

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 9/2003

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Kahla
15/11/17

(SEE RULE - (4))

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

✓ Original Application No : 9 / 103
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____


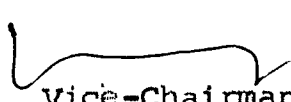
Applicant(s): Deifak Sen Sons.

- Vs. -

Respondent(s): Union of India Sons.

Advocate for the Applicant(s): Mr. MK Majumder Mr. S. Das.

Advocate for the Respondent(s): Mr. A. Deb Roy
Dr. CSSC

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time Condonation is filed / not for Rs. 5/- vide 170/B Dated <u>20.1.03</u> No synopsis has been filed 1/cy. Registrar 23/1/03 Steps taken along with envelopes Notice prepared and sent to S/s for filing the Respondent No. 1 W-4 by Regd. A/D. 29/1/03 D/No <u>1425/145</u> dt <u>28/1/03</u> No reply has been filed.</p>	<p>24.1.03</p>	<p>Present : The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chair- man.</p> <p>Heard Mr S.Das, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why this application shall not be admitted. Returnable by four weeks.</p> <p>Also issue notice to show cause as to why interim order as prayed fo- r shall not be granted.</p> <p>List on 28.2.03 for filing reply and admission. In the meantime the respondents are directed not to make any recovery towards Night Duty Allowance paid to the applicants.</p> <p> Vice-Chairman</p> <p>put up again on 28.3.2003 for admission.</p> <p> Vice-Chairman</p>
	pg 28.2.2003	
	bb	

28.3.2003

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

The application is admitted. Call for the records. The respondents are directed to file written statement within four weeks from today.

List on 2.5.2003 for orders.

Vice-Chairman

mb

2.5.2003

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

Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents prayed for time to obtain instructions on the matter. Put up again on 9.6.2003 for orders. In the meantime, interim order dated 24.1.2003 shall continue.

Vice-Chairman

mb

9.6.2003

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

Mr. A. Deb Roy, learned Sr. C.G.S.C. stated that he is yet to obtain instruction on the matter. Put up again on 11.7.2003 to enable him to obtain instruction. In the meantime, interim order dated 24.1.2003 shall continue.

Vice-Chairman

mb

Notice issued vide
DINo 142 15/45 dtd
28/1/03
28/3

No Written Statement
has been filed.

28/3
1.5.03

Order dtd 2/5/03
Communicated to
the parties counsel.

28/3
6/5/03

Order dtd 9/6/03
Communicated to the
parties counsel.

28/3
10/6

No writs has been
filed.

28/3
10.7.03

Notes of the Registry	Date	Orders of the Tribunal
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11.7.2003

Written statement
Submitted by The
Respondents.

Written statement has been filed.
The case may now be listed for hearing
on 12.8.2003. The applicant may file
rejoinder, if any, within two weeks
from ~~da~~ today.

[Signature]
11.8.03.

[Signature]
Vice-Chairman

[Signature]
mb

12.8.2003

Present: The Hon'ble Mr. Justice D.N.
Vice-Chairman.

None appears for the
applicants. However, I have heard
Mr.A.Deb Roy, learned Sr.C.G.S.C. for
the respondents and also perused the
pleadings including the written
statement.

It seems that the case is
squarely covered by the judgment and
order passed in O.A.374/2002 disposed
on 11.8.2003 rendered by this Bench.
The aforementioned judgment and order
is based on the order passed in
O.A.299/1998 disposed on 8.9.1999.
The present applicants are also
entitled for the same benefits. The
impugned communication No.C/1053/142/
EIC dated 10.10.2002 is accordingly
set aside and quashed and the
respondents are directed to desist
from making recovery of any amount
already paid to the applicants as
Night Duty Allowance.

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

[Signature]
Vice-Chairman

18.8.2003
Copy of the order
has been sent to the
officer for issuing the
order to the L/Advocate
for the parties.
[Signature]

22/8/03

u

Notes of the Registry

Date

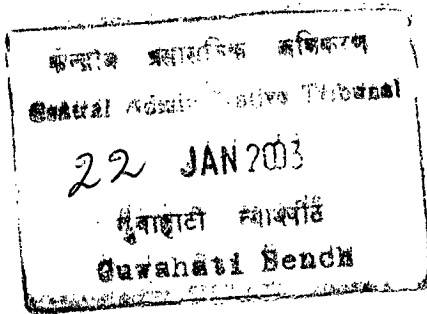
Orders of the Tribunal

2000

2000

2000

2000



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by
the Applicant through
S. Das
Advocate.

O.A. No. 9 /2003

Sri Dipak Das & ors.

- Versus -

The Union of India & ors.

