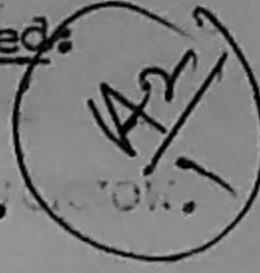


Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.



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Registration O.A. No. 183 of 1988

K.D. Pandey and another Applicants.

Versus

Union of India, " and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant no.1 is working in the Ordnance Factory Dehradun at the post of Supervisor Grade-I while the applicant no.2 is working at the post of Examiner, HS-II Quality Control Section (Tool Room) and they have approached this Tribunal praying that the respondents be directed to ensure that interim relief granted w.e.f. 1.6.1983 and 1.3.1985 during the pendency of 4th Pay Commission be also form ~~the~~ part of Ordinary Rate ~~Rate~~ of wages while calculating the overtime wages payable to all the eligible employees of the Ordnance Factory, Dehradun including ~~the~~ applicants and the respondents may also be directed to calculate the arrears of the overtime and make the payment of the same expeditiously. The 3rd pay commission which was implemented since 1.1.1973 gave its report in the year 1973. During the pendency of the commission proceedings between 1969 upto 1973 certain interim reliefs were granted and the same were taken into account for fixation of 'pay and wages' for calculation of over time allowances accruing during the period in question and to the same effect government orders were passed. The Government

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vide its order dated 25.8.1973 issued such instruction to the General Managers, Ordnance Factories. Similarly, the Director General, Ordnance Factories vide order dated 29.12.1978 instructed all factories that all outstanding claims of arrears of over time allowances be taken into account and the element of interim relief should be finalised at top priority. As Ordnance Factories are factories within the meaning of Section-59 of the Indian Factories Act, 1948 and according to the applicant, in view of section 59 (ii), "the ordinary rate of wages" means basic wages for such allowances as the worker is for the time being entitled to. The Deputy Controller of Defence Account issued a letter that non-industrial persons are to be treated as workers and paid over time allowances as for staff under the factory side. On 30.7.1974 another letter was issued with regard to reckoning of interim relief as part of pay for the purposes of calculation of over time allowances. The 4th pay commission recommended interim relief to be granted to the Central Government Employees during the pendency of the report and its implementation. The recommendation for interim relief was accepted by the respondents. As the 4th pay commission's report was being delayed, the commission recommended interim relief w.e.f. 1.3.1985. The report of the 4th pay commission was implemented on 1.1.1986 and the recommendation for interim relief granted during the pendency of the report was also taken into consideration, thereafter, the wages were fixed.

2. The grievance of the applicant is that the respondents have not taken into consideration the interim relief for Rs. 110 as implemented 1.8.1983 as well as the interim relief 10% of the basic pay w.e.f. 1.3.1985 for the purposes of calculation of over time allowances, although the interim relief was part of wages itself. Since 1.1.1986,

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the interim relief wages were granted by government pending submissions of 4th Pay commission report has become part and parcel of new pay scale and since then the employees of the establishment are getting the overtime on the basis of wages fixed since 1.1.1986. But, during the period 1.6.1983 to 1.3.1985, the interim relief for calculating the over time allowances was excluded, though it has got merged in the revised scale of pay w.e.f.

1.1.1986. The applicant has placed reliance on the decision of the Madras Bench of the Central Administration Tribunal dated 19.12.1986 in T.A. No. 608 of 1986 which was filed by the Clothing Factory National Workers Union challenging the decision of the respondents in not reckoning of two instalments of interim relief sanctioned during the pendency of 4th pay commission for the purposes of calculation and payment of overtime allowances. The Tribunal held that there is no reason why the interim relief should be excluded while calculating the overtime allowances.

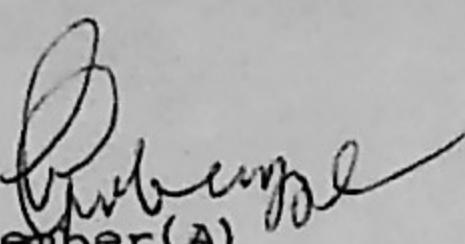
3. The respondents have opposed the prayer made by the applicants and have placed reliance on certain notifications and orders issued in this behalf. A reliance has been placed on the copy of the notification dated 29th April, 1985 regarding the grant of the interim relief to the Central Government Employees. In the said G.O. it has been held that the expression ' Basic Pay' would have the same meaning as given in F.R. 9(21)(a) (i) and also non-practising allowance wherever admissible to Government Doctors. This would, however, not include special pay, deputation pay (deputation duty allowance) special allowance or pay in addition to above or any other nomenclature. This amount of interim relief would be taken into account

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for determining retirement benefits and will not count for any other purpose i.e. for determining any other allowances admissible on the basis of pay and allowances. The similar ^{came} matter ^{came} up for consideration before the Bombay Bench of the Central Administrative Tribunal in O.A. No. 292 of 1986 decided on 7.11.1987 which was also a claim made for and on behalf of the employees of the ordnance factories. The Bombay Bench allowed the application and directed the respondents to ensure that the interim relief granted in 1983 and 1985 form part of the ordinary rate of wages, while determining the overtime wages payable to the concerned eligible employees of the said factory and the respondents are restrained from effecting any recovery of the overtime wages on the ground that such interim relief has been included earlier wrongly in the ordinary rate of ~~@@@~~ wages while effecting the recovery of the overtime wages. We also agree with the said decision as there appears to be that once the benefit has already been given to the employees, they can not be deprived of the said benefits. There appears to be no reason why the interim relief should not be included. Subsequently, some or certain decisions have been given and the Government has also issued notifications in this behalf and it is not necessary to make reference to what has happened subsequently and accordingly, this application is allowed and the respondents are directed to ensure that the interim relief granted w.e.f. 1.6.1983 and 1.3.1985 during the pendency of 4th pay commission be also form the part of Ordinary Rate of Wages to the applicant and the respondents are also directed to calculate the arrears of the overtime and make the payment of the same within a period of 4 months from the date of the communication of this

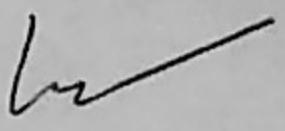
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order. The application is disposed of with the above observations. Parties to bear their own costs.


Member (A)

Dated: 29th May, 1992

(n.u.)


Vice-Chairman