

6
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 672 OF 1998
Cuttack this the 23rd day of May 2000

Prasanta Kumar Das

Applicant(s)

-Versus-

Union of India & Ors.

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
(SOMNATH SOM)
VICE-CHAIRMAN
23.5.2000

J. S. Dhaliwal
(J.S. DHALI WAL)
MEMBER (JUDICIAL)

2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO.672 OF 1998
Cuttack this the 23rd day of May 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM VICE-CHAIRMAN

AND

THE HON'BLE SHRI J.S.DHALIWAL (MEMBER JUDICIAL)

...

Sri Prasanta Kumar Das
S/o. Brundaban Chandra Das
now working as Watchman in the
Office of the Inspector of Income Tax
Bhaderak PO: Charampa
Dist: Bhadrak

...

Applicant

By the Advocates : M/s.C.R.Nandi
Miss.S.Mohapatra
D.K.Dash

-Versus-

1. Union of India represented through
The Commissioner Income Tax
Forest Park Bhubaneswar
Dist: Khurda
2. Income Tax Officer Bhadrak
PO: Charampa, Dist: Bhadrak

...

Respondents

By the Advocates : Mr.B.Dash
Addl.Standing Counsel
(Central)

...

MR. J. S. DHALIWAL MEMBER (JUDICIAL): Applicant Prasanta Kumar Das has come to the Tribunal challenging the order dated 28.8.1997 passed by Res.2. He pleads that he has been working as Chowkidar in the Office of Res.2 since 24.5.1995. He has been discharging his duties from 6.00 P.M. till 9.30 A.M. on the next day and 24 hours in all the holidays like Saturday and Sunday and scheduled holidays. He claims that the Department of Personnel issued Office Memorandum dated 31.12.1971 prescribing that working hours of Chowkidars in various Department of Central Government followed by another Office Memorandum dated 4.10.1989 for grant of "Night Weightate" (Night Duty Allowance) to the employees performing regular duties from 10 PM to 6 PM (Annexures-1 and 2). Since the Departments were not following these Circulars further circular dated 23.8.1977 (Annexure-3) was issued with direction for strict compliance of Annexure-1. Ministry of Finance issued O.M. dated 18.4.1994 directing payment of Over Time Allowance to the employees who were discharging extra duties beyond normal office hours (Annexure-4). He claims that he was orally directed by Res.2 to discharge the duties from 6 PM to the next day upto 9.30 A.M. and for 24 hours on all other holidays. He submitted a claim for payment of Over Time Allowance for the period from 24.5.1995 to 31.3.1997 and claims that the same has been turned down/rejected by Res.2 through order dated 28.8.1997 (Annexure-5). He claims that two other Chowkidars viz. Babaji Ch. Mohanty and Ranjan Kumar Mohapatra working in the Office of Assistant Commissioner Income Tax Cuttack Circle have been paid Over Time

Allowance. On these grounds he has prayed for direction to respondents to pay him Over Time Allowance with Night Weightage from 24.5.1994 till date i.e. final disposal of the Original Application for the extra duties performed beyond the normal working hours i.e. beyond 7 hours per day. He has prayed for grant of interest thereon till payment. He has also prayed for declaring as mentioned in Annexure-5 as unconstitutional arbitrary and unreasonable ~~ultra vires~~ and violative of Articles 14, 21, 23 and 300-A of the Constitution. He also seeks direction to respondents to produce records with regard to grant of Over Time Allowance to the two persons named by him who have been paid such allowance.

2. Respondents filed a written reply pleading therein that Annexure-5 is not a final order as applicant has been only asked to give certain clarifications in respect of Over Time Allowance claimed by him. Since it is not an order of rejection of his claim they plead that Annexure-5 could not be challenged in a Court of Law not being a final order. They deny that the applicant was ever asked to perform duties beyond the normal hours. He was however allowed to stay in the office building and thus has been staying there and thus not entitled to O.T.A. They plead that a Government ^{is} servant under the Government ~~after~~ for performing duties during all the 24 hours and the concerned authority may utilize his service by issuing necessary orders to that effect. Circular dated 8.5.1978 provides for grant of compensatory leave to those who ^{are} required to work on Saturday, ~~and~~ Sunday and other holidays. Applicant has only been asked to furnish the details of work done by him, if any, beyond normal

duty hours. Applicant has never applied for availing compensatory off.

