

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PREScot ROAD, BOMBAY-1

OA No. 893/90

1. Naval Employees Union
through General Secretary
Shri Nizamuddin
2. Shri Jaikrishna Yadav
M.T. Driver, INHS Asvini
Colaba, Bombay 400005

..Applicants

v/s.

1. Union of India through
Secretary, Ministry of Defence
Govt. of India,
South Block
New Delhi 110011
2. The Flag Officer Commanding-in-Chief
Western Naval Command
Shahid Bhagat Singh Road
Bombay 400001

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

APPEARANCE:

Mr. D.V. Gangal
Counsel
for the applicants

Mr. V S Masurkar
Counsel
for the respondents.

ORAL JUDGMENT:

DATED: 16.2.94

(Per: M.S. Deshpande, Vice Chairman)

The applicant Association and one of its members seek a declaration that the rates of Overtime Allowance which have been prescribed for the applicants, who belong to the Naval Employees Union, are wholly illusory and should be struck down, and also that the rate of Overtime Allowance fixed by the Controller of Defence Accounts vide letter dated 16.6.1984 should be made applicable to the



applicants and further declare that the rate of overtime should have nexus to the total pay received by the employees. The applicants belong to the category of Motor Transport Drivers and are engaged in the Transport work in respect of INS Trata, INHS Asvini, INS Kunjali, INS Tunir, INS Hawda, INS Shivaji and others in the non-industrial establishment under Headquarters, Western Naval Command, Bombay-1.

No overtime is paid if the overtime is within one hour of prescribed hours of work, and for the work performed beyond that period Overtime wages are paid at the rate of Rs.2.35 to Rs.3.45 per hour. This position is not disputed. The applicant's further contention is that the entire establishment of Naval Dockyard and the entire establishment under the 2nd respondent consists of non-industrial workers but their duties are technical in nature and the applicants cannot be denied the rate of overtime wages applicable to the industrial workers.

The pay structures were revised as recommended by the 4th Pay Commission and different methods were adopted for calculating the overtime rates. The applicants contention is that there is no proper basis for the differentiation and since overtime is nothing but continuation of normal work beyond prescribed hours of work the rate of overtime wages must have nexus to the work and pay drawn

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and there cannot be any room for discrimination in this respect.

The respondents while admitting that the applicants are engaged on several ships denied that the applicants belonged to any industrial category. According to them the Motor Transport Drivers category is a non-industrial category by its cadre. The rates of overtime in force were covered by the letter of DPC&T OM No. 15020/4/80-Estt(Allowances) dated 23.12.1982 and were revised with effect from 1.12.1990 and the revised rates applicable to the category of Staff Car Drivers were made applicable to the applicants also. The learned counsel for the respondents stated that the rates as revised by the letter dated 23.5.1991, Annexure R-1 to the written statement, have been made applicable to the present applicants with effect from 1.12.1990 and that the applicants cannot have any grievance.

The first submission of Shri Gangal the learned counsel for the applicants was that the respondents establishment is a Factory and the applicants would be governed by the rates of Overtime applicable to the factory workers. There is no pleading to that effect in the application and when it was pointed out to the learned counsel for the Applicants he stated that he would proceed

on the basis ~~that~~ the applicants were industrial workers. It may be noted that but for a lone statement that the applicants cannot be called as non-industrial workers, there is nothing in para 4.3 which would show that the applicants have come with a specific case that they are industrial workers. There is no positive averment that the respondents are an industry and that the duties performed by the applicants are those of industrial workers. In the absence of adequate material it would not be open for me to go into the question. In A. PADMAVALLEY Vs. G.P.W.D. & ORS. 1991(1) SLR 245, the decision by a Larger Bench, the legal position has been summed up as follows:

"1. The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of Sisodia, which lays down a contrary interpretation is not correct."

2. An applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

3. The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries(supra).

4. The interpretation given to the term 'arrangements in force' by the Jabalpur Bench in Rammoo's case is not correct."

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The question whether the respondents are an Industry and the applicants industrial workers and would be entitled to the overtime wages on line with the wages which are given to the industrial workers would be a question of fact to be decided upon proper pleadings on the basis of evidence adduced. The requisite material has not been placed by the petitioners in this case to enable the Tribunal to decide the question whether the respondents are an industry and the applicants are industrial workers. That point will have to be left open to be decided before appropriate authority under the Industrial Disputes Act, if and when the applicants choose to take the matter to the industrial court or labour court under the provisions of Industrial Disputes Act, in view of the proposition laid down in A. PADMAVALLY's case (*supra*) that such controversies cannot be entertained by this Tribunal.

My attention was drawn to the observations made by the Hon. Supreme Court in BANGALORE WATER SUPPLY & SEWERAGE BOARD Vs. A. RAJAPPA & ORS. 1978 Supreme Court Cases (L&S) 215 in order to show what is the meaning and scope of the expression 'Industry' and under section 2(j) of the Industrial Disputes Act. It is not necessary to go into what

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has been said in that case because that is not the question which can be decided in the present proceedings.

In view of the statement made by the learned counsel for the respondents that the applicants are being paid Overtime allowance at the rates stated in Annexure R-1, Ministry of Defence letter dated 23.5.91, the grievance of the applicants in so far as the alternative relief, is met and nothing therefore survives in the application and it is, therefore, disposed of. No order as to costs.



(M.S. Deshpande)
Vice Chairman

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