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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 772 OF 1995  
Cuttack this the 26<sup>th</sup> day of May, 1999

Prahallad Patra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

(SOMNATH SOM)  
VICE-CHAIRMAN

26.5.99  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 772 OF 1995  
Cuttack this the 26<sup>th</sup> day of May, 1999

CORAM:

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

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Prahallad Patra,  
S/o. Late Dhaneswar Patra  
of Village: Paschima Kachha,  
PO: Madyakachha,  
P.S. Jagatpur,  
Dist: Cuttack - at present working  
as Choukidar, in the Office of the  
Commissioner of Income Tax(Appeal),  
Bangali Sahi, 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  
Commissioner of Income Tax,  
Bhubaneswar
2. Commissioner of Income Tax(Appeals)  
Bangali Sahi, Cuttack-9

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Respondents

By the Advocates : Mr.U.B.Mohapatra,  
Addl.Standing Counsel  
(Central)

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ORDER

**MR.G.NARASIMHAM, MEMBER(J):** This application under Section 19 of the Administrative Tribunals Act, 1985, was filed on 2.12.1995 by one Prahallad Patra, Choukidar in the Office of Commissioner of Income Tax(Appeals), Cuttack (Res. 2) in regard to over time allowance with the following main reliefs:

- a) Respondent No.2 be directed to verify and calculate all the monetary benefits due to the applicant as per Annexures-A to C by taking into consideration instructions under Annexure-E, issued by the Ministry of Finance;
- b) Respondent 2 be directed to verify and check up the claim statements submitted by the applicant which are lying with him and after due check up to pay the claim along with upto date claims with other dues such as night weightage etc. within a reasonable time to be fixed by the Tribunal along with 13% interest per annum;
- c) The Memorandum issued by Res.2 on 8.12.1995 under Annexure-D rejecting representations of the applicant for over time be quashed. ~~along with~~ Other prayers made on that day are formal in nature.

It is not in dispute that applicant and two others were working under Respondent No.2 as Choukidars till September, 1993. In July, 1993 and September, 1993 two other Choukidars were disturbed from that office and the applicant functioned ~~as~~ sole Choukidar from there onwards for some time. Annexure-A is Office Memorandum dated 14.11.1971 of the Cabinet Secretariat Department in that which it was decided working hours of a Choukidar should be 48 hours in a week in which sustained mental and/or physical effort and/or of work alertness is involved. Annexure-B (also Annexure-R/1) is Circular of December, <sup>of</sup> 1972 in regard to grant six additional holidays, besides

three National Holidays to the employees, who are Choukidars. Annexure-C(also Annexure-R/2) is Office Memorandum dated 4.10.1989 of the Department of Personnel and Training Establishment as to the allowance of night weightage to employees performing duties during night for eight hours between 10 p.m. to 6 a.m., i.e., 10 minutes each hour.

The applicant pleads that he has been discharging general duties (not shift duties) from 6 p.m. to 9.30 a.m. and is, therefore, entitled to night weightage of 10 <sup>per</sup> minute per each hour. It is also his averment that since there is no other Choukidar attached to the office, Respondent No.2 ordered him to watch office from 6.00 p.m. to 9.30 a.m. on each working day and full period on Saturdays, ~~and~~ Sundays and other holidays. Since his representations claiming monetary benefits like over-time were not responded, he has approached this Tribunal through this application impleading Res.1, viz., Commissioner of Income Tax, Bhubaneswar as representing Union of India, besides Res.2, as earlier indicated.

2. Respondents in their counter filed on 2.2.1996 pleaded that working hours of Choukidars are from 6.00 P.M. to 9.30 A.M. Respondent No.2 had not passed any order ~~success~~ directing the applicant to remain on duty for 24 hours during Saturdays, Sundays and other holidays. According to ~~them~~, as per Circular of 1972(Annexure-R/1), Choukidars are entitled to nine holidays including three National Holidays. For the purpose of availing additional holidays, the concerned Choukidars would have to apply a week in advance to the

competent authority and if the application is rejected, he will be entitled to over-time allowance. The applicant on no occasion applied for availing any such holidays. Hence question of payment of over-time allowance would not arise. As to the night weightate of 10 minutes each hour, under Circular dated 4.10.1989(Annexure-R/2) it is the averment of the respondents that such allowance is not applicable to Choukidars, whose job is to guard during relevant time at night; rather it is applicable to employees, who, besides performing duties eight hours a day, are performing duties between 22 hrs. to 6.00 hrs. This in substance is the stand taken by the respondents in the counter.

