

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.891/92

DATE OF JUDGEMENT: 26-2-1993 (1993)

Between

1. M.Laxmaiah
2. B.Hanumanth Rao
3. P. Raghu

.. Applicants

and

1. Secretary
Ministry of Agriculture
Krishibhavan
NEW DEKHI-1.
2. Director
Central Plant Protection-
Training Institute
Rajendranagar
HYDERABAD

.. Respondents

Counsel for the Applicant :: Mr G.Bikshapathi

Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

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

JUDGEMENT

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This is an application filed under Section 19 of the Administrative Tribunals Act, to direct the respondents to pay the applicants herein the overtime allowance as claimed for from 1.2.86 to 8.3.88 & 16.3.88 in respect of Applicant No.1 and 2 and from 23.7.85 to 30.6.86 in respect of Applicant No.3 and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief may be stated as follows:

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3. The first applicant herein, while he as working as chowkidar had worked overtime from 1.2.86 to 8.3.88 and 16.3.88 and later he was promoted as Baildar. The second applicant also while he was chowkidar worked overtime from 1.2.86 to ~~8.3.88~~ and 16.3.88 like the first applicant and got promoted as Lab ~~Assistant~~ Attendant. The third applicant herein ~~had~~ worked ^{overtime} from 23.7.85 to 30.6.86 when he was a chowkidar and got promoted as Ward Boy on a later date. All the above 3 applicants worked in the office of the Director, Central Plant Protection Training Institute, Rajendranagar, Hyderabad who is the second respondent herein. According to the applicants, when they were chowkidars, they had worked ~~for~~ 4 hours per day ^{overtime} on all the above said working days. According to the applicants, they are entitled to work 48 hours in a week at the rate of 8 hours per day. It is their claim that they are entitled for overtime allowance beyond 48 hrs of work on a week.

4. Similarly placed ~~chowkidars~~ ^{overtime} who had worked in the office of the Director of Central Plant Protection Training Institute, Rajendranagar, Hyderabad, and were entitled for payment of overtime, but were denied overtime allowance by the respondents had filed OA 532/89 on the files of this Tribunal for a direction for payment of overtime allowance to them. This Tribunal as per its judgement dated 21.2.91 had allowed the said OA. After the said OA was allowed, ~~therein~~ the applicants herein gave ^a another representation on 25.2.92 to the respondents to extend the benefit of the judgement to them also. No orders have been passed on the said representation of the applicants. So, the applicants have filed the present OA for the reliefs as indicated above.

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5. The OA is opposed on the ground of limitation and latches. We have heard at the admission stage Mr Bikshapathi counsel for the applicant and Mr NR Devraj Standing counsel for the respondents. As both ~~sides~~ have invited this Tribunal to give a decision on the point of limitation, we proceed to dispose of this OA on the question of limitation.

6. As could be seen, the first applicant has worked over-time when he was chowkidar from 1.2.86 to 8.3.88 and 16.3.88. So far the second applicant is concerned he has also worked over time ~~xxx~~ from 1.2.86 to 8.3.88 and 16.3.88. Hence, the overtime allowance for 1st and 2nd applicants became due for payment on 17.3.88. According to the third applicant he has worked over time from 23.7.85 to 30.6.86. His claim for overtime allowance became due on 1.7.86. At this stage, Section 21 of the Central Administrative Tribunal Act which deals with limitation is reproduced below:

"21. LIMITATION: (1) A Tribunal shall not admit an applicatio

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made within one year from the date of which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section(2) of section 20 has been made and aperiod of six months had expired thereafter without such final order having been made within one year from the date of expiry of the said period of ~~xx~~ six months;

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7. So from a reading of the Administrative Tribunals Act, Section 21 it becomes amply evident that if an appeal or representation had been made and if a period of six months expired thereafter without final orders having been made, an aggrieved party has to approach this Tribunal within one year after the expiry of the period of six months. In this context, we may straightaway refer to AIR 1990 SC 10 SS Rathore Vs State of MP wherein it is laid down as follows:

- "20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however make it clear that this principle may not be applicable when the remedy availed of has representations not provided by law are not governed by this principle.
21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section(2) has prescribed a period of one year for making of the application and power of condonation delay of a total period of six months has been vested under sub-section(3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned Article 58 may not be invocable in view of the special limitation. Yet suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.
22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of justa memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of limitation.

