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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

8

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 305/03

R.A/C.P No.

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SECTION OFFICER (Judl.)

Kanta
21/11/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original Application No:- 305 / 03

Contempt Petition No: 2

Name of the Applicant(s): R. Paul Sam.

Name of the Respondant(s): Ms 9 & 2.

Advocate for the Applicant:- Mr. M. Chanda, G. N. Chakrabarti,
" S. Nath, S. Chandra,

Advocate for the Respondat:- CGSC

Notes of the Registry	date	Order of the Tribunal
<p>Application is in form but not in time Computation Petition Filed/ not filed C. I. for Rs. 50/- deposit vide IPO No. 387486 Dated 28.12.03 & 5/1/04.</p> <p>Heard Mr. S. Nath, learned counsel for the applicants.</p> <p>The O.A. is admitted, call for the records. Issue notice to the respondents.</p> <p>List on 6.2.2004 for orders.</p> <p>100/100/100 Member(A)</p>	<p>7.1.2004</p>	<p>mb</p>
<p>App. & envelopes later</p> <p>native as per order dated</p> <p>25.2.2004</p>	<p>25.2.2004</p>	<p>Present: Hon'ble Shri Shanker Raju, Judicial Member</p> <p>Learned counsel for the respondents seeks and is allowed further four weeks to file reply. List it on 26.3.04.</p> <p>Member(J)</p>

June notice as per
 Court's order dated
 7-1-04.
 Notice & order dt. 7/1/04
 Sent to D/Section for
 issuing to respondent
 nos 1 to 5.

No Reply has been
filed

25.3.04

Notice issued vide
NO. 103—107 dated
14.1.04
NL

No Wls has been
filed.

28.4.04

No written statement
has been filed.

26.04

4.8.04
W/s filed by
the Respondents.

4.10.04

W/s filed by the
Respondents. Reporinder
not yet filed. The
case is ready for hearing.

Ans.

26.3.2004

On the prayer of counsel for
the respondents four weeks time is
given to the respondents to file
written statement. List on 29.4.04
for orders.

KV Bhalade
Member (A)

mb

29.4.2004

Four weeks time is given to the
respondents to file written statement.
List on 3.6.2004 for orders.

KV Bhalade
Member (A)

mb

3.6.2004

List on 30.6.2004 for orders.
Meanwhile, the respondents may file
written statement.

KV Bhalade
Member (A)

mb

13.8.2004

On the plea of counsel for the
applicant, the case is deferred. List
again on 1.9.2004 for hearing.

KV Bhalade
Member (A)

mb

01.09.2004

On the plea of counsel for the
applicant the case is adjourned. List
on 3.9.2004 for hearing.




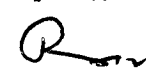
KV Bhalade
Member (A)

mb

3.9.04

There was a reference
Adjud 1 - 4.10.04.

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la.

Notes of the Registry	Date	Order of the Tribunal
	6.10.2004	Present : The Hon'ble Mr. Justice R.K. Batta, Vice-Chairman. On the request of learned Advocate for the applicant Mr. M. Chanda, sādjour- cedr to 8.12.2004 for hearing.  Vice-Chairman
7.10.04 Rejoinder submitted by the applicant.	mb 16.12.04	None for the applicant. The matter was initially fixed on 17.12.04 and was preponed to today. Matter be listed again on 17.12.04.  Vice-Chairman
	pg 17.12.04.	Present: Hon'ble Mr. Justice R.K. Batta, Vice-Chairman. Heard Mr.M.Chanda learned counsel appearing on behalf of the applicant and Mr.A.Deb Roy, Sr.C.G.S.C. for the Respondents. Both the learned counsel for the parties have placed before me two judgments, one of Guwahati Bench in <u>Rishikesh Paul & Others, Vs. Union of</u> <u>India & Others in O.A.No.218 of 2000.</u> , which was decided on 25th Day of October, 2000 and another Judgment of the Chandi- garh Bench of the Tribunal in <u>Lakhwinder</u> <u>Singh and Others, Vs. Union of India &</u> <u>Others and other connected applications</u> <u>namely 1241 of 2002 and O.A.No.1299 of</u> <u>2002 which</u> was decided vide Judgment dated 11th July, 2003. In Rishikesh Paul's case decided by this Tribunal, the issue was relating  contd/-

17.12.04. to admissibility of Night Duty Allowance to Pump House Operator (PHO) now redesignated, as Fitter General Mechanic (FGM). The stand taken by the Respondents was that on redesignation of posts under category of FGM, who did not figure in the list for grant of NDA, they are not entitled to Night Duty Allowance. After taking into consideration that the matter has already been referred to Ministry of Defence and it was expected that Ministry of Defence would take up appropriate decision, directions were given to ^{the} ~~the~~ effect to the Circular dated 17.2.2002 issued by the Senior Accounts Officer so far as applicant therein are concerned.

The decision of this Bench of the Tribunal was considered by the Chandigarh Bench of this Tribunal in Lakhwinder Singh's case and the view was taken that the order passed in the case of Rishikesh Paul was in the nature of interim order while disposing of main O.A. taking into account that the matter had already referred to Ministry of Defence, It was further held therein that the said order passed by this Tribunal were only relating to parties. The Chandigarh Bench came to the conclusion that the Pump House Operator redesignated as Fitter General Mechanic are not entitled for Night Duty Allowance. This Bench in Rishikesh Paul's case had, however, made the following observations:-

" 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 would take up an appropriate decision as per law for providing the Night Duty Allowance for rendering such duty as was done earlier."

R - contd/-

17.12.04.

The present applicants claim that even after redesignation they are performing ^{night} input duty and as such are entitled to Night Duty Allowance.

In view of the observations quoted above, there is apparent conflict in the views expressed by two Benches of the Tribunal and as such I am of the opinion that the matter be placed before Hon'ble Chairman, so that the conflict can be resolved on the issue, "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".

In view of the above, the matter be placed before the Hon'ble Chairman for further appropriate orders in the matter.


Vice-Chairman

lm

~~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

Handwritten:
27/5/05
M.V. Srinivas
Adl. G.C.C.

Handwritten:
R
Subanta Kumar
93/8 Adhikari

Handwritten:
25.01.05
Copy of the order
has been sent to the
Office for issuing the
order to the L/Advocate
for the parties.
H.S.

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.
Prahlanan, 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.


Member


Vice-Chairman


Chairman

nkmm

Office Notes

Date

Order of the Tribunal

17.5.2005

Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order.

Mr. P. P. P.
Member

Mr. P. P. P.
Vice-Chairman

mb

13.6.05

Copy of the Judgment
handed over to the
L/A advocates for the
parties.
JH

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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.



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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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 assessment of the prevailing situation. The Supreme Court held ^{that} 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



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

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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.

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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.

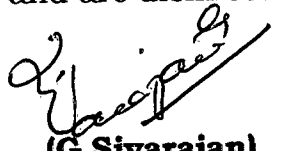



31. Since this Tribunal has examined the matter, we find no reason to remit the matter back for re-hearing as that would be an idle formality.

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.


(K.V. Prahladan)
Member (A)


(G. Sivarajan)
Vice-Chairman(J)


(V.S. Aggarwal)
Chairman

/NSN/

19/10 DEC 2003
 গুৱাহাটী বেঞ্চ
 Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O. A. NO. 305 / 2003

Sri Rishikesh Paul & 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 from Pump House Operator (PHO) to Fitter General Mechanic (FGM). 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.

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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

Rishikesh Paul

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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.

Applicants filed O.A.No.218/2000 before the Hon'ble CAT, Guwahati challenging the legality of the order. (Annexure-II)

25.10.2000-The CAT, Guwahati passed its judgment and order in O.A.No.218/2000 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. (Annexure-III)

18.08.2003-Respondents issued speaking order No.1151/CAT/OA-218/2000/126/E1A dated 18.08.2003 declaring that the applicants are not entitled to NDA on their being redesignated as FGM and stopped payment of NDA to the applicants w.e.f.01.07.2003. (Annexure-IV)

Hence this O.A before the Hon'ble Tribunal.

PRAYER

8. Relief(s) 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.

Rishikesh Paul

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8.1 That the impugned speaking order no.1151/CAT/OA-218/2000/126/E1A dated 18.08.2003 and also the letter dated 17.02.2000 issued by the respondents be declared as void-ab-initio.

