

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1978/89

Date of decision: 31.7.1992

All India Customs
Preventive Service
Federation through
the General Secy.,
and Another

.... Applicants

Versus

Union of India through Respondents
Secy., Miny. of Finance
& Another

For the Applicants

.... ^{vs} Miss Chandan Ramamurthi,
Counsel with Shri M.K.
Ramamurthi, Sr. Counsel

For the Respondents

.... Shri M.L. Verma, Counsel

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

This application has been filed by the All India
Customs Preventive Service Federation and the All India
Customs Appraising Officers Federation. They have prayed
for the following reliefs:-

(i) To direct the respondents to revise the
present overtime rates and allow $1\frac{1}{2}$ times
hourly average pay for every hour of overtime
performed during the day by the officers
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represented by the applicants and allow twice the hourly average pay for every hour of overtime performed during night extending 8.00 p.m. to 6.00 a.m.;

- (ii) to direct them not to impose any ceiling on the overtime earned by the officers represented by the applicants;
- (iii) to direct them to prescribe minimum duration of overtime work extending in continuation of day's work; and
- (iv) to direct them to pay arrears together with interest at the rate of 18 per cent of the overtime earned by the members of the applicant Associations and calculated on the basis of $1\frac{1}{2}$ times hourly average rate of their pay on the basis of their pay-scales as revised from time to time since 1.1.1973.

2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The first applicant represents the Preventive Officers and Superintendents of Customs (Preventive) in the six major Customs Houses at Bombay, Madras, Calcutta, Goa, Cochin and Vizag. There are nearly 2,000 officers belonging to this Service. The

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second applicant represents Appraisers (Promotees) Group 'B', and Examiners Group 'C' working in various Customs Collectorates. The Federation consists of about 550 members. The overtime performed by these officers is of two types. The first one is known as the Government Overtime which is paid to the staff when they are posted for anti-smuggling work like patrolling of the sea coasts, keeping watch on various in the docks and also patrolling on the high seas. The second category of overtime is called Merchant Overtime (MOT) which is peculiar to the Customs Service. This overtime is paid to the staff when they are posted for various import/export jobs at the request of the importers/exporters. The applicants have stated that posting of officers at the request of the Trade helps the Government in recovery of revenue and at the same time the overtime is paid by the Merchant. The Government does not have to spend any amount for payment of MOT. On the contrary, the Government takes away a major chunk of the overtime fee paid by the Trade and pays a very small fraction to the officers. MOT received by the Government from the Trade is much more than what is paid to the employee officers.

3. The applicants have stated that they are entitled to earn Merchant overtime fees under the Customs Act, 1962 and they have been earning the same since very long time.

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4. The grievance of the applicants is that the overtime allowance paid to the officers in the Customs Department is incredibly low. According to them, the overtime rates have not been revised since 1968. They have claimed that the Government should revise the overtime rates and they should be paid $1\frac{1}{2}$ times rates of hourly pay ~~mark~~ for normal duty hours. Apart from this, they have also called in question the imposition of a ceiling on the overtime earnings upto 50 per cent of the emoluments.

5. The applicants have stated that the Government had revised the overtime fees payable by Trade in 1976 but it did not revise the rates of overtime allowance to be paid to the staff. They have submitted that non-revision of overtime rates for so many years has resulted in an anomaly and wide disparity in the earning of overtime fees by the Government and what is being paid to its staff. They have pointed out that in some other establishments, overtime is paid at much higher rates.

6. The respondents have stated in their counter-affidavit that the Fourth Pay Commission has recommended abolition of the scheme of overtime allowance, and that a new concept to partially replace the overtime allowance was under consideration of the Government. They have

also contended that abolition of the ceiling on overtime earning, would cause damage to the health of the officers and hence, compensatory leave could be granted to them. As regards Merchant overtime, the respondents have argued that it is collected by the Government for rendering the services of the Customs after the office hours and that it is a collection by the Government, whereas overtime allowance is a payment by the Government.

7. The applicants have relied upon the office dated 4.10.1989 ^a Memorandum issued by the Department of Personnel & Training regarding the night duty allowance and the orders issued on 4.12.1989 by the Collectorate of Customs, Calcutta on the subject. During the hearing of the case, our attention has also been drawn to the office memorandum issued by the Department of Personnel & Training on 19.3.1991 and the circular issued by the Ministry of Finance (Department of Revenue) on 15.1.1992 on the subject of payment of overtime allowance. The learned counsel for the respondents has relied upon the office memorandum dated 13.11.1986 issued by the Department of Personnel & Training, wherein it has been stated that the Government have accepted the recommendations contained in para. 26.11 of Chapter 26 of the Report of the Fourth Pay Commission regarding the discontinuance of the scheme of grant of overtime allowance to Central Government employees.

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8. The learned counsel for the applicant relied upon the judgement of the Supreme Court in Indian Oxygen Ltd. Vs. their Workmen, A.I.R. 1969 S.C. 306. In that case, the Supreme Court has upheld the decision of the Industrial Tribunal to fix the rate for overtime work at $1\frac{1}{4}$ times the ordinary rate of wages.

9. We have given careful consideration to the contentions of both sides. In our opinion, after the Fourth Pay Commission has recommended discontinuance of the scheme of grant of overtime allowance to Central Government employees and its acceptance by the Government, the grant of overtime allowance would be in the nature of a concession. It is clear from the O.M. dated 19.3.1991 that the Government have fixed revised rates of overtime allowance in respect of office staff, staff car drivers and operative staff. Consequent upon the issue of the said O.M. dated 19.3.1991, the Ministry of Finance (Department of Revenue) have issued their circular letter 15.1.1992 regarding payment of overtime allowance to officers and staff w.e.f. 1.12.1990 employed on Customs work. The rates of overtime allowance are the same as in the O.M. dated 19.3.1991 pertaining to the operative staff. However, a ceiling has been imposed on overtime allowance to the extent of 1/3 of the monthly hours. The
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overtime work, if any, in excess of the above ceiling, would have to be done by the officers and the staff without payment of overtime allowance. In our opinion, the fixation of a ceiling on overtime allowance in respect of the operative staff, cannot be said to be arbitrary or unreasonable. There had been a ceiling on the overtime earnings even under the earlier instructions contained in the Ministry of Finance letter dated 23.2.1968. The ceiling was to the extent of $\frac{1}{2}$ of a month's emoluments, relaxable to two-thirds of a month's emoluments in certain cases. The fixation of the rates of overtime allowance and the ceiling imposed thereon, also find justification in the overall context of the financial policy of the Government, which is to curtail the expenditure and to minimise inflation. At any rate, what should be the rate of overtime and whether any ceiling should be imposed on it, are questions of policy on which it would not be appropriate for a Court or Tribunal to interfere unless there is any arbitrariness or discrimination involved in the operation of the scheme. We have already observed that there is no arbitrariness or unreasonableness in the revision of the overtime rates by the Government. The new rates will apply uniformly to all the staff, depending

on the emoluments drawn by them and the rate of overtime allowance fixed for each category.

10. In the light of the foregoing discussion, we are of the opinion that the applicants are not entitled to the relief's sought by them. The application is, therefore, dismissed. There will be no order as to costs.

B.N. Darji
(B.N. Dhomdiyal) 30/7/52

Administrative Member

Parikh
31/7/52
(P.K. Kartha)
Vice-Chairman (Judl.)