

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 303/03

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SECTION OFFICER (Judl.)

Kalita
21.11.17

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No:- 303 103

Misc Petition No: X

Contempt Petition No: X

Review Application No: X

Name of the Appellant(s): N K Chanda & an.

Name of the Respondant(s): CG 2 an.

Advocate for the Appellant:- Mr. M. Chanda, G N Chandra

Advocate for the Respondant:- S. Nair, S. Chandray,
CG SC

Notes of the Registry	date	Order of the Tribunal
Application is in form but not in time Consolidation Petition is filed not filed for the consolidated vile Dated 29.12.03 at 13.10	6.1.2004	Heard Mr.M.Chanda, learned counsel for the applicants. The O.A. is admitted. Issue notice to the parties. List the case on 6.2.2004 for order.
Steps & envelopes are taken. Issue notice to the Respondants as per Court's order dated 6.1.04.	4.3.04	On the prayer of Mr A.Deb Roy, learned Sr.C.G.S.C four weeks time is granted to the respondents to file written statement. List on 31.3.04 for order.
JS 6.1.04	pg	

Member
Member

Member
Member

17.5.2004

On the plea of Mr. B.C. Pathak, learned Addl. C.G.S.C. six weeks time is allowed to the respondents to file written statement.

List on 30.6.2004 for filing of written statement.

K.V. Prahlada
Member (A)

bb

6.8.2004

On the plea of counsel for the respondents four weeks time is given to the respondents to file written statement. List on 9.9.2004 for orders.

K.V. Prahlada
Member (A)

mb

24.09.2004 Present : The Hon'ble Sri K.V. Prahlada, Administrative Member.

Written statement has been filed. List on 3.12.2004 for hearing. The applicant may file rejoinder, if any, in the meantime.

K.V. Prahlada
Member (A)

mb

8.12.2004
Shillong

Mr. M. Chanda, learned counsel for the applicant, was present.

Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents has stated that copy of the rejoinder has been furnished to him only today and as such it is not possible to argue the matter today. He also stated that his tenure is coming to end today and the matter cannot be argued tomorrow or the day after. Hence adjourned to 19.1.2005.

R
Vice-Chairman

bb

Notice & order dt. 6/11/04, sent to D/Section for issuing to respondents nos. 1 to 5.

Cms
9/11/04

Notice issued vide NO-70-99 dated 10.1.04

mb

58-04
No W/S been filed
mb

23.9.03
W/S filed by the Respondents.

Qns.

2-12-04

W/S has been filed.
4 W/S. awarded.

7-12-04

W/S filed by
Rejoinder by

(3)

3

O.A.303/2003

Notes of the Registry Date

Order of the Tribunal

19.01.2005

Present: The Hon'ble Mr. Justice R.K. Batta,
Vice-Chairman.

Mr. S. Nath, learned counsel for the
applicant.

The matter be kept alongwith O.A.No.
305 of 2003, wherein the matter relating to
Night Duty Allowance, has been referred to
the Hon'ble Chairman, Principal Bench.

R

Vice-Chairman

bb

02.05.2005

Present: Hon'ble Sri Justice V.S. Aggarwal,
Chairman

Hon'ble Sri Justice G. Sivarajan,
Vice-Chairman

Hon'ble Sri K.V. Prahladan,
Administrative Member.

Heard Mr. J.L. Sarkar and Mr. M.
Chanda, learned counsel for the applicants
and also Mr. M.U. Ahmed, learned Addl.
C.G.S.C. for the respondents.

*Hearing concluded. Order reserved.

W.D. Reddy
Member (A)

V. S. Aggarwal
Vice-Chairman

G. Sivarajan
Chairman

nlm

25.01.05

Copy of the order has
been sent to the office
for issuing the same
to the d/Advocates for the
parties.

4

Notes of the Registry | Date

| Order of the Tribunal

13, 6.05
Copy of the list
 handed over to the
 L/Advocates for the
 Party.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.303/2003

with

Original Application No.305/2003

Guwahati, this the /7th day of May, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman(J)
Hon'ble Mr. K.V.Prahladan, Member (A)**

O.A.NO.303/2003:

1. Shri N.K. Chanda
2. Shri N.C.Paul
3. Shri P.B. Diengdon
4. Shri Rajendra Paswan
5. Shri Muktar Singh
6. Shri Bindeswar Singh
7. Shri Nagendra Jha
8. Shri Dambar Bahadur
9. Shri B.C. Debnath
10. Shri Rupayan Chakraborty
11. Shri Debraj Pathaniya
12. Shri Jaharlal Kuri
13. Shri Sambhu Prasad Chaurasia
14. Shri C.W. Lama
15. Shri Manik Chandra Dutta
16. Shri Misri Lal Rajak
17. Shri Prabhu Nath Mishra
18. Shri Mem Bahadur Thapa
19. Shri Bansi Dhar Kumar
20. Shri Mahamad Eycin.

(All are working as Fitter General Mechanic under Assistant Garrison Engineer, E/M Section, Shillong and Garrison Engineer, Air Force, Shillong)

... Applicants

(By Advocate: Sh. J.L. Sarkar and Sh. M.Chanda)

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)
Uday Vihar, Narengi
Guwahati - 21.
 4. The Garrison Engineer
M.E.S. Shillong
 5. The Garrison Engineer
Air Force
Shillong.
- ... Respondents

(By Advocate: Sh. M.U. Ahmed, Addl. CGSC)

O.A.NO.305/2003:

1. Shri Rishikesh Paul
2. Shri Jang Bahadur Gurung
3. Shri Liliram Sharma
4. Shri Bola Krishna Sharma
5. Shri Raj Narayan Rai
6. Shri Dhan Bahadur Pradhan

(All working as Fitter General Mechanics in the office of Garrison Engineer, Shillong)

... Applicants

(By Advocate: Sh. J.L. Sarkar and Sh. M.Chanda)

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)
Uday Vihar, Narengi
Guwahati - 21.

4. The Garrison Engineer
Shillong

5. The Commander Works Engineer
Spread Eagle Falls
Shillong-11.

... Respondents

(By Advocate: Sh. M.U. Ahmed, Addl. CGSC)

ORDER

By Mr. Justice V.S. Aggarwal:

The following question has been referred to this Full Bench for consideration:

“ --- as to whether the Pump House Operator now redesignated as FGM are or are not entitled to Night Duty Allowance after the redesignation in the event of performance of Night Duty by them.”

2. To appreciate the question in controversy, we refer to the basic facts. For the sake of convenience, the same are being drawn from OA 303/2003 entitled **Shri N.K. Chanda & Ors. v. Union of India**.

3. The applicants were appointed as **Pump House Operators** in the Military Engineering Service and were granted Night Duty Allowance for such hours as they individually worked during the night at the rate of 10 paise per house hour. As such, each Pump House Operator used to get about Rs.100/- per month by way of Night Duty Allowance. The Pump House Operators were subsequently re-designated as Fitter General Mechanic w.e.f. 06.07.1994. However, the applicants contend that their nature of duties, responsibilities and grade remained the same.

4. Some of the applicants were working as Fitter General Mechanic under A.G.E. E/M Section, Shillong and some under G.E. Air Force, Shillong.



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5. Subsequent upon the re-designation in the year 1994, the NDA was admissible only to those categories which were enlisted in the Government order issued by the Ministry of Defence. The FGMs not being in the list, the Army Headquarter, Eastern Command took up the matter with the Ministry of Defence so that the FGM might be included in the list of the Government order for enlistment of NDA.

6. Thereafter, the Controller of Defence Accounts vide his communication of 17.02.2000 communicated that it had been decided that the FGMs being not included in the notified list of categories under the Government order, are not entitled to draw Night Duty Allowance with effect from the date of their re-designation. The letter reads:

"In consistence with the provision of HQ office, New Delhi letter No.AT/2366-NDA-VIII dated 16-7-99 circulated vide Part I S.O.No.227 dated 14-9-99, the category of Pump House Operator and Engine Driver Static of MES redesignated as Fitter General Mechanic (FGM) with effect from 6-7-94 are not entitled to draw Night Duty Allowance, as the category of FGM has not been included in the Govt. orders issued from time to time entitling them Night Duty Allowance (NDA).

Of late it has come to our notice that one of our sub offices is admitting the Night Duty Allowance claim in respect of the category of FGM, which is in contravention of the provisions contained in CGDA's New Delhi clarificatory order mentioned in para 1 above.

In view of above you are advised to review with reference to records held by you that whether NDA has been paid to FGM and if so, initiate action to regularize the overpayment so made of in your audit area in consultation with GE and further payment of Night Duty Allowance (NDA) to FGM may please be stopped immediately.

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A confirmation to the effect that NDA is not being paid to FGM may please be sent to this office by all AAOs GEs/AAO AGE(I)s.
G.O. has seen.

Sd/-
(S. Prasad)
Sr. Accounts Officer"

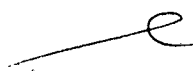
7. Applicants contend that their Night Duty Allowance had been stopped. Some of the other co-workers filed OA No.218/2000. They challenged the legality of the order of 17.2.2000. This Tribunal had directed that appropriate decision in this regard should be taken. In pursuance of the decision of the Guwahati Bench of this Tribunal in OA No.218/2000, the order dated 18.8.2003 had been passed rejecting the claim of the applicants, recording:

"4. The MOD has since taken the following decision in the matter:-

(a) As per MOD letter No.6 (1)/94/D/(W-II) dated 06 Jul 1994 the following 8 categories of employees of MES were re-designated as Fitter General Mechanic (FGM) in compliance with CAT, Bombay judgment in OA No.704/90 with a view to entitling these categories for promotion to highly skilled grades:-

- a) Pump House Operator
- b) Driver Engineer Static
- c) Mechanic Petrol & Diesel Engine
- d) Driver Mobile Plant
- e) Operator Earth Moving Machinery
- f) Operator Pneumatic Tools
- g) Boiler Attendant
- h) Lift Mechanic (Existing Incumbents Only)

(b) As a result of these orders, there are no category of officials designated as PHO and DES as besides these two six other categories were also merged in the category of FGM. It is also stated that FGM officials are brought on shift duties their prescribed duty per day being 8

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hours. In case of their being detained for longer period they are entitled to compensatory off etc as per rules and Govt. orders. Having been integrated in combined category of officials called FGM, grant of NDA to these officials who held the posts of PHO & DES earlier, would not be proper and would be discriminatory to the FGM officials who earlier held posts other than PHO/DES. Further, the Supreme Court in their judgement dated 1 Aug 1997 in SLP (Civil) No.25134/96 has upheld the validity of a U.O. dated 12 Oct 1995 issued by DOPT wherein the following was stated on the question of admissibility of NDA to Chowkidars:-

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

(c) Prima-facie, the above DOPT orders, whose validity was upheld by the Hon'ble Supreme Court also similarly apply to the applicants in the case under consideration.

5. In view of above, interim payment of NDA which you were continued to get as sanctioned vide MOD letter dated 22 Apr 2002 and 11 Jun 2002 is hereby stopped wef 01 Jul 2003."

8. By virtue of the present application, the applicants seek to assail both the above said orders contending that they had been re-designated as FGMs from Pump House Operators but they are still performing the same duties and responsibilities and attending to night duty as they were doing earlier. Their duties and responsibilities remained unchanged and, therefore, they cannot be denied the Night Duty Allowance, which they have been drawing earlier. It could not be withdrawn simply on the ground that they have been re-designated as FGMs.

9. Taking stock of the facts, the Original Applications had been filed for quashing of the clarification of 13.5.2003 and for grant of NDA.

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10. The applications have been contested.

11. Respondents plead that grant of Night Duty Allowances has been discontinued by the Union of India as a matter of policy decision which was communicated to the applicants. The re-designation to FGMs was done with a view to give them promotional avenues on any plot form. However, NDA has been withdrawn as a matter of Government policy. Same had been done in pursuance of the decision of the Mumbai Bench of this Tribunal.

12. We have heard the parties' counsel and have seen the relevant record. It is not in dispute that the Mumbai Bench of this Tribunal in OA 704/1990 had directed that with a view to entitle certain categories for better promotional avenues, the matter should be re-considered. In pursuance thereto, eight categories of employees of Military Engineering Service were re-designated as FGMs which also included Pump House Operators.

13. Strong reliance on behalf of the applicants was placed on the observations of this Tribunal in the case of **Rishikesh Paul v. The Union of India & Others**, O.A.No.218/2000, decided on 25.10.2000. The same reads:

"5. From the facts alluded above, it emerges that the applicants were provided with some extra allowance of 10 paise per hour for rendering night duty. Since they are discharging the same and similar nature of duty as FGM as they were earlier as PHO, it is difficult to discern the rationale behind the refusal of the allowance for NDA for similar duty, the allowance was provided against the services rendered. The matter has already been referred to the Ministry of Defence and it is expected that the Ministry of Defence would take up an appropriate decision



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as per law for providing the Night Duty Allowance for rendering such duty as was done earlier.

6. After considering all the aspects of the matter the respondents are directed to take an early decision in the matter, preferably within three months from today. Till completion of such exercise the respondents are directed not to give effect to the circular dated 17.2.2000 issued by the Senior Accounts Officer so far the present applicants are concerned."

14. These findings clearly show that they are not final findings arrived at by the Tribunal. Reading of the order itself shows that this could not be an adjudication of the rights but mere observation. Consequently, it cannot be taken to be a decision that has been arrived at because otherwise a direction would have been issued.

15. The learned counsel for the respondents, at the outset, took up the preliminary objection which fact even was noticed by the Chandigarh Bench of this Tribunal that grant of Night Duty Allowance is a policy decision. It cannot confer a right on the applicants. Resultantly, the petition by itself must be held to be not maintainable.

16. In this connection, we refer with advantage to some of the decisions of the Supreme Court in the case of **UNION OF INDIA AND OTHERS v. TEJRAM PARASHRAMJI BOMBHATE AND OTHERS**, (1991) 3 SCC 11. In the cited case, the respondents were Teachers of unapproved school. Their regularization involved grant of Government sanction to the School. The said School was being run by the officers of Ordnance Factory and no sanction had been accorded to the secondary school by the Government. The teachers were paid honorarium out of fees paid by the children and other donators. It was held that they were

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-9- 15

not entitled to the regularization at par with Government teachers because the Court would not compel the Government to change its policy and accord sanction to the School, which involves financial burden on the Government. In this process, the Supreme Court held that in policy matters, the Tribunal/Court will not interfere.

