

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(13)

DA No. 98 of 1994

New Delhi, this the 26th day of July, 1995.

HON'BLE MR. B.K. SINGH, MEMBER (A)

1. Shri Anand Singh,
Packer,
Qr. No. 839 Type I N.H. IV,
Faridabad (Haryana)
2. Shri Om Prakash,
Packer,
Quarter No. 308 Type I, N.H. IV,
Faridabad (Haryana).
3. Shri Ratti Ram,
Working as Chowkidar,
Qr. No. 168 Type II N.H. IV,
Faridabad (Haryana).
4. Shri Jai Prakash,
Packer,
Qr. No. 256, Type I N.H. IV,
Faridabad (Haryana).
5. Shri Bhagwati Prasad,
working as Chowkidar,
Qr. No. 1374 NH IV
Faridabad (Haryana).
6. Shri Ram Khilari,
Mazdoor,
Qr. No. 789 Type I N.H. IV
Faridabad (Haryana).
7. Shri Ashok Kumar
Sweeper
Qr. No. 1384 Type I N.H. IV
Faridabad (Haryana).
8. Shri Ramla
working as Sweeper,
Qr. No. 1439 Type I N.H. IV
Faridabad (Haryana). Applicants.

(through Mr. T.C. Aggarwal, Advocate).

vs.

Union of India
Through:

1. Director, Publications Division,
Ministry of Information & Broadcasting,
Patiala House, New Delhi.
2. Shri P. Ram Dhamija,
Asstt. Business Manager,
Publications Division,
Faridabad. Respondents.

(through Mr. M.L. Verma, Advocate).

ORDER

(delivered by Hon'ble Mr B.K. Singh, Member(A))

This O.A. No. 98 of 1994 has been filed against Annexure A-1, whereby the applicants have been denied their payment of Over Time Allowance (OTA) and also restricting the same to 1/3rd of the pay. The applicants, who are eight in number, have filed representations individually and jointly and these have been placed at Annexure A-3. The reliefs prayed for by the applicants is;

- a) to pay the applicants their overtime claims as per Annexure A-2 for the period from July, 1992 to December, 1993 without any restrictions, with 15% interest thereon within a period of one month; and
- b) quashing the rule restricting the OTA to 1/3rd of the pay.

On notice, the respondents filed their reply, contesting the application and grant of relief prayed for. Heard the learned counsel Shri T.C. Aggarwal for the applicant and Shri M.L. Verma, for the respondents and also perused the records.

Both the rival parties have filed the Circular No. 15012/3/86-Estt. (Allowance), Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi dated 19.3.1991. This O.M. issued by the the Ministry of Personnel (PG & P) relates to the payment of over-time allowance to Central Government employees. Both the parties rely on O.T.A. per hour in excess of one hour of the prescribed period of work, as contained in paragraph 2 of the O.M. The applicants challenge paragraph 2(ii) of the said O.M. The sub-para(ii) of



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para 2 reads as under:

"(ii) The maximum Overtime Allowance admissible to an employee in a month shall not exceed the amount corresponding to Over Time Allowance payable for 1/3rd of monthly working hours."

The learned counsel for the applicants, however, argued that the applicants have been categorised as Operative Staff and, therefore, he has claimed that paragraph 4 of the O.M. will be applicable. The General Secretary of the Joint Council of Central Government Employees & Workers, vide Annexure A-4, issued his reminder dated 4.12.1993 claiming that out of 17 months bills 9 months were pending with Asst. Business Manager Feeder Stores, Faridabad. In this letter, it has also been mentioned that Chowkidar duties were dispensed with with effect from 1.12.1993 in the dispensary building where the "Collected works of Mahatma Gandhi" worth of about Rs.4 lacks were kept. In this reminder he has requested for the payment of the outstanding bills of O.T.A.

The learned counsel for the applicants vehemently argued that the watchmen and Chowkidars are required to work from 5.00 p.m. to 9.a.m. in the morning that is for 16 hours a day when the normal prescribed period of working is only 8 hours and as such each one of them is performing the job of two persons and they should be compensated in monetary terms. He further submitted that if they are not compensated it would mean their exploitation by the Government of India.

In reply to the various averments made in the O.A. and also to the arguments of the

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learned counsel for the applicants, Shri M.L.Verma learned counsel for the respondents relied on the O.M. of 19.3.1991 of the Department of Personnel and Training and stated that the rate of over-time allowance, has been revised w.e.f. 1.12.1990 and has been paid accordingly. He clearly conceded that there is a restriction imposed by the Government Deptt. of expenditure of India, Ministry of Finance in regard to the payment of over-time allowance to their staff. He further stated that the reasons for the O.M. restricting the over-time allowance from the maximum permissible limit of 1/3rd to 1/6th of the working hours in a month is due to the fact that the Government vide department of P & T Office Memo. No. 15012 dated 19.3.1991 had revised the rate for over-time allowance retrospectively w.e.f. 1.12.1990. This copy has also been annexed by both the respondents and the applicants. It is enclosed with the counter reply as Annexure R-1. It is further submitted that since the O.T.A. rates were enhanced considerably but since the Government had vide Ministry of Finance (Department of Expenditure) O.M. No. (B) 21011/32/89-E-IV dated 18.4.1991 restricted the expenditure for subsequent years, that is, for 1990-91 when the over-time allowance rates were enhanced, the division was compelled to take economy measures to correlate the expenditure on O.T.A. within the funds made available to it under the budgetary allocations based on those orders. The respondents have also enclosed a copy of the aforesaid O.M. dated 18.4.1991 as Annexure R-2(A). This O.M. issued by the department of Expenditure, Ministry of Finance fixes the upper limit for payment of O.T.A. to 1/6th of the total working hours in a month

