

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 459/94
Transfer Application No. --

Date of Decision : 20-10-95

Ms. Manorama John & 68 Ors.

Petitioner

Mr. S.P. Saxena

Advocate for the
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. R.K. Shetty

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M.R. Kolhatkar, Member(A).

The Hon'ble Shri

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.459/94

Ms. Manorama John and 68 Ors.

.. Applicants

-versus-

Union of India & Ors.

.. Respondents

Coram; Hon'ble Shri M.R. Kolhatkar, Member(A)

Appearances:

1. Mr. S.P. Saxena
Counsel for the
applicant.
2. Mr. R.K. Shetty
counsel for the
Respondents.

JUDGMENT:

(Per M.R. Kolhatkar, Member(A))

Date: 20-10-95

This is an O.A. filed by 69 non-industrial employees of respondent No.3 (Ammunition Factory, Ordnance Estate, Kirkee, Pune). Sr.No. 1 to 60 are employees who are para medical staff or the supporting para medical staff like Sweeper, Peon, Ward-Master, Ward Sahayak, Mif Wife, Staff Nurse etc. Sr.No.61 to 69 are so called office staff like Mali, Barber, Dhobi, Cook, Masalchi etc. Applicants at Sr.No.61 to 69 get overtime at the slab rate which is less than the single rate. Applicants 1 to 60 get overtime at the single rate which is less than the double rate. Section 59 of the Factories Act, 1948 envisages payment of overtime ^{to an employee} at double the rate i.e. at the rate of twice his ordinary rate of wages. Section 63 of the Bombay Shops and Establishments Act, 1948 also envisages payment of overtime at double the rate i.e. wages at the rate of twice the ordinary rate. The grievance of the applicants is that they had represented for payment of overtime at double the rate vide their representation dt. 8-10-92 at Annexure A-8 as is being paid to the hospital employees of HVF/OFT in terms of decision of C.A.T.

Madras. This representation was rejected by the respondents by their letter dated 11-3-93 at Annexure A-2, page 20 which is reproduced below :

"The representation forwarded under AFK letter No.E-326/Out side four walls dated 15-10-92 have been examined in the light of the comments/information given vide their letter quoted under reference.

It is intimated in this connection that those individuals working outside the four walls of the Factory are not covered under the Factories Act, 1948 and are being paid overtime allowance at the slab rates/ single rate correctly.

As regards the extension of the benefits of CAT Madras Bench judgment dated 30-9-91 (given in O.A. No.980/89 of OFT and O.A.No. 983/89 of HVF), it is stated that since the said judgment is against the Government's policy and statutes, it has no general applicability."

2. It is the contention of the applicants that this action of the department is in violation of the instructions being followed by the respondents viz. O.M. No.14(II)/70/12037/D(Civ.II) dt.6-11-1970 which is to be seen at Annexure A-14 page 44. By this office memorandum, the note-4 was added to the earlier O.M. dated 27-11-63.

"Note-4, the payment of the overtime allowance will be regulated vide sub-paras (I), (II) and (III) above in respect of non-industrial staff, term 'Worker' includes also the non-industrial staff in the Industrial Establishment. In such case, payment of overtime allowances will be regulated according to the provisions contained in these enactment."

Thus the effect of this note-4 is that non-industrial staff are treated as workers under Factory Act.

3. So far as the definition of Factory is concerned there are instructions of the C.G.D.A. at Annexure A-4 dt. 6-11-1974 on the subject of "Payment of overtime allowance to Industrial Employees and Non-Industrial Employees employed whole time outside the four walls of the Factory under Factories Act." This communication reads as below:

"The question whether all the Industrial Employees, Non-Industrial employees of the Factory, located in the State of Maharashtra, can be treated as governed by the factories act and paid overtime allowance accordingly irrespective of the fact whether they work inside or outside of the Factory Walls in terms of Min. of Defence O.M. No.14(11)/70/12037/D(Civ.II) dated 6 Nov.1970 read with Section 70 of the Bombay Shops and Establishment Act 1948 been examined in consultation with the financial authorities and Min. of Law, Justice and Company Affairs, Ministry of law held the view that word "Premises" used in the Factories Act should be so construed as not to deny the fruit of the beneficial legislation to the workers which perform their duties outside the factory premises and the acid test in such cases would be to see as to whether the person in question is so employed as to be covered by the definition of the term 'Worker' as given in Factories Act, 1948. They have also agreed with the views of the Additional Legal Adviser, Bombay the premises of the Factory would not be limited only to an area of 79 acres protected by a perimeter wall wherein the manufacturing process but also would include the whole area of 750 acres, The financial authorities while agreeing to the views of Ministry of law stated that persons employed in and in connection with a factory are covered between the two statutes (viz. Factory Act, 1948 and Bombay

Shop and Establishment Act) and orders exist vide Min. of Def. O.M. dated 6-11-70 to the effect that where the enactments of the state legislatures include non-industrial staff in the term "Worker", payment of overtime has to be regulated according to the provision contained in that enactment."

