

Recovery of
overtime allow
(No)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 176 of 1989
~~T.A. No.~~

DATE OF DECISION 3.2.1992.

Shri Vinod S. Parmar Petitioner

Shri S.H. Asrani Advocate for the Petitioner(s)

Versus

Union of India & Ors. (CPWD) Respondent

Shri B.B. Naik Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt

: Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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Shri Vinod S. Parmar : Applicant
(Advocate: Shri S.H. Asrani)

VS.

Union of India & Ors (CPWD) : Respondents
(Advocate : Shri B.B. Naik)

O R A L - J U D G E M E N T

O.A. No.176 of 1989

Date : 3.2.1992

Per : Hon'ble Shri R.C. Bhatt : Member (J)

Heard Mr. S.H. Asrani for the applicant and Shri R.R. Tripathi for Shri B.B. Naik, learned advocate for the respondents. The applicant a Chowkidar serving with the respondents (C.P.W.D.) has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order, annexure A/1, dated 20.3.1989, by which the respondents have demanded recovery of the total amount of Rs.9415.15 consisting of two amounts shown in the statement 'A' which is for the amount of Rs.6,270.15 and another statement 'B' for the amount of Rs.3,145.00. The respondents then deducted Rs.829.00 payable to the applicant for closed holiday overtime and thus finally making the demand of Rs.8,586.00.

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The applicant has alleged that he worked as Chowkidar with effect from 1978 to 1988 and at present he is working as peon. The applicant has annexed at annexure A/2 the duty hours office memorandum of Chowkidars who were brought under the purview of Minimum Wages Act, 1948 for purpose of Overtime Allowances. The applicant at annexure A/3 has produced collectively the office orders sanctioning the overtime allowances w.e.f. 1983. It is the case of the applicant that according to these orders, annexure A/3, the payment of overtime allowances was made to him as per the extent rules at pre-revised scale of pay upto 31-12-1985 and as per revised pay scale w.e.f. 1.1.1986 as per wage structure implemented after IVth Pay Commission Report. It is alleged that the respondents were also liable to pay for the working done by chowkidars on the days when there were national holidays. During the pendency of this original application, the applicant filed M.A. No. 73 of 1990 which was disposed of by this Tribunal on 2.1.1990 after hearing the learned advocates. The Rules and orders referred to in that order of the Tribunal ^{as were} ~~was~~ relied on by both the parties, but the difference had arisen in detailed calculation, and therefore the Tribunal directed as under :-

" In view of the above, it is hereby directed that the respondents shall recalculate the overtime in the above manner within one month from the date

of this order."

The body of the order in the miscellaneous application shows that the respondents were directed to recalculate the overtime according to the Rules and Orders by detailed self explanatory calculation, taking into consideration the papers^u tendered by the learned advocate and the detailed representation of the applicant.

2. After the above order passed in the miscellaneous application, the respondents have come with the details dated 27.1.1990, produced at annexure A/3, regarding the recalculation of the overtime payment for the year 1986, 1987 and 1988. This annexure A/3 in Miscellaneous Application shows that so far the demand in statement 'A' of annexure A/1 for the amount of Rs.6,270.15 is concerned, nothing remains to be recovered from the applicant. ^u ~~Further~~, the applicant has ^{now} ~~not~~ to say ^{nothing} ~~anything~~ about the recovery of statement 'A' of the impugned order, annexure A/1, as the respondents as per their order dated 27.1.1990, annexure A/3, has now found that no amount remains due regarding statement 'A'. So far the amount of Rs.3,145/- demanded in statement 'B' of annexure A/1 is concerned, the respondents have mentioned in annexure A/3 that Rs.1489/- remained due and payable by the applicant, but if that amount is adjusted against the amount of Rs.1159/-, as calculated for the services rendered by the applicant on closed holidays, the amount of Rs.330/- remains due

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and payable by the applicant.

3. Learned advocate for the applicant has drawn my attention to several office orders, from page 35 onwards of the paper book of this case, in which the respondents from time to time in accordance with the office memorandum dated 19.9.1986 of the Director General of Works, C.P.W.D., New Delhi, accorded for the overtime allowance of the applicant for the duty performed on overtime i.e., for more than nine hours a day or forty-eight hours a week. Learned advocate for the applicant submitted that so far the actual work of overtime put by the applicant is concerned, the respondents have not come with the case that there was administrative errors in calculation of the hours of overtime work put by the applicant. He submitted that the respondents now want to make the overtime payment on the basis that the applicant was eligible. ^{in 4 hours} ₂

4. Learned advocate Mr. Tripathi for the respondents took me through page 4, 5, 6 and 7 of the reply of the respondents and Rule 25 of the Minimum Wages Act and submitted that the amount calculated by the respondents was legal and proper. The learned advocate for the applicant submitted that the payment of wages as per Rules was ^{regarding} ~~about~~ nine hours a day or forty-eight hours a week and in that case the applicant was entitled to overtime. In short, the submission of the learned advocate for the

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applicant is that the overtime of two shifts working sixteen to seventeen hours shall be eight to nine hours and not six hours as calculated by the respondents. It is also submitted by him that there was no reliever given to the applicant and he could not go out for lunch and therefore the ^mluch ^mhours deducted from over-_Ltime would be contrary to the provisions or rules.

5. Now the only controversy is whether the respondents could recover ^mRs. ~~300~~ ¹⁴⁸⁹/- on the basis of the calculation explained in page 5,6 and 7 of the reply relying on the rules of Minimum Wages Act or whether the applicant would be entitled to the overtime on the basis of the same rules considering the payment of wages on the basis of nine hours a day or forty-eight hours a week and any ^{for m}work performed for more than forty-eight hours per week, whether the applicant is entitled to overtime when he is not given a reliever and he could not go for lunch ^mand whether those hours could be deducted and disposed as a minor one now. It would, therefore, be proper for the respondents to consider that aspect of recovery of ^mRs. ~~1400~~ ¹⁴⁸⁹/- from the applicant, ^mRegarding statement 'B', The respondents to decide the said controversy between the parties after giving opportunity the the applicant to be heard. Hence the following order :-

O R D E R

The application is partially allowed.

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The impugned order, annexure A/1, regarding demand of the amount of Rs.6,270.15 as shown in statement 'A' is ^{quashed} ~~closed~~ on the admission of the respondents in their order dated ^{that no amount remains due} 27.1.1990. So far the demand of the amount of Rs.3,145/- in statement 'B' of annexure A/1 is concerned and now reduced to the amount of Rs.1489/-, the respondents are directed to consider the work put by the applicant as ^{to} observed above and also consider the fact that no reliever was given to him during his work and to dispose of the grievance of the applicant according to law after giving him the opportunity to be heard. The respondents to decide the point within three months from the date of receipt of this judgement. The recovery is stayed ^{till} ~~for~~ a period of one month after the decision of the respondents to enable the applicant to approach this Tribunal in case the decision goes against him. The application is disposed of accordingly. No order as to costs.

R.C. Bhatt

(R.C. BHATT)
Member (J)