

1272

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1272/1994

Transfer Application No.

Date of Decision 10-04-97.

E.K.Balakrishnan.

Petitioner/s

Shri G.S.Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty.

Advocate for
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri. -

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? x

MR Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1272/1994.

pronounced, this the 10th day of April 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

1. E.K.Palakrishnan,
Wireless Operator.
2. P.Suresh Babu,
Wireless Operator.
3. M.G.M.Nair,
Cipher Operator.
4. F.L.Fernandes,
Despatch Rider.
5. M.P.Shetye,
Messenger.

(Applicant Nos.1 to 5
are working at ISPW
Station, Secretariat
Panaji,
Goa - 403 001.

6. P.M.Abraham,
Wireless Operator,
7. K.G.E.Pillai,
Cipher Operator.
8. S.I.Urunkar,
Despatch Rider.

(Applicant Nos. 6 to 8
are working at ISPW
Station, Malabar Hill,
Bombay - 400 006).

... Applicants.

(By Advocate Shri G.S.Walia)

V/s.

1. Union of India through
Director, Directorate of
Coordination, (Police
Wireless) Ministry of Home
Affairs, C.G.O. Complex,
Block No.9,
Lodhi Road,
New Delhi - 110 003.
2. Station Superintendent,
I.S.P.W. Station,
Secretariat, Panaji,
Goa - 403 001.
3. Station Superintendent,
I.S.P.W. Station,
Malabar Hill,
Bombay - 400 006.

... Respondents.

(By Advocate Shri R.K.Shetty)

ORDER

(Per Shri M.R.Kelhatkar Member(A))

In this O.A. five employees at Inter-State Police Wireless Station, Panaji and three employees of Police Wireless Station, Malabar Hill, Bombay have challenged the Circular dt. 30.5.1994 (Ex. 'D' page 49) regarding payment of Overtime Allowance. The same reads as below :

" In continuation of Circular No.DCPW/OTA/92-93-Accts.II dated 22.6.1992 regarding sanctioned of OTA to Operational/Technical staff, it is, once again, brought to notice that present sanctioned strength of the TX Stations HQ/Interpol/IMC/Comm. Centre/ISPW Stations is based on S.I.U. study and inclusive of leave reserve. Hence the functioning of the Stations is required to be managed without giving any OTA to staff members except for very special occasion while OTA is permissible where the staff member are to be deployed for additional hours on account of G.H/N.M, and C/L, training etc. No OTA is permissible against E/L, EOL and Commuted Leave etc.

It is therefore informed that claims without proper justification, as indicated above, will not be entertained.

Approval must be obtained from Hqrs. for putting any individual on OTA in exceptional cases. No person should be deployed on OTA duties in anticipation of sanction from HQRS.

This issue with the approval of Director Police Telecommunications."

The applicants have particularly challenged the portion relating to bar on OTA against ^{E.L.}EOL and Commuted Leave etc. The applicants contend that when they perform Overtime they are entitled to payment on account of overtime actually performed as per Rules viz. when their services are utilised in excess of stipulated hours (168 hours in four weeks). According to the applicants there is a cycle of 18 months in the settlement of dues on account of overtime. For example, payment for the block ending 25.7.1992, 22.8.1992, 19.9.1992, 3.4.1993 and 1.5.1993 has been received by the applicants after about 18 months period. According

to the applicants, ~~moreover~~, the process is in three stages: (1) Submission of the Bills (2) Sanction of the Bills and (3) Clearance of the Bills by the Accounts Section. It is submitted that Overtime Allowance for 9 blocks pending from 22.8.1992 to 3.4.1993 was sanctioned by the Headquarters Office but by Accounts Br. i.e. Competent Authority/ the same has not been paid/ The ~~basic~~ grievance of the applicants, however, appears to be the non-sanction of the Overtime allowance in respect of periods for which overtime was put in. In this connection, it is stated that sanctioned letters for the block ending 29.5.1993, 26.6.1993, 24.7.1993, 21.8.1993, 18.9.1993, 16.10.1993, 3.11.1993, 11.12.1993, 8.1.1994, 5.2.1994, 5.3.1994, 2.04.1994, 30.4.1994 and 28.5.1994 have not been received.

