

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

O.A. 350/362/2021
MA. 350/138/2021

Date of order: 11.03.2021

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. ICHAPUR RIFLE FACTORY WORKERS UNION, a registered Union represented by its General Secretary namely Shri Sukanta Sur, son of Late Hardhan Sur, having its registered office at 230/3/1, Ratneswar Ghat Road, P.O. Garulia, District North 24 Parganas, Pin-743133.

2. Sri Sukanta Sur, son of Late Hardhan Sur, Doctor Para, P.O. Ichapore Nawabganj P.S. Noapara, District - North 24 Parganas Pin-743144.

3. Sri Pranab Dey, son of Sri Ganendra Dey, East Chandi Bari, Shaktigarh, Shyamnagar Kaugachi (Ct), District - North 24 Parganas, Pin-743127.

4. Sri Rupam Bhattacharyya, son of Sri Ashok Bhattacharyya, 15 Hand Kalitala, P.O. Nona Chandanpukur, P.S. Titagarh, District - North 24 Parganas, Pin-700122.

5. Sri Ashim Pradhan, son of Sri Dhiren Pradhan, Marik Para, Ichapore Nawabganj, P.O. Ichapore Nawabganj, P.S. Noapara, District North 24 Parganas, Pin-743144.

6. Sri Indrajit Kumar singha, son of Sri Yogendra Prasad Singh, Pithauri Tawakal Tola, P.O. Paighambarpur (K. Manokar), P.S. Baniyapur, District - Saran (Bihar), Pin-841403.

7. Sri Nirmalendu Paul, son of Late Basanta Paul, 230/3/1, Ratneswarghat Road, Garulia, P.O. Garulia, P.S. Noapara, District North 24 Parganas, Pin-743133.

.....Applicants.

-VERSUS-



1. **UNION OF INDIA** service through the Secretary, Ministry of Defence (Defence and Production), Government of India, South Block, New Delhi - 110001.

2. **THE CONTROLLER GENERAL OF DEFENCE ACCOUNTS**, Ministry of Defence, having its office at Ulan Batar Road, Palam Colony, Delhi Cantonment, New Delhi - 110010.

3. **THE CHAIRMAN**, Ordnance Factory Board, Government of India, Ministry of Defence, having his office at 10A, Shaheed Khudiram Bose Road, Calcutta - 700001.

4. **THE PRINCIPAL CONTROLLER OF ACCOUNTS (Fys.)** Ministry of Defence, having his office at 10A, Shaheed Khudiram Bose Road, Calcutta - 700001.

5. **THE GENERAL MANAGER**, Rifle Factory Ichapore, P.O. Ichapur- Nawabganj, District - North 24 Parganas, Pin-743144.

.....Respondents.

For the Applicant : Mr. S. S. Ray, Counsel
Mr. S. Basu, Counsel

For the Respondents : Mr. S. Paul, counsel



ORDER(Oral)

Per Bidisha Banerjee, Judicial Member

Heard both:

2. The applicants have preferred an M.A. bearing No. 350/138/2021 praying for liberty to jointly pursue this Original Application. On being satisfied that the applicants share common interest and are pursuing a common cause of action, they are permitted to jointly move this matter. M.A. No. 138 of 2021 is hence allowed under Rule 4(5)(a) Central Administrative Tribunal (Procedure) Rules, 1987.

3. This application has been filed to seek the following reliefs:

- "8(a) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987 as because the concerned Union is making this original application and their members are the employees of the concerned Ordnance Factory, therefore under Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987 this original application is permissible;
- (b) To pass an appropriate order directing upon the respondents to grant the benefit of calculation of OTA by inclusion of various allowances i.e. HRA/TA/SFA while calculating OTA in terms of the direction given by the Learned Central Administrative Tribunal, Principal Bench, New Delhi in order dated 25.04.2018 in OA No. 650/2016 and in terms of the order dated 04.04.2014 passed by the Learned Central Administrative Tribunal, Hyderabad Bench in OA No. 1372/2012 terms of the order passed by Hon'ble High Court of Judicature at Madras in W.P. No. 609, 1276, 1466, 1980 to 1982, 9076 and 21035 of 2011 and connected MPS.
- (c) To pass an appropriate order directing upon the respondents to give the benefit of calculation of OTA by inclusion of various allowances i.e. HRA/TA/SFA while calculating OTA will be extended provisionally to the applicants with retrospective effect i.e. with effect from 26th June, 2009 along with all consequential arrear benefits in terms of the direction given by the Learned Central Administrative Tribunal, Principal Bench, New Delhi in order dated 25.04.2018 in OA No. 650/2016 and in terms of the order dated 04.04.2014 passed by the Learned Central Administrative Tribunal, Hyderabad Bench in OA No. 1372/2012.
- (d) Costs;



4. Ld. Counsel for applicants submits that he would be satisfied if a direction is given to the competent respondents' authority to consider the case of the applicants in the light of the order passed by this Tribunal in OA. 1523/2019 with MA. 893/2019 dated 09.12.2019, annexed as annexure A-8 of the OA, which reads as under:

"3. Heard both Ld. Counsel, examined documents on record. The matter is taken up at the admission stage for disposal.