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8. As could be seen, the applicant had not approached this Tribunal within 1 and 1/2 years from the date of their overtime allowances became due, in the year 1988. So, we do not have any doubt to come to the conclusion that this OA is barred by time.

9. But the contention of the learned counsel appearing for the applicant is, that similarly placed applicants were given overtime allowance by the respondents in view of the directions given in the judgement dated 21.2.91 in OA 532/89 and so the applicants are entitled to the benefit of the Judgement in OA 532/89. However, as the remedy of the first and second applicants became time barred within 1 and 1/2 years from 17.3.88 and of third applicant within 1 and 1/2 years from 1.7.86, we are unable to understand how the judgement dated 21.2.91 would revive the remedy that had become already time barred. Nodoubt, the judgement dated 21.2.91 in OA 532/89 had been obtained by the applicants who are similarly placed to the applicants herein. It is need - less to point out that once the period of limitation begins to run, no disability or inability to file the OA could stop the running of time. We have already given the dates when the period of limitation started running in this case. As the remedies of the applicants had become time barred, as already indicated, the judgement delivered in OA 532/89 does not extend the period of limitation which got expired long before. Nor it would give rise to fresh cause of action. Anybody who seeks benefit of judgement must seek the benefit of the judgement in accordance with law. So, the person who seeks benefit

of judgement on the ground that the same benefit

To

1. The Secretary, Ministry of Agriculture,
Krishibhavan, New Delhi-1.
2. The Director, Central Plant Protection
Training Institute, Rajendranagar, Hyderabad.
3. One copy to Mr. G. Bikshapathi, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One spare copy.

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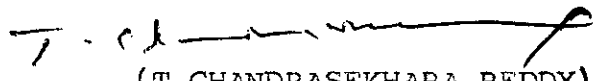
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those persons whose remedy had become time barred. So, that being the position, we donot have any doubt to come to the conclusion that the applicants herein are not entitled to the benefit of the judgement passed in OA 532/89.

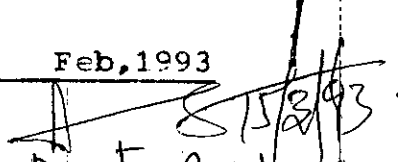
10. MA 1081/92 is filed by the applicants herein to condone the delay of 6 months and 17 days in filing this OA. In the affidavit accompanying the OA, it is averred that the applicants were not aware of the judgement delivered in OA 532/89 till the month of January, 1992 and that they came to know the above fact when the 2nd respondent made the payment of overtime allowance to the applicants in OA 532/89. Subsequently, in the month of February, 1992, the applicants herein had submitted a representation dated 25.5.92 claiming overtime allowance and praying the 2nd respondent to grant the same. Since the 2nd respondent failed to pay the overtime allowance and also failed to give any positive reply in this regard, the applicant had no other go but to file this OA for the required relief. According to the applicant there is a delay of only 6 months and 17 days in filing this OA and the delay is neither willful nor wanton.

11. We have already held that the remedy of the applicants became time-barred long before the delivery of the judgement dated 21.2.91 in OA 532/89 and that the judgement in OA 532/89 did not give rise to fresh cause of action nor it revived the cause of action which had become dead due to the expiry of the limitation period. We do not see any merit in filing MA 1081/92 and hence the MA 1081/92 is liable to be dismissed as not maintainable and is accordingly dismissed. For the reasons already indicated above the OA is rejected as barred by time leaving the parties to bear their own costs.


(T. CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 26 Feb, 1993

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Deputy Registrar(3)