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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

06.11.2012

OA No. 395/2011

Mr. P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Rejoinder
filed
B

Learned counsel for the applicant submits that he has filed rejoinder today with an advance copy given to the learned counsel for the respondents. The Registry is directed to place the same on record.

List it on 29.11.2012.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

29.11.2012

Mr P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents
Heard. The OA is disposed of by
a separate order.

Anil Kumar
(Anil Kumar)
M (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 395/2011

Jaipur, the 29th day of November, 2012

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Udai Ram son of Shri Bal Mukund by cast Mehra- aged about 65 years, resident of House No. 467, Galta Gate, Rishi Galav Colony, Gali No. 8, Jaipur -3. Presently retd. as Group 'D' from Jaipur General Post Office, Jaipur.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Senior Supdt. Post Offices, Jaipur City, Dn. Jaipur.
4. Senior Post Master, Jaipur GPO, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant had filed an OA No. 388/2005 seeking directions to the respondents that the applicant should be allowed over time allowance for the period from 06.07.1998 to 26.11.2001 and for the second spell from 01.08.2002 to 31.07.2005. In that OA, he had taken the plea that though he was working as Group 'D' employee but he had been deputed as Khansama cum Attendant and as such he was performing the 12 hours duty per day at the Guest House of the Department and therefore, he should be allowed overtime for 4 hours per day.

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This OA was disposed of by this Tribunal vide order dated 23.11.2006 with the following observations:-

"5. Since it is an admitted that the case of the respondents is also that the applicant was posted as Khansama cum Attendant at Jaipur GPO Guest House of the department and on the said post he was supposed to perform the duty for 12 hours. So the department of Post being an idle employer also not justified in refusing the wages/overtime allowance to the applicant for the work done by him. So the plea of limitation cannot be taken by the department particularly so when the representation was made by the applicant has not yet been answered. In these circumstances, I direct the respondents to consider the claim of the applicant on merits and pass a reasoned and speaking order on the representation of the applicant within a period of 3 months from the date of receipt of a copy of this order."

2. In pursuance of this direction, the respondents have considered the representation of the applicant and passed a reasoned and speaking order dated 24.12.2010 and rejected the claim of the applicant for overtime allowance. Aggrieved by this rejection of his claim for overtime allowance by the respondents, the applicant has filed the present OA.

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed as a Group 'D' employee with the respondents' department. While working as Group 'D' employee, he was deputed to work as Khansama Cum Attendant in Jaipur GPO Inspection Quarters by the order dated 26.07.1989 and worked continuously as Khansama upto 06.11.2001. The photocopy of the order dated 26.07.1989 has been annexed as Annexure A/3. The applicant

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was again posted as Khansama cum Attendant w.e.f. 01.08.2002 and he continuously worked upto 31.07.2005.

4. Learned counsel for the applicant argued that the applicant submitted an application dated 16.08.2002 that the duty of Khansama cum Attendant is of 12 hours a day instead of usual duty of an employee of 8 hours per day. Therefore, overtime for 4 hours be paid to the applicant for every working day. He further submitted that he was performing his duty from 06.00 AM to 06.00 PM at the Guest House for 12 hours whereas as per rules, the applicant was supposed to perform the duty for 8 hours a day. Therefore, he should be paid overtime for all working days for the period for which he has worked for the post of Khansama cum Attendant at Jaipur GPO Guest House of the Department.

5. On the other hand, the respondents in their reply have stated that the applicant was working as Group 'D' employee but he had been deputed as Khansama cum Attendant for the Inspection Quarter of GPO for the period from 06.07.1998 to 26.11.2001 and 01.08.2002 to 31.07.2005. The normal working hours of Group 'D' are 8 hours a day and he was ordered to perform duty as Khansama cum Attendant for 8 hours. It was only when any officer was staying in the Inspection Quarter of Jaipur GPO, the applicant had to perform the extra work otherwise he used to perform the duty of Group 'D' general as usual.

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6. The applicant had filed a representation dated 28.05.2005 for granting him overtime allowance for the 12 hours duty performed by him as Khansama cum Attendant at the Inspection quarter for the period from 06.07.1998 to 26.11.2001 and 01.08.2002 to 31.07.2005, which was not decided earlier. However, in compliance of the Hon'ble Tribunal's order dated 23.11.2006, the respondent no. 3 considered the representation of the applicant and rejected the same by a reasoned and speaking order dated 24.12.2010. From the perusal of the aforesaid order dated 24.12.2010 and relevant provisions of rules, it is clear that the applicant has no right to get overtime allowance. Therefore, the decision of the respondents in rejecting the representation of the applicant is legal and justified.

