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CAT/112

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~  
NEW BOMBAY BENCH

O.A. No. 251/88  
~~XXXXXX~~

198

DATE OF DECISION 4.1.1989

Bharatiya Pratiraksha Mazdoor Sangh ~~Petitioner~~ <sup>Applicants</sup>  
and others.

Shri S.M.Dange <sup>Applicants</sup> Advocate for the ~~Petitioner(s)~~

Versus

Secretary, Min. of Defence and others <sup>Respondent</sup>

Shri R.K.Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? <sup>Yes</sup>
2. To be referred to the Reporter or not? <sup>Yes</sup>
3. Whether their Lordships wish to see the fair copy of the Judgement? <sup>No</sup>
4. Whether it needs to be circulated to other Benches of the Tribunal? <sup>Yes.</sup>



(6)  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 251/88

Bharatiya Pratiraksha Mazdoor Sangh,  
A registered trade Union of Defence Workers,  
C/O Zonal Secretary,  
U.B.Upadhyayaya,  
Ordnance Factory,  
Bhusawal. AND OTHERS.

... Applicants

V/S.

1. Secretary, Ministry of Defence,  
Department of Defence Production,  
Govt. of India, New Delhi.
2. Chairman,  
Ordnance Factory Board,  
10A, Auckland Road,  
Calcutta.
3. General Manager,  
Ordnance Factory,  
Bhusawal 425 203.

... Respondents

CORAM: Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances:

Shri S.M.Dange  
Advocate  
for the Applicants

Shri R.K.Shetty  
Advocate  
for the Respondents

JUDGMENT

Dated: 4.1.1989

(PER: P.S.Chaudhuri, Member (A))

This application was filed on 7.4.1988 under Section 19 of the Central Administrative Tribunals Act, 1985. It has been filed by the Bhartiya Pratiraksha Mazdoor Sangh which is a registered trade union of Defence workers through its General Secretary and nine others. By this Tribunal's order dated 23.6.1988 they were permitted to file this joint application under the provisions of Rule 4 (5) (a) & (b) of the Central Administrative Tribunal (Procedure) Rules, 1987. The prayer in the application is that the concerned employees be entitled to overtime wages by taking into consideration the interim relief recommended by the Fourth Pay Commission.

(7)

2. The respondents have opposed the application by filing the written statement of Shri A.K.Mukherjee, Works Manager (Administration), Ordnance Factory, Bhusawal i.e. office of Respondent No. 3.

I heard Shri S.M.Dange, learned advocate for the applicants and Shri R.K.Shetty, learned advocate for the respondents.

3. The applicants no. 2 to 9 are employees of the Ordnance Factory, Bhusawal i.e. Respondent No. 3. There are a number of ordnance factories situated all over the country. To administer and coordinate the working of all these factories, the Government of India has constituted the Ordnance Factories Board i.e. Respondent No. 2. All these factories, including the Ordnance Factory at Bhusawal are governed by the provisions of the Factories Act 1948.

4. At this stage, it would be convenient to refer to the relevant sections of the Factories Act, 1948 (hereafter referred to as 'the Act'). Chapter VI of the Act deals with the 'Working Hours of Adults'.

Sections 51 and 54 thereof read as follows :-

"51. Weekly hours. - No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week. ....

"54. Daily hours. - Subject to the provisions of Sec.51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts."

Section 59 of the Act deals with extra wages for overtime.

"59. Extra wages for overtime. - (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

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(2) For the purpose of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers :

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done.

Explanation. - For the purposes of this sub-section, in computing the earnings for the days on which the worker actually worked such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation 1. - "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - "Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6, respectively of one adult consumption unit.

(5) The State Government may make rules prescribing —

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provision of this section."

Section 61 of the Act deals with notice of periods of work for adults and reads as under :-

"61. Notice of periods of work for adults. -

(1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of Sec. 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed before hand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of Secs. 51, 52, 53, 54, 55, 56 and 58.

(3) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) to (10). Are not relevant in this case."

Section 63 of the Act reads as under :-

"63. Hours of work to correspond with notice under Section 61 and register under Section 62. — No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory."

Section 64 of the Act deals with the power to make exempting rules and reads as under :-

"64. Power to make exempting rules. —

(1) Is not relevant in this case.

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed —

(a) of workers engaged on urgent repairs, from the provisions of Secs. 51, 52, 54, 55 and 56;

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of Secs. 51, 54, 55 and 56;

(c) of workers engaged in work which is necessarily so intermittent that the interval during which they do not work while on duty ordinarily amount to more than the intervals for rest required by or under Sec. 55, from the provisions of Secs. 51, 54, 55 and 56;

(d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of Secs. 51, 52, 54, 55 and 56;

(e) Is not relevant in this case.

