IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPA BENCH : NEW DELHI

DATE OF DECISION 5-6-1992

OA No 1774/91 (PB) (T)
Shri SMA Haque & Others

OA No 1775/91 (PB) (T)
Shri T.T. David & Others

OA No 1776/91 (PB) (T)
Shri S.P. Saxena & Others

... APPLICANTS

Versus

Union of India & Others

... RESPONDENTS

CORAM :-

Hon'ble Mr. P.K. Kartha, Vice Chairman (J)

Hon'ble Mr. I.K. Rasgotra, Member (A)

FOR THE APPLICANTS - None

FOR THE RESPONDENTS - Mrs Raj Kumari Chopra, Counsel

JUDGEMENT

(Delivered by Hon'ble Mr I.K. Rasgotra, Member(A))

In accordance with the Orders passed by the Hon'ble Chairman in MP No. 1263/89 on 30.5.1990/91, following cases which raise identical questions of law were directed to be transferred and heard at the Principal Bench, to avoid any conflict of decision, from the Additional Benches. In pursuance of the above decision, these cases as re-numbered at the Principal Bench came up for hearing before us today. They are :-

(i)	649/88	-	Allahabad Bench	OA No 1774/91 (PB)
(ii)	448/88	-	New Bombay Bench	OA No 1775/91 (PB)
(iii)	645/88	-	New Bombay Bench	OA No 1776/91 (PB)

2. Although, the cases have been posted in Daily Cause List Peremptorily for Final Hearing since 21.5.1992, none was present for the petitioners. In the circumstances we had

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no alternative but to proceed with the cases as per record before us. We have gone through the Original Applications and other documents filed by the applicants and heard by Learned Counsel for the Respondents.

2. As the issues of law and of fact involved are identical, in all the OAs, we propose to deal with O.A. No 1774/91 (PB)(T) in detail and the conclusions arrived therein will be ipso facto be applicable to other two O.As.

3.(i) The applicants Shri SMA Haque and 295 others in OA 1774/91 (PB) are working in different Ordnance factories at Kanpur as Foreman, Assistant Foreman and Store Holders. These Ordnance factories e.g. Small Arms Factory, Ordnance and Equipment Factory are registered with the Inspector of Factories or Chief Inspector of Factories, as the case may be, in the respective States under the State's Factories Act. The applicants had been working under the arrangement of systematic overtime, which they had compulsorily to put in. It is their understanding that the systematic overtime shall continue as part and parcel of their service conditions and no change will be introduced without their agreement. The Ordnance factories have been working on systematic overtime to the extent of 54 hours per week with little variation in hours of working per week. This system was, however, suddenly altered to the prejudice of the applicants by the issuance of an Order dated 27.4.1988 (Page 88 of the Paper Book) according to which the total working hours in a week shall not exceed 51 hours and (NGOs) Non-Gazetted Officers of the level of Foreman, Assistant Foreman and Store Holders, Assistant Store Holders will be deployed on over-time only in alternate weeks depending upon functional requirement. The series of Orders issued in each Workshops/Ordnance Factories have reduced overtime working of the category of Foreman, Assistant Foreman and Store Holders by 50% as they are to be deployed on overtime by rotation. The applicants contend that the Orders of the Respondent are not based on reasonable classification and are arbitrary and discriminatory.

(ii) Shri T.T. David and 117 others who are applicants in O.A. 1775/91 (PB) (T) are working as Foreman, Assistant Foreman at Ordnance Factory Chandrapur (Chanda) and are aggrieved by identical Orders passed by the Competent Authority, reducing their overtime under the arrangement of Systematic Overtime by 50%.

(iii) O.A. No 1776/91 (PB) (T), is filed by Shri S.P. Saxena and 9 Others who are working as Foreman, Assistant Foreman at High Explosive Factory Khadki, Pune, and are aggrieved by the Orders of the Chairman, Ordnance Factory Board dated 4.4. 1988 reducing their systematic overtime by 50% by booking them on rotational basis.

4. By way of relief the applicants pray that the Order issued by the respondents by Telex on 4.4.1988 and subsequent Orders No 367 dt 27.4.1988, 752 dt 15.4.1988, 191 dt 16.4.1988, 118 dt 16.4.1988 and 154 dt 16.4.1988 be quashed to the extent that respondent continue the arrangement of systematic over-times in respect of the applicants in the same manner as other categories of NI., I.E.S. and NII.Es Staff, thereby restoring status-quo-ante prior to the issuance of the impugned Order.

5. Learned Counsel for the respondents Mrs Raj Kumari Chopra submitted that a similar matter involving identical issues of law has already been decided by the Calcutta Bench of the Tribunal in Sukumar CH. Khan V/s Union of India, TA No 112 of 1987 on 6.4.1990 and that the above cases are fully covered by the Sukumar CH. Khan (Supra) case.

