

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 133/2001

Dated this Thursday the 1st day of November, 2001

K.E. Sawant

Applicant.

Shri S.D. Daware

Advocate for the
Applicant.

VERSUS

Union of India & Anr.

Respondent.

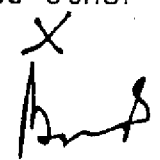
Mr.V.D. Vadhavkar for
Mr.M.I. Sethna.

Respondents.

CORAM :

Hon'ble Shri B.N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? X
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? X
- (iii) Library. X


(B.N. Bahadur)
Member (A).

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.133/2001.

Dated this Thursday the 1st Day of November, 2001.

Hon'ble Shri B.N. Bahadur, Member (A).

Shri Krishna Bapu Sawant,
Working as Mechanical Assistant in the
India Meteorological Department Workshop,
Shivajinagar, Pune-411005 and
President, All India Meteorological
Workshop Union, Office at above address.
R/at: "Bandhu Prem", New Kirkee,
Pune - 411 003.

.. Applicant.

(By Advocate Shri S.D. Daware)

VERSUS

1. The Union of India, through the
Secretary, Department of Science &
Technology, Technology Bhavan,
New Mehrauli Road,
New Delhi - 110 016.
2. The Director General of Meteorology,
Mausam Bhavan, Lodi Road,
New Delhi - 110 003.

.. Respondents.

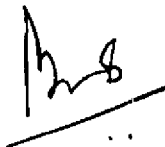
(By Advocate Shri V.D. Vadhavkar for
Shri M.I. Sethna, Advocate).

ORDER (Oral)

[Per : Shri B.N. Bahadur, Member (A)]

In this case I have heard Learned Counsel Shri
S.D. Daware, for the Applicant and Shri V.D. Vadhavkar
for Shri M.I. Sethna, for the Respondents. As the
pleadings in the case are complete and the matter is in a

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short compass, this case is being disposed of at the stage of admission with consent of both parties, after hearing them.

2. It may be stated that rejoinder filed today by the Applicant has been taken on record, after, a copy is served to the Learned Counsel Shri Vadhavkar.

3. The Applicant in this O.A. comes up to the Tribunal seeking the reliefs for a direction to the Respondents to revise the overtime rates "in consonance with the recommendations of the Vth Pay Commission report regarding Industrial Workers of India Meteorological Department" with arrears. Consequential relief etc. are also sought are set out in the O.A. The facts are simple in that the Applicant asserts that the Vth Pay Commission recommendations had recommended (para 118.13) inter-alia that "Staff Car drivers, operational staff and industrial employees may however continue to be governed by the existing rules and instructions on the subject". It is the grievance of the Applicant that the Respondents department has not revised the overtime rates for Industrial employees like applicants whereas Ministries like Defence, Railways, CWPRS, CPWD have provided benefits by revising the overtime rates to their Industrial employees. Inspite of his vigorous follow up he states that no action has been taken in the matter.

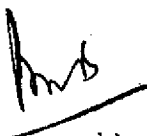


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The Learned Counsel for the Applicant states that because of this follow up process his application is delayed for which the M.P. for condonation for delay has been filed.

4. The Respondents in the case have filed a reply resisting the claim of the Applicant while agreeing that the Applicant Union and the Applicant comprises inter-alia, of Group C and D employees (industrial workers). It is stated that the Respondents are following the instructions of the Government in Department of Personnel & Training (DOPT) issued vide O.M. dated 21.11.1997. A copy of this O.M. is annexed as Exhibit-1. The decision in this O.M. dated 21.11.1997 is very clear, in that no enhancement of overtime allowance has been considered. It is further stated that the orders are issued by the nodal authority hence have to be followed by all, including the Respondents.

5. I have seen the papers in the case and have heard Learned Counsel Shri S.D. Daware for the applicant and Shri V.D. Vadhavkar for Shri M.I. Sethna, for the Respondents. Learned Counsel Shri Daware took me over the facts of the case and also over the recommendations of the Pay Commission, stating that being industrial workers applicants had to be considered for revision of benefit of enhancement of overtime allowance.