8.2 That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to get NDA, even after being redesignated as FGM.

8.3 That the respondents be directed to pay NDA to the applicants w.e.f 06.07.1994 i.e. since redesignated as FGM, and refund the amount the recovered from the applicants as overpayment of NDA immediately.

8.4 Cost of application.

8.5 Any other relief or reliefs to which the applicants are entitled to, as the Hon'ble tribunal deems fit and proper.

9. Interim order prayed for.

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

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

Pishikesh Patel

29
Filed by the Applicant
Through Surjit Choudhury
Advocate
on 29.12.03

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

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

Title of the case : O. A. No. 305 /2003

Sri Rishikesh Paul & Others : Applicants

-Versus -

Union of India & Others : Respondents.

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Date 29.12.03

Filed by

Surjit Choudhury
Advocate

Ri'shikesh Paul

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

O. A. No. 305 /2003

BETWEEN

1. Sri 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 Machanics in the office
of Garrison Engineer, Shillong)

...Applicants

-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. Controller of Defence Accounts (pay)
Uday Vihar, Narengi, Guwahati-21
4. The Garrison Engineer
Shillong.
5. The Commander works Engineer

R. Rishikesh Paul

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Shillong-11

...Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned speaking order No.1151/CAT/OA-218/2000/126/E1A dated 18.08.2003 issued by the respondent no.5 stopping the payment of night Duty Allowance(NDA) for the second time w.e.f 01.07.2003 to the applicants arbitrary which they restored earlier following the passing of the Judgement and order dated 25.10.2000 in O.A No 218 of 2000 by this Hon'ble Tribunal and also against the non-refund of the amount of NDA recovered from their salary on the plea of overpayment.

2. Jurisdiction of the Tribunal.

The applicants declare that the subject matter of this 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.

Rishi Kishore

4. Facts of the Case.

4.1 That the applicants are the citizens of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. All the applicants are presently working as Fitter General Mechanics, (in short FGM) H.S. II under the Garrison Engineer (P), MES, Shillong.

4.2 The applicants pray for permission to move this application jointly in a single application under Section 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules 1985 as the reliefs sought for in this application by the applicants are common, therefore they pray for granting leave to approach the Hon'ble Tribunal by a common application.

4.3 That the applicant no.1 was initially appointed as Mazdoor in the year 1971, under the Commandar Works Engineer, Shillong. Thereafter he was promoted to the post of Motor Pump Attendant in the year 1983. The applicant no.2 was initially appointed as Mazdoor in the year 1967 under Commandar Works Engineer, Shillong. Thereafter, he was promoted to the post of Motor Pump Attendant. Thereafter the post was re-designated as Fitter General Mechanic following the order of Government of India issued bearing letter No. 6(1)/94/D(W-II), dated 6th July, 1994. In the said letter dated 6th July 1994 the Government of India,

Re 'Shi' Kesh Paul

Ministry of Defence, New Delhi further stated that the re-designation as stated above would be entitled these categories for promotion to highly skilled grades as per the present benchmark percentage. It is further contended in the said letter that E-in-C's Branch will initiate action to amend the recruitment rules accordingly. And detail administrative instructions regarding training of the tradesman and their deployment trade tests for considering suitability/eligibility for higher grades etc. shall be issued by the E-in-C's Branch. It is further stated that with the concurrence of Ministry of Defence (Finance Division) and the aforesaid letter dated 6.7.1994 was duly circulated by the Government of India, Ministry of Defence to all the Commands for further necessary action. Be it stated that both the applicants were promoted to the cadre of Motor Pump Attendant during the year 1981 to 1983.

- 4.4 That consequent upon the redesignation in the year 1994 the N.D.A become admissible only to those categories of staff who were enlisted in the government order issued by the ministry of Defence wherein the category of FGM was not included and as such the FGM s become non-entitled to NDA which they had been getting prior to their redesignation.
- 4.5 That the FGM not being included in the list notified by the Government, The Army headquarter, eastern Command took up the matter with the Ministry of Defence so that

Re'shikesh Paul

the category of FGM might be included in the said list for the purpose of NDA, which is evident from the letter of the Engineer-in-Chief, Eastern Command bearing No. A/20050/NDA/E1C (3) dated 14th July, 1999

(Copy of letter dated 14.07.1999 is annexed hereto and marked as **Annexure-I**)

4.6 That it is stated that the present applicants had attained the eligibility for promotion of FGM HS II long back in terms of clause-V of the letter dated 21.7.94 wherein it is stated as follows :

**"5. Highly skilled Grades for Fitter General
Mechanic.**

With the re-designation of the above trades, the personnel would be eligible for promotion to Fitter Gen Mechanic HS II subject to passing Trade Test and having rendered a minimum of three years service. Similarly, the existing Mazdoor, Chowkidar and Safaiwals could be eligible for promotion to Mate Fitter Gen Mech (SS) subject to passing of trade test, and having rendered a minimum of three years service in the grade subject to availability of vacancies.

It is relevant to mention here that the promotion of the applicants to the cadre of FGM HS II now

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effected vide Part -II order No. 19 dated 13th May, 2002 issued by the Garrison Engineer (P), Shillong, granting the benefit of promotion with effect from 15.2.2002 only in the light of the instructions contained in the order of letter dated 21.7.1994. Therefore, it could be presumed that the present applicants were eligible for promotion to the cadre of FGM HS-II on the date of issuance of letter dated 21.7.1994 and vacancies were also available out of 35% quota reserved for promotion as an one time measure as per order contained in the letter dated 21.7.1994.

In view of the above factual position and since the applicants have passed the Trade Test conducted only on 7th June 2001 and also on considering the fact that they have now been promoted to the cadre of FGM HS II after the process of selection, therefore, there is no difficulty on the part of the respondents to grant the antedated promotional benefit in the cadre of FGM HS II at least with effect from 31.3.1995 as granted to their other counterparts working in different regions of the country.

- 4.7 That suddenly the controller of defence Accounts (CDA) vide his letter no pay/024/IV/PC/86-VII dated.17.02.2000 stopped the payment of NDA to the applicants forthwith and further directed to recover the amount of NDA paid to the applicants after 06.07.1994 i.e. the date from which they were

R. Shikesh Paul

redesignated as FGM. Accordingly, the recovery of NDA already paid to the FGM s after 06.07.1994 were started from their salary for the month of June, 2000 without issuing any prior notice or providing any reasonable opportunity to the applicants of being heard in violation to the principles of natural justice and procedure established by law.

(Copy of letter-dated 17.02.2000 is annexed hereto as Annexure-II)

- 4.8 That it is stated that due to non consideration of the promotion of the present applicants within the time schedule contained in the Government order dated 21.7.1994 the present applicants incurring huge financial loss each and every month, every day whereas counterparts of the applicants earning higher salary as because their basic pay in the scale of Rs. 1200-1800 (revised Res. 4000-6000) in fact has gone very high but the present applicants are much below in the slab of the aforesaid scales due to non fixation of pay with effect from 31.3.1995. As such, applicants are highly discriminated in the matter of promotion to the cadre of FGM HS II and the action and inaction of the respondents is violative of the Article 14 of the Constitution in as much as the Government policy has been implemented in selective areas on pick and choose basis and on the basis of the said Government policy contained in the letter dated 21.7.1994 the present applicants have been promoted to the cadre of FGM HS II

Rishi Keshav

only with effect from 15.2.2002 vide P.T.O. No. 19 dated 13.5.2002.

4.9 That consequent upon the sudden discontinuation of NDA to the applicants and recovery there of in an arbitrary manner, the applicants approached the Hon'ble Central Administrative Tribunal (CAT), Guwahati through O.A.No 218 of 2000 challenging the legality of such action of the respondents. The Hon'ble CAT after examining the case was pleased to pass its judgment and order dated 25.10.2000 in O.A.No 218 of 2000 with the observations/directions as quoted below:-

"-----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.

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

Rishikesh

the senior Accounts Officer so far the present applicants are concerned."

(Copy of judgment and order dated 25.10.2000 is annexed hereto and marked as **Annexure-III**)

4.10 That pursuant to the judgment and order dated 25.10.2000, the applicants however continued to get the NDA in terms of the said order.

