

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

CONTEMPT PETITION NO.47/2005
IN
ORIGINAL APPLICATION NO.26/2000.

Dated : 30.6.2006

Hon'ble Shri A.K.Agarwal, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J).

A.K.Biswas & 20 Ors.Applicants.
(By Advocate Shri S.S.Karkera)

v.

1. Shri Aravind Mayaram,
Secretary, Govt. of India,
Ministry of Finance
(Currency & Coinage Department),
North Block,
New Delhi - 110 001.
2. Shri Arun N.Ingle,
General Manager,
Currency Note Press,
Jail Road,
Nasik Road.
3. Shri Prakash Narayan,
General Manager,
India Security Press,
Nashik.Respondents.
(By Advocate Shri V.S.Masurkar)

: O R D E R :

{A.K.Agarwal, Vice-Chairman}

Applicant by Shri S.S.Karkera. Respondents by
Shri V.S.Masurkar.

2. C.P.No.47/2005 has been moved by the petitioner
alleging non-compliance of the Tribunal's order dt.
4.4.2005 given while disposing of this O.A. The
Hon'ble High Court of Bombay has vide its order dt.
31.1.2006 given while disposing of Writ Petition
No.5956/2005 has set aside the order of the
Tribunal and has remanded back the matter for

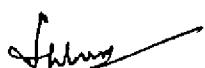
fresh consideration.

3. In view of above, the C.P. does not survive and it is dismissed accordingly. Notice discharged.

4. The applicant has moved an M.P. No.364/2006 seeking certain amendments to para 4 of the O.A. The learned counsel for respondents Shri Masurkar has no objection. M.P. is allowed. Let the necessary amendments be carried out in the O.A. within a period of two weeks.

5. A copy of the amended O.A. may be served on the learned counsel for the respondents, who will file the written statement in another three weeks thereafter.

6. List the case for final hearing on 17.8.2006.



(MUZAFFAR HUSAIN)
MEMBER (J)



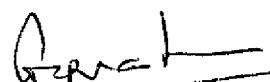
(A.K. AGARWAL)
VICE-CHAIRMAN

B.

17.8.06

Applicant by Shri S.S. Karkera.
Respondents by Shri V.S. Masurkar.
At the request of counsel for
applicant, case is adjourned to 21.8.06
for final hearing.

(Muzaffar Husain)
J (J)


(G.C. DIVASTAVA)
VC

180/2

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

ORIGINAL APPLICATION NO.26/2000

Dated : 15.9.2006

A.K.Biswas ...Applicants

Shri S.S.Karkera ...Advocate for
Applicant.

v.

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

Shri V.S.Masurkar ...Advocate for
Respondents

Coram : Hon'ble Dr.G.C.Srivastava, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J)

(i) To be referred to the Reporter or not? Yes

(ii) Whether it needs to be circulated to other
Benches of the Tribunal? Yes

(iii) Library? Yes

G.C.Srivastava
(G.C.SRIVASTAVA)
VICE-CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH.

ORIGINAL APPLICATION NO. 26/2000.

Friday, THIS THE 15th DAY OF September, 2006.

Hon'ble Dr.G.C.Srivastava, Vice-Chairman,
Hon'ble Shri Muzaffar Husain, Member (J).

1. A.K.Biswas
2. Asutosh Kanungo
3. Arthur Swamy
4. Alok Basu
5. N.K.Sanyal
6. Sanjib Mitra
7. A.K.Gupte
8. Bipul chaudhary
9. M.N.Aswale
10. D.E.Parker
11. V.K.Roy
12. Rathin Sarkar
13. P.K.Biswas
14. Abir Sen
15. R.S.Pawar
16. A.D.Khan
17. Aparnesh Das
18. Dipankar Biswas
19. H.S.Robinson
20. J.K.Chaudhary
21. D.Natarajan
(All of whom are working
as Supervisors in India
Security Press and CNP
Nasik Road, Nasik) ...Applicant.
(By Advocate Shri S.S.Karkera)

v.

1. Union of India through
The Secretary, Ministry
of Finance,
New Delhi.

2. The Joint Secretary
(Currency, Coinage &
Administration)
Department of Economic
Affairs, Ministry of
Finance,
New Delhi.

3. General Manager,
Currency Note Press
Jail Road,
Nasik Road,

4. The General Manager,
India Security Press
Jail Road,
Nasik Road. Respondents.

(By Advocate Shri V.S.Masurkar)

: O R D E R :

{Dr.G.C.Srivastava, Vice-Chairman}

This O.A. has travelled back to the Tribunal on being remanded by the Bombay High Court through its order dt. 31.1.2006 passed in Writ Petition No.5956/2005. The case has slightly longish history, which may be recounted in brief. The applicants, 21 in number, filed this O.A. on 15th December, 1999 praying for the following relief :

"That this Hon'ble Tribunal be pleased to direct the respondent No.3 and 4 and their servants and agents to pay to the applicants herein, overtime allowance as paid to their counter parts working with the respondents who are also performing 11 hours duty as per the duty hours fixed by respondents without any limit on basic pay, in respect of overtime duties performed by the applicants and to pay to the applicants arrears that are due and have become payable to them from the date of their promotion to the post of Supervisors pay together with interest thereon at the rate of 21% per annum in the alternative to pay equal wages for equal work".

