

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP: NAGPUR

Original Application No: 591/91

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DATE OF DECISION 30.7.93

A N Meshram & Ors. Petitioner

Mr. S C Joshi Advocate for the Petitioners

Versus

U O I & Ors. Respondent

Mr. R. Darda

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. Priolkar, Member (A)

The Hon'ble Shri

1. whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? NO
3. whether their Lordships wish to see the fair copy of the Judgement ?
4. whether it needs to be circulated to other Benches of the Tribunal ? NO

MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRES'COT ROAD, BOMBAY-1
CAMP: NAGPUR

OA NO. 591/91

1) A N Meshram
2) Subrala Chaudhary
Sup. (Tech) Shell M/c.
Qr. No. 7/3/5, Ordnance Estate
Nagpur

..Applicants

V/s.

Union of India through
General Manager
Ordnance Factory
AMBAJHARI & 2 ors.

..Respondents

Coram: Hon. Shri M Y Priolkar, Member (A)

ORAL JUDGMENT:
(PER: M Y Priolkar, Member(A))

DATED: 30.7.93

Heard Mr. S.C. Joshi for Mr. D.S. Buche,
counsel for the applicant and Mr. Ramesh Darda, Counsel
for the respondents.

2. Mr. Joshi states that Mr. Buche is held up in
Bombay and prays for an adjournment. However, since
earlier this case had been adjourned on 16.3.93 at
the request of counsel for the applicant and also in
view of the statement of the learned counsel for the
respondents that this ~~case~~ is fully covered by the
judgment of a Division Bench of the Tribunal at Madras
dated 27.2.92, I think no useful purpose would be
served by ~~again~~ granting an adjournment and, therefore,
proceed to hear the case.

3. The applicants in this case are Ordnance
Factory employees and are members of the Ordnance
Employees Union, Ambajari, Nagpur. The prayer in
the application is that the House Rent Allowance (HRA)
should be included while computing the rate for the

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Overtime Wages for work done between the prescribed weekly hours 44.5 and maximum weekly hours to employees of the Factory who have been allotted Government quarters. This very issue had come up for consideration before the Madras Bench of the Tribunal in OA No. 883/90 which was filed by the Employees of the Ordnance Factory, Avadi.

4. The applicant, the General Secretary of the Union, who is present in person states that a similar application had been allowed by the Calcutta Bench and, thereafter a division bench of this Tribunal in its last sitting at Nagpur had also allowed a similar application filed by some other employees similarly placed in the same Factory (OA No. 168/92).

5. In the subsequent judgment of the Madras Bench dated 27.2.1992 the decision of the Calcutta Bench referred to above has been discussed. As stated in the judgment of the Madras Bench, a single judge of the Calcutta Bench of the Tribunal in OA 983/90 by order dated 9.8.90 had directed that the rate for the purpose of computing overtime allowance should be after inclusion of the HRA, which would have been payable to the employees allotted Government quarters, as if they had not been allotted any quarters. But this order had been stayed by the Hon. Supreme Court by its interim order dated 15.4.91 directing "that the same formula must be applied for calculating overtime allowance in the cities of Calcutta, Hyderabad and Bombay although it will be open to the petitioner to apply different formulae to those Government employees who have government accommodation and those who do not."

6. The argument of the petitioners before the Madras Bench was that it would be discriminatory that the applicants who are in occupation of the Government quarters but were also workers in the same factory should be receiving overtime allowance at a lower rate for the same work for the same time, than equivalent grades of workers who are not in occupation of factory quarters in the same factory and that there was no justification for applying different rates of overtime allowance to officials in the same grade. This contention has been rejected by the Madras Bench holding that there cannot be equality in the rate even in the same grade of workers, for the simple reason that the rate of overtime allowance is governed under Sec. 59 of the Factories Act 1948, under which the worker gets overtime at a rate equivalent to twice his ordinary wages and since the total emoluments of two employees though in the same pay scale will vary depending on the increments earned in that scale, the rate of overtime will also vary, as different employees are drawing salary at different stages in the same pay scales. The Madras Bench thus rejected the argument that it was discriminatory to have different rates for overtime allowance for the same work done by different employees in the same pay scale. I am in respectful agreement with the reason given and the conclusion reached in this judgment of the Division Bench of our Tribunal at Madras. It may be noted that the Madras Bench has also referred to a decision dated 9.1.77 of a Division Bench of the High Court of Bombay where also it has been specifically held that there is no discrimination in the method of computation of overtime allowance after excluding HRA from the emoluments of those who are allotted quarters. The logic apparently is that the Factory employees to whom quarters are allotted are in an advantageous position since it is

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difficult to get accommodation at reasonable rent in the cities. On the other hand those who are unable to get Factory quarters have to pay exorbitant rent which is not compensated fully by the HRA received by them. In such circumstances these two are separate and distinguishable classes.

7. The learned counsel for the respondents also stated that the judgment of this Bench in the last circuit sitting in OA No. 168/92 at Nagpur referred to by the applicants was passed on his own submission before this Tribunal that there was already a decision on this subject. The learned counsel for the respondents stated that this was a wrong statement made by him based on an erroneous impression that there was already a decision of the Tribunal in favour of the applicants as claimed by them and that only later he had come to know that what the applicants had in mind was the decision of the Calcutta Bench which, as it turned out, has been stayed by the Supreme Court. On the contrary, there is a judgment of a Division Bench of the Madras Bench which is favourable to the department and which, specifically, discusses and ~~ever~~ ^{takes a} view ~~contrary to~~ ^{of} rules the single member decision of the Calcutta Bench. He further stated that the respondents have already filed a review petition against the earlier judgment of the Bombay Bench at Nagpur in OA 168/92 and that review petition is still pending in the ~~the~~ Tribunal.

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8. In the circumstances, particularly in view of the stay of the Calcutta Bench judgment by the Supreme Court as also the subsequent Division Bench judgment of the Madras Bench, I have no hesitation in rejecting this original application. No order as to costs.

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(M.Y. Priolkar)
Member (A)

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