

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

O.A.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

~~1. U. Rudra and Co. Cns.~~

.. 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.

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 respondent 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 terms and the limit of nine hours in any day and/or 48 hours in any week. ~~As only~~ ^a common short point is involved ^{and} 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 44³ 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 44³ 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 ~~xxx~~ 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.