

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision : 6.3.1991

PRESENT

Hon'ble Shri N.V.Krishnan, Administrative Member

Hon'ble Shri N.Dharmadan, Judicial Member

O.A. 751/89, 51/90 & 58/90

I. O.A. 751/89

Subramaniyan & another Applicants

Vs.

Union of India rep. by
Secretary, Ministry of
Urban Development,
New Delhi and 4 others. Respondents

Mr. K.K.Balakrishnan ... Counsel for applicants

Mr. M.N.Sugunapalan, SCGSC .. Counsel for Respondents
1 to 5.

II. OA 51/90

K.Krishnan Kartha Applicant

Vs.

Union of India rep. by
Secretary, Min. of Urban
Development & 4 others. .. Respondents

Mr. K.K.Balakrishnan .. Counsel for applicant

Mr. Mathews J.Nedumpara &
Mr. N.N.Sugunapalan, SCGSC .. Counsel for respondents

III. OA 58/90

M.K.Bhaskaran & another .. Applicants

Vs.

Union of India (Secretary,
Min. of Urban Development)
and 4 others. .. Respondents

Mr. K.K.Balakrishnan .. Counsel for applicants

Mr. Mathews J.Nedumpara
AGGSC .. Counsel for respondents

ORDER

These three applications raise a common issue for consideration and hence they were heard together and are being disposed of by this common order. For the purpose of this order, OA 751/89 is being examined in detail.

2. The two applicants in OA 751/89 are Choukidars in the Central Public Works Department. After completing the period of probation, both were confirmed and they have since retired from service. It is submitted that their duty hours, while in service, were 12 hours per day. However, subsequently, according to the JCM decision, it is stated that the duty hours were fixed at 8 hours per day and a settlement was reached with the CPWD Mazdoor Union on 5.9.86 with respect to the payment of arrears of Overtime Allowance for the weekly off/rest days/holidays and also for Overtime Allowance for duty hours in excess of 8 hours a day. It is according to this agreement that the applicants claim that they are entitled to get the benefit of Overtime wages for the weekly off/rest days/holidays from 1974 onwards. According to the applicants, this entitlement is borne out by the Annexure-2 letter dated 26th December 1988 sent by the Superintending Engineer (HQ) to the Superintending Engineer, Trivandrum Central Circle, the 4th respondent, as also the circular letter dated 16.1.89 (Annexure-3) issued by the third respondent to all Executive Engineers in his Circle.

3. However, by the impugned Annexure-1 order dated 16.2.89, the fifth respondent informed the second respondent that the arrears have been paid from 1.1.83, also indicating that this is in accordance with the memo dated 19.9.86 (Annexure-4), wherein it has been stated that such payment is due only from 1.1.83. The fifth respondent therefore stated that the question of settling the arrears from 1974 did not arise.

4. The applicants contend that the impugned Annexure-1 order is contrary to the Annexure-2 and Annexure-3 letters. They pray that Annexure-1 be quashed and OTA be given from 1974.

5. The respondents have filed a reply denying that any relief is due to the applicants. It is contended by them that the provisions of the Minimum Wages (Central) Rules 1950 for payment of OTA in accordance with the provisions of those Rules were made applicable to Chowkidars only from 1.1.83, as is clear from the Annexure-R3 letter dated 6th July 1983 from the Director General (Works), CPWD, Ministry of Works and Housing. That order refers to an earlier letter dated 22nd February 1982 by which 9 categories of workers belonging to the transferred category in the CPWD were made entitled to payment of OTA as prescribed under Rule 25 of the Minimum Wages (Central) Rules 1989. By the Annexure-R3 letter that benefit was now extended to the 4 other categories, including Chowkidars, with effect from 1.1.83 only. The respondents, therefore, contend that OTA in accordance with these special rules is payable only from 1.1.83 and not from any earlier date. Therefore, this application is devoid of merit and need to be rejected.

6. We have heard the counsel on both the sides as well as perused the records. Admittedly, the OTA in accordance with Rule 25 of the Minimum Wages (Central) Rules 1989 is payable to Chowkidars from 1.1.83 only in accordance with the Ann.R3 order. We are of the view that so long as the Ann.R3 letter remains unchallenged the applicants are not entitled to any OTA in accordance with Rule 25 of the Minimum Wages (Central) Rules 1989 for any period prior to 1.1.83. It is also not denied by the applicants that payment from 1.1.83 has already been made.

7. The applicants' claim is for payment of OTA from 1974 to 1.1.83. The Ann.2 letter on which the applicants strongly rely also refer to the payment of OTA in accordance with the Minimum Wages Act only, as can be seen from the first two paragraphs of that letter. If that be so, such payment is due only from 1.1.83.

8. There is no demand in the application for any OTA under the normal rules for periods prior to 1.1.83. In fact, in the second relief sought by the applicants, they demand OTA for the excess duty performed for hours in excess of 8 hours per day from 1974 to 1.1.83. That make it clear that the OTA asked for is under Rule 25 of the Minimum Wages (Central) Rules 1950, because it is these Rules which contain such a provision. Under the mormal rules and instructions applicable to Government servants not governed by the aforesaid Rules, OTA, if any, is admissible only for any work

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done in excess of the normal working hours. In the present case the normal working hours is 12 hours a day as stated by the applicant. Therefore, there is no claim for any OTA, for the period from 1974 to 1.1.83 under any provision other than the Minimum Wages (Central) Rules, 1950.

9. Therefore, we are of the view that OA 751/89 has no merit and deserves to be dismissed and we do so. We make it clear that this is without prejudice to the rights, if any, of the applicants to claim OTA, for periods prior to 1.1.83, if admissible to them, under any provisions other than Rule 25 of the Minimum Wages (Central) Rules 1950 before such forum as they may be advised.

10. The reliefs claimed by the two applicants in OA 58/90 and by one applicant in OA 51/90 are similar to the reliefs claimed by the applicants in OA 751/89 and these applications are also disposed of by the order that we have passed in OA 751/89 in para 9 above.

11. The three applications are disposed of by this common order with the aforesaid directions.


N. Dharmadan
Judicial Member


(N.V. Krishnan)
Administrative Member

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CERTIFIED TRUE COPY

Date

Deputy Registrar