4.11 That thereafter, the Respondents issued the impugned Speaking order bearing No.1151/CAT/OA-218/2000/126/E1A dated 18.08.2003 whereby it was declared that the applicants are not entitled to NDA on their being redesignated as FGM and accordingly payment of NDA to them were discontinued w.e.f 01.07.2003 on the following pleas:-

- (a) The 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 the applicants alone would be discriminatory to others who were clubbed together under the new designation of FGM. Hence they were not included in the 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 includes night duty also and as such no special allowance in the name of NDA is

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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 chowkidar/guards being such a category whose normal 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**)

4.12 That the applicants most humbly begs to state that they have been redesignated as FGM from Pump House Operator (PHO) but they are still performing the same duties and responsibilities and attending to night duties as they were doing earlier as PHO s. 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 by adopting the technique of redesignating them as FGM is an unfair lab our practice. As such the contention of the respondents as stated in Para 4.11(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

Rishi Kesh Paul

stated in para 4.11(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 Mechanic (FGM). Hence the aforesaid contentions of the respondents resulting into stoppage of NDA to the applicants and recovery thereof are arbitrary, malafide, unjust, illegal and unfair and against the spirit of the judgment and order dated 25.10.2000 in O.A.No 218/2000 passed by this Hon'ble Tribunal.

4.14 That the applicants beg to submit that due to illegal stoppage of NDA, the applicants have been incurring heavy financial losses and hardships 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 its discontinuation 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.

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

Rishi Keshav

- 5.1 For that, the applicants on their redesignation from 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 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 the CDA and Audits, 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 Govt, 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 any reasonable opportunity to the applicants of being heard of which is a violation of

Re'sh. Resh. Paul

the principles of natural justice and not in accordance with the procedure established by law.

- 5.6 For that this Hon'ble tribunal by its judgment dated 25.10.2000 in O.A No 218 of 2000 have observed that there is no rational behind the refusal of the allowance to the applicants for similar duty.
- 5.7 For that the continuation of NDA to the FGM category was duly recommended by the Army Head quarter, eastern command to the ministry of Defence.
- 5.8 For that the contentions made by the respondents in support of their action in their impugned letter dated 18.08.2003 is not sustainable in the eye of law.
- 5.9 For that the stoppage of NDA to the applicants and recovery thereof, 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 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 effects, departmental

Re'shikesh Paul

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FGM, and refund the amount the recovered from the applicants as overpayment of NDA immediately.

8.4 Cost of application.

8.5 Any other relief or reliefs to which the applicants are entitled to, as the Hon'ble tribunal deems fit and proper.

9. Interim order prayed for.

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

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

10.
This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No. : JSG 387484
ii) Date of Issue : 29.12.03.
iii) Issued from : G.P.O. Gwalahat
iv) Payable at : G.P.O. Gwalahat

12. List of enclosures.

As given in the index.

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VERIFICATION

I, Shri Rishikesh Paul, Son of Harendra Kumar Paul, working as FGM HS II, Office of the HS II, office of the Garrison Engineer, Shillong, one of the applicants in the instant application, duly authorized by the other applicants to verify the statements made in this application and to sign this verification. Accordingly I declare 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 which I believe to be true. I have not suppressed any material fact.

And I sign this verification on this the 29th day of December, 2003.

Ri'shi'Kesh Paul

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

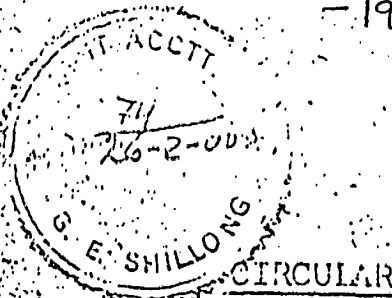
ANNEXURE-1 SR.

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

Clamc. upto May 99

*Noted
Surgit 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 - 793072
- 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. A1/2366-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 LAOs GEs/AAO AGE(I)s.

G.O. has seen.

(S. PRASAD)
SR. ACCOUNTS OFFICER.

Advised
Surgeon General
Advocate
on 29.12.03

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.

*Attested
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 the 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

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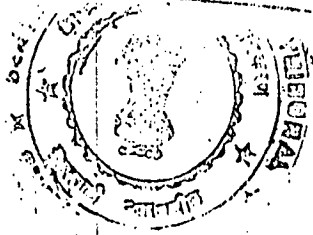
duties. The respondents, however, submitted that though the nature of duties remained the same the FGM were not catergised in the list of the Government Order for grant of NDA and accordingly the case of the applicants were taken up with the Government of India, Ministry of Defence for clarification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

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. 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

18 Aug 2003

MES/229110 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) wcf 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.

Admitted
Surg. General
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(I)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.

(i) 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 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 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)

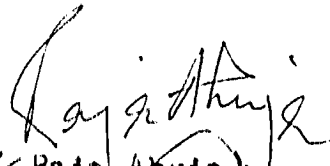
(b) As a result of these orders, there are no category of officials designated as PHO and DES as besides these two six other categories were also merged in the category of FGM. It is also stated that FGM officials are brought on shift duties their prescribed duty per day being 8 hours. In case of their 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 wcf 01 Jul 2003.

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, C
DcWE B/R
Offg CWE Shillong

Copy to :-

E-in-C's Branch (EIC 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

- 27 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

File No. 218/03
(A. DES ROY)
Sr. C. G. S. C.
J. T. Guwahati Bench

OA NO 305/2003

Shri Rishkesh Paul & Others..... Applicants

- Vs -

Union of India and Others Respondents

- AND -

IN THE MATTER OF

Written Statement submitted by the respondents

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

1. That with regard to the statement made in Para 1 It is submitted that as per judgement passed by the Hon'ble CAT Gauhati in OA/218(Copy attached as Annexure I) directing the respondents to take early decisions in the matter of night Duty allowance preferably within three months from the date of order. It has also been directed that the respondents should not give effect to the order dated 17.2.2000 passed by the Sr Account Officer ,CDA Gauhati (Copy attached as Annexure II) So far as the present applicants are concerned .In compliance with the order passed in OA/218 dated 25.10.2000 the respondents paid the NDA to the respondents till 30/6/2003.The decision in stoppage of NDA has since been vide Govt of India ,Ministry Of Defence Letter No PC-90237/8201/EIC(Legal)/66/CAT/D(work) date 6/2/2003 (Copy attached as per Annexure III)The applicants were communicated on the above matter vide CWE's speaking Order 1151/CAT/OA-218/2000/126/EIA date 18/8/2003(Copy attached as per Annexure IV)
2. That with regard to Para 2, 3, 4.1 & 4.2 of the application the respondents beg to offer no comments.
3. That with regard to the statement made in Para 4.3, 4.4, of the application the respondents beg to state that consequent to Govt of India ,Ministry of Defence letter No 6(I) /94/D(W-I) dated 6 July 1994(Copy attached as per Annexure V), the following 8 categories of

-28-

employees of MES were re-designated as Fitter General Mechanic (FGM) in compliance with CAT, Bombay Judgement in OA No 704/90 and with a view to entitling these categories for promotion to highly skilled grades:-

- (a) Pump House Operator.
- (b) Driver Engineer Static.
- © 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).

4. That with regard to the statement made in Para 4.5 of the application the respondent beg to state that Army HQ E-in-C's Br letter no A/20050/NDA/EIC/(3) date 14 July 1999(Copy attached as Annexure VI),has only sought clarification regarding payment of NDA, to the erstwhile PHO and DES operator(now rechristened as FGM).It is also submitted that that the matter of discontinuation of NDA was upheld by CAT, Chandigarh in OA No 12141-PB of 2002 and OA No1299-PB of 2002(Copy of order attached as Annexure VII, please).

5. That with regard to the statement made in Para 4.6 of the application the respondents beg to submit that the subject OA being for grant of night duty allowance, the issue of promotional benefits may please be admitted by the Hon'ble Tribunal in a different OA if the applicants may so desired please.

6. That with regard to the statement made in Para 4.7 of the application the respondents beg to submit that the action of the Senior Account Officer, Office of the Controller Of Defence

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Account(Letter attached as per appendix 'H') was in accordance was in accordance with Ministry of defence policy matter as explain in paragraph 1, above.

7. That with regard to the statement made in Para 4.8 of the application the respondents beg to submit that the subject OA being for grant of NDA, other grievances of the applicants may please be admitted by the Hon'ble Tribunal in a different OA if the applicants so desired please.

8. That with regard to the statement made in Para 4.9 of the application it is submitted that the judgement of the Hon'ble CAT, Gauhati has been complied with vide CWE's speaking order No 1151/CAT/OA-218/2000/126/EIA date 18 Aug 2003.

