

16  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
CIRCUIT SITTING AT NAGPUR

334/91 and O.A.389/91(St.111/91)

1. A.S.Parata and 29  
Others.

.. Applicants  
in O.A.334/91

vs.

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

2. The Director General,  
Ordnance Factories,  
10-A, Auckland Road,  
Calcutta.

3. The General Manager,  
Ordnance Factory,  
Ambajhari,  
Nagpur - 440 021.

.. Respondents in  
O.A. 334/91

4. U. Rudra and 20 Crs.

.. Applicants in  
O.A.389/91

vs.

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

2. The Director General,  
Ordnance Factories,  
10-A, Auckland Road,  
Calcutta.

3. General Manager,  
Ordnance Factory,  
Ambajhari,  
Nagpur 440 021.

.. Respondents in  
O.A.389/91

Coram: Hon'ble Shri Justice U.C.Srivastava  
Vice-Chairman

Hon'ble Shri P.S.Chaudhuri,  
Member(A)

Appearances:

1. Mr.K.Dhote  
Advocate for the  
Applicants in  
O.A.334/91

2. Mr.U.Rudra applicant  
No.1 in person in  
O.A.389/91

3. Mr.Ramesh Darda  
Counsel for the Respondents  
in both the applications.

ORAL JUDGMENT:  
Per P.S.Chaudhuri, Member(A)

Date: 12-7-1991

In Original Application No.334/91  
filed under Section 19 of the Administrative  
Tribunals Act,1985 on 19.3.1991 the applicants are  
artisans in various grades under the third respon-  
dent therein. We have heard Mr.K.Dhote, learned  
counsel for the applicants and Mr.Ramesh Darda,  
learned counsel for the respondents. In O.A.389/91  
also filed under Section 19 of the Administrative  
Tribunals Act,1985 on 19-3-1991 the applicants are  
Supervisory staff in various grades who are  
entitled to and/or in receipt of overtime payments  
under the Factories Act,1948. We have heard  
Mr.U.Rudra applicant No.1 in person for the  
applicants and Mr.Ramesh Darda, learned counsel  
for the respondents.

2. The prayer in both these applications  
is that the concerned employees are entitled to  
overtime wages taking into consideration the two  
rounds of interim relief recommended by the IVth  
Pay Commission in respect of the overtime work done  
notified  
between the working hours ~~notified in xxxx~~ and the  
limit of nine hours in any day and/or 48 hours in  
any week. ~~xxx~~ As only <sup>a</sup> common short point is  
involved <sup>and</sup> as this Bench has had occasion in the past  
to deal with several cases involving this prayer,  
we are admitting these applications and proceed to  
decide them together by this common judgment and order  
as common facts and questions are involved in both.

3. The grievance of the applicants in  
both the applications is that the respondents are  
not taking the two rounds of interim relief recommended  
by the IVth Pay Commission into account when determining  
the ordinary rate of wages for payment for overtime

work done between the notified working hours and the limit of 9 hours in any day and/or 48 hours in any week prescribed in the Factories Act, 1948. This very issue had arisen in the case of Bharatiya Pratiraksha Mazdoor Sangh, Ordnance Factory, Bhusawal & others v. Secretary Ministry of Defence, Department of Defence Production New Delhi - O.A.251/88 - before this Bench of this Tribunal which was decided by one of us (P.S. Chaudhuri, Administrative Member) on 4.1.1989. In that judgment and order dtd. 4.1.1989 it had been held that:-

"In any case, Section 59 of the Factories Act refers to "Extra Wages." If interim relief is taken into account for determining not only the wage for the work done upto 44 $\frac{1}{2}$  hours per week but also the wage for the work done in excess of 48 hours per week, it does not stand to reason that it ceases to be a part of the ordinary rate of wages for the work done between 44 $\frac{1}{2}$  hours and 48 hours per week. It is also pertinent to note that under Section 59 of the Factories Act, the computation of ordinary rate of wages includes the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles.

Based on this discussion, I am of the view that this application succeeds. The respondents are directed to include the interim relief sanctioned under the Ministry of Defence's O.M. No.5(8)83/D(Civ-I) dated 5.8.1983 and 4(1)/85/D(Civ-I) dated 2.5.1985 while computing the ordinary rate of wages for determining the payment in respect of the overtime work done between the working hours notified in terms of Section 61(1) of the Factories Act, 1968 and the limit of nine hours in any day/ or 48 hours in any week prescribed in Section 59(1) of the said Act.

In the circumstances of the case, there  
will be no order as to costs."

The respondents in that application had thereafter  
filed S.L.P.No.5851/89 in the Supreme Court, but this  
was dismissed on 18.12.1989.

4. We are in agreement with this judgment  
of this Tribunal. The same view has been taken in other  
similar cases also by this Bench of the Tribunal. In  
this view of the matter, both the applications succeed. So,  
we propose passing an order on the same lines as in  
Original Application No.251/88 before this Bench(supra)

5. We accordingly order that the respondents  
shall include the interim relief sanctioned under the  
Ministry of Defence's O.M. No.5(8)83/D(Civ-I) dated  
5.8.1983 and 4(1)/85/D(Civ-I) dated 2.5.1985 while  
computing the ordinary rate of wages for determining  
the payment in respect of the overtime work done between  
the working hours ~~notified~~ notified in terms of Section 61(1)  
of the Factories Act, 1968 and the limit of nine hours  
in any day and/or 48 hours in any week prescribed in  
Section 59(1) of the said Act.

6. In the circumstances of the case, there  
will be no order as to costs.