

(S)
J.A.344/96 Decisive
for T.S. set
CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.197/96 & O.A. 344/96

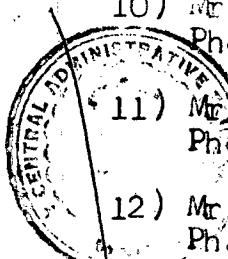
O.A. 197/96

pronounced, this the 7th day of January 1997

COURT:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

- 1) Mrs. M. Kuruvilla,
Matron
- 2) Mrs. A. Thomas
Sr. Nurse Grade I
- 3) Mrs. A. Chandy
Sr. Nurse Grade II
- 4) Mrs. M. S. Bidkar
Sr. Nurse Grade II
- 5) Mrs. C. B. Salve,
Sr. Nurse Grade II
- 6) Mrs. P. N. Sonawane
Sr. Nurse Grade II
- 7) Mrs. D. S. Nidhalkar
Midwife
- 8) Mrs. P. Sarwade,
Midwife
- 9) Mrs. A. S. Shinde,
Midwife.
- 10) Mr. B. D. More
Pharmacist.
- 11) Mr. R. V. Joshi
Pharmacist
- 12) Mrs. J. S. Patil,
Pharmacist.
- 13) Mr. A. A. Kaswa
Pharmacist.
- 14) Mr. K. C. Muhatte,
Pharmacist.
- 15) Mr. P. A. Sonawane,
Pharmacist.
- 16) Mr. S. R. Godke,
Pharmacist.



- 17) Mr. S.O. Amritkar
Pharmacist.
- 18) Mr. P.V. Shrisunder
Radiographer
- 19) Mr. A.K. Sawant
Peon
- 20) Mr. D.L. Chavan
Peon.
- 21) Mr. S.E. Gundarkar
M' Boy.
- 22) Miss. V.Y. Gajeellu,
LDC
- 23) Mrs. L.S. Hanmavale
Medical Assistant.
- 24) Mr. S.R. Kawale
Medical Assistant.
- 25) Mr. P.R. Sable
Medical Assistant
- 26) Mr. D.M. Gaikwad,
Medical Assistant
- 27) Mr. C.D. Maraskolhe
Medical Assistant.
- 28) Mrs. E. Rajan
Medical Assistant.
- 29) Mr. M.B. Shinde,
Medical Assistant.
- 30) Mr. K.S. Kamble,
Dhobi.
- 31) Mrs. D.P. Sagvekar,
Ward Sahayak.
- 32) Mrs. B.B. Gaikwad,
Ward Sahayak.
- 33) Mr. M.P. Gagade,
Ward Sahayak.
- 34) Mr. H.S. Lonkar,
Barbar.
- 35) Mr. R.S. Gaikwad,
Cook.
- 36) Mr. R.V. Bathellu,
Cook.
- 37) Mr. N.K. Das,
Masalchi.

38) Mr. R.C. Sarwan, Sweeper.
39) Mrs. Kamlabai Balmiki, Sweeper.
40) Mrs. Dayawathi Balmiki, Sweeper.
41) Mrs. L.R. Kale, Sweeper.
42) Mr. S.S. Chawriya, Sweeper
43) Mrs. Sunita Balmiki, Sweeper.
44) Mr. V.M. Shetty, Sweeper.
45) Mr. J.P. Vasist, Sweeper.
46) All India Ordnance Factories
Para - Medical Staff Association,
Dehu Road Branch, through the
Secretary, Pune 412 113
(By Advocate Shri S.P. Saxena)

.. Applicants in
O.A. 197/96

vs.

1. Union of India
through
The Secretary,
Dept. of Defence Production,
Ministry of Defence, South Block,
New Delhi - 110 011.

2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. The General Manager,
Ordnance Factory, Dehu Road,
Pune - 412 113.