The applicants were appointed and posted to work in

the technical section of the India Security Press (ISP) and Currency Note Press (CNP) as Supervisors. Through this OA, they claim the benefit of Overtime Allowance (OTA), twice the rate of their ordinary wages, under section 59 of the Factories Act, 1948, in respect of the work done beyond the period of 9 hours each day or in excess of 48 hours a week. The respondents, in their written statement, oppose the claim on the ground that the applicants are senior government officials drawing a salary and they can claim OTA under the Service Rules and not under Sec.59 of the Factories Act. Respondents further state that the applicants cannot be termed as workmen, who alone are entitled to draw OTA at double the ordinary rate of wages under sec.59 of the Factories Act. It was further averred that the Bombay Shops and Establishment Act had earlier given a wider definition to the word "workman" in sec.70 of the said Act, so as to include even those who were working in and in connection with the factory, even though they were not actually engaged in the manufacturing process in the Factory. However, sec.70 of the Bombay Establishment and Shops Act was amended on 21.10.1986, by virtue of which, the "non-obstante" clause of Section 70 was deleted. As a consequence of this Amendment, the wider meaning given to the word "workman" in Section 70 of the Bombay Shops and Establishments

Act no longer operates with effect from 21.10.1986.

It has further been stated by the respondents that because of this amendment, the Apex Court gave a ruling in the case of General Manager, India Security Press v. H.M.Datar & Ors.

{Special Leave to Appeal (Civil) No.866/92 of from the Judgment and Order dt. 8.7.1991 of the High Court of Bombay in W.P. No.3846/83} that the liability for the payment of double overtime, as per section 59 of the Factories Act, to the persons, who are not strictly falling within the definition of the "workman" in section 2(i) of the Factories Act, has ceased w.e.f. the date of amendment of sec.70 of the Bombay Shops and Establishment Act, carried out in the year 1986. In view of these submissions, the respondents state that the applicants are not "workman" within the meaning of the Factories Act, 1948 and are therefore not entitled for double OTA as per sec.59 of the Factories Act. This OA was originally decided on 19.1.2001 and the OA was dismissed for lack of jurisdiction on the ground that the Tribunal has no jurisdiction to deal with the claim of OTA under the Factories Act. The applicants filed W.P. No.4917/2001 against this order of the Tribunal and through its order dt. 27.1.2005, the High Court remanded the case back to the Tribunal making the following observations :-

" There can be no dispute that

Cm

supervisors are entitled to overtime in accordance with section 59 of the Factories Act. In the case of Union of Omdoa & Anr. v. G.K.Kokil & Ors., AIR 1984 SC 1022, the Apex Court considered where the claims filed under section 33-C(2) of the Industrial Disputes Act by persons who were workmen within the meaning of Industrial Disputes were entitled to wages under section 59 of the Factories Act. Thereafter, several Original Applications were also decided in favour of the supervisors who are doing the same kind of work as the present Petitioners.

The Tribunal was, therefore, in error in concluding that it had no jurisdiction to decide the issue in the Original Application filed by the Petitioner as to whether they were entitled to overtime wages under the Factories Act. We, therefore, set aside the impugned order and remand the matter to the Tribunal".

On remand, this Tribunal allowed the application through order dt. 4.4.2005. This order was challenged by the respondents in the High Court through W.P. No.5956/2005. The Bombay High Court examined the case in detail in light of the Judgment passed by the Supreme Court in Union of India & Anr. v. G.K.Kokil & Ors., AIR 1984 SC 1022, delivered on 21.3.1984. The submission before the Supreme Court was that sec.70 of the Shops & Establishment Act read with sec.64 of the Factories Act, 1948 created anomalous situation, inasmuch as, even persons occupying the position of a Manager or General Manager would be entitled to OTA which could not have been the intention of the State Legislature. The Supreme Court, however, held that "In our view, it is a matter of the State

Legislature and not for the Court". When a legislature stepped in after the judgment of the Supreme Court to amend the law, Sec.70 of the Shops and Establishment Act, 1948 was amended w.e.f. 21.10.1986 as a result of which the earlier provisions were modified insofar as they had laid down an expanded applicability of the Factories Act, 1948 to all persons employed in a Factory irrespective of whether or not they were "workman". After the amendment, a decision of the Bombay High Court in relation to the ISP was taken in appeal to the Supreme Court in General Manager, ISP v. H.M.Datar (supra) and a Bench of three Learned Judges of the Supreme Court in its order dt. 8.10.1992 made the following observations :-

"It is also relevant to mention that such liability for overtime has ceased with the amendment, of Section 70 of the Bombay Shops and Establishment Act, 1948, with effect from 26.6.1986 as the amendment has the effect of deleting the non-obstante clause in Section 70, as it stood earlier".

