

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, (24)
NEW DELHI.

O.A.No.867 of 1987

Date of Decision:19.7.93.

N.Moorthy

.....Petitioner.

Versus

Union of India & othersRespondents.

With

O.A.No.1233/87

CPWD Non-Gazetted Officers Staff Assoc.
.....Petitioner.

Versus

Union of IndiaRespondents

O.A.No.1855/89

CPWD Non-gazetted Office Staff
Asso.Petitioner.

Versus

Union of India & othersRespondents.

T.A.No.178/87

CPWD Staff AssociationPetitioner.

Versus

Union of India & othersRespondents.

CORAM:

Hon'ble Mr.Justice V.S.Malimath,Chairman.

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

Present:

Shri P.P.Khurana, counsel for the
petitioner in T.A.No.178/87.

None for respondents.

JUDGMENT(ORAL)

(By Hon'ble Mr.Justice V.S.Malimath,Chairman)

This is one of the many unfortunate cases
where the Central Government is an orphan before
the Tribunal. We say ^{so} because none has appeared
before the Tribunal in this case. In the cause
list, the names of the parties have been shown

as duly served. Though a reply has been filed in this case by a counsel the Court Officer informs us that there is no memo of appearance filed on behalf of the respondents by any counsel. We are, therefore, required to take the additional responsibility of careful looking into the records for the purpose of proper adjudication of the matter before us without the assistance of the counsel representing Union of India and other respondents in these cases.

2. The grievance that is placed before us is by the Central Public Works Department Staff Association (Eastern Zone) through its Secretary and Under Secretary. The respondents impleaded are the Union of India through the Secretary, Ministry of works and Housing, the Director General of Works, Central Public Works Department, the Secretary, Ministry of Home Affairs, Department of Personnel and Training, the Director of Administration, Central Public Works Department and the Chief Engineer (Eastern Zone), Central Public Works Department, Calcutta. The prayer of the petitioners is for a direction to the respondents to withdraw, rescind and cancel the order dated 1.6.85 (Annexure-C) and the order dated 14.6.85 (Annexure-B) issued by the Director of Administration, CPWD, New Delhi and the Chief Engineer, CPWD, Calcutta respectively and for further direction not to implement or give effect to the same. These are the substantial reliefs claimed in this petition. We shall now briefly advert to the relevant facts to understand the case of the petitioners.

3. It is the petitioners' case that so far as the weekly working pattern for the Government of India staff is concerned, until the impugned order came to be passed by Annexure-A dated 13.7.85 that

the timings were from 10 a.m. to 5 p.m.. The working days were from Monday to Saturday, the Second Saturday, however, being a holiday. A change is brought about in this pattern by the order Annexure-A dated 21.5.85 issued by the Director, Government of India, Department of Personnel and Training. By this order, it is stated that the Government of India has introduced the 5 day week in the Civil Administrative Offices of the Government of India w.e.f. 3.6.85. As a consequence, the office would remain open from Monday to Friday with all Saturdays being off-days in addition to Sunday. So far as the working hours during these days are concerned, they have been given two options; either to fix timings from 9a.m. to 5 p.m. with half an hour lunch break from 1 p.m. to 1-30p.m. or from 10a.m. to 6 p.m. with half an hour lunch break from 1-30p.m. to 2 p.m. Paragraph 3 of the said order says that "In so far as administrative offices outside Delhi/New Delhi are concerned, the total working hours would not exceed 7½ hours excluding lunch break, but the office timings may be decided by the Central Government Employees Welfare Co-ordination Committee (where it exists) or by the Head of Office (where such a Committee does not exist) in consultation with the representatives of the employees". It is further said that "all the Central Govt. Offices located in one place should have the same office timings, either 9a.m. to 5 p.m. or 10 a.m. to 6 p.m.". All the Ministries/Departments are requested by the said order to bring these instructions to the notice of all Organisations/Offices under Central Govt. for compliance. Annexure-B is order dated 1.6.85 issued by the Office of the Chief Engineer (Eastern Zone), CPWD, Calcutta. It is stated therein that in

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compliance with the decision of the Government (Annexure-A) offices. the CPWD located at Calcutta would now work for 5 days a week from Monday to Friday with all Saturdays as closed with effect from 3.6.85. It is further stated that to make up for the closed Saturdays, the working hours per day during the 5 days week when the offices are open will be increased by one hour. The revised timings have been furnished therein as from 10 a.m. to 6 p.m. with half an hour lunch break from 1-30 p.m. to 2 p.m. This is followed by another order of the same date (Annexure-C) issued by the Director of Administration wherein it has been clarified that the aforesaid orders (Annexures B and C) are not applicable to Workcharged/Regular Classified Establishment of the Directorate. It is further stated that the decision regarding 5 day week will not be applicable to the Divisions and Sub-Divisions, who will continue to observe only the Second Saturdays off and their working hours will remain as 9-30 a.m. to 4-30 p.m. with half an hour lunch break, as at present. It is stated that the supervisory staff attached to Sub-Division-Supervisory, Clerical and ancillary upto the level of Junior Engineer will, however, come on 2nd Saturday to supervise the work of Workcharged Establishment/Regular Classified Establishment Staff as per the present practice. It is further stated that the Zonal Offices and Circle Offices will, however, observe the 5 day week as per the orders of the Department of Personnel and Training. It is this order which really hurts the interest of the petitioners in that they are required to continue to abide by the earlier pattern of 6 day week. They not deriving any benefit of the new order made on 21.5.85, claim that the order (Annexure-C) is in conflict with the direction contained in Annexure-A and that is also arbitrary in

the sense that they have been picked and chosen for a treatment different from the one which is meted out by the operation of Annexure-A in favour of other employees of the Central Government.