4. It is further contended that Ordnance Factory Hospitals are located outside the perimeters in the interest of security, but they are ~~partly~~ treated as part of the Factory. Reference is invited to Procedure ^{Factories} Manual for ~~the~~ issued under the authority of D.G. Ordnance Factory, 1965 edition in which it is stated in para 3908(b) that Factory Hospitals and Dispensaries are integral parts of Factories under the direct administration of the Superintendents of Factories concerned. It is further contended that there has been a discrimination in the matter of payment of overtime inasmuch as while some of para medical staff like Pharmacists, Lab Technicians, Hospital Male Medical Assistants, Hygiene staff, Upper Division Clerks, Lower Division Clerks, Male Safaiwala, none of whom is directly connected with production process were paid double rate overtime, some of the other para medical staff working in the same ordnance factory hospital like the applicants are paid single rate or slab rate overtime and this amounts to violation of Article 14 and 16 of the Constitution. It is also pointed out that Ordnance Factory Hospital is not a separate office or establishment, as it is not registered separately under the Shops and Establishments Act or under Factories Act but as a matter of fact the whole complex is registered under the Factories Act, and a licence for registering the Factory and operating the factory valid upto end of 1995 was produced before us.

5. The applicants have further pointed out that the issue relating to payment of double the rate overtime is no longer ~~res-integra~~ in view of the judgment of CAT Bench, Madras in O.A. No.980/89 and O.A.No.983/89 decided on 30-9-91. In these cases the Ordnance Factory Hospital Employees Union, Thiruchirapally were the applicants and the Tribunal granted the relief of double the rate overtime in their favour. Subsequently T.A.No.363/86 decided on 4-3-94 in All India Ordnance Factories Para Medical Staff Association vs. U.O.I., C.A.T. Jabalpur has also followed C.A.T. Madras and granted relief in favour of the applicants similarly situated to the present applicants. It is pointed out that both Madras and Jabalpur judgments are division bench judgments and they are binding. It is further contended that the discrimination is aggravated to extent para-medical staff and office staff of some Ordnance Factories are given overtime at double the rates but the similarly situated staff at Ordnance Factory at Kirkee are denied the benefit.

6. Respondents have opposed the O.A. Their basic contention is that the applicants are not workers within the ambit of Section 2(L) of the Factories Act, 1948 because the work of the applicants is not connected with or associated with the manufacturing process of the Ammunition Factory as defined in Section 2(k) read with section 2(m) of the Factories Act, 1948 and therefore the demand of the applicants for overtime allowance under Factories Act 1948 is not maintainable. Further, so far as the hospital at Ordnance Factory, Kirkee is concerned it cannot get the benefit of

the extended definition of Factory as given in the CGDA circular dt. 6-11-74 because the individuals working ~~and~~ outside the four walls of the Factory are not covered under the Factories Act, 1948.

Regarding the applicability of the Madras Bench judgment it is stated that it is against the applicability. Govt. policy and ~~it is stated that it has~~ got no general/

7. In order to appreciate the location of the Factory and Hospital the Tribunal decided to make a spot visit which was arranged on 10-6-95. The location of the dispensary of the Factory and location of the hospital were seen in the presence of counsel for both the parties and information regarding staff working in the factory hospital and staff working in the dispensary and their duties was also obtained. The respondents also filed a map showing location of factory dispensary and hospital. Counsel for the ~~applicant's~~ administered an ~~interrogatory~~ to which also a reply was filed by the respondents. All these are part of record. The inspection revealed that the dispensary attached to the Factory is within the Factory premises and hospital is at a distance of about two kms. from the factory but within the Factory Estate. It was noted on a perusal of reply to the interrogatory that there are some establishments of the Ordnance Factory which are located at a distance of about 4 kms. for example the Range Hill Dispensary. Dighi ~~Sub-Station~~ is 14 kms. away. It is stated that the employees of Range Hill Dispensary located at 4 Kms. away from the Factory were also paid overtime at double the normal rates. Lastly it was stated in a note attached to the reply to interrogatory ~~xxxxxxx~~ as below:

"It is possible that certain categories of employees on the strength of AFK could be in receipt of benefits under the Factories Act,

such as overtime at double the normal rate. There is certainly a case for reviewing the position and excluding such personnel from the benefit they are not entitled to. But there is no case whatever for extending any of the provisions of the Factories Act, to the applicants who are not connected with any manufacturing process as defined by the said Act."