4. The moot issue on account of which the applicants are aggrieved relates to inclusion of HRA, TA and SFA for the purpose of calculating overtime allowance under Factories Act. The applicants had approached this Tribunal earlier in O.A. No. 574 of 2019 which was disposed of on 10.6.2019 with the following operative orders:-

"5. It is no doubt true that relief was granted by the Madras High Court and the Principal Bench in the proceedings. However, the question as to whether the orders passed by the High Court and the Tribunal have been assailed before a superior forum or whether the applicants stand on the same footing as do the applicants in the writ petition and the O.A., needs to be examined. Representation dated 28.3.2019, made in this behalf is pending.

6. We therefore dispose of this O.A. directing to examine the representation of the applicant dated 28.3.2019 with reference to the provisions of law and pronouncement of courts on the subject and pass appropriate orders within a period of 2 months from the date of receipt of this order. There shall be no order as to costs."

The respondent authorities, in compliance with the said orders, issued a speaking order dated 10.8.2019 (Annexure A-13 to the O.A.) but concluded as follows:-

"5. Therefore, keeping in view of the aforesaid position, admissibility of inclusion of various allowances i.e. HRA/TA/SFA while calculating OTA may not be accepted at this stage as the entire issue is pending before Hon'ble Supreme Court. This disposes of representations dated 28.3.2019 preferred by the applicants."

Ld. Counsel for the applicant would agitate that this Tribunal in its Hyderabad Bench had directed that all allowances such as HRA, TA and SFA be included in calculation of OTA from 1.1.2006 and that the Principal Bench of this Tribunal had accorded the benefits to the applicants therein provisionally subject to the final outcome of Hon'ble Apex Court in SLP No. 12845 to 12852 of 2012. The respondent authorities, on the other hand, while complying with the decision of the Kolkata Bench in earlier O.A. No. 574 of 2019 had declined to consider the prayer of the applicants on the grounds of pendency of the entire issue before the Hon'ble Apex Court. As the applicants before the Kolkata Bench have been subjected to discriminatory treatment, they have approached this Tribunal in second round litigation challenging the speaking order of the respondent authorities.

Ld. Counsel for the applicants would therefore submit that the respondent authorities be directed to grant the inclusion of such allowances in the OTA provisionally, subject to the outcome of the SLP as directed by the Principal Bench of this Tribunal.

Ld. Counsel for the applicant would further submit that the applicants are prepared to furnish an undertaking to the effect that they understand that such benefits are payable to them only provisionally, subject to the outcome of the decision of the Hon'ble Apex Court in SLP No. 12845 to 12852 of 2012, and, in the event that the decision of the said SLP rules that HRA, TA & SFA are not to be included in overtime allowance, the applicants would undertake (through an affidavit) to refund the entire payment received in this regard and would also agree to recovery from their salaries/pension of the excess amount so paid.

5. Ld. Counsel for the respondents does not object to issue of further directions on the respondent authorities, subject to furnishing of such undertaking by the applicants concerned.

6. Accordingly, without entering into the merits of the matter, and, with the consent of the parties, we would direct the applicants to prefer a comprehensive representation to the respondent authorities citing relevant judicial decisions in support and also that they are willing to furnish a clear undertaking (through an affidavit), that any amount payable to them provisionally on ground of inclusion of HRA, TA and SFA in overtime allowance is subject to the outcome of the decision in SLP No. 12845 to 12852 of 2012 and, in the event that the decisions in SLP do not permit inclusion of HRA, TA and SFA in overtime allowance, the applicants would either undertake to agree to recovery of the excess amount from their salary/pension, as applicable.

Upon receipt of such complete representations, the competent respondent authority shall reconsider the scope of according the benefits to the applicants in light of the decision arrived at by the Principal Bench of the Tribunal in O.A. No. 574 of 2019 and issue an appropriate order in modification to their speaking order dated 6.4.2019 to such effect within a period of 12 weeks from the date of receipt of a copy of this order.

7. With these directions, the O.A. is disposed of. No costs".



5. Ld. Counsel for respondents does not object to such disposal in accordance with law.

6. Accordingly, this O.A. is disposed of directing Ld. Counsel for the respondents to hand over a copy of proforma affidavit to the Ld. Counsel for the applicant within a week, which shall be filled up by the applicants duly endorsing from 1st Class Magistrate or Notary and shall be submitted within a period of four weeks therefrom. Thereafter, the respondents shall consider applicants' case in the light of the order passed by the Principle Bench as well as Hyderabad Bench of this Tribunal for releasing dues from the admissible dates in terms of the decision and, if found eligible, release the dues positively by 2 months thereafter, subject to outcome of the SLP No. 12845 to 12852 of 2012.

7. As prayed for by Ld. Counsel for the applicants, on behalf of Members of the applicants' Union (existing employees or retired employees), dues shall be released in favour of all the members of the Union who affirm an affidavit through 1st Class Magistrate/Notary.



In the event the decision in SLP goes against the petitioners, the respondents may recover the entire amount.

8. With the aforesaid observations, the O.A. stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

pd