

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD

Dated: Allahabad this.....27th.....day of March 1996

CORAM: Hon'ble Mr. T.L. Verma, Member (J)

Hon'ble Mr. S. Dayal, Member (A)

ORIGINAL APPLICATION NO. 1139 OF 1988

K.B. Dhir & others - Applicants

( By Advocate Ashok Mehta )

Versus

Union of India and others - Opposite Parties

( By Advocate Km. Sadhna Srivastava )

O R D E R



( By Hon'ble Mr. S. Dayal, Member (A) )

This is an application under section 19 of the Administrative Tribunal Act 1985.

2. The applicant seeks the following reliefs through this application:-

- (i) Quashing of order dated 4.4.1988
- (ii) Quashing of order dated 25.3.1988
- (iii) A direction to the respondents to continue implementation of systematic overtime scheme or pay equal amount of compensation in lieu thereof.

3. The facts of the case as narrated by the applicant in Para 6 of their Original Application are that the applicants were employed in the Ordnance Factory for production of Defence equipment and are posted in OPTO Electronics Ordnance Factory, Dehradun. It is claimed that the employees of the factory are entitled to overtime. It is also claimed that non-gazetted staff are class III employees and their post is transferable to different Ordnance Factories all over India. It is also claimed that the same rules and instructions govern non-gazetted staff in the Ordnance Factories. It is said that the working hours of the existing work posts were increased in 1962 for increasing production of Defence equipment due to War with China. It is also claimed that the non-gazetted staff of the Ordnance Factories were treated as Workshop Staff, who were on par with non-industrial employees. It is said that the post of the Chargeman, Assistant Foreman, Store Holder, Assistant Store Holder were treated as non-gazetted staff while Clerks, Supervisor were non-industrial employees. Both the categories were treated as Class three employees. The rate of overtime applicable to Industrial employee were made applicable to non-gazetted staff in 1983. The working hours of employees were increased from 44 hours to 45 minutes per week to 54 hours.



Per week which came to 9 hours 15 minutes per week of six days. The applicant claims that no person can be asked to work for more than 48 hours per week as per provision of Factories Act and has to be paid at double than ordinary rate for hours beyond 48 hours per week. The respondents were paying wages at ordinary rates for 3 hours 15 minutes per week of work beyond 44 hours 45 minutes and were paying at double the rate for the remaining 6 hours of extra work. This was known as Scheme of Systematic overtime. The Ordnance Factory Board was applying this scheme uniformly to all the Ordnance Factories 54 hours of work was compulsory till 4.4.1988 in Ordnance Factory, Dehradun. The benefit of Systematic overtime had become a condition of service as declared by Calcutta High Court in its judgement dated 11.6.81 in K.G. Ganguli Versus Union of India. The scheme of Systematic overtime was applicable to all factories for 25 years with ~~except~~<sup>new</sup> factories declared new by the Department. This was done in case of OPTO Electronics since 4.4.88. The non-gazetted staff started joining OPTO Electronics since 1984 when it was treated as a project cell of the Ordnance Factory, Dehradun. The staff was transferred from other factories and was paid overtime allowance at the same rate as was being received by them prior to their transfer. It is claimed that transfer to a place where perks are less is claimed to be punitive and can be passed after following prescribed procedure for disciplinary proceedings. It has been mentioned as illustration that employees transferred from Ordnance Factory Kanpur, and disobeyed the transfer order are still getting systematic overtime. Compensatory scheme e.g. outstation allowance scheme and Pay Protection Scheme is applied where the Scheme of Systematic overtime is withdrawn. Outstation allowance is given for two years on transfer to a new station and option of getting either outstation or project allowance

is given to a workman joining inspectorate or new factory.

Pay protection is granted to an employee transferred temporarily for a month or more and they are to get a minimum salary including overtime allowance and overtime bonus. After withdrawal of overtime scheme on 4.4.88, the Industrial employees as well as non-industrial employees including those, who are Class III employees have been given pay protection.

4. The relief has been asked for on the ground that category of non-industrial employees and non-gazetted staff is same and similar, that Supervisor, who is a non-industrial employees, and chargeman Grade II, who is a Class III staff, perform same and similar job and are in the same scale of pay, that the staff of OPTO Electronics cannot be discriminated from 10000 non-gazetted staff posted in other Ordnance factories, that wages has been reduced by one third, that 21 days notice is necessary before withdrawal of this 25 years old benefit, that even officers are given headquarter allowance in lieu of perks received by them while they were posted in Ordnance Factories that the condition of service of employees transferred to OPTO Electronics have been made less favourable and should be compensated, that General Manager cannot pass the order because he cannot transfer employees from one factory to the others, that change without show cause is against principle of natural justice that systematic overtime has been stopped giving without any reason that senior persons get less than juniors

that living has been adjusted taking overtime into consideration, that compensatory allowance should be granted as was done when rent free accommodation facility was withdrawn and that no body was joining as Principal Foreman, a non-gazetted staff post, as there was no overtime available on this post. We have heard Sri Ashok Mehta counsel for applicant and Km Sadhana Srivastava Counsel for the Respondent.

