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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH,

CALCUTTA

O. A. No. 350/00139 of 2021  
M. A. No. 350/0049 of 2021  
IN THE MATTER OF:

1. GUN & SHELL FACTORY

EMPLOYEES UNION, a registered Union represented by its Joint Secretary namely Shri Arup Kumar Ghosh, son of Shri Kartick Chandra Ghosh, having its registered office at 265/12/C/1, Gopal Lal Tagore Road, Kolkata- 700036;

2. SHRI ARUP KUMAR GHOSH, son of Shri Kartick Chandra Ghosh, aged about 39 years, residing at Village-Gopalnagar, P.O. Par Gopalnagar, P.S. Singur, District-Hooghly, Pin-712204 and working as Machinist (HS-II) in Gun & Shell Factory, Cossipore, Kolkata-700002.

3. SHRI INDRANIL BAGCHI, son of Indrajit Bagchi, aged about 41 years, residing at C/25, Sundia Housing

*h.s.b*

Estate, P.O. and P.S. ~Jagatdal,  
District- 24-Prganas (North), Pin-  
743125 and working as Machinist (HS-  
II) in Gun & Shell Factory, Cossipore,  
Kolkata-700002.

4. **SHRI PIYAS KUMAR DOLUI**, son of  
Late Niranjan Dolui, aged about 51  
years, residing at 14, Sitala Mata Lane,  
Baranagar, Kolkata-7000090 and  
working as S/SK in Gun & Shell  
Factory, Cossipore, Kolkata-700002.

5. **SHRI ANINDYA SANAKR HALDER**,  
son of Sri Anil Chandra Halder, aged  
about 40 years, residing at East  
Sreepally, Palta, P.O.- Bengal Enamel,  
P.S. Titagarh, District- 24-Parganas  
(North), Pin-743122 and working as  
Machinist (HS-II) in Gun & Shell  
Factory, Cossipore, Kolkata-700002.

6. **SHRI RAJIB GORAI**, son of Shri  
Kinkar Gorai aged about 35 years,  
residing at Quarter No. 8/4, NJRE,  
Cossipore, Kolkata- 700002 and

*W.H.*

working as Machinist (HS-I) in Gun Shell Factory, Cossipore, Kolkata 700002.

7. **SHRI SAMAR ROY**, son of Late Subhash Roy, aged about 43 years residing at 18/21, Dum Dum Road, Kolkata- 700002 and working as Medical Assistant in Gun & Shell Factory, Cossipore, Kolkata-700002.

8. **SHRI SUMAN RAY**, son of Sh. Biswanath Ray, aged about 47 years residing at Flat No. 9, Block-B, 3 M.N.K. Road, Kolkata- 700036 and working as Fitter (HS-I) in Gun & Shell Factory, Cossipore, Kolkata-700002.

9. **SHRI SUDIPTA KUMAR DAS**, son of Late Gopal Chandra Das, aged about 50 years, residing at Manirampur Barrackpore, Kolkata- 700120 and working as Rigger (S/SK) in Gun & Shell Factory, Cossipore, Kolkata 700002.

*hphn*

10. **SHRI SANJOY KUMAR DAS**, son of

Late Sunil Das, aged about 52 years, residing at 486/1, Kalitala Lane, Baidyabati, District- Hooghly, Pin-712222 and working as Electrician (Skilled) in Gun & Shell Factory, Cossipore, Kolkata-700002.

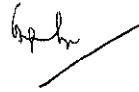
11. **SHRI AMIT KUMAR DAS**, son of

Late Ashok Kumar Das, aged about 43 years, residing at 8 No. B.A.L. Ghosh Road, Kolkata - 700057 and working as Durwan in Gun & Shell Factory, Cossipore, Kolkata-700002.

## ...APPLICANTS

## -VERSUS-

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

A handwritten signature in black ink, appearing to read 'B. P. DAS', is written over a diagonal line.

