

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2801/91

Date of decision 12-1-96.

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

Hon'ble Shri R.K. Ahopja, Member (A)

1. Shri R.P. Lamba
s/o Late Sh. Ram Swaroop
R/o 1430, Lodhi Complex,
New Delhi-110003

2. Shri J.S. Arya S/o Sh. K.L. Upadhyay,
R/o C-66, Sector-21, Jal Vayu Vihar,
NOIDA-201301.

... Applicants.

(By Advocate Shri V.K. Sawhney)

Vs.

1. Union of India, through
Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhawan, New Delhi.

2. Secretary, Cabinet Secretariat,
(Special Wing) Room No. 88,
South Block, New Delhi.

... Respondents

(By Advocate Shri M.K. Gupta)

O R D E R

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

This application was taken up together with
OA 2802/91 as the parties and the facts are the same.

The main reliefs claimed by the applicants in this case
are the following:-

(i) That the respondents be directed to
authorise Overtime Allowance to the
Applicants for the extra duties performed
by them beyond 40 hours/week since their
dates of initial appointment in the
Department.

(ii) That the Respondents be directed to
authorise Night Duty Allowance to the
Applicants for the portion of Night

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Duty performed by them between 2200 to 0600 hours since their dates of initial appointment in the Department, and

(iii) That the respondents be directed to pay their claim for Arrears of Overtime and Night Duty Allowances to the Applicants within a reasonable time limit.

2. The applicants who are both working as Caretakers with the respondents - Cabinet Secretariat are aggrieved by the memorandum issued by the respondents on 28.8.91 rejecting their claim for payment of Overtime Allowance for the extra duties performed by them (Annexure-C). The applicant No.1 has been appointed as Caretaker w.e.f. 3.8.71 and applicant No.2 with effect from 7.5.76. Their claim is that in accordance with the Govt.of India, Ministry of Personnel,Public Grievances and Pensions O.M. No.12012/4/86-Estt(Allowances) dated 4-10-89 (Annexure-E), they are entitled to night duty allowance for duty performed between 2200 hours to 0600 hours upto a maximum ceiling of Rs 2200/-. Their duty hours have been prescribed in Office Memo.dated 20.2.1989(Annexure-F). The applicants claim that according to this Memo, they are required to perform duties as shown below:-

	<u>From</u>	<u>To</u>	<u>Total hours</u>
<u>DAY DUTY</u>	(i) 0730	1730	10 hours
	(ii) 0900	1900	
	(iii) 0830	1830	
<u>NIGHT DUTY</u>	1900	0730	12½ hours
<u>HOLIDAY DUTY</u>	0800	1800	
	1800	0800	10/14 hrs.

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3. The applicants state that in accordance with para 22 of the recommendations of the IVth Pay Commission which has been adopted by the Govt. of India, the working hours of the office staff have been fixed at 40 hours per week (Ann.H). According to them as per the office duty hours fixed for Caretakars in the Memo. dated 20.2.89, they are required to perform 10 hours day duty and 12½ hours night duty and they are also required to perform duty on Saturdays/Sundays/Holidays which extends from 0800 hours to 1800 hours (10 hours) and 1800 hours to 800 hours (14 hours). According to them after performing the additional duties on Saturdays/Sundays/Holidays, they are only granted one day compensatory off while the other staff in the same department are getting two days compensatory off for every 8 hours duty performed on Saturdays/Sundays/Holidays. They, therefore, state that respondents have adopted double standards in respect of personnel working with them. The applicants, *12/* state that they are working for of an average//minimum 22 hours/per week extra when doing day duties and 22½ hours/per week extra when performing night duties. Therefore, they claim that they are entitled for Overtime allowance/financial compensation, which has been *12/* wrongly denied to them.

4. They have stated that the respondents have been giving assurances from time to time that the matter was receiving consideration but finally they have rejected their claim for Overtime Allowance by the Memo. dated 28.8.91 (Annexure-C)

5. Respondents have filed written statement denying the above claims. Their stand is that in the light of their circular dated 20.2.89 fixing the duty hours of Caretakers, they are not entitled to any O.T.A.

According to them, Caretakers on night duty have to perform duty from 1900 hours to 0730 hours (next day) on rotation basis. Since the Caretakers are recruited for performing these duties, including night duty on rotation form, obviously they are not entitled for any OTA etc. They state that reference was made to the Govt. for clarifications as to whether the Night Duty Caretakers were eligible for night duty allowance to ^{stating} which reply has been received on 14.1.1992./that night duty allowance is admissible as per the formula given in para 2(v) (b) of the DP&T Department's O.M. 12012/4/86 Estt.(Allowance) dated 4.10.1989 (Annexure-E) but subject to the condition that he is not compensated in any ^{other} form". According to the respondents, since the night duty Caretakers are granted compensatory off the next day, they are not entitled to night duty allowance. In the

circumstances, respondents state that this O.A. is without any merit and may be dismissed.

