
(2019) 05 CAT CK 0090

Central Administrative Tribunal Principal Bench, New Delhi

Case No: Original Application No. 4091 Of 2017

Sanjay Kumar

APPELLANT

Vs

Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision: May 15, 2019

Hon'ble Judges: A.K. Bishnoi, J

Bench: Single Bench

Advocate: Raj Kumar, Sameer Sharma

Final Decision: Dismissed

Judgement

1. The applicant has filed the present OA seeking the following reliefs:-

a) Quash and set aside the impugned Office Order dated 05.12.2016

b) Declare that the applicant is entitled to night duty allowance.

c) Direct the respondents to pay the night duty allowance to the applicant for the period August 2013 to September, 2013.

2. The brief facts of the case are that the applicant was appointed in the year 1992 as Foot Constable with the respondents. Thereafter with effect

from 12.01.2005 the applicant was asked to officiate as Head Constable without any salary benefits attached to the said post. In the year 2010, he

was promoted to the post of Head Constable on a regular basis.

2.1 During the period August 2013 to September, 2013, he was required to perform night duty. The applicant submitted that he was entitled for night

duty allowance as per DOP&T OM No. 12012/4/86-Estt.(Allowance) dated 04.10.1989. Thereafter, he made a number of representations with no

response from the respondents.

2.2 The applicant filed OA No.1357/2015, which was disposed of vide order dated 17.04.2015 granting liberty to the applicant to file separate OAs

since the OA that he had filed contained multiple reliefs. Thereafter the applicant filed OA No.3312/2015 which was disposed of on 10.09.2015 with a

direction to the respondents to dispose of the representation of the applicant dated 02.02.2015 and to pass appropriate speaking and reasoned orders.

2.3 Since the representation of the applicant was not disposed of by the respondents as per the directions given in the OA, he filed a Contempt Petition

No.305/2016 in reply to which the respondents submitted that they have fully complied with the order of this Tribunal dated 10.09.2015 and produced a

copy of the order dated 05.12.2016. Accordingly, the CP was closed.

2.4 Aggrieved by the order dated 05.12.2016, the applicant has filed the instant OA.

3. The respondents in the counter reply have mainly contended that the applicant performed his duties during the night shift for the normal working

hours and he was on rest during remaining part of the day. Hence, he is not entitled to any extra payment.

4. The respondents have also filed a short affidavit through which the Recruitment Rules to the post of Head Constable as also the OM dated

05.05.1994 of the Department of Personnel and Training have been submitted.

4.1 In this short affidavit the respondents have contended that the OM dated 04.10.1989 is not applicable to the applicant. They have also stated that

subsequently OM dated 05.05.1994 has been issued as per which provisions for providing Night Duty Allowance to Resident (Night Duty) Clerks in

the Central Secretariat & Allied Offices and Peons attached to them has been made.

5. The applicant, on the other hand, has filed reply to the short affidavit filed by the respondents, which contains OM dated 04.10.1989 of DoP&T as

also extracts of the report of 6th & 7th Central Pay Commissions. It is, however, not clear as to how the recommendations of the 6th & 7th Central

Pay Commissions, extracts of which have been attached, in any way support the contention of the applicant regarding his eligibility for grant of Night

Duty Allowance.

6. Learned counsel for two sides during the course of arguments further expanded the contentions that they have made in the pleadings on file.

7. I have carefully gone through the pleadings and have also considered the arguments advanced by the learned counsel for two sides.

8. The impugned order dated 05.12.2016 contains reference to other points made in the representation of the applicant also but for the purpose of the

present OA, I shall only be considering those points which relate to the claim of the applicant regarding grant of Night Duty Allowance. The impugned

order mentions that the Enforcement Branch in department functions round the clock and all the officials are always on duty. During the period under

reference the official performed duties only during the night shift for the normal working hours and he was on rest during remaining part of the day.

Since, he has not performed duties more than normal working hours, his claim for additional payment for duties performed in the night shift is not

tenable.

9. A plain reading of this statement shows that it is reasonable and logical and, perhaps, nothing more was essential to be provided. However, for

abundant clarity and in the interest of justice, the applicant was given due opportunity to cite or refer to any order which provided for the grant of

Night Duty Allowance to him. He has submitted the OM dated 04.10.1989 of DOPT (Annexure-A of rejoinder). From a perusal of the OM it is clear

that it is related to Ministries and Departments of Govt. of India and does not relate to the applicant, who is an employee of the Govt. of NCT of

Delhi. The Recruitment Rules that have been submitted by the respondents do not provide any assistance in the issue being decided.

10. I have carefully gone through the matter under examination and find that there is no specific provision which the applicant has produced or

referred to, which would support his contention for the grant of Night Duty Allowance. The applicant performed duties only during the night shift and

he was on rest during remaining part of the day. It is obvious that the officials of the Enforcement Branch in the department are not performing a desk

job and it is, therefore, to be expected that the applicant would also be required to work during the night shift. The impugned order itself makes it clear

that the applicant was given rest during the day in lieu of working in the night. As such, there is absolutely no merit in the contention of the applicant

that he should be provided Night Duty Allowance.

11. Under the circumstances, the OA is dismissed. No order as to costs.