7. Learned counsel for the respondents also submitted that the OA is barred by limitation. The limitation has to be counted from the date of original cause of action available to the applicant and not from the date of decision of his stale representations dated 18.08.2002 and 19.09.2003 and to support his averment, he referred to the judgments of the Hon'ble Supreme Court in the case of **C. Jacob vs. Director of Geology and Mining**, 2008 (10) SCC 115 and **Union of India vs. M.K. Sarkar**, 2010 (2) SCC 59. Therefore, he argued that this OA should be dismissed on the point of limitation as well.

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8. Learned counsel for the respondents further submitted that the applicant worked as Khansama cum Attendant in the first phase upto 06.11.2001. There were complaints against him regarding absent from duty from the Inspection Quarter and not attending the telephone calls during his duty hours. Thus the applicant was posted as Group 'D' and Shri Ram Lakhan Yadav, Group 'D' was posted as Khansama cum Attendant in the Inspection Quarter of Jaipur GPO. However on observation of Internal Audit Checking Party during inspection of Jaipur GPO from 02.07.2002 to 13.07.2002, the applicant was again posted as Khansama cum Attendant in place of Shri Ram Lakhan Yadav vide order dated 01.08.2002 and applicant worked till his retirement upto 31.07.2002 as Khansama cum Attendant.

9. Learned counsel for the respondents argued that the claim of the applicant for overtime allowance has been rejected by the competent authority by a reasoned and speaking order. The respondent no. 3 has categorically stated in his order dated 24.12.2010 that the applicant was never separately ordered to work for 12 hours a day on the post of Attendant cum Khansama. The applicant was ordered to perform duty of Attendant cum Khansama for 8 hours only. It was only when any officer was staying in the Inspection Quarter of Jaipur GPO otherwise he had performed the duty of Group 'D' generally as usual. The contention of the applicant that he was posted in the Inspection Quarter where he has to perform 12 hours duty

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instead of 8 hours is not tenable. The applicant has not produced any record to show that he had been retrained for 12 hours a day for the period from 06.07.1998 to 26.11.2001 and 01.08.2002 to 31.07.2005. Therefore, he is not entitled for overtime allowance. Learned counsel for the respondents argued that there is no merit in the OA, hence it should be dismissed with costs.

10. Heard the rival submissions of the parties and perused the documents on record. I am not inclined to agree with the averments made by the learned counsel for the respondents that the present OA is barred by limitation. I have carefully gone through the judgment of the Hon'ble Supreme Court in the case of **C. Jacob vs. Director of Geology and Mining**, 2008 (10) SCC 115 and **Union of India vs. M.K. Sarkar**, 2010 (2) SCC 59 and I am of the view that the ratio decided by the Hon'ble Supreme Court in these cases is not applicable under the facts and circumstances of the present case. The learned Tribunal vide its order dated 23.11.2006 in OA No. 388/2005 had directed the respondents to decide the representation of the applicant within a period of three months. The respondents have decided the representation of the applicant after four years. Therefore, the applicant cannot be made responsible for this delay in deciding the representation of the applicant by the respondents. He has challenged the letter dated 24.12.2010 vide which his representation for overtime has been rejected. This OA has been filed on

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25.08.2011. Therefore, I hold that this OA is not barred by limitation.

11. As far as merit of the case is concerned, I am of the view that the representation of the applicant has been decided by the respondents vide letter dated 24.12.2010, which is a speaking and reasoned order. The respondents have clearly stated in the rejection order dated 24.12.2010 that the applicant was never separately ordered to work for 12 hours a day on the post of Attendant cum Khansama. The applicant *Anil Kumar* was ~~order~~ to perform the duty of Attendant cum Khansama for 8 hours only except when any officer was staying in the Inspection Quarter of Jaipur GPO. In this connection, the applicant has not produced any record to show that he has been retained for 12 hours a day for the period from 06.07.1998 to 26.11.2001 and 01.08.2002 to 31.07.2005 and, therefore, he is not entitled for overtime allowance. I am inclined to agree with the averments made by the learned counsel for the respondents that the learned counsel for the applicant has not been able to show any order where the applicant was asked to perform duty for 12 hours a day instead of 8 hours a day. According to the respondents, he was performing duty more than 8 hours only when an officer was staying in the Inspection Quarter of Jaipur GPO otherwise the applicant had to perform duty of Group 'D' as usual. I do not find any infirmity/irregularity in the rejection order passed by the respondents dated 24.12.2010 (Annexure A/1). Learned

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counsel for the applicant has failed to make out any case for interference by this Tribunal. The OA has no merit and it needs to be dismissed.

12. Consequently the OA is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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