

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : : HYDERABAD BENCH
AT HYDERABAD

OA.605/89

Date of decision : 19-6-92

Between

1. K. Lingiah
2. P.J. Skaria
3. K. Kannain
4. Venkataiah, and
5. K.T. Rao.

: Applicants

and

1. Govt. of India, represented by
the Secretary
Ministry of Defence
Dept. of Defence Production
New Delhi

2. The Ordnance Factory Board, represented by
the Secretary, Ordnance Factory Board
10/A, Auckland Road
Calcutta 700 001, and

3. The General Manager
Ordnance Factory Project
Yeddu-mailaram
Medak Dist. AP 502205.

: Respondents.

Counsel for the applicants : Y. Suryanarayana
Advocate

Counsel for the respondents : N. Bhaskar Rao
Central Govt. Standing Counsel

CORAM :

HON. MR. PC JAIN, MEMBER (ADMIN.), PRINCIPAL BENCH

HON. MR. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

(Order of the Division Bench delivered by Hon. Mr. P.C. Jain,
Member (Admn)

CJ.

All the five applicants in this OA under Section 19 of the Administrative Tribunals Act, 1985, were transferred to Ordnance Factory Project, Yeddu-mailaram, Medak District on different dates between 15.4.1984 and 23.11.1985 from other Ordnance Factories such as Ordnance Factory Chanda, Ordnance Factory Khamaria, and Ordnance Factory Jabalpur. They claim to be non industrial staff. Applicants No.1 & 2 were Supervisor 'A' (NT) and, Applicant No.3 was UDC, Applicant no.4 was Sub.Durwan, and Applicant No.5 was Duftry. On transfer to Yeddu-mailaram Ordnance Factory Project, all the applicants were given certain benefits of protection of their emoluments in terms of Ministry of Defence (Department of Defence Production) letter No.11(7)/64-D(NF)-Vol.IV dated 29-12-1975. Their grievance is that these benefits have been denied to them after their scales of pay were revised with effect from 1-1-1986 pursuant to the recommendations of the Fourth Pay Commission. It is contended that the action of the respondents in contrary to the aforesaid circular of the Defence Ministry and is also discriminatory in as much as employees who have been transferred to this project factory from other factories on or after 1-1-1986 have been allowed the benefits of the aforesaid circular, in addition to the benefits of the revision of the pay scale with effect from 1-1-1986. It is in this background that this OA has been filed with the prayer for a direction to the respondents to fix the actual earnings and overall monthly earnings as per the revised pay scale according to the Fourth Pay Commission which were made applicable with effect from 1-1-1986 and accordingly pay them the arrears due to them.

2. The stand taken by the respondents in their counter affidavit is that the Government orders as contained in the aforesaid circular dated 29-12-1975 intend to ensure that employees transferred from existing ordnance factory to new

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projects are not put to any financial hardships by protecting the difference in pay, overtime allowance (OTA) and overtime bonus (OTB) drawn in the previous station and the one paid as basic pay in the new station. It is their contention that the applicants have accordingly been availing all the protection of their pay on the basis of these instructions, but with the revision of the scale of pay with effect from 1-1-1986, the basic pay has been revised upward, as a result the gap between the pay drawn in the old station and the new station has been wiped out. They, therefore, stress that the applicants had no claim whatsoever for the concession any more; on the other hand they are required to return the amounts received by them for the period from 1-1-1986 to 31-10-86. They have also taken the stand that note 'C' of the aforesaid letter of 29-12-1975 is also applicable to the case of the applicants.

