

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

ORIGINAL APPLICATION NO. 156 OF 2003.

WITH

ORIGINAL APPLICATION NO. 157 of 2003.

ALLAHABAD THIS THE 20<sup>th</sup> DAY OF March 2008.

Hon'ble Mr. A.K. Gaur, Member-)

Jaggoo Ram, aged about 59 years, son of Shri Jokhu, working as Chowkidar, in the office of the Joint Director, Botanical Survey of India, resident of office campus 10, Chaitham Lines, Allahabad.

.....Applicant in O.A. NO. 156/03

By Advocate: Shri O.P Mishra)

Versus.

1. The Union of India through Secretary, Ministry of Environment and Forest Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi.
2. The Director, Botanical Survey of India, P-8, Brobaru Road, Kolkata.
3. The Joint Director, Botanical Survey of India, Central Circle, 10, Chaitham Lines, Allahabad.

.....Respondents No. OA. 156/03

(By Advocate: Shri S. Chaturvedi)

ALONGWITH

ORIGINAL APPLICATION NO. 157 of 2003.

Munni Lal Gaur, son of Shri Mageshwar Gaur, at present working as Chowkidar, in the office of Botanical Survey of India, resident of office campus 10, Chaitham Lines, Allahabad.

.....Applicant in O.A. NO. 157/03

By Advocate: Shri O.P Mishra)

Versus.

1. The Union of India through Secretary, Ministry of Environment and Forest Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi.

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2. The Director, Botanical Survey of India, P-8, Brobaru Road, Kolkata.
3. The Joint Director, Botanical Survey of India, Central Circle, 10, Chaitham Lines, Allahabad.

.....Respondents No. OA. 157/03

(By Advocate: Shri S. Chaturvedi)

O R D E R

As the questions of law and facts involved in these OAs are identical and the same heard together and are being disposed of by a common order.

2. All the applicants in these O.As are working as Chawkidar in the office of Joint Director, Bharatiya Vanaspati Sarvekshan, Madhya Kshetra, Allahabad have filed these O.As for issuing direction to the respondent NO. 2 to pay them the overtime allowance as due for the period from March 1991 to March 1994.
3. In short the case of the applicants is that during the period in question all the applicants had worked 72 hours over time every month but instead of 72 hours overtime allowance, they have been paid only 30 hours per month and the rest of the allowances since they have not been paid to the petitioners. Earlier O.A. NO. 60 to 64 to 1999 was filed by the applicants. These O.As were finally disposed of at the admission stage with the direction to the respondents to file fresh detailed representations in the light of the averments made by the respondents in their counter affidavit and were also directed to be considered and appropriate orders were to be passed by the Competent Authority within a period of three months from the date of receipt of copy of the order.
4. Denying the claim of the applicant, it has been contended by the respondents that the overtime allowance claimed by the applicant is not a condition of service of the employee and as such

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the claim regarding overtime allowance cannot be entertained by this Tribunal. Respondents submitted that the O.A. is clearly time barred and liable to be dismissed on the ground of delay and latches. It has already been submitted on behalf of the respondents that with regard to overtime allowance from March 1991 to December 1997, the applicants had earlier filed O.A. NO.62 of 1999 in which the claim of the applicant was that the Overtime Allowance w.e.f March 1990 to December 1997 were not paid to them. In the present Original Application, the allegation of the applicants is that Overtime Allowance w.e.f. March 1991 to March 1994 has not been paid. The applicants have submitted two contradictory plea. In this O.A. relief claimed by them is wholly without any foundation and basis. The applicants have also failed to discharge the burden of prove inasmuch as they failed to annex any kind of proof or documents in order to buttress their contention that they worked for 72 hours and their claim for Overtime Allowance for merits consideration. The respondents have clearly stated in their reply that in view of decision rendered by the Bombay Bench of the Tribunal in the case of P. C Chanda Vs. Union of India and others, this Tribunal has no jurisdiction to adjudicate the matter of Overtime Allowance, the proper remedy for the applicants is to file the application under section 30 (C) of the Industrial Dispute Act and as such the OA deserves to be dismissed on the ground of want of jurisdiction. The respondents have also contended that the applicants have performed the duties night and day as per requirement of the respondent NO. 3. The respondents had never given any such direction for performing Overtime duties and whenever the applicants had performed overtime duties, the payment has been paid to them and no payment is due to the applicants. While issuing the order dated 31.12.2002, the answering respondents considered full facts and relevant records availing in the office of answering respondent and it was found that no payment regarding Overtime Allowance was due to the applicants. It is observed that considering the allegation and

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grievance of the applicants, the answering respondent vide order dated 1.4.2005 setup a 4 Men Committee consisting of four Senior Officers to trace out the Attendance Register and find out the solution with regard to grievance of the applicants. The Committee has submitted in its report dated 8.4.2005 that the Attendance Register of the Chowkidar for the period in question are not traceable in the office. The Committee has also reported that compensatory leave availed by the applicants during January 1992 to December 1994 comes to 47 days. The Committee has also reported that the basic pay and total Overtime Allowance has been paid to the applicants during the period i.e. 1991, 1992 and 1994. A copy of the report of the committee dated 27.4.2005 has been annexed as Annexure CA-1. The respondents have also clearly submitted that compensatory leave is granted to an employee in lieu of over time performed by the person concerned. It is further submitted that once the compensatory leave has been availed on a particular date, no overtime is permissible to a person.

