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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 63/95,66/95,215/95, 216/95, & 267/95

Transfar Application No: --

P.P.Kokane & Ors. O.A.63/95 DATE OF DECISION: 18-12-1995
W.S.Ladhwe & Ors. O.A.66/95
S.K.Bhattacharya & Ors. O.A.215/95
V.K.Dighe & Ors. O.A.216/95
B.A.Kardak & Ors. O.A. 267/95
Petitioner

Advocate for the Petitioners

(G.K.Masand Advocate for the applicants)

Versus

U.O.I. & Ors.
Respondent

Mr.S.S.Karkera
Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri -

1. To be referred to the Reporter or not ? X
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R.Kolhatkar.
(M.R.KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NOS.63/95, 66/95, 215/95, 216/95 & 267/95

HON'BLE SHRI M.R. KOLHATKAR, MEMBER(A)

(1) P.P.Kokane & Ors. .. Applicants in O.A.63/95

vs.

(i) Union of India

(ii) General Manager,
India Security Press,
Nasik Road 422 101. .. Respondents in O.A.63/95

(2) Wasudeo Sudam Ladhwe & Ors. .. Applicants in O.A.66/95

vs.

(i) Union of India

(ii) General Manager,
India Security Press,
Nasik Road, 422 101. .. Respondents in O.A.66/95

(3) Shyamal Kumar Bhattacharya & Ors. .. Applicants in O.A.215/95

vs.

(i) Union of India

(ii) General Manager,
Currency Note Press,
Nasik. .. Respondents in O.A.215/95

(4) V.K.Dighe & Ors. .. Applicants in O.A.216/95

vs.

(i) Union of India

(ii) General Manager,
India Security Press,
Nasik Road. .. Respondents in O.A.216/95

(5) B.A.Kardak & Ors. .. Applicants in O.A.267/95

vs.

(i) Union of India

(ii) General Manager and
Ex-Officio Controller of
Stamps, Central Stamp Depot,
India Security Press,
Nasik Road. .. Respondents in O.A.267/95

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Appearances:

(1) Mr.G.K.Masand
Advocate for the
Applicants.

(2) Mr.S.S.Karkera
Advocate for the
Respondents.

Date: 18-12-95

ORDER

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

These five cases raise common questions of fact and law in relation to employees of India Security Press and Currency Note Press,Nasik Road and we dispose of the same by common order. Where necessary, facts in O.A.63/95 have been taken as illustrative.

2. There are 23 Inspectors of ISP in O.A. 63/95 in the grade of Rs.1600-2660, there are five Store Keepers and Deputy Store Keepers in O.A.66/95 in the grade of Rs.1660-2900 and Rs.1400-2300 respectively. In O.A. 215/95 there are 25 Junior Supervisors from Currency Note Press in the scale of Rs.1600-2660. There are 28 Junior Supervisors and Asstt.Supervisors from India Security Press in O.A.216/95 in the grade of Rs.1600-2660 and Rs.1400-2300 respectively. There are eight Inspectors and three Assistant Inspectors totalling 11 applicants from Central Stamp Depot(India Security Press) in O.A. 267/95 in the grade of Rs.1600-2660 and Rs.1350-2200 respectively. The common grievance of applicants relates to payment of overtime. The applicants all are working in the non gazetted cadre. The applicants submit that India Security Press,Nasik Road, Currency Note Press, Nasik Road and Central Stamp Depot, NasikRoad,

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are each of them a factory and the provisions of Factory Act are applicable to them including Section 59(1) of the Factories Act which provides that whenever a worker works in the factory for more than 9 hours on any day and for more than 48 hours in any week, he shall, in respect of the payment of the overtime allowance, be entitled to wages at twice the ordinary rate of wages. Section 2(L) of the Factories Act defines a worker to mean, a person employed directly in any manufacturing process or any kind of work incidental to or connected with the manufacturing process. The applicants it is urged are, therefore, workers as defined in Section 2(L) of the Factories Act and that in terms of Section 59(1) they are entitled to O.T.A. at double the rate of normal wages in respect of extra hours put in by the applicants in excess of 48 hours in a week. The applicants submit that Section 64 of the Factories Act authorises the State Government to make rules to define persons who hold positions of Supervision or management or who are employed in confidential position in a factory and if this is done the provision of the Chapter VI of the Act including Section 59(1) shall not apply to any person so defined. According to the applicants, State Government has framed rules viz. Rule 100 of the said rules in terms of Section 64 and they are not covered by the same and that applicants are performing manual labour as regular part of their duties. According to the applicants

