guwahati Bench

26

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI

O.A. NO. 374 OF 2002

Md. Maizur Ali & Others.

..... Applicants.
- Vs -

Union of India & Ors.

..... Respondents.

In the matter of :

Written Statement submitted
by the respondents

The respondents beg to submit a
back ground of the case which may be
treated as a part of the written
statement.

(BACKGROUND OF THE CASE)

Night duty allowance as paid through supplementary
pay bill to Chowkidars (CVB) w.e.f. Jan 86 Dec 92 duly audited
and passed by AAO Shillong. On being recovered the same as
per the directions of Government of India Ministry of Defence
letter No. 4(I)/97/D(Civ-I) dated 02 Apr 98, 24 individual have
approached CAT Guwahati and finally the judgement have been
passed, not to recover the amount already paid vide OA No.
299/98. After that INDAARMY vide signal No UNCLAS 502107/EIC
dated 26 Sep 2002 directed to recover the amount paid to

individuals other than the applicants of OA No. 299/98 after issuing show cause notice to them. As such show cause notice have been issued to the affected individuals. On receipt of show cause notice the applicant and six others have approached the Hon'ble CAT Guwahati to stop the recovery.

It is proposed to defend the case at Hon'ble CAT Guwahati by way of parawise comments of OA, the statement of case and counter affidavit, being prepared by xx Senior xx

Night duty allowance was paid through supplementary pay bills to Chowkidars (CVB) w.e.f. 01 Jan 86 to Dec 92 duly audited and passed by AAO Shillong. As per Govt. of India Ministry of Defence letter No. 6(4)Y88/D(Civ-I) dated 15 Mar 90 Chowkidars (CVB) are not entitled for night duty allowance. Accordingly AAO Shillong recovered the amount of night allowance through regular pay bill from 5/94 to 7/94. Being aggrieved on account of recovery by AAO Shillong Shri Ratan Baruah alongwith other 23 other filed a single application at Hon'ble CAT Guwahati to Quash the orders of AAO Shillong and on hearing, the Hon'ble CAT Guwahati vide order dated 30 Aug 96 finally set aside the order of recovery. Again as per the directions of HQ CEEC the recovery has been started in easy instalments and again Shri Ratan Baruah and 23 others approached the Hon'ble CAT Guwahati vide O.A. No. 299/98 and finally the judgement has been passed in favour of the applicants not ~~xxx~~ to recover the amount already paid to them.

-3-

After that INDARMY vide signal UNCLAS 502107/EIC dated 26 Sep 2002 directed to recover the amount paid to the individuals other than the applicants of OA No. 299/98 from their pay and allowance after issuing show cause notice to them. Accordingly show cause notice have been served to the affected individuals. On receipt of show cause notice the applicant and six others approached the Hon'ble CAT Guwahati to stop the recovery of the night duty allowance already paid to them.

As per the OA the total amount paid to the applicants of OA No. 374/2002 is as under :-

(a)	Shri Md Maiznur Ali	- Rs. 3716.00
(b)	" Md Abdul Nakkin	- Rs. 3685.00
(c)	" Premmath Singh	- Rs. 3708.00
(d)	" Hiteswar Hazarika	- Rs. 3585.00
(e)	" Durg Bde Chetri	- Rs. 3485.00
(f)	" Mukhtar Hussian	- Rs. 3538.00
(g)	" Munir Uddin Ahmed	- Rs. 3564.00
Total		- Rs. 25281.00

The humble respondents beg to submit the written statement as follows :

1. That with regard to the statement made in para 1, of the application the respondents beg to state that it is agreed. The notice was issued as per the direction issued by INDARMY signal No UNCLAS 502107/EIC dated 26 Sep 2002.

-4-

2. That with regard to paras 2, 3 and 4, of the application the respondents beg to offer no comments.

3. That with regard to the statement made in para 4.II, of the application the respondents beg to state that it is agreed that Chowkidars (CVB) are performing their duties in the vacant buildings. But it is not agreed that they are entitled for night duty allowance. Chowkidars (CVB) are not entitled for night duty allowance as per Government of India Ministry of Defence letter No. 6(4)/88/D (Civ-I) dated 15th March 1990.

4. That with regard to the statement made in para 4.III of the application the respondents beg to state that it is agreed. INDARMY signal No. UNCLAS 502107/EIC dated 26 Sep 2002 directed to recover the night duty allowance paid to individuals other than the applicants of OA No.299/98 be recovered from their pay and allowance after issuing show cause notice, hence the notice was issued.

