

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

O.A . 1127/96

Date : 18. July 2000

CORAM: HON. SHRI B.S. JAI PARAMESHWAR MEMBER(J)

HON. SHRI B.N. BAHADUR, MEMBER (A)

1. Mangat Ram Bhandari
2. Ravi Krishna Srivastava
3. Arun Sakharam Vaidya
4. Sudhir Balakrishna Patil
5. Swapankumar Ghosh
6. Maralenahalli Chikkanna Bylappa,
7. Krishna Vithal Kankraj
8. Dhirendranath Verma
9. Mahendra Singh
10. Murlidhar Pandurang Dhande
11. Bhalchandra Ambadas Vaishampayan
12. Bhalchandra Pandurang Panchal
13. Manghat Radhakrishnan
14. Manish Shankar
15. Prakash Sadashiv Ughade .. Applicants

(Represented by Mr. G.K. Masand)

-versus-

1. Union of India
Secretary, Min. of Finance,
Dept. of Economic Affairs,
North Block, New Delhi-110001.
2. General Manager,
India Security Press,
Nashik Road - 422 101
3. General Manager,
Currency Note Press,
Nashik Road - 422 101. .. Respondents

(Represented by Mr. V.S. Masurkar)

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O R D E R
(Per Hon. Shri B.S.Jai Parameshwar, Member (J))

Heard Mr. G.K.Masand, learned counsel for the applicants and Mr. V.S.Masurkar, learned standing counsel for the respondents.

2. There are 15 applicants in this OA. They are working as Assistant Works Manager (Gazetted Group 'A') in the scale of Rs.2200-4000 in the India Security Press/Currency Note Press at Nashik Road. Prior to introduction of the said scales of pay the pre-revised scale of pay for the said post was Rs.700-1300. The post of Asstt.Works Manager is regulated by the Recruitment Rules. Accordingly 75% of the posts are to be filled by promotion from the lower cadre of Supervisors in Group-B, non-gazetted and remaining 25% by direct recruitment. Applicants herein comprise both direct recruits and promotees. The service particulars of the applicants are detailed in Annexure A & B to the OA.

3. The India Security Press and Currency Note Press at Nashik Road are the industrial establishments for which the Factories Act apply. The manufacturing process of printing of currency notes come u/s. 2(k)(iv) of the Factories Act. These presses work in two shifts of 11 hours every day and 66 hours continuously in a week. This has been so since 1972. These working hours and

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shifts are more than the working hours prescribed under the Factories Act. They submit that as Asstt. Works Manager they have to work in shift of 11 hours per day and 66 hours in a week, either in day shift or night shift. They submit that staff and workmen in these presses are paid overtime allowance (in short "the OTA") at double the rate in accordance with section 59(1) of the Factories Act whereas the applicants have not been paid such OTA. They submit that prior to the recommendation of IV Pay Commission the Gazetted Officers working in the Press on the shop floor were compensated for the extra work by paying them 15% of the basic pay subject to the maximum of Rs.200/- p.m. as special allowance. The IV Pay Commission with regard to grant of special allowance recommended as under :

1. Officers working 09 hours shift Rs. 300 p.m.
2. Officers working 10 hours shift Rs. 400 p.m.
3. Officers working 11 hours shift Rs. 500 p.m.

They submit that even there is an incentive scheme under which payment of a fixed sum of Rs.300/-p.m. is paid to the workmen at the rate of 15% or more of their emoluments. Whenever ^{the} industrial workmen are allowed payment of incentive allowance less than 15% of their emoluments in any month, the incentive payment i.e. special allowance paid to the Gazetted Officers was proportionately reduced. They submit



that working in shift of 11 hours in these presses have been continued indefinitely. The Pay Commission had expressed the hope that with the incoming new mint and new note press, it would soon be possible to observe normal working hours in the mints and presses.