6. We have perused the judgement in Sukumar CH. Khan (Supra) case and gone through the record of the matters before us very -

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carefully. The applicant in Sukumar CH, Khan (Supra) was an employee of Ishapur Rifle Factory which was also functioning under the systematic overtime. The systematic overtime was, however, stopped vide order dated 30.6.1984 in respect of the applicant, which act of the respondents was challanged by him in the Calcutta High Court. The case was subsequently transferred to the Calcutta Bench of the Tribunal under Section 29 of the Administrative Tribunal Act. The Calcutta Bench in its Order dated 6.4.1990 observed :-

" At the very outset we must say that this application is wholly misconceived. The applicants only grievance in this application is that he has not been given any overtime duty since July, 1984. It is not understendable to us as to how the claim of over time allowance as made by the applicant is entertainable when that is not a part and parcel of normal pay and allowances as admissible to an employee. It is undisputed position that overtime work is detailed on production. It may be a fact that at the relevant time when the impugned order was issued there was some functional requirement and some urgency of production for sanctioning overtime work, but it cannot be concluded therefrom that the applicant should have been given some overtime work at that time. It cannot be disputed that the discretion as to who should be detailed on overtime work rests with the management and it is for the management to decide as to after detailing for overtime work from whom more work would be available. It might be that in consideration of that some other employees got overtime duties at the relevant period and the applicant did not get such. In our opinion that would not surely make his present claim justiciable. The management has the right to compel an employee to work on overtime beyond normal working hours, but an employee has no right to compel the management to give him over-time work. Such being the position we are of opinion that the present application cannot at all be entertained.

5. In this connection we may mention that long back the Third Central Pay Commission recommended for withdrawal of over-time allowance. While submitting its report the IVth Central Pay Commission deprecated payment of overtime allowance on the ground that this system tends to generate inefficiency and creats an unhealthy atmosphere in Offices. The IVth Central Pay Commission in their report unequivocally recommended for the discontinuance of overtime allowance. Bearing that in mind we hold that such a claim for overtime duty and overtime allowance is not admissible.

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6. In his application the applicant has specified some past incidents, from which, according to him, it can be concluded that the order debarring him from getting overtime work was malafide. We are unable to accept this contention. In the incidents mentioned in the application the applicant might have justiciable cause for redressal of which he had moved Calcutta High Court. It does not follow from these incidents that out of vengeance the concerned authority had passed the order debarring him from doing overtime duties. It is not a case where all the employees of Ishapore Rifle Factory have been performing overtime duties and the applicant has only been singled out being debarred from getting such duties. We have already mentioned that <u>when the discretion of giving overtime duty rests on the management, it is for the management to decide as to who would be detailed for such work from whom they would get more work.</u> We have absolutely no reason to intervene into this matter. Considering all we are of opinion that as the <u>impugned Order is not tainted with malice</u> the present application is liable to be dismissed." (Emphasis Supplied)

7. We are in respectful agreement with the decision of the Calcutta Bench that the overtime cannot be claimed as a matter of right. In fact, the practice of overtime is intended to have been discouraged under the provisions made under the Industrial Disputes Act as it effects the health and overall productivity of the workers in the long run. It was for this reason that various constraints have been prescribed for employing workers on overtime basis. In the present matter before us all that has been done is that in pursuance of the recommendations of the Third and Fourth Central Pay Commission, vigorous effort has been made to contain the working on overtime basis both in the interest of the workers and in the interest of the national economy. The booking of 50% NCOs on rotation basis under the arrangement of systematic overtime is a step which seems to have been taken by the Respondent in the direction of the ultimate objective of eliminating overtime working with a view to reduce stress and strain on the workers and to improve productivity. The respondent have the undoubted right to formulate policy in such

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matters. Further no provision in law has been brought to our notice which obligates respondents to make the workers/NGOs work on overtime basis, when overtime is not required by Administrative and national considerations.

8. In the above conspectus of the case we do not find any merit in the argument of the applicants to continue the arrangement of systematice overtime even when overtime work is not required by the respondents. Accordingly application is dismissed with no orders as to the cost.

9. What we have said in respect of OA No 1774/91 (PB) in paragraph 8 above applies mutatis mutandis to OA Nos 1775/91 (PB) (T) & OA No 1776/91 (PB)(T).

10. All the OAs accordingly are dismissed with no Orders as to the costs. Let copy of this order be placed in all the case file.

(I.K. RASGOTRA)
MEMBER (A)
5/6/1992

(P.K. KARTHA)
VICE CHAIRMAN (J)

Central Administrative Tribunal
New Delhi

CERTIFIED COPY
Dated .....
Deputy Registrar (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
नई दिल्ली
New Delhi