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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 207 of 1992

Date of Decision: 27.5.1994

Duryodhan Chhotray

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

  
VICE-CHAIRMAN

  
MEMBER (ADMINISTRATIVE)

27 MAY 94

(157)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH; CUTTACK.

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Duryodhan Chhotray ...

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Versus

Union of India and another ...

Respondents.

For the applicant ...

M/s. C.R. Nandi, S.S. Mohanty,  
S.K. Mohanty, R.K. Behura,  
Advocates.

For the respondent No.1

M/s. Amol Krishna Ray,  
Sidhartha Ray, Advocates

For the respondent No.2 ..

Mr. P. Mohanty, Advocate.

CORAM:

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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ORDER

H. RAJENDRA PRASAD, MEMBER(A), In this application, Shri Duryodhan Chhotray, Chowkidar/Watchman, Income-tax Appellate Tribunal, Cuttack Bench, prays for a direction to be issued to the Respondents viz. Registrar, Income-tax Appellate Tribunal, Bombay, and Assistant Registrar, Income-tax Appellate Tribunal, Cuttack Bench, to —

i) sanction him overtime allowance from 31.3.1973;

ii) allow proper weightage for the night duties performed by him; and

— 13 July 1994 —

iii) grant interest on the allowance payable to him.

2. The applicant was engaged on daily wage basis in the Group 'D' category between May, 1970 and March, 1973. His services were regularised on 31.3.1973. Even prior to the date of his regularisation he was asked to "officiate" as Chowkidar/Night watchman of the said Office. His grievance is that he was made to continuously perform duties from 18.00 hours to 09.30 hours on the succeeding day; on holidays he was said to be working for<sup>a</sup> continuous 24- hour cycle. He complains that while all other comparable members of the staff are given the benefit of either overtime allowance or compensatory-off whenever required to perform duties beyond the prescribed office hours, he was denied this concession.

3. Sometime in 1972 Government decided to allow 6 holidays in a year besides 3 National holidays to various employees, including Night Watchman; and where they were required to be on duty on such occasions, they were to be paid overtime. The Third Pay Commission recommended specifically that, where an employee is not allowed regular weekly holiday, he should be given at least a day's rest in a fortnight. The Commission also recommended that where it was not possible to grant compensatory-off, the duties so performed had to be compensated by suitable monetary sanctions of overtime allowance. This recommendation was accepted by the



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Government. In July, 1976 the Department of Personnel and Administrative Reforms also issued general instructions on the subject of regulating the weekly-off days to Group'D' staff.

4. The applicant claims to have represented to Respondent No.2 for the grant of compensatory-off or, in the alternative, payment of overtime allowance

in respect of duties ceaselessly performed by him beyond the prescribed office hours. Those representations are said to be lying undisposed. Hence this application.



5. The Assistant Registrar, Income-tax Appellate Tribunal (Respondent No.2) submits that the application contains frivolous allegations and suppresses material facts. He denies that any representation was made at all by the applicant. He says further that the applicant has availed of 803 days of earned leave. He also asserts that no Group'D' employee in the Office is deployed on any kind of duty beyond the office hours. The respondent repeatedly emphasises the fact that, the Income-tax Appellate Tribunal being under the Ministry of Law & Company Affairs, none of the circulars or instructions issued by any other Ministry or Department is binding on or applicable to it. The Respondent also states that the all concession due to the applicant have already been allowed and that it is not correct to say that he was not given 15 days off

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nor allowed to avail of rest on National holidays. It is added that the applicant has already exhausted all his holidays by availing <sup>that</sup> earned or casual leave and/furthermore his frequent absences are causing disruption and administrative difficulties to the Office.

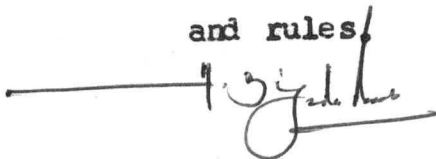
6. We have examined the facts as submitted or averred by the applicant, and the arguments advanced by the respondent. The claims and counter-claims are totally at variance with one another. If the official was deployed on night duties, or, more precisely, any duty beyond the prescribed office-hours, some record of this should be available in the Office. It is not also correct to assert that circulars applicable to Group 'D' employees, and more specifically to Choukidars/ Night watchman, in other Departments/Offices/Ministries will not apply to the Tribunal on the only ground that it functions under the control of Ministry of Law and Company Affairs. Such an assertion is illogical and unacceptable. The service conditions and the principles for the grant of compensation for extra work are common to all Departments/Offices/Ministries under the Government of India, with only marginal variations on account of certain conditions or ground realities that may be peculiar to some Offices or services. The Tribunal cannot claim total exemption from the operation of general instructions of the Government in such matters.



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7. It is also not understood as to what exactly is meant by the statement of the respondent that the applicant has enjoyed the concession of compensatory-off by the availment of earned leave and casual leave. There is no evident connection between earned leave/casual leave and compensatory-off or overtime allowance. No earned leave, or casual leave, duly applied for, and properly sanctioned, can be set-off against compensatory-off which is legitimately due. If it is meant to be conveyed that the applicant is a habitual malinger<sup>er</sup> or frequently absents himself without proper leave, then it is an entirely different matter which calls for administrative action. This Bench is not concerned with the issue of unauthorised or frequent absence, if any, which are to be dealt with administratively.

8. Similarly, if the applicant has been duly allowed to avail of National holidays and other regular holidays as per his entitlements, as mentioned by the respondent, then there would be some record to that effect. There is thus a primary need for the issues to be properly checked and his claims to be properly scrutinised as per his entitlements and in accordance with rules. It would be incorrect to reject or ignore the applicant's claims on the basis of unspecified grounds or vague rebuttals. The issues involved are essentially all matters on record and full facts ought to be checked with reference to records and rules.





9. Prima facie, the claims of the applicant seem to be based on valid and legitimate grounds. This observation of ours may be kept in view when the applicant's claims are examined denovo with the help of and specific reference to available records in the Office of the Assistant Registrar, Income-tax Appellate Tribunal, Cuttack.

10. We would, therefore, direct the applicant to submit afresh a detailed claim supported by documentary evidence, wherever or to the extent possible, within a fortnight of the receipt of a copy of this order. The Respondent No.2 is expected thereafter to scrutinise the said claim in the light of existing instructions on the subject and with the help of the records available, and to dispose of the representation within thirty days of its submission by the applicant. If the said Respondent comes to the conclusion that the applicant is entitled to any monetary or other kind of benefit, he will cause action to be taken to make such benefits available to the applicant by sanctioning and disbursing the due amounts within the period indicated. If, on the other hand, he concludes that the applicant's claim is not acceptable, the same should be disposed of by a detailed, reasoned and speaking order. If the applicant is still aggrieved by the decision he is hereby given liberty to agitate his grievance afresh before this Bench. No observations are



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to be made at present regarding the aspect of interest.

11. Thus, this application is disposed of. No costs.

*[Signature]*  
27.5.94  
.....  
VICE-CHAIRMAN

*[Signature]*  
.....  
MEMBER (ADMN.)  
27 MAY 94



Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
27.5.94 / Sarangi.