**2. THE CONTROLLER GENERAL**

**DEFENCE ACCOUNTS, Ministry**

Defence, having its office at Ulan Ba

Road, Palam Colony, De

Cantonment, New Delhi-110010.

**3. THE CHAIRMAN, Ordnance Fact**

**Board, Government of India, Ministry**

Defence, having her office at 10

Shaheed Khudiram Bose Roa

Calcutta- 700001.

**4. THE PRINCIPAL CONTROLLER C**

**ACCOUNTS (Fys.), Ministry of Defenc**

having her office at 10A, Shaheed

Khudiram Bose Road, Calcutta

700001;

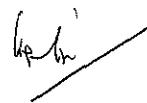
**5. THE GENERAL MANAGER, Gun &**

**Shell Factory, Cossipore, Khagendr**

Chatterjee Road, CIT, Cossipore

Kolkata- 700002.

...Respondents.



**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00139/2021  
M.A. 350/00049/2021

Date of order: 1.2.2021

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

**GUN & SHELL FACTORY EMPLOYEES UNION & ORS.**

**VS.**

**UNION OF INDIA & ORS. (Defence)**



For the Applicants : Mr. P.C. Das, Counsel  
Ms. T. Maity, Counsel

For the Respondents : Mr. S. Paul, Counsel

**O R D E R (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

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 extend the benefit of the 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 2006 in terms of the direction given by the Learned Central Administrative Tribunal, Principal Bench, New Delhi in order dated 25.4.2018 in O.A. No. 650/2016 appearing at Annexure A-5 of this original application and in terms of the order dated 4.04.2014 passed by the Learned Central Administrative Tribunal, Hyderabad Bench In O.A. No. 1372/2012 and in terms of the earlier direction given by this Hon'ble Tribunal in order dated 09.12.2019 in O.A. No. 350/1523/2019 and in terms of the order dated 11.11.2020 passed by this Hon'ble Tribunal in O.A. No. 350/705/2020 along with all arrear benefits;

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 2006 along with all

*[Signature]*

consequent arrear benefits in terms of the direction given by the Learned Central Administrative Tribunal, Principal Bench, New Delhi in order dated 25.4.2018 in O.A. No. 650/2016 appearing at Annexure A-5 of this original application and in terms of the order dated 04.04.2014 passed by the Learned Central Administrative Tribunal, Hyderabad Bench in O.A. No. 1372/2012 and in terms of the earlier direction given by this Hon'ble Tribunal in order dated 09.12.2019 in O.A. No. 350/1523/2019 and in terms of the order dated 11.11.2020 passed by this Hon'ble Tribunal in O.A. No. 350/705/2020 along with all arrear benefits;

d) To declare that the office memo dated 26<sup>th</sup> June, 2009 issued by the Government of India, Ministry of Defence and on the basis of said office memo, the subsequent office orders dated 27.08.2009 along with CGDA letter dated 27.08.2009 and office order dated 28.10.2009 are nonest and cannot be sustainable in the eye of law as per the judicial pronouncement made by the Hon'ble High Court of Judicature at Madras in Writ Petition Nos. 609, 1276, 1466, 1980 to 1982, 9076 and 21035 of 2011 and connected MPs vide order dated 30.11.2011 because which has been already quashed and/or set aside by the Hon'ble High Court of Judicature at Madras and on the basis of that, the benefit of the applicants has been granted by the Hon'ble High Court of Judicature at Madras in Writ Petition Nos. 609, 1276, 1466, 1980 to 1982, 9076 and 21035 of 2011 as well as similarly circumstanced employees get benefit by the Learned Central Administrative Tribunal, Hyderabad Bench in OA No. 1372 of 2012 vide order dated 04.04.2014 and also the decision of the Learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 650/2016 vide order dated 25.04.2018 cannot be restricted in connection to the present applicants as they are the similarly circumstanced persons and they are entitled to get the same reliefs with effect from 2006 along with all consequential benefits subject to the decision of the Hon'ble Supreme Court, if any;"



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

3. The applicants have preferred an M.A. bearing No. 350/00049/2021 praying for liberty to jointly pursue this Original Application. On being satisfied that the applicants share commonality of interest and are pursuing a common cause of action, they are permitted to jointly move this matter. M.A. No. 49 of 2021 is accordingly allowed under Rule 4(5)(b) of Central Administrative Tribunal (Procedure) Rules, 1987 subject to payment of individual court fees.