(By Advocate Shri R.K. Shetty)

.. Respondents in
O.A. 197/96

O.A. 344/96

II.1) Mrs. K. Daniel, Matron
2) Shri V.D. Patil, Pharmacist
3) Mrs. A. Daniel, Sr. Nurse Gr. I
4) Miss. S.V. Kulkarni, Sr. Nurse Gr. I
5) Mrs. M.H. Masih, Sr. Nurse Gr. II
6) Mrs. Usha Khare, Sr. Nurse Gr. II

- 7) Mrs. V.P.Thakare, Midwife
- 8) Mrs. S.P.Hirwe, Midwife
- 9) Mrs. M.Sammaddar, Midwife
- 10) Shri K.R.Patil, Pharmacist
- 11) Shri A.B.Patil, Pharmacist
- 12) Ku.R.A.Pandya, Pharmacist
- 13) Shri P.S.Chaudhari, Pharmacist
- 14) Shri P.N.Patil, Pharmacist.
- 15) Ku.J.B.Bhangale, Pharmacist
- 16) Shri F.S.Patel, Pharmacist
- 17) Shri E.B.Sapkale, Med.Asstt.
- 18) Shri L.H.Patil, Med.Asstt.
- 19) Shri N.B.Sonar, Med.Asstt.
- 20) Shri A.G.Shaikh, Med.Asstt.
- 21) Shri P.R.Shinde, Med.Asstt.
- 22) Mrs. I.D.Thakur, Med.Asstt.(Female)
- 23) Mrs. S.M.Sapkale, Med.Asstt.(Female)
- 24) Mrs. M.R.Thakur, Med.Asstt.(Female)
- 25) Mrs. I.Gaikwad, Ward Sahayka.
- 26) Mrs. R.P.Shinde, Ward Sahayka.
- 27) Mrs. S.M.Patil, Ward Sahayka
- 28) Shri V.G.Ambodkar, Ward Sahayka
- 29) Shri P.Govindan, Cook
- 30) Shri S.P.Surwade, Cook
- 31) Shri H.Dillon, Masalchi
- 32) Mrs. H.R.Chandale, Female Sweeper
- 33) Mrs. S.R.Lohare, Female Sweeper
- 34) Mrs. S.H.Gechant, Female Sweeper
- 35) Mrs. K.P.Chandale, Female Sweeper
- 36) Shri V.K.Chahakar, Dhobi
- 37) Shri B.P.Patil, Mali
- 38) Shri U.M.Nagrare, Barber
- 39) Mrs. A.Mathews, Sr.Nurse.
- 40) Shri Notyanand, Lab.Technician
- 41) Shri J.K.Gajbheye, Radiographer
- 42) Shri P.R.Chaudhari, Chargeman
- 43) Mrs. V.A.Thenge, Lady Health Visiter.
- 44) Mrs. J.B.Sonar, Female Attendant.

(By Advocate Shri S.P.Saxena)

.. Applicants in
O.A. 344/96

-versus-

..5/-

- 1) The Union of India
through
The Secretary,
Ministry of Defence,
DHQ PO
New Delhi - 110 011.
- 2) The Chairman,
Ordnance Factory Board,
10-A Auckland Road,
Calcutta - 700 001.
- 3) The General Manager,
Ordnance Factory,
Varangaon,
Dist. Jalgaon.

By Advocate Shri R.K.Shetty

Respondents in
O.A. 344/96

- : O R D E R :-

(Per M.R. Kolhatkar, Member(A))

As the parties in both the cases are common viz. employees of Ordnance Factory, Dehu Road in O.A. 197/96 and employees of Ordnance Factory Varangaon in O.A. 344/96 and as the issue is identical viz. entitlement of employees for payment of overtime the same are being decided by a common order.

2. In these O.A.'s the applicants who are staff/employees working at the Ordnance Factory Hospital Dehu Road/Varangaon have claimed payment of overtime allowance in view of the judgment of this Tribunal in O.A. 459/94 decided on 20-10-1995. The counsel for the respondents have opposed the O.A., though he does not dispute that the case of the applicants is similar to that of applicants in O.A. 459/94. It would therefore appear that the issue is no longer res-integra and the applicants are entitled to get the relief.