2. The basic contention of the respondents/ however, in opposition is that payment of overtime is not a matter of right and it is regulated by relevant Government Instructions vide Swamy's Compilation on Overtime Allowance 1994 Edition. The cardinal principle of payment of overtime is that the work in all offices should be so organised as ordinarily to be capable of being done during the normal office hours/ and That in the past overtime claims were being sanctioned routinely and it was in order to scrutinise them appropriately that the instructions dt. 30.5.1994 were issued, which to some extent were reiteration of the earlier instructions dt. 22.6.1992. The respondents have also at the argument stage indicated that overtime for the block ending 24.7.1995 has since been sanctioned and is being paid.

3. The contention of the applicants, however, is that there is a restriction in the Circular dt. 30.5.1994

...4.

that no OTA is permissible against E.L., E.O.L. and Commuted Leave etc. According to the applicants this is an arbitrary restriction not justified by Government instructions on overtime. The respondents would contend that the staff of every Inter-state Wireless Station includes leave reserve and therefore the need for any O.T.A. against E.L., E.O.L. and Commuted Leave should not arise. On the other hand, the applicants have brought to my notice the practical difficulties which arise in such insistence to which vent is given in the Message dt. 6.6.1994(at page 51) which is reproduced below :

"REF HQRS CIRCULAR NO.A-20020/1/GENL/91-ADMN.I DATED 30.5.1994 REGARDING PERMISSIBILITY OF O.T.A. OUT OF S.I.U. SANCTIONED STRENGTH OF 8 W/OPRS, TWO ALREADY TENDERED THEIR RESIGNATIONS LONG BACK AND ONE HAS BEEN RELIEVED ON TRANSFER. PRESENTLY TWO OPRS ARE ON SANCTIONED LEAVE AND STATION LEFT WITH ONLY THREE OPRS. AS PER S.I.U. RECOMMENDATION, WITH THE PRESENT STRENGTH OF THREE OPRS, STATION CANNOT BE MANAGED DEPLOYING TWO OPRS IN EACH SHIFT WITHOUT INVOLVING O.T.A., WHICH IS SELF-EXPLANATORY. HENCE SPECIAL SANCTION FOR O.T.A. MAY PLEASE BE ACCORDED SO AS TO MANAGE THIS STATION SMOOTHLY LEST WORK SHOULD SUFFER. SPECIFIC NUMBER OF LEAVE RESERVES OUT OF EIGHT W/OPRS ALONGWITH MAXIMUM PERMISSIBLE O.T.A. MAY BE INTIMATED FOR THE PURPOSE OF JUSTIFYING O.T.A. CLAIMS. HOWEVER IF NOT ACCORDED, SPECIMEN DUTY ROSTER DEPLOYING THREE W/OPRS MAY BE FURNISHED BY RETURN SIGNAL WHICH IS URGENTLY REQUIRED SO AS TO PREPARE THE DUTY ROSTER FOR THE CURRENT WEEK. MATTER MAY BE TREATED AS VERY VERY URGENT."

4. The respondents contend that so far as the Circular dt. 30.5.1994 is concerned the same was challenged in the O.A. No.2153/94 decided by the Principal Bench on 9.11.1995 and the validity of the same was upheld. The Tribunal observed that in regard to the prayer of the applicant for quashing the Circular dt.30.5.1994. ^{It} ~~finds~~ that this prayer is mis-conceived because it has not been shown that the order has been issued in an illegal manner or the same is violative of any provisions of law. It is within the employers' right

to prescribe the condition for grant of overtime allowance and therefore the Respondents in their executive power are entitled to issue orders stipulating conditions for grant of Overtime allowance. However, the Tribunal did note that there was a delay in settlement of the claims of overtime and therefore disposed of the O.A. by directing the Respondents to issue immediate instructions to all the field officers responsible for processing the pending overtime claims to scrutinize and forward the claims with proper justification as required under the letter dt.30.5.1994 to the Respondent No.1 within a period of six months from the receipt of their order.

5. I have, however, already referred to the practical difficulties experienced by the local officers in strictly implementing the instructions that no overtime will be permissible in respect of E.L., E.O.L. and Commuted Leave etc. I am therefore, inclined to modify this particular sentence to read it down as below :

"No. OTA is ordinarily permissible against E.L., E.O.L. and Commuted Leave etc."

In other words, in the absence of any general instructions which have^{not} been brought to my notice, and when I am of the view that when the circumstances so warrant, the O.T. is actually performed, the payment of O.T.A. should be sanctioned even against E.L., E.O.L. and Commuted Leave when proper justification is forthcoming. I am thus, inclined to allow the prayer of the applicants partly so far as this aspect of the Circular is concerned. I also note that Overtime claims

up to 24.7.1995 have been settled. We are in the midst of April, 1997, I would therefore direct the Respondents to see that the scrutiny of Overtime claims is expedited and all pending Overtime claims as on ^{after scrutiny} to day are sanctioned/and paid within a period of six months.