17. Similar finding had been recorded by the Supreme Court in the case of **INDIAN RAILWAY SERVICE OF MECHANICAL ENGINEERS ASSOCIATION AND OTHERS v. INDIAN RAILWAY TRAFFIC SERVICE ASSOCIATION AND ANR.**, JT 1993 (3) SC 474. The Supreme Court again reiterated that in matters of policy, the Tribunal/Court will not interfere provided the authorities do not transgress their constitutional limits or statutory powers. The findings of the Supreme Court are:

“18. In the light of this background, when we examine the order of Tribunal, we find it had erred in interfering with a scheme. It is well-settled in law that the Government has got a right to notify the scheme. It has equally a right to issue amendments. Therefore, it could amend the scheme including the provisions relating to the predominant factor from 6 to 37.5%. This is a matter of policy. This Court had taken the view in *Union of India v. Tejram Parashramji Bombhate* [(1991 (3) SCC 11)] that no court or tribunal could compel the Government to change its policy involving expenditure. Again in *Asif Hameed v. State of Jammu and Kashmir* [AIR 1989 SC 1899], in paragraph 19, page 1906 this Court observed thus:

“When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the

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action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, 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 limits or statutory powers.”

18. Once again, in the case of **STATE FISHERY OFFICERS' ASSOCIATION, W.B. AND ANOTEHR v. STATE OF W.B. AND ANOTHER**, 1997 SCC (L&S) 1003, the facts were that the applicants therein had approached the respondents for revision of the service conditions. There was an agreement. Government issued orders granting all benefits except monetary benefits from 1.4.1961 to 1.4.1981. The appellant association claimed arrears on the plea that agreement must be honoured. The Finance Department was not a party. Besides that the decision had not been translated into any formal Government order. The Supreme Court held that it was a policy decision. The plea of arbitrariness could not be accepted and since the matter fell within the realm of executive policy decision, the petition was dismissed. We find that the position herein is identical.

19. More recently, in the case of **FEDERATION OF RAILWAY OFFICERS ASSOCIATION AND OTHERS v. UNION OF INDIA**, (2003) 4 SCC 289, the Supreme Court reiterated that judicial review in such like matters is limited. It held:

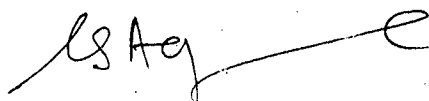


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“12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.”

20. More close to the facts of the present case are few other decisions. In the case of **SHIBA KUMAR DUTTA AND OTHERS v. UNION OF INDIA AND OTHERS**, (1997) 3 SCC 545, the Government had decided to abolish two different categories, i.e., Fitters (T&G) and Jig Borers and in their place, they created a new category of Fitters only. The petitioners before the Supreme Court were Fitters (T&G). They complained that earlier they were enjoying higher pay scale than the Fitters and now they had been brought down to the category of Fitters. The matter had been examined by the Third Central Pay Commission. The Expert Classification Committee and Anomalies Removal Committee also looked into it and made a distinction. The Government subsequently took a decision to fuse different categories into one. The Supreme Court held that nomenclature and fitment is one of executive policy of the Government. Unless the action is arbitrary or there is invidious discrimination between the persons similarly situated, doing same type of work, it would be difficult for the Courts to go into that arena. The findings are:




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“3. Unless the action is arbitrary or there is invidious discrimination between persons similarly situated, doing same type of work, as is pointed out, it would be difficult for the courts to go into the question of equation of posts or fitment into a particular scale of pay.
.....”

21. No different was the view taken in the case of **STATE OF ANDHRA PRADESH v. V.C. SUBBARAYUDU & ORS.**, JT 1998 (1) SC 198. In that case, options had been given to absorb in the State service as per Government Office Memorandum of 20th November, 1979. State Governments desired to take over cadre of Divisional Accountants only. The question for consideration was as to if it amounts to discrimination or not. The Supreme Court once again reiterated that it was a policy measure and the Court will not give direction in policy matters.

22. Similarly, in the case of **NATIONAL BUILDINGS CONSTRUCTION CORPORATION v. S. RAGHUNATHAN AND OTHERS**, 1998 SCC (L&S) 1770, the National Building Construction Corporation had taken a policy decision on account of certain situations and conditions prevailing that foreign allowance would be payable only on the original basic salary of the respondents and not on the salary as revised on account of recommendations of the Fourth Central Pay Commission. In such a situation, the policy decision was to have an effect of displacing the doctrine of legitimate expectation. It was based on objective ^{that} assessment of the prevailing situation. The Supreme Court held when there was no arbitrariness, scope of interference was limited. The findings read:



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“36. NBCC had taken a policy decision on account of strange situations and conditions prevailing in Iraq where the respondents were deputed on foreign projects assigned to NBCC, that foreign allowance would be payable only on the original basic salary of the respondents and not on the salary as revised on account of the recommendations of the Fourth Pay Commission. In such a situation, the policy decision shall have the effect of displacing the doctrine of “legitimate expectation”, particularly as the decision was based on objective assessment of the prevailing circumstances including the financial stringency in which Iraq came to be placed. There is, therefore, no element of arbitrariness in that decision.”

23. No difference is the position herein. The erstwhile Pump House Operators were re-designated as Fitter General Mechanics. There was a policy decision. In their new post, the Night Duty Allowance, which earlier was given to them did not come to their benefit. Since it was a policy decision which was applicable to all, we find that there was no hostile discrimination to prompt the applicants and resultantly, we find that there is little scope for interference on this count.

24. There are other factors, which prompt us to come to the same conclusion. It was as a result of the decision of the Bombay Bench of this Tribunal that eight categories of employees of MES were re-designated as Fitter General Mechanics with a view to entitling them to the categories of promotion to highly skilled grades. The eight categories were:

- a) Pump House Operator
 - b) Driver Engineer Static
 - c) Mechanic Petrol & Diesel Engine
 - d) Driver Mobile Plant
 - e) Operator Earth Moving Machinery
 - f) Operator Pneumatic Tools
 - g) Boiler Attendant
- P. A. —————

h) Lift Mechanic (Existing Incumbents Only)"

25. The Pump House Operators were one of them. They got additional benefit, i.e., right of being considered for further promotions. The NDA, which was being given to them, therefore, was not given to the said persons, keeping in view the decision taken. It would be inherently illogical to hold that the decision is discriminatory.

26. It has to be remembered that all employees, whose normal duties contained the element of night duty, would not be entitled to the Night Duty Allowance. Identical was the position in case of the present applicants.

27. The Fourth Central Pay Commission had also gone into this question. Its recommendations are:

"III. Overtime Allowance

26.9 After the Second Pay Commission's recommendations, overtime allowance was sanctioned to many categories of central government employees. The Third Pay Commission recommended withdrawal of the allowance. They recommended compensatory off to those categories of employees who were required to work outside office hours; and for overtime work during periods of unusual activity like budget preparation and for parliamentary work, they suggested grant of honorarium. It appears that these recommendations have not been fully implemented by government.

26.10. We have examined the question of payment of overtime allowance to the employees who are required to work outside the office hours. We have noticed with concern the implications and effect of the system on the work in government offices, discipline, and its cost to the exchequer. The system tends to generate inefficiency and creates an unhealthy

atmosphere in offices. We have been informed that in most of the State governments where the conditions of work are not materially different, there is no regular system of payment of overtime allowance except in undertakings where provisions of Factories Act are applicable.

26.11. We have examined the working of the system, with particular reference to the developments that have taken place after the report of the Third Pay Commission and the arrangements made by state governments to meet similar requirements of work. We have come to the conclusion that the present system of payment of overtime in government offices is not satisfactory and is not conducive to efficiency in administration. We therefore recommend its discontinuance. Instead we suggest that wherever overtime allowance expenditure is being incurred due to inadequacy of staff, it should be made up expeditiously. Government should provide the necessary staff consistent with the requirement of work. For operative offices, the compensation should be in the form of off days rather than by way of cash benefits. Honorarium should be considered only for compensating the overstayal during periods of unusual activity or due to unforeseen circumstances. Government may also consider granting out of pocket expenses and transport charges for personal staff and drivers of staff car of Ministers and senior officers at suitable rates including a consolidated special allowance wherever necessary.

26.12. In the view we have taken on the general question of payment of overtime allowance to the non-industrial employees of government, we are of the opinion that no useful purpose will be served by further deliberating on the Awards given by the Board of Arbitration in CA Reference No.3 of 1980 and No.6 of 1981 which have been referred to us by government.

26.13. Government employees eligible for grant of overtime allowance are given "night duty allowance", or weightage for hours of work performed during night. It has not been possible for government to introduce a uniform system of weightage for 'night duty' because the requirements of each organisation are different.

Suggestions have been received for prescribing uniform standards for 'night weightage' and 'night duty' hours. Government may consider the advisability of having the entire matter examined as it has various aspects and implications. In the meantime government may re-fix the rates of 'night duty' allowances."

28. Therefore, the Pay Commission had recommended to the Government that it should examine the entire matter and re-fix the NDA. But it has never been recommended that anybody who is performing the night duty, be awarded the NDA. Therefore, the applicants' reliance on the said Pay Commission's report is of little consequence.

29. In fact, it was rightly pointed that there were eight categories, which were taken into the category of FGM. Two of them seek NDA. If night duty allowance was given to these two and not to others, in that event, it would amount to hostile discrimination qua others. We, therefore, sum up that as a result of the decision of the Bombay Bench of this Tribunal, certain categories, which we have reproduced above, were re-designated as FGMs. They became entitled to certain promotional avenues which were earlier not being given. They came in the category for being considered to highly skilled grades. Therefore, it cannot be termed that the NDA which was earlier being given and now being denied, would amount to discrimination. In this regard, with respect to the earlier decision, we find no ground to interfere. We approve the decision of the Chandigarh Bench of this Tribunal.

30. We answer the reference as under:

In the facts of the present case, the Pump House Operators, after their re-designation as Fitter General Mechanics, are not entitled to Night Duty Allowance in the event of performance of night duty by them.

12 Apr 1971

31. Since this Tribunal has examined the matter, we find no reason to remit the matter back for re-hearing as that would be an idle formality.

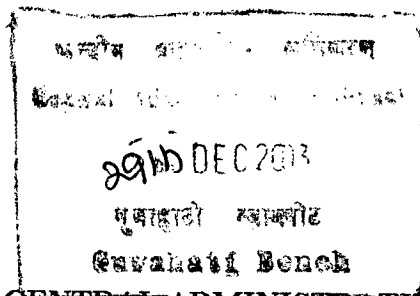
32. No other arguments have been raised.

33. For these reasons, we find that the Original Applications being without merit must fail and are dismissed.

SD/ CHAIRMAN

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O. A. NO. 303 / 2003

Sri N.K.Chanda & Others.

... Applicants

-Versus-

Union of India & Others

... Respondents

Lists of dates and synopsis of the case

Date

Synopsis of particulars in the application

06.07.1994-Applicants were redesignated as Fitter General Mechanic (FGM) from Pump House Operators. Their duties and responsibilities remained unchanged and they continued to get Night Duty Allowances (NDA) even after being redesignated as they had been getting earlier as PHO.

Government subsequently issued orders notifying the list of categories of personnels entitled to get NDA in which the category of FGM was not included.

14.07.1999-Engineer-in-chief, Eastern Command wrote letter No. A/20050/NDA/E1C (3) dated 14.07.1999 to Army Headquarter and Ministry of Defence recommending for the continuation of NDA to the FGMS.

(Annexure-I)
17.02.2000-Controller of Defence Accounts (CDA) issued letter No. Pay/024/IV/PC/86-VII dated 17.02.2000 directing to stop payment of NDA to the FGMS and further to recover the amount of NDA paid to the

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FGM since 6.7.94 since they are not entitled for the same consequent upon their being redesignated as FGM w.e.f.6.7.94.

As such payment of NDA to the applicants under sl.no.1 to 14 were stopped with effect from 01.01.99 and that of applicants under sl.no.15 to 20 w.e.f.01.06.2000 and recovery also started thereafter. (Annexure-II)

25.10.2000-The CAT, Guwahati passed its judgment and order in O.A.No.218/2000 filed by some other co-workers of the applicants under the similar facts and circumstances directing the respondents to consider the case of those applicants as per law within three months and stayed the operation of CDA's order dated 17.02.2000 till such time their cases are considered. Thereafter the payments of NDA to those applicants were restored.

The present applicants also approached the respondents for payment of NDA in the light of the aforesaid judgment but denied.(Annexure-III)

15.03.2003-Lawyer's notice was served urging upon the respondents to pay NDA to the present applicants in the light of order dated 25.10.2000 in O.A.No.218/2000.

13.05.2003-Respondents replied communicating that the applicants are not entitled to NDA after being redesignated as FGM on the plea that night duty is an element of their normal duty and rejected the application of the applicants. (Annexure-V)

PRAYERS

8. Reliefs sought for:

Under the facts and circumstances of the case stated above, the applicants most humbly and respectfully pray that the Hon'ble Tribunal be pleased to grant the following reliefs: -

- 8.1 That the impugned letter No. 1000/Cat.Case/Gen/302/E1C (legal) dated 13.05.2003 issued by the respondents be declared as void-ab-initio.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicants even after being redesignated as Fitter General Mechanic personnel are entitled to Night Duty Allowance (NDA).
- 8.3 That the respondents be directed to restore the payment of NDA to the applicants w.e.f the date of its discontinuation and repay the amount recovered from the applicant as overpayment of NDA immediately.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

27
Filed by the Applicant
Through Surajit Choudhury
Advocate
on 29.12.03.

Title of the case: O. A. No 303 /2003

Sri N.K.Chand and Others : Applicants

-Versus -

Union of India & Others: Respondents.

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Date 29.12.03

Filed by
Surajit Choudhury
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O. A. No. 303/2003

BETWEEN

1. Shri N.K.Chanda
2. Shri N.C.Paul.
3. Shri P.B.Diengdoh.
4. Shri Rajendra Paswan.
5. Shri Muktar Singh.
6. Shri Bindeswar Singh.
7. Shri Nagendra Jha.
8. Shri Dambar Bahadur.
9. Shri B.C.Debnath.
10. Shri Rupayan Chakraborty.
11. Shri Debraj Pathaniya.
12. Shri Jaharlal Kuri.
13. Shri Sambhu Prasad Chaurasia.
14. Shri C.W.Lama.
15. Shri Manik Chandra Dutta.
16. Shri Misri Lal Rajak.
17. Shri Prabhu Nath Mishra.
18. Shri Mem Bahadur Thapa.
19. Shri Bansi Dhar Kumar.
20. Shri Mahamad Eycin.

