

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1273/93 & 203/94

Transfer Application No:

DATE OF DECISION: 5.7.94

Sh. P.A. Bendale & Ors./Sh. D.C. Patil & Ors.

Petitioner

Shri G.K. Masand

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M. Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*

B.S. Hegde
(B.S. HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1273/93 & OA.NO. 203/94

1. Shri Prakash Ambadas Bendale & Ors.	...	Applicants in OA.NO. 1273/93
2. Shri Dharma Chindha Patil & Ors.	...	Applicants in OA.NO. 203/94
V/S.		
Union of India & Ors.	...	Respondents

CORAM: Hon'ble Member (J) Shri B.S. Hegde

Appearance

Shri G.K. Masand
Advocate
for the Applicants

Shri P.M. Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 5/7/94.

(PER: B.S. Hegde, Member (J))

Applicants are working as Works Engineers in the Pay Scale of Rs.2000-3500 w.e.f. 1.1.1986 in the respondents' office. In accordance with terms of their employment, applicants have to cater all the maintenance needs of sophisticated printing machinery, its allied equipments, its upkeep & maintenance utilities like A.C.Plants, water systems, sewage systems & its maintenance buildings and roads maintenance and electrical systems of Machines and electrical distribution net work. They have to carry out the jobs of new project works personally as per the higher superior's orders. They have been designated as Works Engineers in Group 'B' Non-gazetted Cadre and theirs' is staff post and their pay scale is equivalent to that of Supervisors in the Currency Note Press who were the applicants in OA.NO. 761/88, Ashok Pandharinath Padwal & Ors. vs. Union of India & Anr.

2. The pay scale of the ^{Supervisors} as well as the Works Engineers are one and the same. The applicants in O.A. No. 761/88 were similarly deprived of Section 59 of the Factories Act after they have crossed the pay of Rs.2200/- p.m. These applicants are identically placed like the applicants in O.A.No. 761/88. Accordingly, they prayed for the following reliefs :-

- "(a) That Respondents be directed, by a mandatory order, to pay to the applicants and other similarly placed and designated as Works Engineer in the Currency Note Press at Nasik Road, overtime allowance in accordance with the provisions of Sec.59 of the Factories Act from the date when the same was stopped by the Respondents on the applicants and other reaching the pay of Rs.2200/- per month."
- (b) That in the alternative to prayer clause (a) Respondents be directed to pay to the applicants and other similarly placed Works Engineers overtime allowance in accordance with Sec.59 of the Factories Act with effect from three years preceding the date of the filing of this application in accordance with the ratio of the Judgement of this Hon'ble Tribunal its dated 6.1.1993 given in O.A.No. 761 of 1988."

3. On perusal of the record and considering the pleadings I find that the facts are not in dispute that those applicants who draw basic pay of Rs.2200/- p.m. ^{and above} are not entitled to overtime allowance and those who were drawing less than Rs.2200/- basic pay are drawing overtime allowance. The learned counsel for the applicant contends that this is discriminatory in character and the same is not made in accordance with law. Further, he submits, that 27.9.1991 Circular alleged to have been issued in accordance with Rule 100 of Maharashtra Factories Rules has not been acted upon. In this connection, it is relevant to quote Rule 100 of the Maharashtra Factories Rules, 1963 :-

"In a factory the following persons shall be deemed to hold positions of supervision or management within the meaning of sub-section (1) of section 64, provided they are not required to perform manual labour or clerical work as a regular part of their duties."