8. ^{Respondent}
~~applicant~~ At the argument stage the counsel for the ~~applicant~~ relied on the following case law: (i) Buckingham and Carnatic Mills Ltd. vs. Natarajan (C.A.) and another. It was a case decided by Madras High Court on 6th March, 1963. It was held that the overtime work to attract overtime wages at the rates mentioned should be in the Factory itself. (ii) In State of U.P. vs. M.P. Singh, which is a Supreme Court case reported in AIR 1960 SC 569 it was held that "Field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane to be used in a sugar factory are not employed in the precincts of the factory or in the premises of the factory." (iii) In Nagpur Electric Light and Power Co. Ltd. vs. Regional Director, ESIC, AIR 1967 SC 1364, it was held that "every inch of the wide area over which the transmission lines were spread was not a factory." (iv) In R. Ananthan vs. Avery India Ltd., which is a case decided by Madras High Court on 22-10-1971 following the decision in Buckingham & Carnatic Mills v. Natarajan the petitioners' claim for overtime wages for work done outside the factory premises of employer was negatived.

9. On the other hand the ^{Applicants}
~~respondents~~ apart from relying on C.A.T. Judgments in Madras and Jabalpur Benches relied on General Manager, Bank Note Press, Dewas v. Chhattar Singh and Ors. 1991 (II) CLR 551 in para 12 of which it is observed

as below:

"12.As seen above, the provisions of Section 62 of the M.P.Shops and Establishments Act are in pari materia to Section 70 of the Bombay Shops and Establishments Act and by virtue of non obstante clause in Section 62 of the M.P. Act, the provisions of Section 59 of the Factories Act are fully attracted in the present case also as was found by their Lordships of the Supreme Court in relation to Section 70 of the Bombay Act, in the case of Union of India v. G.M.Kokil(Supra), and that being so, there is no reason why the benefit of Section 59 of the Factories Act which relates to the payment of wages at the rate of twice the ordinary rates of wages to the workers in the factory who work for more than 48 hours in a week should not be extended. The same view was reiterated by a Division Bench of this Court in Bank Note press, Dewas. v. Union of India, Letters Patent Appeal No.59 of 1985, decided on 11.8.1987, wherein the points in controversy are dealt with in detail. It is, therefore, not necessary for us to dwell on the point much in detail as the point in controversy is almost covered by the Supreme Court decision in the case of Union of India v. G.M.Kokil(supra) as well as Bank Note Press, Dewas v. Union of India(supra)."

10. We have considered the pleadings, documents and arguments. Some of the contentions raised before us were also raised before C.A.T.Madras and they are dealt with in that judgment. The C.A.T. Bench at Madras firstly held that in view of the CGDA clarifications dt. 14-4-75 premises should factory include the whole area between the inner perimeter wall and the outer fencing of the factory. Regarding the question of definition of Worker, CAT Madras also noticed Buckingham and Carnatic Mills case, R.Ananthan v. Avery Indian Ltd, State of U.P. vs. M.P. Singh as well as B.P.Hira's case. But the Tribunal disposed of the objection regarding applicants not being

on the ground
workers/that they are not concerned with the
technical definition of worker: but they are
concerned with the discrimination which is
violative of constitutional guarantee. The C.A.T.
Madras also noted that applicants were paid double
rate overtime when they worked in the dispensary
but single rate when they worked in the hospital.
It also noted that many categories of staff are
paid overtime allowance at double the rate
even though they do not work in the factory or
take part in the manufacturing process. According
to us all the contentions raised by the respondents
have already been dealt with in the judgment of
CAT Madras which has been followed by the judgment
of CAT Jabalpur. We have also observed the situation
at first hand and noted that the hospital is within
the Ordnance Factory Estate. The existence of
anomalies has also been acknowledged by the Management.

11. We are not, however, proceeding on the
basis of any concessions. After the end of ~~the~~ all the
arguments we are required to note that the issues
raised are no longer res-integra and we are bound
by the decisions of Division Bench Madras and Jabalpur.
I have dealt with the contentions at length to
point out that these decisions of Madras and Jabalpur
have been taken after consideration of all the ^{relevant} facts
and arguments and I would not like to do ~~no~~ anything
less.