(All are working as Fitter General Mechanic under
Assistant Garrison Engineer, E/M Section, Shillong and
Garrison Engineer, Air Force, Shillong)

...Applicants

Niranjana K. Chanda

-AND-

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)
Uday Vihar, Narengi
Guwahati-21
4. The Garrison Engineer.
M.E.S, Shillong
5. The Garrison Engineer.
Air Force.
Shillong.

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

Niremdra K. Chandra

This application is made against the sudden discontinuation of the Night Duty allowance (NDA) to the applicants and recovery thereof in an arbitrary manner without any prior notice or without providing any reasonable opportunity to the applicants of being heard of and against the impugned letter no. 1000/Cat.case/Gen/302/E1C (legal) dated. 13.05.2003 rejecting the application of the applicants for NDA.

2. Jurisdiction of the Tribunal.

The applicants declare that the subject matter of the application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicants further declare that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicants state that they are citizens of India and as such all of them are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. The applicants further beg to state that their grievances are common and the relief sought for are also common and as such they crave for permission to move this application jointly under rule 4(5)(a) of Central administrative Tribunals Procedures Rules 1987.

Nirendra KR Chandra

4.2 That the applicants were initially appointed as Pump House Operators (for short PHO) serving in the Military Engineering Service (for short MES) and were granted Night Duty Allowance (for short NDA) for such hours as they individually worked during the night @ 10 paise per house hour. As such each PHO used to get about Rs 100/- pm by way of NDA.

4.3 That the PHO's were subsequently redesignated as Fitter General Mechanic (forshort, FGM) w.e.f.06.07.1994. However, their nature of duty, responsibilities and grade remaining same even after redesignation, they continued to get the Night Duty allowance (NDA) pertaining to the hours of night duty performed by each individual F.G.M.

The applicants under Sl. No. 1 to 14 are working as FGM under A.G.E, E/M Section, Shillong while those under Sl. No 15 to 20 are working as FGM under G.E, Air force, Shillong.

4.4 That consequent upon the redesignation in the year 1994 the NDA was admissible only to those categories which were enlisted in the Government order issued by the Ministry of Defence. The FGM not being in the list, the Army Head Quarter, Eastern Command took up the matter with the Ministry of Defence so that the FGM might be included in the list of the Government order for the entitlement of NDA which is evident from the letter No.

Hirendra K R Chanda

A/20050/NDA/EIC (3) Dtd.14.07.1999 of the Engineer-in-chief addressed to the army Headquarter.

(Copy of the letter dated. 14.07.1999 is annexed hereto as Annexure-I).

- 4.5 That thereafter the controller of Defence Accounts (CDA) vide his letter No. Pay/024/IV/PC/86-VII Dtd.17.02.2000 communicated that it had decided that the FGM being not included in the notified list of categories under the Govt. order, are not entitled to draw Night Duty allowance w.e.f the date of their redesignation i.e 6.7.94 and further directed to stop the payment of NDA to the FGM's immediately and to regularize the overpayment already made by way of NDA since 6.7.94

(Copy of letter dated 17.2.2000 is annexed hereto as Annexure- II).

- 4.6 That acting on the communication of the CDA aforesaid, the recovery of NDA from the salary of the applicants on monthly basis was started and further payment of NDA to the FGM s were stopped forthwith. The payment of NDA was stopped w.e.f 01.01.1999 in respect of the FGM s working under the G.E, Shillong and w.e.f. June, 2000 in respect of FGM s working under G.E, Air Force, Shillong.

- 4.7 That it is relevant to state that the applicants continued to get the NDA even after July, 1994 i.e.

Nikendra K. Chandra

after their redesignation and their bills were passed by the CDA every month over the years. But all on a sudden, the payment of NDA to the applicants were stopped without any prior notice or without providing any opportunity of being heard to the applicants. Such action of the respondents are most arbitrary, malafide, unjust, illegal and unfair and in utter violation of the Principles of natural justice.

- 4.8 That having failed to get Justice, some of the other co-workers of these applicants filed one O.A. No 218 of 2000 before the Hon'ble central administrative tribunal (CAT), Guwahati Bench (Shri Rishikesh Paul and others - Vs- U.O.I and others) challenging the legality of the CDA's order dated 17.02.2000. The Hon'ble CAT vide its Judgment and order Dated 25.10.2000 in O.A No 218 of 2000 was pleased to dispose of the O.A with the following observations/directions: -

"5. ----- Since they are discharging the same and similar nature of duty as FGM as they were earlier as PHO, it is difficult to discern the rationale behind the refusal of the allowance for NDA for similar duty. The allowance was provided against the services rendered. The matter has already been referred to the Ministry of Defence and it is expected that the Ministry of Defence would take up an appropriate decision as per law for providing the NDA for rendering such duty as was done earlier.

Mikemela KR Chandra

6. After considering all the aspects of the matter the respondents are directed to take an early decision in the matter, preferably within three months from today. Till completion of such exercise the respondents are directed not to give effect to the circular dated 17.02.2000 issued by the senior Accounts Officer so far the present applicants are concerned."

It is clearly evident from the above quoted order that the FGM s who were applicants in O.A. No. 218 of 2000 are entitled to get the NDA and on the same analogy the present applicants are also entitled for the same.

(Copy of the Judgment and Order dated 25.10.2000 is annexed hereto as **Annexure-III.**)

4.9 That subsequently, the respondents, making a reference to the CAT's Judgment dated 25.10.2000 in O.A No 218 of 2000 issued one speaking order bearing no 1151/CAT/OA-218/2000/126/E1A dated 18.08.2003 in respect of those applicants of O.A.No. 218 of 2000 and stopped payment of NDA to those applicants w.e.f 01.07.2003 with the contentions that-

(a) Those applicants who were PHO s earlier and were clubbed together with some other seven categories and all were redesignated as FGM, in such case paying NDA to those applicants alone would be discriminatory to others who

Waseemul Haq Chaudhary

were clubbed together under the new designation of FGM. Hence they are not included in the newly notified list of persons who are entitled to NDA, and

- (b) The FGM s are brought on shift duties, their prescribed duty per day being 8 hours which included night duty also and as such no special allowance in the name of NDA is permissible for them in respect of their night duties. For this, the respondents relied on Supreme Court's Judgment dated 01.08.1997 in SLP (civil) No 25134/96 which held that

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

(Copy of speaking order dated 18.08.2003 is annexed hereto as **Annexure-IV**).

- 4.10 That the applicants of the instant application being similarly situated as those who were the applicants in O.A.No.218/2000, approached the respondents time and again praying for consideration of their case in the light of the directions passed by the Hon'ble Tribunal on 25.10.2000 in O.A.No.218/2000 for grant of NDA but simply met with denial. Eventually Lawyer's notices were served upon the Respondent No.4 and 5 on 15.03.2003 and 30.05.2003 respectively urging for

Nigamendra K. Chandra

payment of NDA to these applicants in the light of judgment dated 25.10.2000 in O.A.No.218/2000 but with no result.

- 4.11 That eventually, the respondents in reply to the Lawyer's Notices aforesaid, communicated vide their impugned letter No. 1000/Cat case/Gen/302/E1C (legal) dated 13.05.2003 that there is no jurisdiction for grant of NDA to the applicants since redesignated as FGM as per MOD letter No.691794/D (W-II) dated 06.07.1994 and rejected the applications of the applicants. Needless to say that the rejections by the respondents were based on the same pleas as stated in para 4.9(a) and (b) above.

(Copy of the impugned letter dated 13.05.2003 is annexed hereto as Annexure-V.)

- 4.12 That the applicants most humbly begs to state that they have been redesignated as Fitter General Mechanic (FGM) from Pump House Operator but they are still performing the same duties and responsibilities and attending to Night duties as they were doing earlier as PHOs. As such their duties and responsibilities remaining unchanged, they cannot be denied NDA, which they had been drawing earlier, simply on the plea that they have been redesignated as FGM. Therefore, exclusion of FGM from the notified list of categories entitled for NDA

NIRENDRAN KR. CHANDRA

by adopting the technique of redesignating them, as FGM is an unfair labour practice. As such the contention of the respondents as stated in Para 4.9 (a) above is not sustainable in the eye of law.

4.13 That the applicants further beg to state that the judgment dated 01.08.1997 of the Supreme Court in SLP (Civil) No.25134/96 referred to by the respondents as stated in para 4.9 (b) above is not applicable in the instant case and is irrelevant since the said judgment relates to the category of Chowkidars and Guards whereas the present applicants are Fitter General Mechanics. Hence the aforesaid contentions of the respondents resulting into stoppage of the payment of NDA to the applicants and recovery thereof are arbitrary, malafide, unjust, illegal and unfair.

4.14 That the applicants beg to submit that due to illegal stoppage of NDA, the applicants have been incurring heavy financial losses and hardship and finding no other way, the applicants are approaching this Hon'ble Tribunal for protection of their rights and interests and this is a fit case for the Hon'ble Tribunal to interfere with and to direct the respondents to restore the payment of NDA to the applicants w.e.f the date of discontinuation of payment of NDA immediately and to refund the amount of NDA recovered from their salary.

4.15 That this application is made bonafide and for the cause of justice.

NIRENDRANATHAN KR CHANDU

6. Grounds for relief(s) with legal provisions.

- 5.1 For that, the applicants on their redesignation from the Pump House Operator (PHO) to Fitter General Mechanic (FGM) have been performing the same duties and responsibilities even after being redesignated as they were doing earlier. As such, denial of NDA to the applicants on the simple plea that they have been redesignated and exclusion of the category from the notified list for NDA is an unfair labour practice.
- 5.2 For that, the applicants in their capacity as FGM are attending night duties as done earlier and as such they are entitled to NDA for the services rendered by them.
- 5.3 For that, the applicants had been drawing NDA for years together even after being redesignated as FGM since they are entitled for that which were duly passed by CDA and Audit, and sudden discontinuation of the same is arbitrary, illegal, unjust, malafide and unfair.
- 5.4 For that, whereas the duties and responsibilities of the applicants were kept unchanged even after their redesignation by the Government, the Controller of Defence Accounts does not have the authority to stop payment of NDA being drawn by the applicants.
- 5.5 For that, the CDA by stopping NDA to the applicants acted arbitrarily and that too without any prior notice or providing reasonable opportunity to the applicants

NIRENDRANATH CHANDY

of being heard of which is a violation of the principles of natural justice and not in accordance with the procedure established by law.

- 5.6 For that, the Hon'ble CAT, Guwahati by its judgment dated 25.10.2000 in O.A.No.218/2000 in similar facts and circumstances have observed that the applicants in the said O.A are entitled to get NDA and as such the same principle is applicable in the instant case also.
- 5.7 For that the contentions made by the respondents in support of their action is not sustainable in the eye of law, and as such their impugned letter dated 13.05.2003 is liable to be set aside and quashed.
- 5.8 For that the continuation of NDA to the FGM category was duly recommended by the Army Headquarter, Eastern Command to the Army Headquarter and the Ministry of Defence.
- 5.9 For that the discontinuation of the payment of NDA to the applicants and recovery there of, which they are legitimately entitled to get, have caused great financial hardships to such ill paid employees, leading to irreparable loss to them.
- 5.10 For that it is a continuous wrong committed by the respondents leading to less payment to the applicants

Niranda Ka Chandra

and fresh cause of action arising every month when the salary is paid to the applicants.

6. Details of remedies exhausted.

That the applicants state that they have no other alternative and other efficacious remedy than to file this application. Their personal efforts, departmental recommendations and even Lawyer's notice served on the respondents could not yield any results.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

Nirendra K. Chandra

8.1 That the impugned letter No. 1000/Cat.Case/Gen/302/E1C (legal) dated 13.05.2003 issued by the respondents be declared as void-ab-initio.

8.2 That the Hon'ble Tribunal be pleased to declare that the applicants even after being redesignated as Fitter General Mechanic personnel are entitled to Night Duty Allowance (NDA).

8.3 That the respondents be directed to restore the payment of NDA to the applicants w.e.f the date of its discontinuation and repay the amount recovered from the applicant as overpayment of NDA immediately.

8.4 Costs of the application.

8.5 Any other relief(s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicants pray for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for considering the case of the applicants for the purpose of NDA.

Niranjana K. Chandra

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No. : JJG 387483
- ii) Date of Issue : 29.12.03,
- iii) Issued from : G.P.O. Gwy.
- iv) Payable at : G.P.O. Gussakhat,

12. List of enclosures.

As given in the index.

NIRENDRAN KR CHANDA

VERIFICATION

I, Shri Nirendra Kumar Chanda, aged about 55 years, presently working as FGM in the E/M Section, O/O G.E. Air Force, Shillong do hereby verify on behalf of that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the ~~29th~~^{30th} day of December, 2003.

Nirendra K Chanda

AHQ E-in-C's letter No A/20050/NDA/E1C(3) dt 14 Jul '99

NDA TO PUMP HOUSE OPERATOR AND
DRIVER ENGINE STATIC IN MES

ANNEXURE-1 SR.

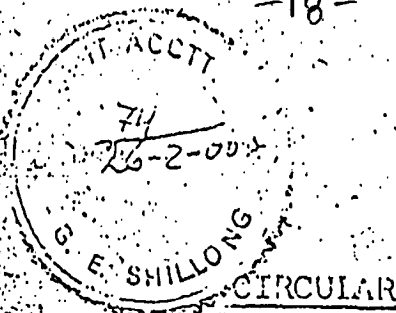
1. A case regarding admissibility of Night Duty Allowance to PHO and DES consequent to redesignation as FGM was referred to Ministry of Defence by CGOA New Delhi for clarification. Ministry of Defence has however clarified that the Night Duty Allowance is admissible only to those categories which are 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 ER 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

Claim accepted May 99

*Attested
Surjit Choudhary
Advocate
on 29.12.03*



No. Pay/024/IV/PC/86-VII
Office of the CDA Guwahati
Udayan Vihar, Narangi
Guwahati - 781 171
Dated: 17/02/2000.

- To AAO GE
Shillong - 79307
- 1) AAO Shillong
 - 2) All LAOs
 - 3) All AAO GEs/AGE(I)s

Sub:- Grant of Night Duty Allowance to Pumb House Operator and Engine Driver static of MES who are redesignated as Fitter General Mechanic.

In consistence with the provision of HQ office, New Delhi letter No. AT/2366-NDA-VIII dated 16-7-99 circulated vide Part I G.O. No. 227 dated 14-9-99, the category of Pumb House Operator and Engine Driver Static of MES redesignated as Fitter General Mechanic (FGM) with effect from 6-7-94 are not entitled to draw Night Duty Allowance, as the category of FGM has not been included in the Govt. orders issued from time to time entitling them Night Duty Allowance (NDA).