4. However, the Govt. of India was not able to reduce the working hours in these two Presses and even to this day two shifts of 11 hours and 66 hours per week is being continued. They submit that while the staff and workmen of the Press including their immediate subordinates viz. Supervisors etc. are paid incentive and OTA and on certain occasions their total emoluments exceeded the total emoluments drawn by the applicants. Even the staff and workmen are getting more benefits like incentive and OTA the applicants are being paid only special allowance fixed which was prior to the recommendation of the IV Pay Commission.

5. On the basis of the recommendation some of the workmen in the Press had approached this Tribunal in OA 761/1988 for claiming OT at double the rate in accordance with the provisions of Section 59(1) of the Factories Act and to keep them on par with the Supervisors drawing below Rs.2200p.m. as basic pay. Their claim was accepted by this Tribunal and ultimately the order of the Tribunal was confirmed by the Hon. Supreme Court. Thus after the recommendation



of the Pay Commission the staff and workmen in the Press got their benefit of OTA whereas in the case of applicants the special pay allowance continued to be at the minimum. Even relying upon the decision of this Tribunal some non-gazetted staff working in the Press approached this Tribunal in OA 761/88 and got the relief. They have enclosed the copies of the orders in OA 761/88 dt. 6-1-1993 and 18-12-95 in a group of application passed by this Tribunal (Annexure 'E' & 'F').

6. Thus the applicants submit that their subordinates viz. Supervisors, Junior Supervisors Assistant Supervisors who form the technical cadre and perform 11 hours duty per shift like the applicants are being compensated for extra work by payment of OTA at single rate beyond 44 hours and at double rate beyond 48 hours, per week. Thus the subordinates to the applicants are getting the emoluments more than the emoluments the applicants get in a month. They submit that they also perform the similar nature of duties and work for 11 hours per shift and 66 hours in a week. Further they submit that the staff and workmen in these Press get an incentive of Rs.300/- p.m.

7. In order to explain the difference in emoluments they have given statement showing the gross emoluments of Asstt. Works Manager and three subordinate cadre of staff in the Press.



which is at Annexure 'G' page 46 to the OA.

8. Hence they have filed this application

praying for the following reliefs :

"(a) to issue appropriate directions to the respondents to favourably consider the claim of the applicants for being suitably compensated for the extra working of three hours per day in a shift by payment of 90% of their gross emoluments as special allowance from the date on which each of the applicants were appointed to the post of Asstt. Works Manager;

(b) to regulate the payment of special allowance proportionately on the above basis for 9 hours and 10 hours working respectively;

(c) to pay to the applicants night shift allowance at the same rate as is being paid to their subordinates.

(d) to pay to such of the applicants who are employed at the Currency Note Press incentive at the same rate as is payable to the staff working under the applicants; and

(e) to pay to the applicants a sum of Rs.750/- for each Sunday working."

9. Their main contention for the above

(a)
reliefs is that there is an hostile discrimination

between them and the staff or workmen working in the

Press;

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(b) the fixed special allowance of Rs.500/- per month was decided by the respondents to compensate three hours extra working per day in the year 1987 when the applicants' subordinates were also not being paid overtime allowance;

(c) with the payment of OTA to their subordinates and at the same time denial of the said payment to the applicants when both the applicants and their subordinates work for identical hours every day, viz. 11 hours per shift is a gross discrimination.

10. The respondents have filed ~~the~~ reply.

They submit that India Security Press and Currency Note Press are the two industrial establishments under the direct control of the Govt. of India and that these Presses have engaged a set of different categories of officers, staff and workmen to carry out the sovereign functioning.

Every government servant is governed by different sets of rules and presently the applicants are governed by Rule 11 of the Fundamental Rules.

The applicants are entirely at the disposal of Respondent No.1, and directly at the disposal of

Respondents 2 and 3 for day-to-day administration.



