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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.771 OF 1995
Cuttack this the 08th day of May/2001

D.Chhotray ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondents)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Sem
(SOMNATH SEM)
VICE-CHAIRMAN
Basu

8/5/01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

(20)

ORIGINAL APPLICATION NO.771 OF 1995
Cuttack this the 08th day of May/2001

CORAM:

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

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Duryodhan Chhotray, Son of Baikuntha Chhotray
of Village/PO:Ghoradia, P.S. Delanga, Dist-Puri
At present working as Choukidar/Watchman, in
the Office of the Assistant Registrar, Income
Tax Appellate Tribunal, Cuttack Bench,
Link Road, Cuttack-9

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Applicant

By the Advocates

M/s.C.R.Nandi
D.K.Dash
Miss.S.Mohapatra

-VERSUS-

1. Union of India represented through the Registrar
Income Tax Appellate Tribunal, 4th Floor, Central
Government Office Building, 101, Maharshi Karvel
Marg, Bombay-20
2. The Assistant Registrar, Income Tax Appellate
Tribunal, Cuttack Bench, Link Road, Cuttack-9
3. Union of India represented through Secretary,
Ministry of Home Affairs, Department of Personnel
and Administrative Reforms, Central Secretariat,
New Delhi

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Respondents

By the Advocates

Mr.A.K.Bose,
Sr.St.Counsel (Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, D.Chhotray,
serving as Choukidar (Watchman) in the Office of the Asst.
Registrar, Income Tax Appellate Tribunal, Cuttack (Res.No.2)
since 1973, earlier approached this Tribunal in Original
Application No.207/92, for sanction of overtime allowance
from 31.3.1973; allowing ^{more for} proper _{in} weightage for the
night duties performed by him; and for interest payable
on such allowance. That Original Application was disposed

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of on 27.5.1994 with the following direction to the Respondent No.2, i.e. Assistant Registrar, Income Tax Appellate Tribunal, Cuttack.

" We would, therefore, direct the applicant to submit a fresh 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 to be made at present regarding the aspect of interest".

2. The case of the applicant is that since inception he has been discharging the duties of a Choukidar from 6 PM to 4.30 AM, i.e., from the departure of the office staff till their arrival on the next forenoon, during working days and twenty-four hours during holidays, though as per Govt. Circular dated 31.12.1971 (Annexure-2) it was decided that the working hours of the Choukidar would be 48 hours in a week. In view of his performance of duties from 6 PM to 9.30 AM, he is entitled to night weightage of 10 minutes per hour as laid down in the Govt. circular dated 4.10.1989 (Annexure-3) as his night duty involves alertness and great mental and physical efforts. In Government circular dated 17.6.1972 there is provision for grant of 9 holidays,

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including National Holidays to excluded and other Class-IV employees. Yet he was denied this opportunity, even though in Office Memorandum dated 8.5.1978, as mentioned in O.M. dated 18.4.1991 (Annexure-5) it is mandatory to give compensatory off to staff required to work on Saturdays and Sundays and also holidays. Further in the Office Memorandum dated 18.4.1991 it was made clear that O.T. allowance has to be paid for the work performed beyond normal office hours. The grievances of the applicant to the authorities did not yield any result. Hence he preferred the said Original Application. As directed by this Tribunal, he prepared a claim statement as per his own knowledge. But the authorities directed him to submit the orders given by the competent authorities and the other documents in connection with the performance of over-time duties. He, however, submitted that the same are not available with him. In fact all the relevant informations in this regard would be available with Respondent No.2. Yet the claim of the applicant was rejected by order dated 13.10.1995 (Annexure-8).

The applicant thus prays for fixing up duty hours within 48 hours in a week, for quashing order dated 13.10.1995 (Annexure-8); for recalculation of the claim of the applicant on the basis of the records and registers available with Respondent No.2 and disburse the amount to him.

Subsequently the applicant amended the Original Application by including an additional prayers to declare Office Memorandum dated 19.3.1991 published in Swamy's O.T. Rules 3(b) (iii) fixing 1/3rd ceiling in payment of O.T. allowance as void ab initio.

