

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 115 OF 1995

Cuttack, this the 29th day of March, 2001

Sudhanidhi Das and others ... Applicants

Vrs.

Union of India and others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes

2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? NO

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Sominath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.3.2001

14

14

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 115 OF 1995
Cuttack, this the 29th day of March, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Sudhanidhi Das, son of late Dayanidhi Das
 2. Sudarsan Rout, son of late Karunakar Rout
 3. Haramohan Pati, son of Bhramarbar Pati
 4. Biswanath Sahoo, son of late Padan Charan Sahoo
 5. Indumani Dalai, son of late Basudev Dalai
 6. Nilakantha Das, son of late Maheswar Das
 7. Basanta Kumar Lenka, son of Purna Chandra Lenka
 8. Trilochana Panda, son of late benu Panda
 9. Binaya Kumar Ray, son of late Manindra Nath Ray
 10. Rajeswar Prasad Gupta, son of Jadav Lal
 11. Jagabandhu Barik, son of late Purna Chandra Barik
 12. Govinda Mandal, son of late Narotam Mandal
 13. Balaram Pattanayak, son of late Agadhu Ch.Pattanaik
 14. Dhuleswar Pattanayak, son of late Basudev Patnaik
 15. Prakash Chandra Padhi, son of late Vima Padhi
 16. Pramod Kumar Behera, son of Purendra Behera
 17. Trinath Sahoo, son of late Narayan Sahoo
 18. Rudra Charan Das, son of late Satyananda Das
 19. Kailash Chandra Parida, son of Govinda Ch.Parida
 20. J.P.Philip son of late Joseph
 22. Kulamani Parida, son of Gouranga Parida
 23. Bugat Mohan Rao, son of late B.T.Naidu
 24. Simanchal Pattanayak, son of Radhamohan Patnaik
 25. C.H.Markandayalu, son of late Chitapaly Appla Suri
 26. Purna Chandra Das, son of late Chandeswar Das
 27. Pitabas Swain, son of Sadhu Charan Swain
 28. Jaladhar Rout, son of late Krishna Ch.Rout
 29. Sanatan Ghosh, son of late Sibulali Ghosh
 30. Abhimanyu Mishra, son of late Nilakantha Mishra
 31. Pran Ballav Mandal, son of late Narothan Mandal
 32. Niranjana Sahoo, son of late Gandhary Sahoo
 33. Akshaya Kumar Mishra, son of late Dayanidhi Agnihotri
 34. Laxman Das, son of late Gangadhar Das
 35. Chandra Sekhar Rath, son of late padmanav Mishra
 36. Bijaya Kumar Pattnaik, son of late Madhu Sudan Patnaik
- Som.

15

15
37. Sanatan Das, son of Chintamani Das
38. Kanta Ram Das, son of K.Ch.Ramaiah
all are working as S.F.A., except 1,2,9,33 as A.F.O. and 18
and 38 as D.F.O. in the Motor Transport (Executive) Cadre
at Aviation Research Centre, PO-Charbatia, District-Cuttack

.....

Applicants

Advocates for applicants - M/s C.A.Rao
S.K.Purohit
S.K.Behera
P.K.Sahoo.

Vrs.

1. Union of India, represented by the Cabinet Secretary, Central Secretariat, New Delhi.
2. Director, Aviation Research Centre, R.K.Puram, New Delhi-110 012.
3. Deputy Director (Admn.), Aviation Research Centre, At/PO-Charbatia, District-Cuttack.

.....

Respondents

Advocate for respondents - Mr.U.B.Mohapatra
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Som
In this application under Section 19 of Administrative Tribunals Act, 1985, the thirty-eight applicants have prayed for a direction to the respondents to allow them to perform 40 hours of duty in a week with one day rest and one day off, and night duty allowance after each night shift duty. They have also prayed for treating each standby duty as full day duty like other existing staff and supervisory staff and their counterparts of the same wing and other wings at Delhi, Sarsawa, Doom Dooma and other organisations like SSB and RAW under the same D.G., Security. They have also prayed for a direction to the respondents to allow them overtime allowance for the extra duty hours performed by the applicants with effect

16
from the date of acceptance of the provisions of 40 hours duty in a week by the Central Government.