3. After the respondents entered appearance and filed counter, this Tribunal on 14.8.1996 instructed Shri C.R.Nandi, learned counsel for the applicant to file a statement giving the working sheet of amount of over-time, night duty after serving a copy thereof on Shri U.B.Mohapatra, learned Addl.Standing Counsel. On 26.9.1996, the applicant furnished a statement of claim of Rs.1,08,318/- On 11.12.1996, on the submission of Shri U.B.Mohapatra, learned Addl.Standing Counsel that the Department is prepared to verify the claim made by the applicant in presence of the applicant, it was ordered that applicant shall in person sit with the nominee of the respondents, who is in charge of dealing with these claims on 16th, 17th and 18th December, 1996 and the respondents after discussing with the applicant shall file their views on the claims of the applicant. Shri Nandi, learned counsel for the applicant was permitted to accompany the applicant to explain his case properly before the authorities. Thereafter on 3.1.1997, the respondents submitted a report which was prepared in presence of the applicant and his counsel. This report,

according to respondents, has been prepared as per the Over Time Rules and a sum of Rs.28,612/-only was payable to the applicant. The Tribunal observed that this report was prepared after painstaking calculations. The learned counsel for the applicant Shri Nandi, however, as the order reveals, did not agree to the correctness of this calculation on the ground that the working hours of Choukidars is 48 hours per day. However, it has been indicated in this order that respondents, while calculating the over-time allowance restricted the payment to 1/3rd of the working hours per day, i.e., 2 hours and 40 minutes of over-time on the basis of eight working hours per day in view of Office Memorandum dated 19.3.1991 which restricts the maximum over time allowance admissible to an employee in a month not exceeding 1/3rd of working hours in a month.

Thereafter the applicant amended the Original Application with additional prayer that this Office Memorandum dated 19.3.1991 fixing 1/3rd ceiling as has been published as Rule-3(b)(iii) in Swamy's Over Time Allowance to be declared as void ab initio, unconstitutional, illegal and arbitrary on the ground of infringing fundamental rights and other provisions of the Constitution.

4. As to the relief for striking down Office Memorandum dated 19.3.1991, i.e., Rule-3(b)(iii) of the Over Time Allowance to the Central Government employees, we are to observe that the same is not maintainable in the absence of the concerned Ministry represented through Secretary or concerned competent authority of the Ministry as a party in this application ~~seeking~~ <sup>settling</sup> an

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opportunity to counter. Without hearing the authority, who issued the Office Memorandum dated 19.3.1991, it is not permissible or desirable under law to strike down the rule as unconstitutional after hearing version of only one side, i.e. applicant as it would violate the principles of natural justice. It is true that Union of India has been impleaded as Respondent No.1, but this Union of India has been described to have been represented by Commissioner of Income Tax, Bhubanewar and not the competent authority. Commissioner of Income Tax, Bhubaneswar can by no stretch of imagination be the competent authority representing the concerned Ministry, who issued the instructions in this disputed Office Memorandum dated 19.3.1991. Hence prayer in this regard is disallowed as being not maintainable.

There is also controversy between the parties with regard to night weightage allowance. Circular in regard to night weightage dated 4.10.1989 under Annexure-R/2 is same as that of Annexure-C to the Original Application. The very first paragraph of the Circular runs as under :

" The night weightage is not allowed to the categories of who have have been included in the shift duty. Such categories of staff who have not been engaged in shift duty and are performing the duties of 8 hours a day and are performing duties between 22 hours to 6 hours are eligible to weightage of 10 minutes each hour as per Dept. of Personnel orers circulated".

A reading of the above makes it clear that such night weightage allowance is admissible to the employees, who perform the duties between 22 hrs. and 6 hrs, besides performing duties eight hours a day. It is not the case of the applicant that during the relevant time, besides working 8 hours ~~per~~ <sup>and</sup> day, he was also kept on duty during

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night. Viewed from this angle, this night weightage allowance is not admissible to the applicant.

It has been contended by Shri Nandi, learned counsel for the applicant that according to him the maximum night duty is 48 hours in a week. According to respondents, however, for a Choukidar from 10.00 P.M. to 6.00 A.M., i.e. 8 hours every night is the duty hours at night. In fact in circular dated 4.10.1989 under Annexure-R/2 in para-2(ii) it has been made clear that night duty is duty performed between 22 hours and 6 hours, i.e. in total it comes to 56 hours per week ~~week~~, if one performs the night duty. Annexure-A/1 dated 31.12.1997 relied on by the applicant is only a decision that working hours of a Choukidar should be reviewed. In other words Annexure-A does not lay down that working hours of Choukidars are fixed to 48 hours in a week. No other circular has been brought to our notice by the applicant that the maximum working hours of Choukidars have been fixed to 48 hours in a week. On the other hand as already indicated, ~~the~~ circular dated 4.10.1989(Annexure-C of the applicant and Annexure-R/2 of the respondents) is clear that night duty means, the duties performed between 22 hours and 6 hours, i.e. 10 pm to 6 a.m. Hence contention in this regard advanced on the side of the applicant is not acceptable.

5. In the result we do not see any merit in this application which is accordingly dismissed leaving the parties to bear their own costs.

(SOMNATHSOM)  
VICE-CHAIRMAN

B.K.SAHOO

26-5-95  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)