

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A 288/03

.....MONDAY.....THIS THE 5TH DAY OF DECEMBER, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.K.Venugopalan,
Motor Driver,
Civil Construction Wing,
All India Radio,
Kakkanad PO
Kochi.30.Applicant

(By Advocate Mr.K.Vinod Chandran)

V.

- 1 Union of India represented by its Secretary,
Ministry of Information & Broadcasting,
New Delhi.
- 2 Prasar Bharathi (Broadcasting Corporation of India)
All India Radio, Parliament Street,
New Delhi-10 001.
- 3 The Executive Engineer (Civil)
Office of the Executive Engineer (Civil)
All India Radio, Kakkanad PO,
Kochi.30.
- 4 The Superintending Engineer (Civil)
Prasar Bharati Broadcasting Corporation of India,
Office of the Superintending Engineer, (Civil)
Civil Construction Wing, All India Radio &
Doordarshan,Swamy Sivananda Salai,
Chepauk,Chennai.5.
- 5 U.Raju,
Executive Engineer *(Civil)
Office of the Executive Engineer (Civil)
Civil Construction Wing,
Prasar Bharati, All India Radio,
Kakkanad PO, Kochi.30. Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 18.11.05 the Tribunal on 5.12.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

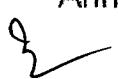
The applicant in this OA is a work-charged Motor Driver. The applicant's grievance is that he is not being paid Overtime Allowance up to 100 hours in a month as is applicable to other drivers in the Government Departments. He has submitted that the work-charged establishment is considered as an establishment where the pay, allowances, etc are directly chargeable to works and their service is quite comparable to regular category of employees as the Fundamental Rules and Service Rules are applicable to them and they are civil servants in terms of Article 311 of the Constitution of India. In this regard, the applicant has relied upon the Annexure A1 memorandum dated 29.1.93 issued by the respondents. The relevant portion of the said memorandum is as under:

"In this connection attention of all the Superintending Engineers is invited to the provisions of Govt. of India Ministry of I&B OM No.G-28011/2/75-CW-II-B(D) dated 20.11.1975 and AIR Manual para 3.5.17 read in conjunction with CPD Manual Vol.III para 1.01 and 1.04.

The para when read together mean that the work charged staff is quite comparable to the regular categories. The F.Rs and S.Rs are also applicable to the work charged staff and are civil servants in terms of Article 311 of the Constitution (as obtained by Ministry of Law) Execution that their salary is chargeable to the works.

Further as per para 11.04 of the CPWD Manual Vol.III "No member of the work charged staff shall be transferred to the regular establishment or vice-versa except with the prior approval of the Govt. of India or on promotion in accordance with the provisions of the recruitment rules". The copies of the relevant Govt. of India orders and paras of CPWD Manual Vol.III are enclosed as ready reference".

On the strength of the aforesaid Memorandum, the Applicant assailed the Annexure A8 circular dated 8.9.2000 and Annexure A7 letter dated



12.10.2000 by which the 4th Respondent has issued instructions to the officers under him including the 5th respondent to see that the work-charged staff are performing duty daily for nine hours/48 hours per week, beyond which only they are entitled for Overtime Wages. The Applicant also assailed the Annexure A6 circular dated 19.9.2000 by which he was directed to perform 48 hours of normal duty a week (5 days) and the daily duty from 8.30 hours to 18.00 hours when the normal duty hours of the office is from 0900 hrs to 1730 hrs (42.30 hours a week) and his Overtime Allowance claim for a week has been restricted to 40 hours. He has also sought a declaration that the work-charged staff is comparable to that of other employees in the office of the second respondent, namely, the Prasar Bharathi (Broadcasting) Corporation, All India Radio.