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(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed sessions, from the provisions of Secs. 51, 52 and 54;

(g) Is not relevant in this case.

(h) of workers engaged in engine-rooms or boiler-houses or in attending to power-plant or transmission machinery, from the provisions of Secs. 51 and 52;

(i) Is not relevant in this case.

(j) of workers engaged in the loading or unloading of railway wagons, or lorries or truck from the provisions of Secs. 51, 52, 54, 55 and 56;

(k) of workers engaged in any work, which is notified by the State Government in the official Gazette as a work of national importance, from the provisions of Secs. 51, 52, 54, 55 and 56.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of Sec. 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the State Government shall not exceed, except in respect of exemption under Cl.(a) of sub-section (2) the following limits of work inclusive of overtime :

(i) The total number of hours work in any day shall not exceed ten;

(ii) the spread-over, inclusive of interval for rest, shall not exceed twelve hours in any one day :

Provided that the State Government may, in respect of any or all of the categories of workers referred to in Cl.(d) of sub-section (2), make rules prescribing the circumstances in which, and the conditions subject to which, the restriction imposed by Cl.(i) and Cl.(ii) shall not apply in order to enable a shift worker to work the whole or part of subsequent shift in the absence of a worker who has failed to report for duty;

(iii) the total number of hours of work in a week, including overtime shall not exceed sixty;

(iv) the total number of hours of overtime shall not exceed fifty for any one quarter.

Explanation. — "Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.

(5) Rules made under this section shall remain in force for not more than five years."

5. I was told across the bar that the notified working hours in the Ordnance Factory, Bhusawal are as under :-

Monday to Friday - 07.30 to 12.30 - 5 hours  
13.15 to 16.15 - 3 hours  
Saturday - 07.30 to 12.15 -  $4\frac{3}{4}$  hours

This totals to  $44\frac{3}{4}$  hours in a 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  $44\frac{3}{4}$  hours i.e. the notified hours of duty in a week as prescribed in Section 61 of the Act and 48 hours per week i.e. the limit prescribed in Section 51 of the Act. 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  $44\frac{3}{4}$  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.

6. 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 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.

7. A similar matter had been considered by the Madras Bench of this Tribunal when pronouncing their order dated 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, 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 thereof. 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 avertions 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."

8. The respondents have raised a number of points. Their first point is that the order sanctioning the payment of interim relief clearly indicates that :-

"The amount of interim relief will be taken into account for determining retirement benefits and it will not count for any other purpose, i.e. for determining any allowance admissible on the basis of 'Pay' or 'emoluments'."

Initially, therefore, interim relief was not being taken into account for determining the ordinary rate of wages for any overtime work regardless of whether it was for the period between  $44\frac{3}{4}$  hours and 48 hours per week or it was for the period in excess of 48 hours per week. However, based on the judgment of the Madras Bench, orders were issued on 30.7.1988 directing that the computation of overtime allowance taking into account interim relief may be allowed in all the cases where the 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.S.M.Dange submitted that in view of this position, the applicants' prayer was now restricted to payment of extra wages for overtime work done between  $44\frac{3}{4}$  hours and 48 hours per week being computed after taking into account the interim relief payable at the time.



9. Mr.R.K.Shetty contended that this submission of Mr.S.M.Dange was not incorporated in the original prayer. This contention of Mr.R.K.Shetty is not well founded because the prayer pertains to all overtime wages. Hence, it includes the period between the notified working hours (viz.  $44\frac{3}{4}$  hours per week) and the prescribed maximum working hours (viz. 48 hours per week).

Mr. R.K.Shetty then contended that this period between  $44\frac{3}{4}$  hours and 48 hours was not overtime and hence there was no statutory liability to pay for it. This stand is also not well founded as "overtime" means "(time during which person works) in addition to regular hours; payment for this."

10. Mr.R.K.Shetty's final contention was that there was a specific decision to exclude interim relief when determining the rate of <sup>a</sup>payment of overtime and this decision was a conscious decision based on the totality of the circumstances and took into account the resources of the Government. No clarification was forthcoming regarding the relevant and valid considerations on which this conscious decision was based. I also do not find any single detail in this regard in the written statement. No details were forthcoming regarding the quantum of the financial burden or the Government's inability to bear it.

11. 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  $44\frac{3}{4}$  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  $44\frac{3}{4}$  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.

12. 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 orders as to costs.



(P.S. CHAUDHURI)  
Member (A)