Of late it has come to our notice that one of our sub offices is admitting the Night Duty Allowance claim in respect of the category of FGM, which is in contravention of the provisions contained in CGDA's New Delhi clarificatory order mentioned in para 1 above.

In view of above you are advised to review with reference to records held by you that whether NDA has been paid to FGM and if so initiate action to regularise the overpayment so made of in your audit area in consultation with GE and further payment of Night Duty Allowance (NDA) to FGM may please be stopped immediately.

A confirmation to the effect that NDA is not being paid to FGM may please be sent to this office by all AAOs GEs/AAO AGE(I)s.

G.O. has seen.

(S. PRASAD)
SR. ACCOUNTS OFFICER.

A. Dastidar
Surgeon Advocate
on 29.10.03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.218 of 2000

Date of decision: This the 25th day of October 2000

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

1. Shri Rishikesh Paul
2. Shri Jang Bahadur Gurung
3. Shri Lilaram Sharma
4. Shri Bola Krishna Sharma
5. Shri Raj Narayan Rai
6. Shri Dhan Bahadur Pradhan

....Applicants

All the applicants are Fitter General Mechanic working in the establishment of Garrison Engineer, Shillong.

By Advocates Mr M. Chanda, Ms N.D. Goswami and Mr G.N. Chakrabarty.

- 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), Uday Vihar, Narangi, Guwahati.
4. The Garrison Engineer, Shillong.

....Respondents

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

O R D E R

CHOWDHURY.J. (V.C.)

The issue relates to admissibility of Night Duty Allowance (NDA for short) to the Pump House Operators (PHO for short) serving in the Military Engineering Service redesignated as Fitter General Mechanic (FGM for short) with effect from 6.7.1994.

*Admitted
Surajit Choudhury
Advocate
on 29.12.03.*

: 2 :

2. The applicants are six in number who have joined together and filed a single application. Since the cause of action and the nature of relief prayed for are same and of similar nature, the applicants are accordingly allowed to espouse their grievance by this single application under the provisions of Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

3. Prior to the impugned order dated 17.2.2000, Annexure 2, the applicants were working as PHO and were awarded NDA for the work they performed during the night at the rate of ten paise per house hour. Such allowance, according to the applicants, came to around Rs.100/- per mansion. The PHO was redesignated with effect from 6.7.1994 as FGM. The 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. According to the applicants after redesignation was made in 1994, NDA was made admissible only to those categories which were enlisted in Government Order. In the order there is no mention of FGM and therefore, the Army Headquarters, Eastern Command took up the matter with the Ministry of Defence in order to include the FGM in the list of the Government Order for the purpose of NDA. No decision in the matter was taken. The concerned authority made correspondence with the Army Headquarters, Eastern Command. One such communication is annexed As Annexure I to the application. By his communication dated 17.2.2000 the Senior Accounts Officer informed the concerned authority to stop the payment of NDA and advised to initiate action to regularise the overpayment.

4. Written statement has been filed on behalf of the respondents. The respondents admitted that the applicants are discharging similar nature of duties, having also not disputed that the applicants are attending their night

: 3 :

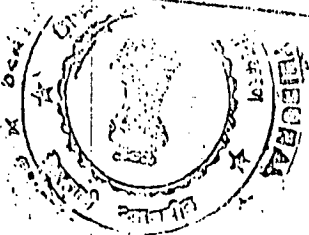
duties. The respondents, however, submitted that though the nature of duties remained the same the FGM were not catered in the list of the Government Order for grant of NDA and accordingly the case of the applicants were taken up with the Government of India, Ministry of Defence for clarification regarding the admissibility of NDA to the FGM.

5. ~~X~~ From the facts alluded above, it emerges that the applicants were provided with some extra allowance of 10 paise per hour for rendering night duty. Since they are discharging the same and similar nature of duty as FGM as they were earlier as PHO, it is difficult to discern the rationale behind the refusal of the allowance for NDA for similar duty. the allowance was provided against the services rendered. The matter has already been referred to the Ministry of Defence and it is expected that the Ministry of Defence would take up an appropriate decision as per law for providing the Night Duty Allowance for rendering such duty as was done earlier.

6. After considering all the aspects of the matter the respondents are directed to take an early decision in the matter, preferably within three months from today. Till completion of such exercise the respondents are directed not to give effect to the Circular dated 17.2.2000 issued by the Senior Accounts Officer so far the present applicants are concerned.

7. ~~X~~ The application is accordingly disposed of. No order as to costs.

So/ VICECHAIRMAN



Tele : 5045

Commander Works Engineers
Spread Eagle Falls
Shillong-11

1151/CAT/OA-218/2000/ 26 /E1A

12 Aug 2003

MES/229119 Shri Rishikesh Paul
(Through GE Shillong)

SPEAKING ORDER

DISCONTINUATION OF INTERIM PAYMENT OF NIGHT DUTY
ALLOWANCE (NDA) OA NO 218/2000 FILED BY SHRI RISHIKESH PAUL
& 5 OTHERS IN CAT GUWAHATI

Dear Sir,

1. Ref the following judgment delivered by cat Ghy on the question if admissibility of NDA to FGM category MES:-

Sl No	OA No	Filed By	Date of Judgment
1	218/2000 in Cat Ghy	Shri Rishikesh Paul and 5 others	25.10.2000

2. The following grounds were adduced in OA No 218/2000 filed by you and five others in Cat Guwahati:-

(a) 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 house hour. On such allowance one single Pump house Operator could get a sum around Rs 100/- in a month.

(b) The PHOs were redesignated as Fitter General Mechanic (FGM) wef 06 Jul 1994. Their nature of duty and grade in service remaining same, they continued to get the said NDA calculating on the hours of night duty performed by each individual FGM.

(c) That consequent on the redesignation as FCM in the year 1994, the NDA was to be admissible only to those categories which were enlisted in the Government Order issued by the Ministry of Defence. The FGM not being in the list the Army Headquarters and Eastern Command had taken up the matter with the Ministry of Defence so that the FGM could be included in the list of the Government Order for the purpose of NDA. But the Ministry of Defence had till then not taken the decision or communicated anything denying the admissibility of NDA to the PHO since redesignated as FGM.

(d) That E-in-C's Branch vide their letter No A/500/50/NDA/E1C(3) dated 14 Jul 99 has intimated to all concerned that case had been taken up by them with the MOD for issue of necessary Govt Orders for grant of NDA to those FGM who were employed as PHO and DES.

Requested
Surajit Choudhury
Advocate
on 29.12.03

(e) That the applicants had been paid the NDA since July, 1994 when they were redesignated and their bills had been passed by the CDA (Respondent -5) every month during the last six years in the absence of any order to stop the Night Duty allowance.

(f) That based on instruction from CGDA New Delhi, CDA Guwahati vide its letter No Pay/024/IV/PC/86-VII dated 17 Feb 2000 informed AAO Shillong, all LAOs and AAOs of GE/AGE(1)s that PHOs and Ds ES consequent to their redesignation as FGM with effect from 6 Jul 1994 were not entitled to draw NDA as FGM has not been included in the Govt Orders issued from time to time entitling to draw NDA. CDA Guwahati asked the above subordinate offices to stop payment of NDA immediately and recover over payments already made.

(g) That the above decision of CGDA to stop payment of NDA was taken without issue of any Prior/show cause notice and without following the principles of natural justice.

(h) That even after redesignation the PHOs & DsES continued performing night duty and the nature of their job remained same.

(j) That until the govt of India, Min of Def took a decision about non admissibility of NDA to PHOs and DsES because of their redesignation as FGM, NDA should continue to be paid to the above categories as usual.

(k) That the applicants are low paid employees and in the interest of natural justice recovery of the payment of NDA should not be ordered from them.

2 The applicants of ibid OA had prayed for following relief's from the Hon'ble CAT Guwahati :-

(a) That the directions of CDA Guwahati vide their letter dated 17 Feb 2000 be declared void and no nest.

(b) Recovery of over payment of NDA be declared void and illegal until decision is taken by the MOD continue or discontinue payment of NDA. Till the MOD takes a decision in the above matter. NDA should continue to be paid.

3. CAT Guwahati in its order dated 25 Oct 2000 had made following observations/passed directions :-

"5 From the facts alluded above, it emerges that the applicants were provided with some extra allowance of 10 paise per hour for rendering night duty. Since they are discharging the

same and similar nature of duty as FGM as they were earlier as PIO it is difficult to discern the rationale behind the refusal of the allowance for NDA for similar duty. The allowance was provided against the services rendered. The matter has already been referred to the Ministry of Defence would take up an appropriate decision as per law for providing the Night Duty Allowance for rendering such duty as was done earlier.

"6 After considering all the aspects of the matter the respondents are directed to take an early decision in the matter preferable within three months from today. Till completion of such exercise the respondents are directed not to give effect to the Circular dated 17 Feb 2000 issued by the Senior Accounts Officer so far the present applicants are concerned".

4. The MOD has since taken the following decision in the matter :-

(a) As per MOD letter No 6 (1)/94/D/(W-II) dated 06 Jul 1994 the following 8 categories of employees of MES were re-designated as Fitter General Mechanic (FGM) in compliance with CAT. Bombay judgment in OA No 704/90 with a view to entitling these categories for promotion to highly skilled grades :-

- (i) Pump House Operator
- (ii) Driver Engineer Static
- (iii) Mechanic Petrol & Diesel Engine
- (iv) Driver Mobile Plant
- (v) Operator Earth Moving Machinery
- (vi) Operator Pneumatic Tools
- (vii) Boiler Attendant
- (viii) Lift Mechanic (Existing Incumbents only)

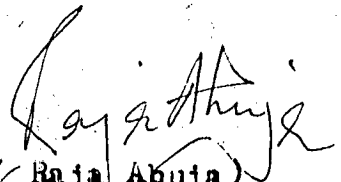
(b) As a result of these orders, there are no category of officials designated as PHO and DES as besides these two six other categories were also merged in the category of FGM. It is also stated that FGM officials are brought on shift duties their prescribed duty per day being 8 hours. In case of their being detained for longer period they are entitled to compensatory off etc as per rules and Govt orders. Having been integrated in combined category of officials called FGM, grant of NDA to these officials who held the posts of PHO & DES earlier, would not be proper and would be discriminatory to the FGM officials who earlier held posts other than PHO/DES. Further, the Supreme Court in their judgement dated 1 Aug 1997 in SLP (Civil) No 25134/96 has upheld the validity of a U.O. dated 12 Oct 1995 issued by DOPT wherein the following was stated on the question of admissibility of NDA to Chowkidars :-

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

(c) Prima-facie, the above DOPT orders, whose validity was upheld by the Hon'ble Supreme Court also similarly apply to the applicants in the case under consideration.

5. In view of above, interim payment of NDA which you were continued to get as sanctioned vide MOD letter dated 22 Sep 2002 and 11 Jun 2002 is hereby stopped wof 01 Jul 2003. B

6. With the issue of above, the decision of The Hon'ble CAT Ghy in OA No 218/2000 filed by you and five others is complied with.


(Raja Ahuja)
Major
DCWE B/R
Offg CWE Shillong

Copy to :-

E-in-C's Branch (E1C Legal-C)
Army Headquarters
Kashmir House
DHQ PO, New Delhi-11

HQ Chief Engineer
Eastern Command
Engineers Branch
Fort William, Kolkata Zone
Kolkata

HQ CE Shillong Zone
SE Falls Shillong 11

GE Shillong

Tele Mil : 6062
Fax : 0364-2561779

Garrison Engineer
Shillong Division
Shillong - 793 002

1000/Cat Case/Gen/302/EIC(Legal)

13 May 2003

✓ Shri Manik Chanda, Advocate
Bye Lane -7
Lachit Nagar
Guwahati - 781 007

COURT NOTICE

Dear Sir,

1. Reference your Court Notice dated nil regarding payment of night duty allowance to FGM category and this office letter No 1000/Cat Case/Gen/WED/EIC(Legal) dated 09 Apr 2003.
2. As per Para 9 of Govt of India, Ministry of Defence letter No PC-30237/8201/EIC(Legal-C)/66/CAT/D(Works) dated 06 Feb 2003 (photocopy enclosed), the Union of India represented by Def Secy, has found no justification for grant of NDA to the ex PHO/DES officials who have been re-categorised as FGM vide MOD letter No 691794/D(W-II) dated 06 Jul 94. The representations made by the applicants have, therefore, been rejected.
3. This is for your information please.

Yours faithfully,

Aseem Kumar
(Aseem Kumar)
AEE
Legal Officer
For Garrison Engineer

Encls : (03 sheets)

Copy to :-

HQ Eastern Command - for info please
Engrs Branch
Port William, Kolkata - 21

HQ CE Shillong Zone - -do-
Spread Eagles Falls
Shillong - 11

CWE Shillong - -do-
Shillong - 11

*Attested
Jugjit Choudhary
Advocate
on 29.12.03*

07 Copies each

Tele :3019376

Engineer in Chief's
Branch/EIC
Army Headquarters
Kashmir House
New Delhi-110011.

90237/8460/EIC(Legal-C)

13 Feb 2003

Chief Engineers
Western Command, Chandimandir
Northern Command, C/o 56 APO

DEFENCE OF COURT CASES FILED BY FGM
CATEGORY FOR PAYMENT OF NDA

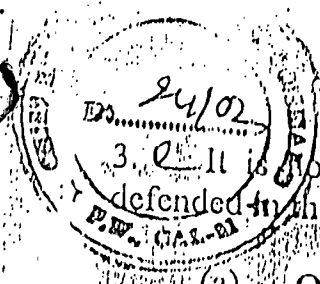
1. Reference following OAs filed by various applicants in CAT Chandigarh on the above subject :-

- (a) OA 1180/PB/02 filed by Shri Dinesh Kumar and 77 others.
- (b) OA No. 1299/PB/02 filed by Shri Dev Raj & 50 others.
- (c) OA No. 1241/PB/02 filed by Shri Lakhwinder Singh & 34 others.
- (d) OA No. 1276/PB/02 filed by Shri Amrit Lal & 68 others.
- (e) OA No. 1240/CH/02 filed by MES Workers Union & 120 others.
- (f) OA No. 1004/PB/02 filed by Shri Rajpal Singh & 36 others.

2. In an earlier similar case ie OA No. 466/PB/02 filed by Shri Madan Lal & 79 others in CAT Chandigarh, the Hon'ble CAT vide their order dated 10 May 02 had directed the respondents to dispose of the representations of the applicants by issue of a Speaking Order. Accordingly in compliance of the CAT order, Speaking Order to all applicants has been issued vide MOD letter No. PC-90237/8201/EIC(Legal-C):66/CAT/D(Works) dated 06 Feb 03. copy enclosed for ready reference.

