

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

**Original Application No.881 OF 2001.**

ALLAHABAD THIS THE 8<sup>th</sup> DAY OF June 2007.

**HON'BLE MR. JUSTICE KHEM KARAN, V.C.**

1. All India Ordnance Factories Para Medical Staff Association through its Chairman Mrs. K.K. Nair Matron, O.E. & P. Fys Hospital, Kanpur Cantt.
2. Shri N.K. Shukla, Radiographer, O.E. & P Fys Hospital Kanpur Cantt.

...Applicants in O.A. No.881/01.  
(By Advocate :Shri R. K. Shukla)

**Versus**

1. The Union of India, through the Secretary, Ministry of Defence, Deptt. Of Defence Production, Govt. of India, New Delhi-11.
2. The Secretary, Ordnance Factory Board, 10-A, Shaheed Khudi Ram Bose Road, Calcutta-1.
3. The General Manager, Ordnance Equipment Factory, Kanpur.

...Respondents in O.A. No.881/01.  
(By Advocate :Shri A. Mohiley)

**CONNECTED WITH**

**ORIGINAL APPLICATION NO.590 OF 2002.**

1. Ganesh Prasad Jaiswal, S/o Late Shri Shankwer Lal, R/o H.No.145/134, Om Purwa, Chakeri, Kanpur.
2. Raj Kumar, Son of Shri Sone Lal, R/o H.No.116/185, Rawatpur, Kanpur.
3. Smt. Raj Kumari Gupta, W/o Shri Thakur Prasad Gupta, R/o H. No.2A/74-B, Azad Nagar, Kanpur.
4. Prem, S/o Late Prabhu, R/o Q. No.18/1, Defence Coloney, G.T. Road, Kanpur.
5. Ram Asrey, S/o Shri Durga Prasad, R/o H. No.12/480, Gwaltoli. Kanpur.

...Applicants in O.A. No.590/02  
(By Advocate :Shri R.K. Shukla)

**Versus**

1. The Union of India, through the Secretary, Ministry of Defence, Deptt. Of Defence Production, Govt. of India, New Delhi-11.
2. The Secretary, Ordnance Factory Board, 10-A, Shaheed Khudi Ram Bose Road, Calcutta-1.



3. The General Manager, Ordnance Equipment Factory,  
Kanpur.

....Respondents in O.A. No.590/02

(By Advocate :Shri A. Mohiley)

### **ORDER**

Though the pleadings and written arguments filed by the parties in the abovementioned two O.As are a little lengthy, but the points involved are not so complex or intricate, atleast after order dated 27.4.2000 of this Tribunal in earlier O.A. No.478 of 1997, All India Ordnance Factories Para Medical Staff Association O.E.F, Hospital Branch Kanpur and 47 others Vs. Union of India and others. A close perusal of order dated 27.4.2000 (A-1 in O.A. No.590 of 2002) would reveal, that relying on decision dated 4.3.2004 in T.A. No.363 of 1990 (Misc Application No. 2020 of 1983), of Jabalpur Bench, decision of Madras Bench of this Tribunal in Ordnance Factory Hospital Employees Association V. Union of India and others and on certain other such decisions of other Benches, this Bench at Allahabad, allowed overtime Allowance at double the rate to the applicants therein, from the date of filing of their O.A. It is admitted case of the parties, that the said order dated 27.4.2000 became final and not only that the respondents complied with those directions, by giving O.T.A at rate of the applicants of that O.A. from the date of filing of O.A.

2. There is no dispute between the parties that subsequently the respondents allowed O.T.A at double rate to Para Medical Staff working in the Hospitals of Ordnance Factories, to mitigate the discrimination between such staff working in the Hospital and in the dispensaries, w.e.f. 28.2.2001, vide order dated 27.3.2001 (CA-1 in O.A. of 2002).

3. In O.A. No.881 of 2001, Association named All India Ordnance Factories Para Medical Staff Association Ordnance Equipment Factory Branch Kanpur, through its Chairman, has prayed for directing the respondents to pay O.T.A at double rate



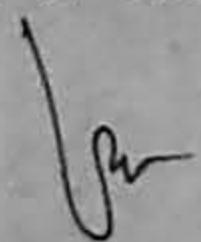


to Para Medical Staff, Kanpur Hospital of the Factory, from 1989 or 1983 when such benefit was given to such staff of Madras based Factories and Madhya Pradesh based Factories, respectively, on the basis of decisions of Madras and Jabalpur Benches of this Tribunal. According to them, respondents order dated 27.3.2001, restricting this benefit to the said staff at Kanpur, from 28.2.2001, being discriminatory, deserves to be quashed.

