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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Registration O.A.No.232 of 1987

S.N.Goswami & Others

Applicant

Vs.

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr.Justice U.C.Srivastava, V.C.)

The applicants are holding civil posts in defence services, employed at 508 Army Base Workshop, Allahabad in the Corps of EME under the Ministry of Defence in the capacity of Lower Division Clerks/Upper Division Clerks/Office Supdts./Stenographers etc, i.e. ministerial staff (Non Industrial Personnel), and all the applicants belong to the category of class III (Group 'C') which posts are filled in by civilians only. The applicants approached this Tribunal prayed that they are entitled to Rs.8250/- per applicant per year approximately and the opposite parties are under a legal duty to pay it to the applicant as the opposite parties have taken more work than their counter parts serving as detailed in the application and that working hours be regulated according to rules and a mandamus be issued to the respondents not to take work beyond 36 hours a week alongwith leaves as availed of by the employee, and the interest may also be allowed along with other consequential reliefs with cost of their application. The direction shall be issued in favour of the applicants that they be remunerated for 568 hours per year per applicant from 1.1.1973 for the extra works taken by the respondents in terms of extra work as they are in the legal duty bound to pay.

2. The applicants averred that the ministerial staff serving under D.G., E.M.E. Army Headquarters, Military College of EME, HQ Technical Group EME, Command Headquarter, EME Schools, EME Centres, EME Records, CEME Corps HQ, Area Headquarters, Sub Area Headquarters and in many other departments work for 36 hours a week only. They are clerks (Non Industrial Personnel) like that of the applicants and they work in the offices only. The applicants have stated that they serve in 508 Army Base Workshop 8 hours a day including $\frac{1}{2}$ an hour lunch break i.e. $45\frac{1}{2}$ hours a week and they work in the offices only and not in workshops or stores, and the staff referred to above working at other places for 36 hours a week, though all of them are employees of the same Directorate controlled by D.G. EME and all these employees are similarly situated and centrally controlled by EME Record Secunderabad and as such they form one class i.e. ministerial staff (clerical cadre and O.S.) (Non Industrial Personnel) and the employees in category referred to above may be transferred as employees of the Departments enumerated above is dealt with at par in law in appointments, promotion, retirements, pensions etc. Thus according to the applicants so far as they have been denied the benefit of principle of equal pay for equal work and is also injurious to the health as the discriminatory method of regularizing the working hours is followed.

3. The 3rd Pay Commission recommended that the ministerial staff like clerks/Office Supdts working in Central Government establishments including departments within the frame work of common category should be provided common pay scale and the same was accepted by the Govt. The applicants have stated as they have worked for more hours and as such they are entitled to more remuneration even according to recommendations of

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3rd Central Pay Commission as well as the principles of fair play and natural justice, and the benefit of 3rd Pay Commission has not given even today. Subsequently the applicants have stated that even today the working hours of the ministerial staff in various units/establishments to which the applicants can be attached on transfer and in fact many of the applicants have come on transfer from these units/establishments, the working hours is from 8.00A.M. to 2.00P.M. i.e. 36 hours in a week. The said units/establishments are M.E.Record, Secunderabad, 2-1 EME Centre Secunderabad, 3-ME College Secunderabad, 4-III ME Centre Bhopal, 5-EME School Baroda and 6-ME Branch of Central command Lucknow, Western Command, Chandimandir Panjab, Southern command, Eastern command and Central command. According to the applicants the respondents cannot enforce two different service conditions regarding the working hours in respect of the applicants.

4. The respondents apart from challenging the maintainability of the petition also stated that the persons working in the Army workshop are treated as workmen and they are getting the benefits and privileges as given in the Factories Act and Industrial Disputes Act. The working hours of the workshops cannot be compared with other government departments, because the persons working in other government departments are not entitled for other benefits and privileges under the Factories Act or Industrial Disputes Act. As per the Section 51 and 54 of the Factories Act normal working hours of a Factory should not exceed 48 hours in a week and accordingly persons working in the workshop have been observing working hours with the specified limits of 48 hours and there is no distinction between ministerial and

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non-ministerial staff working in a workshop and that both will be treated as workmen in the establishment which is governed under the Factories Act. The ministerial staff and non-ministerial staff of the workshop have been treated as workmen by the allowances etc. Hence they cannot be treated as officers for the purpose of regulating their hours. As per the 4th Pay Commission recommendation the working hours of a person working in Army Headquarters has also been increased. The applicants have given the details of working hours of Army Headquarters/ministerial staff and those employed in Army based workshop and according to the details those working in Army Headquarters/ministerial staff their net working hours are 40 hours while the net working hours of those working in Army based workshop comes to only 40.15 hours. So far as the ministerial staff of Army Headquarters is concerned the total working hours are $8\frac{1}{2}$ hours per day and for five days of which $2\frac{1}{2}$ hours per week are excluded as lunch break and thus total working hours comes to 40 hours. So far as Army Based workshop is concerned the total working hours comes to 8 hours per day and on Saturday they are required to work $5\frac{1}{2}$ hours and thus total comes to $45\frac{1}{2}$ hours in a week and after excluding the lunch break of 5.15 hours they get the total working hours as 40.15 hours only. Even though the difference is not substantial but they having been treated as workmen are granted all the benefits as referred to above apart from productivity linked bonus, overtime allowances at double rate. The definition of workers in the Factories Act is wider than given elsewhere and by virtue of this definition the clerical staff also become workmen, and as they became workmen they are governed by Factories Act. The applicants have nowhere challenged the applicability of Factories Act and they have also not come out with any

such offer or plea that they would not like to be governed by Factories Act and would not like to get any benefits as workmen which is admissible to them but not to others and in case the working hours are reduced or the relief as claimed by them is granted, they will get part of the benefit as workmen as their counter-parts elsewhere are not getting. Merely because if they are posted somewhere else their working hours are reduced that could not be taken into plea that some extra work has been taken. in a particular place for some reasons or otherless work is taken that will not be guiding us for deciding working hours. The applicants are the employees of the workshop and the employees of the workshop can be transferred to various establishments. In a particular establishment if the load of work is more or the load of work is less and this is found for some reason and the same is in the State or in the National interest or for defence purposes some lesser work is taken that could not be taken as a ground of reducing the working hours in the parent department or the department in which they have been appointed and for a particular working hours have been fixed.

5. The learned counsel for the applicants placed reliance on two cases. S.L. Sachdev and other Vs. Union of India & Others, (AIR 1981 Supreme Court 411) and Navnit Lal Mani Lal Bhat Versus Union of India and others (AIR 1973 Supreme Court page 1167)

The above cases have got no applicability in the instant case. The applicants being workmen under the Factories Act and getting the benefit cannot claim more wages or more facilities which is not admissible to those who cannot claim parity and as such difference in the working hours

and the posting elsewhere or some reduction in working hours could not be a ground for reducing the working hours elsewhere as against the fixed working hours and accordingly we do not find any merit in this application which is accordingly dismissed but there will be no order as to costs.

R. Bhagat
Member (A)
4/11/91.

L
Vice-Chairman.

W.A. Notified
October, 1991, Alld.

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(sph)