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however, the respondents are not paying overtime allowance to them in terms of Section 59(1) but they are following a policy of :(i) paying employees in their category who are drawing pay upto Rs.1900/-, overtime allowance at double the rate,(ii)for the employees in question drawing pay between Rs.1900 - 2200 the amount of overtime paid to them is calculated at double the rate but the quantum actually paid is restricted to the basic pay of the employee concerned.(iii) However, after the employees cross the pay of Rs.2200/- the payment of overtime allowance is unilaterally stopped and instead they are being paid an honorarium of Rs.1400 plus Rs.200 per month irrespective of the basic pay drawn by the employees concerned and irrespective of the amount of overtime allowance that would become payable in respect of the overtime duties performed. This can be seen from the table below:

Basic Pay	O.T.A. paid by respondents.	Demand double over time allowance to be paid without restriction to basic pay.
1. Rs.1850/- (I.C.S.)	Rs.3691/-	-
2. Rs.1900/- (Ceiling)	Rs.1900/- (Ceiling)	Rs. 3,780/-
3. Rs.2200/- (Ceiling)	Rs.2200/- (Ceiling)	Rs. 4,315/-
4. Rs.2250/- (No. OT)	Rs.1400/- + Rs. 200/-	Rs. 4,404/-

This table also shows the prayers of the applicants in a nutshell in column 3.

3. The applicants contend that not only the action of the respondents is against Section 59(1)

of the Factories Act but is also against the law laid down by this Tribunal in O.A.761/88(A.P.Padwal and Others vs. Union of India & Ors.). The judgment of the Tribunal was delivered on 6-1-93 which appears at page 22 of the O.A.63/95. In that case the applicants were employed as Supervisors in Class-II,Non-Gazetted Cadre in Currency Note Press at Nashik Road, The operative portion of the judgment is in para-7 which states as below :

> "7. The application succeeds and is allowed. The respondents are directed to pay to the applicants overtime wages in accordance with Section 59(1) of the Act and place them at par with such Supervisors who were being paid overtime wages on the footing that their basic pay does not exceed a sum of Rs.2200/-. The respondents shall commence the payment within a period of one month from the date of the receipt of a certified copy of this order and thereafter pay to the applicant regularly, if and when the occassion arise. "

Applicants state that the SLP viz. Civil Case No.22285 against the judgment was dismissed by the Supreme Court on 15-11-1993 on a statement from the counsel for the respondent Supervisors that once they are paid overtime as is paid to the other Supervisors they would not claim and would not be entitled to the special allowance under the office order 221/AS dt. 24-12-1987. Applicants contend that apart from being placed in Class-III (Group'C') non gazetted they are not vested with any managerial or disciplinary powers nor do they perform the work of any confidential nature. The applicants also state that in O.As.834/94 and 938/94,both decided on

21-11-1994, P.R.Chandratre & 40 Ors. and R.Y.Kadam & 3 Ors, this court has followed the judgment in Padwal's case. Chandratre and fellow employees were Inspectors and Kadam & Ors. were Storekeepers. It has further been argued by the applicants that in O.A.1273/93 and O.A.203/94(Bendaley vs. U.O.I and Patil vs. U.O.I.) decided on 5-7-1994 by single bench where the applicants were Works Engineers in the scale of Rs.2000-3500, the ratio in Chandratre/Kadam/Padwal was followed. Incidentally Chandratre's and Kadam's cases related to Currency Note Press.

4. The applicants therefore claim the relief of payment of overtime allowance to the applicants as well as others identically placed at double the rate in accordance with Section 59(1) of the Factories Act subject to adjustment of any honorarium paid to the employees during the said period. The applicants also claim the arrears from the date when they were denied the payment of OTA in accordance with Factories Act or alternatively payment of arrears atleast for three years prior to the filing of the O.A.