9. That with regard to statement made in Para 10 of the OA it is submitted that consequent to the above speaking order the payment of NDA was stopped to the applicants with effect from 01/7/03.

10. That with regard to the statement made in Para 4.11 of the application. It is submitted that the respondents have served the speaking order to comply with the decision of the Hon'ble CAT in Guwahati in OA No 218/2000. The speaking order served on petitioner is based on the speaking order issued by MOD in OA 466/PB/02 filed by Shri Madan Lal and 79 others vide letter No PC90237/8201/EIC(LegalC)/66/CAT/D(Work) dated 06 Feb 2003. (Copy attached As Annexure III), extracts of which are enumerated below.

The aforesaid representations have 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-11) dated 06 Jul 1994 and it is observed that vide above mentioned order dated 06.7.94 following 8 categories of employees of MES were redesignated 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:-

(c) Pump House Operator.

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(d) Driver Engineer Static.

© Mechanic Petrol & Diesel Engine.

(i) Driver Mobile Plant.

(j) Operator Earth Moving Machinery

(k) Operator Pneumatic Tools.

(l) Boiler Attendant.

(m) Lift Mechanic (Existing incumbents only).

As a result of these orders, there are no categories 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 the combined category of officials called FGM, grant of NDA to these officials who held the post of PHO & DES earlier would be discrimination 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 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".

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."

11. That with regard to the statement made in Para 4.12 of the application re-designation of erstwhile categories in MES as FGM, was in compliance of CAT Bombay judgement in OA No 704/90. Exclusion of FGM from notified list of categories entitled for NDA in a policy

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decision of Govt of India. It is submitted that the same has been upheld by Hon'ble CAT Chandigarh in OA No 12141- PB of 2002 & OA No 1299-PB of 2002. The Hon'ble CAT Chandigarh Bench has observed in its judgement

“ That while merging 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. Nothing has been shown to be violative of the provision of law or any provision of constitution”

12. That with regard to the statement made in Para 4.13 of the application, it is submitted that FGM as a category is responsible for providing essential services specially water supply to the garrison. The services therefore are such where 24 hours manning of installations is necessary and therefore an element of night is inherent. Therefore as in the case of Chowkidars/Guards, FGMs are not eligible for night duty allowance. Hence it is submitted that the statement of petitioner is untrue and is a result of inability to understand the speaking order in proper perspective. Hence the petition is liable to be dismissed.

13. That with regard to the statement made in Para 4.14 of the application grant of NDA to petitioner has been discontinued by the Govt as a policy decision, for which it is competent and sole authority. Hence the petition is liable to be dismissed.

14. That with regard to the statement made in Para 5.1, of application it is submitted that re-designation from PHO to FGM was in compliance of Hon'ble CAT Bombay judgement in OA No 704/90 to improve career prospects and promotional avenues of various categories and subsequently the Govt as a policy decision has stopped grant of NDA to FGMs.

15. That with regard to the statement made in Para 5.2 to 5.10 of the application it is submitted that element of night is inherent in the duties of FGM. Further after recategorisation, payment of NDA to only two of the erstwhile categories will be unjust and unfair. Further since recategorisation has improved the career and promotional prospects of the FGMs, Govt as a policy decision has stopped payment of NDA to FGM.

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16. That with regard to the statement made in Para No 6 & 7 in application it is submitted that these are matters of record. No comments are offered.

17. That with regard to the statement made in Para 8.1 of the application it is submitted that the speaking order No 1151/CAT/OA-218/2000/126/EIC dated 18 Aug 2003 and the letter dated 17 Feb 2000 are in accordance with the policy of the Govt.

18. That with regard to the statement made in Para 8.2 to 8.5 of the application the matter of discontinuation of NDA has been upheld by CAT Chandigarh OA No12141- PB of 2002 & OA No 1299-PB of 2002. which stated " There was no vested right in the applicants for payment of such allowances particularly when a decision has been taken to stop its payment in Oct 1999 " and the petition /cases were accordingly dismissed by CAT Chandigarh. It is therefore submitted that petition is liable to be dismissed.

19. That with regard to the statement made in Para 9 to 11 of the application, the respondents beg to offer no comments.

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VERIFICATION

I, Shri Chibor Shullai, AEE, Office of
the Garrison Engineers Shillong being
authorised' do hereby solemnly affirm and declare that the statements made in
Paragraphs 1, 5, 4, 6 ~~above~~ being matters of record are true to my
information derived therefore and those made in ^{paras 2, 5, 7 to 19 and} the rest are humble
submission before the Hon'ble Tribunal.

And I sign the verification on this _____ day of June 2004.

Shullai
Chibor Shullai
DEPONENT

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.

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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 the 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

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13 :

duties. The respondents, however, submitted that though the nature of duties remained the same the FGM were not catergised 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.

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

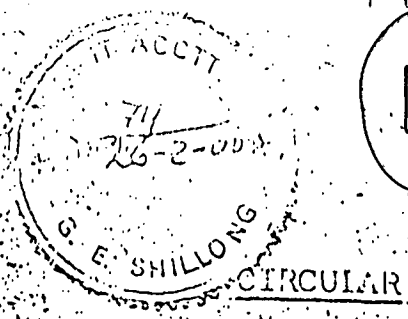
So/ VICECHAIRMAN



Annexure - 27

- 19 -

(11)



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

- To : AAO GE
Shillong - 793072
- 1) AAO Shillong
 - 2) All LAs
 - 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. A1/2366-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/AO AGE(I)s.

G.O. has seen.

(S. PRASAD)
SR. ACCOUNTS OFFICER.

(12)

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Amr-6

III

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

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 duty 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 vide letter dated 13.02.2002 (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/-

- 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 to 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 night duty 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. 248 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 give a similar direction. Accordingly the

Contd... 37.

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3- 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 DOPPT 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 DOPPT orders, whose validity was upheld by the Hon'ble Supreme Court also similarly apply to the applicants in the case under consideration.

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

Shri Madan Lal & 79 others
Applicants of OA No. 466/14/2002
filed in CAT, Chandigarh Bench

(BP Sharma)
Deputy Secretary to Govt of India

(14)

(411)

2. The CWE will make his recommendations and obtain the orders of the Commander Area/Div/Indep Sub Area. Each case will be considered on its merit.

3. The extension of MES mains to serve private buildings or premises in a cantonment station and its environs is governed by Chapter XIII of the Cantonments Act (Act II) of 1924. Two cases arise:—

(a) Where the MES officer in charge of the supply is functioning as the 'officer' see Section 233 (i) of the Cantonments Act (Act II) of 1924 and where the Cantonment Board is not receiving a bulk supply of water from the MES under Section 234-A of the Act:—

(i) The conditions in para 1 will apply to all such extensions whether for supply of water for domestic or non-domestic purposes.

(ii) Whenever possible the extension of MES mains in a cantonment station, for whatever purpose, to serve private buildings or premises—i.e. buildings not being military buildings as defined in Appx O—should be made through the intermediary of a metered supply in bulk to the Cantonment Board.

(b) Where the MES officer in charge of the supply is not functioning as the 'officer':—

(i) The extension of MES mains to serve private buildings and premises with water for domestic purposes is not permitted.

(ii) The extension of MES mains to serve buildings or premises with water for non-domestic purposes will seldom be undertaken but when done will be governed by the conditions in para 1 above.

Civil Departments

4. The extension of MES mains in order to give supply of water to a Central or State Government department is governed by the conditions laid down for private consumers in paras 1 to 3 above.

Electric Supply

5. The extension of MES electricity mains to serve private buildings in any military station is governed by the rules laid down for the extension of water mains in non-cantonment stations (see para 1), with the following additions:—

(a) The Military authorities will not pay for more than 100 feet of service line and this cost will only be met by them when the service line is not the property of the owner/occupier.

(b) The definition of a 'consumer' is given in Section 2 (c) of the Indian Electricity Act; the Government of India represented by the MES is the 'licensee'.

(c) Reference sub-para (b) of para 1 above, the connected loads of the various consumers and the estimated peak will be included in the report.

- (d) For extension of MES electricity mains to buildings and premises of a department of the Central Government, see para 846.

Temporary Electric and Water Connections

6. Temporary electric and water connections may be sanctioned by Station Commanders in special cases, viz., on religious, social and medical grounds, for a period not exceeding 15 days.

