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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9428/2016 & CM 37746/2016

AMBIKA PRASAD PANDEY

..... Petitioner

Through Mr R.K. Shukla, Adv.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondent

Through Mr Satyakam, ASC, GNCTD with Mr
Naveen Jakkar, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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03.11.2016

The petitioner – Ambika Prasad Pandey had filed OA No. 2052/2008 claiming that he has not been given 4 days rest in a month and was being made to work without overtime for more than 8 hours a day. By the order dated 11.08.2009, the Central Administrative Tribunal disposed of the OA, recording:

“ *Heard the counsel.*

2. *The grievance of the applicant is directed against the circular dated 20th June, 1996 whereby Chowkidars who are on duty more than 60 hours a week, would be entitled to over time allowance subject to maximum 50 hours per individual per month and are entitled to rest of 24 hours in a fortnight and they are also entitled to a maximum of 12 public holidays (including 3 National Holidays) in addition to uniform 15 Casual Leaves in a year.*

3. *Learned counsel of applicant would contend that whereas in Central Government, rest is for four days and working hours are less.*

4. *It is in this backdrop, resorting to Article 39 (D) and Article 14 of the Constitution of India, it is stated that his condition may be brought at par with his counterparts.*

5. *Learned counsel would also contend that without a reliever, the applicant is working 24 hours duty which is not in consonance with the circular. He states that circular has not been followed in its true letter and spirit.*

6. *We reiterate the circular and deny that any punitive action be taken against the applicant for his approaching the Tribunal for*

redressal of his grievance. Insofar as notice issued to the applicant is concerned, for serving a legal notice by the Vice Principal is patently illegal and shows bias towards the applicant, this cannot be countenanced in law. Respondents are restrained from adopting these measures against the applicant as there cannot be a bar for legal remedy which guarantee as a fundamental right to a Government Servant under the Constitution of India and also does not constitute a misconduct within the meaning of CCS (Conduct) Rules, 1964.

7. *In our considered view, the applicant who has made a statement at Bar that after filing this OA, his working hours has been reduced to 8 hours a day. We feel that the respondents should meticulously stick to their own circular by providing a reliever and the working hours of the applicant would not exceed the maximum and also pay him over time allowance for any work done beyond the working hours. We also reiterate that applicant would be entitled to OTA subject to maximum 50 hours per month and is entitled to rest of 24 hours in a fortnight. With these observations, OA stands disposed of. No costs."*

It is accepted by learned counsel for the petitioner that the aforesaid order has been complied. The petitioner has been working 8 hours a day and a reliever has been appointed.

The order had directed that the petitioner would be given overtime subject to maximum 50 hours per month as was stipulated in terms of circular dated 20.06.1996. The petitioner does not have any grievance in this regard for he has been paid overtime of 50 hours per month in terms of the said circular. As noticed below, the Tribunal in the subsequent order dated 03.11.2014 has directed payment of overtime allowance for 50 hours for one month.

The petitioner had challenged the order dated 11.08.2009 in W.P.(C) No. 7857/2011 for the Tribunal had not decided the petitioner's claim and entitlement to overtime allowance over and above 50 hours per month. The High Court by the order dated 04.11.2011, remanded the issue to the Tribunal for examining whether the petitioner had been made to work overtime for more than 50 hours in a month and if so, whether he would be entitled to overtime allowance for that period. The Tribunal was also required to examine whether any amount could be paid to the petitioner even if he had worked for more than 50 hours a month.

The impugned order of the Central Administrative Tribunal, Principal Bench dated 03.11.2014 decides the aforesaid issue and questions posed for answer by the High Court vide order dated 04.11.2011. The petitioner before the Tribunal had relied upon the attendance register. The Tribunal examined the record and their finding is that the attendance register was unreliable and could not be made the basis to determine whether the petitioner had worked for more than 50 hours overtime per month. The Tribunal observed that the entries made in the attendance register are incoherent and would not convincingly and conclusively show that from 1995 to 2008 the petitioner had worked overtime for more than 50 hours. For reasons recorded, the Tribunal felt that it would not be safe and trustworthy to rely solely on the attendance register to decide whether the petitioner had worked overtime for more than 50 hours in a month. After nearly 2 years, the petitioner has filed this petition challenging the order dated 03.11.2014.

The Tribunal also referred to the OM dated 20.07.1993, reiterated in OM dated 20.06.1996 with regard to overtime allowance and held that the OMs were in the nature of policy decision. The petitioner has been paid overtime in accordance with the said policy except for overtime of one month amounting to Rs.625/- which had not been paid as on 30.07.2010. Directions in this regard were given to the respondents to verify the records and ascertain whether any overtime amount was due to the petitioner.

Keeping in view the aforesaid facts and circumstances, we do not find need to interfere with the impugned order.

The writ petition is accordingly dismissed.

Pending CM is also disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

NOVEMBER 03, 2016/rd