Contd....2/-

Affected
Sent.
Adm. Secy
29.12.03



Agree

It is now advised that all the OAs mentioned in Para 1 above be defended in the following manner:-

(a) OAs which have been admitted ^{these} There will be defended in the interest of the State and as per laid down procedure. The Govt's stand against payment of NDA to FGM category as reflected in paras 6, 7 and 8 of the MOD letter dated 06 Feb 03 (referred in Para 2 above) will be emphasised in the DCAs to be prepared in consultation with CGSC.

(b) OAs which are yet to be admitted In case of these OAs, the Deptt should pray the Hon'ble CAT to dismiss the cases at the admission stage stressing the grounds mentioned in Paras 6, 7 and 8 of the MOD letter dated 06 Feb 03.

(KN Subudhi)
Dy Dir
SO 2 (Legal)
For Engineer in Chief

Encls : As above

Copy to :-

- CE Southern Command
- ✓ CE Eastern Command
- CE Central Command

for info & necessary action ^{along with}
a copy of mod letter
mentioned at Para 2 above.

(Legal)	
(Legal)	
(Legal)	

*Circulate letter
to all zones
✓
11/2*

Pol...

IMPLEMENTATION OF CAT CHANDIGARH BENCH
JUDGMENT DATED 10 MAY 2002 IN OA NO. 466/PB/2002
FILED BY SHRI MADAN LAL AND 79 OTHERS

I. In OA No. 466/PB/2002 before CAT Chandigarh, Shri Madan Lal and 79 other applicants gave following grounds for relief :-

- i) The applicants while working as PHO and DES are performing the night duty with the respondents and from the year 1992 they were granted the night duty allowance @ Rs. 100 p.m. as per the letter dated 25.06.1992 issued by the Ministry of Defence.
- ii) Even after re-designation as FGM, the applicants have been performing the night duties and as such they cannot be discriminated merely on the ground of re-designation particularly when the respondents themselves admitted the same.
- iii) It is evident from the letter dated 18.09.2000, issued by the office of the respondent No. 2, that the matter for restoring the applicants categories to its original designation is still under consideration.
- iv) The representation made by the applicants is still under consideration and settled position cannot unsettle in violation of principles of natural justice.
- v) The applicants though re-designated, are performing the same duties as were being performed by them earlier, they cannot be denied the benefits of night duty allowance enjoyed by them as per the recommendations of the fourth pay commission and further extended by the fifth pay commission as well.
- vi) The claim of the applicants is squarely covered by the judgment of this Hon'ble Tribunal in the case of Rainish Kumar Sharma and others in O.A. No. 978/HR/2000 which was decided on 20.07.2001 by relying, upon the judgement dated 27.10.2000 passed by the Hon'ble CAT, Ghaughati Bench, wherein it was held that since the applicants are still performing the night duty for which earlier allowance was being paid and they cannot be denied the night duty allowance only on the ground that since in the list new designation did not appear and further the respondents were directed to take a decision on the matter and if necessary to amend the Govt. order by incorporating the same in the Govt order and further directed that till such time decision is arrived at, the respondents are directed to continue to make the payment of night duty allowance to the applicants as was being paid earlier.
- vii) After coming to know the aforesaid judgment the applicants through union as well as individually made representations to the respondents for the grant of night duty allowance in pursuance of the judgement of this Hon'ble Tribunal, but vide letter dated 15.02.2002 (copy enclosed) the respondents have communicated to the General Secretary of the union that the subject is under consideration with higher authorities and decision when received will be intimated.

Contd... 2/-

- viii) The action of the respondents in not granting the night duty allowance to the applicants in pursuance of the judgement of this Hon'ble Tribunal is illegal, arbitrary and discriminatory, as such it has been held by this Hon'ble Tribunal that since the applicants are performing night duty with the respondents they are entitled for the grant of night duty allowance till such a time decision is taken by the respondents.

The Hon'ble Tribunal was prayed by the applicants for the following reliefs :-

- i) This Hon'ble Tribunal may summon the entire record of the case of the applicants for kind perusal.
- ii) A direction be issued to the respondents to grant the applicants night duty allowance in pursuance of the judgement of this Hon'ble Tribunal as well as the Hon'ble Guwahati bench of the Tribunal as such the applicants are still performing the night duty with the respondents and therefore the applicants may kindly be granted the arrears of night duty allowance for the period of their claim regarding night duty allowance is within limitation.
- iii) Any other order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.
- iv) Costs of the application be awarded to the applicants.
- v) Applicants be permitted to file joint application.

3. The Hon'ble CAT decided the OA on 10.5.2002 and operative part of the judgement is as follows :-

"On a consideration of the matter and having regard to the prayer of counsel for the applicants, the OA is disposed of with a direction to the respondent authorities to take a decision on the representations of the applicants, A-12 and A-13 as far as possible within a period of 4 months from the date of receipt by them a copy of this order. It will be open to the applicant/s to supplement the representation/s within a period 3 weeks from today or to file fresh individual representation if not already filed within the aforesaid period. The representations already filed or supplementary representations/fresh representations shall also be considered by the competent authority during the aforesaid period and disposed of in accordance with law. In case the applicants will be found entitled to some relief, the same shall be granted to them. However, in case the authorities will come to the conclusion that the applicants are not entitled to any relief, they shall indicate in brief the reasons for coming to that conclusion. The decision taken on the representations shall be communicated to the applicants."

4. The extract of Hon'ble CAT Guwahati bench judgement dated 27 Oct 2000 in OA No. 163/2000 filed by Shri MC Deb & 13 others is as follows :-

"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 OA 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. Accordingly the

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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."

No supplementary representations & fresh representations have been filed by any of the applicants. In their similar representations filed as A-13, the applicants have requested that CAT decision in OA 978/HR/2002 dated 20.7.01 to pay NDA in favour of FGM may please be implemented in case of each of the applicants on the ground that they all are FGM and hence the CAT decision is also applicable to them.

6. The aforesaid representations have been considered in detail by the respondent No. 1 i.e. Union of India through Secretary Min of Def, New Delhi along with Govt Order No. 6(1)/94/D(W-II) dated 06.7.94 and it is observed that vide above mentioned order dated 06.7.94 following 8 categories of employees of MES were re-designated as Fitter General Mechanic (FGM) in compliance with CAT, Bombay judgement in OA No. 704/90 with a view to entitling these categories for promotion to highly skilled grades :-

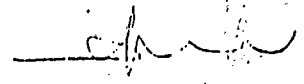
- (a) Pump House Operator
- (b) Driver Engineer Static
- (c) Mechanic Petrol & Diesel Engine
- (d) Driver Mobile Plant
- (e) Operator Earth Moving Machinery
- (f) Operator Pneumatic Tools
- (g) Boiler Attendant
- (h) Lift Mechanic (Existing Incumbents only)

7. As a result of these orders, there are no category of officials designated as PHO and DES as besides these two, six other categories were also merged in the category of FGM. It is also stated that FGM officials are brought on shift duties, their prescribed duty per day being 8 hours. In case of their being detained for longer period they are entitled to compensatory off etc as per rules and Govt orders. Having been integrated in combined category of officials called FGM, grant of NDA to these officials who held the posts of PHO & DES earlier, would not be proper and would be discriminatory to the FGM officials who earlier held posts other than PHO/DES. Further, the Supreme Court in their judgement dated 1.8.97 in SLP (Civil) No. 25134/96 has upheld the validity of a U.O. dated 12.10.95 issued by DOPT wherein the following was stated on the question of admissibility of NDA to Chowkidars :-

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

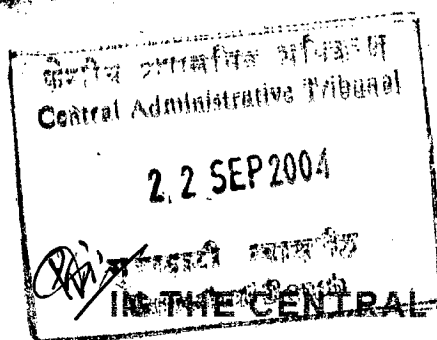
8. Prima-facie, the above DOPT orders, whose validity was upheld by the Hon'ble Supreme Court also similarly apply to the applicants in the case under consideration.

9. Having regard to the foregoing considerations, the Union of India represented by Def Secy, has found no justification for grant of NDA to the ex PHO/DES officials who have been re-categorised as FGM vide MOD letter No. 6(1)/94/D(W-II) dated 06 Jul 94. The representations made by these applicants, have, therefore, been rejected.



(BP Sharma)
Deputy secretary to Govt of India

Shri Madan Lal & 79 others
(applicants of OA No. 466/PB.2002
Filed in CAT Chandigarh Bench)



Sri N.K. Chanda & 19 others

...Applicant

-versus-

Union of India & others

...Respondents

(Written Statements filed by the respondents)

The written statements of the above noted respondents are as follows:

1. That a copy of the O.A. No. 303/2003 (referred to as the "application") has been served on the abovementioned respondents. The said respondents have gone through the same and understood the contents thereof. The interest of all the above respondents being common and similar, the written statements is filed as common for all of them.
2. That the statements made in the application which are not specifically admitted by the answering respondents, are hereby denied.
3. That with regard to the statements made in para 1 of the application, the respondents state that grant of Night Duty Allowance (hereafter 'NDA') has been discontinued by the Union of India as a matter of policy decision which was communicated to the applicant vide CWE Shillong's speaking order No.

1151/CAT/CAT/OA-218/2000/126/EIA dated 18.8.2003 and consequently the interim payment of NDA to honour the judgment in OA 218/2000 was also stopped.

4. That with regard to the Para 2, 3, 4.1 and 4.2 of the application, the answering respondents beg to offer no comments.
5. That with regard to the statements made in para 4.3, 4.4 and 4.5 of the application, the answering respondents have no comments to offer as these are all matters pertaining to records and nothing is admitted which is not supported by such records.
6. That with regard to the statements made in para 4.6 of the application, the respondents state that re-designation of the 8 categories of MES officials to Fitter General Mechanic (hereafter 'FGM') is done with a view of giving them promotional avenues on a common platform and while granting other additional benefits to the integrated FGM. However, NDA is withdrawn as a matter of Government of India policy decision. Therefore the CDA's letter No. Pay/024/IV/86-VII dated 17.2.2000 and the action by the department to regularize the payment and recovery of NDA is in accordance with the above policy.
7. That with regard to the statements made in para 4.7, the answering respondents have no comments to offer as these are all matters pertaining to records and nothing is admitted which is not supported by such records.
8. That with regard to the statements made in para 4.8, the respondents state that these statements are irrelevant to the grant of NDA and it is an effort on the part of the applicant to make his application verbose with malafide intent.
9. That with regard to the statements made in para 4.9 and 4.10 of the application, the answering respondents have no comments to

offer as these are all matters pertaining to records and nothing is admitted which is not supported by such records.

10. That with regard to the statements made in para 4.11 of the application, the respondents state that they have already served the speaking order to comply with the decision of the Hon'ble CAT, Guwahati bench as passed in OA No. 218/2000. The speaking order served on the petitioner is based on the speaking order issued by the MOD in OA 466/PB/02 filed by Shri Madan Lal and 79 others vide letter No. PC-90237/8201/EIC(Legal C)/66/CAT/D(Work) dated 6.2.2003, extracts of which are enumerated below:

6. The aforesaid representations have been considered in detail by the respondent No. 1, i.e. the Union of India through the Secretary, Ministry of Defence, New Delhi alongwith Govt. order No. 6(1)/94/D(W-11) dated 6.7.1994 and it is observed that vide the above mentioned order dated 6.7.1994 following 8 categories of employees of MES were re-designated as Filter General Mechanic (FGM) in compliance with CAT, Bombay Judgment in OA No. 704/90 with a view to entitling these categories for promotion to highly skilled grades:

- (a) Pump House Operator
- (b) Driver Engineer Static
- (c) Mechanical Petrol & Diesel Engine
- (d) Driver Mobile Plant
- (e) Operator Earth Moving Machinery
- (f) Operator Pneumatic Tolls
- (g) Boiler Attendant
- (h) Lift Mechanic (Existing incumbents only)

7. As a result of these orders, there is no category of officials designated as PHO and DES as besides these

two six other categories were also merged in the category of FGM. It is also stated that FGM officials are brought on shift duties, their prescribed duties per day being 8 hours. In case of their being detained for longer period they are entitled to compensatory off etc. as per rules and Govt. orders. Having been integrated in combined category of officials called FGM, grant of NDA to these officials who held the posts of PHO & DES earlier would not be proper and would be discriminatory to the FGM officials who earlier held posts other than PHO, DES. Further, the Supreme Court in their judgment dated 1.8.97 in SLP(Civil) No. 25134/96 has upheld that validity of UO dated 12.10.95 issued by DOPT wherein the following was stated on the question of admissibility of NDA to Chowkidars:

"The chowkidars/guards being such a category whose normal duties contain an element of night are therefore not eligible for Night Duty Allowance."

8. Prima facie the above DOPT order, whose validity was upheld by the Hon'ble Supreme Court also similarly apply to the applicants in the case under consideration.

A copy of the said order dated 6.2.2003 is annexed hereto as **Annexure R1**.

11. That with regard to the statements made in para 4.12 of the application, the answering respondents state that the re-designation of the 8 erstwhile categories in MES as FGM was in compliance of the CAT Bombay judgment in OA No. 704/90. Exclusion of the FGM from notified list of categories entitled for NDA is a matter of policy decision of the Govt. of India. It is also submitted that the same has been upheld by Hon'ble CAT, Chandigarh Bench in OA No. 12141-PB of 2002 and OA No. 1299-

PB of 2002 vide order dated 11.7.2003. The Hon'ble CAT, Chandigarh Bench has observed in its order that-

While merging of 8 categories including two which were in receipt of NDA (other six were never in receipt of NDA), they were all included in skilled category with provision of promotional avenues with a common designation giving them additional benefits than what they were earlier enjoying. A decision has been taken that the category, known as FGM, now is not entitled to grant of NDA. The court need not interfere in the same. Nothing has been shown to be violative of the provisions of law or any provisions of the Constitution.

Copy of the order-dated 11.7.2003 is annexed hereto as Annexure R2.