5. He further alleges that inspite of pursuing with the Respondents, they have not purused the matter further to obtain orders, specific to organisations like that of Respondents where industrial workers are performing duties. Learned Counsel for the Applicant specifically invited my attention to the Office Memorandum annexed as Exhibit A-6 to his rejoinder statement. This O.M. dated 1.7.1998 provides enhanced benefit to the employees of Industrial Establishments. It was the argument of Shri Daware that in a same manner the Applicant who are industrial workers, deserve to be provide the similar benefits and in fact pleaded that directions may be given to the Respondents atleast to take up the matter with the Department of Personnel & Training as was done by the Defence Industrial Establishments. He also argued that the employees such as Applicant were covered under Factories Act.

6. Learned Counsel Shri V.D. Vadhavkar, who argued the case for the Respondents, took ^{the} stand that the Department of Personnel & Training's O.M. of 21.11.1997 (Exhibit 1) was relevant and the instructions were squarely applicable and were to be followed and, in fact, are being followed. It was his contention that the recommendations of Bodies like the Pay Commission cannot be the basis of seeking reliefs in Tribunals/Courts. He contended that O.M. dated 1.7.1998 referred to above

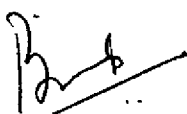
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related to Defence employees only. Shri Vadhavkar's stand was that these were the instructions only for Defence Industrial Establishments and therefore had no applicability to the Respondents Organisation. It was argued on behalf of the Respondents that in case any benefit accrued under the Factories Act then this Tribunal had no jurisdiction in the matter.

7. The facts of the case are in a short compass. It is clear, in the first place, that the recommendations of the bodies like Pay Commission etc. are not per se entertained in Tribunals etc. normally as basis for relief and it is only after the Government had taken a decision that benefits can be sought through judicial determination. This principle is well settled in law, and Tribunals are not to go by mere recommendations unless, Government decision thereon follows. Here the Government has carefully considered the decision of the Vth Pay Commission which initially states that there is no justification to continue overtime allowance, but recommends continuation of the existing position to operational staff of industrial employees. Now the Department of Personnel & Training has taken a view in its O.M. dated 21.11.1997 to continue status quo but makes no increases. The operational part of the O.M. reads as under:-

"2. The Government has, however, decided to continue the status quo in regard to payment of OTA, subject to a review of the matter to make the eligibility for OTA more restrictive and commensurate

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with the interests of Government work. Accordingly, payment of Overtime Allowance may continue to be made as per the existing order on the basis of Notional pay admissible to the concerned Govt. employees in the pre-revised scales of pay/pay slab as laid down in the existing orders".

In the light of this instructions we cannot find any strength in the argument of the Applicant that this Tribunal could provide the relief sought for in the O.A. Thus, directions in this regard cannot be made in the background of this position.

8. Now, the facts about Applicant being industrial workers is admitted. If the Government itself were to take a decision about Industrial employees such as the applicant in Respondents organisation it would be a matter for Government to decide on. They could take a decision on the lines taken by the Ministry of Defence but it is not the matter on which a judicial interpretation can be made regarding the entitlements or otherwise of the workers of the Respondents organisation. If the Respondents organisation desires to consider the matter on the lines followed by Ministry of Defence it is up to them but no direction can be given on the basis of judicial determination.

9. A reference was made to rights under the Factories Act. No facts are available in this regard nor this Tribunal has any jurisdiction in the matter as this point has been dealt with by the Hon'ble Supreme Court in

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its decision in the matter of K.P. Gupta V/s. Controller of Printing and Stationery, JT 1995(7) SC 522. If certain entitlements and rights are available to the applicant as per law, it is for them to decide whether they would pursue them before the right forum but they cannot pursue it before this Tribunal.

10. In view of the above discussions, the reliefs as sought for cannot be provided to the applicant. The O.A. is therefore dismissed with no order as to costs.



(B.N. Bahadur)
Member (A).

H.