As their designation itself indicates they are Managers, and accordingly the post held by the applicants being Gazetted Group 'A' post, discharge managerial and executive functions by virtue of their status. The applicants have no legal, moral or constitutional rights at any stage to claim any additional remuneration as they have been already appropriately remunerated. The application is a misconceived one. The applicants are getting special allowance since the year 1987 and they have approached this Tribunal in the year 1996. Hence the application is barred by time. Further they submit that the Officers Association had approached this Tribunal in OA 753/88 for similar reliefs and this Tribunal by its order dt. 11-2-1994 declined the reliefs claimed by the applicants. The claim of the applicants for payment of 90% of their gross emoluments as special allowance cannot be considered to. They submit that as per order No. F-4(45)/77-BNP dt. 30-7-1987 the Gazetted Officers working in the Press were paid or being paid with appropriate special allowance if and when they work beyond 8 hours and upto 11 hours a day.

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This is effective from 1-10-1986. The applicants being Gazetted Officers do not sign their muster. The office order dt. 29-12-87 was issued at the time when no order prescribing any duty hours was in existence. They submit that the necessity of issuing office order arose in view of Govt. of India orders dt. 30-7-1987 issued by the Ministry of Finance, Department of Economic Affairs prescribing the rates of special allowance in respect of gazetted officers working in the Mint and Press for extended working hours. The order dt. 30-7-1987 and 29-12-87 are at Annexure R-1 to the reply. Further they submit that variation or modification of the special allowance is being considered by the V Pay Commission and that the applicants could have waited till the outcome of the said Commission.

11. The applicants have not submitted any representation as prescribed under the Administrative Tribunals Act before approaching this Tribunal. Hence the OA is premature. Out of 15 applicants, 8 applicants are working under the direct control of respondent No.2 and 7 applicants

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are working under the direct control of respondent no.3. Therefore this single OA is not maintainable.

12. The applicants having accepted the special allowance granted in the year 1987 without any murmur are precluded from raising protest now which is beyond time. It is an after thought. The extra work performed by the Gazetted Officer is compensated by grant of special allowance. The nature of work performed by the applicants are managerial and executive in nature. They are not governed by the provisions of the Factories Act. They cannot take shelter of the categories of subordinate employees ~~referred~~ working in the Mint and Press under the provisions of the Factories Act. In accordance with Rule 11 of the FR they are bound to perform the basic duties assigned to them and they have been compensated for what they are doing. They dispute Annexure 'A' which is said to be a list of duties performed by the applicants. They submit that the list submitted by the applicants

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is confusing and misleading. The General Manager has no control over the applicants working in the Currency Note Press and also the applicants working under the control of Respondent no.3. The payment of incentive allowance is purely and entirely an integral part of the administration of Currency Note Press under the direct control of respondent no.3. The incentive allowance is paid to the concerned employees subject to achieving required target of production.

In other words the payment of incentive allowance in any factory is directly proportionate to the production achieved during a specified period.

Hence the applicants have no right to claim on the quantum of incentive allowance as they do not take part in the production. However, as a gesture of good will and with a view to keep parity with others the Govt. of India thought it proper to sanction special allowance to the applicants subject to certain conditions. This amount is paid in lieu of incentive allowance. The two Presses have been working @ 11 hours a shift to meet the exigencies of the work in the national interest. The applicants are governed



in accordance with the provisions of relevant service rules and they are paid as per their entitlements.

13. The cadre of the applicants is from the field of experts in printing technology, having basic knowledge of different methods of printing process and its application appropriately which involves minute details of printing currency/ Bank notes, Revenue stamps, passports, Saving instruments, cheques and other allied high value security documents. They are appropriately remunerated or compensated at each and every level. Hence the applicants are not entitled to any of the reliefs claimed in the OA.

14. Thus they pray for dismissal of the OA.

15. The applicants have filed a rejoinder more or less reiterating the averments made in the OA and claimed the reliefs as stated above.