12. That with regard to the statements made in para 4.14 of the application, the respondents state that the grant of NDA to the applicant has been discontinued by the Govt. as a matter of policy decision and the same cannot be challenged before this Hon'ble Tribunal. Hence, the OA is liable to be dismissed.
13. That with regard to the statement made in para 5.1 to 5.10 of the application, the answering respondents reassert and reaffirms that statements made hereinabove in this written statements and also state that the grounds put forwarded by the applicants in support their claim is not supported by any provisions of law, hence the said grounds cannot sustain in law. Therefore the application is liable to be dismissed as devoid of any merit.
14. That with regard to the statements made in para 6 and 7, the respondents state that they have nothing to comment on it.

15. That with regard to the statements made in para 8.1 to 8.5 and 9, the respondents reasserts and reiterates the statements made hereinabove in this written statements and state that under the facts and circumstances of the case and the provisions of law, the applicant is not entitled to any relief whatsoever and the application is liable to be dismissed with cost.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application with cost.

VERIFICATION

I, Shri Chibor Shullai, son of late M A AHMED, at present working as Asstt. Executive Engineer in the office of the Garrison Engineer, Shillong, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1 to 9 and 12 to 15 are true to my knowledge and belief, those made in para 10 and 11, 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 25th day of September, 2004 at Guwahati.



DEPONENT

C. SHULLAI, IDSE
AGE B/R.
SHILLONG.

PC-90237/8201/EIC (Legal-C) (66/CAT)
 Government of India
 Ministry of Defence
 New Delhi, 110011, 06 Feb 2003

**IMPLEMENTATION OF CAT CHANDIGARH BENCH
 JUDGMENT DATED 10 MAY 2002 IN O.A. NO. 466/PB/2002
 FILED BY SHRI MADAN LAL AND 79 OTHERS**

I. In O.A. No. 466/PB/2002 before CAT Chandigarh, Shri Madan Lal and 79 other applicants gave following grounds for relief:-

- i) The applicants while working as PIO and DES are performing the night duty with the respondents and from the year 1992 they were granted the night duty allowance @ Rs. 100 p.m. as per the letter dated 25.06.1992 issued by the Ministry of Defence.
- ii) Even after re-designation as FGM, the applicants have been performing the night duties and as such they cannot be discriminated merely on the ground of re-designation particularly when the respondents themselves admitted the same.
- iii) It is evident from the letter dated 18.09.2000, issued by the office of the respondent No. 2, that the matter for restoring the applicants categories to its original designation is still under consideration.
- iv) The representation made by the applicants is still under consideration and settled position cannot unsettle in violation of principles of natural justice.
- v) The applicants though re-designated, are performing the same duties as were being performed by them earlier, they cannot be denied the benefits of night duty allowance enjoyed by them as per the recommendations of the fourth pay commission and further extended by the fifth pay commission as well.
- vi) The claim of the applicants is squarely covered by the judgment of this Hon'ble Tribunal in the case of Rainish Kumar Sharma and others in O.A. No. 978/HR/2000 which was decided on 20.07.2001 by relying upon the judgement dated 27.10.2000 passed by the Hon'ble CAT, Gauhati Bench, wherein it was held that since the applicants are still performing the night duty for which earlier allowance was being paid and they cannot be denied the night duty allowance only on the ground that since in the list new designation did not appear and further the respondents were directed to take a decision on the matter and if necessary to amend the Govt. order by incorporating the same in the Govt order and further directed that till such time decision is arrived at, the respondents are directed to continue to make the payment of night duty allowance to the applicants as was being paid earlier.
- vii) After coming to know the aforesaid judgment the applicants through union as well as individually made representations to the respondents for the grant of night duty allowance in pursuance of the judgement of this Hon'ble Tribunal, but while letter dated 15.02.2002 (copy enclosed) the respondents have communicated to the General Secretary of the union, that the subject is under consideration with higher authorities and decision when received will be intimated.

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- 8
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- viii) The action of the respondents in not granting the night duty allowance to the applicants in pursuance of the judgement of this Hon'ble Tribunal is illegal, arbitrary and discriminatory, as such it has been held by this Hon'ble Tribunal that since the applicants are performing night duty with the respondents they are entitled for the grant of night duty allowance till such a time decision is taken by the respondents.

The Hon'ble Tribunal was prayed by the applicants for the following reliefs :-

- i) This Hon'ble Tribunal may summon the entire record of the case of the applicants for kind perusal.
- ii) A direction be issued to the respondents to grant the applicants night duty allowance in pursuance of the judgement of this Hon'ble Tribunal as well as the Hon'ble Guwahati bench of the Tribunal as such the applicants are still performing the night duty with the respondents and therefore the applicants may kindly be granted the arrears of night duty allowance for the period of their claim regarding night duty allowance is within limitation.
- iii) Any other order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.
- iv) Costs of the application be awarded to the applicants.
- v) Applicants be permitted to file joint application.

The Hon'ble CAT decided the OA on 10.5.2002 and operative part of the judgement is as follows :-

"On a consideration of the matter and having regard to the prayer of counsel for the applicants, the OA is disposed of with a direction to the respondent authorities to take a decision on the representations of the applicants, A-12 and A-13 as far as possible within a period of 4 months from the date of receipt by them a copy of this order. It will be open to the applicant/s to supplement the representation/s within a period 3 weeks from today or to file fresh individual representation if not already filed within the aforesaid period. The representations already filed or supplementary representations/fresh representations shall also be considered by the competent authority during the aforesaid period and disposed of in accordance with law. In case the applicants will be found entitled to some relief, the same shall be granted to them. However, in case the authorities will come to the conclusion that the applicants are not entitled to any relief, they shall indicate in brief the reasons for coming to that conclusion. The decision taken on the representations shall be communicated to the applicants."

The extract of Hon'ble CAT Guwahati bench judgement dated 27 Oct 2000 in OA No. 163/2000 filed by Shri MC Deb & 13 others is as follows :-

"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 OA 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. Accordingly the

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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."

No supplementary representations & fresh representations have been filed by any of the applicants. In their similar representations filed as A-13, the applicants have requested that CAT decision in OA 978/HR/2002 dated 20.7.01 to pay NDA in favour of FGM may please be implemented in case of each of the applicants on the ground that they all are FGM and hence the CAT decision is also applicable to them.

6. The aforesaid representations have been considered in detail by the respondent No. 1 i.e. Union of India through Secretary Min of Def, New Delhi along with Govt Order No. 6(1)/94/D(W-II) dated 06.7.94 and it is observed that vide above mentioned order dated 06.7.94 following 8 categories of employees of MES were re-designated as Fitter General Mechanic (FGM) in compliance with CAT, Bombay judgement in OA No. 704/90 with a view to entitling these categories for promotion to highly skilled grades :-

- (a) Pump House Operator
- (b) Driver Engineer Static
- (c) Mechanic Petrol & Diesel Engine
- (d) Driver Mobile Plant
- (e) Operator Earth Moving Machinery
- (f) Operator Pneumatic Tools
- (g) Boiler Attendant
- (h) Lift Mechanic (Existing Incumbents only)

7. As a result of these orders, there are no category of officials designated as P/O and DES as besides these two, six other categories were also merged in the category of FGM. It is also stated that FGM officials are brought on shift duties, their prescribed duty per day being 8 hours. In case of their being detained for longer period they are entitled to compensatory off etc as per rules and Govt orders. Having been integrated in combined category of officials called FGM, grant of NDA to these officials who held the posts of P/O & DES earlier, would not be proper and would be discriminatory to the FGM officials who earlier held posts other than P/O, DES. Further, the Supreme Court in their judgement dated 1.8.97 in SLP (Civil) No. 25134/96 has upheld the validity of a U.O. dated 12.10.95 issued by DOPT wherein the following was stated on the question of inapplicability of NDA to Chowkidars :-

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

8. Prima-facie, the above DOPT orders, whose validity was upheld by the Honble Supreme Court also similarly apply to the applicants in the case under consideration.

9. Having regard to the foregoing considerations, the Union of India represented by Lief Secy, has found no justification for grant of NDA to the ex P/O, DES officials who have been re-categorised as FGM vide MOD letter No. 6413/94/D(W-II) dated 06 Jul 94. The representations made by these applicants, have, therefore, been rejected.

(BP Sharma)
Deputy Secretary to Govt. of India

Shri Madan Lal & 79 others
Applicants of OA No. 466/13, 2002
Filed in CAT Chandigarh Bench

100A No. 1241-PS of 2002 &
100A No. 1279-PS of 2002

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

100A No. 1241-PS of 2002 &
100A No. 1279-PS of 2002

Chandigarh, this the 11th day of July, 2003

CHIEF JUDGE DR. JASBIR S. DHALIWAL, MEMBER (J)

100A No. 1241-PS of 2002:

1. MES No. 360006 Lakhwinder Singh s/o Shri. Perhlad Singh, aged 43 years, working as FGM MS-11, office of Garrison Engineer (A/F), Pathankot.

2. MES No. 360312 Yash Pal

3. MES No. 360220 Ishwar Singh

4. MES No. 360351 Joginder Singh

5. MES No. 360761 Amar Nath

6. MES No. 360715 Prem Chand

7. MES No. 360400 Tarsam Lal

8. MES No. 360119 Shagara Singh

9. MES No. 360096 Ashok Kumar

10. MES No. 3603476 Kapil Dev

11. MES No. 360447 Mad Vias

12. MES No. 360720 Prem Lal

13. MES No. 360711 Bhajan Chand

14. MES No. 360720 Harjit Singh

15. MES No. 360720 Harjit Singh

16. MES No. 360720 Harjit Singh

17. MES No. 360720 Harjit Singh

18. MES No. 360720 Harjit Singh

19. MES No. 360720 Harjit Singh

20. MES No. 360720 Harjit Singh

21. MES No. 360720 Harjit Singh

22. MES No. 360720 Harjit Singh

23. MES No. 360720 Harjit Singh

24. MES No. 360720 Harjit Singh

25. MES No. 360720 Harjit Singh

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38. MES No. 369431 Ramesh Chander
 39. MES No. 369432 Jagdish Singh
 40. MES No. 369433 Gurdas Chander
 41. MES No. 369434 Gurdas Chander
 42. MES No. 369435 Hans Raj
 43. MES No. 369436 Surinder Singh

All working under Garrison Engineer, (A/E), Pathankot.

...Applicants

By Advocate: SH. AMIT SHARMA

CO. NO. 12777 PD. 01.10.02

1. MES No. 369431 Dev Raj s/o Shri. Dali Ram, aged 46 years, working as EGH (SK), office of Garrison Engineer, Pat Tibri Cantt., Distt. Gurdaspur (Punjab).

2. MES No. 369432 Tarlok Chand
3. MES No. 369433 Surinder Kumar
4. MES No. 369434 Janak Raj
5. MES No. 369435 Sahni Singh
6. MES No. 369436 Gurdas Singh
7. MES No. 369437 Yash Dev
8. MES No. 369438 Raj Kumar
9. MES No. 369439 Dalwinder Singh
10. MES No. 369440 Inder Mohan
11. MES No. 369441 Harbhajan Singh
12. MES No. 369442 Ashwani Kumar
13. MES No. 369443 Bimal Singh
14. MES No. 369444 Ramesh Kumar
15. MES No. 369445 Swinder Pal
16. MES No. 369446 Shiv Singh
17. MES No. 369447 Darshan Kumar
18. MES No. 369448 Sewil Singh
19. MES No. 369449 Charan Dass
20. MES No. 369450 Shanti Masih
21. MES No. 369451 Pota Ram
22. MES No. 369452 Daljit Singh
23. MES No. 369453 Tarsem Singh
24. MES No. 369454 Mohan Lal
25. MES No. 369455 Danish Masih
26. MES No. 369456 Pawan Singh
27. MES No. 369457 Ramesh Kumar
28. MES No. 369458 Joginder Pal
29. MES No. 369459 Prem Chand
30. MES No. 369460 Roop Lal
31. MES No. 369461 + 369462 Raj
32. MES No. 369463 Prem Lal



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ORDER

UNION OF INDUSTRIAL WORKERS - JBI

Both these cases are being disposed of through this common judgment as these involve identical questions of facts and law. With consent of both the parties, reference is being made to the facts in the case of Lakshminar Singh and others, OA No. 1241 of 1993.

A number of applicants have joined in both these cases pleading that they had earlier been working as Motor Pump Attendants and Diesel Filling Station under the Garrison Engineer (A/F). Number of categories of employees like those of applicants were merged and were designated as Fitter General Mechanic (F/GM) in 1974 for improvement of their service conditions. Claim that their nature of job, however, did not change. They were earlier getting Night Duty Allowance (NDA) but now payment of the same has been stopped. Some employees, who have placed the application, have filed an application for reinstatement of NDA. At the time of their petition, the claim of reinstatement was pending in that case that till a final decision was ordered in that case, they should continue to be taken by the respondents on the claim of reinstatement. The respondents have not taken any steps to reinstate them or to pay them the amount of NDA. They should continue to be taken by the respondents on the claim of reinstatement. The respondents have not taken any steps to reinstate them or to pay them the amount of NDA. They should continue to be taken by the respondents on the claim of reinstatement.

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ORDER

ORDER IN THE MATTER OF THE PETITION FOR WRIT OF HABEAS CORPUS

Both these cases are being disposed of through the common judgment as these involve identical questions of facts and law. With consent of both the parties, reference is being made to the facts in the case of Lakshminarayan Singh and others, CA No. 1241 PR of 2002.

A number of applicants have joined in both these cases pleading that they had earlier been working as Motor Pump Attendants and Diesel Lamping Static under the Garrison Engineer (A/E). Number of categories of employees like those of applicants were merged and were designated as Fitter General Mechanic (F.G.M.) in 1994 for improvement of their service conditions. Claim that their nature of duties, however did not change. They were earlier getting High Duty Allowance (HDA) but now payment of the same has been stopped. Some employees, who later joined the applicants, had filed a petition before Bench of C.A. 1. It was ordered in that case that till a final decision is taken by the respondents on the claims of such persons for payment of H.D.A., they should continue with the payment to them as paid earlier. The respondents, however, are not complying with the order of the Bench of C.A. 1.

