

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No. 253 of 2011

Dated: This the 02nd day of April 2019.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Girija Shankar son of Shri Ram Kumar R/o 47/7-D Shivkuti, Teliarganj,
District Allahabad, U.P.

. . . Applicant

By Adv: Shri S.K. Mishra

V E R S U S

1. The Manager Director, Bharat Sanchar Nigam Limited, New Delhi.
2. The General Manager, Telegraph/Telecom District Allahabad U.P.
3. The Chief General Manager, Telecom Eastern U.P. Circle, Lucknow, U.P.
4. Incharge, Telephone Office/Telegraph Office, Kutchhari, Allahabad, U.P.

. . . Respondents

By Adv: Shri D.S. Shukla

O R D E R

1. The present O.A. has been filed by applicant Girja Shanker under Section 19 of Administrative Act, 1985 seeking the following reliefs:

“(i) Issue order or direction in the nature of certiorari calling for the record and quashing the order dated 29.12.2000 and 4.12.1995 (Annexure A-1 and A-2 respectively with compilation No.1).

(ii) Issue an order or direction in the nature of mandamus commanding the respondent to grant all consequential benefits to the petitioner

including the arrears of the overtime/conversion allowance to the petitioner with effect from 1980 with 24% interest per annum by ignoring the orders dated 29.12.2000 and 4.12.1995.

(iii) Issue an order or direction in the nature of mandamus commanding the respondents reduce the duty hours of the petitioner from 12 hours to 8 hours per day and forthwith make payment of salary on month to month basis on the basis of duty hours discharged by the petitioner.

(iv) Issue order an direction in the nature of mandamus declaring the circular dated 18.6.1983 (Annexure 3 with Compilation I) in operative null and void in so far as it pertains to discrimination of the case of the applicant visa vis those Chowkidars who work for 8 hours.

(v) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(vi) Award cost of the application in favour of the applicant".

2. The applicant has filed this OA along with Delay Condonation Application No. 902/2011 seeking to condone the delay in filing the original application on the fact that the while working as Chowkidar in the office of Post and Telegraph Kutehery, Allahabad, the applicant submitted representation regarding overtime allowance, as the normal duty hours is 8 hours but respondents are illegally taking 12 hours duty from applicant since 1980, the date of appointment. For his grievance, applicant submitted representation. When respondents did not pay any heed on the representation of the applicant, the applicant filed O.A No. 1315 of 1995 before this Tribunal, which

was decided by the Tribunal with a direction to decide the representation of the applicant by order dated 19.10.2000.

3. Thereafter respondents rejected the representation of the applicant by order dated 29.12.2000. Against the aforesaid order, applicant again filed original application No. 678 of 2001 before this Tribunal. In the year, 2000, Ministry of Telecommunication has been converted into Bharat Sanchar Nigam Ltd. hence, the O.A. No. 678/2001 was dismissed by the Tribunal vide order dated 15.7.2003 with a liberty to the applicant to seek his grievance before appropriate forum.
4. Thereafter applicant filed Writ Petition No. 41220 of 2003 before the Hon'ble High Court, Allahabad, which was dismissed on the ground of alternative remedy. Against the order of dismissal of writ petition, applicant filed Special Appeal No. 146 of 2005, which was finally disposed of by order dated 6.9.2010. The operative part of the order is reproduced below:-

“If the petitioner applies for condonation of delay, the Central Administrative Tribunal will consider the application sympathetically”.

5. Though there is delay in filing this O.A but in view of observation of Hon'ble Allahabad High Court, for condonation of delay in filing the O.A. taking a sympathetic view, I am of the view that delay in filing the O.A. is liable to be condoned. Hence, the M.A. No. 902/2011 is allowed. Delay in filing the O.A. is condoned.
6. The brief facts of the case as narrated by the applicant in this O.A are that applicant was appointed on the post of Chowkidar vide order dated 14.5.1980. His main duty is to look after the security of the properties of the respondents' organization. The normal duty for Chowkidar is 8 hours a day. Applicant further submitted that in case the respondents take duty hour for more than 8 hours then they are liable to pay

overtime allowance to the applicant for the period of duties which exceeds 8 hours. The letter dated 20.1.1975 (Annexure A-4) issued by D.G.P & T, clearly mentions the fact that in case the Chowkidars, Head Chowkidars and other class IV employees are directed to discharge duties for more than 8 hours, then they are entitled to get overtime allowance/conversion allowance. Applicant is claiming for discrimination vis-à-vis one Kishori Lal who worked only 8 hours in a day though applicant was directed to perform the duty for 12 hours in a day. Applicant requested to the department for overtime allowance. When not action was taken, the applicant was compelled to file representations before the authority for overtime allowance. Being aggrieved against the non-disposal of the representation, the applicant filed O.A. No. 1335 of 1995 and during its pendency, respondent informed that the representation dated 9/10.10.1995 of the applicant was rejected by way of impugned order dated 04.12.1995. However, the tribunal while disposing of the O.A. No. 1335 of 1995 while ignoring order dated 04.12.1995, directed for disposal of representation which was again rejected by way of impugned order dated 29.12.2000.