2. The case of the applicants is that they were originally appointed as Drivers in Aviation Research Centre (ARC), Charbatia. In November 1979 the authorities indicated that there is a proposal with the Central Government for creation of separate Executive Motor Transport Cadre for Drivers of A.R.C., Charbatia as well as other units. On 21.5.1980 in the letter at Annexure-1 office of Director General, Security, indicated that the case of conversion of M.T. Cadres of ARC, SSB and RAW into Executive Cadre is under consideration of the Government and final orders will be uniformly applicable to all these officers. In letter dated 22.9.1984 (Annexure-2) the applicants were informed of creation of M.T.(Executive) Cadre in A.R.C. and conversion of posts of Drivers into Senior Field Assistants with effect from 3.8.1984. In this letter dated 22.9.1984 the authorities of ARC, Charbatia, sought for clarification from Directorate General of Security regarding the demand of applicants for compensation towards extra hours of duty. In this letter it was also mentioned that M.T.(Executive) Cadre in the ARC/SSB has been created on the analogy of RAW. In view of this, information relating to duty hours of the drivers of RAW and guidelines adopted by them for grant of compensation towards extra duty hours were sought for. The applicants have stated that as they are working as S.F.As, A.F.Os. and D.F.Os. in the M.T.(Executive) Cadre of ARC their service conditions are at par with the service conditions of other staff of Executive Cadre of ARC, Charbatia and also with similar staff in other organisations like SSB and RAW which are under the same Directorate of General of Security and therefore they

JJM

17

17

should be extended similar benefits as given to their counterparts in other units in the matter of overtime allowance, leave, night duty allowance, one day rest and one day off after night duty and calculation of full duty for standby period. It is further submitted that the Fourth Pay Commission recommended that the working hours for all civil administrative offices would be 40 hours per week and the same recommendation was also accepted by the Central Government. The Pay Commission also recommended for stopping the overtime allowance, and the benefits of proportional off days/leave as well as night shift allowance were recommended and the Central Government accepted the above recommendation. The applicants have stated that in organisations with five-day week system eight hours duty per day was fixed to work out to 40 hours a week and in organisations having six working days 6 hours 40 minutes working hours per day have been fixed for working out 40 hours per week. The applicants have stated that in all Central Government civil administrative offices as also in other units under the same Directorate General of Security like Air Wings of Delhi, Saraswa and Doom Dooma, SSB and RAW and for all other staff of ARC, Charbatia including MT (Executive) Cadre, 40 hours working in a week has been adopted. But unfortunately the Drivers, i.e., SFA, AFO and DFO are compelled to work for 48 hours a week as they have been allotted to work for 8 hours per day for six days in a week even though the assisting staff like M.T.Cleaners and Helpers as well as the SFAs working in the Establishment Office are allowed to work only for 40 hours a week. Some of the SFAs of ARC who have been transferred to other units of ARC like Delhi, Sarsawa and Doom Dooma are allowed to perform 40 hours of work per week. The applicants have further stated that after stoppage of provision of over-time allowance they are not getting

S. Som

18

overtime allowance even though they are working for extra eight hours per week. They are also not given compensatory off and leave in lieu of overtime work. It is further stated that in clear violation of the recommendation of the Fourth Pay Commission accepted by the Government the applicants are not given one day rest and one day off facilities and night duty allowance after performing the night shift duty though the SFAs of other offices of ARC at Delhi, Sarsawa and Doom Dooma including the transferred employees like R.N.Jena, S.K.Routray and N.Rama Rao are getting the same benefits. Moreover, like their counterparts in other units the applicants are not getting the full benefit against their standby duty even though during the allotment of the standby duties their presence for eight hours is mandatory and in case of absence disciplinary proceedings have been initiated against them. In case a person is called from standby duty the actual time of work performed by him is taken into consideration which is illegal. The applicants have sent several individual and joint representations some of which are at Annexure-5 series but without any result. In letter dated 29.12.1994 at Annexure-6 the applicants have been informed that the representation of MT Drivers regarding duty hours is under examination of the ARC Headquarters. But in spite of this, no final decision has been intimated to them. That is why the applicants have come up in this petition with the prayers referred to earlier.

Jam.

