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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 290/00192/2016

RESERVED ON : 06.02.2018

JODHPUR, THIS THE ___9TH ___ DAY OF

FEBRUARY, 2018

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER

1. KASHMIR CHAND S/O SHRI RANJHA RAM, AGED 52 YEARS, ELECTRICIAN HS-II R/O STREET NO.11, DHARM NAGERI, ABOHAR, DISTRICT FAZILKA, PUNJAB.

2. BHAGWATI PRASAD S/O SHRI BRIJ LAL, AGED 56 YEARS, ELECTRICIAN SK, R/O Q.NO.25/04, MES COLONY, ABOHAR CANTT. DISTT. FAZILKA, PUNJAB.

3. NARAIYAN RAM S/O SHRI MANGLA RAM, AGED 47 YEARS, ELECTRICIAN SK R/O GOVINDGARH, TEHSIL ABOHAR, DISTRICT FAZILKA, PUNJAB.

4. OM PRAKASH S/O SHRI NAND RAM, AGED 52 YEARS, ELECTRICIAN SK R/O KANDHWALA AMARKOT, ABOHAR, DISTRICT FAZILKA, PUNJAB.
ALL APPLICANTS EMPLOYED IN THE OFFICE OF GARRISON ENGINEER, MES, ABOHAR, DISTRICT FAZILKA.

.....APPLICANTS

BY ADVOCATE: SHRI VIJAY MEHTA
VERSUS

1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF DEFENCE, RAKSHA BHAWAN, NEW DELHI.
2. COMMANDER WORKS ENGINEER, MES, SRI GANGANAGAR.
3. GARRISON ENGINEER, ARMY, MES, ABOHAR, DISTRICT FAZILKA, PUNJAB.

.....RESPONDENTS

BY ADVOCATE : MR. K.S.YADAV

ORDER

PER SURESH KUMAR MONGA, MEMBER (J)

THE APPLICANTS HEREIN HAD EARLIER FILED AN ORIGINAL APPLICATION NO.21/2013 BEFORE THIS TRIBUNAL SEEKING A DIRECTION

TO THE RESPONDENTS TO PAY THEM THE NIGHT DUTY ALLOWANCE ON THE BASIS OF THEIR ACTUAL SALARY. THE SAID ORIGINAL APPLICATION WAS ALLOWED ON 21.10.2013 AND PURSUANT THERETO, THE APPLICANTS WERE PAID THE NIGHT DUTY ALLOWANCE ON THE BASIS OF THEIR ACTUAL SALARY. THE ARREARS OF THE SAID ALLOWANCE WERE ALSO PAID TO THEM.

2. THE PLEADED CASE OF THE APPLICANTS IN THE INSTANT OA IS THAT THEY LEARNT ABOUT DEDUCTIONS OF THE SUMS OF RS. 12000, 12500, 7500 & 12601 FROM THEIR RESPECTIVE DUE NIGHT DUTY ALLOWANCE PAYMENTS IN THE MONTH OF DECEMBER, 2015 WITHOUT EVEN ISSUING ANY NOTICE TO THEM. THEY FURTHER LEARNT THAT A RECOVERY OF RS. 2000/- PER MONTH IS ALSO BEING AFFECTED FROM THEIR SALARY. AGGRIEVED BY THE SAID ACTION OF THE RESPONDENTS, THEY INVOKED THE JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985 WITH A PRAYER THAT THE IMPUGNED ACTION OF RECOVERY FROM THEIR SALARY BE QUASHED.

3. THE RESPONDENTS WERE PUT TO NOTICE ON 17.03.2016 AND AS AN INTERIM MEASURE, THEY WERE DIRECTED TO NOT TO MAKE ANY FURTHER RECOVERY OF NIGHT DUTY ALLOWANCE FROM THE APPLICANTS.