I N D E X

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For Office Use :

Signature :

Date :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by
the applicant through
S. Das
Advocate 2

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

O.A.No. /2003

- BETWEEN -

1. Sri Dipak Das,
Son of Mahendra Das,
B.R.II Office,
M.E.S. Charduar,
2. Sri Dipak Kr. Das,
Son of Banemali Das,
G.E. Tezpur,
S.S.O. Office,
3. Sri Laxhi Ram Urang,
Son of Late Birsha Urang,
G.E. Missamari, (B.S.O.)

- Versus -

1. Union of India,
(Represented by the Secy to Govt.
of India Ministry of Defence,
New Delhi)
2. Engineer in Chief
Military Engineering Service,
New Delhi.

contd.

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- 2 -

3. B.S.O. Missamari,
Dist - Sonitpur, Assam

4. Garrison Engineer,
Missamari,
Dist. Sonitpur, Assam.

1. Particulars of order against which the
Application is made :

A common cause of action arose due to unnecessary harassment for initiating recovery process of Night Duty Allowance paid to the applicants and the order dated 10-10-2002 under No. Tele : Mily 6422-C/1053/142/EIC by the Respondent No.4.

2. Jurisdiction :

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

3. Limitation :

The applicants also declare that the application is within the limitation period as has been prescribed under section 21 of the Administrative Tribunal Act, 1955.

contd.

- 3 -

4. Facts of the case :

(i) That the applicants are the night guard Chowkidar under the Respondent No.4 in the cadre of Group-D. The cause of action and relief sought are similar and they pray together invoking Rule 4(5) of CAT(P) Rule 1987.

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

(iii) That the applicants state that the Garrison Engineer, of late have issued an order against the applicants in pursuant to the direction issued by the Govt. of India, Ministry of Defence vide signal No.UNCLAS-502107/EIC dated 26-9-2002 is going to recover the amount already paid to them.

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

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

contd.

(v) That the applicants state that the Garrison Engineer, Missamari on earlier occasion intimated the applicants that there will be recovery of the night duty allowance already paid as monthly installment of Rs.100/- per month with effect from Dec/98 and vide OA No.299 of 1998 as decided on 8.9.99 this Hon'ble Tribunal it was directed not to recover any amount already paid to the applicants.

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

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

However, vide signal No.UNCLAS.502107/EIC dated 26-9-2002 sanction of NDA against the 24 other applicants have been communicated with further direction that amount paid to individuals other than applicants may be recovered from their pay allowances after issuing show ~~cause~~ notice to them.

Copy of the order annexed as
Annexure - III.

contd.

(vii) That being aggrieved with the action and attitude of the Respondent the applicant approach this Hon'ble Tribunal by filing this application on the following grounds.

5. Grounds :-

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

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

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

(iv) For that Hon'ble Tribunal have already decided the matter of other applicants in OA No.299 of 1998 and the authority respondents also vide their signal dated 26-9-2002 decided not to deduct the same amount but the unfortunate action against the present applicants only on this score is liable to set aside.

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

contd.

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

6. Details of remedies availed :-

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

7. The matter not previously filed and/or pending before any court :

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

8. Relief Sought for :

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

(a) To quash and set aside the order dated 10-10-2002 (Annexure - I).

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

contd.

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

(e) Quashed of the applicant.

9. Interim relief if any :

Under the facts and circumstances, the applicant
prays that Your Lordships may please to pass necessary
order staying the operation of order/letter dated
10-10-2002 (Annexure - I).

10. Particulars of Postal Order :

I P O No.	Dt. of Issue	Payable at
20F 060401	20/1/03	Gurwahati
20F 060402	20/1/03	Gurwahati
32E 787820	20/1/03	Gurwahati

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

contd.....Verification.

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VERIFICATION

I, Sri Dipak^{Ch.} Das, S/o. Mahendra Das, employee of B.R.II Office, M.E.S. Charduar, do hereby solemnly verify that the statement made in para - a, 2, 3 and 4 are true to the best of my knowledge and belief and based on record and rests are my humble submission before this Hon'ble Tribunal.

And I sign this Verification on this the
17th day of January, 2003 at Guwahati.

Dipak Ch Das
DEPONENT

15

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ANNEXURE-1.

Tele: Mily 6422

Garrison Engineer

Missamari (Assam)

C/1053/142 /E1C

10 Oct' 2002

RECOVERY OF NDA AMOUNT

1. The following individual of your unit have been paid the amount as per details shown against each on account of NDA while they were serving in this office. It is intimated by Govt. of India, Min of Def Vide their Signal No. UNCLAS 502107/E1C dated 26 Sept. 2002 (copy enclosed for your ready reference) that the amount of NDA paid to the individual are to be recovered after issuing show cause notice to each individual. As such you are requested to issue show cause notice to each individual before recovery the same and take action to recover the amount under intimation to all concerned:-

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

contd ...p/2

Attended
S. D. Das
Advocate

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

(Ajit Kumar)

Major Garrison Engineer.