4. In O.A of 2002, the five applicants claiming to be the Para Medical Staff (No. 1, 2 and 3 claim to be Ward Assistant No. 4 and 5 to be Sweepers of Factory Hospital) pray that they should be given O.T.A at double the rate, from the date, it has been given to applicants of O.A. No.478 of 1997 and respondents letter dated 31.5.2000/8.6.2000 (A-IV to that O.A.) restricting the benefit of the applicants of that O.A. No.478 of 1997 only, be quashed.

5. The respondents have contested the claims, in both the O.As. In so far as the claim of the Association in O.A. No. 881 of 2001, for giving the said benefit from 1983 to 1989 is concerned, they say firstly the O.A is highly time barred and secondly, considering the fact that decision dated 27.4.2000 rendered in O.A. No.478/97 to which the Association was a party, has become final, the O.A. is barred by the principles of resjudicata. They say, none of the employee has come to claim such O.T.A from 1983 to 1989, so the Association or its office bearer cannot be said to be aggrieved, for purposes of maintaining O.A. under section 19 of the Administrative Tribunal Act, 1985. They go on to state that such type of O.A., being in the nature of Public Interest Litigation is not maintainable under section 19 of the Act of 1985. According to them, grant of O.T.A at double rate or at single rate, to Para Medical Staff of the Hospital of Factory, bearing a policy matter, the Court or Tribunal should not interfere.

6. As regards the claim in O.A. No.590 of 2002, that the applicants should be given the said benefit from the date, it was given to the applicants of O.A. No.478 of 1997 and not from

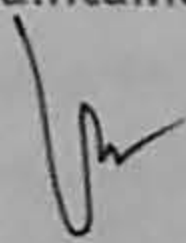




28.2.2001, the contention of the respondents is that those who were not party to that O.A. of 1997, cannot claim that such benefit be given to them from the same date. According to them, applicants No.4 & 5 at present are working as Labourer (s) in Production Section of Factory and are not Para Medical Staff.

7. Parties counsel have placed on record, their written arguments. I have gone through the material on record and through the written arguments.

8. In so far as O.A. No.881 of 2001 is concerned, it appears to be not maintainable for the following reasons. First, the association was one of the applicants, in earlier O.A. no. 478 of 1997, so not only it but all its members are found by decision dated 27.4.2000, which gives benefit only from the date of filing of that O.A. and not from 1983 or 1989. Second, so long as the decision dated 27.4.2000 holds the field, none can be permitted to say something, which tend to question that decision. Third, in case the association or any of its member, was of the view that benefit ought to have been given, from the dates, it was given to their counterparts in Factories of Madras or Madhya Pradesh, he should have taken the matter to higher forum. Fourth, the applicants themselves argue, on the basis of Prabhakant Ayodhya Pd. Vs. Union of India and others, All India Services Journal 1-2003 (1) page 54 (Ahmadabad Bench), that when association fights a case, all the members are deemed to be parties in the case. The applicants in earlier O.A. of 1997, could have claimed the benefit from the dates, it was given to employees of Madras or M.P. based factories, and if they could not or did not, further claim on the same cause of action will be barred by the principles contained in order II Rule 2 of the Code of Civil Procedure and if it was claimed but not accepted, it will be barred by principles of resjudicata as contained in section 11 of the same Code. So the claim of the benefit from 1983 or 1989, is not maintainable after decision dated 27.4.2000.

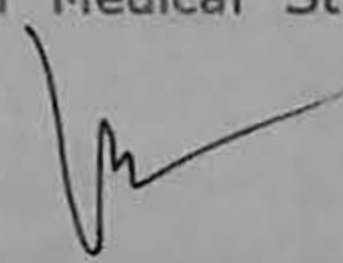




9. Moreover, it is not disclosed in this O.A. of 2001, as to when cause of action arose, for claiming benefit in question from 1983 or 1989. If it arose on 13.9.1991, when Madras Bench gave its decision in O.A. No. 980 and 983 of 1989, or on 4.3.1994, when Jabalpur Bench allowed such benefit in T.A No.363 of 1986 (Misc. Petition No.2628 of 1983), then why the matter was kept at that till 2001 and if it arose on 27.3.2001, when the respondents extended the benefit of O.T.A at double rate vide order dated 27.3.2001, restricting it from 28.2.2001, then how the applicants of this O.A of 2001, will get away from verdict dated 27.4.2000 in O.A. No. 478 of 1997. Shri R.K. Shukla, the learned counsel for the applicants, has not successfully adverted to all these points, in his written arguments. Perhaps, he is of the view that since the decisions of Madras or Jabalpur Benches, were in between Association and the respondents, so all the members are to be given that benefit. But he has not attempted to satisfy as to how he will meet decision dated 27.4.2000, also rendered in petition filed by Association at Kanpur and other members. Can applicants of that O.A. of 1997, say, without challenging that decision, that they should be given the benefit from any date prior to the date when that O.A. was filed. The answer is, they cannot and if so, applicants in O.A. No.881 of 2001 cannot do so.