5. We have considered the arguments of both the learned counsel for the parties and perused the records in this case.

6. The memo, dated 20.2.1989 issued by the Cabinet Secretariat deals with the duty hours of Caretakers posted at Headquarters Building. According to this Memo., the Caretaker who is on/^{day}duty has to perform 10 hours per day and those on night duty has to perform 12¹/₂ hours a day. Para 3 of this Memo. provides that Caretakers on night duty will perform duty for 5 days in a week from Monday to Friday, Saturday and Sundays being off day for him. Instead of two days holidays as prescribed in this O.M. the applicants state that they are only given one day compensatory off. However, applicants have failed to substantiate their claim by furnishing any proof that they are, in fact, made to work for longer hours than prescribed in the O.M. dated 20.2.1989. We, therefore, are not in a position to come to any categorical findings to the effect that the respondents are taking more hours of work from the Caretakers than the prescribed duty hours.

7. The claim of the applicants that their working hours are at variance with the working hours

prescribed for other employees in the same department and, therefore, they should be compensated, is without any force. Admittedly, they are required to put in duty hours as Caretakers in accordance with the respondents' memo. dated 20.2.89 whereas other office staff are required to work 40 hours. Their argument that they are given longer duty hours as Caretakers which amounts to discrimination cannot be accepted because admittedly the working hours of Caretakers has been separately dealt with in the O.M. which prescribes the duty hours of Caretakers posted with the respondents. The Caretakers, therefore, cannot complain if their duty hours are longer than those prescribed for other office staff who are governed by separate conditions of service as their duties and responsibilities are not the same. The working hours of Caretakers who are governed by the hours of duty prescribed separately in the O.M. cannot, be compared to those with other office staff like LDC's etc. because obviously their conditions are required to be governed by different duty staff who shoulder different responsibilities, depending on the type of their jobs and duties etc. In the circumstances we reject the claim of the applicants that they are also required to do only 40 hours of duty as prescribed for other office staff.

8. As regards the claim for night duty allowances,

we find that there is ^{no} doubt the applicants are performing ~~/night duty~~ as defined in para 2(ii) of the DP&T O.M.

dated 4.10.1989 i.e. duty performed between 2200 hours and 6.00 hours. Sub Para (iii) of this para prescribes a uniform weightage of 10 ^{minutes} for every hour of night duty performed. Night duty is to be computed as per the formula given in sub-para(v). The exception in para 6 does not appear to be applicable in the case of the applicants, which takes into account the night duty factor while revising the pay scale of any of persons ^{duty.} categories/doing night// respondents have nowhere stated that the pay scale of the applicants have been revised taking into account the night duty factor. Para 3 provides "that the existing orders on the subject in so far as they relate to night duty should be deemed to have been modified accordingly." These orders were to come into force w.e.f. 1.1.1986. The O.M. issued by the respondents prescribing the duty hours of Caretakers, including the night duty hours is dated 20.2.1989 i.e. prior to the DP&T O.M. prescribing weightage for night duty allowance which is dated 4.10.1989. Having regard to the DP&T O.M., we are of the view that the applicants are fully covered within the provision of this O.M. and are entitled to be paid night duty allowance as prescribed in para 2(ii).

10. This application has been filed on 22.11.1991.

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The applicants have not given the details of their off days or working days on Saturdays/Sundays/and Holidays in terms of compensatory off as prescribed in the O.M. dated 20.2.1989. The respondents stand is merely that night duty allowance are admissible to them subject to the conditions that they are not compensated in any other form. According to the respondents, they have given them compensatory off and so they are not entitled for night duty allowance. These are matters of fact to be verified from the records which, however, are not placed on record.

11. In the circumstances, we dispose of this O.A. with the following directions to the respondents:-

- (i) The respondents are directed to calculate and pay night duty allowance to the applicants with effect from one year prior to the date of filing of this application i.e. from 22.11.90 on the basis of actual hours of work put in by them in accordance with the relevant instructions. This amount shall be paid to the applicants within a period of 4 months from the date of receipt of a copy of this order.
- (ii) The claim for overtime allowance for extra duties performed beyond 40 hours/ per week is rejected.

12. The O.A. is disposed of as above. No costs.

R. K. Ahooja
(R.K. Ahooja)
Member (A) 12/1/86

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J) 12/1/86

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