3. The respondents in their counter have pointed out that the case of the applicants is not maintainable as duty hours of the applicants have already been reduced to 7 hours a day and six days in a week in order dated 1.2.1995 and this has been implemented from

27.3.1995. It is further stated that there is no provision for one day off and one day rest after performance of night duty as the night duty includes the total prescribed hours of duty in a week. The person who performs night duty gets an off from the duty during the day hours. There is no provision for payment of night duty allowance to any category of staff in the Department. Standby duty is only for functional convenience of the applicants themselves. Whenever any extra hand is required for execution of unforeseen operational commitment the burden is equally shared by every staff member through the standby system who occupy Government quarters in the campus. Whenever a standby Driver is called for duty he is given suitable compensation. The respondents have further stated that the applicants are members of ARC (Misc.Staff) Cadre and not the common cadre of other staff of ARC. Drivers of ARC were converted as Executive Cadre with effect from 3.8.1984 and they have been redesignated as Field Officer (MT), D.F.O.(MT), A.F.O. (M.T.) and Senior Field Assistant (M.T.) with reference to their options given in September 1982. As members of the Executive Cadre they are not entitled to overtime allowance, night duty allowance, one day rest or one day off after performance of duty. After performance of night duty a person remains off duty during the day and reports for night duty again. This way the total hours of duty in a week are confined within the prescribed hours and never exceed. The respondents have further stated that ARC, SSB and RAW are not one and the same Department, and as such facilities available in RAW need not necessarily be made available to ARC and SSB as the working conditions are altogether different. It is also stated that RAW does not come under the Directorate General of Security whereas ARC and SSB are part and parcel of Directorate-General of

19

J. Jom.

Security. The respondents have further stated that the Fourth Pay Commission recommended 40 hours of duty per week for administrative units. The applicants are not administrative unit staff but are operational unit staff, and the Department of Personnel & Training in their letters dated 7.11.1986 and 9.3.1987 have clearly laid down that hours of work for Central Government organisations differ according to their functions, nature of work and job requirement as they are in the category of administrative offices, workshops, operative offices, etc. In the above circulars of Department of Personnel & Training working hours of civil administrative offices have been increased from 37½ hours to 40 hours a week. But for the category of staff who were working for more than 40 hours a week the duty hours have not been reduced and that is how the applicants who are performing 40 hours duty a week earlier were asked to work for the same hours a week till 26.3.1995. As regards duty hours of MT Cleaners and Helpers it has been pointed out that they are not assisting staff of the applicants. They are from the Mechanical Cadre and their line of promotion and nature of work are different. The respondents have further stated that the Drivers were put on duty for 48 hours a week in terms of the instructions of the Department of Personnel & Training referred to earlier and whenever they perform duty over and above 48 hours in a week they have been suitably compensated. As regards the standby duty the respondents have stated that no disciplinary action has been initiated against any standby staff who has defaulted to come for duty when summoned. Explanation might have been called for by the immediate senior officers for leaving headquarters without permission, but that would not amount to disciplinary proceedings. It is further stated that the duty chart enclosed by the applicants to their OA is

J. Jom.

21

21
correct. For performance of duty on second Saturdays, Sundays and holidays persons are suitably compensated either by cash or compensatory off days. The respondents have further stated that the applicants submitted their representation only in August 1994 which was forwarded to the cadre controlling authority in letter dated 6.10.1994. The decision was received on 20.3.1995 prescribing 42 hours of duty a week and this has been implemented from 27.3.1995. On the above grounds the respondents have opposed the prayers of the applicants.

4. The applicants in the rejoinder have reiterated their averments that even prior to conversion of MT Cadre into MT (Executive) Cadre the applicants have been assured that terms and conditions which are applicable to similar categories of staff of Executive Cadre would be applicable to them. In support of this, the applicants have enclosed the letter dated 14.9.1984 in paragraph 3 of which it has been mentioned that MT Executive Cadre would be governed by the terms and conditions which are applicable to similar categories of staff of Executive Cadre. It is further stated that there are other operational staff like SFA(T), AFO(T), DFO(T) and FO (T). But they are allowed to work only for 6 hours 40 minutes a day and 40 hours in a week unlike the applicants whose duty hours have been reduced to 42 hours per week. It is stated that these Executive Cadre staff in ARC, Charbatia were performing 6 hours 40 minutes duty per day even before 3.8.1984 and therefore the applicants are entitled to the benefit from 3.8.1984, i.e., the date of conversion of the MT Cadre into MT Executive Cadre or from the date of assurance given by the respondents in Annexure-7.