10. So, the O.A. No.881 of 2001 deserves to be dismissed as non-maintainable and the applicants therein are entitled to no relief at all.

11. In so far as the O.A. No.590 of 2002 is concerned, there appears to be force, in the contention of the applicants. In view of the decision dated 12.3.2001 of Ahmedabad Bench in O.A. No.524/98, in Ayodhya Prasad's case (supra), applicants who were member of the Association, will be treated to be the party in that O.A. of 1997. The benefit of order dated 27.4.2000, should have been given to all the similarly situated members of the applicant NO.1, in O.A. No.478 of 1997. The respondents have extended the benefit of O.T.A at double rate to Para Medical Staff of the

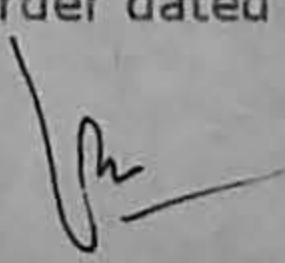




Hospitals of the Factory, as mentioned in Defence Office Memo dated 25.6.1983 and Govt. order dated 27.3.2001 (CA-1) but from 28.2.2001, I am of the view the applicants should have been allowed that benefit from the same date, from which it was given to applicants of O.A. No.478 of 1997. When their association got the verdict dated 27.4.2000, for such benefit from the date of filing O.A. of 1997, applicants who claim to be the members thereof, should have been given that benefit from the same date. It is not good, to force the members to file O.As, for getting that benefit, once their association was one of the applicants in O.A. of 1997.

12. Whether the applicants No.4 & 5 are at present working as such Para Medical Asstt., in the Hospital and Dispensary concerned of the Factory at Kanpur, does not appear to be so relevant, in the context of the controversy as to whether they and other applicants are to get the said benefit from the date, applicants of O.A. NO.478 of 1997, got it, for the respondents do not dispute that applicants No.4 and 5 were working as such in 1997 and upto February, 2001, when the respondents allowed such benefits to other such Staff. Moreover, the question of payment of O.T.A at double the rate, will arise only if one of such applicants has worked in the past or works in future as Para Medical Staff in the Hospital or Dispensaries of the respondents factory at Kanpur.

13. In this O.A of 2002, we are not concerned with the question as to whether Cook, Dhobi, Malil, Masalchi etc. working in such hospital/Dispensaries, should or should not be brought within the purview of Para Medical Staff, entitled to get O.T.A at double rate. None of the present applicants says that he was working as Cook, or Mali or Dhobi or Mali. Applicants No.1,2 and 3 say that they have had been working as Ward Asstts. and applicants No. 4 and 5 say that they have had been working as Sweepers, in the Hospital of the factory at Kanpur and both these types of workers are included in the category of Para Medical Staff of Dispensary, as stated in memo of 1983 (see para 10 of order dated 27.4.2000). I





need not refer to those arguments of Shri Mohiley, where he says the order dated 27.4.2000, in respect of decategorised workers such as Dhobi, Mali etc, being advisory in nature, is not binding on the respondents.

14. Considering the nature of controversy so involved and the order dated 27.4.2000 of this Tribunal, which has been implemented by the respondents. I need not refer to those arguments and the judicial pronouncements, in support thereof, where it is contended that in matters of pay scales, equal pay for equal work, etc. the Courts should normally leave the same to be decided by the Govt. with the help of the experts in the respective fields.

15. There appears to be no need for quashing letter dated 31.5.2000/8.6.2000.

16. In view of the discussion made above, the O.A. No.881 of 2001 filed by the Association, is dismissed but with no order as to costs and the other O.A. No. 590 of 2002, filed by Ganesh Prasad Jaiswal and 4 others, is disposed of with a direction to the respondents therein, to extend benefit of Overtime Allowance at double rate to them, from the date this benefit was given to applicants of O.A. No. 478 of 1997, decided on 27.4.2000, in the light of observations made above, and pay the difference within a period of three months from the date a certified copy of this order is produced before respondent No.2. No order as to costs.

17. Let a copy of this order be placed on the record of O.A. No.590 of 2002.

  
Vice Chairman

Marish