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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2582/89.

Date of decision: 6.12.1994

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Harivansh Prasad Tewari,
S/o Shri L.P. Tewari,
Night Watchman,
Office of Dy. Chief Controller
of Explosives,
Govt. of India,
Explosive Deptt.
North Circle,
Agra.

... Applicant

(By Advocate Shri S.S. Tewari)

versus:

1. Union of India
through Secretary,
Ministry of Industries,
Government of India,
Central Secretariat,
New Delhi.
2. The Chief Controller of Explosives,
Government of India,
Department of Explosives,
Old High Court Building,
Nagpur.
3. The Dy. Chief Controller of Explosives,
Government of India,
Department of Explosives,
North Circle,
Agra. ... Respondents

(By Advocate Shri N.S. Methal)

ORDER

7 Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial) 7

1. The applicant is aggrieved that he is not being paid Overtime Allowance for duties performed by him in excess of the prescribed limit for more than 9 hours in a day or more than 48 hours in a week with effect from 1.1.1983.

2. The brief facts of the case are that the applicant

is working as Night Watchman-cum-Farash-cum- Darban in the Office of Respondent No. 2 i.e. the Chief Controller of Explosives, Department of Explosives at Nagpur. The applicant claims that he has been working in that office from 1.1.1983. He states that he has been discharging his duties from 1600 hours to 1000 hours next day morning regularly from 1.1.1983. The applicant states that he has not been paid any Overtime Allowance for performing his duties during these long hours. The Council for the Applicant referred to the Memo. issued by Respondent No. 2 dated 16.6.1983 (Annexure-I'). This memo. reads as follows :-

* Government of India
Department of Explosives
No.G-1(135)1 Agra dated 13th May, 1983
16/6/83

MEMO

Subject:- Working hours of Night Watchman.

With reference to his application dated 26/3/1983 on the above subject Sri H.P. Tewari Night Watchman in this office, is informed that he is required to perform the duty from 16 hrs. to 10 hrs. (next day morning). As regards locks and keys as requested for by him he is informed that it would be his sole responsibility as is being followed at present in this office. In this connection he may please note that change of duty as requested for by him is not agreed to.

Sd/-
(P.K. Bandyopadhyaya)
Dy. Chief Controller of Explosives
North Circle, Agra.

3. He has also referred to the O.M. dated 19.9.1986 issued by the Government of India, Directorate General of Works, Central Public Works Department (Annexure II) under which it is provided that Overtime Allowance is payable to Chowkidars in field offices where they have performed

duties in excess of their prescribed limit mentioned in the Minimum Wages Act, 1948 read with Rule 25 of the Minimum Wages (Central) Rules, 1950 i.e. where the worker is employed for more than 9 hours on any day or 48 hours in any week. He had also made representations to the respondents for providing him Overtime Allowance which had not been acceded to. The applicant, therefore, submits that since he has not been paid any Overtime Allowance for working from 16 hours to 10 hours (next day morning) from 1983, the same may be directed to be paid to him by the respondents.

4. The learned counsel for the respondents submitted that the O.M. of the Directorate General of Works dated 19.9.1986 relied upon by the applicant is not applicable to the applicant as the O.M. concerns Chowkidars in C.P.W.D. This has been vehemently denied that

by the applicant on the ground of being an employee of the Central Government, same standard should be applied to him also. Learned counsel further drew our attention to para 4(iv) of the reply which is reproduced below :-

"..., As per the standing instructions and normal practice followed by the department of Explosives, the night watchman reports for duty just before the closing of the office hours (at present it is 18.00 hrs.) and checks the locks and keys and takes charge of the same. Afterwards he goes out for his tea and dinner and comes back to his duty at about 22.00 hrs. and in the morning from 6 hrs. and before the opening of the office i.e. (09.30 hrs.) he takes

'off' according to his convenience for tea and breakfast."

5. We have carefully considered the submissions of the learned counsel for both the parties. The Memo. dated 16.6.1983 issued by respondent No. 2 clearly shows that the applicant was required to perform duties from 1600 hours to 1000 hours (on the next morning) which would amount to more than 9 hours of work in a day. The averment of the respondents in their reply reproduced above does not also show that he is required to work for less than 9 hours in a day or 48 hours in a week. The respondents have also not brought on record any change in the hours of duty to be performed by the applicant further to their Memo. dated 16.6.1983. This clearly shows that the applicant was required to perform more than 9 hours of duty in a day or 48 hours in a week.

6. In the facts and circumstances of the case, we are of the view that the applicant is entitled to be paid Overtime Allowance for performing duty in excess of the prescribed limit of working hours on the basis of the extant orders on the subject and O.M. of the Government of India dated 19.9.1986 i.e. for the period he discharged his duties for more than 9 hours in a day or 48 hours in a week subject to the

19

following:

The Overtime Allowance shall be paid at the prescribed rates from one year prior to the filing of the applicant O.A. i.e. with effect from 28.3.1988 till the applicant continues to perform such hours of duty in excess of 9 hours in a day or 48 hours in a week. We order accordingly and further direct that this payment should be made to the applicant within two months from the date of receipt of a copy of this judgment failing which the respondents will be required to pay interest also @ 12% per annum on the total sum due with effect from 2 months from the date of this judgment till the date of actual payment.

7. The application is partly allowed as directed above. There will be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

R. Adige
(S.R. Adige)
Member (A)