

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATIN NO. 237 OF 1998
Cuttack, this the 15th day of May, 2000

Nakula Chandra Sahoo 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)

(SOMNATH SOM)
VICE-CHAIRMAN

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CORAM:

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

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1. Nakula Chandra Sahoo, aged about 38years, son of Naba Sahoo, resident of Kishanpur, PO-Mahasinghpur, Dist.Cuttack.
2. Krushna Chandra Samal, aged about 40 years, son of Natabar Samal, resident of Badakhira, PS-Salipur, Dist.Cuttack.
3. Bishnu Charan Natia, aged about 37years, son of Babaji Charan Natia, resident of Barapada, PS-Tangi, District-Cuttack.
4. Sanatan Mallick, aged about 28years, son of Fakir Charan Mallick, resident of Korua, PS/District-Kendrapara.
5. Dukhishyam Samal, aged about 37 years, son of Rajkishore Samal, resident of Mahakundapur, PO-Bhimarajpur, PS-Jagatpur, Dist.Cuttack.
6. Ramachandra Behera, aged about 35 years, son of Gandharba Behera, resident of Moheshpur, PSSadar, Dist.Cuttack.
7. Purna Chandra Rout, aged about 36 years, son of Kamadev Rout, resident of Nuagaon, PS-Banki, District-Cuttack at present all are serving as Regular Mazdoors (Group-D), Telecommunication Office, D.E.Store, Satyanagar, Bhubaneswar, District-Khurda

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Applicants

Advocates for applicants - M/s S.Puspakala
P.K.Nayak

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1. Union of India, represented through the Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunication, Orissa Circle, Bhubaneswar.
3. Divisional Engineer, Retail Telecom Store Department, Satyanagar, Bhubaneswar

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Respondents

Advocate for respondents - Mr.B.K.Nayak
ACGSC

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the seven applicants have prayed for a direction to the respondents to pay them the overtime allowance from December 1995 since when they are performing watch and ward duty for twelve hours. The second prayer is for a direction to the respondents to allow the applicants to do their normal duty for eight hours and for five days a week instead of watch and ward duty which they are not required to perform.

2. The applicants' case is that they were originally engaged as NMR Mazdoors in 1982 in the Circle Store Telecommunication Office, OMP Square, Cuttack. In 1988 their services were regularised. The office of Divisional Engineer (Store), Retail Telecom Store Depot (RTSD) was shifted from Cuttack to Satyanagar in 1990 and the applicants were also transferred to Bhubaneswar. In December 1995 some Telecom equipments were stolen from Store regularly by some miscreants. Accordingly, Deputy General Manager (Planning) ordered for deployment of regular Mazdoors like the applicants for watch and ward duty which is not in accordance with the departmental rules. The applicants have stated that the departmental authorities decided that regular Mazdoors would be deployed for watch and ward duty till deployment of Armed Force. After such deployment Divisional Engineer (Store) wrote to Assistant General Manager (SA), Bhubaneswar, stating that earlier regular Mazdoors were employed against Lascar vacancies and were observing five-day week. Now regular Mazdoors are engaged on Saturday and Sunday. In view of this he sought clarification whether regular Mazdoors so engaged are

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entitled to weekly compensatory off or OTA in lieu of performance of duty on the day RTSD is closed, i.e., Saturday and Sunday and closed telegraph holidays. He also sought clarification as to whether they are to be engaged on 8 hours shift or 12 hours Choukidar shift duties. The Secretary, Bharatiya Telephones Employees Union also took up the case of the applicants in his letters at Annexures 4 and 5. Divisional Engineer, RTSD, Bhubaneswar, wrote to the office of Chief General Manager, Telecommunications, Orissa Circle, in March 1996 (Annexure-6) for creating seven posts of regular Choukidars in order to overcome the staff problem. But no action was taken and the applicants are continuing to perform watch and ward duty for more than eight hours. In the context of the above facts the applicants have come up with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayers of the applicant. They have stated that according to Director-General, P&T's circular dated 20.9.1966 at Annexure-R/1 Mazdoors and Choukidars come under Class IV posts and have been categorised as non-test category. The seven applicants and five others, totalling 12 Mazdoors are governed under the above circular. They have stated that according to Director General, P&T 's circular dated 18.6.1983 at Annexure-R/2 the Choukidars employed to keep a general watch over buildings at night when the same are locked and secured, can be given 12 hours duty as no strain is involved in such ward and watch duty. In offices which are open all the 24 hours and where there is need to check entry of public, staff or stores moving in and out, the duties of Choukidars should be for eight hours as mental and physical strain would be involved. In the instant case,