Relying on these observations of the Apex Court, the High Court made the following observations, while disposing of the aforesaid writ petition :-

"Under the pre-amended provisions, Supreme Court had held that the non-obstante clause in Section 70 of the Bombay Shops and Establishments Act, 1948 had the effect of overriding even the exemption provisions viz, Section 64 of the Factories Act Act, 1948, read with Rule 100. This position has now been brought about in Section 70 of the Bombay Shops and Establishments Act, 1948. The

Con

judgment of the Tribunal overlooks the effect of the amendment to the governing legislative provisions.

The exemption that has been provided in Rule 100 of the Maharashtra Factories Rules, 1963 inter alia applies to supervisors by virtue of clause (x) of sub-rule (1). Sub-rule (1) defines persons who shall be defined to hold positions of supervision or management provided they are not required to perform manual labour or clerical work as a regular part of their duties. Therefore, the question as to whether the exemption would apply to the Respondents - who are supervisors would depend upon whether the nature of their duties is such that they are not required to perform manual labour or clerical-work as a regular part of their duties. This is a factual issue upon which the primary determination would have to be made by the Central Administrative Tribunal".

The High Court felt that this Tribunal had proceeded earlier in this case on the foundation that the order of remand that was passed by the High Court precluded it from making any judicial determination, as a result of which the Tribunal had allowed the application relying upon its own decision in Ashok Pandharinath Padwal v. Union of India (O.A. 761 of 1988). The High Court observed that it was not an appropriate reading of its order and accordingly set aside the Tribunal's order and remanded the matter back for fresh consideration, as the Tribunal had overlooked the crucial change in legislative provision that took ~~the~~^{the} place because of amendment of sec.70 of the Bombay Shops and Establishments Act. While remanding the case,

Ca

the High Court also gave liberty to the applicants to move an application for amendment of their pleadings, if they are so advised, to place before this Tribunal all the relevant material having a bearing on the question as to whether the respondents are or are not required to perform manual labour or clerical work as a regular part of their duties. The respondents were also given the liberty to file a reply on merits, as well, if the amendment petition was allowed by this Tribunal. Consequently, the applicants amended their O.A. and incorporated the details of the duties performed by supervisors with a view to establish that they did perform manual work. Controverting these submissions, the respondents stated that the machineries in the press are sophisticated in nature and are run and operated by Industrial Workmen and other subordinate staff members and not by the applicants, who only supervise their work. It was further averred that the applicants have the status of Group 'B' non-gazetted officers and they supervise and even write annual confidential reports of a number of subordinate staff. The respondents further stated that the applicants have given an exaggerated list of the duties being performed by them and they should be put to strict proof thereof.

2. Counsel from both sides argued vehemently

in support of their respective contentions. It is now the settled position that in terms of Rule 100 of the Maharashtra Factories Rules, 1963 Supervisors shall also be entitled to OTA at double the rate, provided they are required to perform manual labour or clerical work as a regular part of their duties. This is the short question that has to be decided by this Tribunal i.e. whether the applicants are required to perform manual labour or clerical work as a regular part of their duties. The applicants have listed out 22 items of work in para 4.3(b) of the amended OA, which, as per their statement, they are required to perform generally. They also contend that they have been given training in mechanical and printing techniques and are required to ^{be G} ~~represent~~ in the workshop regularly. They are also required to handle technical problems whenever approached by the lower staff. Their further contention is that other Supervisors (numbering 44), who are also in the common seniority list of Supervisors, had been drawing OTA at double the rate and the same benefit should be extended to the applicants, as well. They have also stated that in the past they had been required to perform consignment duty and in printing pass-ports etc., which amount to manual work. Clarifying the position, the respondents submitted that the OTA given to other Supervisors

Gr

cannot be taken as a ground for allowing OTA at double the rates to the applicants, as each case has to be considered on its own merit. It was further submitted that whenever extra work was required to be done by the applicants, they are fully compensated for that through special allowance and they cannot enjoy overtime at double the rates, as manual work is not a part of their normal duties.