3. The counsel for the respondents however points out that the judgment of the Tribunal in O.A.459/94 was delivered relying on the judgment of the Tribunal in O.A 983/89 decided by the Madras Bench on 30-9-91 and T.A.No. 363/86 decided on 4-3-94 by the Jabalpur Bench which was also decided in employees' favour. The judgment of the Madras Bench was the earlier one and according to him the Madras Tribunal having reviewed its judgment on ^{also} 15-2-1994 in MP No.454/92 this Tribunal should have a fresh look. It was contended before the Madras Bench of the Tribunal that there were employees belonging to Cook, Masalchi, Mali and Dhobi categories who were not eligible for regular overtime on the same terms as the other applicants in the O.A. but rather they were entitled to slab rates and these slab rates are prescribed in Department of Expenditure O.M. dt. 19-3-1991 and the same has been adopted by the Ordnance Factory Board under its letter dt. 19-4-1991 which is to be seen at Annexure-I to written statement in O.A.344/96. This circular states that as per extant orders Cooks, Khansama Chowkidars, Water Carriers, Malis, Barbers, Dhobis and Masalchies are paid overtime allowance at the rate as applicable to Class IV/Group 'D' staff working in offices. The rates of overtime allowance payable to office staff has since been revised by the D.O.P.T. vide their letter dt. 19-3-1991 and the same should be made applicable to the above staff from 1-12-1990. In view of the above the Madras Bench of the Tribunal reviewed its judgment and stated that now they find that the categories like Cook, Masalchi, Mali and Dhobi who are covered by separate instructions regarding overtime allowance and hence

the order passed in the O.A. has been clarified denying the relief granted to these category of staff.

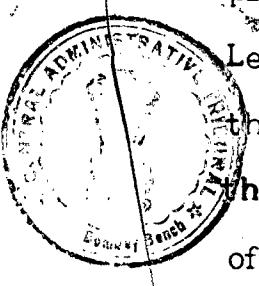
4. The counsel for the applicant contends that CAT Madras Bench has not reviewed its judgment but it has only passed order in relation to an MP. In the list of 78 persons who had joined the O.A. some employees in the category of Cook, Mali, Masalchi and Dhobi sought permission to join together in a single application. The notice of MP in this connection was not served on the Govt. Under the circumstance the MP was filed seeking clarification of the order as to whether this category of staff belonging to a separate category for the purpose of calculating overtime allowance need be granted the relief granted to the other applicants in the O.A. and the Tribunal clarified the order. Thus the background of the orders passed by the Madras Bench of the Tribunal in MF 454/92 is quite peculiar and it does not constitute a review of its original judgment which has been followed by the Tribunal. The counsel for the applicant further submits that the SLP against the decision of the Madras Bench of the Tribunal was dismissed by the Supreme Court. In this connection he brings to our notice the judgment of the Supreme Court in C.A. No. 4505/96, State of Maharashtra & Anr. vs. Prabhakar Bhikaji Ingle, 1996(1)ATJ 606 in which Supreme Court laid down that when an SLP is filed before

the Supreme Court against O.A. decided by the Tribunal and the Supreme Court has confirmed the order passed by the Tribunal, the Tribunal cannot have any power to review the earlier decision especially when the fact of the dismissal of the SLP has been brought to the notice of the Tribunal. In this connection para 4 of the above judgment of Hon'ble Supreme Court is relevant & reproduced below :

"4. But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1 CPC or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court."

Incidentally I also find that the so called review by the Madras Bench of the Tribunal was delivered on 15-2-94 i.e. prior to Ingle's case which was decided on 11-3-1996.

Learned counsel for the applicant further contends that merely calling a category of staff as office staff although they actually work inside the factory and to make payment of overtime allowance by slab instead of regular overtime basis is neither in accordance with the relevant provisions of Factories Act nor the Shops and Establishment Act.9/-



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5. After consideration of arguments of both the sides I am of the view that the present O.A. is covered by earlier judgment confirmed by Supreme Court by rejection of SLP and I am bound to follow the ratio of the same and grant relief to the applicants similar to the relief granted in OMOIST 459/94 because there can be no discrimination in relation to employees similarly situated.



Both the OAs are therefore disposed of by passing the following order :

The applicants are declared to be entitled to get double rate overtime and the respondents are directed to make payments of the same to them subject to the condition that the payment of arrears of overtime should be restricted to one year prior to the date of filing of the application. Respondents are also directed to continue to pay overtime to the applicants in future at double the rate. The payment of arrears should be completed within three months of the date of communication of the order.

