IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.435 of 1992

DATE OF JUDGMENT: 10 AUGUST 1993

BETWEEN:

1. Mr. M.Vasudev
2. Mr. G.Sathaiah
3. Mr. K.Vishnu Dass
4. Mr. C.Suryakanth
5. Mr. M.Haribabu
6. Mr. R.Ailleshbabu
7. Mr. M.Kishan
8. Mr. E.Anjaneyulu
9. Mr. B.Prabhakar
10. Mr. G.Madhusudhan
11. Mr. V.Gopalakrishna
12. Mr. S.Dhanraj .. Applicants

AND

1. Union of India represented by its
   Secretary, to Government,
   Ministry of Defence,
   New Delhi.

2. The Scientific Adviser to the
   Ministry of Defence,
   Defence Research Development Organisation,
   Ministry of Defence,
   New Delhi.

3. The Director,
   Defence Research Development Laboratory,
   Hyderabad.

4. The Director, Research Centre,
   IMARAT, Vignana Sanchar,
   Hyderabad. .. Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. N.Rama Mohan Rao, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Raghava Reddy, Addl.CGSC

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CORAM:

Hon'ble Shri A.B.Gorthi, Member (Admn.)

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDICIAL)

The applicants herein are working in the office of the Director, Research Centre, IMARAT, Hyderabad appointed by the Defence Research Development Laboratory (DRDL). They are working as Fire Supervisors, Firemen Grade-I and Firemen Grade-II. The applicants worked in shifts which are operated around the clock. They have filed the present OA claiming Over-time Allowance at single rate for the duties performed by them beyond 42 hours upto 48 hours per week and for the Over-time Allowance performed beyond 48 hours at double the rate and also arrears of the said allowance for the past period.

2. Counter is filed by the respondents opposing this O.A.

3. We have heard in detail Mr. N.Rama Mohan Rao, learned counsel for the applicants and Mr. N.V.Raghava Reddy, learned Standing Counsel for the Respondents.

4. It is needless to point out that an employee will be entitled for the Over-time allowance if he works for more than the prescribed hours of work ie., a person who is said to have worked over time if he works more than the prescribed hours of work. So in view of this position, it will be necessary to define what is meant by the "overtime work" and also the "prescribed hours of

work". The over time work means, "work done in excess of one hour over the prescribed hours of work in a working day and includes work done on any Sunday or any other holiday". Prescribed hours of work means, "hours of work prescribed in any office in respect of the employees doing in that office". The applicants in this OA have specifically pleaded that they work in shifts which are operated round the clock. Further they have pleaded that each shift they work for 8 hours and they are given one day off in a week. Hence, they work for a minimum period of 48 hours per week and 8 hours per day. As seen, the prayer of the applicants is that they are entitled to be paid the over-time allowance at single rate for the duties performed by them beyond 42½ hours upto 48 hours per week and for the over time duties performed beyond 48 hours at doubled the rate. An employee will be entitled for the overtime allowance if he works for more than the prescribed hours of work in a day or in a week. The respondents also had pleaded in their counter that the normal working hours of the applicants in a week are 48 hours at the rate of 8 hrs. of work per day ~~of the work~~ in a week. It is not in dispute that every Sunday is holiday for the applicants, that working days being for the applicants from Monday to Saturday. As there is no dispute about the fact that the number of prescribed hours to the applicants to work in a week ~~for~~ are 48 hours per week at the rate of 8 hours per day, we are unable to understand how the applicants are entitled for the overtime for working for more than 42½ hours and upto 48 hours per week. So, the claim of the applicants for the overtime allowances appears to be completely misconceived and as such the OA is liable to be dismissed.