Attached
 S.D. on
 Advo. case

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 299 of 98

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

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

Sri Ratan Baruah & 23 Ors. ... Applicant

By Advocate Mr. A. Das Gupta, Ms. B. Bairagi.

-vs-

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

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

O R D E R.

G. L. SANGLYINE, ADMINISTRATIVE MEMBER:

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

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

contd/-

*Attended
S. D. Das
Advocate*

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

2nd Mr.Dasgupta submitted that the applicants were paid the allowance since long and it was only subsequently that the respondents stopped the payment and ordered recovery of the amounts paid. The amounts were paid to the applicants voluntarily by the respondents and the applicants had already spent the amounts received. Recovery of the amounts would cause severe hardship to the applicants. He submitted that in the case of Special (Duty) Allowance paid to the ineligible employees the Hon'ble Supreme Court had held that amounts already paid to them were not to be recovered. He submitted that in this case also the applicants are to be similarly treated and no recovery of the amounts paid need be made.

contd/-

Attended
S. Das
Advocate

19

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

contd/-

Attended
S. Das
Advocate
L

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ANNEXURE-III

A Copy of INDARMY signal No. UNCLAS 502107/E1C dated 26th Sep, 2002.

From : INDARMY

To : CE SHILLONG ZONE
CE EAST COMD

UNCLAS 502107/E1c

INFO : CME TEZPUR
CE NISSAHARI
CDA GUWAHATI.

LEGAL -C

IMPLEMENTATION OF CAT GUWAHATI JUDGMENT OF 08 SEP 1999 IN
OA NO. 299/98 FILED BY SHRI RATAN BARUAH AND 23 OTHERS ()
CDA GUWAHATI CDA GUWAHATI LETTER NO.
PAY/34/CONFEDL/OA 117/94 AND 299/98 OF AUG 23 (). THE
AUDIT REPORT FURNISHED BY CDA GUWAHATI ON 14 Jul 2000
AMOUNTING TO Rs. 3,66,862/- WAS FOR INDIVIDUALS (.)
GOVT. SANCTION HAS BEEN ISSUED IN RESPECT OF INDIVIDUALS
ONLY WHO WERE THE APPLICANTS IN THE SUBJECT OA. THE AMOUNT
PAID TO INDIVIDUALS OTHER THAN APPLICANTS MAY BE RECOVERED
FROM THEIR PAY AND ALLOWANCES AFTER ISSUING SHOW CAUSE
NOTICE TO THEM (.) ACCORD PRIORITY.

Attended
S. D. Das
Advocate

(10 JUL 2003)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

Filed by

7/7/03
(A. DEBROY)
C.A.T. Guwahati Bench

O.S. NO. 9/2003

Dipak Das & Others.

..... Applicants

Union of India & Ors.

..... Respondents.

In the matter of :

Written Statement submitted
by the respondents

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

(BACKGROUND OF THE CASE)

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

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

It is proposed to defend the case at Hon'ble CAT Guwahati by way of parawise comments and statement of case and ~~other~~ counter affidavit.

Night duty allowance was paid through supplementary pay bills to Chowkidars (CVB) w.e.f. 01 Jan 86 to Dec 92 duly audited and passed by AAO Shillong. As per Govt. of India Ministry of Defence letter No. 6(4)/88/D(Civ-I) dated 15 Mar 90 Chowkidars (CVB) are not entitled for night duty allowance. Accordingly AAO Shillong recovered the amount of night allowance through regular pay bill from 5/94 to 7/94. Being aggrieved on account of recovery by AAO Shillong Shri Ratan Baruah alongwith other 23 other filed a single application at Hon'ble CAT Guwahati to Quash the orders of AAO Shillong and on hearing, the Hon'ble CAT Guwahati vide order dated 30 Aug 96 finally set aside the order of recovery. Again~~s~~ as per the directions of HQ CEEC the recovery has been started in easy instalments and again Shri Ratan Baruah and 23 others approached the Hon'ble CAT Guwahati vide O.A. No. 299/98 and finally the judgement has been passed in favour of the applicants not to recover the amount already paid to them.

