

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 197/91
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DATE OF DECISION 14-1-1992

V. Rama Swamy and others Applicant (s)

M/s PS Biju and & CS Ramanathan Advocate for the Applicant (s)

The Secretary to Govt. of India
Ministry of Urban Development Respondent (s)
(Works Division), New Delhi
and others.

Mr NN Sugunapalan, SC GSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

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1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal

JUDGEMENT

Sh NV Krishnan, A.M.

Department of

The applicants are Chowkidars working in the Public Works/
Lakshadweep Administration. It is stated that their hours of
duty is fixed at 8 hours a day, as can be seen from the Annexure A1
duty chart dated 2.11.78 issued by the Assistant Engineer under
whom applicants 1,3 and 4, besides others, were working. Nevertheless,
it is contended that the applicants had generally been working for
much longer hours. In the Annexure A2 representation dated 16.6.87
submitted by the 1st applicant to the Respondent-3, the Executive
Engineer of the Public Works Department stationed at Cochin, it is
stated he had been working from 5 PM to 10 AM in the first instance
and later on from 5.30 PM to 9.30 PM. It is submitted that all the
applicants have been working overtime similarly.

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2 The applicants state that overtime allowance (OTA, for short) to Chowkidars under the CPWD was sanctioned by the memorandum dated 16.7.83 of the Government of India, exhibited as Annexure R2 by the respondents and that the rules applicable to the CPWD are followed in the Union Territory of Lakshadweep. The first applicant, therefore, made a representation, Annexure A2, stating that for the overtime work done by him, OTA should be paid to him. In this representation he has referred to the Annexure R2 memorandum dated 6.7.83 and also two other letters dated 19.9.86 and 4.6.87 of the Directorate General of Works, CPWD which have not been produced by either party.

3 It would appear that all the applicants claimed overtime wages on the basis of the Annexure R2 memorandum. For, the impugned orders at Annexure A4 and A5 which have been sent to the 1st applicant and the 4th and 5th applicants state that the Annexure R2 memorandum applies the provisions of Minimum Wages Act to the CPWD Chowkidars only and that decision is not applicable to the Chowkidars of the Public Works Department of Lakshadweep Administration.

4 It is also pointed out that KP Basha, a Chowkidar of the Public Works Department Lakshadweep, has been paid OTA from October 1987 onwards as is evident from the Annexure A6 sanction. On the contrary, except for the

1st applicant who was paid Rs 131/- as OTA by the Annexure A3 order, no OTA has been paid to any of the applicants though they have worked for about 16 hours every day.

5 It is in this circumstance the applicants have sought the following reliefs:

- "(i) Call for the records leading to Annexure A4, Annexure A-5 and Annexure A6 and set aside Annexure A4 and A5 orders.
- (ii) Direct the respondents 2,3 and 4 to take urgent steps to pass orders to pay overtime allowances to the applicants also, in terms of Annexure A6.
- (iii) To declare that the applicants are entitled to arrears of Overtime wages for the overtime work done during the past and other consequential benefits."

6 The respondents have filed a detailed reply explaining the position. It is submitted that the Exbt.R2 memorandum dated 6.7.83 declares that 4 categories of employees of the CPWD, which also includes Chowkidars, would also be entitled to get OTA under Rule 25 of the Minimum Wages (Central) Rules, 1950 from 1.1.83, in addition to others in respect of whom such a declaration had been made earlier. They point out that in the Annexure R4 letter, the Ministry of Urban Development had clarified in a reply to Respondent-4 that the Annexure R2 memorandum applies only to Chowkidars in the CPWD and not to any other Office/Department of the Government of India and therefore, it is also not applicable to the Lakshadweep Public Works Department.

7 The respondents admit that OTA to government employees is regulated by Government of India, Ministry of Finance memorandum dated 11.8.76, a copy of which has been

produced at Annexure R1. Para 3 of the memorandum sets out the conditions for the entitlement. Clause (VI) of Sub para (b) of para-3 stipulates that all regular Class IV Group Staff, including Chowkidars, whose hours of work have been prescribed by the competent authority and who are at present eligible to OTA may be paid OTA at the same rate as is admissible to other Class IV Group D staff. It is clarified that this provision will not apply to those who are paid overtime allowance under any statutory rules in force.

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8 The respondents admit OTA sanctioned to KP Bhasha, Chowkidar (Annexure A6) is also under the provisions of the Exbt R1 instructions only. In para 5, it is admitted that the applicants and others have been paid OTA in accordance with Annexure R1 order. In the circumstance, it is contended that the applicants are not entitled to OTA in accordance with the Annexure R2, but that they are entitled to OTA in accordance with the Annexure R1 order.

9 I have heard the learned counsel and perused the records.

10 Obviously, the Annexure A2 representation cited the Annexure R2 memorandum as the starting point for the claim. The applicants are not covered by the Minimum Wages Act and therefore, Rule 25 of the Central Rules cannot apply to them. It is clear that the benefit of R2 memorandum is restricted only to the persons mentioned in that memorandum and the Union Territory has/extended the benefit to any class of

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their own employees. Hence, the applicants cannot claim OTA under that memorandum.

10 The respondents admit that the applicants are entitled to the payment of OTA as provided in Exbt.R1. As a matter of fact, the first applicant was paid such OTA by ^{he admitted} the Annexure-III. It is also ~~assumed~~ that Shri KP Bhasha was also paid OTA only under Exbt.R1.

11 In the circumstances, Annexure A4 and A5 orders are not in any way invalid. As the respondents have not denied the right of applicant to receive OTA subject to the fulfilment of the conditions laid down in Annexure R1, it is not necessary to issue any declaration in this regard. The grievance of the applicants is that they have not received any OTA at all except for the isolated instance in Annexure A3. In order to give them relief, it would be sufficient if this application is disposed of with a direction to the applicants 1 to 5 to submit their representations to Respondent-3 and to the 6th applicant to submit such a representation to Respondent-4 requesting for the payment of OTA for all periods for which they claim they are entitled to such allowances in accordance with the provisions of Exbt.R1 memorandum, within a period of one month from the date of receipt of this order. In case such representations are received, the Respondents 3 and 4, as the case may be, are directed to consider the representation and pass such orders thereon, in accordance with law as they consider appropriate, within a period of three months from the date of receipt of such representations. Ordered accordingly.

12 There is no order as to costs.

Reu
(NV Krishnan)
Administrative Member
14.1.1992