3. Before going into the merits of the rival contentions of the parties, it is necessary to advert to the essential features of the Defence Ministry's letter dated 29-12-1975 on which both the parties have placed their reliance. Under the letter date 29-12-1975, the concessions mentioned therein were sanctioned to the workmen, non-industrial and non-gazetted staff employed under the Director General of Ordnance Factories/Inspectories under the DGI, who may be transferred in the interest of service from any of the existing factory/inspectories which are established and may be established in future, ^{and} these concession had to be given to the aforesaid staff irrespective of whether they are transferred on a temporary or on a permanent basis provided, however, that these concessions will not be admissible to individuals who may be transferred ^{due} to shortage of work and/or to avoid retrenchment in the existing factories. Since all the clu.

applicants in the case before us were transferred on a permanent basis, we need not refer to the concessions which were made admissible to these employees who were so transferred on a temporary basis. The employees transferred on permanent basis are shown under two heads :-

- i) Workmen, and
- ii) Non-industrial staff.

In regard to non-industrial staff, the aforesaid circular provides as below :-

"Non-industrial staff will be granted protection of salary equal to their average salary, including overtime allowance and over time bonus for the last three months preceding the month of their transfer. The payment of over time allowance and over time bonus will, however, be subject to the conditions under note (b) of (iv) of para A-I. In addition, they will be entitled to advance of TA/DA as admissible under normal rules."

This concession of protection of salary will be admissible in respect of all Non-industrial employees transferred to new factories/inspectories for 24 months from 18-5-1967 or from the date of transfer, whichever is earlier."

4. Under the heading 'workmen' apart from the advance equivalent to one month's basic pay repayable in not more than 12 equal instalments, outstation allowance of 25% of basic monthly pay at the old station at the time of transfer for the first three months and 20% of the basic pay for the next 21 months, it was also provided that when a project allowance was sanctioned, the workmen will be allowed to draw for the first two years from the date of joining the new factory/

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inspectorate either ~~or~~ the outstation allowance or the project allowance, whichever is more beneficial from time to time, but after two years, he would be entitled to receive only the project allowance provided the same is continued and is otherwise admissible. We need not refer to the provisions for advance of travelling allowance, joining time, joining time pay and transfer allowance as these are not relevant for deciding the issue before us. What is relevant is the provision about minimum monthly earnings in the new factory and provisions under this head are ~~extracted~~ extracted as below :

"Workmen will be granted a minimum salary equal to their average monthly earnings until such time as they are put on ⁱⁿ piece work/the new factory/inspectorate or for 24 months from the date of transfer whichever is earlier. This does not apply to periods of leave or other absence from duty.

NOTE: (a) The average monthly earnings will be calculated on the basis of actual earnings of the individuals in the previous Factory/Inspectorate during the three complete calendar months preceding the month of their transfer.

NOTE: (b) The term "Actual earnings" in (a) above means piece work and/or day work earnings including overtime, pay and overtime, bonus but excluding dearness, house rent and compensatory and other allowances. The overtime pay and overtime bonus will, however, be included subject to the following conditions : -
 i) that regular overtime worked in the parent factory/inspectorate in the department in which the workman was employed for at least three complete calendar months preceding the month of transfer; and
 ii) a quarterly certificate is furnished by the General Manager of the parent factory/inspectorate to the General Manager of the new factory/inspectorate that the workman con-

cerned would have continued to have drawn overtime pay if he had continued there.

iii) Overtime pay and overtime bonus will not be increased/decreased corresponding to increase/decrease of overtime hours in parent factory/inspectorate from time to time but the same will cease to be included in the actual earnings from the date on which regular overtime working is stopped in the parent factory/inspectorate.

NOTE: (c) Workmen will be paid at their monthly rate at the new factory/inspectorate (including annual increment ~~or~~ pay increase due to promotions) and in addition they will be paid the difference, if any, between their basic monthly pay at the new factory/inspectorate additional payment will be treated as part of pay for the purpose of calculating leave pay.

NOTE: (d) Should the basic monthly rate at the new factory/inspectorate exceed at any time the average monthly earnings at the old factory/inspectorate (as mentioned in this clause) the additional payment will cease to be made.

