

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 824/92

DATE OF JUDGEMENT: 23-3-1993

Between

E. Narsinga Rao

.. Applicant

and

1. Chief Postmaster General,
Andhra Pradesh Circel,
Hyderabad-4

2. The Sr. Superintendent of Post Offices
Visakhapatnam Dvn
Visakhapatnam

3. The Postmaster
Headpost Office
Visakhapatnam

.. Respondents

Counsel for the Applicant :: Mr MP Chandramouli

Counsel for the Respondents :: Mr NR Devraj

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, to declare the action of the respondents in not paying overtime allowance ~~xxxRx.~~ and not granting compensatory offs within one month as per the applicable rules as illegal and consequently direct the respondents to pay overtime allowance at Rs.6.50 per hour for 132 hours of OT taking night coefficient into consideration for the duty performed from 9.00 p.m. to 5.00 a.m. during 25.3.90 to 11.11.90 and at the rate of Rs.11.35 for 192 hours worked during Jan 1990

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and June 1991 on working days and eligible OT totalling to Rs.10,801/- and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:-

3. The applicant is a Group-D (HSG) Test Category employee in operative staff in postal department. He had performed duties of Chowkidar/Nightwatchman in the year 1990 and 1991. According to the applicant, he had performed overtime duty for 132 hours from 9.00 p.m. to 5.00 a.m. from 25.3.90 to 11.11.90, for 456 hours from 2.12.90 to 8.12.91 and for 192 hours during January, 1990 and June 1991 on workingdays. According to the applicant, the applicant had not been paid overtime allowance at the current rates prescribed from time to time. So, the present OA is filed for the relief(s) as already indicated above.

4. Counter is filed by the respondents opposing this OA.

5. We have heard Mr Chandramouli Counsel for the applicant and Mr NR Devraj, Standing Counsel for the respondents.

6. The applicant had also been employed as Chowkidar/Night watchman on sundays and holidays on rotation. To compensate the duties performed by the applicant as chowkidar/~~Nightwatchman~~ on Sundays/Holidays in addition to their duties, compensatory off is granted within one month of the duty performed as provided in para 43 of Manual of Appointments and allowances and when compensatory off could not be granted by the Head of the office within one month, the official is entitled to OTA at the rate of Rs0.30 per hour subject to a maximum of Rs.2.75 diem.

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The grievance of the applicant is that he is entitled to be paid extra compensation for all the duties performed by him as chowkidar/nightwatchman. But, according to the respondents, the duties of night watchman need comparatively lesser exertion as one would be guarding the office during closed hours. The department is said to have fixed the work hours of the night-watcher as 12 hrs. a day as per the instructions of the competent authority. Ofcourse, the instructions issued by the competent authority are not filed before this Tribunal. But, the Sr. Superintendent of Post Offices, Visakhapatnam and Postmaster, Head Post Office, Visakhapatnam who are respondents 2 & 3 in this OA have ~~xxxx~~ reckoned 12 hrs of night duty as constituting normal working day of 8 hours for the purpose of overtime allowance as for night duty no exertion on the part of the applicant is required, treating 12 hrs of night duty as equivalent to one normal working day of 8 hrs appear to us to be very reasonable. So, the action of the respondents in treating 12 hrs of night duty working as equivalent to 8 hrs of normal working day is liable to be upheld for the purpose of paying overtime allowance to the applicant. So, it is not open for the applicant to make grievance for treating 12 hrs of night duty as one working day of 8 hrs for the purpose of over-time allowance.

7. It is also the grievance of the applicant though, he was entitled for compensatory offs, for the period he had work during holidays and for being on night duty that the said compensatory offs were not granted to him and that he had been asked to perform duties on the days he had to be given compensatory offs and that he is not paid overtime allowance for the same and so, a direction is liable to be given to the respondents to pay overtime allowance for making the applicant work on compensatory off days, which the applicant ^{is} ~~was~~ entitle

8. The fact that the applicant had worked as Night-watchman on Sundays and Holidays and other working days is not in dispute. It is also not in dispute that the applicant has worked overtime on certain occasions during working days. It is also not in dispute that the applicant had been paid overtime for the period he worked overtime during working days and also as Night watchman on sundays and other days, treating as already pointed out, 12 hrs. of night duty as a working day of 8 hrs for the purpose of paying overtime. Ofcourse for night duty, the employee can avail compensatory off and when the department does not permit the compensatory off due to administrative exigencies, then only overtime allowance has got to be calculated. But, it is the case of the respondents, that even though the applicant had been given compensatory offs for the days he was entitled, the applicant with a view view to claim overtime allowance did not avail compensatory offs and had come to work voluntarily. So, as the applicant has not availed compensatory off ~~and~~ on his own and that, with a view to claim overtime allowance, had come forward to work, the respondents are not liable to pay him overtime allowance for the said days of compensatory offs. So, the action of the respondents in not paying overtime allowance with regard to the compensatory off days which the applicant did not avail and had comeforward voluntarily to work is to be upheld as valid. So, we do not see any mistake on the part of the respondents in calculating hours of work for the overtime that has got to be paid and hence, the prayer of the applicant that he is entitled for overtime allowance for more hours of work than he is paid, is hereby dismissed

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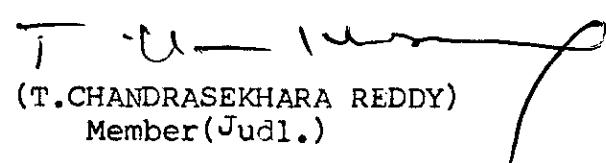
Copy to:-

1. Chief Postmaster General, Andhra Pradesh Circle, Hyd.
2. The Sr. Superintendent of Post Offices, Visakhapatnam Division, Visakhapatnam.
3. The Post Master, Head Post Office, Visakhapatnam.
4. One copy to Sri.M.P.Chandramouli, advocate, 1-7-139/1, S.K.K.Nagar, Hyderabad-48.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
6. One spare copy.

Rsm/-

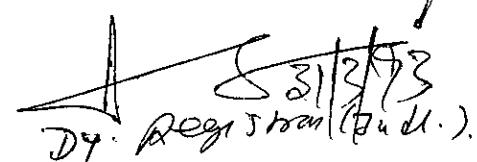
9. The other grievance of the applicant is that the overtime allowance has been calculated on the basis of the basic pay of the applicant. We are informed that the overtime allowance has got to be calculated not on basic pay, but on monthly emoluments. It is the case of the applicant that his monthly emoluments were Rs.1502/-, during the relevant period and that, the overtime allowance should have been calculated by the respondents on the basis of monthly emoluments, during the relevant period.

10. It is needless to point out that emoluments include basic pay and DA. So, for the purpose of over-time allowance for the relevant period, the rate for overtime allowance has got to be calculated taking into consideration the basic pay and also DA which the applicant was drawing in the relevant period. So, if there is any mistake on the part of the respondents in arriving at the figure with regard to monthly emoluments which the applicant was drawing during the relevant period, we hereby direct the respondents to reconsider the matter afresh and pay the applicant the difference in overtime allowance calculating the same on the basis of the monthly emoluments (which ~~is~~ constitutes both basic pay and DA) which the applicant was drawing during the relevant period. OA is disposed of accordingly leaving the parties to bear their own costs.


(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 23 March, 1993

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D.Y. Registration (P.U.D.C.)

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O.A.824/92

TYPED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

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

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUL)

DATED: 23/3/1993

ORDER/JUDGMENT

R.P. / C.P./M.A. No.

int

824/92

O.A. No.

T.A. No.

(W.P. No _____)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions
Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

NO order as to costs.

pvm