7. The procedure governing the sanction for such temporary connections and the recovery of charges therefor will be as under—

- (a) Application will be made in the first instance by the consumer to the Garrison Engineer who will endorse a certificate to the effect that the electric energy/water can be made available without detriment to the normal requirements and forward the application to the Station Commander for approval.
- (b) The consumer will be responsible to get the entire work including the service line, carried out by a licensed contractor to the satisfaction of the Garrison Engineer.
- (c) Connection will be given and the meter installed by the MES.
- (d) A connection fee of Rs. 3 will be charged for every connection. The meter rent will be 50 Paise per day.
- (e) A deposit to cover the charges for anticipated consumption, connection fee, meter rent, etc. will be recovered in advance.
- (f) Charges for electrical/water consumption will be calculated at the all India rate, or the all in cost rate, whichever is higher.
- (g) An agreement will be executed with the consumer by the Garrison Engineer on IAFW-2351.

APPENDIX O

(See Chapter IX and XI)

Rules for levy of charges for Water and Electricity, etc.

General

1. For the purpose of this Appendix a 'military building' is one owned, hired, leased, appropriated or used by the Ministry of Defence.

2. Wherever practicable all paying consumers (military or civilian) occupying or using military buildings (under the control of the MES) provided with water or electricity, which is neither supplied from an MES installation nor obtained by the MES under a bulk supply agreement with a supply company or other supplying agency, will deal direct with and pay the bills of the supply company or other supplying agency for water or electricity so consumed. Such category of paying consumers as may be entitled to any concessional rates as laid down by the Government of India from time to time may claim reimbursement of any excess charges thus paid from the CDA concerned.

3. When MES is the supplying agency, all paying consumers (Military and Civilians) paid from Defence Service Estimates and Civil

1 Substituted vide C.S. No. 85/X/89.

Tele : 5045

Commander Works Engineer
Spread Eagle Falls
Shillong-11

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

(2 Aug 2000)

MES/229110 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.

(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/TV/PC/86-VII dated 17 Feb 2000 informed AAO Shillong, all LAOs and AAOs of GE/AGE(I)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 officers 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.

(i) 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 PIIO 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 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 or 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 DOP'T 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 wcf 01 Jul 2003.

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 Abuja
(Raja Abuja)
Major J.C.
DcWE B/R
Offg CWE Shillong

Copy to :-

E-in-C's Branch (EIC 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

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Annex- V

7545

No.6(1)/94/D(W-II)
Government of India
Ministry of Defence
New Delhi, the 6th July 1994

To
The Chief of Army Staff

Subject: Grant of promotional prospects to industrial workers of MES.

Based on the decision taken by the Government in pursuance of the orders of CAT Bombay Bench in O.A.No.704/90 filed by Shri T. Narayana Murthy & Others, I am directed to convey the sanction of the Government to the following :-

(i) Redesignation of the following jobs as Fitter General Mechanic :

- (a) Pump House Operator
- (b) Driver Engine 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)

The redesignation as above will entitle these categories for promotion to Highly Skilled Grades as per the present bench mark percentage.

(ii) The Upholsterer may be allowed option for induction in Carpenter's trade subject to his passing provide promotional avenues to Caneman which is the feeder category for Upholsterer.

2. No fresh recruitment as Lift Mechanic will be made.
3. E-in-C's Branch will initiate action to amend the Recruitment Rules accordingly.
4. Detailed Administrative instructions regarding training of the tradesman, their deployment trade tests for considering suitability/eligibility, for higher grades, etc. shall be issued by E-in-C's Branch.
5. The expenditure involved shall be debitable to the respective Head of the Defence Services Estimates.

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6. The orders will take effect from the date of issue.

7. This issues with the concurrence of Ministry of Defence (Finance Division) vide their ID No 1248/DFA(WORKS) of 1934.

(Signature)

(D.R. Dhankahi)
Under Secretary to the Government of India

Copy to :

CGDA, New Delhi	- 2 copies	
DADS, New Delhi	- 2 copies	
Dy. Director of Audit Defence Services	- Calcutta/	
Pune/Meerut/Dehradun/Patna	(2 Copies each)	
Controller of Defence Accounts,		
		Eastern Command) 2
		Central Command) copies
		Western Command) (one
		Southern Command) copy
		Northern Command) signed
		Bangalore) in
		Gauhati) ink

E-in-C's Branch/Army HQRs - 50 copies
Finance Division

(21)

No.6(1)/94/D(W-II)
Government of India
Ministry of Defence
New Delhi. 8th July 1994

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CORRIGENDUM

Subject : Grant of promotional prospects to industrial workers of MES.

Government of India, Ministry of Defence letter of even number dated 6th July 1994 on the above subject is amended as under :-

Sub-Para (ii) of Para (i) may be substituted with the following :-

"The Upholsterer may be allowed option for induction in Carpenter's trade subject to his passing the prescribed trade test. This will provide promotional avenues to Caneman which is the feeder category for Upholsterer."

2. This issues with the concurrence of MOD (Finance-works.1) vide their U.O. No.1218-Works.1/94 dated 8.7.1994.

J. Han

(D.R. Dhankani)

Under Secretary to the Government of India

Chief of the Army Staff.

Copy to :

CGDA, New Delhi	- 2 copies
DADS, New Delhi	- 2 copies
Dy. Director of Audit Defence Services - Calcutta/	
Pune/Meerut/Dehradun/Patna	(2 Copies each)
Controller of Defence Accounts, Eastern Command	2
Central Command	copies
Western Command	one
Southern Command	copy
Northern Command	signed
Bangalore	in
Gauhati	ink

E-in-C's Branch/Army HQRS - 50 copies
Finance Division

22

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Received under HQ CESZ Shilling letter
NO 704111P/3017/EIC(2) dt 27 Aug 94 at 147 of 1046

Tele : 3019107

30/11/94

Army Headquarters
Engineer-in-Chief's Branch
Kashmir House
DHQ PO New Delhi-110011.

2 Jul 94

No 91026/FGM/EIC(3)

- Chief Engineer
- Southern Command Pune
- Eastern Command Calcutta ✓
- Western Command Chandimandir
- Central Command Lucknow
- Northern Command C/o 56 APO

Comdt.

- CME Pune
- Madras Engineer Group & Centre, Bangalore
- Bengal Engineer Group & Centre Roorkee
- Bombay Engineer Group & Centre Kirkee

FITMENT OF INDUSTRIAL WORKERS IN MES:
LEFT OUT CATEGORIES

1. A copy of Government of India Min of Defence letter No 6(1)/
nd 4/D(W-II) dated 06 Jul 94 as dated 08 Jul 94 according Govt
Sanction for certain left out categories in Fitment Policy, as a
result of CAT case is forwarded herewith. Implementation orders
are amplified in the succeeding paras:

2.1. Redesignation of Trades

Consequent to issue of above Govt letter, the following
Trades have been redesignated as FITTER GENERAL MECHANIC.

- a) Pump House Operator ✓
- b) Driver Engine 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) ×

2.2. CES Command are advised to issue directions to lower forma-
tions to notify the 'Redesignation' in the respective Unit Part I
Orders as a first step without any further delay. The Redesignatio
should be 'Fitter General Mechanic (SK)'. w.e.f. 6.7.94, without
change in pay structure.

Approved
dated report
on 30/10
by CE/ACE
and
forwarded to
the
Director
for
approval
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3.1. Option to allow Uphosterer for induction in Carpenter's Trade

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The existing Uphosterer may be allowed option for induction in Carpenter's Trade subject to passing of Trade Test of Carpenter (SK) so that the Uphosterer (SK) after induction to Carpenter (SK) shall continue to be considered for promotion up to Carpenter HS I Level subject to passing of Trade Tests at various level. The Uphosterer (SK) when inducted to Carpenter (SK) will be considered as redesignation and not Promotion, without change in pay structure.

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3.2. Caneman.

Similarly the Caneman (SS) Trade which is already a feeder Category for Uphosterer (SK) could be considered for promotion to Carpenter (SK) after promotion to Uphosterer (SK) and passing the Trade Test for Carpenter (SK).

4. No Fresh Recruitment in the trade of Lift Mechanic

The above Govt order now indicates that the existing Lift Mechanic may be redesignated as Fitter General Mechanic (SK). Recruitment of Lift Mechanic has been dispensed with from 06.7.94. CEs Command are advised to issue specific directive in this regard to all Units not to recruit/promote Lift Mechanic from 06.7.94.