16. During the course of arguments the learned counsel for the applicants strongly contended that a Govt. employee must be paid in commensurate with the ~~duties and~~ responsibilities attached to him. It is an admitted fact that the applicants are non technical

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Gazetted Group 'A' officers. The Two Presses which are maintained by the Govt. of India have got different grades of staff and workmen. The staff and workmen who work under the applicants are provided with OTA and incentive allowance. It is the grievance of the applicants that on certain occasions the emoluments drawn by their subordinates exceeded the emoluments drawn by the applicants. Thus the learned counsel for the applicants attempted to convince us that at least the emoluments drawn by the applicants must be equal to the emoluments drawn by the staff or workmen and cannot be less than the emoluments of the staff or workmen. It is his contention that applicants do work 11 hours in a shift and in those ^{same} shift those staff and workmen who work get more emoluments. Thus he submits that an anomalous situation has created wherein a supervisory officer is getting less emoluments than the emoluments drawn by the subordinate staff/workmen. This anomaly has resulted in payment of OTAs to the staff and workmen. In fact the subordinate staff and workmen after aggrieved by the recommendation of the IV Pay Commission approached this Tribunal and got ^{the} relief wherein the Tribunal directed to pay double the rate of OTA on

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certain conditions and that order came to be upheld by the Hon. Supreme Court. Likewise the Officers Association also approached this Tribunal for similar relief but their claim was negatived.

17. The learned counsel for the applicants submitted that this discrimination is violative of Article 14 and 16 of the Constitution of India.

18. On the contrary the learned counsel for the respondents submitted that the applicants are Gazetted Group 'A' officers and they are governed by Rule 11 of the FR. In fact the learned counsel for the respondents at ^acertain stage conceded the disparity in drawing the emoluments by the applicants and by the staff/workmen but he submitted that the position cannot be changed overnight and the policy of the Govt. ^{is} to pay certain OTA and incentive allowance to the staff/workmen working in the Press in accordance with the Factories Act. The applicants are not governed by ^{the} Factories Act. They are governed by Fundamental Rules. When that is so the applicants cannot claim any benefit. Further he submitted that in the year 1987 having considered the extra working of the gazetted officers in the Press Govt. of India

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ordered to grant special allowance of Rs.500/-p.m. These applicants have been drawing special allowance without any murmur. It is the case of the respondents that it is an after thought to claim parity in emoluments with the emoluments of staff/workmen. Incentive is given to the workmen on the basis of the production whereas the applicants being supervisory staff are not involved in production. Thus the learned counsel for the respondents attempted to contend that the officers cannot compare their emoluments with that of low paid workmen and that workmen might have earned more money as incentive allowance or OTA. That is not a valid ground for supervisory staff to claim higher or extra allowance. The applicants have not disputed grant of special allowance in the year 1987.

19. As against this the learned counsel for the applicants submit that at that time when the special allowance was granted, no such OTA was in practice. It is only after the incentive allowance and OTA were sanctioned to the staff and workmen. They obtained a favourable order from this Tribunal which ultimately confirmed by the Hon. Supreme Court. Hence the anomalous situation has arisen.



20. We have considered the contentions advanced by the learned counsels for both the sides.

21. This Tribunal has its own limitations. This Tribunal cannot direct the respondents to pay special allowance as claimed by the applicants. This Tribunal must take note of the supervisory work that being performed by the applicants. As contended by the learned counsel for the applicants special allowance was granted since all the staff and workmen are being paid OTA and incentive allowance. It is not known what the Government's decision on the recommendation of V Pay Commission was with regard to continuation or variation in special allowance granted to the officers in the year 1987.

22. Considering all these facts and circumstances of the case we feel it proper to direct the respondent authorities to treat the application as the representation of the applicants and take a realistic view of the matter and decide the issue with an open mind.

23. As the decision to be taken by the respondents is of far reaching implications on the financial aspects we feel it proper to leave it to the respondents to take the decision as expeditiously as possible.



24. Hence we do not feel it proper to fix any time frame.

25. In that view of the matter the following directions are given :

- (a) The respondents shall treat this application as the representation of the applicants and consider the same in accordance with the rules with an open mind and take a **decision; decision;**
- (b) The respondents may convene meeting of the representative of the officers in resolving the issue or controversy;
- (c) The respondents shall decide the issue as expeditiously as possible;

26. With the above direction the OA is disposed of. No order as to costs.

B. Bahadur

(B.N. BAHADUR)
Member(A)

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B.S. Jai Parameshwar

(B.S. JAI PARAMESHWAR)
Member (J)

18/12/2000