4. We shall first examine the contention as to

whether the order (Annexure-C) is in conflict with the

the order of Government of India (Annexure-A). The order

(Annexure-A) makes it clear that the introduction of

new scheme of 5 day week is in respect of Civil

Administrative Offices of the Government of India.

In other words, the application of the said rules

is limited in application to Civil Administrative

Offices of Government of India. In other words, it has

no application to the offices which are not Civil

Administrative Offices of Government of India. What

is asserted in Annexure-C is that the said order

(Annexure-A) is not applicable to Divisions and Sub-

Divisions and they continue to follow the same old

pattern. The reason advanced in the reply filed in

support of this is that the Divisional and Sub-

Divisional Offices of CPWD do not fall within the

ambit of the expression 'Civil Administrative Offices

of the Government of India'. If the order (Annexure-C)

made by an authority subordinate to the Government

of India has mis-understood the directions of the

Government of India ^{or} and has passed order in

conflict with the same, one would have expected

the Government of India to have found fault with the

said direction and directed such authority to modify

the said direction and to bring it on par with its

decision. This is a circumstance which indicates that

there was acceptance of the stand taken by the authority

in Annexure-C that the Divisional and Sub-Divisional

Offices of CPWD were rightly not treated as Civil

Administrative Offices of ^{the} Government of India. In the

reply, particularly in paragraph 9, it is stated that the Divisions and Sub-Divisions of CPWD are not Civil Administrative Offices. It is further stated that the CPWD Divisions and Sub-Divisions which are field establishments, are the executive offices and are doing the work of operational nature/public utility services and as such CPWD Divisions and Sub-Divisions are not Administrative Offices and, therefore, five day week is not applicable for them. It is, therefore, clear that the positive stand has been taken which is supported by reasons for the stand taken that Divisional and Sub-Divisional Offices of CPWD are not Civil Administrative Offices. Hence it is clear that an attempt has been made by the authority not to act in conflict with the order of ^{the} Government of India (Annexure-A) but to act consistent with the statutory order.

/It is no doubt that in the rejoinder filed by the petitioners, they controvert the assertion of the respondents that the Divisional and Sub-Divisional Offices are not Civil Administrative Offices. We must say at the out set that the main assertion in paragraph 9 of the reply about the nature and functions discharged by the Divisional and Sub-Divisional Offices is not, controverted. It is, however, stated in the reply that Ministerial staff belonging to the Regular Establishment working in the Divisions and Sub-Divisions do not perform duties of operational nature/public utility services. In other words, a section of the staff of Divisional and Sub-Divisional offices consisting of Ministerial officials do not perform the duties of operational nature/public utility services. Assuming at the best the stand taken by the petitioners in this behalf is right. It only means that a section of Divisions and Sub-Divisions consisting of

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Ministerial staff does not by itself engage in performance of duties of operational nature/public utility services. What is necessary to remember is that the new prescription of 5 day week is required to be applied with reference to offices and not with reference to officials and what is required to be taken into consideration is the unit as an office and not the particular officials who are working in the office. As long as the essential and predominant nature of the office is performing duties of operational nature/public utility services, it cannot be regarded as Civil Administrative Office. Merely because some of the officials; namely Ministerial staff do not involve in duties of operational nature/public utility services, it cannot be said that they are not the officials of an Organization which can be regarded as being in the nature of Civil Administrative Offices. Another reason given by the petitioners in the rejoinder is that the offices of the Divisions and Sub-Divisions are located far away from the site of construction work. This, in our opinion, does not have any direct bearing on the nature of the functions exercised by the officials in the Divisions and Sub-Divisions as long as these Divisions and Sub-Divisions are not offices which can be regarded as Civil Administrative Offices having regard to the predominant nature of the duties and functions exercised by the said Divisions. It is not possible to take the view that merely because the offices are located far away from the work site, the basic character of offices gets affected. It is for the administration to decide as to which are the offices of Civil Administrative offices and which are not. Having regard to the materials placed before us, it is not possible to take the view that the decision taken by

the authority in holding that the Divisional and Sub-Divisional offices of CPWD are not Civil Administrative Offices, can be regarded as arbitrary calling for interference. We, therefore, see no good ground to hold that either the impugned order is in conflict with the order (Annexure-A) or in any manner arbitrary. Even if we look into the substance of the matter, it is not possible to take the view that there is any injury of such a nature which really merits being taken cognizance of by the Tribunal. It is necessary to bear in mind that the whole object of the order is to make arrangement for improving efficiency whenever reasonably possible. We find that there is no substantial difference so far as the work load is concerned. The difference, if any, is only marginal in character. We are, therefore, not impressed by the argument that the order is arbitrary. In our opinion, this is not a case which merits interference. The application is accordingly dismissed.

5. In O.A.No.1233/87, O.A.No.1855/89 and O.A.. No.867/87 none appeared for the petitioner. Smt.Raj Kumari Chopra appears for the respondents. Though these cases could have been dismissed for default as none appeared for the petitioners, we propose to dismiss them on merit as the question raised in these cases is fully covered by the decision which has just now ^{been} rendered dismissing T.A.No.178 of 1987. It is ordered accordingly.

(S.R.ADJ/GE)
MEMBER(A)

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27071993.

(V.S.MALIMATH)
CHAIRMAN.

True Copy
(PURNI CHAND)
Court Officer
Central Administrative Tribunal
Principal Secretariat, New House
Constitutional Bench, Delhi