5. Highly skilled Grades for Fitter General Mechanic

With the redesignation of the above trades, the personnel would be eligible for promotion to Fitter Gen Mechanic HS II subject to passing of Trade Test and having rendered a minimum of three years service. Similarly, the existing Mazdoor, Chowkidar and Safaiwala could be eligible for promotion to Fitter Gen Mech (SS) subject to passing of trade test, and having rendered a minimum of three years Service in the grade subject to availability of vacancies.

6. Trade Test.

Till the revised RRs and revised Syllabi for Fitter Gen Mech (SK), Fitter Gen Mech (SK), HS-II and HS-I are issued, CEs Command are advised to frame their own syllabi, keeping in view the job requirement. Simultaneously CEs Command are requested to forward Draft Syllabi for the above Trade Test to this HQ by 30 Aug 94.

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7. Promotion to Fitter Gen Mech (SK), HS II and HS I

The existing ratio as per Fitment Policy is 65% (SK) : (HS II) : 15% (HS-I). However, with the introduction of redesignated Trade i.e. Fitter Gen Mech (SK), a few personnel will initially become eligible for promotion to HS II after passing Trade Test. Skilled personnel thus promoted to HS II will

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Annually become eligible for promotion to HS I only after completion of requisite years of service as per Recruitment Rules subject to passing of Trade Test. As welfare measure, it has been decided to allow:

i) 20% promotions to HS II Level

ii) and further 15% promotion to HS II Level against 15% vacancies of HS I.

This a total of 35% (20 + 15) promotions would be made at HS II level only. The promotion of 15% against the vacancy of HS I would be made as a one time measure as a special case before 31 Mar 95. TT and DPC for these 15% vacancies shall be conducted after a clear gap of one month of full utilisation of 20% vacancies. After this dead line, no promotion at HS II Level against the vacancies of HS I would be made under any circumstances. Attention of CEs Command is hereby drawn to Rule 43 of FR according to which excess appointment in a lower rank/grade may be made against vacancies left unfilled in a higher rank/grade. For each vacancy in a higher rank/grade only one extra appointment in a lower rank/grade is admissible.

4.12.31 Nov 95

Inter-Se-Seniority

Consequent on redesignation of the above Trades, a doubt may arise as to how the Inter-Se-Seniority is to be fixed between these trades. It is clarified that inter-se-seniority will reckon from the date of their placement in the scale of Rs. 260 - 400 (provised). In case the date happens to be similar for two or more individuals, seniority will count on the basis of length of service in the next below grades. If this also happens to be the same the date of birth will be the criteria. In case of a tie up between a direct recruit and a promotee, the promotee will be the Senior. The basis of fixing inter-se-seniority as aforesaid will equally apply to respective Mate (SS) Trades. A combined seniority as per their placement be maintained for the purpose of promotion.

New Recruits:

Future entry into trade, made after exhausting the promotional and other avenues, will be as Fitter Gen Mech (S) at Semi Skilled level with ITI qualification in terms of GOI Min of Defence letter No. 3310/DS(C&M)/Div-1/84 dated 15.10.84. The newly inducted direct recruits if any will be recruited in the Semi-skilled grade and on satisfactory completion of 2 years of Service in that Grade will be considered for promotion to the skilled Grade by DPC. Please refer para 3 of this letter No. 90270/89/EIC dated 11 Jan 85.

10. Posting as per CRIC 73/73

Personnel posted from one CWE Area to another will have Seniority from the date of TOS in new Unit (under different CWE) for the purpose of promotion only. Past service rendered in the former CWE area, will not repeat not, count for the purpose of promotion since Industrial Personnel are on the area based Seniority.

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11. Effective date of promotions:

The subject Govt orders are effective from 06 Jul 94. All the existing tradesmen referred to in para 2.1 above will be redesignated as Fitter Gen Mech (SK) from 06 Jul 94. However, effective date of their further promotions to EIC would be on the date of assuming new appointment. Under no circumstances the effective date would be given as 06 Jul 94 for the new appointment.

12. CAT Cases

In the past there have been many CAT cases due to wrong implementation of Three Grade Structure. Further, in certain cases the new recruits were given directly the skilled Grade instead of inducting them at the Semi-Skilled Grade for 2 years. As such strict instructions be issued by CEs Command for the implementation of the above orders meticulously, without any deviation. Any lapse on the part of officials responsible will be viewed seriously and stern action taken against them. In case of any doubt, the Unit may refer the cases to respective CEs Command/CE Zone, who in turn will refer such cases (if not resolved at their level) to this HQ for a decision.

12. Deployment of personnel after re-designation

There will be no change in the existing deployment of above personnel, even after their redesignation as Fitter Gen Mech for the time being. However, in due course of time all Fitter Gen Mech are expected to perform any of the duties of the tradesman mentioned in para 2.1 above irrespective of their original/old trades. Initial difficulties during transition stage will have to be borne without sacrificing the functional efficiency. As such CEs Command are requested to impress upon their Lower formations and Units about the change in grade structure and initial difficulties in deployment during the transformation stage as per the local and functional requirement.

13. Training

Now as per the redesignated post, the above Tradesmen are expected to know the job in various trades referred to above for assignment of job as per functional requirement. In order to have adequate skill in the trades, CEs Command are requested to formulate necessary Training Programmes for considering suitability/eligibility for higher grades.

13. EIC (3)

Put up on file to CE.

(M-H Mach)

Col

Dtr EIC

for E-in-C

along with a copy of Govt Letter No 6(1)/94/D(W-II) dt. 6.7.94 and dt. 8.7.94. CEC Sec is requested to issue necessary amendment to RRs. Draft RR may please be shown to EIC(3) before processing the case with

For comments if any

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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- SR.

1. A case regarding admissibility of Night Duty Allowance to PHO and DES consequent to redesignation as FC 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 KK FOM 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 FOM who are employed as PHO & DES.

Sd/- x x x
(KD Chettri)
SAO
SO 2 Engrs(Pers)
for Engineer-in-Chief

Clamc. upto May 99

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VII (53)
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-1- (OAS 1241-PB/02 & 1299-PB/02)

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

- i) O.A. No. 1241-PB of 2002 &
ii) O.A. No. 1299-PB of 2002

Chandigarh, this the 11th day of July, 2003

ORDER: HON'BLE MR. JASBIR S. DHALIWAL, MEMBER (J)

1) O.A. No. 1241-PB of 2002:-

1. MES No. 503000 Lakhwinder Singh s/o Shri Perhlad Singh, aged 43 years, working as FOM MS-11, office of Garrison Engineer (A/F), Mathankot.

2. MES No. 504312 Yash Pal

3. MES No. 500220 Ishwar Singh

4. MES No. 355551 Joginder Singh

5. MES No. 350701 Amar Nath

6. MES No. 359715 Prem Chand

7. MES No. 504480 Tarsem Lal

8. MES No. 359119 Shangara Singh

9. MES No. 350890 Ashok Kumar

10. MES No. 6003496 Kapil Dev

11. MES No. 500144 Ved Vias

12. MES No. 507722 Pargmal

13. MES No. 356711 Bharam Chand

14. MES No. 502740 Hosham Singh

15. MES No. 350431 Shal Singh

16. MES No. 350600 Sarda Ramch

17. MES No. 350527 Tara Chand

18. MES No. 509140 Jatinder Singh

19. MES No. 350136 Subhash Kumar

20. MES No. 355924 Punjab Daash

21. MES No. 506511 Hohan Singh

22. MES No. 350145 Harjit Singh

23. MES No. 359230 Dev Raj

24. MES No. 340505 Gurdasmal

25. MES No. 504599 Shiv Karan

26. MES No. 135415 Ram Dass

27. MES No. 350374 Harbans Singh

28. MES No. 121175 Ashok Kumar

29. MES No. 350674 Raj Kumar

- 30.MES No.312250 Ramesh Chander
31.MES No.358257 Jagdish Singh
32.MES No.368060 Kesar Chand
33.MES No.365436 Gurdasmal
34.MES No.364432 Hans Raj
35.MES No.368568 Surinder Singh

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

...Applicants

By Advocate: SH. AMIT SHARMA

11000_00_1222-PB_02_2002:

1.MES No.369431 Dev Raj s/o Shri Ball Ram, aged 46 years, working as FGM (SK), Office of Garrison Engineer, Pul Tibri Cantt., Distt. Gurdaspur (Punjab).