J. J. Sam

22

5. The respondents have filed a reply to the rejoinder in which they have indicated that the Tribunal had directed the respondents to clarify whether the benefits regarding 40 hours duty in a week, one day rest and one day off after night duty and computing the entire hours of stand by for payment purposes which are being allowed to other SFA Operational Drivers in wings in like ADT, ADI and establishment wings of ARC, Charbatia and also to SFA Operational Executive Drivers in ARC, Doom Dooma and Saraswa. The respondents have stated that according to Government of India, Ministry of Finance Staff Car Rules, Rule 25 specifies the normal working hours of Drivers as 9 hours with half an hour lunch break. Subsequently, this was amended and the total duty hours of effective duty do not exceed 8 hours per day with break of half an hour. The MT Drivers ARC and SFF have been converted into Executive Cadre in 1983 so as to make them more responsible and responsive for operational requirement of the Department. Therefore, while Staff Car Drivers are put to perform 8 hours of duty in a day, the Executive Staff cannot claim a lesser duration of duty hours than the Staff Car Drivers. The pay scale of Staff Car Driver is lower than that of MT Executive Cadre Drivers. Therefore, there cannot be more pay and less work in the same professional trade. It is further submitted that Drivers of ARC Establishment at Charbatia, Delhi, Sarsawa and Doom Dooma including that of its technical units are being put to perform 42 hours in a week (six working days). As regards their claim for one day rest and one day off after night duty, it has been submitted that Government officials are supposed to be required for the call of duty at any time and no claim can be staked by them for compensation until they actually perform duty in which case they can be compensated either by granting compensatory off or cash in lieu thereof. At present the applicants are put to night

J. Jom

shift duty from 2100 hours to 0700 hours spanning over a total of 10 hours. Three hours of extra work done over and above their 7 hours duty are credited to their compensatory off. Therefore, the claim of the applicants for one day rest and one day off after night duty and standby being considered as active duty is neither allowed at Charbatia or at other units like Delhi, Sarsawa and Doom Dooma, nor is their claim supported by any Government orders. It is further stated that ARC, Charbatia is in a compact campus comprising of residential and office area. The actual steering hour of no Driver is more than 30 minutes for the whole shift barring on occasional run to Cuttack/Bhubaneswar. Of the sanctioned strength of 45 Drivers, on an average one or two Drivers are required to perform out of campus duty wherein their steering hour exceeds 6 or 7 hours a shift for which they are suitably compensated by TA/DA. In RAW irrespective of fixed hours of duty the Drivers perform the duty as per operational requirements (like in ARC) some even for 16 hours continuously and are compensated by means of compensatory off/cash in lieu thereof. Even though SSB is a sister organisation of ARC, the Drivers in SSB are part of their combatised force and their duties are similar to that of the duties of Drivers being performed in Central Police Organisations. On the above grounds, the respondents have in their reply opposed the prayers of the applicants.

↓ ↓ ↓

6. We have heard Shri C.A.Rao, the learned counsel for the petitioners and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have perused the records.

7. The applicants have based their claims on the ground that similar facilities as asked for by them in this OA are being allowed to Drivers in RAW and SSB as

24

also to the Drivers in other units of ARC at Delhi, Sarsawa and Doom Dooma. Moreover, it is stated that some of these facilities are also being allowed to Drivers working in other wings of ARC, Charbatia itself like the Technical Cadre and Establishment Cadre. Before going into different claims made by the applicants, this aspect will have to be considered first. The respondents have pointed out that Drivers in SSB are part of their combatised force and their working conditions and regulations are similar to the Drivers in Central Police Organisations. In view of this, the applicants cannot compare their situation with the Drivers in SSB. As regards RAW, the respondents have pointed out that RAW is not under Directorate General of Security. It is no doubt true that before formation of the MT Executive Cadre it was indicated to the applicants in the various communications enclosed by the petitioners to the OA that they will be governed by the same terms and conditions as are applicable to MT Executive Cadres in RAW & SSB. But after MT Executive Cadre was formed in ARC, the applicants have come over to the Executive Cadre by exercising their option and therefore they cannot claim that their terms and conditions should be same as in RAW which is a different organisation and not under the Directorate General of Security. As regards the MT Executive Cadre, in other units of ARC at Delhi, Sarsawa and Doom Dooma, the respondents have clarified in their reply referred to by us earlier that similar facilities are not being allowed to MT Executive Cadre employees in the other units of ARC. The applicants have not brought any material on record except saying that MT Executive Cadre employees in other units of ARC at Delhi, Sarsawa and Doom Dooma are getting these facilities. In view of this, the averment of the respondents that the MT Executive Cadre

24

Wom.

25

25

Employees in other units of ARC are getting the same facilities which are being allowed to the applicants has to be accepted and the claim of the applicants cannot be based on comparison with the facilities given to MT Executive Cadre employees of other units of ARC.