He further contends even assuming ^{that} the applicants do come in the supervi^{sory} category pursuant to Section 64 (1) of the Maharashtra Factories Act, 1948, in that case it is open to the respondents to exclude the supervision or management as a whole. However, in the instant case, instead of excluding the supervision or management categories in accordance with Rule 100^{R/F.S.64(1) of the Act} the respondents did discriminate between those who are drawing more than Rs.2200/- basic pay and those who are drawing less than Rs.2200/- basic pay. Therefore, such a provision is contrary to Section 59 of the Factories Act and there is no nexus ^{between} ~~of~~ crossing of Rs.2200/- p.m. pay ~~and~~ overtime allowance payment. He further contends, that it is an admitted fact, that the duties performed by Works Engineers either prior to or after reaching the pay of Rs.2200/- p.m. in the pay scale of Rs.2000-3500 are one and the same theory the ~~stoppage~~ of payment of overtime to the Works Engineers after they have reached the pay of Rs.2200/- is therefore illegal and bad in law and cannot be sustained. Thirdly, though the respondents have received a Circular of 1991 and 1994 respectively, they have not acted upon in accordance with the Circular and it is not denied by the respondents that the applicants are not excluded from doing the manual labour in addition to their normal work and also perform additional labour over their normal working hours. As against this, the learned counsel for the respondents contended that pursuant to sub-rule (3) of Rule 100 of the Factories Act,

"(3) Any dispute whether a person, by virtue of the nature of his duties, falls in any of the definition given in sub-rules (1) or (2) above, shall be decided, by the Chief Inspector by passing an order in writing which shall be final."

^{said} in accordance with the ~~rule~~, the Chief Inspector/Director had passed the aforesaid orders of 1991 and 1994 respectively alleged to have been passed in terms of Section 64 of the Factories Act read with Rule 100 sub-rule (1) & (2) stating

that Works Engineer - Group B Non Gazetted not eligible to draw any overtime allowance. Therefore, the decision of the Chief Engineer is final and is not reviewable by the Tribunal or any authority. The said contention is not tenable on the following grounds, admittedly, the respondents have not adhered to the aforesaid direction of the Chief Inspector/Director and they have given overtime allowance to those who are drawing less than Rs.2200/- p.m. basic pay and stopped paying overtime allowance to those who are drawing more than Rs.2200/- and above p.m. basic pay which is prima facie is not contemplated in Section 64 and under Rule 100 (b) Maharashtra Factories Act, 1963. Further, the word Supervision in Workshop has been designated as Works Engineer also therefore it cannot be said that the Supervisors are not equated with that of Works Engineer. The respondents during the hearing draw my attention to the Duty List which clearly indicates that the applicants are to deal with the major overhauling, repairs, modifications and rewinding works including startares, control panels or part thereof, which certainly involves manual labour over and above their scale in which they have been employed.


4. It is not denied by the respondents that though the applicants have been designated as Works Engineer but the work performed by them is not like which entitled them to overtime allowance in accordance with Factories Act.

5. It may be recalled that the entire situation is widely discussed in OA.NO. 761/88 by the Division Bench of this Tribunal and in Para 2 of the judgement the Tribunal after ascertaining the facts have come to the conclusion that "in order to get advantage of Section 64(1) read with Rule 100, the respondents have to demonstrate that the applicants are not required to perform manual labour or clerical work as regular part of their duties." After considering the rival contentions of the parties

the applications were allowed by the Tribunal and the direction ^{was} given to the respondents to make payment of ^{more than} overtime allowance even if those who are drawing Rs.2200/- per month basic pay if they are performing the same type of duties. Therefore, keeping in view of the aforesaid judgement, I am of the view that the Circular issued by the respondents in 1991 and 1994 are not in accordance with Section 64 read with Rule 100 of the Bombay Factories Act and the same has not been implemented in the spirit in which it has been issued.

6. In the light of the above, the applications are allowed. The respondents are directed to pay the applicants overtime allowance under the provisions of Section 59 of the Factories Act from the date when the same was stopped on the applicants after their reaching Rs.2200/- basic pay per month. Regarding the back wages in the earlier judgement of OA. 761/88, they could claim the arrears of wages for the period of three years prior to the filing of this petition. In the instant case the application was filed in 1993, three years back to that may be calculated and the payment be restricted to one year prior to 1991. The arrears, if any, shall be paid within a period of three months from the date of receipt of this order.

7. This petition as well as OA.NO. 203/94, the issues involved are one and the same and therefore the same stands disposed of simultaneously. The OA. is disposed of.


(B.S. HEGDE)
MEMBER (J)

mrj.