T. C.

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5. The learned counsel for the applicants strongly relied on a Judgment dated 11.6.1981 of the Calcutta High Court of which a photostat copy is placed before us. Pursuant to the Ministry of Defence Memo No.2205/A/OF12A/898/D-11, dated 25.1.1950, all categories of workers in the Ordance and Clothing Factories, who were paid 6 days wages for 48 hours of work were directed to be paid six day wages for 44¾ hours of work. Pursuant thereto, all categories of such workers including Fire Brigade staff and Telephone Operators got the benefit till 5.11.1973 for working for 44¾ hours for six days in a week instead of 48 hours in a week. Thereafter, by an order No.525/D/A/A(III), dated 1.4.1974 issued by the ADGOF/Admn.II, on behalf of the Director General, Ordance Factories, it was decided that Durwans, Gate Keepers, Fire Bridge staff and Telephone Operators working in the DGOF would be entitled to the overtime wages at double the rate provided they work beyond 48 hours a week. So, the increase of working hours of the workers of the Ordnance Factory was questioned in the Calcutta High Court. The Calcutta High Court posed the question "whether after the petitioners therein were being paid six days wages for doing 44¾ hours of work, they can be deprived of the benefit and become eligible for the overtime allowance only if they worked beyond 48 hours?" Then the Calcutta High Court in answer to said the question held as follows:-

> "Admittedly the petitioners were getting this benefit for over 20 years and as such this benefit had become a condition of their service.

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The respondents unilatorally without any reference to the petitioners and without giving them an opportunity of being heard cannot deprive them of this benefit to their detriment. The Supreme Court in the case of Lilly Kurian Vs. Sr. Lewina and others (AIR 1979 SC 52) explained the expression 'conditions of service' by stating that it includes everything from the stage of appointment to the stage of the termination of service and even beyond and relates to matters pertaining to disciplinary action. In the case of Ex. Major N.C.Singhal Vs. Director General, Armed Forced Medical Services, New Delhi and another (AIR 1972 SC 628) the Supreme Court dealing with the alteration of the condition of service observed inter alia as follows:-

> The condition of service in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative (Army) Instructions which was given retrospective effect from 26th October 1972".

The last question which remains to be determined is whether the petitioners in order to ventilate their grievances can approach this court under Artile 226 of the constitution or whether they should have sought relief under the industrial disputes Act, 1947. In my view, by the alteration of the conditions of service of the petitioners to their detriment without an opportunity of their being heard, the principles of natural justice have been violated. As such the petitioners being employees of defence establishment of the Government of India it is certainly open to them to appraoch this court under Artilce 226 of the constitution for relief.

In view of what has been stated above, I allow this application, make the rule absolute and direct the respondents not to give effect to the order dated April 1,1974, copy of which is annexure 'B' to the petition, without giving the petitioners an opportunity of being heard. All deductions made from the salary of the petitioners pursuant to the impugned order must be paid back to them as expeditiously as possible.

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So, as seen after working hours were reduced ~~from the original hours~~ to 44¾ hours and the workers and the supervisory staff in the Ordnance Factory including ~~xxx~~ Darwans, Gate Keepers and Telephone Operators who were working for more than twenty years only at 44¾ hours per week were made to work for 48 hours per week in pursuance of the O.M. dated 1.4.1974 to which a reference is already made. Under those circumstances, the Calcutta High Court held that the over time allowance was liable to be paid to the petitioners (before the Calcutta ~~xx~~ High Court) therein for the work they did at single rate for the work performed by them beyond 44¾ hours and upto 48 hours per week and for the over time performed beyond 48 hours at double the rate. But as already pointed out, normally the working hours for the applicants herein are 48 hours per week. ~~xxx~~ It is not the case of the applicants that formerly they were working at the rate of 44¾ hours per week and that by the orders passed by the competent authority that they were made to work for 48 hours per week. As a matter of fact, it is the case of the respondents that the applicants herein had joined the service with the condition that the applicants are required to work for 48 hours per week. But the respondents have not issued a G.O. or circular affecting the condition of service of the applicants with regard to the number of hours the applicants have to work. As already pointed out, it is the case of the applicants that they have to work for 48 hours per week at the rate of 8 hours on each working day. So, the decision of the Calcutta High Court relied upon by the counsel for ~~x~~ the applicants absolutely has no relevance to the facts of this case and the said decision does not advance the case of the applicants with regard to their claim for overtime allowance.