5. That with regard to the statement made in para 4.IV of the application the respondents beg to state that it is agreed that the pay bill for the same has been prepared and forward to AAO Shillong for audit and subject to passing the same by AAO Shillong the payment has been made.

7. That with regard to the statement made in para 4.V, of the application the respondents beg to offer no comments.

8. That with regard to the statement made in para 4.VI of the application the respondents beg to state that

as per the direction of INDIARMY signal No 502107/EIC dated 26 Sep 2002, the amount paid to the individuals other than the applicants of OA NO. 299/98 has to be recovered from their pay and allowance after issuing show cause notice to them, hence the show cause notice have been issued.

9. That with regard to the statement made in para 4.VII of the application the respondents beg to state that recovery action was taken ~~against~~ as per Govt. policy on CDA as per direction of higher authorities.

10. That with regard to the statement made in para 5.1 of the application the respondents beg to state that there is no specific order has been received regarding not to recover the amount of night duty allowance paid to the applicants of OA No. 374/2002.

11. That with regard to the statement made in para 5.ii of the application the respondents beg to state that Garrison Engineer is implementing an order of higher authority. But it is a fact that there is no specific order for not to recover the amount paid to the individuals who are the applicants of OA No 374/2002. It is also confirmed that the judgement passed by OA No.299/98 i.e. only for 24 individuals and not for common, as such the contents is not agreed.

12. That with regard to para 5.iii and 5.iv, of the application the respondents beg to offer no comments.

13. That with regard to the statement made in para 5.v of the application the respondents beg to state that the respondents is not violating of fundamental rights of the

- 6 -

applicants as the respondent is liable to obey the directions of higher authorities.

14. That with regard to the statement made in Para 5.vi, of the application the respondents beg to offer no comments as the action has been taken as per the directions of higher authorities as well as CAT Guwahati.

15. That with regard to Paras 6, 7, 8 and 9 of the application the respondents beg to offer no comments.

"In view of the above mentioned paragraph the answering respondents beg to state that the above application has not been made for ends of justice, equity and fair play. Hence, the application is liable to be dismissed with cost as the same is speculative and harassing in nature".

Verification

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- 7 -

V_E_R_I_F_I_C_A_T_I_O_N

I, Shri B Srinivasa Rao, presently working as Garrison Engineer Missamari, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in Para 1 to 15 are true to my knowledge and belief and those made in Para 16 to 19 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 18th day of Jun 2003.

Srinivasa Rao
Declarant

MOST IMPORTANT

No. 4(1)/97/D(Civ.I)
Government of India,
Ministry of Defence
New Delhi, the 2nd April, 1998.

OFFICE MEMORANDUM

Subject:- Night Duty Allowance to civilian staff employed in Defence Establishments- withdrawal of facility to the category of Chowkidar.

The undersigned is directed to say that one of the categories in the Annexure to the Ministry of Defence O.M. No. 6(4)/88/D(Civ.I) dated 15-03-90 identified for grant of Night Duty Allowance is Chowkidar/Watchman. Para 3 of the aforesaid O.M. stated that no Night Duty Allowance may be granted where night duty is an inseparable characteristic of the job itself. The Vth Central Pay Commission has stated in para 53.23 of their Report that Night Duty Allowance claimed by the chowkidar is not justified. Separately in a U.O. note dated 12-10-95 from the Department of Personnel and Training, the following was expressly stated:

"The chowkidars/guards being such a category whose normal duties contain and element of night are, therefore, not eligible for night duty allowance."

"This department has not agreed to the grant of night duty/wightage to chowkidars in any Ministry/Department etc."

2. The Hon'ble Supreme Court in their judgement dated 1-8-97 in SLP (Civil No. 25134/96) have held that the aforesaid U.O. note dated 12-10-95 of DOP&T applies to all departments of the Government of India, Department of Personnel and Training have also separately advised Ministry of Defence that when NDA is not being allowed in other departments on the premise that night duty is an inseparable characteristic of the chowkidar, allowing the same to Chowkidar only in the Ministry of Defence will not be in order, particularly after the aforesaid judgement of the Supreme Court.

3. In the light of the above position, the facility of Night Duty Allowance to the Chowkidars category by whatever designation including Chowkidar (Vacant Building) held by them in the Defence Establishments is hereby withdrawn with immediate effect.

4. This issues with the concurrence of Finance Division vide their ID No. 250/PB dated 30-3-1998.

sd/-

(C.A. Subramanian)
Under Secretary to the Govt. of India.