12. In the result the O.A. succeeds. The Applicants
are declared to ^{be} entitled to get double rate overtime
and the respondents are directed to make payments
of the same to them subject to the condition that
the payment of arrears of overtime should be restricted
to one year prior to the date of filing of the appli-
cation which in this ^{case} happens to be 21-3-1994.

Respondents are also directed to continue to pay overtime to the applicants in future, at double the rate. The payment of arrears should be completed within three months of the date of communication of the order. There will be no order as to costs.

M

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

Review Petition No. 12 of 97.

in

ORIGINAL APPLICATION NO. 459/1994.

Prorogued, this the 28th day of July 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Ms.Manorama John & 68 Ors. ... Applicants.

(By Advocate Shri S.P.Saxena)

V/s.

Union of India & 2 Ors. ... Respondents.

(By Advocate Shri R.K.Shetty).

O R D E R

¶Per Shri M.R.Kolhatkar, Member(A)¶

In this Review Petition filed by original respondents including General Manager, Ammunition Factory, Kirkee, the review of my Judgment dt.20.10.1995 is sought. The O.A. related to 69 non-industrial employees of the Respondent No.3 and the relief sought for was that of payment of double rate overtime. Applicants at Sl.Nos. 1 to 60 were para-medical staff or staff supporting para medical staff and applicants at Sl.Nos. 61 to 69 were so called office staff like Mali, Barber, Dhobi, Cook, Masalchi etc. In that Judgment relief was granted to the applicants on the footing that the issue raised was no longer res-integra and the matters stood concluded by the Judgment of the Tribunal in O.A. No.983/89 decided by the Madras Bench on ~~decided on~~ 30.9.1991 and T.A. No.363/86 of Jabalpur Bench decided on 4.3.1993. The main ground for R.P. is that the Madras Bench of the Tribunal had clarified its

...2.

Judgment in M.P.454/92 decided on 15.2.1994. The effect of the modified Judgment was that order passed would not apply to applicants at 4, 6, 44 and 73 and these applicants were the employees belonging to the category of Cook, Masalchi, Mali and Dhobi who are office staff governed by Ministry of Personnel O.M. No.15012/3/86- Estt. Allowances dt. 19.3.1991, this had the effect that the above staff were entitled to slab rate of overtime. The main contention of the Review Petitioners is that it was through oversight that the provisions of the O.M. dt. 19.3.1991 could not be brought to the notice of the Tribunal/ ^{but} the same is referred to in para 2 of ~~the~~ Ex. A-3/ ^{of the O.A.} and in para 10 of the written statement, ~~but~~ the respondents failed to annex the copy of the said O.M. inadvertently and that the failure on the part of both the parties in ^{led to} the O.A. ~~has~~ an error apparent on the face of the record. According to the Review Petitioners applicants at Sl.No.61 to 69 are governed by the slab rate and that the CAT, Madras Bench having revised its Judgment to exclude this category of staff and this Tribunal having ^{basis of} passed its Judgment entirely on the ratio of the Judgment of the CAT, Madras Bench is also required to review its Judgment. The counsel submits that in case the Judgment is not reviewed it would lead to an anomalous situation, inasmuch as, employees of this category of staff who are paid ^{in all other Factories} overtime at slab rate/ ^a would only in Kirkee be paid at different rate. The counsel for the Respondents to the Review Petitioner ^{however} (Original Applicants) relies on the Judgment of this Tribunal in O.A. No.197/96 and O.A. No.344/96 delivered on 7.1.1997. This related to staff of Ordnance Factory, Dehu Road and staff of Ordnance Factory, Varangaon.

The counsel pointed out that this Tribunal took note of review/modification made by CAT, Madras Bench in its Judgment, but still proceeded to grant relief as in the case of O.A. No.459/94 relying on the Supreme Court Judgment in State of Maharashtra & Anr. V/s. Prabhakar Bhikaji Ingle, (1996 (1) ATJ 606) wherein the Supreme Court observed that when an SLP is filed before the Supreme Court against O.A. decided by the Tribunal and the Supreme Court has confirmed the order passed by the Tribunal, the Tribunal cannot have any power to review the earlier decision especially when the fact of the dismissal of the SLP has been brought to the notice of the Tribunal.