3. On perusal of the documents submitted by the applicants along with their M.P. No.364/2006 through which they have prayed for amendment in the OA, we find that there is nothing on record to support their contention that manual work is done by them as a part of their normal duty. The learned counsel for the respondents produced copies of confidential reports of the applicants in which the applicants themselves are required to give a brief description of their duties. Shri Arun Kumar Biswas, applicant no.1, has stated the following as his duties in the ACR form of year 2001-2002 :-

- "1. General Supervision.
- 2. To initiate for procurement of raw material and taking their trials for ascertaining suitability.
- 3. Utilisation of available man-power and machines.
- 4. Maintenance of machine and industrial tranquility.
- 5. Any other work as per requirement of the government (as presently working in Forgery Detection cell)".

Another applicant, Shri Alok Basu has stated his duties comprising the following, as per ACR of 2002-

2003 :-

- "1. To work as Supervisor on Miller Machine in alternative shifts and to look after the job of planning co-ordination and production of the work.
2. To ensure proper utilisation of man, machine and material.
3. To maintain targeted production with quality.
4. To take Corrective measures for improvement in standard of printing.
5. To Assist A.W.M. and all higher officer in all routine work.
6. To initiate procurement of material and to conduct the suitability test/trial and to initiate suitability report".

Shri Bipul Chaudhury, in his ACR of 2002-2003, has given the following as the description of his duties :-

- "1. Manpower planning and deployment of workmen accordingly,
2. Deployment of Asstt & Jr. Supervisor on machine and assigning them official jobs.
3. Maintaining the production target of the machines with quality printing.
4. Maintaining safe working condition for avoiding accidents.
5. Monitoring the preventive maintenance of the printing machines.
6. Procurement of spare parts needed for the machine.
7. Monitoring stock of various items.
8. Taking trials of raw materials and spare parts for its suitability.
9. Maintaining harmony and discipline in the section.
10. Carrying out any other official job as assigned by A.W.M.".

Shri Ratin Sarkar in his ACR of 2002-2003 has stated his duties as the following :-

"The duties which I perform are as follows :-

Overall shopfloor supervision for execution of production both for Letter-Press and perforating sections".

Ar

Similarly, other applicants ACR also indicate that the duties performed by them are also on similar lines. These are ~~are~~ ^{all} official documents in which the applicants have themselves stated what their duties are and can, therefore, be fully relied upon. A careful perusal of these documents leaves us in no doubt that none of these items come under the category of manual work. They are clearly act of supervision and by no stretch of imagination it can be said that these Supervisors perform manual or clerical work as a part of their normal duties.

4. It has also been brought to our notice that the essential qualification for appointment as a Supervisor is a diploma in printing technology from a recognised institution with two years experience in supervisory capacity in the respective field in a printing press of repute. It is evident that officials recruited with this qualification will not be required to perform manual work like a workman. The list of duties shown by them in the amended O.A. in paragraph 4.3 (b) also include mainly supervisory duties and not manual work as are performed by workmen.

5. In view of the above discussion, we are convinced that the applicants do not perform manual labour or clerical work as a regular part of their duties. This stand is further confirmed by the decision given by the Central Government Labour

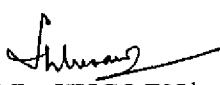
Court No.II Mumbai while dealing with Application No.LC-2/578-593 of 1995 and LC-2/32&33 of 1996 (Exhibit - "N") filed by some of the Supervisors of the ISP, Nasik. It was held by the Labour Court that the applicants in these two cases were not workmen under Rule 2(S) of the Factories Act.

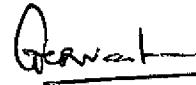
6. Another argument advanced by the learned counsel on behalf of the applicants is that they cannot be treated differently from 44 other supervisors, who have been allowed by this Tribunal to draw OTA at double the rate. To our mind this argument is not legally tenable, inasmuch as, this position was known to the High Court while dealing with W.P. No.5956 of 2005 wherein it was clearly mentioned that this Tribunal had passed its earlier order following its own decision in Ashok Pandharinath Padwal's case (supra).

Notwithstanding this position, the High Court held that this Tribunal has to determine whether the applicants are or are not required to perform manual labour or clerical work as a regular part of their duties. Also, relying on the principle laid by the apex court in Government of U.P. & another Vs. B. Satyanarayan Rao (Dead) by Lrs & others (2000 SCC L&S 486), the decision in Ashok Pandharinath Padwal's case (supra) can be ignored on the principle of per incuriam as certain relevant provisions of law were not considered in the said

case. By the same logic, the principle of equal pay for equal work has no relevance to the instant case. The apex court has stated very clearly in State of Haryana & ors. Vs. Charanjit Singh & Ors. (2006 (1) SC SLJ 1) that the principle of equal pay for equal work has no mechanical application in every case.

7. In view of the above discussion and our clear-cut finding that applicants are neither performing nor are required to perform manual labour or clerical work as a regular part of their duties, we have no hesitation in holding that they are not entitled to get OTA at double the rates as a workman. Accordingly, the O.A. is dismissed. No order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(G.C. SRIVASTAVA)
VICE-CHAIRMAN

B.