Office of the CDA, Basistha, Gaunati - 28

Pt-I O.O. No. 8

Dt. 4/90 (21-9-91)

Sub: Grant of Night duty Allowance to civilian staff employed in Estt under the Min of Defence.

Ref: This office Pt-I O.O. No. 37 dt. 19.3.90.

A copy of the Govt of India Min of Defince No. 6(4)/88/D(Civ-I) dt. 15th March 90 on the above subject is reproduced below for information & guidance off.

File No Pay/024/IV/PC/86-III

Pt 4/90 (21-9-91)

Distribution :-

- 1) All sub office as per standard list
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- 3) All officer in M.O.
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- 6) Spare 20 copies.

(R. E. Farley)

ACCOUNTS OFFICER.

Copy of the Min of Defence No 6(4)/88/ D(civ-I) dt.15th March 90 on the above subject.

The undersigned is directed to say that the question of grant of Night Duty Allowance to eligible categories of Defence Civilian employees other than those under the Department of Defence Production & Supplies has been under consideration of this Ministry for some time. Based on the recommendations of the service Headquarters and in ~~xxxx~~ consultation with the Integrated Finance Division it has ~~xx~~ been decided that subject to the orders contained in Department of personnel & Training O.M. No. 12/12/4/80-Estt. (Allowances) dated 4.10.1989 which was circulated wide Ministry of Defence I.D. of even no dated 12.10.1989, employees mentioned in Annexure to this O.M.

2. All categories of employees (except Nurses) who are at present getting Night Duty Allowance as per existing orders in Ordnance Factories, Ordnance Equipment Factories and DGQA Orgn. will be eligible to get this benefit as per above mentioned DDPT orders dated ~~xx~~ 4.10.1989.

3. ✓ No Night Duty Allowance may be granted where night duty is an inseparable characteristic of the job itself e.g. Nurses and Sister-in-Charge of the hospitals.

4. The categories of employees not mentioned in Annexure to this O.M. will not be eligible for Night Duty Allowance. However, there may be some stray cases where staff is put on night duty. In such stray cases specific approval of an authority, one level higher than the authority competent to sanction Night Duty Allowance, may be obtained before should not become a general practice.

5. However, wherever OTA is payable NDA will not be paid for the same period.

6. Under the above mentioned DOPT orders, computation and payment of Night Duty Allowance is to be made w.e.f. 1.1.1986. In some cases, arrears may have to be admitted. While sanctioning such arrears the Head of the Office / Authority competent to sanction Night Duty Allowance shall satisfy himself, on the basis of relevant records maintained and produced, that the individual concerned had actually performed night duty and was entitled to Night Duty Allowance in the light of the above mentioned. DOPT orders dated 4.10.1989.

7. The payment of Night Duty Allowance will be subject to the availability of funds under the Head 'Allowances'. If additional funds are needed, the demand may be projected and payment may be made only after the requisite funds are made available.

8. These orders will come into force with effect from 1.1.1986.

9. This issues in consultation with the Integrated Finance Division vide their U.O. No. 354-PB of 1990.

Sd/-

(RAM NATH)

Under Secretary to the Government of India.

28

38

ANNEXURE TO

M of D O.M. No. 6(4)/88/D(Civ-I) dt. 5.3.1990

List of categories of staff identified for grant of Night Duty Allowance.

<u>Army</u>	<u>Navy</u>	<u>Air Force</u>
1. Gate Keeper/ Darwan/Jamadar/ Sub Darwan	Gate keeper(Civ) Watchman/Chowkidar.	Wireless Operator Mechanics
2. Watchman/ <u>Chowkidar</u>	Civil Motor Driver.	Watchman.
3. Civilian Motor Driver	Darwan/Sub Durwan/ Jamadaris.	MTDs
4. Supervisor 'A' & 'B' Security and Security Assistant	Supervisor 'A' & 'B' (Fire Brigade)	Ayah
5. Supervisor 'A' & 'B' Fire Bde/ Fireman Gde. I & II and Fire Bde Driver.	Fireman Gdd.I & II	Fire Engine Driver
6. Telephone Operator/ Civilian Switch Board Operator/ switch Board Assts.	Telephone Operators	Leading hand fireman
7. Ward Sahayika and Mid Wife.	Driver(Fire Engine)/ Civil Motor Drivef.	Fireman
8. Compounders and Dressers.	Compounder/Dresser	
9. Ambulance Drivers (Hospitals)	Ambulance Driver (Hospital)	
10. Driver Fire Engine		
11. Charge man (security)		
12. Loading Hand Fire.		