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1140 OA No. 978-PB of 2000, titled Rajnish Kumar Sharma and Others vs. Union of India & others before the Chandigarh Bench of CAT for a similar claim. It was decided by judgment dated 26.7.2001. After considering the interim orders of CAT, Guwahati Bench, it was disposed of with a direction to respondents to consider their case in view of the judgment given by the Guwahati Bench. Payment of the NDA was allowed till November 1999 but thereafter was stopped on the ground that the payment was under consideration of respondents, as mentioned in Annexure A-D. It was further mentioned that category of FGB is not included in the Govt. order for grant of NDA. Thus, the matter had been taken up with the Ministry of Defence. By Annexure A-F, it was clarified on 20.9.2000 that categories of PRO and DES have only been redesignated as FGB but they cannot be allowed NDA. However, it was ordered that no recovery of NDA, already paid, shall be made. Thus, NDA payment to applicants was stopped. They all made representations in 2001. Respondent No. 2 sent a reply informing them that their case was under consideration. Guwahati Bench had only confirmed their interim order while disposing of the main O.A. In the case of Balbir Singh & others, OA No. 903-PB of 2001 it was ordered that the case be considered in the light of judgment by Guwahati Bench and in the case of Rajnish Kumar Sharma and others. They have, thus, prayed for quashing the orders, dated 6.6.2001, Annexure

A-1 and dated 27.12.2000, Annexure A-121, by holding that the applicants are entitled for payment of NDA, which they were earlier getting, with a direction to pay the same with arrears from the date it was stopped and no recovery be effected from their pay on account of NDA paid to them.

3. Respondents moved MA No. 628/2003 for placing the written statement on the file. Applicants have no objection to the same being taken on record. MA is, thus, allowed. The written statement is taken on the file.

4. Respondents plead that applicants have approached the C.A.T. without approaching the department itself and, thus, the CA is liable to be dismissed. They admit that prior to July 1994 eight categories were functional under industrial skilled categories in MES. Their promotion prospects were not comprehensive and, thus, a case was filed before C.A.T., Bombay Bench. On the basis of judgment of CAT, Bombay Bench, sanction for merging of those eight categories was issued by Govt. of India vide letter dated 6.7.1994 by redesignating all of them as FGM category under highly skilled grades. Before re-designation, two categories of Power House Operation and Driver Engine Static were not functional in view of letter dated 24.1.1992 and 27.1.1994. The same has now been stopped with

7- (OAS 1241-PB/82 & 1279-PB/82)

effect from the date of resignation. Their claim was referred to the Ministry of Defence by CDDA for clarification. Govt. of India has clarified that NDA is admissible only to those categories which are enlisted in the Govt. order. Reference is made to E-IN-C's Branch letter dated 14.7.99. Ministry has expressed the opinion that charter of duties of FBM category did not include night duties and, thus, NDA has not been authorized to them. The two categories of PHO and DES were recommended for being taken out from FBM category with restoration of their earlier designation and only then grant of NDA could be considered. For this, however, these two categories have to submit their options and willingness for being taken out of FBM category which has not been done so far. Charter of their duties was not taken into consideration by CAT Bench of Guwahati. An OA, No. 466-PB of 2002, was filed by Madan Lal and 75 others. The case went up to the Hon'ble Supreme Court which disposed it with a direction to consider and dispose of the representations of the applicants for grant of NDA by issuance of speaking orders as per CAT directions. The case of Madan Lal was decided by CAT on 10.3.2002, copy of which is enclosed-1. In the case of Dev Raj and others, OA No. 1206/1997, the written statement filed, though similar claim had been taken, it has been mentioned that in view of directions given by the Hon'ble representations of Madan Lal and others were considered and

their claim for payment of NDA has been rejected by order dated 6.2.2003. On being required to produce copy of such rejection order, Id. Counsel for respondents has produced the same, both in the form of copy of order as well as a legible typed copy thereof. We have gone through the same.

5. We find the order dated 6.2.2003 to be a detailed speaking order in which all the grounds raised by the applicants in the present case have been considered which include their claim of being covered under the judgments in the case of Rajnish Kumar Sharma & others, judgment rendered by Guwahati Bench. They have also reproduced copy of order dated 10.5.2002 in which, after taking into consideration, the earlier judgments, a direction was given to respondents to take a decision on the representations. Liberty was granted to the applicants to supplement the representations, if they wanted. It was held that if after decision on their representations they are found entitled to some relief, the same shall be granted to them. In case the authorities find that the applicants were not entitled to any relief, they shall indicate, in brief, the reasons for coming to that conclusion. Even in the judgment rendered by Guwahati Bench, taken into consideration by the respondent authorities, it was mentioned that the claim for NDA was under consideration, being under scrutiny of the higher authorities. The decision was ordered to be

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filed by the respondents. No rejoinder has been filed. Counsel in both the cases before us are the same. There is no change to the final order dated 6.2.2003. In such factual matrix, applicants cannot maintain the present cases for grant of NDA.

6. A close scrutiny of both the cases would indicate that applicants are seeking quashing of two orders which have the effect of denying payment of NDA to them. They seek a mandamus with a declaration that they are entitled for NDA, alongwith arrears from the date it was stopped. In the alternative, orally it has been mentioned that at least they should be allowed payment of NDA w.e.f. the date it was due, upto the date of final decision taken by the respondents in view of the orders passed by the Guwahati Bench.

7. After considering the rival contentions and the law applicable on this aspect, we would not express any opinion on the orders passed by the Guwahati Bench. It is more in the nature of an interim order to continue payment of NDA till a final decision is taken by Union of India. That itself does not lay down a binding precedent enforceable under the law, to be enforced by other benches of the Tribunal. No rights of applicants in that case have been discussed or held to be available. In any case, a judgment, to be a binding precedent for other courts, must lay down a

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(OAS 1241-PH/02 & 1299-PH/02)

...expeditiously. Only interim directions were issued till such decision is taken by the respondents, they should continue payment of NDA to all applicants. Union of India Ministry of Defence considered all these claims, along with orders dated 6.7.1994. It has been mentioned that B categories of employees of MES were redesignated as FPM in compliance with directions of CAT, Bombay Bench. Thereby, there are no separate categories of officials now with designation of PHO and DES. FPMs were brought in shift duties. They were prescribed duty per day, being not more than 8 hours. In cases where they are detained for periods longer than 8 hours, they have been held entitled to compensatory off. A decision has been taken that since there is no such category of PHO and DES, it would not be proper to allow NDA to some of the FPMs and disallow the others. It would be discriminatory. It was mentioned that the Supreme Court in its judgment dated 1.8.1997 in SLP (C) No. 25134/94 has upheld the validity of UO dated 12.16.1995, issued by DOP. In this it was held that Chowkidars/Guards belong to such a category whose normal duties contain an element of night duties and, thus, they were held to be not eligible for NDA. Decision has been conveyed that this ratio would apply to the present applicants also. A decision has, thus, been taken not to allow NDA to any of the FPMs. This decision has been conveyed to the applicants in the written statement

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filed by the respondents. No rejoinder has been filed. Counsel in both the cases before us are the same. There is no change to the final order dated 6.2.2003. In such factual matrix, applicants cannot maintain the present cases for grant of NDA.

6. A close scrutiny of both the cases would indicate that applicants are seeking quashing of two orders which have the effect of denying payment of NDA to them. They seek a mandamus with a declaration that they are entitled for NDA, alongwith arrears from the date it was stopped. In the alternative, orally it has been mentioned that at least they should be allowed payment of NDA w.e.f. the date it was due, upto the date of final decision taken by the respondents in view of the orders passed by the Guwahati Bench.

7. After considering the rival contentions and the law applicable on this aspect, we would not express any opinion on the orders passed by the Guwahati Bench. It is more in the nature of an interim order to continue payment of NDA till a final decision is taken by Union of India. That itself does not lay down a binding precedent enforceable under the law, to be enforced by other benches of the Tribunal. No rights of applicants in that case have been discussed or held to be available. In any case, a judgment, to be a binding precedent for other courts, must lay down a

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Expediently. Only interim directions were issued that till such decision is taken by the respondents, they should continue payment of NDA to the applicants. Union of India Ministry of Defence considered all these claims, alongwith orders dated 6.7.1994. It has been mentioned that B categories of employees of MES were redesignated as FMS in compliance with directions of CAT, Bombay Bench. Thereby, there are no separate categories of officials now with designation of PHO and DES. FMS were brought in shift duties. They were prescribed duty per day, being not more than 8 hours. In cases where they are detained for period longer than 8 hours, they have been held entitled to compensatory off. A decision has been taken that since there is no such category of PHO and DES, it would not be proper to allow NDA to some of the FMS and disallow the others. It would be discriminatory. It was mentioned that the Supreme Court in its judgment dated 1.6.1997 in SLP (C) No. 25134/96 has upheld the validity of UO dated 12.12.1995, issued by DOP. In this it was held that Chowkidars/Guards belong to such a category whose normal duties contain an element of night duties and, thus, they were held to be not eligible for NDA. Decision has been conveyed that this ratio would apply to the present applicants also. A decision has, thus, been taken not to allow NDA to any of the FMS. This decision has been conveyed to the applicants in the written statement

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-12- (1991) 1241-PH/702 & 1277-PH/702

(i) Govt. of Tamil Nadu and another vs. S. G. Ganesan & others : 1979 SCC (L&S) 493;

(ii) Haryana Agro Industries vs. Govt. of Haryana : 1991(3) SCT page 141; and

(iii) Hand Lal and others vs. State of Punjab : 1996(2) Recent Service Judgments 131 (a DB decision of Punjab & Haryana High Court) = 1996(2) SLR 230.

In the last two cases, it has been held that Court cannot give mandamus for payment of a concession which stands withdrawn. Even if such a concession (allowance) is given under a statute, it remains a concession and does not create a vested right in its beneficiaries. In the case of Hand Lal Sharma vs. State of Punjab : 1996(2) SLR 230, placing reliance on AIR 1979 SC 1620, it was held that no one needs to be heard before withdrawing a particular concession extended by the Govt. Payment of HRA, allotment of houses, and grant of medical facilities were mentioned as some of the concessions which are not part of service conditions. Such concessions can be withdrawn, curtailed/reduced by the Govt. at any point of time depending upon exigencies of service/administrative compulsions which may be financial or otherwise. Similar views were expressed in the case of Shar Singh & others vs. Union of India and others : (1979) 51 AIR 744 and in SRI vs. Haldia : (1971) 71 AIR 224 on interference by Courts in the decision of the Govt. It has recently been reiterated in the case of Federation of Railway

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11- (1991-1241-PH/62 & 1997-PH/62)

provision of law. Otherwise, it remains an order binding on the parties in that particular case only.

6. Though there are two prayers made in these cases, one relating to quashing of the orders under which payment of BDA has been stopped to them and the second relating to declaration of entitlement of the applicants to payment of BDA, and, thus, a consequential mandamus. In fact, it remains a challenge to a policy decision of the Govt. under which B category of industrial workers have been merged, only one category of ECHs out of which 6 were never in receipt of BDA. Secondly, the applicants are seeking a declaration that the policy decision is bad and that stoppage of payment of this particular allowance should be declared illegal with directions to make payment of the same.

7. While dealing with cases of employees, this Tribunal never sits in the capacity of an appellate authority. Secondly, policy decisions of Govt. are never interfered with unless the same are shown to be either ultra vires the provisions of the Constitution or statutory provisions, or malafide, etc. Reference can be made to the following judgments on this aspect:

1. State of Madras v. Gunanadha Svarup (1969) 1 SCR 1000
2. State of Madras v. Gunanadha Svarup (1969) 1 SCR 1000
3. State of Madras v. Gunanadha Svarup (1969) 1 SCR 1000

of some claims or to substitute its own wisdom for the discretion vested by law in the Govt. or such Body. It was so held in Vice. Chancellor vs. S.K. Ghose : AIR 1954 SC 217. This applies to the facts of the present case fully. In the case of UOI vs. Tej Ram : (1991) 3 SCC Page 11 it has been held that no Court can compel the Govt. to change its policy involving an expenditure. In the case of Rewa Coal Fields vs. Central Govt. : AIR 1967 MP 174, it has been held that no mandamus be issued on the grounds that the respondent Govt. has reviewed its previous orders. Applicants are, in fact, seeking such a relief as earlier two administrative orders of 1972 and 1974 on NDA have been now reviewed. Thus, in the opinion of this Tribunal, applicants cannot, even otherwise, seek such a relief from the Court against the Govt. on a policy decision. It cannot be said to be discriminatory also.

11. On the claim of the applicants that at least they should be allowed payment of NDA in view of Government Bench order dated 7.11.1963, can also not be accepted. As discussed above, there was no vested right in the applicants for payment of such allowance, particularly when a decision has been taken to stop its payment in October 1987. Secondly, the directions given by the Government Bench did not lay down a binding precedent and hence were not

-15- (U) 1241-DE/02 & 1277-DE/02

Officers Association vs. UOI : 2005 SCC 207. It has been held that policy action of the Govt., unless shown to be inconsistent with the Constitution and the laws or totally arbitrary or irrational, is not subject to judicial review. This proposition of law would be fully applicable to the facts of the present cases while merging B categories, including the two which were in receipt of HRA under the administrative orders only, ^{excepted in} They have their service conditions provided. They have all been included in the skilled categories with provision of promotional avenues with a common designation giving them additional benefits than what were they earlier enjoying. A decision has been taken that the category, known as BEM, now is not entitled to grant of HRA. The Court need not interfere in the same. Nothing has been shown to be violative of the provisions of law or any provision of the Constitution.

18. While seeking a mandamus from a Court of law, a litigant is required to prove that there is a right vested in him and a legal duty in the respondents to grant him what he is praying for in the OA. If it is not a vested right, being one of the conditions of his service, but is only discretionary, mandamus may be refused. Mandamus is to compel performance of legal duty on the part of the Govt. or a body entrusted with such duties. Court does not sit in appeal so as to examine the facts

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-13- (U) 1241-PE/62 & 1295-PE/62)

in the nature of interim directions.

For the reasons discussed above, both these charges are dismissed.

JASPER S. DODD (1941-1941)
DODD (J)

11/11/2008

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Filed by me applicant
through Subrota Nath
Advocate
06/12/04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 303 /2003

Shri N.K. Chanda & Ors.

-Vs-

Union of India & Ors.

-AND-

In the matter of :

Rejoinder submitted by the applicants in
reply to the written statement submitted by
the respondents.

The humble applicant above named most humbly and respectfully state as under: -

1. That with regard to the statements made in paragraphs 3, 6 and 8 of written statements are categorically denied and further the applicants beg to say that the decision of the respondents not to pay Night Duty Allowances to the applicants only on the alleged ground that the applicants have been redesignated as F.G.M and the F.G.M's were not included in the list of categories who were granted Night Duty Allowances by the Govt. of India. In this connection it may be stated that although the applicants have been redesignated as FGM from the cadre of P.H.O but the nature of duties and responsibilities has not been affected in any way even after the redesignation, the applicants are discharging till date the same duties and responsibilities which are entrusted to them after their redesignation to the post of FGM. As such decision of the Govt. of India, Ministry of Defence to

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the extent that benefit of night duty allowance should not be extended to the applicants is highly arbitrary, illegal, unfair and such contention of the respondents is violative of Article 14 of the Constitution of India.

