

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

DATE OF DECISION : 10.12.92

O.A. NO.794/92

Shri C.V. Joseph & Anr.

Vs.

Union of India & Ors.

...Applicants

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants
For the Respondents

...Shri Sant Lal, counsel
...Ms. Jasvinder Kaur, proxy
counsel for Sh. Jog Singh,
counsel

1. Whether Reporters of local papers may be allowed to see the Judgement? ys
2. To be referred to the Reporter or not? ys

JUDGEMENT

Both the applicants are employed as Packers (Group 'D') in Pratap Nagar Post Office and they have the grievance that they have been performing shift duties of 12 hours each day on working days, Sundays and holidays since 21.7.1990. They have not been allowed compensatory leave as well as denied weekly offs and Post Office holidays without payment of any monetary compensations (Over Time Allowance).

2. They have claimed the reliefs that a direction be issued to the respondents to make Over Time Allowance (OTA) at the prescribed rate for the excess hours of duty taken on working days and full duty of 12 hours taken on Sundays and holidays from

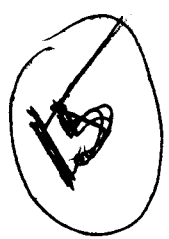
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August, 1990 and further the respondents be directed to grant the weekly offs on Sundays or any other day of the week and all Post Office holidays regularly or make payment of OTA in lieu thereof.

3. It is stated by the applicants that Group 'C' & 'D' (Packers) staff of the Post Office are required to perform duties of 8 hours a day and 48 hours a week. They are entitled to a vail of weekly offs on Sundays and Postal holidays including National holidays. It is further stated that according to the P&T Overtime Allowance Rules, the operating staff of the Post Office including the Packers (Group 'D') are entitled to OTA at the prescribed rate for the duty performed in excess of the prescribed hours of duty on working days and on higher rates for the duty performed on Sundays and holidays. That respondent No.3 has been taking duty of 12 hours daily from the applicants instead of 8 hours duty since 21.7.1990. A reference has also been made to the DGP&T letter No.10-79/70-PE-2 dt.19.9.1972 prescribing the time limit of 6 weeks after the end of calender month in which the over time duty was performed within which the payment of OTA bills have to be made. The applicants made several representations to respondent No.3, but there has been no reply. The applicants by the Memo dt. 15.11.1991 were informed on their representation before Second Staff Adalat that

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the case will be examined by the competent authority.

4. The respondents contested the application and in the reply stated that applicant No.1, Shri C.V. Joseph belongs to Group 'D' test category and the other applicant, Shri Roop Chand belongs to Group 'D' non test category. Both of them were ordered to work as Chowkidar and Darban in Pratap Nagar Post Office on 12 hours duty. Shri C.V. Joseph was put on the job of Chowkidar, the duty hours of which is 12 hours, and therefore, no OTA was allowed upto 12 hours and since he has claimed OTA for 4 hours daily, i.e., in excess of 8 hours daily on the plea that he belongs to GROUP 'D' non test category and was not supposed to perform the duty of Chowkidar which was of non test category. The other applicant, Shri Roop Singh belongs to non test category and he could be posted as Chowkidar, Darban with 12 hours duty daily and, as such he has no right to claim duty for the excess of 8 hours to 12 hours. The aspect of payment of OTA for the duty performed on weekly off is under consideration.

5. In the rejoinder filed by the applicants to the reply, it is stated that applicant No.1 belongs to test category of

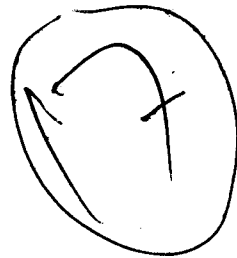
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Group 'D', while the fact that applicant No.2 belongs to non test category Group 'D' is not admitted. Applicant No.2, Shri Roop Singh was appointed as a Packer in Group 'D' w.e.f. 18.10.1975. The post of Packer belongs to test category as admitted by the respondents in case of applicant No.1. The respondents have also admitted that the applicants were ordered to work for 12 hours daily. The duty hours of ^{the} applicants are not 12 hours, but 8 hours duty is to be taken on the working days. In fact, they were given orders in the Order Book of the Post Office to work on over time duty for 4 hours daily. They were also paid OTA for 4 hours' excess duty performed during July, 1990. Not only this, the Sub Post Master, the In-charge of the office prepared the OTA bills submitted to the office of respondent No.3 for formal sanction for the relevant periods, but the same bills were not sanctioned.

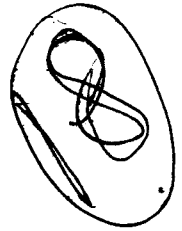
6. I have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicant has also got summoned Order Book of Pratap Nagar Post Office for the period July, 1990 upto March, 1992 and OTA bills for the aforesaid period relating to the OTA of the applicants and OTA bills in similar cases

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of the concerned staff of Sadar Bazaar, Delhi, Chandni Chowk and Malak Ganj Post Office. The record was made available at the time of hearing of the case. Over Time Allowance for the staff of P&T Department regarding the award of the same has been laid down in the Post and Telegraph Over Time Allowance Rules. The overtime work has been defined as the work done in excess of 1 hour over the prescribed hours of work on any working day in the case of the staff included in Part-2 of this order and includes work done on Sunday or any other holiday and secondly, the prescribed hours of work on any working day in the case of staff other than that included in part-2 and includes work done on any other Sunday or any other weekly off day and effective days. The learned counsel has also referred to the DGP&T letter No.10-48/73-P dt. 21.8.1978 which is based on an agreement arrived at between the staff side and the office side of the JCM and it has been decided that in case of staff of operative offices, if compensatory ^{leave} ~~for~~ duty performed on a weekly off day cannot be granted within a week of performing of such a duty, then OTA may be granted. However, the subsequently weekly off should not be postponed. Part-2 covers administrative offices. Part-4 covers the Post Offices. Under Para-22 sub clause 4, Packers are included among the categories of staff employed in the

