

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 682 of 1989

Date of Decision :

~~T.A.No.~~

<u>C.K.Rao & 27 others</u>	Petitioner.
<u>Shri G.Bikshapathy</u>	Advocate for the
	petitioner (s)
Versus	
<u>The Government of India & another.</u>	Respondent.
<u>Shri Naram Bhaskara Rao</u>	Advocate for the
Adtl.CGSC.	Respondent (s)

CORAM :

THE HON'BLE MR. J.NARASIMHA MURTHY, MEMBER (JUDICIAL).

THE HON'BLE MR. R.BALASUBRAMANIAN, MEMBER (ADMN.).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(H.J.N.M.)

(H.R.B.S.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No. 682 of 1989

Dt. of Order: 21-2-1991

Between:-

1. C.K.Rao
2. R.Balraj
3. Barjee
4. A.Anjaiah
5. Lingam
6. Tambravellu
7. S.Subramaniyam
8. Md.Rahimuddin
9. Bandari Balaiah
10. C.N.Lingam
11. P.Sathyanarayana
12. C.Babu
13. N.Dasarathan
14. K.S.Naik
15. B.Balaiah
16. P.Mallesha
17. S.Malla Reddy
18. Ramdev Singh
19. K.Rajaram (Senior)
20. M.S.Mani (
21. K.Rajaram (Junior)
22. Gopichand
23. G.Ramchander
24. P.Balaiah
25. G.Brahmaiah
26. J.John
27. S.C.Mohan
28. M.Sadanandam

.. Applicants

and

1. The Government of India,
represented by Secretary,
Ministry of Defence, South
Block, New Delhi.
2. Director, Defence Research
Development Laboratory (DRDL),
Hyderabad.

.. Respondents

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Appearance:

For the applicants : Shri G. Bikshapathy, Advocate.

For the respondents : Shri Naram Bhaskara Rao,
Addl. CGSC.

CORAM:

THE HONOURABLE SHRI J. NARASIMHA MURTHY, MEMBER(J).

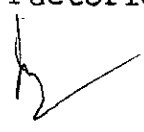
THE HONOURABLE SHRI R. BALASUBRAMANIAN, MEMBER(ADMN.).

(JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE)
MEMBER(J), SHRI J. NARASIMHA MURTHY.

1. This is an application filed by the applicants to declare the action of the respondents in not making payment of over time allowance to the applicants consequent on the judgement of the Supreme Court delivered on 19.11.1986 as illegal and wholly arbitrary and direct the respondents to pay the over time allowance to the applicants herein w.e.f. 6.11.1973 upto July 1983 as per the rules with all consequential benefits.

The facts of the case are briefly as follows:-

2. The applicants were appointed as Darwans (Chowkidars) under the 2nd respondent organisation at Hyderabad. The 2nd respondent organisation viz., the Defence Research Development Laboratory (DRDL) is registered under the provisions of the Factories Act and other similar organisations situated at Hyderabad and at many other places in the country under the name and style of Defence Metallurgical Laboratory of Research (DMRL) and Defence Electronics Research Laboratory (DERL). All these laboratories are registered under Factories Act. They



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come under the Ministry of Defence and Department of Defence Research and Development. The applicants were directed to work on shift basis of the duration of 8 hours per day and 48 hours per week. The prescribed weekly hours of 2nd respondent establishment are only 44½ hours per week. All the industrial workers and non-industrial workers, except the applicants, were being paid over-time allowance at single rate from 44½ hours to 48 hours per week and beyond 48 hours double the rate of wages. The 2nd respondent was not justified in denying the over-time allowance to the applicants, while the same is granted to all other categories of employees. Under the Ministry of Defence there is another similar organisation in the name of Ordnance Factories Board covering all the ordnance factories and the projects under its control. The Overtime Allowance to the Central Government employees under the Ministry of Defence was being regulated in accordance with the Memo dated 16-9-1961 as amended from time to time. Revised instructions were issued in respect of Darwans, Gate-keepers, Telephone Operators, working in Ordnance Factories and other Defence Industrial Establishments registered under Factories Act in O.M.No.F.14(2)/73/616/S/D (Civ.II), dated 5-11-1973. The applicants stand on similar and identical footing. The 2nd respondent laboratory is also registered under Factories Act. The Office Memorandum dated 5-11-1973 covered not only the staff of Ordnance Factory, but also all other Defence Industrial Establishments registered under the Factories Act.

