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CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No.: 109/95.

Date of Decision MARCH 19, 1996.

Shri S. R. Swami, Petitioner

Shri Y. R. Singh, Advocate for the Petitioner.

Versus

Union Of India & Others, Respondents


Shri S. S. Karkera for
Shri P. M. Pradhan, Advocate for the Respondents.

Coram:

The Hon'ble Mr. V. RAMAKRISHNAN, MEMBER (A).

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1. To be referred to the Reporter or not? ~
2. Whether it needs to be circulated to other Benches of the Tribunal? ~


(V. RAMAKRISHNAN)
MEMBER (A).

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(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR
PRESCOT ROAD, FORT, BOMBAY - 400001.

ORIGINAL APPLICATION NO. : 109/95.

Dated, this Tuesday, the 19th day of March, 1996.

CORAM : Hon'ble Shri V. Ramakrishnan, Member (A).


Shri S. R. Swami ... Applicant
(Advocate by Shri Y.R. Singh)

Versus


Union Of India & Others ... Respondents.
(Advocate by Shri S.S. Karkera
for Shri P. M. Pradhan).

: O R D E R :

{ PER.: SHRI V. RAMAKRISHNAN, MEMBER (A) }

 The applicant who is presently working as Sub-Postmaster at Ghansoli, has moved the Tribunal for a direction that he should be paid Overtime allowance for the period he served as Sub-Postmaster at Murbad. This is the second round of litigation. He moved the Tribunal earlier in O.A. No. 317/92 but subsequently he withdrew the O.A. with liberty to file another application by setting out the detailed factual position indicating the quantum of overtime which he claims. In the present O.A. he has given such details in para 4.6.

2. I have heard Shri Y.R. Singh for the applicant and Shri S.S. Karkera for Shri P.M. Pradhan for the respondents.



3. The applicant's contention is that the applicant was holding an independent charge as Sub-Postmaster at Murbad. He had two hands working under him and the quantum of work in that office was such that these two employees had to work beyond office hours. The applicant himself being the supervisor, necessarily had to stay back to supervise their work and it would be unjust to deny him the overtime allowance when the same is admissible to the employees whose work he supervises. He also brings out that his counterparts who are working in the Head-Office and whose nature of work is the same as his, are given overtime and refusal to extend the same benefit to him is violative of articles 14 and 16 of the Constitution. He had approached his superior officers by various representations but nothing has been heard from them nor he has been granted overtime. As it is not in dispute that the nature of work ~~that~~ he performs are the same as that of his counterparts in the head-office, Shri Singh strongly urges that the applicant is entitled to overtime allowance and the relief prayed for should be granted. He also contends that any instructions which would deny overtime to a person holding supervisory post would be discriminatory and should be quashed.

4. Shri S. S. Karkera for the respondents submits that in terms of the relevant instructions, overtime allowance is not admissible to persons such as the applicant. In this connection, he refers to para 5 of the Swamy's Compilation on Overtime Allowance to Central Government Employees, which is annexed to the reply statement and in particular to para 5 which excludes certain categories from the benefit of Overtime Allowance. Para 5(c) of the Rules reads as follows :-

- "(c) Government servants who hold supervisory posts not excluded by clauses (a) and (b) above, unless they fulfill the following conditions :
- (i) they are in direct and continuous contact with staffs they supervise;
 - (ii) they work the same hours as the staff under them; and
 - (iii) they are themselves subject to the kind of supervision which would enable them ordinarily to obtain prior approval for overtime."

The applicant is undoubtedly holding a Supervisory post and he had not taken any prior approval for working overtime, which is a pre-requisite in terms of these instructions. In the absence of any check by an officer superior to the applicant, he is not entitled to any overtime allowance in terms of the relevant instructions. He also brings out that the applicant is having two employees to assist him in the Sub Post Office and it is ^{up to} him to organise the work in such a manner that it gets done during the prescribed working hours and does not drag on beyond the office hours. He has not brought out any time ^{the possibility of} to his superiors that the ^{of} worked involved is such that it cannot be handled by two hands working under him. In the absence of any check in the grant of overtime, there is no means to verify as whether in spite of optimum organisation of work, overtime still becomes inevitable. It is also the contention of the respondents that there is nothing discriminatory between persons who are in charge of independent office and those who are working in the head-office. The persons in independent charge have a different scheme of incentives such as quarters and other allowances, which are not available to the employees in Head-office. Shri S.S. Karkera also contends that in view of the clear provisions as contended in para 5 of the


Swamy's Compilation on Overtime Allowance to Central Government Employees, the applicant is not entitled to overtime allowance. He further submits that it is not open to the applicant at this stage to challenge the vires of the relevant rules and instructions, when he has not dealt with in the O.A. nor has he amended the prayer questioning the vires of the rules.

5. Shri Singh rebuts the contentions of the respondents. He submits that the fact that the applicant is given quarters cannot be a ground for denying his the overtime allowance when he had performed duty beyond the normal working hours.

6. I have considered carefully the submissions of both sides. The main ground urged by the applicant is that, when his counterparts in the head-office who performs the same nature of duties are entitled to overtime allowance, he cannot be deprived of the same, as such denial would be discriminatory and would offend the principles of equal pay for equal work, ~~when~~ the respondents have not rebutted in the reply statement that the quantum of work performed by the applicant is not less than that of his counterparts in the Head-Office. The fact remains that there are certain instructions for the grant of overtime allowance to persons who hold supervisory post. The applicant admittedly holds a supervisory post and as he was incharge of an independent office, he was not subject to the kind of supervision, which would enable him ordinarily to obtain prior approval for overtime. There is a check which is inbuilt in the scheme for grant of overtime, which calls upon a superior officer to make an assessment of the work load and to permit overtime ~~in~~ special circumstances.

This is not possible to be enforced in the case of the applicant. There are a set of instructions the competent authority is called upon to observe before he permits his subordinate to work overtime. This is not possible in the present case for the reason that the applicant himself is holding an independent charge and is not subject to a check from a superior officer. I see nothing wrong in this scheme, as the overtime allowance is expected to be a special feature and is to be granted only in case where the work cannot be completed within the prescribed office hours. There is nothing discriminatory in denying overtime to a person who himself is holding a supervisory post in an independent capacity when overtime allowance is available only to those who take prior approval from their superiors, as an assessment has to be made as to the need to work beyond office hours by an officer who is superior to the claimant. Such a check is a salutary provision and in the absence of the same, the applicant is not entitled to overtime allowance.

7. In the light of the above discussions, I find no merit in the present application and the same is dismissed. No costs.


(V. RAMAKRISHNAN)
MEMBER (A).