5. Respondents have opposed the O.A. According to them the O.A. is time barred because the payment of overtime is regulated by Govt. orders dt. 8-3-1968, 13-10-1972, 1-5-1974 and 24-12-1988,Ex.R-1, R-2, R-3 and R-7 respectively and the applicants cannot challenge the validity of the Govt. orders in terms of which overtime is being paid in an O.A. which has been filed only on 12-1-1995. In effect the applicants are really seeking implementation of the judgment in Padwal's case

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but that was not a judgment in rem but that was a judgment in personem and it was implemented in full and the C.P.No.7/94 in O.A. No.761/88 decided on 2-12-1994 was also dismissed by a division bench of this Tribunal to which the present single bench was a party. According to the respondents the applicants all are performing supervisory function and therefore in terms of Maharashtra Factories Rule 100, they are not at all entitled to overtime allowance. However, central government made rules providing for payment of overtime allowance subject to certain restrictions. This restriction may be seen in letter dt. 8-3-1968 para 3 of which reads "For persons actually drawing basic pay of Rs.400/- or above the total overtime allowance during a month shall not exceed month's basic pay". What the order dt.8-3-1968 did was to sanction overtime allowance to the non industrial staff of India Security Press, Nasik Road at the time rate for work done in excess of the prescribed hours at the same rate as it is admissible to the industrial staff subject to fulfilment of certain conditions. The orders regarding payment of overtime allowance did not apply to the gazetted officers and persons drawing pay in the scale the maximum of which is Rs.500/- or more.

6. These orders were modified from time to time and in accordance with the revision of pay scales. The restrictions to which the applicants have referred viz. non industrial employees drawing pay between Rs.1900 and Rs.2200/- being paid overtime allowance limited

to their basic pay and non payment of overtime allowance to the employees drawing more than Rs.2200/- are all incorporated in the latest Govt. orders which provides for payment of special allowance to the employees drawing more than Rs.2200/- at the following rates:

For working of	Amount of special allowance
9 hours	Rs.600/- per month
10 hours	Rs.1000/- per month
11 hours	Rs.1400/- per month

7. Respondents next contended that Section 59(1) read with section 64 of the Factories Act and proviso to section 64 of the Act provide that the persons holding position of supervision shall be entitled to extra wages in respect of overtime work under Section 59(1) provided the ordinary wages does not exceed Rs.1600/- per month. Therefore they are not entitled to overtime though the applicants are being paid limited overtime allowance as per the Govt. of India's order referred to above. The respondents also relied on the judgment of this Tribunal in O.A.No.534/88 K.L.Nayyar & Ors. vs. The General Manager, High Explosive Factory, Kirkee, decided on 30-11-1993 which judgment is annexed by respondents. They also relied on the judgment of this Tribunal in O.A.753/88, India Security Press & Currency Note Press Gazetted Officers Association & Anr. vs. Union of India decided on 11-2-1994 by a division bench to which the present single bench was a party. Finally the respondents contend that the judgment in Chandratre/R.Y.Kadam's case is per-incuriam because

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it was delivered in the absence of written statement of the respondents and moreover judgment cited before the Tribunal in Chandratre/R.Y.Kadam was not Padwal's judgment but the judgment in Bendale/Patil. The respondents in this connection rely on Full Bench Judgment(Bangalore) of C.A.T. in C.R.Rangadhamaiah and Ors. vs. Chairman Railway Board,,1994(1)ATC 305. In para-15 it is stated that when there are two inconsistent decisions, the latter decision has to be regarded as per incuriam and not binding on the court in a subsequent case. The Tribunal in Chandratre's case had before it Bendale's case O.A.Nos.1273/93 & 203/94 but the Tribunal interpreted judgment in Padwal's case which was not specifically cited before it and therefore the judgment in Chandratre/Kadam's case according to respondent should be treated as per-incurium.

8. The applicants have pointed out that so far as observations of the Tribunal in C.P. arising out of Padwal's case are concerned, they were made in the context of scope of contempt jurisdiction. The situation before the Tribunal was that overtime was being paid to the applicants at the rate at which it was paid to the employees drawing basic pay below Rs.2,200/- The Tribunal in its contempt jurisdiction considered that the reference in operative part of Padwal's judgment to Section 59(1) was only to the payment of overtime as such and not to the extent of rate of overtime. Therefore any observations in that C.P.

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so far as the present O.As are concerned are not conclusive. So far as the decision in O.A.753/88 is concerned that decision related to Gazetted Officers and the present applicants are all non gazetted and therefore the ratio in that case does not apply to the present case. O.A. 534/88 K.L.Nayyar related to category of Foremen, Chargemen, and Overseers and Supervisors who fell within the provision of Rule 100clause (x) and (xii) of the Maharashtra Factories Rule,1963 and that judgment has no applicability to the facts of this case. So far as Chandratre's case is concerned it cannot be said to be per incuriam because in Bendale and Patil's case reference has been made to Padwal's case and it is assumed that the Tribunal which has decided Bendale's case is fully aware of Padwal's judgment.

