

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2418/96

New Delhi this the 18th day of March, 1998.

Hon'ble Sh. S.P. Biswas, Member (A)

Miss S. Topno and 55 others
(as mentioned in the memo of parties)
working as Para-Medical Staff in the
Ordinance Factory, Murad Nagar,
Hospital. Applicants

(through Sh. V.P. Sharma, advocate)

versus

1. Union of India, through
Secretary, Ministry of
Defence, Govt. of India,
New Delhi.
2. The Director General,
Ordinance Factories Board,
10-A, Ackland Road,
Calcutta.
3. The General Manager,
Ordinance Factory,
Muradnagar, Distt. Ghaziabad. Respondents

(through Sh. K.C.D. Gangwani, advocate)

ORDER

The applicants who are employees of Para Medical Staff in the Ordinance Factory, Murad Nagar, Hospital are before us seeking grant of double the rate of over time allowance that are allegedly being paid to similarly placed employees working in other ordinance factories under the respondents. The applicants are working in the capacity of Matron, Sister Grade-I, Sister Grade-II, Pharmacists, Lab-Technicians, Midwives, Sweepers and Ambulance Drivers etc. The learned counsel for the applicants argued that as per Section 59 of the Factories Act, workers who work in a factory for more than 9 hours

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in a day and for more than 48 hours in a week shall, in terms of the existing provisions are entitled to wages at twice the rate they are ordinarily getting. The applicants would base their claims on the decisions dated 16.9.91 of the Madras Bench of this Tribunal in OA-969/89. The orders of the Madras Bench were subsequently supported by judgements of this Tribunal in Jabalpur Bench in OA-363/86 decided on 4.3.94. The main plank of attack by the applicants is that there is no justification for denying double rate of over time to them working out side the factory but within the factory estate especially after the issue of letter dated 6.11.74 by the Controller General of Defence Accounts, New Delhi clarifying that the term 'factory premises' would include the whole area between the inner perimeter wall and the outer fencing of the factory and that all the Industrial and Non-Industrial employees of the factory are getting over time allowance at double the rate.

In the counter, the respondents, besides taken the plea of jurisdiction, have opposed the claims stating that over time payment is not a matter of right or service condition of the Para Medical Staff. The Para Medical Staff are working in three shifts in a day and they are not required to stay for their work beyond 8 hours of normal working. Accordingly, Para Medical Staff, like the applicants herein, are not entitled for any over

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time allowance on double the rate as demanded. Besides, the applicants did not make any official representation highlighting their grievances. The respondents would also contend that the applicants are not workers under the definition of 'Factory Act' and the claim of over time arises only when the individual is detained to carry out the work beyond 8 hours. The applicants are not performing their duties within the premises of the factory. The Ordinance Factory Hospital at Murad Nagar which is the working place of the applicants herein is situated outside the factory parameter walls and the provision of Section 59 of the Factory Act is only applicable to the employees who are covered under the definition of workers under Factory Act 1948. The respondents have further submitted that the judgement referred to is not applicable in the facts and circumstances of the case.

The respondents, in an attempt to draw strength to their contentions have cited the judgement of the Hon'ble Supreme Court in the case of Union of India Vs. T. Bombhate & Ors. (1991(3) SCC 11) wherein it has been held that no Court/Tribunal could compel the Government to change its policy involving financial expenditure.

In the present case, I find that the applicants had filed a separate miscellaneous application/tranfer petition under Section 25 of the

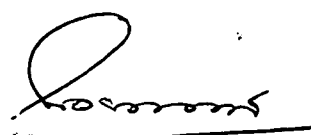
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Administrative Tribunals Act, 1985 for this O.A. being heard before the Principal Bench New Delhi. The same was allowed vide orders dated 13.12.96. I also find that an appeal from All India Ordinance Factories Para Medical Staff Association dated 18.6.95 was addressed to Respondent No.3 and this was followed by yet another appeal dated 1.9.85 referring thereto the orders of the Jabalpur Bench of this Tribunal. Both these appeals remain unanswered till today. In addition to this communication, I do not find any detailed representation from the applicants giving the details of dates/timings etc. to establish that they have put in extra hours of duty to claim double the rate of over time allowance.

Under the circumstances afore-mentioned, the ends of justice could be met by disposing of this O.A. with a direction to respondents. The applicants shall make a detailed representation to respondents within a period of three weeks from the date of receipt of a copy of this orders. The respondents shall consider the same in accordance with the extant rules and decisions of this Tribunal of both Madras and Jabalpur Bench within a period of three months from the date the representation is received, pass a speaking order with reasons and communicate the same to the applicants.

The O.A. is disposed of as aforesaid. No costs.


(S. P. Biswas)
Member (A)

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