8. Lastly the applicants have stated that Executive Cadre employees of other Wings of ARC, Charbatia, are getting some of these facilities. The respondents have pointed out that there are differences in their terms of appointment as also the scales of pay. They have pointed out that Drivers in the Establishment Cadre are getting lower scales of pay but performing eight hours duty a day. It has also been pointed out that MT Drivers Cadre in ARC was converted into Executive Cadre in view of operational requirements, and higher pay scales and greater chances of promotion were allowed to them. In usual Central Government offices the Drivers hardly have any promotional prospects except promotion to the post of Senior Driver and in some offices Head Drivers whereas in M.T. Executive Cadre in ARC, Drivers who are Senior Field Assistants have prospects of promotion to the post A.F.O., D.F.O and F.O. In view of this, it would not be correct for the applicants to compare themselves with the Staff Car Drivers working in the Establishment Wing. The applicants have also compared the duty hours of MT Cleaners, but the respondents have rightly pointed out that MT Cleaners belong to Mechanical Cadre and not MT Executive Cadre. The prayer of the applicants for different benefits as mentioned in their OA has to be considered in the context of the above.

J. J. J.

9. The petitioners in the OA have indicated that they were put to perform 48 hours duty in a week. The respondents have pointed out that the applicants had represented on this point only in August 1994 and in order

26

26

dated 1.2.1995 the duty hours of the applicant have been reduced to 7 hours a day and six days in a week during the pendency of this O.A. In other words, the duty hours of the applicants have been reduced to 42 hours a week as against 48 hours earlier. The applicants' prayer is to reduce the duty hours to 40 hours a week. The respondents have rightly pointed out that according to the Staff Car Rules issued by the Ministry of Finance normal working hours of Drivers are eight hours with half an hour lunch break. As against 7½ hours of work per day for Drivers in normal Central Government offices, the applicants are required to perform 7 hours duty per day. It has been indicated that the Drivers Cadre was converted into MT Executive Cadre in view of operational requirements of the organisation and the Drivers were redesignated as Senior Field Assistant and provided with higher scale of pay compared to Staff Car Drivers. In view of this, they cannot claim that their duty hours should be reduced to 40 hours a week. This claim is therefore held to be without any merit and is rejected.

10. The second prayer is for getting one day rest and one day off after every spell of night duty. The respondents have pointed out that the night duty is not over and above 42 hours duty per week. The night duty hours are included in the 42 hours duty for a Senior Field Assistant in a week. They have further pointed out that the night shift duty of the applicants is from 2100 hours to 0700 spanning a period of 10 hours. Thus, they perform 3 hours of extra work during night duty and these three hours are credited to their compensatory off account. The respondents have also pointed out that after night duty the concerned official is not immediately called to duty during day time. He gets rest for the day and again is called to duty at night. In view of this, there is no case for a rest day for the applicants after night duty. They are allowed

J. Som.

27

27

rest or off duty by arranging the duty roster and this is adequate. The respondents have also pointed out that the system of one day off after night duty is not followed in any of the units of ARC or in other Central Government offices. This is also an aspect which has to be taken into account. Thus, we hold that the applicants do not have any claim for getting one day off after every night duty. The claim for night duty allowance is also without any merit because the night duty is not over and above the normal and regular 42 hours of duty of the applicants and this night duty allowance is not given to any other Drivers in ARC at Charbatia and other units of ARC at Delhi, Sarsawa and Doom Dooma.

11. The last claim of the applicants is that when they are on stand by, the entire period of stand by should be taken as full duty. The respondents have pointed out that system of keeping some Drivers stand by has been introduced firstly in view of the operational requirements and secondly, to ensure that this burden is equitably distributed amongst all the Drivers. They have further pointed out that if a Driver is called from stand by for performing duty, then the actual period of duty performed by him is credited to his compensatory off account and with the hours totalling up in the compensatory off account, they are allowed compensatory off day. Considering the fact that these Drivers have been provided quarters inside the campus and their actual steering duty normally and even when called to duty from standby is not more than thirty minutes, they cannot claim that the entire period of stand by should be taken as full duty. If that be the case then there is no point in having a stand by arrangement and the Drivers who are kept on

Dom

standby arrangement can be called for regular duty. The purpose of stand by arrangement is that in case requirement comes up, then persons on stand by arrangement can be called to duty. The actual period of duty performed is taken into account. The claim of the applicants that when they are on stand by arrangement, even if they are not called to duty, that period of stand by arrangement should count as full duty is, therefore, held to be without any merit and is rejected.

12. In the result, we hold that the Application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
29.3.2001
VICE-CHAIRMAN

March 29, 2001/AN/PS