

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1499/2014

Reserved on 28.03.2017
Pronounced on 30.03.2017

Hon'ble Mr.P.K.Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Rakesh Kumar,
Age 44 years,
S/o Shri Rohtash Singh,
Post MCD- Chowkidar,
House No. WZ/124,
Naraina Village, New Delhi-110028.

... Applicant

(By Advocate: Ms. Charu Ambwai for Ms. Pooja Dhar)

VERSUS

1. The South Delhi Municipal Corporation
Through its Commissioner,
Civic Centre, J.L.N.Marg,
New Delhi-110002.

2. Deputy Health Officer,
School Health Services,
South Delhi Municipal Corporation,
Opposite Madhav Park, Rajouri Garden,
New Delhi-110027.

... Respondents

(By Advocate: Ms. Anupama Bansal)

ORDER

Hon'ble Mr. P.K.Basu, Member (A):

The applicant is a Chowkidar in South Delhi Municipal Corporation (SDMC). He is a permanent employee. His grievance is that he has to undertake 16 hours of duty without any provision for Over Time Allowance (OTA), rest day, casual leave and other leave granted to Chowkidars of Education Department of SDMC as per

Circular dated 19.03.1997. The Circular dated 19.03.1997 of Education Department has been annexed which provide as follows:

"CIRCULAR

The Corporation vide decision No. 5823/G.R./Corp dated 15.3.97 has approved the payment of overtime allowance maximum upto the limit of 50 hours to regular chowkidars working in schools of Municipal Corporation of Delhi w.e.f. 1.1.97.

The normal duty hours of chowkidars would be ten hours per day and they would be entitled to 24 hours one day rest in a fortnight.

It is further clarified that no overtime allowance would be admissible for their working on sundays/holidays. Compensatory leave would be granted in lieu of it as per rule.

In addition to above, regular chowkidars will be entitled for 15 casual leave, 3 National Holidays and six other holidays (of their choice) in a calendar year."

The applicant has prayed for the same benefit as has been communicated above.

2. It is stated that the applicant is still governed by Circular dated 13/16.2.1995 which provide for allowances as follows:

"S.No.	Duty of Employees	Rate of rest of allowance
2.	Such employees who have to perform less than 16 hours of duty and who are given weekly Off."	Rs.160 per month

It is stated that the applicant is not eligible for casual leave or six other holidays of his choice nor is his duty hours restricted to 10 hours along with one day rest as per the 19.03.1997 Circular for Education Department.

3. In their reply dated 12.11.2014, the respondents have stated that they are taking necessary action to consider the claim of the applicant. However, being a policy matter, it will take some time to be decided.

4. Heard the learned counsels and perused the record.

5. This is a clear case of discrimination. Within the same organisation, employees discharging the same duties, namely, that of Chowkidars in two different departments cannot have separate facilities.

6. In their affidavit November, 2014, the respondents had assured that they are taking steps to reduce his grievance but being a policy matter it would take some time. More than 2 years have passed after that. Learned counsel for the respondents' states that this has not yet been finally decided.

7. From the facts of the case it is clear that the demand of the applicant is genuine and not granting him his prayer would amount to violation of Articles 14 and 16 of the Constitution.

8. We, therefore, allow this OA with a direction to the respondents to grant the same benefit and service conditions to the applicant as contained in Circular dated 19.03.1997 and also pay Over Time Allowance at current rate as applicable to Chowkidar in Education Department. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K.Basu)
Member (A)

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