5. Applicant has filed rejoinder denying the pleas taken in the counter reply. It is submitted by the applicant that respondents have stated in the impugned order dated 21.12.2002 passed after careful verification of relevant official record that the applicants have not worked during the period as mentioned by them in the Annexure 1 on page 16 of the Original Application. The respondents were directed to produce the relevant record vide order dated 26.7.2006 before this Tribunal, but the same could not be produced by them.

6. I have heard Shri O.P. Mishra, learned counsel for the applicant and Shri P. Srivastava holding brief of Shri S. Chaturvedi, learned counsel for the respondents, perused the written arguments submitted by the learned counsel for the applicant and record of the case. The moot question for my consideration in this O.A. is whether the claim for Overtime Allowance is maintainable before

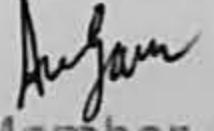
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whether the claim for Overtime Allowance is maintainable before this Tribunal. Learned counsel for the respondents has placed reliance on the decision of the Mumbai Bench of Tribunal in P.C. Chandra Vs. Union of India and others. Learned counsel for the respondents would contend that in view of said decision, this Tribunal has got no jurisdiction to hear the case of the Overtime Allowance. The learned counsel for the respondents has also raised preliminary objection with regard to the maintainability of the O.A. on the ground of Order 2 Rule 2 of C.P.C., constructive res-judicata and delay and latches. Learned counsel for the respondents has placed reliance on the judgment rendered by Hon'ble Supreme Court in order to buttress the contention that even in the case a continuing wrong the question of limitation can be looked into and the case may be decided on the ground of delay and latches. In support of this contention, the learned counsel for the respondents has placed reliance on J.T. 2002 Vol. 5 S.C. page 367 even in a continuing cause of action the O.A. can be dismissed on the ground of delay and latches. Learned counsel for the respondents has also placed reliance on the decision of Hon'ble Supreme Court rendered in 2006 SCC (L&S) page 791, Karnataka Power Corporation Vs. K. Thangappan in order to buttress the contention that series of representation to the Authority concerned cannot justify belated approach. Learned counsel for the respondents has further placed reliance on the decision of Hon'ble Supreme Court rendered in 2000 SCC (L&S) page 53, Ramesh Chandra Sharma Vs. Udhamp Singh Kamal in order to buttress the contention that merits of the case cannot be looked into without considering condonation of delay. In the present case, the applicants had earlier filed O.A. NO. 60 to 64 of 1999, Shri Satti Deen Vs. Union of India and others, claiming overtime allowance from April 1991 to the month of December 1997. In the instant O.A., they have claimed overtime allowance since March 1991 to March 1994. For redressal of their grievance, they made representation on 11.10.2002, which was decided by the Competent Authority on 31.12.2002. In the earlier O.A. filed before

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this Tribunal, the grievance of the applicants was with regard to the payment of overtime allowance from the month of March/April 1991 to the month of December 1997. Representation filed in pursuance of order and direction of the Court was dismissed by the Competent Authority on 31.12.2002. It is really amazing that earlier the claim for overtime allowance for the period 1991-1997 having been considered by this Tribunal in O.A. NO. 62 of 1999 and in the connected O.As. Against this O.A. filed by the applicants for claim of Overtime Allowance for the same period cannot be entertained on the principle of Order 2 Rule 2 C.P.C. and doctrine of constructive res-judicata and the case is fully covered by the decision given in 1997 SCC (L&S) 167. The applicants have awoken from slumber<sup>now</sup> after so many years and again claimed overtime allowance for the period from March 1991 to December 1994 which was a subject matter of O.A. NO. 62 of 1999 and approached this Tribunal by filing this O.A. In my considered view, the OA is misconceived and deserves to be dismissed as having barred by order 2 Rule 2 CPC and doctrine of constructive res-judicata. The other preliminary objection advanced by the learned counsel for the respondents is that This Tribunal has no jurisdiction to decide the case of Overtime Allowance and in support of this, the decision of Mumbai Bench of the Tribunal reported in 2002 (3) ATJ page 686 has been relied upon. Since it is a judgment of Coordinate Bench it is binding on me. In view of the principle of law enunciated in the aforesaid judgment, the overtime allowance cannot be adjudicated by this Tribunal and proper course for the applicants is to approach the Labour Court.

7. With the aforesaid observation, the O.A. deserves to be dismissed and is accordingly dismissed. No costs.

  
Member-J

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