

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 13.10.93

O.A. 477/93

K.J. Jose, Watchman
Office of the Assistant Engineer
Microwave Maintenance, Microwave Station
Southern Telecom Sub Region, Kaloor
Ernakulam

Applicant

vs.

1. Union of India represented by the
Secretary, Ministry of Communications
New Delhi
2. The General Manager,
Dept. of Telecommunications
Ernakulam
3. The Divisional Engineer,
Microwave Maintenance, Microwave Station,
Kaloor, Cochin-17
4. The Genl. Manager, Maintenance,
Southern Telecom Region
Dept. of Telecommunications
IV Floor, Wavoor Mansion
39 Rajaji Road, Madras-1
5. The Director, Maintenance
Southern Telecom Sub Region,
Dept. of Telecommunications,
IVth Floor, Geo Towers, Cochin-16

Respondents

Mr. P. Santhosh Kumar

Counsel for the
applicant

Mr. Mathew M. Vadakkal, ACGSC

Counsel for the
respondents

CORAM

THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant is a Watchman working in the office of the third respondent. He joined service on 21.4.86. According to him he is now working 12 hours continuously in a shift; but as per the existing rules and also the decisions of the Supreme Court, he is expected to work only for 8 hours and for the rest of the duty he is entitled to overtime allowance. With these averments he has filed this application under section 19 of the Administrative Tribunals' Act for a declaration that the applicant is entitled for overtime allowances beyond 8 hours duty in day from the date

of his initial appointment and for disbursement of the same to the applicant.

2. At the time when the case was taken up for final hearing, the learned counsel for respondents on the basis of instructions from the third respondent submitted that if the applicant is willing to accept a transfer as Watchman having 8 hours day duty in any of the offices of the respondents within the Cochin Corporation limits, orders will be issued without any delay.

3. In the light of the submission made by the learned counsel for the respondents, it is not necessary for me to go into the merits of the contentions. Learned counsel for respondents also submitted that claim for OTA from 1986 cannot be accepted in the light of the clear provision under section 21 of the Administrative Tribunal's Act, 1985. He further submitted that the application is liable to be rejected in the light of the above offer of appointment with 8 hours duty.

4. However, the learned counsel for applicant placed reliance on Annexure-B guidelines in connection with security duty of Watchman and Annexure R-1 proceedings dealing with duty hours of Chowkidars/Watchman and submitted that applicant's case will come within clause (ii) of Annexure R-1 and he is expected to do duty for 8 hours as the work entrusted to him includes check of stores moving in/out involving mental strain.

5. On the other hand, learned counsel for respondents submitted that applicant's case will come within the purview of clause (i) of Annexure R-1 which provides that Chowkidars employed to keep a general watch over buildings at night, which are locked and secured may be given 12 hours as no strain would be involved.

6. The applicant has not produced any orders by which he has been appointed fixing the duty hours. Respondents also did not specifically mention about the duty hours of the applicant except stating that the normal duty of Watchman is 12 hours and such duty does not involve strain.

7. In the light of the controversy arising in this case, I cannot take a decision as to whether the duties discharged by the applicant involves strain or not. This is a matter of proof. The applicant may establish by adducing sufficient proof before the competent authority that his case will come within clause (ii) of Annexure R-1 and that he is performing duties involving mental and physical strain. He is free to accept the offer.

8. In view of the fact that the respondents have made a fair offer of giving a posting to the applicant having 8 hours duty, I think the application can be closed reserving the right of the applicant, if any, to agitate the matter for getting OTA in the light of the existing orders for the period already worked by him.

9. The application is accordingly closed reserving the right of the applicant to agitate the matter as indicated and above recording the statement of the respondents.

10. There shall be no order as to costs.


(N. DHARMADAN) 13.10.93
JUDICIAL MEMBER
13.10.93

kmn

List of Annexures

1. Annexure R-1: Circular No. 24-11/82-TE.II dated 18.6.83
regarding duty hours of Chowkidars/Gatemen