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as against maximum of 1/3rd working hours permitted under the normal circumstances. The 1/3rd limit has to be treated as the maximum limit and a worker is not entitled to claim over time allowance upto this limit as a matter of right. There is an alternative method of compensating the staff put on over-time duty, that is, by granting compensatory leave to them. The learned counsel categorically stated that because of the paucity of funds and because of the limited budgetary allocation, there is no option for the respondents but to pay the over time out of the budgetary allocation and for the remaining period of over-time performed, the employee would be entitled to the grant of compensatory leave. They have enclosed the Government's instructions in this regard vide their Annexure R-2(B) with the counter reply. The funds are a constraint and on account of resource crunch, the respondents have evolved an alternative procedure of granting compensatory leave in lieu of payment of cash. He drew attention of the Court to page 5 to show that they have paid the allowances to the extent of available funds on the dates given below:

S.No.	Date	Rate Monthly Work	Period
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1.	23.7.92	@ 1/6th	April-June, 1992.
2.	9.12.93	-do-	July-Sept., 1992
3.	28.2.94	-do-	Oct., 92-Feb., 1993.
4.	5.4.1994	-do-	April, 92-Feb., 1993.
5.	1.6.1994 (bills sent to PAO)	-do-	April, 93-March, 1994.
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And for the rest, because of paucity of funds it is stated by the learned counsel for the respondents

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it will not be possible to compensate them in the form of cash. He further argued that the action of the respondents is neither arbitrary nor against the principles of natural justice and that there is no exploitation of the staff. The Hon'ble Supreme Court in a catena of judgments has held the view that policy decisions of Government involving finance do not fall within the purview of judicial review by the courts. These are matters solely within the domain of the Executive and the Courts exercising the power in their writ jurisdiction under Article 226 of the Constitution are barred from interfering with the decisions taken in the interest of national economy. This was clarified by the Hon'ble Supreme Court in Umesh Chander vs. C.N.C.C. and others AIR 1989 SC 291 followed in several judgments in JT 1994(2) SC 170 Union of India and others vs. Scientific Workers Association(Repd.) Kanpur & others, wherein it was held that in the interest of national economy and social justice the Government can even modify a settlement or an award reached as per clause 21 of the J.C.M. Scheme, in the interest of national economy.

It is well-settled that the power to frame rules, to regulate conditions of service under proviso to Rule 309 of the Constitution, entails with it the power to amend or alter the rules with retrospective effect as was held in V. S. Wadhwa vs. Union of India, 1968(3) SCR 575, Raj Kumar vs. Union of India(1975) 3 SCR 963, K. Naqraj and others vs. State of Andhra Pradesh and another, 1985(1) SCC 523 and State of J & K vs. P. N. Khosa and others, 1974(1) SCR 771. It is equally well-settled that accrued

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to a person cannot be taken away. OTA is not a vested right and does not form part of the emoluments of a Government servant. The basic pay, DA, HRA and CCA etc. are part and parcel of their emoluments but there is no vested right as regards OTA and taking into consideration the resource crunch, the Government are fully competent to reduce the working period of OTA. In the instant case, the rate of O.T.A. was increased but the limit of the OTA has been reduced from 1/3rd to 1/6th, in view of the increase in the amount payable. This is mainly because the amount of budgetary allocation has not increased corresponding to the increase in the rates of O.T.A. The Circular of the Department of Expenditure, Ministry of Finance, which is fully empowered to adopt measures to effect economy in Government expenses has issued a O.M. which has been enclosed by the respondents with their counter-reply and this circular is also a decision of the Government and cannot be questioned by the Court.

As regards the 16 hours work put in and monetary compensation claimed, it may be pointed out that there is a directive regarding reduction of staff to the extent of 10% in the interest of national economy and every government servant is known to be a 24-hour employee and he cannot take the liberty that it is none of his job to perform the duties ^{assigned to him} of watch and ward. He will be entitled to payment of OTA as per the O.Ms issued by the DO PT and also the O.M. issued by the Department of Expenditure, Ministry of Finance and nothing more and nothing less. The Government have evolved an alternate method of compensating the employees by

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grant of compensatory leave in lieu of cash payment and this is also a policy decision of the Government to grant rest to the employees if otherwise there is a resource crunch and there is a possibility of fatigue to an employee affecting his efficiency and capacity. The compensatory leaves can be availed of by an employee to take rest for over-time duty put in by him. These are matters of policy decision strictly falling within the domain of the Executive and it would be unjust and unfair for the Courts to interfere in matters like this.

In view of the aforesaid observations, I do not find any merit in the application and the same is dismissed leaving the parties to bear their own costs.

(B. K. Singh)
Member (A)

(Signature)