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CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION No. 325 of 1992

Gomti Prasad

Applicant

versus

Union of India through  
Secretary, Ministry of  
Agriculture, Krishi Bhawan,  
New Delhi and others

Respondents.

Shri A.K. Shukla, Advocate

for Applicant

Dr. Ashok Nigam, Advocate

for Respondents.

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HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal for directing the respondents to sanction the over Time Allowance Bill due from 17.12.73 to 3.9.87 amounting to Rs 116661/- <sup>~ to the applicant ~</sup> and for paying the same alongwith interest at Bank rate, and for setting aside the order dated 20.9.91 (Annexure 14), whereby the respondents have refused to sanction the aforesaid overtime <sup>allowance</sup> ~~allowance~~ Bill (hereinafter referred to as O.T.A. bill).

2 In nut shell, the facts of this case, interalia are that the applicant was initially appointed as Chowkidar on 17.12.1973 and continued to work as such till 3.9.87 when he was promoted on the post of Lower Division Clerk in the office of Marketing Intelligence Unit, Directorate of Economics and Statistics, Ministry of Agriculture, Govt. of India, Department of Agriculture, Lucknow ; and he was further promoted on the post of Lower Division Clerk and was posted in Delhi where he joined on 10.9.87 and thereafter he was

transferred from Delhi to Lucknow in the year i.e. on April 1990 and since then he is continuing as such in the office of Marketing Intelligence Unit, Directorate of Economics and Statistics Lucknow; and the applicant was directed to work as Chowkidar from ~~the~~ before closing of the office till the reopening of the office on the next day, which is clear from the order of appointment(Annexures 1 and 2); and the applicant was getting his monthly salary per month as usual when he was chowkidar, although he was performing his duties for 18 hours per day including over-time. It has further been stated that the applicant was legally entitled to get O.T.A. for the work performed by him ~~for~~ as Chowkidar for more than 18 hours per day.

3. The main grievance of the applicant appears to be that despite repeated requests and representations made by the applicant when nothing materialised, he filed O.A. no. 332/1990 in this Tribunal which was decided as per judgment and order dated 12.12.90 and thereby the claim of the applicant was held to be barred by limitation and accordingly the O.A. was dismissed. It has further been stated that the applicant has already submitted O.T.A. bill on 21.2.90 for the aforesaid period for the aforesaid amount, and as such the applicant is legally entitled for the payment of the same alongwith interest.

4. In the Counter Affidavit filed by the respondent, it has been interalia, contended that the application of the applicant is not maintainable in view of the fact that the applicant had already agitated the matter and the same grievance before this Tribunal in the aforesaid O.A. no. 332/90 which was

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dismissed on merit and as such the case of the applicant is bared by res-judicata as well as barred by limitation (vide Annexure A-1 which is a copy of the judgment dated 12.12.90 as referred to above). It has further been contended that the applicant worked as Chowkidar only during the hours for which he had accepted the offer of appointment and as per the terms of offer of appointment the applicant is not entitled for any over time allowance and the authorities at Lucknow are not entitled to authorise to allow any over time to the applicant. It has further been contended that, after dismissal of the above O.A. of the applicant, any subsequent representation cannot revive his claim which is barred by limitation and barred by resjudicata, as well. In view of the above circumstances, the application of the applicant is liable to be dismissed.

5. I have heared the larned counsel for the parties and have thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing my attention to the pleadings of the parties and the papers annexed thereto, has argued, while drawing my attention to the order dated 20.9.91 (Annexure A-14) and has argued that the claim of the applicant has not been barred by limitation but the same is within the limitation, as the cause of action accrued to the applicant from 20.9.91, the date on which sanction to the aforesaid OTA bill was refused by the respondents; and has further argued that the above judgment and order passed by this Tribunal in

(Signature)

O.A. No. 332/90 <sup>will</sup> ~~was~~ not operated as res-judicata as there is no clear finding therein, as there is only a casual observation in the last five lines, the relevant portion of which is as follows:

"We think that the claim for over-time accrues not from the date on which it is refused but from the date when it becomes due."

In support of his arguments the learned counsel for the applicant has placed reliance on the ruling reported in Lucknow civil Divisions, 1988(6), Union of India vs. State of U.P. and others , pages 336-337.

7. The learned counsel for the respondents, has argued while advertizing to the pleadings of the parties and the papers annexed thereto, that a perusal of the judgment and order dated 12.12.90 passed by this Tribunal in the aforesaid O.A. No. 332/90 clearly shows that O.T.A. claim in that O.A. was also for the same period and for the same amounts which are also the same in this instant case ; and has further argued that the above judgment has become final, as no appeal or review was filed by the applicant against that judgment; and has further argued that the above ruling relied upon by the learned counsel for the applicant is not applicable in this Case; and has further argued that keeping in view the terms and conditions as mentioned in the appointment letter of the applicant, which is Annexure 1 to the O.A. and keeping in view the fact that <sup>sitting and for</sup> there is no order of any competent authority for doing over time work as alleged by the applicant, the application of the applicant is liable to be dismissed.

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8. I have perused the above Ruling.

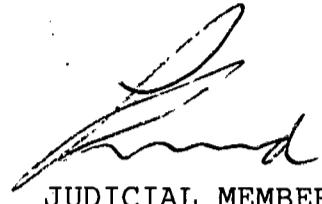
9. A perusal of the Annexure 1 to the counter reply of the respondents clearly shows that the applicant had claimed overtime allowance for the period from 17.12.73 to 3.9.87 in the aforesaid O.A. No. 332/90 and in this instant case also the O.T.A. for the same period and the same amount has been claimed by him. It is noteworthy that a careful perusal of the above judgment and order dated 12.12.90 passed by this Tribunal in O.A. no. 332/90 shows that there is clear finding to the effect that the claim of the applicant is barred by limitation, accordingly the aforesaid O.A. no. 332/90 was dismissed by this Tribunal.

10. Thus, this being so, and keeping in view the ingredients of section 11 of the C.P.C. I find that the Original Application of the applicant is barred by principle of res-judicata and the above ruling relied upon by the learned counsel for the applicant is found to be of no avail to the applicant as the facts of the present case are different and ~~distinct~~ <sup>from</sup> ~~and~~ <sup>to the facts of</sup> the case referred in the above ruling. On merit also I find that the application of the applicant is devoid of merit as there is no order of competent authority ordering or sanctioning sitting and doing overtime work prior to the date of sitting from the period 17.12.73 to 3.9.87 and I find that the refusal of the claim of the applicant contained in the representation of the applicant subsequent to the aforesaid judgment and order dated 12.12.90 passed by this Tribunal in the aforesaid O.A. No. 332/90 will not give him any fresh cause of

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action as ~~over time as~~ <sup>xx xx</sup> the cause of action accrued not from the date of refusal of the claim regarding overtime allowance but from the date when it becomes due.

11. Consequently, the application of the applicant is dismissed. No order as to costs.



JUDICIAL MEMBER.

LUCKNOW : Dated: 25.2.94

25.2.94

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