

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 344 of 1999

Tuesday, this the 29th day of February, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

K.T. Joseph, S/o Thomas,  
Retired Superintendent of Customs & Central Excise,  
Alleppey Range (Ernakulam II Division),  
Alleppey. Residing at "Manghat",  
Thathampally P.O., Alleppey. ....Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs.

1. Union of India represented by the  
Secretary to the Government of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.
2. The Commissioner of Customs & Central Excise,  
Central Revenue Buildings,  
I.S. Press Road,  
Kochi-18.
3. The Assistant Commissioner of Central Excise,  
Ernakulam II Division,  
Kochi- 18.
4. The Superintendent of Central Excise & Customs,  
Alleppey II Range,  
Alleppey. ....Respondents

(By Advocate Mr S. Krishnamoorthy, ACGSC)

The application having been heard on 29.2.2000, the  
Tribunal on the same day delivered the following:

O R D E R

The applicant seeks the following reliefs:

- (a) To call for the records leading to the issue  
of Annexures A4 and A5 and quash the same;

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(b) To declare that the applicant is entitled to the payment of Merchant Overtime Allowance for the duties rendered by him in excess of his office hours and on holidays during the period from April, 1995 to July, 1996 in connection with the supervision and examination of export consignments and stuffing of the same into the containers in the premises of exporters and direct the respondents accordingly; and

(c) To direct the respondents forthwith to pay the Merchant Overtime Allowance payable in terms of declaration in para (b) above with interest calculated at the rate of 18% from the date from which the Merchant Overtime Allowance for each period become payable.

2. According to the applicant, the Overtime Allowance payable under the normal course is different and distinct from the Merchant Overtime Allowance payable. The concept and background are also different. In the Customs Wing, gazetted officers and other officials drawing a basic pay of more than Rs.2200/- are continued to be paid Merchant Overtime Allowance even now. The applicant and other officials of the Central Excise Department, who are also Customs Officers within the meaning of the term, while they discharge the duties of Customs Officers in the matter of supervision and examination of export consignments and stuffing of the same into containers, they form a common class discharging the same duties and liabilities. The denial of Merchant Overtime Allowance in the said circumstances to the applicant and other

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*[Handwritten signature]*

officials of the Central Excise Department is discriminatory and unconstitutional.

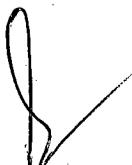
3. Respondents in the reply statement have not denied this particular plea raised by the applicant in the OA. They rely on R1 dated 15th January, 1992, wherein it is stated that those who are having a pay exceeding Rs.2200/per month are not entitled to Overtime Allowance.

4. R1 deals with Overtime Allowance. The claim of the applicant is not in respect of Overtime Allowance, but in respect of Merchant Overtime Allowance. The applicant is relying on A3, wherein it is stated what is the revised rate of fee to be paid by the parties concerned after the implementation of the recommendations of the Fifth Central Pay Commission.

5. A4, one of the impugned orders, says that as per the existing rules Gazetted Officers and Inspectors whose basic pay exceeds Rs.2200/(pre-revised) are not eligible for Overtime Allowance. In this regard, a clarification was sought by the office. Since no reply has been received, the Merchant Overtime claims of the officers are returned as they are ineligible.

6. From A4 it is clear that the officer concerned, who is to pass the claim, has got a genuine doubt as to whether the applicant and similarly placed officers are entitled to the Merchant Overtime Allowance or not. That is why he has sought the clarification.

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7. The case of the applicant that in the Customs Wing gazetted officers and other officials drawing a basic pay of more than Rs.2200/- are being paid Merchant Overtime Allowance even now, and denial of the same to the applicant, who is drawing a pay exceeding Rs.2200/-, in the Central Excise Department is discriminatory or not. It is a matter to be looked into. It is not known on what basis it has been granted to gazetted officers and other officials of the Customs Department drawing a pay in excess of Rs.2200/-. It is to be looked into in comparison with the nature of the duties performed by gazetted and other officials drawing a pay of more than Rs.2200/- of the Customs Wing and of the Central Excise Department. In such a situation, in the first instance, the matter is to be dealt with by the administration.

8. Accordingly, the applicant is permitted to submit a representation to the 1st respondent within one month from today. If such a representation is received, the 1st respondent shall consider the same in the light of the observations contained in this order and pass appropriate orders thereon within three months from the date of receipt of the representation.

9. The Original Application is disposed of as above. No costs.

Tuesday, this the 29th day of February, 2000

A.M. SIVADAS  
JUDICIAL MEMBER

ak.

List of Annexures referred to in this Order:

1. Annexure A3

True copy of Public Notice No. 98/98/12194S  
dated 17-09-98 issued by the 2nd respondent.

2. Annexure A4

True copy of letter C No. II/2/39/97/12449  
dated 5-11-1998 issued by the 3rd respondent.

3. Annexure A5

True copy of letter OC No. 214/99 dated  
3-3-1999 issued by the 4th respondent.