3. Respondents, i.e., the Department, filed counter and after amendment of the Original Application, additional counter opposing the Original Application. According to them, in the circular dated 31.12.1971 (Annexure-2) there is specific mention that 48 hours a week will be applicable to Choukidars, who are exposed to mental and physical strain. Since original records are kept inside the office premises, Choukidar of Respondent No.2's establishment is no way exposed to mental and physical strain. Moreover, the Circular keeps it open for each Ministry to decide, keeping in view in strict economy measures and ban/creation of new posts, working hour procedure so far as Choukidars are concerned. Since his joining, the applicant never objected to perform his duties from closure of the office till the arrival of Safaiwalla around 8.30 A.M., at least till 1982. A Choukidar is entitled compensatory off for holidays, i.e., for Saturdays and Sundays and National Holidays, if he applies for the same in advance. Moreover he has E.L. for 30 days, 12 Casual Leave and 2 Restricted Holidays in a year. Night Weightage under Annexure-3 is not applicable to employees, who are in shift duties ~~like~~ ^{like} the applicant. Because his duty is confined to a particular shift. The applicant is not entitled to over time dues on night weightage. Citing limit of the O.T. in O.M. dated 19.3.1991 being a policy decision of the Government cannot be assailed, more so when the right to property under 44th Amendment of the Constitution ceased to be a fundamental right. Pursuant to the direction of the Tribunal in earlier Original Application, the Respondents in letter dated 20.8.1995 asked the applicant to submit details

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of his O.T. Claims in prescribed proforma enclosed to that letter and then reminded him in letters dated 25.9.1995 and 27.9.1995. But the applicant did not submit the details and insisted to peruse Attendance Registers, pay bills. Thereafter the Asst. Registrar perused these documents and passed order dated 13.10.1995 (Annexure-8) rejecting the claim of the applicant.

4. The applicant in rejoinder reiterated the facts as averred in the Original Application in an argumentative form.

5. We have heard Shri C.R.Nandi, learned counsel for the petitioner and Shri A.K.Bose, learned Sr.St.Counsel for the Respondents (Department). Also perused the records.

6. We may, at the outset deal with the applicant's objection to the Office Memorandum dated 19.3.1991 in limiting O.T. Allowance admissible to an employee in a month shall not exceed the amount corresponding to the O.T. payable for 1/3rd of monthly working hours. Sri Nandi, though took great pains to persuade us to strike down this portion of the Office Memorandum, but could not cite any authority direct on the point. This limit has been prescribed keeping in mind the broader interest of the Nation's economy as a whole, and that deployment of staff on O.T. work beyond the prescribed office hours is not to be resorted to as a matter of course. Moreover, this restriction is no more open for challenge when the right to properties ceases to be a fundamental right. Prayer in this regard therefore, fails.

7. As to the right weightage, the Circular dated 4.10.1989 is clear that it is not allowed to the categories

who have been included in the shift duty. It is applicable to staff, who are not in shift duties and are, performing the duties 8 hours a day, ^{and} performing duties between 22 hrs. and 6 hrs., are eligible to weightage of 10 minutes each hour. Applicant being in shift duty is not entitled to this weightage.

q. As to the compensatory off for holidays, it is not the averment of the applicant that he on any occasion applied in advance to avail the same and that the Respondent did not permit him to avail. Hence he should have no grievance in this regard.

q. Next question for determination is about the actual night duty hours and the overtime, if due, to the applicant. The averment of the applicant that he has been performing night duty from 6 PM to 9.30 AM has not been specifically denied. In fact this has been admitted by the Department in O.A.207/92. In G.I Department O.M. dated 4.10.1989 (Annexure-3) night duty is defined as duty performed between 22 hours and 6 hours. Viewed from this angle, the applicant on the days he performed duty had to do overtime. This being so his claim could not have been rejected under Annexure-8 only on the ground that he did not submit necessary orders or papers to the Department.

At this stage it should not be overlooked that one P.Palit, a Choukidar of the same Department working at Cuttack, filed Original Application No.772/95 for the similar reliefs. Despite similar objection of the Department, pursuant to the order dated 14.8.1996 and subsequent orders, O.T. payable was calculated at Rs.28, 612/- by taking 2 hours and 40 minutes per day as O.T. keeping in mind the 1/3rd

ceiling limit through joint meeting between the Respondents and the applicant. We feel, similar direction can be given in this case too.

10. This Original Application was filed towards the end of December, 1995. We have no jurisdiction to entertain claims which were due prior to 1.11.1982, under Section 21(2)(a) of the A.T. Act, 1985. Hence, while quashing the order dated 13.10.1995 under Annexure-8, we direct that the over time be calculated on the days the applicant was on night duty from 1.12.1982 to 31.12.1995, keeping in kind the ceiling of 1/3rd limit and non-entitlement of night weightage and disburse the same to him. If not already done, the entire exercise shall be completed within a period of 120 (One Hundred & Twenty) days from the date of receipt of copy of this order.

11. The Original Application is accordingly disposed of with the aforesaid direction, and observation, but without any order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
B.K.SAHOO

8-5-01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//