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

As per the OA the total amount paid to the applicants of OA No. 9/2003 is as under :-

(a)	Shri Dipak Das	- Rs.	3683.00
(b)	" Dipak Kr Das	- Rs.	3622.00
(c)	" Lakhi Ram Urang	- Rs.	2364.00
Total		- Rs.	<u>9669.00</u>

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

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

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

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

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

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

7. That with regard to the statement made in para 4.V, of the application the respondents beg to stated that

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

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

9. That with regard to the statement made in para 4.VII of the application the respondents beg to ~~stated that~~ *offer no comments.*

10. That with regard to the statement made in para 5.1 of the application the respondents beg to state that there is no specific order has been received regarding not to recover the amount of night duty allowance paid to the applicants of 9/2003.

11. That with regard to the statement made in para 5.ii of the application the respondent beg to state that Garrison Engineer is implementing an order of higher authority. But it is a fact that there is no specific order for not to recover the amount paid to the individuals who are the applicants of OA No 9/2003. It is also confirmed that judgement passed by OA No. 299/98 i.e only for 24 individuals and not for common, as such the contents is not agreed.

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

13. That with regard to the statement made in para 5.v of the application the respondents beg to state that the respondents is ^{not} ~~violating~~ of fundamental rights of the ~~ap~~ applicants as the respondent is liable to obey the directions of higher authorities.

- 6 -

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

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

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

Verification

M. K. S. S.

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

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

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


Declarant

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MOST IMPORTANT

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

OFFICE MEMORANDUM

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

.....

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

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

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

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

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

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

sd/-

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

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***** DTD 150039

REF NO 143018

FROM : INF RMY

TO : CE BRILLON, JONE

CE EAST COMD

INFO : ONE TELER

GE MISSOURI.

CDA GUMSHATI

UNCLAS 502107/EIC

LEGAL-1

IMPLEMENTATION OF CAT GUMSHATI JUDGMENT OF 08 SEP 1979 IN DA
AD029977 FILED BY INET RATION BRANCH AND 23 OTHERS.

REFERENCE CDA GUMSHATI LETTER AND PAY /34/ CONFED /DA 117/ 94
AND 299/94 OF CASE 23 THE AUDIT REPORT FURNISHED BY CDA

GUMSHATI DM14 JUL 1994 AMOUNTING TO \$ 1,22,841/- WAS FOR 47

INDIVIDUALS : GOVT SANCTIONS HAS BEEN ISSUED IN RESPECT OF 24

INDIVIDUALS DIVIDING AMONG THE APPLICANTS IN THE SUBJECT DA.

THE AMOUNT PAID TO INDIVIDUALS OTHER THAN APPLICANTS MAY BE
RECOVERED FROM THEIR GRAY AND BROWN ACES AFTER ISSUING SHOW
CAUSE NOTICE TO THEM. SPECIAL AGENT. 11/11/94

CPN 502107/EIC LEGAL -1

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Office of the CDA, Basistha, Gaunati - 28

Pt-I O.O. No. 8

Dt. 4/90 22/1/91

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

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

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

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

Pt 4/90 22/1/91

Distribution :-

- 1) All sub office as per standard list
- 2) All subtions in M.O.
- 3) All officer in M.O.
- 4) Hindi cell
- 5) PA to CDA.
- 6) Spare 20 copies.

(R. E. Fandy)
ACCOUNTS OFFICER.

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

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

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

(Contd.....2)

- 26 -

3. ✓ No Night Duty Allowance may be granted where night duty is an inseparable characteristic of the job itself e.g. Nurses and Sister-in-Charge of the hospitals.
4. The categories of employees not mentioned in Annexure to this O.M. will not be eligible for Night Duty Allowance. However, there may be some stray cases where staff is put on night duty. In such stray cases specific approval of an authority, one level higher than the authority competent to sanction Night Duty Allowance, may be obtained before should not become a general practice.
5. However, wherever OTA is payable NDA will not be paid for the same period.
6. Under the above mentioned DOFT orders, computation and payment of Night Duty Allowance is to be made w.e.f. 1.1.1986. In some cases, arrears may have to be admitted while sanctioning such arrears the Head of the Office / Authority competent to sanction Night Duty Allowance shall satisfy himself, on the basis of relevant records maintained and produced, that the individual concerned had actually performed night duty and was entitled to Night Duty Allowance in the light of the above mentioned. DOFT orders dated 4.10.1989.
7. The payment of Night Duty Allowance will be subject to the Availability of funds under the Head 'Allowances'. In case additional funds are needed, the demand may be projected and payment may be made only after the requisite funds are made available.
8. These orders will come into force with effect from 1.1.1986.
9. This issues in consultation with the Integrated Finance Division vide their U.O. No. 354-FB of 1990.

Sd/-

(RAN NATH)

Under Secretary to the Government of India.

CTC
(1)

ANNEXURE TO

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M of D O.M. No. 6(4)/88/D(Civ-I) dt. 2.3.1990

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

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

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