

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 941 OF 2003

ALLAHABAD, THIS THE 21st DAY OF MAY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Kripa Shanker Mishra s/o Shri Doodh Nath Mishra
2. Mohan Lal Kol s/o Shri Shiv Lal Kol
3. Prem Pal s/o Shri Shyam Lal
4. Ram Narain Mishra s/o late Shri Ayodhya Prasad Mishra
All holding the post of Leading Hand Fire.
5. Saran Singh s/o late Shri Chandrabali.
6. Arjun Singh s/o Sripat Singh
7. Bans Kumar Sharma s/o Shri Jagmohan Sharma.
8. Ram Kumar Shukla s/o Shri Harish Chandra Shukla.
the post
All holding/of Fire Engine Drivers.
9. Satya Narain Shukla s/o Shri Umarshi Shukla.
10. Bijendra Singh s/o Late Shri Choorey Singh.
11. Santosh Kumar s/o Shri Gobhi Lal.
12. Ram Tej s/o Shri Ram Dheeraj.
13. Ram Kishore Yadav s/o late Shri Kali Charan Yadav
14. Ram Akbal Yadav s/o Late Shri Raja Ram Yadav.
15. Basant Lal Pal s/o Shri Durga Prasad Pal.
16. Munna lal s/o Shri Nag Chand
All holding the post of Fireman I.
17. Anjani Kumar Singh s/o Late Shri Ram Singh.
18. Satish Chand Jataw s/o Shri Hemah Nand.
Both holding the post of Fireman III.
All above posted under senior quality Assurance
Officer Quality Assurance Establishment (Armaments)
Armapur, Kanpur.

.....Applicants

(By Advocate : Shri S. D. Yadav)

V E R S U S



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1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Director General, Quality Assurance, Government of India, Ministry of Defence, New Delhi.
3. Senior Quality Assurance Officer, Quality Assurance Establishment (Armaments), Armapur, Kanpur.

.....Respondents

(By Advocate : Shri P. Krishna)

O R D E R

By this O.A. applicants numbering in 16 have filed the present O.A. seeking grant of over time allowance ^{as} they are also being made to work on shift basis for 48 hours in a week whereas according to the circular dated 13.05.1988, It has already been allowed to grant to the 4 categories of non-industrial staff of Durwans, Fire Brigade Staff, Telephone operators and security Assistants. The over time allowances ^{was} ^{admissible} to those staff, who worked on shift basis for 48 hours a week (8 hours a day for six days in a week) at the same rate as is admissible to the Industrial Staff under the Factories Act for the work done beyond the prescribed working hours. It is submitted by the counsel for the applicant that this circular was issued after the judgments were given by various High Courts upheld by Hon'ble Supreme Court.

2. Being aggrieved, they gave representation on 10.12.2002 (Pg.15) followed by another representation dated 13.02.2003 (Pg.17) but till date ^{respondents B} have neither replied the said representations nor ^{applicants B} have been given the benefit of circular dated 13.05.1988. Therefore, they had no other option but to file the present O.A. seeking the following reliefs:-

- "(i) Issue a writ order or direction in the nature of mandamus commanding the respondents to grant the over time allowance to the applicants as per circular dated 13.05.1988.
- (ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay

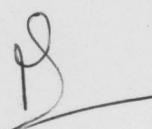
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the arrears of over time allowance.

(iii) Issue any other writ order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. Respondents in the counter affidavit have opposed this O.A. by stating that this circular dated 13.05.1988 was issued by the Ordnance Factory Board, Kolkata, whereas the present Establishment comes under DGQA, New Delhi and no such instruction have been issued in the said establishment. Therefore, circular dated 13.05.1988 would not be applicable in the present case. They have further submitted that employees had given a joint appeal vide their application dated 10.12.2002 which is against the conduct rules, therefore, they ^{were} advised to refrain from giving such joint representation. The said representation was, therefore, not taken into consideration. They have further submitted that over time is a discretion of management and nobody can claim it as a matter of right and since ^{applicant's do B} not have any legal right, no mandamus can be issued. They have also submitted that the similar matter has been rejected by the Mumbai Bench on the ground that if applicants are aggrieved, they should take up the matter before the Industrial Tribunal as per provision of Industrial Disputes Act 1947. They have, thus, submitted that the O.A. is liable to be dismissed on the ground as mentioned above.