4. THE RESPONDENTS WHILE FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE OA PRIMARILY ON THE GROUND THAT THERE WAS AN ERROR WHILE MAKING CALCULATIONS OF THE NIGHT DUTY ALLOWANCE PAYABLE TO THE APPLICANTS. IT HAS BEEN AVERRED THAT AS PER THE FORMULA OF CALCULATION OF NIGHT DUTY ALLOWANCE, FIRSTLY, THE HOURS OF NIGHT DUTY PERFORMED BY THE INCUMBENT IS REQUIRED TO BE DIVIDED BY 8 TO ARRIVE AT THE NUMBER OF DAYS AND THEREAFTER SUCH DAYS ARE REQUIRED TO BE MULTIPLIED WITH THE FACTOR OF 1.33 AND THEREAFTER SUCH DAYS ARE MULTIPLIED WITH MONTHLY SALARY AND REQUIRED TO BE DIVIDED BY 240 TO ARRIVE AT THE NET AMOUNT OF NIGHT DUTY ALLOWANCE. IN THE CASE OF APPLICANTS, WHILE CALCULATING THE NIGHT DUTY ALLOWANCE PAYABLE TO THEM, THE FACTOR OF 1.33 WAS MULTIPLIED TWICE, FIRSTLY WHILE MULTIPLYING THE SAME WITH THE NUMBER OF DAYS, AND SECONDLY, WHILE ARRIVING AT THE AMOUNT PAYABLE WITH MONTHLY SALARY. THE INADVERTENT ERROR WAS POINTED OUT BY THE AUDIT AUTHORITIES AND THEREAFTER RECOVERY WAS AFFECTED FROM THE APPLICANTS.

5. SHRI K.S.YADAV, LEARNED COUNSEL FOR THE RESPONDENTS SUBMITTED THAT SINCE IT WAS AN ERROR WHILE MAKING CALCULATION OF THE NIGHT DUTY ALLOWANCE, THEREFORE, NO OPPORTUNITY OF HEARING WAS REQUIRED TO BE AFFORDED TO THE APPLICANTS. NEITHER ANY NOTICE WAS REQUIRED TO BE ISSUED.

6. THE PLEA RAISED BY THE LEARNED COUNSEL FOR THE RESPONDENTS, THAT NEITHER ANY NOTICE WAS REQUIRED TO BE ISSUED BY THE RESPONDENTS, NOR ANY OPPORTUNITY OF HEARING WAS

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REQUIRED TO BE AFFORDED TO APPLICANTS BEFORE AFFECTING ANY RECOVERY, CANNOT BE ACCEPTED AS THE SAME GOES CONTRARY TO THE DOCTRINE OF AUDI ALTERAM PARTEM. EVEN IF THE RESPONDENTS' PLEA THAT THERE WAS AN ERROR OF CALCULATION IN DETERMINING THE PAYMENT OF NIGHT DUTY ALLOWANCE TO THE APPLICANTS IS ACCEPTED, STILL THE MONETARY BENEFIT ONCE GRANTED CANNOT BE WITHDRAWN WITHOUT FOLLOWING THE BARE MINIMUM PRINCIPLES OF NATURAL JUSTICE, WHICH INCLUDES AN OPPORTUNITY OF HEARING.

7. IN VIEW OF THE ABOVE FACTUAL ASPECTS OF THE MATTER, I DEEM IT APPROPRIATE TO DISPOSE OF THE INSTANT OA WITH A DIRECTION TO RESPONDENT NO.2 TO AFFORD AN OPPORTUNITY OF HEARING TO THE APPLICANTS AND PASS APPROPRIATE ORDERS IN ACCORDANCE WITH LAW WITH REGARD TO THE RECOVERY TOWARDS THE AMOUNT OF NIGHT DUTY ALLOWANCE ALLEGEDLY PAID TO THE APPLICANTS IN EXCESS. IN CASE THE APPLICANTS ARE ABLE TO SATISFY DURING THE COURSE OF HEARING AND RESPONDENT NO.2 COMES TO A CONCLUSION THAT RECOVERY HAS BEEN WRONGLY AFFECTED FROM THEIR DUES, THE AMOUNT ALREADY RECOVERED SHALL BE REFUNDED TO THEM WITH AN INTEREST @ 6% P.A. A FURTHER DIRECTION IS ISSUED THAT THE WHOLE EXERCISE SHALL BE UNDERTAKEN WITHIN A PERIOD OF TWO MONTHS FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER.

8. ACCORDINGLY, THE OA IS DISPOSED OF WITH ABOVE DIRECTIONS. NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)
MEMBER (J)

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