2. It is further contended ^{by counsel for original applicants} that there is a special reason for review of orders by CAT, Madras Bench of its Judgment viz. that the designations of the applicants in the O.A. were not given, but in the present O.A. viz. O.A. 459/94 the designations of all the applicants were clearly given and this is also reflected in para 1 of the Judgment. The modification made by the Madras Bench was known to the department on 15.2.1994 and still the Department failed to bring it to the notice of the Tribunal when the matter was finally heard on 7.9.1995 before reserving the Judgment. Moreover, the counsel has pointed out that the review petition is grossly barred by delay and laches. The Judgment was pronounced on 20.10.1995 and 3 months' time was given for implementation of the same. M.P. 244/96 was filed for extension of time and the same was allowed by the order dt. 28.3.1996. M.P. 17/96 was filed and by the order dt. 10.1.1997 the respondents were directed to file a Review Petition. The present R.P. has been filed on 29.1.1997 and since under Rule 17 of CAT (Procedure) Rules the Review Petition is to be filed within 30 days from the date of receipt of the

copy of the order, the R.P. may be dismissed on the ground of delay and laches alone.

3. I have considered the matter. I am not inclined to dismiss the R.P. on the ground of delay in the facts and circumstances of the case. On a specific query, ^{by counsel for petitioners} it was made known that the O.A. has been implemented in relation to all applicants at Sl.No. 1 to 60 but it has not been implemented in case of remaining employees who are stated to be governed by the slab system. The counsel for the Review Petitioner has invited my attention to the Supreme Court Judgment in Union of India & Anr. V/s. Sher Singh and Ors. Civil Appeal No.2183/93 decided on 7.2.1997 (1997 All. CJ 304). In para 3 of the above Judgment, the Hon'ble Supreme Court has observed that "In view of the settled legal position by a catena of decisions of this court that the dismissal of special leave petition without speaking order does not constitute res judicata, the question of law is at large to be gone into." According to the counsel, the ratio of Sher Singh has to be kept in view while considering the effect of the Supreme Court observations. In State of Maharashtra V/s. Prabhakar Bhikaji Ingle relied on by the Respondents (Original Applicants).

4. In terms of Rules under Order 47 of C.P.C. the Tribunal may review its order when there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the party or could not be produced by the party. There is no doubt that the Judgment of the Madras Bench is the foundation of the

...5.

order of this Tribunal in the ^{present} O.A. and there is also no doubt that the modification to order passed by the Madras Bench on 15.2.1994 excludes the category of Office Staff who are governed by the Department of Personnel Memorandum dt. 19.3.1991. The question to be considered is not whether the CAT, Madras Bench was right to review its earlier order dt. 30.9.1991, but what was the scope of the order of Madras Bench of the Tribunal which conceivably could have been before this Tribunal when it passed its Judgment on 20.10.1995. Thus looked at, this Tribunal could not have been granted the relief to staff governed by D.O.P. Memorandum dt. 19.3.1991. I am therefore of the view that the order dt. 20.10.1995 is liable to be clarified, in terms of the modification given by the CAT, Madras Bench on 15.2.1994 viz. that the applicants other than those at Sl.Nos. 61 to 69 which latter category are governed by Department of Personnel O.M. dt. 19.3.1991 are declared to be entitled to get double the rate overtime. The R.P. is allowed in the above terms. The clarification would govern the Judgment ab initio.

Order in Original Application No.197/96

and

Original Application No.344/96.

No R.P. in regard to these O.As. is before me. As observed above, these O.As. related to Staff of Ordnance Factory, Dehu Road and Varangaon respectively. M.F. 224/97 in O.A. No.197/96 was dismissed by this Tribunal on 1.5.1997. All the same, since these 2 O.As. were decided in terms of O.A. 459/94 which itself has been reviewed by me to day and as I consider it in the interest of Justice viz. to have uniformity of law and

to avoid proliferation of litigation and as it is well settled vide Full Bench decision in John Lucas reported at page 135 of Vol.I of Full Bench Judgments of Bahri Brothers that the review can be undertaken by Tribunal suo moto or on application of any aggrieved person, which may be a party or not to the original application, I, therefore, consider that the orders in the above 2 O.As. are also liable to be reviewed and a show-cause notice may be issued to the parties as to why the orders may not be reviewed, the order in O.A. 459/94 having been reviewed. Show-cause Notice returnable on 21.8.1997 before the same Bench.

M. R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

B.

~~Notices issued to~~
~~Applicant/Respondents on~~

dd. 28/7/97

order/Judgement despatched

to Applicant/Respondent (s)

on *13/8/97. O.C. filed*

(8) mOA 192/96.

14/8/97