3. It is stated that all the applicants were covered

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as Helpers in Industrial Category in July 1983 consequent on the deployment of Industrial Security Force. The applicants represented to the 2nd respondent for grant of Over Time Allowance in accordance with the Supreme Court judgement. Similar representations were also appeared to have been submitted by other counterpart employees in DRDL and DLRL. The Director of DRDL (2nd respondent) issued a letter to the Director of DLRL, Hyderabad, on 27-4-1989 to the effect that the letter issued by Ordnance Factories Board dated 13-5-1983 is not applicable to DRDL. Accordingly, the 2nd respondent issued internal office notice on 10-7-1989 informing the applicants that they are not eligible for over-time allowance on the ground that the letter of Ordnance Factory dated 13-5-1983 is not applicable. It is submitted that the said order is illegal and contrary to judgement of the Supreme Court. The over-time allowance is made applicable on uniform basis to all the establishments working under the Ministry of Defence Research which are covered under the Factories Act. Therefore, they have no right to deny the benefit of over-time allowance. So, the action of the respondents is illegal and untenable. Hence the applicants have filed this application for the above said reliefs.

4. On behalf of the respondents a counter has been filed with the following contentions: The applicants were appointed as Chowkidars under the 2nd respondent between 6-11-1973 and July 1983 for which period they have now requested for payment of single rate over time allowance for the period 44½ hours to 48 hours i.e. 3½ hours

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based on Ministry of Defence Ordnance Factory Board letter No.Nil, dated 13-5-1988. In accordance with the instructions which are applicable in the case of the applicants viz., Ministry of Defence O.M.No.F.14 (2)/73/616/S/D(Civ.I), dated 5-11-1973, the industrial staff coming under Factories Act are paid over-time allowance at the rates as admissible to other industrial and non-industrial staff for the work done beyond the prescribed working hours i.e. 48 hours a week. (8 hours a day for 6 days a week) in relaxation of the conditions laid down in para 6(d)(ii)(a) of the Ministry of Defence O.M. dated 15-9-1961. Once a certificate is issued by the Head of the Establishment, the presence of the non-industrial staff was essential for the maintenance of the production. The Darwans (Chowkidars), Fire Brigade Staff, Telephone Operators and Security Assistants of Non-Industrial staff, who work on shift basis for 48 hours a week (8 hours a day for 6 days a week) are entitled to over-time allowance at the same rate as admissible to the industrial staff under the Factories Act for the work done beyond the prescribed working hours. The applicants are eligible for payment of over-time allowance only for the work done beyond 48 hours a week as provided under Factories Act. They are not eligible for extra wages for the work performed beyond 44½ hours to 48 hours for a week as prayed for. The prescribed duty period of these employees is 48 hours a week.

5. Certain employees of the Ordnance Factory Board filed a Writ Petition in the High Court of Calcutta

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stating that their duty hours were $44\frac{3}{4}$ hours but changed later unilaterally to 48 hours and hence they were entitled to over-time allowance for duty performed by them beyond $44\frac{3}{4}$ hours. In case of the Ordnance Factory Board, the working hours for all categories of staff were fixed at $44\frac{3}{4}$ hours per week in early 1950. In 1974 the working hours of Darwans, Gate Keepers, Fire Fighting Staff and Telephone Operators, working in Ordnance Factories, were increased to 48 hours per week after more than 20 years. The High Court of Calcutta held that the earlier working hours had become a condition of their service. Hence the Ministry of Defence, Ordnance Factory Board, in compliance with the orders of High Court, Calcutta, which had been upheld by the Supreme Court, had issued letter dated 13-5-1988 in respect of employees of Ordnance Factory Board to pay over-time allowance for work done beyond $44\frac{3}{4}$ hours. The Calcutta High Court's decision, which is the basis for payment of over-time allowance for this particular period of work to the employees concerned, is based on facts which are peculiar only to Ordnance Factories and these factors do not characterise other Establishments. The decision of the Supreme Court is not applicable to these applicants. The prescribed working hours of the applicants are 48 hours per week. This has not undergone any change. The order of the Calcutta High Court, which was upheld by the Supreme Court in the case of the Ordnance Factories, is not applicable to the applicants. The service conditions of the Ordnance Factories are

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different from those of the laboratories/establishments of DRDO. Moreover, the working hours are prescribed keeping in view the nature of duties of each post. This is arrived on a rational basis and cannot, therefore, be said to be arbitrary or discriminatory. The O.M.No.F.14 (2)/73/616/S/D/Civ.I, dated 5-11-1973 stated that the over-time allowance may be paid to the employees likes applicants only for the work done beyond the prescribed working hours. In the case of the applicants the prescribed working hours are 48 hours for a week. The Judgement of the Calcutta High Court and the Supreme Court are only applicable to the employees of the Ordnance Factories, who filed the Writ Petition in the Calcutta High Court, where the service conditions are not on par with that of the applicants. Hence the applicants not only not being parties to the above Writ Petition, but also stand on different footing, are not entitled to the relief prayed. So there are no merits in the application and the same is liable to be dismissed.

