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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

O.A. No. 2520/93

Date of decision: 31.3.95

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri Jawahar Lal,
S/o Shri Champa Lal,
R/o Quarter No. 4, C.P.W.D.,
Kashmere House,
Rajaji Marg,
New Delhi-110001.
(By Advocate Shri S.P. Khokha) APPLICANT

VERSUS

Union of India through

1. Director General (Works),
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.

2. The Superintending Engineer,
Central Store Circle, CPWD,
A.W.H. Comp. Netaji Nagar,
New Delhi-110023.

3. The Executive Engineer,
Construction Division No. XII,
'N' Division, I.P. Bhawan,
New Delhi-110002.

(By Advocate Shri M.M.Sudan)RESPONDENTS

JUDGEMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

The applicant Shri Jawahar Lal, Motor Lorry Driver, CPWD, New Delhi has prayed for OTA claims with costs and interest from December, 1981 for

- a) One hour lunch recess;
- b) One hour deducted by the respondents from 5p.m. to 6p.m. i.e. after 8 hours normal working duty;
- c) O.T.A. on the revised rates on the basis of revised pay scale (arrears).

2. He contends that he was appointed to CPWD on Muster Roll on 20.8.81 and later on appointed as Motor Lorry Driver in CPWD as a Work Charged Staff from December, 1981. These wages are computed in accordance with the provisions of Minimum Wages Act. He performed duties as Motor

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Lorry Driver during lunch recess as also on over time after normal 8 hours working after 5 p.m. which is to be compensated by payment of OTA in accordance with Section 14 Minimum Wages Act and CPWD's Circular dated 14.1.93. He contends that OTA ^{is} payable to work charged staff even for lunch hour if such staff is not allowed to avail such recess. He further contends that he claimed for one hour's OTA immediately after 8 hours' normal working i.e. after 5 p.m. which was illegally deducted by the respondents for the period for which he was paid OTA. A certificate to the effect that the work charged staff was not allowed lunch recess, was to be recorded by the Executive Engineer concerned on the register of OTA in such cases. He states that he preferred claims from December, 1981 to 19.3.88 as per rules invoked but was paid OTA after deducting one hour of lunch recess as well as one hour in the evening after 8 hours' normal duties i.e. 5 p.m. to 6 p.m. He states that he represented to the concerned authority but upon not receiving ^{any} ~~the~~ satisfactory response, he was compelled to file this O.A.

3. The respondents have challenged the O.A. and contend that under D.G.CPWD's letter dated 9.11.93, when a worker works for more than 9 hours in a day or for more than 48 hours in any week, excluding lunch hour, ^{only} ~~then~~ ^{is he} ~~is~~ entitled to get OTA under the Minimum Wages Act and hence the contention of the workers for grant of OTA after 8 hours duty is not acceptable. Further more, it is ^{reiterated} ~~stated~~ that by D.G.CPWD's letters dated 19.9.86 and 9.11.93, the OTA is admissible to work charged staff including the Motor Lorry Drivers ^{only} ~~if~~ if they work for more than 9 hours in a day, or 48 hours in a week

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excluding lunch hour, hence OTA paid to the applicant is in order. He further states that in the letter dated 9.11.93, it has been clarified that if any Motor Lorry Driver on any particular day remains on duty during lunch hour and the fact is so certified by the officer concerned, the lunch hour can be considered as on duty for calculation of time beyond which the OTA is admissible. It is averred that no such certificate has been recorded either on the OTA statement or in the Log Book, in the absence of which it must be understood that lunch hour was availed of by the Motor Lorry Driver.

4. I have heard Shri Khokha for the applicant and Shri M.M.Sudan for the respondents.

5. In so far as the claim for OTA for one hour lunch recess is concerned, my attention has been invited to S.E.CPWD Circle V O.M. dated 14.1.93 which makes it clear that in case of the work charged Muster Roll Drivers who do not actually avail the lunch hour and who are not relieved by the relieving staff for lunch, which is the case of the drivers, one hour is not to be deducted on account of lunch recess from the total hours of duty and a certificate is to be given by the Executive Engineer concerned on the register of OTA in such cases. The applicant has filed copies of some Log Book's entries pertaining to the year 1986. None of these entries contained any certificate by the officer using the vehicle that the applicant remained on duty during the lunch hour. Furthermore, these entries are only in respect of the year 1986 and that also for some days in the month of January, 198

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whereas the applicant is claiming the OTA on this account for the entire period 1981 to 1988. It is for the applicant to establish his case through cogent evidence that for the entire period the OTA for lunch hour is claimed, he performed duty and in the absence of such evidence, this claim cannot be sustained. It has been argued that two other drivers in Construction Division 12, have been paid OTA for this period, but no evidence has been furnished by the applicant to enable me to conclude that the cases of two other drivers in Construction Division 12 is on all fours with the present application. Under the circumstances, this prayer is rejected.

6. In so far as the second claim is concerned viz. payment of OTA for one hour (5 p.m. to 6 p.m.) deducted by the respondents each day after 8 hours normal working duty for the period 1982 to 1988, the respondents in their reply have denied that any such deductions were made in OTA and ^{contend that} the payments were made as per the records available and within the purview of Minimum Wages Act, 1948. The applicant has also not shown any orders issued by the respondents making such deductions. It is for the applicant prima facie to establish that the respondents have deducted OTA admissible to the applicant for one hour each day for the period 1982 to 1988. If the applicant has any materials on this score, it will be open to him to file a representation to the respondents who should examine the same and dispose ^{of it} ~~of~~ by a reasoned order,

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under intimation to the applicant in continuation of their earlier letter to him dated 1.9.93 .

7. In so far as the third claim is concerned viz. the arrears OTA on the revised rates on the basis of the revised pay scale, the respondents' counsel Shri Sudan has conceded very fairly during hearing that the same ^{is admissible and it} can be calculated and paid to the applicant. This should be done with all possible expedition and preferably within six weeks from the date of receipt of a copy of this judgment. There are no good grounds for payment of interest on this amount, as the applicant has himself filed the petition for arrears of OTA for the period 1981 to 1988 as late as on 19.11.93. This application is disposed of accordingly. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

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