T.C.

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6. The learned counsel appearing for the applicants had strongly relied on a Judgment dated 21.2.1991 delivered in OA No.682 of 1989 by this Tribunal to substantiate his contention that the applicants are entitled for the over time allowance. We have gone carefully through the decision dated 21.2.1991 in OA 682/89 delivered by the Division Bench of this Tribunal (the same is Annexure A-I). The applicants in OA 682/89 were appointed as Darwans under the Director, DRDL, Hyderabad. The facts in the Judgment in OA 682/89 would go to show that the ~~prescribed weekly~~ hours of work for the applicants in OA 682/89 prescribed by the Director, DRDL, Hyderabad were 44 3/4 hours per week. They have prayed in that OA that instead of working for 44¾ hours per week they were made to work for 48 hours per week and so in that OA682/89, the petitioners therein had claimed that they were entitled to be paid the over time allowance at single rate from 44¾ hours to 48 hours per week and beyond 48 hours double the rate of overtime allowance. The Division Bench had agreed with the contention of the applicants therein. So, the OA had been allowed. But as already pointed out the normal working hours of the applicants before this Tribunal in this OA are 48 hours. So, there is no question of claiming any overtime allowance at single rate from 44¾ hours to 48 hours per week by the applicants. So, the judgment in OA 682/89 is not at all applicable to the facts of the case as the applicants herein are not similarly placed to the applicants in OA 682/89. So, the benefit of the judgment in OA 682/89 cannot be extended to the applicants herein.

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7. The learned counsel for the applicants relied on a decision reported in AIR 1984 SC 1022[1] wherein it is laid down that, employees working in supervisory cadre are also entitled for overtime allowance in accordance with the rules and regulations. Ofcourse, the applicants herein are also discharging the supervisory duties. The respondents have clearly admitted in the counter that the applicants are entitled to overtime allowance for more than 48 hours of work the applicants performed in a week. They have clearly stated in para 10 of the counter that, "for the additional duties performed due to contingencies, the overtime allowance is alway paid.". But as already pointed out, the applicants will have right for overtime allowance provided they work for more than 48 hours in a week of six days i.e more than 8 hours on each working day. But the applicants as already pointed out will not be entitled for the overtime allowance for doing the work at the rate of 44¾ hours per week for the reasons already mentioned. though the said Supreme Court decision reported in AIR 1984 SC 1022 relied by the learned counsel for the applicants does not advance the case of the applicants herein to show that they are entitled for the over time allowance for working more than for 44¾ hours per week but on the other hand the said decision goes to show that the applicants will be entitled for the overtime allowance in accordance with the rules and regulations.

1. Union of India and another Vs. G.M.Kokil and others

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8. So, for the reasons mentioned above, we see absolutely no merits in this OA and the OA is liable to be dismissed and accordingly dismissed leaving the parties to bear their own costs.

(T.CHANDRASEKHARA REDDY)
MEMBER (JUDL.)

(A.B.GORTHI)
Member(Admn.)

DATED: 10 August 1993.

Deputy Registrar(J)

vsn

To

1. The Secretary to Government, Union of India, Ministry of Defence, New Delhi.
2. The Scientific Adviser to the Ministry of Defence, Defence Research Development Organisation, Ministry of Defence, New Delhi.
3. The Director, Defence Research Development Laboratory, Kanchan Bagh Hyderabad.
4. The Director, Research Centre, IMRAT, Vignana Sanchar, Hyderabad.
5. One copy to Mr.N.Rama Mohan Rao, Advocate, CAT.Hyd.
6. One copy to Mr. N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One copy to Deputy Registrar(J)CAT.Hyd.
10. One spare copy.

pvm.