5. From a perusal of the above, it is seen that in view of the general availability of overtime allowance and overtime bonus, in the already established ordnance factories, it was considered appropriate to ensure that the actual average monthly earnings of an employee in the factory from which he is transferred to a project do not suffer any reduction, on his transfer to the project primarily due to the non-availability of facility of overtime working in the project for obvious reasons. It was essentially a measure to save such workers from loss in their total emoluments, excluding, however, HRA, CCA etc. for ^{an} initial period of about two years subject to the conditions specified in the order and which have already been extracted above. The basis of calculation is.

of these earnings was to be the average earnings in the period of three months preceding the month in which the transfer took place. We have not been able to find anything in the aforesaid Government Circular to read into the same either ~~negating~~ the provision to pay to such transferred employees a sum equivalent to their three months average earnings on account of overtime allowance and overtime bonus at the outstation in addition to what he would otherwise get in terms of basic pay plus Dearness Allowance/ Additional Dearness Allowance, Interim Relief/Adhoc Relief etc. So, therefore, we have no hesitation in holding that what is to be ensured is that the total pay packet comprising items mentioned in the scheme and calculated in the prescribed manner as available in the old factory should not get reduced on account of transfer of an employee to a new project in public interest. Both the learned counsel for the applicant as well as ^{the} learned counsel for the respondents had some initial reservations about computation of such a package, yet, in the course of oral hearing before us it appeared to us that the basic idea of the scheme as spelt out by us above, is accepted as reasonable by both the parties.

6. The other contention of the applicants about alleged discrimination among the transferred employees on the basis of date of transfer i.e. prior to 1-1-1986 and on or after 1-1-1986, is also connected in a way with the first contention. The contention of the applicants is that those who were transferred on 1-1-1986 and thereafter had the benefit both of the revision of the pay scale as also the protection of difference in emoluments, if any, between the emoluments at the ~~old~~ station and those admissible at ^{the} new station, but the employees who were transferred prior to 1-1-1986, as is

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the case with all the five applicant herein, though they were given the benefit of revision of scale of pay, which according to them had nothing to do with the applicability of the scheme, the protection of emoluments has been denied to them on the sole ground that the basic pay of the applicants is far far higher under the revised scale with effect from 1-1-1986 than what they were drawing as basic pay under the unrevised scales of pay, not only at the old station but even after transfer to the project. This the respondents have sought to justify on the ground that the idea being to protect the loss in the emoluments, the question of compensation does not arise as loss has ceased to exist on account of difference having been wiped out pursuant to the revision of the basic pay of the applicants. Their contention about the amount due to them for the period 1-1-1986 to 31-10-1986 is presumably based on the basis that though the revision of the scales of pay was given effect from 1-1-1986, the orders were in fact carried out some time in October, 1986 and thereafter because the Government Orders on the recommendation of the Fourth Pay Commission were issued some time in September, 1986 and till then payment on earlier basis continued to be made. What is being ignored, in our view, by the respondents is that they are comparing the basic ^{pay} in the old scale with the basic pay in the new scale. Keeping in view the basic purpose of the Scheme of ensuring protection of actual earnings such comparison would not be justified. If so, the contention of the applicants, that the action of the respondents is discriminatory and thus violative of Article 14 read with Article 16(1) of the Constitution of India has some force in as much as those who are transferred on or after 1-1-1986 get both benefits, one benefit is disallowed to those who were