6. We have heard the arguments of Shri G.Bikshapathy, learned Counsel for the applicants, and Shri Naram Bhaskar Addl. Rao, learned/standing Counsel for Central Govt., on behalf of the respondents.

7. The main point in this case is that ^{whether} the applicants, who are Darwans (Chowkidars) in the 2nd respondent organisation are ^{not} entitled to get over-time wages as any other factory workers and the duties of the applicants are different. Only factory workers are entitled to get over-time wages, but not the applicants as they are not



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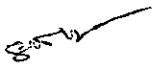
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industrial workers. Their duties are not on par with factory workers. The contention of the applicants is that they and other workers are working in the same factory. Therefore, whatever benefit other workers are getting, they are also entitled to get the same benefit. According to ~~them the applicants duties are~~ the respondents the applicants duties are different to that of other workers. The applicants are working as Darwans (Chowkidars), Gate Keepers, ~~Telephone Operators~~ and they are all working in the respondent No.2 factory. The applicants contend that the Calcutta High Court allowed the Writ Petition filed for the over-time allowance for work beyond 44½ hours. Against the said decision of the Calcutta High Court, the department filed an appeal before the Supreme Court. The Hon'ble Supreme Court, which delivered the judgement on 19.11.1987, dismissed the appeal. In pursuance of the said judgement, all the employees in the category of Darwans, Gate Keepers, and Telephone Operators in the Ordnance Factory and other Defence Research Organisations under the Factories Act are entitled to over-time allowance on par with other employees beyond 44½ hours. Basing on the Judgement of the Supreme Court, the respondents issued circular dated 13-5-1988 directing the subordinate officers to pay the over-time allowance to the employees of the aforementioned cadre for the work done beyond 44½ hours to 48 hours. The date of implementation is given as 6.11.1973 as per the notification of the Ministry of Defence dated 5.11.1973. Basing on the Supreme Court judgement, all the workers working in the 2nd respondent factory are entitled to



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To

1. The Secretary, Govt. of India,
Ministry of Defence, South Block,
New Delhi.
2. The Director, Defence Research Development Laboratory
(DRDL) Hyderabad.
3. One copy to Mr. G. Bikshapathy, Advocate
16-9-749/1, Race Course Road, Old Malakpet, Hyderabad
4. One copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd. Bench.
5. One spare copy.
6. One copy to Hon'ble Mr. J. Narasimha Murthy, Member (J) CAT. Hyd-Bench

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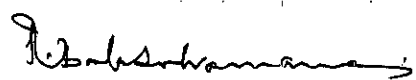
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get the over-time benefits as directed by the Supreme Court.

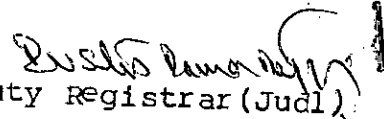
8. The applicants are Dar~~ans~~ans, Gate Keepers and ~~Telephone~~ Helpers. As per the directions of the 2nd respondent they are excluded for payment of over-time allowance as they are only workers. Whether they work at the gate or anywhere, that is part and parcel of the industry, and by basing on their mere work, they cannot be discriminated from the other factory workers. The orders of the respondents for not paying the over-time allowance to the applicants is a sheer discrimination and contrary to the principles of natural justice. Therefore, basing upon the Supreme Court Judgement, the applicants are entitled to get over-time allowance on par with other factory workers. If they work for more than 44½ hours for a week and less than 48 hours, they are entitled to get single over-time allowance and if they work for more than 48 hours a week, they are entitled to get ^{O.T.A. at} double the rate. Accordingly the applicants are entitled to get the arrears of Over-Time Allowance for the period from 6-11-1973 to July 1983 as per rules. We direct the respondents to pay the Over Time Allowance to the applicants on par with other factory workers.

9. With the above direction the O.A. is allowed with all consequential benefits. No order as to costs.


(J.NARASIMHA MURTHY)
MEMBER (JUDICIAL)


(R.BALASUBRAMANIAN)
MEMBER (ADMN.)

Date: 21-11-1991


Deputy Registrar (Judicial)