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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 117 of 1994
T.A. NO.

DATE OF DECISION 30.08.1996

Shri Ratan Baruah and 24 others

(PETITIONER(S))

Shri A. Dasgupta and Shri M.K. Saikia

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri A.K. Choudhury, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER
THE HON'BLE

1. Whether Reporters of local papers may be allowed to yes see the Judgment ?
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ? no

Judgment delivered by Hon'ble Member (A)

Sanglyine
30/8/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.117 of 1994

Date of decision: This the 30th day of August 1996

The Hon'ble Shri G.L. Sanglyine, Administrative Member

Shri Ratan Baruah and 24 others
Working as Chowkidar (CVB),
Military Engineering Service,
Ministry of Defence, Government of India.

.....Applicants

By Advocate Shri A. Dasgupta and Shri M.K. Saikia.

- versus -

1. Garrison Engineer,
Missamari, Distt. Sonitpur, Assam.
2. Assistant Accounts Officer,
Area Accounts Officer,
Shillong.
3. Engineer-In-Chief,
Military Engineering Service,
New Delhi.
4. Union of India.

.....Respondents

By Advocate Shri A.K. Choudhury, Addl. C.G.S.C.

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O R D E R

G.L. SANGLYINE, MEMBER (A)

The applicants are civilian employees under the Military Engineering Service working as Chowkidar (CVB), i.e. Chowkidar Care of Vacant Buildings. Their contentions in this application are that they are entitled to Night Duty Allowance on the strength of the office memorandum No.6(4)/88/D(Civ.I) dated 15.3.1990 and that the recovery of the amounts of Night Duty Allowance paid to them had been made arbitrarily.

2. Night Duty Allowance was granted under the aforesaid office memorandum to certain categories of employees mentioned in the annexure to the office memorandum. In the army Watchman/Chowkidar are entitled to Night Duty Allowance according to the office memorandum. The payment of Night Duty Allowance is admissible with effect from 1.1.1986. The applicants were paid Night Duty Allowance, but on 18.5.1994 and 19.5.1994, vide Annexures C & D to this O.A., recovery of Night Duty Allowance paid had been made by the office of the Area Accounts Officer, Shillong.

Subsequently, recovery of the amounts already paid was stayed by the interim order dated 5.7.1994 till disposal of this application.

3. The applicants are Chowkidars (CVB) and the question is whether they are entitled to Night Duty Allowance under the office memorandum No.6(4)/88/D(Civ.I) dated 15.3.1990. It appears that there are two sets of Chowkidars in the Military Engineering Service, namely, (1) Chowkidars and (2) Chowkidars(CVB). The contention of the respondents is that the office memorandum did not allow Night Duty Allowance to the Chowkidars (CVB). The reason in support thereof according to the respondents is that the Chowkidar (CVB) has to perform 24 hours duty and, therefore, by the nature of their duties they are not entitled to Night Duty Allowance. The contention of the applicants, on the other hand, is that there is no reasonable distinction between Chowkidar and Chowkidar (CVB) and if the other Chowkidars are entitled to Night Duty Allowance there cannot be any reasonable ground to deny the same to the Chowkidars (CVB). In order to resolve this controversy arising out of the rival contentions it is necessary to refer to the appointment letters of the applicants and also to the aforesaid office memorandum. The appointment letter (Annexure-A), which is a sample, shows that the applicants were appointed as Chowkidars (CVB). The office memorandum has mentioned in item (2) of the annexure thereto only "Chowkidar". Thus it is clear that "Chowkidar" and "Chowkidar (CVB)" are two different identities and two different categories of employees. The office memorandum states in paragraph 4 that the categories of employees not mentioned in the annexure thereto will not be entitled to Night Duty Allowance. The Chowkidar (CVB) is an existing category of employees and the office memorandum had omitted this category of employees from the list of employees to whom Night Duty Allowance is admissible according to the annexure. Therefore, it is clear that the office memorandum is not applicable to the Chowkidars (CVB). The office memorandum also lays down that no Night Duty Allowance may be granted to the employees where night duty is an inseparable characteristic of the job itself. Now, therefore, even if it was the intention in the office memorandum to include the

Chowkidar (CVB) in the term "Chowkidar" the Night Duty Allowance will not be admissible to the applicants since their nature of duty is such that they have to perform 24 hours duty to look after the vacant buildings. The nature and duration of duty of the Chowkidar (CVB) had also been clarified by the letter No.A/200060/EIC (3) dated 19.9.1991 issued by the Army Headquarters E-in-C, Annexure-2, to the written statement. They have to perform 24 hours duty and for that reason this category of employees had not been included in the annexure of the aforesaid office memorandum dated 15.3.1990. In the light of the above I am of the view that in terms of the office memorandum No.6(4)/88/D(Civ.I) dated 15.3.1990 the Chowkidar (CVB) is not entitled to Night Duty Allowance.

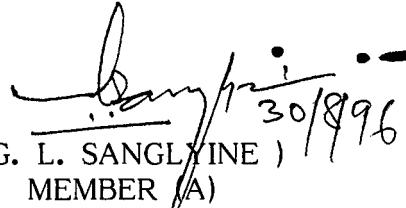
4. The applicants have been paid Night Duty Allowance after the issue of the memorandum No.6(4)/88/D(Civ.I) dated 15.3.1990. But by the impugned orders No.PM/11/304-ix dated 18.5.1994 and No.PM/11/304-ix dated 19.5.1994 (Annexures C & D respectively), the Area Accounts Officer, Shillong had ordered recovery of the amount of Night Duty Allowance already paid to the applicants. The contention of the respondents is that they are entitled to make recoveries of the amounts which had been wrongly paid. The applicants on the other hand have submitted that such recoveries had been made arbitrarily in violation of the procedure established by law and without assigning any reason whatsoever. The learned counsel for the applicants has also submitted that the respondents had not even given any notice to the applicants before recovery of the amounts paid to them was ordered. It appears that the position whether Night Duty Allowance was admissible to the Chowkidars (CVB) was not clear to the competent authorities of the respondents and consequently the Night Duty Allowance was paid to the applicants. The fact is that a situation was created to show before the applicants that they were entitled to receive Night Duty Allowance. It is true that the respondents had not afforded the applicants any opportunity to express their views before the orders of recovery had been issued and recoveries effected in pursuance thereof.

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In the circumstances I hold the view that the recovery has become arbitrary. As a result the orders of recovery No.PM/11/304-ix dated 18.5.1994 and No.PM/11/304-ix dated 19.5.1994 (Annexures C & D respectively) are not sustainable and are hereby set aside.

5. The application is disposed of in the light of the above. No order as to costs.


30/8/96
(G. L. SANGLYINE)
MEMBER (A)

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