7. Applicant again filed O.A No. 678 of 2000 against the order dated 29.12.2000. After creation of Bharat Sanchar Nigam Ltd., the Tribunal vide order dated 15.7.2003, dismissed the original application on the ground that the original application was not maintainable and the applicant has the right to take recourse of appropriate proceedings before the appropriate forum. Thereafter applicant filed Writ petition No. 41220 of 2003, which was dismissed on the ground of alternative remedy by order dated 30.7.2004. Aggrieved against the order dated 30.7.2004, filed Special Appeal No. 146 of 2005, which was disposed of vide order dated 6.9.2010 with a observation that applicant's matter is maintainable in the Central Administrative Tribunal

and therefore, the applicant has to approach the Tribunal for redressal of his grievance. Hence the present O.A. seeking quashment of order dated 04.12.1995 and 29.12.2000 as well as circular dated 18.06.1983 (Annexure- A3).

8. In the reply filed by the respondents, the respondents have stated as under:-

- (i) Applicant was appointed as Chowkidar on 14.5.1980 and was allotted his duty as night Chowkidar in the office of Allahabad Kutchery Departmental Telegraph.
- (ii) The applicant was employed to keep general watch over buildings at night which used to keep locked and secured, to perform duty 12 hours as there is no strain involved as specified vide Circulars dated 17.11.1986 and 18.6.1983, which is as under and find mention in Annexure – 1 of the counter affidavit as below:
 - “(a) Chowkidar employed to keep a general watch over building at night which are locked and secured may be given 12 hours duty only as no strain would be involved.
 - (b) In offices which are open all the 24 hours where there is need to check public, staff or store moving in/out, duties of Chowkidar when employed, will be 8 hours as mental and physical strain would be involved”.
- (iii) The applicant who is posted at DTO Kutchery Allahabad has been allotted 12 hours as he has nothing to do with the dealing with the number of public/staff/store moving in/out etc. because working hours of DTO Allahabad Kutchery who is 07/0800 hours to 2200 hours in week days and 1600 hours to 07/0800 hours on Sundays/Holidays.
- (iii) In view of Circulars mentioned above, payment of overtime allowance/conversion allowance to the applicant is not admissible.

- (iv) It is mentioned that applicant has been working in Telegraph Office Allahabad Kutchery where working hours was/is 0700/0800 to 2200 hours and is closed from 2200 hours to 0700/0800 hours whereas late Kishori Lal Nigh Chowkidar was working in Central Telegraph Office, Allahabad where working hours is/was 24 hours, where number of public/staff are moving in/out etc. Thus, it is clear that the nature of office of CTO, Allahabad and DTO, Allahabad was different in nature.
9. I have heard considered the arguments of the learned counsels for the parties and perused the pleadings and documents filed by the counsel for the parties. Both the learned counsels during their arguments have reiterated the pleas taken by them in their pleadings.
10. Before, proceeding further, reference may be made to order dated 04.12.1995 which reads as under:

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11. It would be necessary to refer to relevant part of order
communication/order dated 29.12.2000 which reads as under:

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12. To repeat, the case of applicant is that his main duty is to look after the security of the properties of the respondents' organization. The normal duty for Chowkidar is 8 hours a day. Applicant further submitted that in case the respondents take duty hour for more than 8 hours then they are liable to pay overtime allowance to the applicant for the period of duties which exceeds 8 hours. By the letter dated 20.1.1975 (Annexure A-4) issued by D.G.P & T, clearly mentioning the fact that in case the Chowkidars, Head Chowkidars and other class IV employees are directed to discharge duties for more than 8 hours, then they are entitled to get overtime allowance/conversion allowance. Applicant is claiming for discrimination of one Kishori Lal who worked only 8 hours in a day though applicant was directed to perform the duty for 12 hours in a day.
13. On the other hand, it is the case of respondents that as per their guidelines, Chowkidar employed to keep a general watch over building at night which are locked and secured may be given 12 hours duty only as no strain would be involved. In offices which are open, there is need to check public, staff or store moving in/out, duties of Chowkidar when employed, will be 8 hours as mental and physical strain would be involved. Since the applicant who is posted at DTO Kutchery Allahabad has been allotted 12 hours as he has nothing to do with the dealing with the number of public/staff/store moving in/out etc. because working hours of DTO Allahabad Kutchery is 07/0800 hours to 2200 hours in week days and 1600 hours to 07/0800 hours on Sundays/Holidays, in view of Circulars mentioned above, payment of overtime allowance/conversion allowance to the applicant is not admissible. It is the further case of

respondents that applicant has been working in Telegraph Office Allahabad Kutchery where working hours was/is 0700/0800 to 2200 hours and is closed from 2200 hours to 0700/0800 hours whereas late Kishori Lal Chowkidar was working in Central Telegraph Office, Allahabad where working hours is/was 24 hours, where number of public/staff are moving in/out etc. Thus, it is clear that the nature of office of CTO, Allahabad and DTO, Allahabad was different in nature.

14. Looking to the stand of the respondents as to the difference in the duties performed by the chowkidars at different timing of the office, as per, the number of hours, type of duties whether at night or during the day as well as the circulars issued by the respondents which have not been challenged by the applicant, it is clear that applicant is not entitled to overtime allowance.
15. In view of the facts of the case, I am of the opinion that no good ground has been made by the applicant for allowing the application and quashing the impugned orders. The application being meritless, is dismissed. In circumstance of the case, parties are left to bear their own costs.

(Rakesh Sagar Jain)
Member (J)

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