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 first approached this Tribunal earlier in O.A. No. 574 of 2019 which was disposed of on 10.6.2019 with the following operative orders:-

*[Handwritten signature]*

“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, 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, having agitated in second stage litigation (O.A. 1523 of 2019), 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 also 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, this Tribunal had disposed of the matter by directing as follows:-

“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 and issue an appropriate order in modification to their speaking order to such effect within a period of 12 weeks from the date of receipt of a copy of this order.”

*hsl*

5. That, thereafter, the respondent authorities had directed the applicants to submit such undertaking in the form of proforma affidavits upon which the applicants had approached this Tribunal in O.A. No. 350/00705/2020 (Annexure A-7 to the O.A.) which was disposed of with the following orders:-

“3. In pursuance of our earlier direction on 15.10.2020, Ld. Counsel for respondents handed over a copy of proforma affidavit to the Ld. Counsel for applicants today, which is required to be filled up by the applicants duly endorsed from 1<sup>st</sup> class Magistrate or Notary.

4. Ld. Counsel for applicants submits that the same shall be submitted by 4 weeks upon receipt of such affidavit.

5. Therefore, respondents are directed to consider the case of the applicants in the light of the order passed by the Principal Bench as well as Hyderabad Bench of this Tribunal for releasing the dues from the admissible dates in terms of the decision and release the dues positively by 2 months thereafter.

6. As prayed for by Ld. Counsel for the applicants, on behalf of Members of the Applicant Union, dues shall be released in favour of all the members of the Union who affirm through 1<sup>st</sup> Class Magistrate/Notary.”

Ld. Counsel for the applicant would submit that the respondent authorities have released the benefits on the basis of such proforma affidavits which were furnished by the applicants in O.A. No. 350/00705/2020 and the order of the respondent authorities to such effect has been annexed at Annexure A-9 to the O.A. which concludes as follows:-

“03. In compliance to OFB instruction received under Lts. No. 525/OTA/OFDC/Per/Policy dated 30/12/2020, to implement the Hon’ble CAT, Calcutta Bench order dated 11/11/2020, Overtime Allowance in respect of such employees of OFDC who have satisfied the condition as laid down by Hon’ble CAT in order dated 11/11/2020 shall be calculated including allowances such as HRA, TA and SFA w.e.f. 1.1.2006, and dues as admissible shall be released.”

8. Ld. Counsel in the instant Original Applicant would, therefore, pray that the instant applicants, in pari materia with cited ratio, have also represented at (Annexure A-10 colly to the O.A.) to the respondent authorities to receive benefits in the light of earlier judgements of the Tribunal (supra) and, that, the respondent authorities may be directed to dispose of the same in the light of their orders at Annexure A-9 to the O.A.

*haf*

9. Ld. Counsel for respondents would contend that any compliance would be subject to the outcome in SLP No. 12845 to 12852 of 2012.

10. Accordingly, without entering into the merits of the matter, we would direct the concerned respondent authorities to dispose of the representations at Annexure A-10 collectively to the O.A. in the light of the decisions cited therein, and, in particular, the decision of the respondent authorities dated 16.1.2021 (Annexure A-9 to the O.A.) within a period of 16 weeks from the date of receipt of a copy of this order, which shall be subject to outcome of the SLP No. 12845 to 12852 of 2012.

11. With these directions, the O.A. is disposed of. There will be no orders as to costs.

*(Dr. Nandita Chatterjee)*  
**Administrative Member**

*(Bidisha Banerjee)*  
**Judicial Member**

**SP**