- 2.MES No.368545 Tarlok Chand
3.MES No.368533 Surinder Kumar
4.MES No.368900 Janki Raj
5.MES No.368763 Sohan Singh
6.MES No.362439 Gurdev Singh
7.MES No.356916 Yas Dev
8.MES No.369005 Raj Kumar
9.MES No.368764 Balwinder Singh
10.MES No.372470 Inder Mohan
11.MES No.368567 Harbhajan Singh
12.MES No.372469 Ashwani Kumar
13.MES No.372406 Nirmal Singh
14.MES No.372406 Ramesh Kumar
15.MES No.372466 Swinder Pal
16.MES No.362022 Shiv Singh
17.MES No.368532 Darshan Kumar
18.MES No.372468 Sunil Singh
19.MES No.368543 Charan Dass
20.MES No.365312 Sharif Masih
21.MES No.369012 Eeta Ram
22.MES No.372477 Daljit Singh
23.MES No.367664 Tarsem Singh
24.MES No.368943 Mohan Lal
25.MES No.368536 Danish Masih
26.MES No.372403 Purnan Singh
27.MES No.372467 Nareesh Kumar
28.MES No.372487 Joginder Pal
29.MES No.372470 Prem Chand
30.MES No.372485 Roop Lal
31.MES No.368930 Jagdish Raj
32.MES No.365927 Prem Lal



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3- (GAs 1241-PB/62 & 1299-PB/62)

- 33.MES No.368439 Kishori Lal
- 34.MES No.372317 Pritham Chand
- 35.MES No.369232 Sukhpal Vir Singh
- 36.MES No.372479 Balwinder Singh
- 37.MES No.372402 Prem Singh
- 38.MES No.372722 Hanjit Singh
- 39.MES No.372401 Prem Nath
- 40.MES No.365751 Hardeep Singh
- 41.MES No.360761 Ajit Raj
- 42.MES No.368401 Balwinder Singh
- 43.MES No.363725 Parmodh Chander
- 44.MES No.363725 Joginder Singh
- 45.MES No.359199 Ram Asra
- 46.MES No.368258 Purnan Chand
- 47.MES No.372443 Baljit Singh
- 48.MES No.368044 Moha Ramal
- 49.MES No.368046 Baldev Singh
- 50.MES No.372042 Balbir Singh
- 51.MES No.372404 Goshree Kumar

All working under Garrison Engineer, Gurdaspur.

...Applicants

By Advocate: SH. AMIT SHARMA

Versus

- 1. Union of India through the Secretary, Ministry of Defence, New Delhi.
- 2. Engineer-in-Chief Branch, Army Head Quarter, New Delhi.
- 3. Commander Works, Engineer, Pathankot.
- 4. Garrison Engineer, (A/E) Pathankot.

...Respondents In both the GAs:

By Advocate: SH. HUKESH KAUSHIK

...Contd. 7-

ORDER

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

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 Lakhwinder Singh and others, OA No. 1241-PB of 2082.

1. A number of applicants have joined in both these cases pleading that they had earlier been working as Motor Pump Attendants and Diesel Engine Static 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 duties, however did not change. They were earlier getting Night Duty Allowance (NDA) but now payment of the same has been stopped. Some employees, similarly placed like the applicants, had filed OA No. 163 of 1982 before Bench of C.A.F. It was ordered in that case that till a final decision is taken by the respondents on the claim of such persons for payment of H.D.A., they should continue with the payment to them as paid earlier. Since Fitter, F-GM and HPS working under CME, Chandimandir

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-3- (005 1291-PB/02 & 1299-PB/02)

filed OA No. 970-FR 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 its payment was under consideration of respondents, as mentioned in Annexure A-9. It was further mentioned that category of FCM 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-9 it was clarified on 28.9.2000 that categories of PRO and DES have only been redesignated as FCM 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-FR of 2001 it was ordered that the same 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 4.6.2001, Annexure

A-1 and dated 27.12.2000, Annexure A-1/1, 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 when 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 OA 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 Lower House Operation and Driver Engine Static were getting HRA in view of letter dated 14.1.1992 and 6.7.1994. The same has now been stopped with

-7- (OAs 1241-PH/82 & 1299-PH/82)

effect from the date of redesignation. Their claim was referred to the Ministry of Defence by CGDA 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 FGM 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 FGM 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 FGM 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-PH of 2002, was filed by Madan Lal and 75 others. The case went up to the Hon'ble Supreme Court which disposed it off 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 Annexure-1. In the case of Dev Raj and others, OA No. 1200/1999, the written statement filed, though similar, had been taken, it has been mentioned that in view of directions given by the Tribunal, representations of Madan Lal and others were considered and

their claim for payment of NDA has been rejected by order dated 7.2.2003. On being required to produce copy of such rejection order, ld. counsel for respondents has produced the same, both in the form of copy of order as well as a legible type copy thereof. We have gone through the same.

5. We find the order dated 6.2.2003 to be 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 Gurnahati 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. If 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 Gurnahati 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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-9- (OAs 1241-PB/02 & 1299-PB/02)

taken expeditiously. Only interim directions were given 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 FOM in compliance with directions of CAT, Bombay Bench. Thereby, thus, there are no separate categories of officials now with designation of PHO and DES. FOMs 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 FOMs 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 UD dated 12.16.1995, issued by DOPT. 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 FOMs. 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 could 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 atleast 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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-11- (GOS 1241-PH/62 & 1299-PH/62)

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

8. Though there are two prayers made in these cases, one relates to quashing of the orders under which payment of MDA has been stopped to them and the second relates to declaration of entitlement of the applicants to payment of MDA 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 FEMs out of which 6 were never in receipt of NDA. 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.

9. 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 mala fide, etc. Reference can be made to the following judgments on this aspect:-

State Fisheries Officers' Association MB and another vs. State of West Bengal 1997 SCC 630 page 1033

ii) Govt. of Tamilnadu and anr. vs. S. Ramakrishnan & others : 1978 SCC (L&S) 493;

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

iv) Hand Lal and others vs. State of Punjab : 1976 Recent Service Judgments 131 (a DB decision of Punjab & Haryana High Court) = 1976(2) SLR 233.

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 : 1990(2) SLR 230, placing reliance on AIR 1979 SC 523, 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 Sher Singh & others vs. Union of India and others : (1973) 31 AIR 744 and AIR SC 101 vs. Baid. (1971) 71 AIR 234 on interference by Courts in the internal decisions of the Govt. It has recently been reiterated in the case of Federation of Railway

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Officers Association vs. UOI : 2503 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 8 categories, including the two which were in receipt of FMA under the administrative orders only, ^{and} ~~in~~ ⁱⁿ their service conditions was 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 FMA, now is not entitled to grant of FMA. 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.

10: 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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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 Rea Coal Fields vs. Central Govt. : AIR 1962 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 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 atleast they should be allowed payment of NDA in view of Government Bench order dated 6.3.1974, it cannot 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 1977. Secondly, the directions given by the Government Bench did not lay down a binding precedent and were not

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-15- (OAS 1241-PB/62 & 1299-PB/62)

in the nature of interim directions.

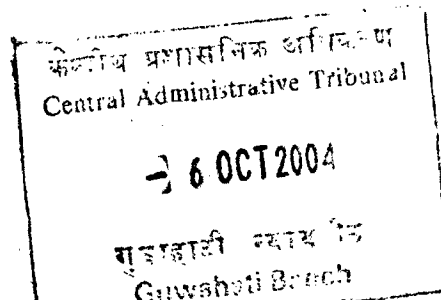
For the reasons, discussed above, both these
cases are dismissed.