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the applicants who are regular Mazdoors of RTSD have been deployed on watch and ward duty for 12 hours to keep a general watch over the buildings and store at night when the same are locked and secured. Apart from this, Home Guards have also been engaged through State Police round the clock to avoid any possible theft. The regular Mazdoors are required to perform 8 hours duty in day time during working hours of the Store, i.e., from 09 30 hours to 18 00 hours as per the circular dated 18.6.1983 at Annexure-R/2. Out of 12 regular Mazdoors five are doing 8 hours duty in day time during store working hours when they are looking after the custody of stores, checking stores moving in and out. The applicants can also be given the same 8hours duty on rotation subject to their willingness and suitability. The applicants are illiterate and therefore are unable to perform checking, etc. and therefore they have been given Choukidar duty for 12 hours on their willingness. They want to remain as Choukidar and claim overtime allowance which is not permissible in view of the circular of Director General, P&T. It is stated that the applicants have never claimed for eight hours duty in day time on rotation. In view of the above, the respondents have stated that the applicants are not entitled to OT allowance. The respondents have also pointed out that the applicants have been regularised as Mazdoors in 1993 and not in 1988 as averred by them. It is further stated that because of imposition of ban order with effect from 30.3.1985 no daily rated Mazdoor has been engaged in the Department and that is how the regular Mazdoors have been so engaged. It is also stated that this arrangement has been made in consultation with higher authorities and Union's representatives. The respondents

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have stated that the applicants have never been ordered to perform 24 hours duty. It is stated that they are all Group-D non-test staff and on their own willingness they have been engaged on watch and ward duty at night. On the above grounds, the respondents have opposed the prayer of the applicants.

4. The applicants in the rejoinder have stated that when RTSD was at OMP Square, Lascars who are industrial Mazdoors used to guard the store. Thereafter regular Choukidars were employed to guard the store. After shifting of the store to Satyanagar, Bhubaneswar, Home Guards were deployed to guard the store. It is stated that the Home Guards themselves committed theft and were caught redhanded. Thereafter Lascars and regular Mazdoors were deployed to guard the store. As Lascars demanded overtime allowance, the respondents did not engage Lascars to guard the store and regular Mazdoors were deployed to guard the store till alternative arrangement is made. It is stated that Lascars were paid OT allowance, but no such allowance was paid to regular Mazdoors. It is stated that even though Choukidars and regular Mazdoors come under Non-test category Group-D their duty is not identical. It is stated that guarding the building at night is the work of Choukidar and this work cannot be taken from regular Mazdoors. The applicants have denied that the arrangement was made in consultation with the Union. On the above grounds, the applicants have reiterated their prayer in the rejoinder.

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5. We have heard Shri S.Puspak, learned counsel for the petitioners and Shri B.K.Nayak, the learned Additional Standing Counsel for the respondents and have also perused the records.

6. The applicants are regular Mazdoors who are included in the list of Non-test category of posts. It seems that there are 12 such regular Mazdoors in RTSD of which five are performing watch and ward duty during day time from 09 30 hours to 18 00 hours and the seven applicants are performing watch and ward duty for 12 hours at night. The applicants' first prayer is that as they are regular Mazdoors they should not be engaged on watch and ward duty but should be engaged in work to be attended to by regular Mazdoors. The learned counsel for the petitioners was unable to indicate if any duty chart has been prescribed for regular Mazdoors. In the absence of any duty chart, regular Mazdoors can be given such work as is required by the authorities in the exigency of service. In view of the above, the applicants cannot claim that they should not be engaged on watch and ward duty. It is also to be noted that the respondents have stated that the applicants have been engaged on watch and ward duty on their willingness. The respondents have also stated that the applicants have never represented for doing 8 hours watch and ward duty during day time. The respondents have furtherstated that if the applicants represent for doing 8 hours watch and ward duty during day time and if they are found suitable for doing the work, then their cases for engagement during day time could be considered. As no duty chart has been prescribed for the regular Mazdoors, they can be engaged in any work which is required of them by the authorities. In view of this the applicants cannot claim that they should not be engaged on watch and ward duty. This contention of the applicants is therefore held to be without any merit and is rejected.

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7. The second aspect of the matter is that these seven applicants are performing 12 hours watch and ward duty whereas five other regular Mazdoors are performing eight hours watch and ward duty during the time the store is open. The respondents have pointed out that the five regular Mazdoors, who have been engaged during the time the Store is open, are checking the entry and exit of the public and staff to the store as also coming in and despatch of the store materials. These seven applicants being illiterate could not be engaged in such work during day time. But if they are willing and found suitable, they can also be engaged for 8 hours work during day time. In view of this, if the applicants want eight hours duty, then they should make representation to the departmental authorities who should find out if they can discharge the duties of the day time watch and ward staff like noting down the names of the persons and the details of materials coming in and going out of the Store. If some of the applicants are found suitable, then the departmental authorities can give those of the applicants who are found so suitable, the watch and ward duty during day time.

8. The last prayer of the applicants is that for their engagement for 12 hours during night time they should be paid overtime allowance for their work beyond eight hours. The circular of Director General, P&T at Annexure-R/2 lays down clearly that during night when the Store and the Buildings are locked and secured, the duty hours will be 12 hours because no strain is involved in such watch and ward duty at night time as the public, staff and store materials are not coming in and going out when the Store is closed. The applicants in their rejoinder have

stated that this circular at Annexure-R/2 is applicable to Choukidars and is not applicable to the applicants. As the applicants are performing watch and ward duty, for their entitlement they would be guided by the same circular and as Choukidars for night duty for 12 hours are not entitled to overtime allowance, the applicants also cannot claim overtime allowance for doing work for 12 hours at night. This contention is also held to be without any merit and is rejected.

9. In the result, therefore, 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)

VICE-CHAIRMAN

15.5.2000

AN/PS