There will be no order as to costs.

M

(M.R.KOLHATKAR)
Member(A)

Certified True Copy

Date

Section 15
Central Arbitration Tribunal,
Bombay Bench.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

Review Petition No. 12 of 97.

in

ORIGINAL APPLICATION NO. 459/1994.

Presented, this the 28th day of July 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Ms. Manorama John & 68 Ors. ... Applicants.

(By Advocate Shri S.P.Saxena)

V/s.

Union of India & 2 Ors. ... Respondents.

(By Advocate Shri R.K.Shetty).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this Review Petition filed by original respondents including General Manager, Ammunition Factory, Kirkee, the review of my Judgment dt. 20.10.1995 is sought. The O.A. related to 69 non-industrial employees of the Respondent No. 3 and the relief sought for was that of payment of double rate overtime. Applicants at Sl.Nos. 1 to 60 were para-medical staff or staff supporting para medical staff and applicants at Sl.Nos. 61 to 69 were so called office staff like Mali, Barber, Dhobi, Cook, Masalchi etc. In that Judgment relief was granted to the applicants on the footing that the issue raised was no longer res-integra and the matters stood concluded by the Judgment of the Tribunal in O.A. No. 983/89 decided by the Madras Bench on 30.9.1991 and T.A. No. 363/86 decided on 4.3.1993. The main ground for R.P. is that the Madras Bench of the Tribunal had clarified its

Judgment in M.P.454/92 decided on 15.2.1994. The effect of the modified Judgment was that order passed would not apply to applicants at 4, 6, 44 and 73 and these applicants were the employees belonging to the category of Cook, Masalchi, Mali and Dhobi who are office staff governed by Ministry of Personnel O.M. No.15012/3/86- Estt. Allowances dt. 19.3.1991, this had the effect that the above staff were entitled to slab rate of overtime. The main contention of the Review Petitioners is that it was through oversight that the provisions of the O.M. dt. 19.3.1991 could not be brought to the notice of the Tribunal/ the same is referred to in para 2 of ~~Ex.~~ Ex. A-3/ and in para 10 of the written statement, ~~that~~ the respondents failed to annex the copy of the said O.M. inadvertently and that the failure on the part of both the parties in led to the O.A. has/an error apparent on the face of the record. According to the Review Petitioners applicants at Sl.No.61 to 69 are governed by the slab rate and that the CAT, Madras Bench having revised its Judgment to exclude this category of staff and this Tribunal having basis of passed its Judgment entirely on the/ratio of the Judgment of the CAT, Madras Bench is also required to review its Judgment. The counsel submits that in case the Judgment is not reviewed it would lead to an anomalous situation, inasmuch as, employees of this category of staff who are paid overtime at slab rate/ in all other Factories would only in Kirkee be paid at/different rate. The counsel for the Respondents to the Review Petitioner (Original Applicants)/relies on the Judgment of this Tribunal in O.A. No.197/96 and O.A. No.344/96 delivered on 7.1.1997. This related to staff of Ordnance Factory, Dehu Road and staff of Ordnance Factory, Varangaon.

The counsel pointed out that this Tribunal took note of review/modification made by CAT, Madras Bench in its Judgment, but still proceeded to grant relief as in the case of O.A. No.459/94 relying on the Supreme Court Judgment in State of Maharashtra & Anr. V/s. Prabhakar Bhikaji Ingle, 1996 (1) ATJ 606 wherein the Supreme Court observed that when an SLP is filed before the Supreme Court against O.A. decided by the Tribunal and the Supreme Court has confirmed the order passed by the Tribunal, the Tribunal cannot have any power to review the earlier decision especially when the fact of the dismissal of the SLP has been brought to the notice of the Tribunal.

