

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.380/04

Jabalpur, this the 5th day of October, 2004.

CORAM

Hon'ble Mr.Madan Mohan, Judicial Member

1. R.K.Shukla
S/o Shri A.P.Shukla
R/Mech., Military Engineering Services
Jabalpur.
2. Anand Kumar
S/o Shri Chhotelal
R/Mech, MES
Jabalpur.
3. A. Alloysious
Sr./Mech, MES(Retd.)
Jabalpur.
4. R.Giri
R/Mech., MES
Jabalpur.
5. Nathoo Lal ..
R/Mech., MES
Jabalpur.
6. Manohar Yadav
R/Mech, MES
Jabalpur.
7. V.P.Singh
R/Mech., MES
Jabalpur.
8. A.K.Sarkar
R/Mech., MES
Jabalpur.
9. Sudhakar
R/Mech., MES
Jabalpur.
10. Abdul Mazeed
R/Mech., MES
Jabalpur.
11. Ranjeet Singh
R/Mech., MES
Jabalpur.
12. Mohanlal
R/Mech., MES
Jabalpur.

13. Dilraj Singh
R/Mech., MES
Jabalpur.
14. Norber Joseph
R/Mech., MES
Jabalpur.
15. Vimal Kumar
Mate, MES
Jabalpur.
16. Basant
Mate, MES
Jabalpur.
17. A.P.Tiwari
R/Mech, MES
Jabalpur.
18. L.M.Saxena
R/Mech., MES
Jabalpur.
19. K.N.Vishwakarma
R/Mech., MES
Jabalpur.
20. Sunil Joseph
R/Mech., MES
Jabalpur.
21. K.P.Yadav
R/Mech., MES
Jabalpur.

Applicants

(By advocate Shri S.Ganguly on behalf of Sh.M.Sharma)

Versus

1. Union of India
Ministry of Defence
Government of India
New Delhi
through its Secretary.
2. Engineer-in-Chief
Army Headquarters
Kashmir House
New Delhi.
3. Chief Engineer
Central Command
M.G.Road
Lucknow.
4. Chief Engineer
Jabalpur Zone
MES, PB No.84
Bhagat Marg
Jabalpur.



5. Commander works Engineer
Military Engineering Services
Supply Marg, PB Box No.54
Jabalpur.

6. Garrison Engineer (East)
MES, Near C.O.D., Jabalpur.

7. Assistant Accounts Officer
Garrison Engineer
Near C.O.D.(East)
Jabalpur.

Respondents
Shri Gopi Chaurasia on behalf of
(By advocate Shri S.A.Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicants have prayed for the following reliefs:

(i) Quash and set aside all the communications dated 23.3.04 with regard to the applicants.

(ii) Restraine the respondents to recover any amount in lieu of impugned communication dated 23.3.04 with regard to the applicants.

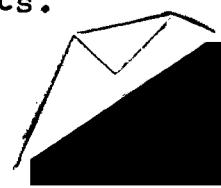
2. The brief facts of the case are that the applicants are working under the direct control and supervision of Garrison Engineer (East), Jabalpur (Respondent No.6). Ministry of Defence, Government of India vide letter dated 24.11.97 notified that the civilians working in various Defence Establishments (under all category of works) shall be entitled for night duty allowance w.e.f. 1.1.86. A copy of the policy decision dated 24.11.97 is filed as Annexure A3. Respondent No.2 vide letter dated 8th Nov. 95 granted the night duty allowance to various categories of persons. In pursuance of Annexure A3&A4, all the applicants were sanctioned night duty allowance and were paid arrears w.e.f. 1.1.86. Before making payment of the arrears, the same was computed and calculated by the Department itself. The payment of the arrears is not



based upon any claim and/or documentation submitted by the applicants. The amount paid by the Department was duly verified and audited by the Account Department itself by their own records. So there is no question of any mis-representation by the applicants in this regard. Suddenly the respondent authorities issued a circular by which it was intimated that an excess payment has been made hence recovery of the same (Annexure A1). Once the amount paid to the employees after due verification of the record, there is no question of any recovery. The applicants submitted representations to the higher authorities but to no avail and the impugned order A-1 has been passed without giving any opportunity of hearing or show cause to the applicants. Being aggrieved by the inaction of the respondents, the applicants filed OA No.427/02. The Tribunal quashed the impugned order and directed the respondents to pass a fresh order in the matter after following the procedure established by the law (Annexure A6). Thereafter the respondents issued show cause notice to all the applicants. The applicants submitted explanations but without considering the contentions raised by the applicants in their reply to the show cause notices, the impugned order dated 23.3.04 (Annexure A2) has been passed. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the amount in question has been sanctioned by the department itself after due audit. The applicants have not misrepresented the matter to the department. According to the Ministry of Defence letter dated 24.11.97, the applicants are entitled to night duty allowance w.e.f.1.1.86. It is surprising that the respondents have issued the order (A-1) proposing recovery of the excess payment made to the applicants.

QF



In support of the claim, the applicants have relied on the judgement of the Hon'ble Supreme Court reported in 1995 Supp. (1) SCC 18. On the other hand, the learned counsel for the respondents vehemently opposed and stated that the applicants are not entitled for night duty allowance which has already been paid to them.

~~Learned Counsel~~
The respondents are ready to correct the mistake and recover the amount accordingly.

4. I have given careful consideration to the rival contentions made by both parties. I find that the issue relating to recovery of night duty allowance has already been decided by the Tribunal in OA No.133/04 decided on 29th July 2004 in the case of Kashi Prasad and 101 others Vs. Union of India and ors. The only dispute ~~to be~~ be adjudicated in this case is whether night duty allowance already paid to the applicants is to be recovered from them or not. In this regard, I find that there is no mis-representation on the part of the applicants and it was due to the mistake of the respondents. According to the judgment relied upon by the applicants, reported in 1995 Supp.(1) SCC 18, the respondents cannot recover the amount which has been granted to the applicants wrongly, due to the mistake of the respondents.

5. Accordingly the OA is allowed and the impugned order dated 23.3.04 (Annexure A2) regarding recovery of night duty allowance is quashed and set aside and the respondents are directed to refund any amount if recovery has already been effected, to the applicants.

पृष्ठांकन सं. ओ/न्या.....जवलपुर, दि.....
प्रतिलिपि अव्योगिता:-

(Madan Mohan)
Judicial Member

(1) सचिव, उच्च न्यायालय भवन, राजभवन, जवलपुर
(2) आकेश श्री/श्रीमती/पुणे.....जे काउंसल
(3) प्रधान, राजभवन, जवलपुर
(4) अधिकारी, राजभवन, जवलपुर

मुद्रण एवं आकर्षक कार्यवाही हेतु

प्रधान
प्रधान

M. Mohan
S. A. Mohan

Agreed
On 7.10.04
BB