9. We have considered the matter. There is no doubt that we are required to follow the ratio of Padwal's case which ratio has become binding consequent on SLP having been rejected. Padwal's case was decided on the averments as to whether the duties performed by the applicants were of Supervisory nature or not. The Tribunal in Padwal's case gave a finding in para 5 of the judgment, as below:

> "5. Having considered the matter carefully, we are convinced that on the material on record the conclusion is inescapable that the applicants even though they are Supervisors are also performing manual work. It therefore, follows that the respondents are not entitled to the benefit of Rule 100 of the Maharashtra Factory Rules,1963."

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Nothing has been brought before us to contradict this finding of the Tribunal on Padwal's case. It was conceded before us that the manual of Currency Note Press is out of date and it is not applicable to the present case.

10. The Tribunal in Padwal's case also relied for its decision on the point of invalid classification. In this connection para 6 of Padwal's judgment may be reproduced :

> "6.There is yet another approach to this problem. It is admitted to the respondents that those Supervisors who are getting a basic salary upto Rs.2200/- are more or less performing the same type of duties as the applicants or those getting over Rs.2200/- as basic pay are being paid extra wages for overtime. We are not prepared to accept the position that inspite of the Rule 100 and inspite of the fact that the aforesaid Supervisors who are drawing pay upto Rs.2200/- and who are not performing manual work are being inadvertantly paid overtime wages in accordance with Section 59(1). It appears to us that respondents on their own have carved out a distinction between those Supervisors who are receiving a basic pay upto Rs.2200/- and those receiving an amount higher than the said amount so as to create two different classes with a view to deny the advantage of overtime wages to the other class. Such a segregation is not countenanced by Section 59(1) and Section 64 read with Rule 100 of the Maharashtra Rules. The Respondents, therefore, are denying the benefit of Section 59(1) to the applicants on purely extraneous consideration."

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11. All the applicants before us are in a pay scale much lower than the pay scale which is applicable to Works Engineers who were the applicants in Bendale/Patil's case. The Tribunal in that case had also referred to the same point of arbitrariness. The Tribunal noted that Chief Inspector of Factories has notified that Works Engineers Gr.B are not eligible to draw any overtime allowance but the respondents instead of adhereing to the above direction of the Chief Inspector have given overtime allowance to those who are drawing less than Rs.2200/-p.m. and stopped paying overtime allowance to those who are drawing more than Rs.2200/- and above which is not permissible. Regarding the case of India Security Press and Currency Note Press Gazetted Officers Association, (O.A.753/88) that decision does not apply because that case pertains to Gazetted officers. The decision in O.A. 534/88, K.L.Nayyar & Ors. also does not apply because that related to High Explosives Factory and the concerned employees were in terms covered by Rule 100 of the Maharashtra Factory Rules. No doubt a particular view was taken in C.P.7/94 in O.A. 761/88 but the reasons for holding that view are explained in thatjudgment. We are also unable to subscribe to the contention that the decision in Chandratre/Kadam's case is per incuriam.

12. In passing we would like to refer to the recent Supreme Court decision in Union of India & Ors. vs. Suresh C.Baskey & Ors.,1995(6)SCALE 328, decided by the Supreme Court on 31-10-1995. In that

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case the main preposition was in regard to definition of ordinary rate of wages for purposes of payment of overtime allowance and the Supreme Court has laid down that employees of the Govt. Mint who are occupying accommodation and as such are not being paid house rent allowance are not entitled to compute the overtime allowance payable to them after taking into account notionally the element of house rent allowance. In para 2 of the judgment the Supreme Court has observed that "It is not necessary for us to go into the chequered history of litigation on the question whether the employees of Govt. Mint were entitled to the overtime allowance. It is not disputed before us that the employees of the Government Mint who come within the definition of workmen under Factories Act,1948 are entitled to extra wages for over-time under section 59 of the Act." These observations support the decision in Padwal's case.

13. We are therefore of the view that the O.A's must succeed and we, therefore, dispose of the O.A's by passing the following order :

O R D E R

O.A.63/95,66/95, 215/95, 216/95 and 267/95 are allowed. The respondents are directed to make payment of the overtime allowance to the applicants at double the rate whenever they perform duties in excess of 48 hours per week in accordance with the provisions of Section 59(1) of the Factories Act,without restricting the same either

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to basic pay of employees concerned or otherwise. The respondents are also directed to pay arrears of overtime to the applicants in terms of our judgment with effect from three years preceding the filing of the OA's Respondents are at liberty to adjust any honorarium paid to the applicants during the said period.

There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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