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transferred prior to 1-1-1986. The cut off date of 1-1-1986 exists only in so far as it relates to the revision of pay scale and to that extent alone, it cannot be said to be an unreasonable classification as it has a nexus with the objective sought to be achieved. But, so far as the scheme of protection of pay is concerned, the cut off date of 1-1-1986 is not at all relevant. In fact, as we have already mentioned, the Defence Ministry letter dated 29-12-1975 refers to the admissibility of benefits from 18-5-1967. There was a revision of pay scales of Central Government employees with effect from 1-1-1973 pursuant to the recommendations of the Third Central Pay Commission. If revision of the scales of pay on the basis of recommendations of Pay Commission had any relevance to the benefits ^{under} the scheme of protection of pay, it would be reasonable to assume that the Government Orders would have taken care of it and made a specific provision with reference thereto. Thus, we are of the view that there is no valid basis for discrimination in the matter of extending benefits of protection of pay between those who came on transfer before their scales of pay were revised on the one hand and those whose scales of pay had already been revised before they were transferred. We would like to make it very clear that this does not mean that the employees who had been transferred prior to 1-1-1986 have any right whatsoever to have their overtime allowance and overtime bonus, recalculated for the ^{relevant} period of three months preceding the month of transfer. Their claim for reworking/refixing these benefits on the basis of the revised scales but for the period when the revised scales were not in operation, is without merit. As such this has to be disallowed.

7. In the light of the foregoing discussion, this DA is

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To

1. The Secretary, Union of India,
Dept. of Defence Production,
Govt. of India, New Delhi.
2. The Secretary, Ordnance Factory Board,
10/A, Auckland Road, Calcutta-1.
3. The General Manager, Ordnance Factory ~~Exx~~ Project,
Yeddu-mailaram, Medak Dist. 502 205.
4. One copy to Mr.Y.Suryanarayana, Advocate, 40 MIGH Housing
Board colony, Mehidipatnam, Hyd.
5. One copy to Mr.N.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
6. One copy to Hon'ble Mr.T.Chandrasekhar Reddy, M(J)CAT.Hyd.
7. One copy to Deputy Registrar(J)CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

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partly allowed with the following directions :-

(1) The emoluments drawn by the applicants on the basis of average of the three months preceding the month in which they were transferred to the Ordnance Factory Project, Yeddu-mailaram, Medak District, will be computed taking into account (i) the basic pay in the time scale of pay; (ii) dearness allowance, additional dearness allowance, ad-hoc relief/interim relief on the basic pay as admissible under the rules; (iii) Overtime Allowance, and (iv) Overtime Bonus.

(2) If on transfer to the Ordnance Factory Project, Yeddu-mailaram, Medak, their emoluments fall short of the emoluments as at old station as calculated in (i) above, the applicants would be entitled to the difference for the period during which such a difference exists. This will, however, be subject to all other conditions in regard to the period, counting of such difference for certain other purposes etc. as prescribed in the Defence Ministry's Circular dated 29-12-1975.

(3) The arrears, if any, in pursuance of the above directions shall be paid within a period of four months from the date of receipt of a copy of the judgement. If, however, the applicants are found to have received any excess payment due to inclusion of Overtime Allowance and Overtime Bonus in the total at the old station, vis-a-vis the emoluments excluding HRA, CCA, etc at the new place of posting, the respondents shall be entitled to recover the same by adjustment in future payments within a total period of 12 months after the expiry of four months from the date of receipt of a copy of the judgement.

8. On the facts and the circumstances of the case, we leave the parties to bear their own costs.

T. Chandrasekara Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

C. Jain
(P.C. JAIN)
Member (Admn.)

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Dated June 19, 1992
Dated in the Open Court

815/7/92
Deputy Registrar (S)

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COMPARED

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.

THE HON'BLE MR. C. J. ROY

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY : MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 19-6-1992

ORDER / JUDGMENT

R.A./C.A./M.A. NO.

in

O.A. No. 605/89.

T.A. No.

(W.P. No.)

Admitted and interim directions issued partly Allowed

Disposed of with directions BENCH.

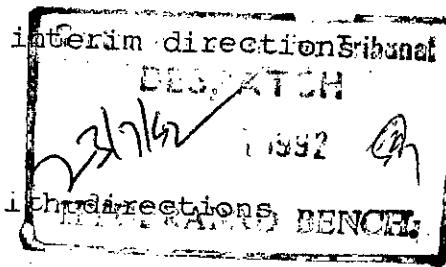
Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.



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