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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,
CUTTACK

ORIGINAL APPLICATION NO.359 OF 1995

Sri B.Sethi ... Applicant

Vrs.

Union of India and another ... Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.359 OF 1995
Cuttack, this the 31st October, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sri B.Sethi, son of late
Bata Sethi,
Retired Watchman, Small Industries
Service Institute, College Square,
Cuttack, At-Bidyadharpur,
P.O-Nuabazar, Cuttack Applicant.

Vrs.

1. Union of India, represented through
its Secretary, Ministry of Industry,
New Delhi.
2. The Director, Small Industries Service
Institute, College Square, Cuttack-3

....Respondents

Advocates for applicant - M/s A.Routray,
S.Mohanty,
B.Swain &
P.K.Padhi.

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the applicant who
is the retired Watchman of Small Industries Service
Institute, Cuttack, has prayed for a direction to
respondent no.2 to pay him over-time allowance. In the

2 relief portion of paragraph 8 of the application, there has been a palpable mistake. In paragraph 4 of the application, it has been mentioned that the applicant retired from service on superannuation on 30.6.1990. In paragraph 8 dealing with relief, prayer has been made for a direction to the respondents to pay him over-time dues for the period from May 1991 to February 1995 and regularly thereafter, i.e. ^{for} the period after his superannuation on 30.6.1990. On this being pointed out, the learned lawyer for the applicant had earlier submitted that he would file an amendment petition to correct the typographical error. But on the date of hearing he only made a submission that in paragraph 8 of the O.A. the words "May, 1991 to February 1995 and regularly thereafter" be substituted as "1st July 1987 to 30th June 1990". Learned Senior Standing Counsel had no objection to this. After conclusion of hearing, the orders on the main application as also on this prayer for amendment were reserved.

2. Amendment to the O.A. should have been made by filing an amendment petition in accordance with the Central Administrative Tribunal (Procedure) Rules, 1987 and on that ground alone, the prayer for amendment and necessarily the O.A. are liable to be rejected. But as the applicant was a Group D employee and there is an obvious typographical error in the prayer portion

of the O.A., it would not be correct to reject the application and the prayer for amendment out of hand. In consideration of the fact that the learned Senior Standing Counsel has no objection to the amendment moved verbally at the time of hearing, the prayer for amendment is allowed and it is taken that the relief claimed is for payment of over-time allowance from July 1987 to June 1990 when the applicant retired.

3. The facts of this case, according to the applicant, are that the applicant was working as one of the two Chowkidars in Small Industries Service Institute, Cuttack. His case is that when the other Chowkidar used to go on leave, he had to work over time beyond eight hours. Moreover, it has been submitted during hearing by the learned lawyer for the applicant that since there were only two Chowkidars, they were doing duty at the rate of 12 hours each per day and therefore, the applicant should get over-time allowance for 4 hours extra work beyond eight hours. It has also been submitted by the applicant that in a similar case, OA No.3/93 the other Chowkidar has been allowed over-time allowance in order dated 6.1.1994 and on the logic of the above decision, the applicant is also entitled to have a direction issued in his favour to the respondents to pay him over-time allowance.

4. Respondents in their counter have not made any comment about the typographical error in the relevant portion of the O.A. referred to earlier. The respondents have submitted that prior to the retirement of the applicant on 30.6.1992 the applicant did not have any grievance about payment of over-time allowance to him. In the O.A. the applicant has stated that on 2.8.1994 he submitted a representation to respondent no.2 asking for payment of over-time allowance. The respondents have pointed out that the so called representation dated 2.8.1994 had not been received by them. It is further submitted by the respondents that for claiming over-time allowance, the applicant should have applied indicating specific hours of over-time duty performed by him and indicating the specific dates. But no such details have been given by him either to the Department or in the O.A. here and therefore, the O.A. is not maintainable. As regards the order dated 6.1.1994 of the Tribunal in O.A.No.3/93 the respondents have submitted that the order has already been complied with and the order applies to the applicant in O.A.No.3/93 only and the present applicant does not stand on the same footing. On the above grounds, they have opposed the prayer.

5. I have heard the learned lawyer for the applicant and Shri Ashok Mohanty, learned Senior Standing Counsel appearing on behalf of the respondents and have also looked into the records including the decision of the Tribunal in O.A.No.3/93.

6. From the above recital of facts, it seems that in the absence of specific details about the hours of over-time work actually performed by the applicant on specific days, the claim of the applicant is based on two assumptions. Firstly, since there are two Chowkidars, each must have worked for 12 hours a day on each day when both of them were present. This assumption is hypothetical in nature and cannot be accepted. In many offices, Chowkidars are not required to attend office during office hours when other persons are available in the office. Deleting the office hours for eight hours, the period for which the Chowkidar has to guard the office works out to 16 hours and for two Chowkidars, in that event, the hours of work will become eight hours. The applicant has to specifically prove that in this case, he was asked to attend the office even during office hours and thereby his duty hours became more than eight hours. Since he has neither made any such submission nor has he given any evidence to that effect, the above assumption must be

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rejected. The second assumption on which the applicant has based his claim is that since two Chowkidars were there, the other one must have gone on leave from time to time and during the period when the second Chowkidar was on leave, he would have done duty of the second Chowkidar as well. This again, I am afraid, is a hypothetical assertion. Over-time allowance is a specific financial claim for which specific details have to be given. In a normal case, the applicant would have been required to fill up a form indicating specific hours and it is when he worked for more than eight hours. Similarly, in this case, he would have been required to indicate the dates when the other Chowkidar was on leave, as a result of which he was made to work for more than eight hours. In consideration of the above, this assumption also must be rejected.

7. The last point submitted by the learned lawyer for the applicant is that in paragraph 8 of the counter in the last sentence the respondents have stated that the representation dated 2.8.1994 (Annexure-2) of the application had ^{not} been received by them. The respondents have also stated that in case the representation had been received, the applicant would have been paid. In consideration of this submission of

the respondents in the counter, the learned lawyer for the applicant submitted that the matter may be remitted to the respondents for considering the matter on merits after giving a hearing to the applicant and with a direction to the respondents to decide the matter within a specific time period. Learned Senior Standing Counsel appearing on behalf of the respondents has, however, tried to explain away the last sentence in paragraph 8 of the counter by saying that had the representation been received by the respondents in time, the applicant would have been paid strictly in accordance with the rules as payment of over-time allowance can be made only in accordance with the rules and the rules in this case do not permit any payment, moreso when the first claim by the applicant for over-time allowance has been made more than four years after his retirement. I have considered the submissions of the learned counsels of both sides with regard to this portion of the counter. To my mind, little purpose will be served by remitting the matter to the respondents to consider the claim of the applicant according to rules, when the applicant has not come up with specific details about the hours of over-time duty performed by him on specific days. This prayer of the applicant is also, therefore, rejected.

8. In the result, therefore, the application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

31.10.97

AN/PS