2. The Applicant has further submitted that the work-charged staff are paid Over Time Wages as per the provisions of the Minimum Wages Act, 1948 at double the normal wages payable and the same was also being paid to him accordingly. However, in the month of September, 1999 the applicant claimed Over Time Wages for 61 hours out of which sanction was issued only for 40 hours by the respondents. Similarly, his claim for overtime allowance for the subsequent months were also not allowed on the ground that work charged staff have to work eight hours a day and for six days in a week. (Saturday are also working days for them). He has also made the allegation that the OTA as claimed by him has not been paid to him because the 5th respondent is inimical towards him.

3. The respondents 1 to 4 in their reply have submitted that according to Rule 24 of Minimum Wages (Central) Rules, 1950, the normal working day consists of 9 hours (excluding lunch) and one is entitled to Overtime Wages of the work done beyond 9 hours a day and 48 hours a week only.



The respondents have produced a copy of the letter dated 8.5.89 issued by the Superintending Engineer, Central Public Works Department, Madras addressed to all its subordinate offices in which it has been stated that any driver working for more than nine hours (excluding lunch hour) in a day and more than 48 hours (excluding lunch hours) in a week is entitled to claim OTA. They have also submitted that the conditions governing Overtime Wages and duty hours of work charged staff are not similar to that of other regular employees as contended by the applicant. They have further submitted that in terms of the Annexure R.2 Office Memorandum dated 5.12.2000, the ceiling limit for OTA has since been fixed at 50 hours in a month for the Motor Drivers.

4. The only issue for adjudication in this O.A is as to whether the services of the work charged employees are comparable to that of other employees in the Respondent Department for the purpose of fixing their working time and for grant of Over Time Allowance to him. Admitted by both parties, the applicant is governed under the provisions of the Minimum Wages Act, 1948. The number of hours of work which shall constitute a normal working day has been prescribed in Rule 24 of the Minimum Wages (Central) Rules, 1950 which is as under:

"24. Number of hours of work which shall constitute a normal working day:-

The number of hours which shall constitute a normal working day shall be--

- (a) in the case of an adult – 9 hours;
- (b) in the case of a child – 4 hours
- (2) The working day of an adult worker shall be so arranged and inclusive of intervals for rest, if any, it shall not spread over more than twelve hours on any day.
- (3) The number of hours of work in the case of an adolescent shall be the same as that of an adult or a child according as he is certified to work as an adult or a child by a competent medical practitioner approved by the Central Government.
- (4) The provisions of sub-rules (1) to (3) shall, in the case of workers in agricultural employment, be subject to such

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modification as may, from time to time, be notified by the Central Government.

(4-A): No child shall be employed or permitted to work more than 4 $\frac{1}{2}$ hours on any day.

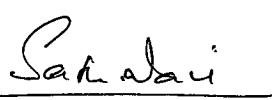
(5) Nothing in this rule shall be deemed to affect the provisions of the Factories Act,1948 (63 of 1948)."

5. Since the applicant being a work charged employee and the work charged employees are admittedly governed by the Minimum Wages Act,1948 and the Minimum Wages (Central) Rules, 1950 made thereunder, the applicant cannot exclude himself from the provisions of the said Act and Rules. The work charged employees also cannot be equated with other regular staff members of the Respondent Department in view of the aforesaid express provision in the Rules regarding the working hours. The administrative order issued vide Annexure.A1 Memorandum dated 29.1.93 relied upon by the applicant cannot be extended to fixing up of working hours by way of inference. Further, it is well settled principle of law that the administrative instructions cannot override the provisions contained in the statutory rules. Hence the Respondents' direction to the applicant to attend his normal duty from 0830 hrs to 1830 hours from Monday to Friday and restricting the OTA for the duty performed beyond 48 hours a week cannot be faulted. We also do not find anything wrong on the part of the Respondents to restrict the OTA for 50 hours a month and in optimum utilization of the services of the work charged staff. In our considered opinion, the OA has no merit and the same is accordingly dismissed leaving the parties to bear their own costs.

Dated this the 5th day of December,2005



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN