

(JD)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A. 59/88, O.A.258/88 & O.A.331/88

I. Ordnance Employees Union,
Ambajhari, Nagpur through
its General Secretary,
R.G.Mahalle.

.. Applicant in
O.A.59/88

vs.

1. Union of India
2. The General Manager,
Ordnance Factory,
Ambajhari,
Nagpur.

.. Respondents

II. Sagarmoy Dutta,
Secretary,
Ordnance Employees Union,
Ambernath.

.. Applicants in
O.A.258/88

vs.

1. Union of India
through
The Secretary,
Ministry of Defence Production,
Government of India,
New Delhi.
2. The Chairman & Director General
of Ordnance Factories,
Ordnance Factory Board,
Calcutta-1.
3. The General Manager,
Ordnance Factory,
Ambernath.

.. Respondents

III.

1. S.C.Basu,
Secretary,
Ordnance Employees Union,
Ambernath - 421 502.
2. G.L.Gaikar,
C/o.Ordnance Employees Union,
J-62/8, Post Office
Ordnance Estate,
Ambernath.

.. Applicants in
O.A.331/88

vs.

1. Union of India
2. The Director General,
Ordnance Factories,
10-A,Auckland Road,
Calcutta.
3. The General Manager,
Machine Tool Prototype Factory,
Ambernath,
PIN : 421 502.

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

1. Original Application No.59/88.

Ordnance Employees Union,
Ambajhari through its General
Secretary, R.G.Mahalle. ... Applicants

2. Original Application No.258/88.

Sagarmoy Dutta, Secretary,
Ordnance Employees Union,
Ambernath. ... Applicants

3. Original Application No.331/88.

Ordnance Employees Union & Another,
Ambernath. ... Applicants.

V/s.

Union of India and Others. ... Respondents.

Coram: Hon'ble Member(J), Shri D.Surya Rao,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Shri L.K.Masand, advocate
for the applicants.
Shri P.M.Pradhan, advocate
for the respondents.

JUDGMENT:-

(Per Shri P.S.Chaudhuri, Member(A)) Dated: 1.6.1990

Original Application No.59/88 under section 19
of the Administrative Tribunals Act, 1985 was filed on
13.1.1988. By an interlocutory order on 7.3.1988 leave
was granted to amend the title of the application to show
that it is by the Employees Union through its Secretary
R.G.Mahalle and to include a prayer for permission to file
this application under the provisions of rule 4(5)(b) of
the Central Administrative Tribunals (Procedure) Rules, 1987
and to file the application in a representative capacity.

2. Original Application No.258/88 under section 19
of the Administrative Tribunals Act, 1985 was filed on
5.4.1988 by Sagarmoy Dutta, Secretary, Ordnance Employees
Union, Ambernath.

3. Original Application No.331/88 under section 19 of the Administrative Tribunals Act, 1985 was filed on 29.4.1988 by S.C.Basu, Secretary, Ordnance Employees Union, Ambernath and G.L.Gaikar, Machine Tool Prototype Factory, Ambernath. By interlocutory order dt. 29.5.1990 the applicants were permitted to file this application under Rule 4(5)(b) of the Central Administrative Tribunals (Procedure) Rules, 1987.

4. The prayer in all these three applications is that the concerned employees be entitled to overtime wages taking into consideration the interim relief recommended by the IVth Pay Commission. As the issues raised in the three applications are identical, all these three applications can be conveniently disposed of by a common judgment and we now proceed to do so.

5. The respondents have opposed the applications by filing their written statement. We heard Shri L.K.Masand learned advocate for the applicants and Shri P.M.Pradhan, learned advocate for the respondents.

6. There are a number of Ordnance Factories situated all over the country and all are governed by the provisions of the Factories Act, 1948 and the applicants are engaged in three of them.

7. We were told across the bar that the notified working hours in all these three Ordnance Factories are $44\frac{1}{2}$ hours per week. Work beyond these hours is deemed to be overtime. Such overtime work is considered in two parts. The first part is for the period between $44\frac{1}{2}$ hours, i.e. the notified hours of the duty in a week as prescribed in Section 51 of the Factories Act, 1948, and 48 hours

per week, i.e. the limit prescribed in Section 51 of the Factories Act, 1948. The second part is for overtime work done for the period in excess of 48 hours per week.

Payment for the first part of the overtime work - i.e. for the period between $44\frac{1}{2}$ hours and 48 hours - is done on the basis of ordinary rate of wages. In terms of section 59 of the Factories Act, 1948, payment for the overtime work done for the period in excess of 48 hours in a week is at the rate of twice the ordinary rate of wages.

8. In order to undertake a periodical review of the pay and other service conditions of its employees, the Government has from time to time constituted Pay Commissions. The Fourth Pay Commission was set up in 1981. During the deliberations of this Pay Commission, interim relief was sanctioned to Central Government employees etc. on two occasions. The first occasion was the sanction by the Government in the Ministry of Finance, Department of Expenditure's O.M.No.F.7(39)/E.III/83 dated 2.8.1983 which covered the period from 1.6.1983 to 28.2.1985. The second was based on the Fourth Pay Commission's 'Report on Interim Relief' dated 29.3.1985 and covered the period from 1.3.1985 to 31.12.1985. It is the grievance of the applicants in all these three applications that these two tranches of interim relief have not been taken into account while determining the ordinary rate of wages for payment for overtime work not only for the period in excess of 48 hours per week but also that between $44\frac{1}{2}$ and 48 hours per week.

9. These very issues have already been decided by this Tribunal in two decisions, one before these applications were filed and the other after these applications

were filed. The first decision was when a similar matter was considered by the Madras Bench of this Tribunal who pronounced judgment on 19.12.1986 in Writ Petition No.1750/85 which had been filed in the High Court of Madras and had been transferred to the file of the Madras Bench of the Tribunal as TA.608/86. The grievance in that case was as follows:-

"While calculating the workers' earnings, the interim relief of Rs.110 p.m. is not included. This relief was granted by the Government pending submission of the Fourth Pay Commission's report and from 1.1.1986 it has become part and parcel of the new pay scale. There was no reason why this should have been excluded as allowances while reckoning the overtime wages. In this connection he pointed out that three instalments of interim relief granted by Govt. of India during the pendency of the Third Pay Commission's report are taken into account for the purpose of calculation of payment of overtime prior to the submission of the Third Pay Commission's Report and not allowing the same procedure now, which has hitherto been followed prior to submission of the Third Pay Commission's Report, will be violation of the Act which governs the overtime wages in respect of piece rate workers".

On this grievance, by their judgment and order dated 19.12.1986 the Madras Bench held as follows:-

"Coming to the third issue relating to exclusion of interim relief, we see no reason why it should be excluded. This payment has been made at prescribed rates based on Government sanction, pending receipt of Report of the Fourth Pay Commission and Government's decisions thereon. It is now seen that this interim relief has got merged in the revised scales of pay with effect from 1.1.1986. The learned Counsel of the applicant had pointed out that similar interim reliefs given during the pendency of the Third Pay Commission had been included for the purposes of calculating overtime wages. Counsel for the respondent has not been able to state any valid reason for exclusion of this interim relief at present, apart from inviting our attention to the office memorandum of the Ministry of Finance issued in October 1983. It is not even clear from that office memorandum whether it relates to overtime payable under the Factories Act or to the other aversions which is paid to staff in various attached and subordinate offices of the Government. In any case, we are of the view that the exclusion of interim relief for the purpose of ~~interim relief for the~~ ~~purpose of~~ reckoning overtime wages payable to piece rate workers under the Factories Act is illegal. The respondents are directed to include the interim relief also while calculating the overtime as per the formula which they are currently adopting."

10. Based on this Judgment of the Madras Bench the respondents issued orders on 30.7.1988, i.e. after these three applications were filed, directing that the computation of overtime allowances taking into account interim relief may be allowed in all the cases where Government Employees are governed by the Factories Act, 1948 for work done beyond 9 hours in a day and/or 48 hours in a week. Mr.L.K.Masand submitted that in view of this position the applicants' prayer in all the three applications was now restricted to payment of extra wages for overtime work done between 44 $\frac{1}{2}$ hours and 48 hours a week being computed after taking into account the interim relief payable at the time.

11. This very residual prayer arose in the case of Bharatiya Pratiraksha Mazdoor Sangh, Ordnance Factory, Bhusawal & others v. Secretary, Ministry of Defence, Department of Defence Production, New Delhi - O.A. 251/88 - before this Bench of this Tribunal which was decided by one of us (P.S.Chaudhuri, Administrative Member) on 4.1.1989, i.e. after these three applications were filed. In that Judgment and Order dt. 4.1.1989 it had been held that:-

"In any case, Section 59 of the Factories Act refers to "Extra Wages". If interim relief is taken into account for determining not only the wage for the work done upto 44 $\frac{1}{2}$ hours per week but also the wage for the work done in excess of 48 hours per week, it does not stand to reason that it ceases to be a part of the ordinary rate of wages for the work done between 44 $\frac{1}{2}$ hours and 48 hours per week. It is also pertinent to note that under Section 59 of the Factories Act, the computation of ordinary rate of wages includes the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles.

Based on this discussion, I am of the view that this application succeeds. The respondents are directed to include the interim relief sanctioned under the Ministry of Defence's O.M.No.5(8)83/D(Civ-I) dated 5.8.1983 and 4(1)/85/D(Civ-I) dated 2.5.1985 while

computing the ordinary rate of wages for determining the payment in respect of the overtime work done between the working hours notified in terms of Section 61(1) of the Factories Act, 1968 and the limit of nine hours in any day and/or 48 hours in any week prescribed in Section 59(1) of the said Act.

In the circumstances of the case, there will be no order as to costs."

The respondents in that application had thereafter filed S.L.P. No.5851/89 in the Supreme Court, but this was dismissed on 18.12.1989.

12. We are in agreement with the two Judgments of this Tribunal that we have mentioned earlier. In this view of the matter, all the three applications succeed. We propose passing an order on the same lines as in Original Application No.251/88 before this Bench (Supra).

13. We accordingly order that the respondents shall include the interim relief sanctioned under the Ministry of Defence's O.M.No.5(8) 83/D(Civ-I) dated 5.8.1983 and 4(1)/85/D(Civ-I) dated 2.5.1985 while computing the ordinary rate of wages for determining the payment in respect of the overtime work done between the working hours notified in terms of Section 61(1) of the Factories Act, 1968 and the limit of nine hours in any day and/or 48 hours in any week prescribed in Section 59(1) of the said Act.

14. In the circumstances of the case, there will be no order as to costs.