Applicant has filed a rejoinder.

3. We have heard learned counsel for the respondents who was present while proceeding under Rule-15 of C.A.T.(Procedure) Rules 1987 as counsel for the applicant was not available.

4. Our attention has been drawn to judgment of this Tribunal in the case of P.R.Patra vs. Union of India & Ors. in O.A. 772/95 decided on 26.5.1999 by a Division Bench. Identical question of law was raised by the Chowkidar (Watchman) for claiming O.T.A. After discussing law on the points which have been raised in the present case also, the Bench came to a conclusion that Chowkidar was not entitled to O.T.A. We find ^{that} the facts of the present case are fully covered under the ratio of the said judgment.

We have gone through the Swamy's Compilation on Overtime Allowance to Central Government employees. Reading of this Book shows that Government has taken a decision that if a person is made to work for extra hours beyond one hour of his normal duties, instead of giving him O.T.A., he should be granted compensatory leave in lieu as a rule. Cash compensation in form of O.T.A. may be granted only in very exceptional circumstances and the requisite condition is that an officer not below the rank of Joint Secretary in the Secretariat Offices or the Head of the Department in the case of attached subordinate or other office has to satisfy himself of necessity of such employee being made to perform duties extra, other than his normal duty hours and he shall have

to certify that it is not possible to grant compensatory leave. In the absence of such condition cash compensation as O.T.A. cannot be given. Even for compensatory leave orders should be obtained within one month of the same becoming due and normally in one month not more than two days such leave at a time can be allowed. O.T.A. shall not exceed 1/3rd of the monthly emoluments of a person who may have been compelled to work over time and for this also a responsible officer will have to satisfy that over time work has been performed by such employee. It has further been mentioned that O.T.A. should under no circumstances be paid for work on Sundays and Holidays to non-industrial Government employees and only compensatory leave should be allowed for such purpose. These are decisions conveyed by the Government of India through OMs dated 30.4.1979 and 8.5.1978. While issuing the letter Office Memorandum in the compilation mentioned above it has been mentioned that Ministry's O.M. dated 30.4.1978 shall no longer be enforced. While prescribing categories of Government servants who are entitled to O.T.A. and who are not entitled to the same, form as given in Annexure-1 is to be filled up by the person making claim for O.T.A. by specifically describing as to whether he had performed duties on a working day or a holiday, the period during which such extra duty was performed with the time specified and at the rate per day and the amount so claimed. Regarding Chowkidars it has been specified ~~that~~ "Claim of Night Duty Allowance" that no such allowance is to be given where night duty is an inseparable characteristic of the job itself.

Compensatory leave which was the rule and payment of

6

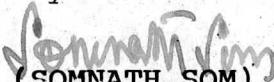
19

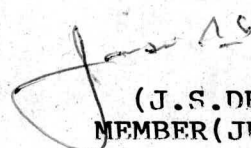
Judging the claim of the applicant in the present case under these rules we find that at no point of time he applied for compensatory leave which was the rule and payment of O.T.A. was an exception and that too under specific orders and certificate of the Head of the Department. One cannot be allowed to make vague claims from the kind of ~~kind~~ the present applicant has made that he has been performing duties beyond duty hours for a period of two years approximately. He has neither made an averment nor brought to our notice that he had made the claims as per rules. There is nothing to show that he was ordered to perform duties for extra hours nor has he given any chart which may indicate that he had submitted his claim as per the form given in Annexure-1 as mentioned in Swamy's Compilation with all details required and the total amount for each month.

Reading of written reply filed by respondents goes to show that no officer had ever directed the applicant for performing the duties extra than his duty hours and that he was permitted to stay in the building. Such staying cannot be taken as the period spent on duty.

We need not record any finding on the challenge of the applicant to the Provision of FR 11 as we find that his case has to fail on merits. Such question however could be adjudicated upon as and when it is raised in some appropriate case.

For the reasons discussed above we find no merit in this case. The O.A. is accordingly dismissed but without any order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(J.S. DHALI WAL)
MEMBER (JUDICIAL)