6. I next come to other prayers of the applicants. It is stated in para 4.16 of the O.A. that there are about 71 Wireless Operators or Messengers or Despatch Riders working in different Stations not only including Panaji and Bombay, but also Kavaratti (Lakshadweep), Pondicherry, Trivandrum, Bangalore and Madras and that this O.A. may be treated as representative O.A. and the relief may be granted to all these applicants at different places. The jurisdiction of this Tribunal extends only to the Territory covered by the jurisdiction of the Bombay High Court. The prayer for treating the O.A. as representative in regard to employees working outside the jurisdiction of this Tribunal is therefore not permissible, the same is rejected.

7. The next prayer of the applicants is that the respondents have introduced a system of keeping Cipher Operators for call duties which provides minimum of three hours of overtime for attending a Call Duty with no other remunerations and that no clear-cut instructions in the Circular dt. 30.5.1994 in respect of O.T.A. for minimum three hours of call duty have been incorporated. On this point, the respondents have stated that the Cipher Staff are deployed in four shifts. Whenever the strength available for duties is below two, they cannot be put on round the clock

duties without rest or off. Hence the necessity to keep the staff on call duty arises in these circumstances. The call duties are rare and therefore it is sheer exaggeration to say that Cipher Staff ^{ever} are not free from duty/responsibility and that it affects their mental peace and family life. I am inclined to agree with the respondents and I do not consider that any relief in this regard is justified.

8. Lastly, the applicants have stated that the department has introduced the system of Night Duty Allowance w.e.f. 1.4.1992 vide Circular dt. 29.04.1992 (at page 58). The applicants rely on the Judgment of this Tribunal in O.A. No.1496/95 decided on 21.11.1996 which was a matter relating to M.E.S. Employees Union V/s. Ministry of Defence and Ors. in which the Tribunal had granted the relief of grant of Night Duty Allowance uniformly from the period ^{and seek the same relief.} 1.1.1986. In this connection, the applicants rely on the Judgment of the Supreme Court in Purshottam Lal and Ors. V/s. Union of India & Another 1973 SCC (L&S) 337 wherein it has been stated that when the employees were paid out of consolidated fund of India it cannot be said that the report of the Second Pay Commission does not deal with one category of employees viz. Forest Research Institute and Colleges. On the other hand, respondents have contended that so far as this relief is concerned, it amounts to multiplicity of reliefs and therefore cannot be agitated as part of this O.A. So far as the comparison of the case of the employees with the M.E.S. staff is concerned the counsel for the Respondents have relied on the Supreme Court Judgment in Harbans Lal and Ors. V/s. State of Himachal Pradesh and Ors. 1989 11 ATC 869.

In this Judgment, the Hon'ble Supreme Court observed that there are in-built restrictions in the principle of equal pay for equal work and that a claim for equal pay can be sustained only if the impugned discrimination is within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management or even in establishments in different geographical locations, though owned by the same master. Hence the petitioners who are employees of the Himachal Pradesh State Handicraft Corporation, a company incorporated under the Companies Act, 1956, cannot claim wages payable to their counterparts in government service.

8. I have considered the matter. To me, it appears that the prayer of the applicants cannot be sustained both on the technical ground of multiplicity of reliefs, as well as, on merits. The Judgment in O.A. No.1496/95 was given in the context of making a distinction between one category of M.E.S. Employees Union and Another category in respect of which notification in regard to Night Duty Allowance was issued late. The Tribunal held that the mere fact that the notification was issued late cannot be a ground for denying the benefit of grant of Night Duty Allowance from 1.1.1986/ ^{to those other employees.} That ratio, however, does not apply to the facts of the present case.

The Judgment in Purshottam Lal and Ors is an old Judgment

and in my view, weight needs to be attached to the observations of the Supreme Court ~~judgment~~ in Harbans Lal and Ors. wherein it has recognised

the limits to the Doctrine to equal pay for equal work. I am therefore, not inclined to allow the prayer of the applicant in regard to payment of Night Duty Allowance w.e.f. 1.1.1986.

9. The O.A. is therefore partly allowed in terms of para 5 and ~~the~~ rest of the prayers of the applicants are rejected. The O.A. is disposed of with no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.