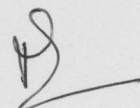
4. Applicants in the rejoinder have annexed further letters issued by Ministry of Defence wherein it was stated that question of extending the benefit of judgments to these 4 categories of non-industrial staff working in the establishment other than Ordnance Factory has been taken up again for consideration. Army Headquarters are, therefore,



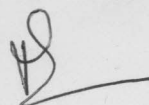
requested to work out the financial implications of extending these benefits to the similarly placed employees working in their organisation w.e.f. 05.11.1973. They have further directed to work out likely annual expenditure. The said letter was addressed to DGQA as well, as back as in 1989. Thereafter, another letter was written by Ministry of Defence to all DGQA, Establishments for sending requisite information (Pg.11 of the rejoinder) and finally the letter dated 01.12.1989 shows that Ministry of Defence once again asked the controller to Quality Assurance to send the annual expenditure likely to be incurred on account of over time allowance to Durwans, Gatekeepers, Fire Brigade Staff and Telephone Operators and the same was still awaited. Therefore, they were once again requested to forward the required information without any further delay (Pg.14). It was in this back ground, that counsel for the applicant submitted that since Ministry of Defence is already seized of the matter and wanted to examine the matter with regard to the payment of over time allowance to the other persons as well, the least which was expected from the respondents was, to look into the representations given by the applicants and to inform them about the latest position or decision taken by the Ministry of Defence.

5. I have heard both the counsel and perused the pleadings available on record.

6. The judgment relied upon by the respondents counsel would be not of much use to them because I do not wish to entertain this petition on merits at this stage, in view of the fact, that the representations given by applicants have not even been taken into consideration by the respondents, I agree with the respondents that applicants could not have given a joint representation as that is against the conduct



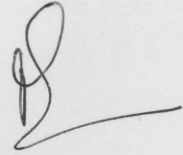
rules but that does not mean that respondents would not even look into the grievances, as pointed out by the applicants. From the various letters annexed with the rejoinder, it is clear that Ministry of Defence wanted to examine this issue at their level but they wanted to know the likely expenditure which would be incurred by the DGQA, if such benefit was to be extended to their employees as well. The repeated letters as referred to above show that Ministry of defence had repeatedly asked the DGQA to give requisite information as sought by the Ministry of Defence. The out come of same is not known to us as neither applicants know about it, nor respondents have shown the outcome on this aspect nor they have explained as to what action was taken by them on the said letters. It is submitted by respondents that they could not have dealt with these letters, as these letters were annexed in the rejoinder. But if respondents wanted, they could always file a supplementary counter affidavit to clarify the position. In any case, without going into that controversy, I think ends of justice would be met in this case, if liberty is given to the applicants to move independent representations to the competent authority within a period of 3 weeks from the date of receipt of a copy of this order by giving details of their working hours along with various letters which they wish to rely on and have annexed with the petition and the orders passed by various courts for seeking the relief as claimed by them. In case, applicants, give such independent representation to the competent authority through proper channel the competent authority shall decide the same by referring to the various letters as mentioned above and the judgment which have already been passed by various High Courts as upheld by Hon'ble Supreme Court and referred to in circular dated 13.05.1988 and then pass a reasoned and speaking order thereon within a period of 4 months thereafter under intimation to



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the applicant.

7. With the above directions, this O.A. is disposed off finally with no order as to costs.

A handwritten signature in black ink, consisting of a stylized initial 'S' followed by a horizontal line extending to the right.

Member (J)

shukla/-