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Department of Post Offices. Under Para-26 sub clause C of Class II, the Packers who are engaged wholly on indoor work should be paid OTA at hourly rate instead of the flat rates for duties performed on Sundays and weekly off days or any of the nine affected holidays including the three national holidays. Para-27(a) lays down that in case of officials employed on split duty, the over time allowance of 1 hour (reduction in duty hours) would be computed as duty for the purpose of reckoning over time duty irrespective of whether duty is performed by night or day or partly by day and partly by night. In Appendix Third at Sl.No. 11, all Chowkidars irrespective of the offices to which they are attached should be granted a weekly off. When compensatory offs cannot be granted to Chowkidars in lieu of the duty performed by them on their weekly off days or on the three national holidays, they must be paid OTA @ Rs.1.85/- per diem. The above reference is from the booklet of P.Muthu Swamy Compilation 4th Edition. Now coming to the case in hand, it is admitted by the respondents that the applicants have worked as Chowkidars, though in case of applicant No.1 ^{it} has been admitted ^{that it belongs} to the test category in respect of of Group 'D', but it is denied applicant No.2 belonging to the same category. But the applicant ^{No.2} has been appointed as a Packer Group 'D' w.e.f. 18.10.1975. In view of this, the contention of



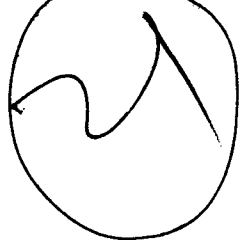
the learned counsel for the respondents differentiating the case of Roop Singh from that of C.V. Joseph does not hold good. It is also admitted to the respondents that both of them were ordered to work as Chowkidar and Darban. It is the case of the applicants that both of them joined as Packers in the test category Group 'D' on 7.3.1980 and 18.10.1975 respectively. The respondents have not placed any document on record to justify their stand taken in the reply that Shri Roop Singh does not belong to test category. When both of them were employed as Packers in the Post Office, then they have to perform the duty of 8 hours a day, i.e., 48 hours in a week. They are also entitled to a vail of weekly off on Sundays and Postal holidays including the National holidays. The records produced by the respondents go to show that the applicants have been paid in the month of July over time allowance for the excess duty hours put in by each of them. In reply to this, the respondents have not denied this fact of payment of OTA for the month of July, 1990. It is further argued by the learned counsel that extraction of 4 hours' extra duty from the applicants and also putting them on duty on Sundays and holidays without payment of OTA is an exploitation of the poor low-paid employees. The learned counsel has also shown the records summoned from the respondents that

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Packers in Group 'D' working in other Post Offices, similarly placed, putting extra hours of duty on week days and brought on duty on Sundays and holidays are being paid monetary compensation of OTA at the prescribed rate. This has been clearly stated in para 5.5 of the grounds, but the same has not been specifically denied by the respondents.

7. In view of the above discussion, it is evident that the applicants are entitled to OTA on extra hours of duty put on working days and also for duty done on Sundays and holidays and also on other closed day on account of national festival.

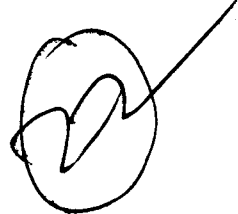
8. The main question that has to be seen is whether OTA is to be paid for the whole 4 hours or an excess duty of 1 hour will be computed as duty for the purpose of reckoning over time duty. The learned counsel for the applicant argued that the applicants are working in operative offices, i.e., in Post Offices and not in the administrative offices. Under Central Government Employees Over Time Allowance Rules, where duty is performed beyond a full day (beyond full prescribed hours of work, over time allowance for such day is to be granted only after deducting 1 hour free duty. Though in the case of




the applicants, there is a payment of OTA of 4 hours of duty, but according to the Extant Rules, the applicants are entitled to only 3 hours of extra duty put in after allowing allowance for 1 hour free duty. In this connection, the Office Order No.24-11-82-T II dt. 08.6.1983 is material where duty hours of Chowkidar and Gateman are prescribed. In fact, the applicants have been engaged as Packers, but they were posted to work as Chowkidars, so they cannot be governed by the rules applicable to Chowkidars. The duty hours of the applicants which have been fixed as 8 hours on the working days, cannot be enlarged to 12 hours if the duty is taken as of Chowkidar.

9. In view of the above facts and circumstances, the application is allowed with the direction to the respondents to pay OTA to the applicants after deducting 1 hour free duty of the Over time duty performed beyond 8 hours on the working days and they also be paid OTA at the prescribed rate of Sundays and off days and on duty performed on national holidays as per the Extant Rules. Regarding the other relief, claimed by the applicants, the respondents are

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directed to grant weekly off on Sunday or any other day of the week to the applicants or make payment of OTA in lieu thereof as per the Extant Rules. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of this judgement. In the circumstances, the parties shall bear their own costs.


(J.P. SHARMA) 10/11/92
MEMBER (J)

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