2. It is further contended that there is a special reason for review of orders by CAT, Madras Bench of its Judgment viz. that the designations of the applicants in the O.A. were not given, but in the present O.A. viz. O.A. 459/94 the designations of all the applicants were clearly given and this is also reflected in para 1 of the Judgment. The modification made by the Madras Bench was known to the department on 15.2.1994 and still the Department failed to bring it to the notice of the Tribunal when the matter was finally heard on 7.9.1995 before reserving the Judgment. Moreover, the counsel has pointed out that the review petition is grossly barred by delay and laches. The Judgment was pronounced on 20.10.1995 and 3 months' time was given for implementation of the same. M.P. 244/96 was filed for extension of time and the same was allowed by the order dt. 28.3.1996. M.P. 17/96 was filed and by the order dt. 10.1.1997 the respondents were directed to file a Review Petition. The present R.P. has been filed on 29.1.1997 and since under Rule 17 of CAT (Procedure) Rules the Review Petition is to be filed within 30 days from the date of receipt of the

copy of the order, the R.P. may be dismissed on the ground of delay and laches alone.

3. I have considered the matter. I am not inclined to dismiss the R.P. on the ground of delay in the facts and circumstances of the case. On a specific query, it was made known/that the O.A. has been implemented in relation to all applicants at S1.No.1 to 60 but it has not been implemented in case of remaining employees who are stated to be governed by the slab system. The counsel for the Review Petitioner has invited my attention to the Supreme Court Judgment in Union of India & Anr. V/s. Sher Singh and Ors.

Civil Appeal No.2183/93 decided on 7.2.1997

¶1997 All. CJ 304¶. In para 3 of the above Judgment, the Hon'ble Supreme Court has observed that "In view of the settled legal position by a catena of decisions of this court that the dismissal of special leave petition without speaking order does not constitute res judicata, the question of law is at large to be gone into." According to the counsel, the ratio of Sher Singh has to be kept in view while considering the effect of the Supreme Court observations in State of Maharashtra V/s. Prabhakar Bhikaji Ingle relied on by the Respondents (Original Applicants).

4. In terms of Rules under Order 47 of C.P.C. the Tribunal may review its order when there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the party or could not be produced by the party. There is no doubt that the Judgment of the Madras Bench is the foundation of the

present order of this Tribunal in the O.A. and there is also no doubt that the modification to order passed by the Madras Bench on 15.2.1994 excludes the category of Office Staff who are governed by the Department of Personnel Memorandum dt. 19.3.1991. The question to be considered is not whether the CAT, Madras Bench was right to review its earlier order dt. 30.9.1991, but what was the scope of the order of Madras Bench of the Tribunal which conceivably could have been before this Tribunal when it passed its Judgment on 20.10.1995. Thus looked at, this Tribunal could not have been granted the relief to staff governed by D.O.P. Memorandum dt. 19.3.1991. I am therefore of the view that the order dt. 20.10.1995 is liable to be clarified, in terms of the modification given by the CAT, Madras Bench on 15.2.1994 viz. that the applicants other than those at Sl.Nos. 61 to 69 which latter category are governed by Department of Personnel O.M. dt. 19.3.1991 are declared to be entitled to get double the rate overtime. The R.P. is allowed in the above terms. The clarification would govern the Judgment ab initio.

Order in Original Application No.197/96

and

Original Application No.344/96.

No R.P. in regard to these O.As. is before me. As observed above, these O.As. related to Staff of Ordnance Factory, Dehu Road and Varangaon respectively. M.P. 224/97 in O.A. No.197/96 was dismissed by this Tribunal on 1.5.1997. All the same, since these 2 O.As. were decided in terms of O.A. 459/94 which itself has been reviewed by me to day and as I consider it in the interest of Justice viz. to have uniformity of law and

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to avoid proliferation of litigation and as it is well settled vide Full Bench decision in John Lucas reported at page 135 of Vol.I of Full Bench Judgments of Bahri Brothers that the review can be undertaken by Tribunal *suo moto* or on application of any aggrieved person, which may be a party or not to the original application, I, therefore, consider that the orders in the above 2 O.As. are also liable to be reviewed and a show-cause notice may be issued to the parties as to why the orders may not be reviewed, the order in O.A. 459/94 having been reviewed. Show-cause Notice returnable on 21.8.1997 before the same Bench.

(M.R. KOLHATKAR)
MEMBER(A).

B.

Notices issued to

Applicant/Respondents on

13.8.97 alongwith
order dt. 28.7.97.

(8)

14.8.97