Non-inclusion of the category of FGM in the letter dated 16.07.99 circulated vide office order dated 19.09.99 cannot be a ground for denial of night duty allowance to the applicants. It is further stated that there was no reasonable ground assigned by the respondents for non-inclusion of the category of FGM for their entitlement for payment of night duty allowances. The above decision of the respondents Union of India is in violation of Article 14 of the Constitution. More so in view of the fact that the respondents nowhere denied in the written statements that the present applicants are discharging the same duties and responsibilities even after their redesignation as FGM.

The decision of the learned CAT, Chandigarh Bench in O.A. No. 1241-PB of 2002 and O.A. No. 1299-PB of 2002 is contrary to the findings of the Hon'ble Tribunals order dated 25.10.2000 passed in O.A No. 218/2000 by the learned CAT, Guwahati Bench. The relevant portion of the order dated 25.10.2000 passed in O.A No. 218/2000 is quoted below:

"4. Written statement has been filed on behalf of the respondents. The respondents admitted that the applicants are discharging similar nature of duties, having also not disputed that the applicants are attending their night duties. The respondents, however, submitted that though the nature of duties remained the same the FGM were not categorized in the list of the Government order for grant of NDA and accordingly the case of the applicants were taken up with the Government of India, Ministry of Defence for clarification regarding the admissibility of NDA to the FGM.

5. From the facts alluded above, it emerges that the applicants were provided with some extra allowance of 10 paise per hour for rendering night duty. Since they are discharging the same and similar nature of duty as FGM as they were earlier as PHO, it is difficult to discern the rationale behind the refusal of the allowance for NDA for similar duty, the allowance was provided against the services rendered. The matter has already been referred to the Ministry of Defence and it is expected that the Ministry of Defence would take up an appropriate decision as per law for providing the Night Duty Allowance for rendering such duty as was done earlier."

It is quite clear from the above observations and findings of this Hon'ble Tribunal that the present applicants are legally entitled to the benefit of night duty allowances. As such the decision of the Chandigarh Bench is distinguishable, the learned Chandigarh Bench upheld the unfair decision of the Government regarding the night duty allowance to the redesignated Fitter General Mechanics. The learned Chandigarh Bench held that since payment of night duty allowance is a matter of policy decision of the Govt. of India, as such Tribunal should not interfere with the decision of the Government and accordingly upheld the decision of the Government. But the learned Chandigarh Bench missed the basic point involved in the instant case for denial of night duty allowance to the applicants. Govt. of India denied the benefit to the applicants on the sole ground that the applicants have been redesignated as FGM along with other industrial categories and the said FGM were not included in the list of categories which were issued by the Govt. of India for entitlement of night duty allowance and it is further contended by the respondents Union of India that the applicants has been

redesignated as FGM by the Government for providing them better promotional facilities. Therefore it is quite clear that the decision of the Govt. regarding non-extension of benefit of allowance to the applicants is not based on fair policy, as because the applicants even after their redesignation discharging the same duties and responsibilities. Hence the action of the respondents is unfair. The case of the Supreme Court cited by the respondents Union of India is altogether different as well as distinguishable. The Hon'ble Apex Court upheld the decision of the Govt. of India for non payment of night duty allowance to the Chowkidars and Guards but the present applicants were working as Pump House Operator and even after their redesignation they are continuing their duties and also performing their duties at night as such they are entitled to the benefit of night duty allowance. The respondents Union of India wrongly interpreted and decided the whole issue of night duty allowance so far the applicants are concerned. The duties and responsibilities of the applicants cannot be treated at par with Chowkidar and Guards. Hence the cases of the present applicants are different than the case of the Chowkider and Guards. Moreover providing a better promotional avenue to a particular class of employees does not entitle the respondents to curtail an existing benefit which was extended in the nature of an allowance which they were enjoying all along in the cadre of PHO.

2. That with regard to the statements made in paragraphs 12, 13 and 14 the applicants deny the correctness of the contentions made in the written statement to the extent they have adopted any fair policy who disentitled the benefit of Night Duty Allowance to the applicants. The present applicants are not working as night guards in the establishment of the respondents, as such decision of the Supreme Court with regard to the Night Duty Allowances to the case referred by the

respondents cannot be made applicable in the case of the present applicants. DOPT circular referred by the respondents also relates to chowkidars since the present applicants are not chowkidars as such the said circular is not applicable in case of the present applicants. Moreover, redesignation of the applicants as FGM cannot take away the benefit of Night Duty Allowance as because after the redesignation as FGM the particular category of employees are still discharging the night duties and there is no change in the nature of works, duties and responsibilities. As such, the benefit of Night Duty Allowances cannot be taken away so long nature and duties of the present applicants remain same. It is categorically submitted that the DOPT circular dated 12.10.1995 has no relevancy with the instant case of the applicants.

The applicants further submit that the judgment of the Chandigarh Bench is *per incuriam* and the same cannot be made applicable in case of the present applicants when there is a categorical finding of this Hon'ble Tribunal in O.A. No. 218 of 2000 decided on 25.10.2000 (Annexure-III of Original Application) regarding Night Duty Allowance. Hence the decision of this Bench is binding in nature as such decision of the Chandigarh Bench has no application in the instant case of the applicants. The decision of the Chandigarh Bench is further distinguishable on the ground that the Court has the power to review an unfair policy of the Government which is violative of Article 14 and 16 of the Constitution of India. So far the contention of the respondents that other categories which were also redesignated as FGM never receipt Night Duty Allowance at any point of time, the said averment of the respondents supports the case of the present applicants as because other categories which who were redesignated as FGM other than the PHO/MPA never performed night duties in

connection with their duties. As such, question of payment of NDA in respect of other categories of FGM has no bearing with the duties and responsibilities of PHO/MPA (now redesignated as FGM), as such case of the applicants are distinguishable in fact as well as in law.

Moreover, in the written statement filed by the respondents Union of India in O.A. No. 218/2000 before this Hon'ble Tribunal it is categorically admitted by the respondents that the present applicants still performing night duties.

The applicants further like to draw the attention of the Hon'ble Court to the Office Memorandum issued by the DOPT vide it's O.M No. 12012/4/86-Estt (Allowance) dated 9th Oct'1989, wherein some criteria has been laid down and the applicants are squarely covered following the guidelines prescribed by the aforesaid O.M for payment of night duty allowances with arrear monetary benefit. Moreover, the applicants have not committed any fraud at any point of time, as such, they are also entitled to refund of illegal recovery made by the respondents Union of India.

In this connection it may be stated that it would be evident from the Central Water Commission's letter bearing No. A-12014/1/91 Estt. VIII/666 dated 27.05.2003 wherein it is clarified by the Govt. of India more particularly by the DOPT that only Chowkidars are not entitled to payment of night duty allowances. Therefore the said decision cannot be forcibly imposed upon the present applicants for the sake of denial of night duty allowance. The 5th Pay Commission says in its report in para 52.23 that Chowkidars are not deployed round the clock whereas applicants are deployed round the clock as such the applicants are entitled to night duty allowances. This finding also supports the case of the present applicants who are not chowkidars.

In view of the aforesaid factual position the Hon'ble Tribunal be pleased to direct the respondents to allow present applicants Night Duty Allowance.

In the facts and circumstances stated above the Original Application deserves to be allowed with cost.

Copy of the letter dated 11.06.03, letter dated 27.05.03 and O.M dated 04.10.89 are enclosed hereto for perusal of Hon'ble Tribunal as Annexure-A (Series).

VERIFICATION

I, Shri Nirendra Kumar Chanda, aged about 56 years, presently working as FGM in the E/M Section, O/O G.E. Air Force, Shillong one of the applicant in the instant application do hereby verify on behalf of that the statements made in Paragraph 1 and 2 are true to my knowledge and I have not suppressed any material fact.

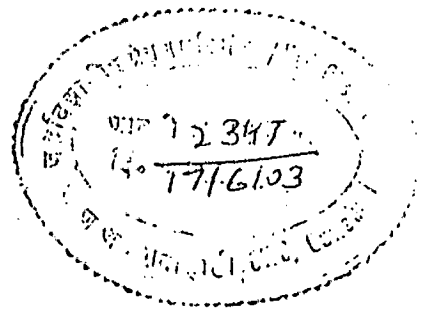
And I sign this verification on this the ____ day of December, 2004.

Nirendra KA Chanda



-66- Annexure - "A" (series) 93

Government of India
Central Water Commission
Brahmaputra and Barak Organisation
Maranatha, Pokhseh, Shillong



Sub: Grant of Night Duty Weightage to Chowkidars in field formations of C.W.C.

Enclosed please find herewith a copy of CWC, New Delhi's letter No.B-12014/1/91-Estt:VIII/666 dated 27th May, 2003 on the above subject for information and necessary action. In this regard it is to say the Chowkidars are not entitled to night duty allowance and all the concerned field formations/units under your control may be instructed accordingly. This is in supersession of the earlier orders on the subject

Encl: As above.

Sureshchandra
(Sureshchandra)
Superintending Engineer (C)

3766
Estt.(M)
for immediate circulation
to all concerned
16.6.03

Suptd. Engineer/Director, HOC/NEIC/MC/M&A Directorate
B&BB ID No.4(P&C)/(1)/2003

2477-80 Dated 11/6/03

ND. A-15017/11(3)/Estt(M)/2002-03/1817-9 dt.19/06/03

✓ Forwarded to the Executive Engineer, MBD/
UPD/LBR, Guwahati/Dibrugarh/Jalpaiguri
for information & necessary action please.

8/196

37222
19/6/03

NO/MBD/GW/Estt-30/3427-33

Munish 19.6.03
Asstt. Executive Engineer
GO. Circle, C.W.C. Ch-24

Copy for information to:-

Dated 20/6/03

- 1/ The Assistant Engineer / M.B. Sub-Division cwe. complex Adabari
Guwahati / Barak Sub-Division cwe. Silchar / Mechanical Sub-Div. cwe.
Adabari Guwahati / P.P. Sub-Div. cwe. Nalbari
- 2/ Accs. Branch. / A.E. Huala / Bill Clerk /

Dr. B. S.
Executive Engineer,
Middle Brahmaputra Division
Central Water Commission

*Tone by
Sureshchandra*

-67-
-10-

Annexure-A (Series)

Most Immediate

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No.A-12014/1/91-EST.VIII
Government of India
Central Water Commission

Sewa Bhavan, R.K.Puram,
New Delhi-110066.
Dated the 27th May, 2003.

To

✓ The Superintending Engineer,
Planning Circle,
Central Water Commission,
1065-68, Type-V, Nil-IV,
Faridabad-121001.

Subj: Grant of Night Duty Weightage to Chowkidars in field formations of CWC.

Sir,

I am directed to refer to your letter No.16/15/Admn-IV/Part-IV/1872, dated 26.4.2001 on the subject noted above and to say that the matter relating to the entitlement of Chowkidars to night duty allowance has been further examined by the Ministry of Water Resources in consultation with the Department of Personnel & Training who have opined/advised as follows:

"It is clarified that night duty being an inseparable characteristic of the job of Chowkidars no weightage for night duty is admissible to Chowkidars. Vth Pay Commission vide para 52.23 of its report has also not found any justification for grant of Night Duty Allowance to them as according to Vth Pay Commission, Chowkidars are not deployed round the clock, but are only required to perform shift duty which include night as part of their normal responsibilities".

2. From the above advice of the Department of Personnel, it will be seen that Chowkidars are not entitled to night duty allowance. You are requested to issue necessary instructions accordingly to all the concerned field formations/units of CWC in supersession of the earlier instructions on the subject.

3. Action taken may please be intimated to this Commission urgently for apprising Ministry of Water Resources and the Department of Personnel & Training of the position.

Yours faithfully,

1150504 GP
(H.S.Choudhary)
Under Secretary (IV)

EC-IV
EC-2

246

For Lko
and others

Q. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

AL-D
Admn. 2

True Copy
For
Admn. 2

The Government has decided to continue the *status quo* in regard to payment of OTA pending a review of the matter. OTA may be paid on the basis of notional pay admissible to the employee in the pre-revised scale of pay/pay slabs as per the existing order.¹

NIGHT DUTY ALLOWANCE

Eligibility

Night Duty Allowance is given to the employees—

- (i) whose basic (pre-revised) pay is up to Rs. 2200 p.m.; and
- (ii) who perform duties between 22.00 hours and 6.00 hours.

Night Duty Allowance is not available where the working hours have been arrived at, after taking into account the night weightage factor of 10 minutes for every hour of night duty performed.²

For the purpose of night duty allowance, a uniform weightage of 10 minutes is given for every hour of night duty performed.

Rate of Night Duty Allowance

- (i) *For continuous and intensive duty:*

Rates per hour are calculated on the basis of current rates of Pay+DA+ CCA divided by number of working hours in a month.

- (ii) *For intermittent duty :* 2/3 of the rates worked out in (i) above.

1. D.O P.&T., O.M. No. 21017/3/97-Estt. (Allowances), dt. 21.11.1997 (Annexure 4.II).

2. D.O P.&T., O.M. No. 12012/4/86 - Estt. (Allowances), dt. 4.10.1989 (Annexure 4.VII).

Text of DOP&T, O.M. No. 12012/4/86-Estt. (Allowances) dt. 4.10.1989

Weightage for Night Duty/Night-Duty Allowance

The undersigned is directed to say that in Paragraph 26.13 of its report, the Fourth Pay Commission has recommended as below on the above subject :

"Government employees eligible for grant of various allowance are given 'Night Duty Allowance' or weightage for hours of work performed during night. It has not been possible for Government to introduce a uniform system of weightage for 'Night Duty' because the requirements of each organisation are different. Suggestions have been received for prescribing uniform standard for 'Night Weightage' and night duty hours. Government may consider the advisability of having the entire matter examined as it has various aspects and implications. In the meantime, Government may relax the rates of night duty allowance".

2. In pursuance of the above recommendation a Committee was constituted in the Department of Personnel and Training associating representative of the major employing Ministries/Departments, where the staff is required to perform night duty. After careful consideration of the Committee's recommendations, the President is pleased to decide as follows :-

- (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 hours.
- (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 as per existing criteria.
- (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 D.A. & C.C.A. 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 an 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 Nurses no further compensation may be allowed for night duty.

3. The existing orders on the subject in so far as they relate to night duty should be deemed to have been modified accordingly.

4. In respect of employees of Department of Telecommunications and Department of Posts separate orders will be issued by the Ministry of Communications.

5. These orders shall come into force with effect from 1.1.1986.

Trilok
for pdwack

Annexure-A (Series)

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