5. The main ground which has been reiterated time and again in the application is that the workers have been getting systematic overtime for more than 20 years and, therefore, this benefit had become a condition of their service. It has been mentioned that the workers were getting overtime of Rs. 600/- to Rs. 1200/- P.M. because they had the work for  $9\frac{1}{2}$  extra hours. The workers stopped getting systematic overtime because of three orders dated 4.4.88. By the first of these (Annexure 1-A) it was decided that OPTO Electronic project which was operating as part of Ordnance Factory will start functioning independently with effect from 4.4.88 in the name of OPTO Electronic Factory and there shall be a separate General Manager for the Factory. Thus by this order, a new Factory was added to the existing Ordnance Factories under the Director General Ordnance Factory. By the second order of the same date (Annexure 1-B) Officers and Staff and Industrial employees, who were shown in ANNEXURES A, B, C and D to Order dated 4.4.88 (Annexures have not been attached to the order by the applicant) were taken on strength of OPTO Electronics Factory, Dehradun, from that date. By the third order (Annexure 1-C), the working hours of A.E.F. were fixed as 8 AM to 5 P.M. of which 1 P.M. to 2 P.M. and Saturday had working hours from 8 AM to 12 A.M. The applicants had sought the quashing of these orders so that they continue getting what they call over systematic overtime which they claim had become condition of their service. They have cited the judgement of Calcutta High Court in W.P. No. 7485 of 1979 delivered on 11.6.81. We have perused the judgement and find that the applicants in that writ before

Calcutta High Court were working for 44½ hours of work in 6 days and were getting overtime wages for work beyond this time but the Respondents had changed the working hours entitling them for overtime wages from 44½ hours of work to 48 hours of work after a period of 20 years. They have treated as a change in the condition of service and set aside the order of the Respondent in that case. It can be seen that the present case is different from the case of Calcutta High Court cited before. In that case the hours of work were changed for computation of overtime. While in the present case the hours of work have been reduced to 44 hours per week so that the workers did not get any overtime. Ordnance Factory of Ishapore in West Bengal was operational and existing for over 20 years while the A.E.F. in this case started its existence on 4.4.88. Before this date it was only a project which was being looked after by the General Manager of Ordnance Factory, Dehradun. Besides the applicant in the writ petition before Calcutta High Court were workmen while the applicants in this case are Supervisors and do not come in the category of workman. The contention of the applicants is that because they are also group 'C' employees and, therefore, they should not be deprived of the benefits of Systematic overtime or pay protection scheme in lieu of that. This contention of the applicants is not valid because they belong to a category different from that of workman. Just because they are encompassed within the common nomenclature of group 'C', they cannot be deemed to be performing the same and similar work as others and entitled to overtime under the Industrial Laws. There will be no discrimination if they have different pay scale and allowance than group 'C' employees, who fall within the category of workers.

6. The contention regarding payment of overtime regardless of need of overtime work in the factory and only for fattening of pay packet of Supervisors because it has become a condition of service cannot be accepted. The

condition of service was only that in case overtime work was put in by workers, they shall be paid overtime allowance. It was not a condition of service that they shall be made to work for more hours than the normal ones only in order to pay them overtime allowance.

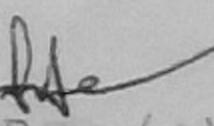
7. It has been contended on the part of the applicants that they have been working in Ordnance Factories from before 4.4.88 and that no new establishment could be deemed to have come into existence on 4.4.88. This contention is also not acceptable in view of the Annexure I-A notifying the creation of new Ordnance Factory. This combined with the averments made by the Respondents that since the Factory was in its construction and installation of machinery stage, the need of overtime did not exist at all and, therefore, the working hours of the factory were fixed at 44 hours per week clearly shows that contention that systematic overtime was a right of the workers of the factory for the last 25 years or 30 years is not tenable.

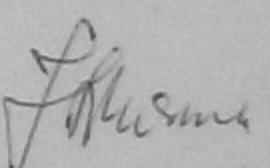
8. Another contention made on behalf of the applicants is that they should be given pay protection just as workers were given is also not tenable because the applicants fell in the category of Supervisor and their pay scales are determined on a basis which is different from those on which the pay scale of workers are determined. This Court cannot be expected to perform the work of Pay Commission merely because of plea of the applicants that the comparative difference in the wages of Supervisor and workman has become smaller or non-existent or negative. It is true that the applicants have cited the recommendations of Rajadhyaksha Committee on overtime but the Respondents have rightly mentioned that these recommendations, in the absence of their acceptance by the Govt. remain just recommendations and nothing more and do not confer any right. The applicants have not shown any order of the Government of India accepting these recommendations.

The applicants have raised the ground of discrimination because their overtime allowance has been done away with while the Industrial workers and non-industrial staff in group 'C' were being given pay protection in lieu of systematic overtime. The Respondents have cited the judgment in O.A. No. 1130/88 delivered by the Member of the Principal Bench on 20.8.92 in which the Principal Bench has held that the Respondents had a right to formulate Policy in the matter of overtime and could possibly decide who would and who would not be given overtime for valid reasons. In this case the overtime is not being given because no need exists in a Factory which is still in construction / commissioning stage.

10. The applicants have raised contention that they could not have been transferred to an establishment which had less perquisites than one in which they were working earlier. Non-payment of overtime because of reduction in hours of work cannot be considered to be loss of perquisite. In any case the applicants have not sought any relief for their transfer to OPTO Electronics Factory.

11. In view of the above, we do not find any merit in the application. The application is dismissed. There shall be no order as to costs.

  
MEMBER (A)

  
MEMBER -(J)

RJ