

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1131/95

Transfer Application No.

Date of Decision 13-06-96

Shri P.B.Gaiwad

Petitioner/s

Shri D.V.Gangal

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

CORAM :

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

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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI 1

O.A.NO. 1131/95

with

M.P.No. 675/95

pronounced this the 13th day of June 1996

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

Shri Prabhakar Bhikaji Gaikwad

By Advocate Shri D.V.Gangal ... Applicant

V/S.

Union of India & Ors.

By Advocate Shri V.S.Masurkar ... Respondents

O R D E R

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

Applicant is working as Assistant Works Engineer in the Office of Respondent No. 2. The grievance of the applicant is that with effect from March, 1994 when the applicant started getting the pay of Rs.1900/-, his Over-Time Allowance was arbitrarily restricted to his basic pay.

In the month of February, 1994 when he was getting a basic of Rs.1850/- he received overtime allowance in accordance with Section 59 of the Factories Act. Thus, the respondents have restricted his overtime allowance arbitrarily relying on the Circular dated 8.3.1989 at Annexure-'A-2'. The applicant contends that as Assistant Works Engineer, he is required to manually work in order to repair various machineries required by the Factories and irrespective of the designation of the applicant, the applicant is neither a Supervisor nor a Manager but a technically qualified manual worker. The applicant has enclosed Annexure-'A-1' which is Notice No. 7 dated 18.5.1994 to show persons holding positions of supervision/which notice includes the position of Deputy Works Engineer therein for the purposes of

Section 64(1) of the Factories Act, read with Rule 100 (sub-rule 1 and 2) of the Maharashtra Factories Rules, 1963. The applicant, however, is not holding this post but is holding the post of Assistant Works Engineer and therefore cannot be denied the benefit of payment of overtime in terms of Section 59 of the Factories Act. The grievance of the applicant relates back to April, 1994 when he was paid salary for March, 1994. The applicant has filed an M.P.No.675/95 seeking condonation of in respect of OA. filed on 7.9.95 delay/on the ground that similarly situated employees have been given the benefit of overtime and hence the plea of limitation does not apply. The applicant also relies on AIR 1987 SC 1353, Collector, Land Acquisition vs. Katiji, in which it was held that lawful claim should not be defeated by limitation.

2. In this case the discrimination vis-a-vis similarly situated employee has been pleaded. The delay in filing the application also is marginal, namely, 5 months. Delay condoned. M.P.No.675/95 allowed and disposed of and the OA. is considered on merits.

3. During the course of argument, it appeared to me that the issues raised in this OA. is no longer res-integra in view of the judgement of this Tribunal in the case of Ashok Pandharinath Padwal & Ors vs. Union of India & Anr. OA.NO. 761/88 decided on 6.1.1993. This was a Division Bench judgement and the same was consistently followed by this Tribunal vide the Single Bench judgements in OA.NO. 1273/93 & OA.NO.203/94 decided on 29.7.1994 in which the applicants were Works Engineers in the pay scale of Rs.2000-3500 whereas the applicant is Assistant Works Engineer in the pay scale of Rs.1400-2300. The same has also been

followed in OA.NO. 834/94 & OA.NO. 938/94 decided on 21.11.1994. I myself had occasion to consider all these judgements and I have disposed of 5 cases, namely, OA.Nos. 63/95, 66/95, 215/95, 216/95 & 267/95 decided on 18.12.1995. It has also been pointed out to me that the SLP against the similar judgement, namely, ^{Union of India & Anr. vs.} OA.Nos. 1312/93, 203/94 & 201/94, ^{Vishampayan & Ors.,} Bhalchandra Ambadas has been dismissed by the Supreme Court.

4. Considering all these factors, the applicant is *prima facie* entitled to succeed.

5. The learned counsel for the respondents, however, argues that the applicant is *estopel* from claiming O.T.A. at higher rate because he accepted O.T.A. at lower rate without any objection and that payment was in full and final settlement of his claim for O.T.A. and he cannot now turn back and ask for higher O.T.A. Secondly, he contends that if *at all* the Tribunal is inclined to grant relief, the relief may not be granted retrospectively but it may be granted from the date of judgement of the Tribunal.

6. I am not impressed by the plea that the applicant is *estopel* from claiming O.T.A. at the higher rate. In relation to the office of Respondent No. 2, this Tribunal has interpreted the scheme prevalent in the Office of Respondent No. 2 and has held that the applicants are entitled to payment of overtime allowance in accordance with the Section 59 of the Act irrespective of any administrative instructions which might have been issued by the respondents which are against the provisions of Section 59(1) of the Factories Act. Thus, the law in the matter has been settled and there cannot be any *estoppel* against law.

7. Regarding the date from which the relief is to be granted, the counsel for the applicant prayed that he be granted relief from April, 1994 when for the first time he was denied the benefit of the O.T.A. in terms of Section 59 of the Factories Act. The counsel for the respondents, as noted above, has prayed for restricting the relief to the date of pronouncement of the order. As has been done by the Tribunal in OA.NO. 73/95 & OA.NO. 77/95, I am inclined to grant relief from one year prior to the filing of the OA.

8. In the light of the discussion above, the OA. is allowed and the respondents are directed to make payment of overtime allowance to the applicant in accordance with the Section 59 (1) of the Factories Act, the arrears being restricted to one year prior to the filing of the OA. The same should be paid to the applicant within two months from the date of the communication of the order. So far as future O.T.A. payment is concerned, the same should be regulated in accordance with Section 59 of the Factories Act.

9. There would be no orders as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

mrj.

Order/Judgement despatched
to Applicant/Respondent(s)
on 13.6.96
Order/Judgement despatched
to Applicant/Respondent(s)
on 18.6.96

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