JASBIR S. DHOLAKIA
MEMBER (J)

Dated: July 11, 2003

Certified True Copy/सत्य प्रमाणित

For circulation for Member Order (O) dt 11/7/03
Central Secretariat to the Government of India
New Delhi 110003
JASBIR S. DHOLAKIA



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Filed by me applicants
Through: Subrata Nath
Jalwade
bills-6
6.10.04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 305 /2003

Shri Rishikesh Paul & 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, 4, 6, 8, 9, 10 and 11 of written statements the applicants beg to say that the decision of the respondents not to pay Night Duty Allowances to the applicant 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

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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 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

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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 uphold 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 the contention of the respondents made in paragraphs 12, 13, 14, 15, 17 and 18 are also not correct in as much as providing water supply falls within the category of an "essential service" and as such applicants are discharging their duties and responsibilities even during the night shift as such they are entitled to night duty allowance. The case of the Chowkider and Guards cannot be compared with the

applicants. The Govt. cannot adopt an unfair policy, which leads to violation of Article 14 of the Constitution. It is categorically denied that element of night duty is inherent in duties of FGM. A wrong decision of the Govt. is always liable to be challenged.

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. A remarkable feature in the instant case of the applicants is that which is specifically admitted by the respondents Union of India in their written statements "the services therefore are such where 24 hours running of installations is necessary and therefore an element of night is inherent". Wherein paragraph 12 of the written statement, whereas 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.

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 the facts and circumstances stated above the application deserves to be allowed with cost.

Copies of the order dated 27.05.03 and O.M dated 04.10.99 are enclosed hereto for perusal of Hon'ble Tribunal as Annexure-A and B respectively.

VERIFICATION

I, Shri Rishikesh Paul, son of Late Harendra Kumar Paul, aged about 49 years, working as FGM HS II in the office of the Garrison Engineer, MES, Shillong, one of the applicants in the instant application, duly authorized by the other applicants to verify the statements made in this application and to sign this verification. Accordingly I declare that the statements made in paragraphs 1 to 2 are true to my knowledge and belief and rests are my humble prayers. I have not suppressed any material fact.

And I sign this verification on this the 3rd day of October, 2004.

Rishikesh Paul

ANNEXURE "A"

Most Immediate

No.A-12014/1791-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, NH-IV,
Faridabad-121001.

Sub:- 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,

11500000 CP
(H.S.Choudhary)
Under Secretary (IV)

True Copy
for Advocate

AE-D
Adm. H.

For to LKO
and others
involvement to all SES & Xms 7 B.A.B.S.C.
for information & n.a.h.

EC-IV
EC-I

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Copy of Notification No. 11012/3/89-Estt (A) dated 21st August, 1989. Government of India, Ministry of Personnel, P.G. and Pensions (Department of Personnel & Training).

Subject : Amendment in C.C.S. (C.C.A.) Rules, 1965.

S.O.....In exercise of the powers conferred by the Proviso to Article 309 of the Constitution, the President hereby makes the following rules further to amend the Central Civil Services (Classification, Control and Appeal) Rules, 1965, namely :—

1. (1) These rules may be called the *Central Civil Services (Classification, Control and Appeal) Amendment Rules, 1989*.
- (2) They shall come into force on the date of their publication in the official gazette.
2. In the schedule to the Central Civil Services (Classification, Control and Appeal) Rules, 1965.
 - (i) in part I, against the serial No. 22 for the words "Telegraph Engineering service Group 'A'" the words "Indian Telecommunications service Group 'A'" shall be substituted.
 - (ii) in part II, against the serial No. 9, under column 2 for the words "Telegraph Engineering service Group 'B'" the words "Telecommunications Engineering Service Group 'B'" shall be substituted.

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Copy of O.M. No. 7(84)/E.III/89 dated 3rd November, 1989. Government of India, Ministry of Finance (Department of Expenditure).

Subject : Grant of an additional paid holiday to the Industrial Workers on the day (s) of Poll in the General Election to Lok Sabha and certain Legislative Assemblies, 1989.

The President has been pleased to decide that during the ensuing General Elections to the Lok Sabha, 1989 and certain Legislative Assemblies, 1989, an additional paid holiday may be granted to the employees of various Industrial Establishments under Central Government on the respective polling day (s) in the particular area (s) if it does not fall on a Sunday or paid holiday provided the State Government/Union Territory Administration concerned has declared that day as a local holiday in the area.

Copy of O.M. No. 12012/4/86-Estt (Allowances) dated 4th Oct. 1989. Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training).

Subject : Weightage for night duty—Recommendations of the IVth Pay Commission—regarding Government's decision thereon.

The undersigned is directed to say that in Paragraph 2b.13 of its report, the Commission has recommended that in 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 introduced 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 Weightaged 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 refix 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 representatives 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. 2200/- 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 DA & CCA divided by the number of working hours in a month. For administrative convenience, the pay scales may be fitted into convenient slabs at the option of the Department.

- (b) For intermittent and excluded Class III

2/3rd of the rate worked out under (a) above.

- (vi) Where in revising the pay scales of any category 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.

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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 Deptt. of Telecommunications and Department of Posts, separate orders will be issued by the Ministry of Communications.

These orders shall come into force w.e.f. 1.1.1986.

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Copy of O.M. No. 17016/6/87-Estt. (Allow) dated 5th Oct. 1989.
Government of India: Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training).

Subject : Grant of Honorarium to Group 'D' officials when appointed to work as Staff Car Drivers and class IV staff when appointed to work as Despatch Riders/Scooter Drivers for short periods in the absence of Staff Car Drivers, Despatch riders/Scooter drivers regarding.

The undersigned is directed to refer to this Department Office Memorandum of even number dated 25.12.1988 (should be 25.2.1988) (Published in S.L.J. of Aug. 1988 as Sr. No. 67) on the above subject and to say that the rates of honorarium prescribed therein will also be applied to Group 'D' staff and Despatch Riders etc. appointed to work as Drivers of the 4 wheeled vehicles or two and three wheeled vehicles as follows :

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|---|----------------------|
| (i) Group 'D' staff or despatch riders who are appointed to work as Drivers of other 4 wheeled vehicles | Rupees Four per day. |
| (ii) Group 'D' staff who are appointed to work as Drivers of two & three wheeled vehicles, | Rupees Two per day. |

2. Other terms and conditions laid down in the Office Memorandum of 25.2.88 will remain continued.

9 Copy of O.M. No. 28038/1/88-Estt.(D) dated 9th October, 1989.
Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training).

Subject : Selection Grade in Group 'A' Service—Guidelines to be followed by the Selection Committee—Instructions on.

A reference is invited to this Department's O.M. No. 22038/1/88-Estt.(D) dated 6.7.88 (Published in this issue) on the above subject. The instructions contained therein have been carefully reviewed. It has now been decided, in supersession of the existing instructions, that for appointment to the Selection Grade in Group A Services which is non-functional, the following procedure and criteria shall be followed :—

- (i) An internal committee will be constituted to review the cases of

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(ii) Ordinarily the Committee shall accept the final grading given by the Reporting/Reviewing/Accepting authority in each ACR unless there are good reasons to depart from that grading.

(iv) The Committee should satisfy itself that the overall performance of the officer was good and that he has atleast two "very good" gradings in the last five ACRs. Such an officer would be considered suitable for NFSG.

(v) There should be no adverse entries in any ACR. If there are any adverse entries, it should be clearly brought out in the minutes as to why the officer has been proposed for NFSG in spite of the adverse entry.

(vi) The minutes should also include a certificate that there is no other factor or aspect affecting an officer which will disqualify him for grant of NFSG.

(vii) The Screening Committee may, in exceptional cases, recommend candidates for appointment to NFSG who do not strictly satisfy the above criteria provided they are considered deserving of grant of NFSG. In such cases the Screening Committee should clearly record the reasons for such recommendation.

2. These revised instructions will have only prospective effect. In all the cases where selection process is over, the panel already recommended by the Internal Screening Committee may be processed for approval on the basis of the existing criteria.

3. Ministries/Departments are requested to bring these instructions to the notice of all concerned for guidance and also to ensure their compliance.

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Copy of O.M. No. 22038/1/88-Estt.(D) dated 6th July 1988.
Government of India. (Department of Personnel & Training).

Subject : Selection Grade in Group 'A' Service—Guidelines to be followed by the Selection Committee.

The undersigned is directed to say that in this Ministry's O.M. No. 19/1/86-PP dated the 9th December, 1987 (Published in S.L.J. of May 1988 as Sr. No. 13) on the subject mentioned above it was clarified as follows :

(i) Selection Grade in Group 'A' Service is non-functional.

(ii) While making selection, it is not necessary to grade the officers as "Outstanding", "Very Good", etc., and to consider all officers in the prescribed zone of promotion as required under the selection method.

(iii) Selection should be made according to seniority based on suitability, and suitability should be assessed on the basis of factors such as working performance, experience and other related matters.

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