

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No 725 of 1999

Jabalpur, this the 11 day of November, 2005.

Hon'ble Mr. Madan Mohan, Judicial Member

1. Champalal Pachore son of
Shri Tulsiram Pachore, aged about 43
Years, Quarter No.1305, Type-A,
Ordnance Factory, Itarsi, Distt.
Hoshangabad (M.P.) and 28 others. Applicants

(By Advocate – Shri S.K. Rao)

V E R S U S

1. Union of India, through the
Secretary, Ministry of Defence,
New Delhi.

2. Director General Ofdnance
Factories Board, 10-A, Auckland Road,
Calcutta.

3. General Manager, Ordnance Factory,
Itarsi, Distt. Hoshangabad (M.P.) Respondents

(By Advocate – None)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main relief :-

“5.1to direct the non-applicants to pay the arrears of overtime allowance to the applicants for the period from April 1991 to April 1998 at par at single rate for the work done beyond 44 $\frac{3}{4}$ hours, i.e. 3 $\frac{1}{4}$ hours per week from the aforesaid date.”

2. The brief facts of the case are that the applicants are presently working with the respondent No.3 i.e. Ordnance Factory, Itarsi.



According to the applicants they are employed at the Ordnance Factory Hospital called and styled as Para Medical Staff. The Ordnance Factory Hospital is providing round the clock medical cover to the estate residents as well as the factory employees. The Para Medical Staff are posted in three shifts round the clock. Thus, the applicants are working 44 $\frac{3}{4}$ hours and extra 3 $\frac{1}{4}$ hours since November 1993. The respondents are giving benefits of overtime allowance to all other industrial employees/non-industrial employees except the Para Medical Staff. However earlier the benefit of overtime allowance was also extended to the Para Medical Staff and they were paid overtime allowance upto March 1991 and thereafter without any reasons, the benefits of payment of overtime allowance were withheld from April 1991 onwards. The employees were not given the benefit of overtime inspite they have worked beyond the 44 $\frac{3}{4}$ hours. However, the said benefits have again been restored w.e.f. 3.5.1998. The applicants individually represented the matter to respondent No.3 on 10.1.1998(Annexure-A-3) and requested for payment of arrears of overtime for the period from April 1991 to April 1998. However, the respondents have not paid the arrears of overtime allowance to the aforesaid period. Hence, this OA.

3. The respondents have filed their reply stating that the normal working hours of the Factory is 44 $\frac{3}{4}$ hours in a week as per the department orders. The employees who work beyond 44 $\frac{3}{4}$ hours in a week are entitled for Over Time Allowance at single rate upto 48 hours in a week. That working over time is need based and previously due to exigency of service the employees of the factory i.e. all Industrial Employees, Non-industrial employees and Non-gazetted Officers upto the rank of Assistant Foreman were being detailed for extra hours duty for systematic Over Time. The applicant were deployed in systematic Over Time work and were accordingly paid Over Time Allowance at par with other employees of this factory. The respondents further contended that during the year 1990 the work load of the factory had fallen, therefore there was no necessity of deploying the

employees for extra hours duty. Hence, the systematic Over Time was stopped from June, 1990. However, the applicants were deployed for working upto 48 hours in a week upto March, 1991 and accordingly paid Over Time Allowance for the extra hours beyond 44 $\frac{3}{4}$ hours in a week. This was also stopped in April, 1991 and the applicants were brought at par with other employees of the factory.

3.1 The respondents also contended that during the normal duty timings the employees detailed in day shift/general shift are doing 8 hours duty excluding 1 hours lunch break in a day from Monday to Friday and 4 $\frac{3}{4}$ hours duty on Saturday to ensure that they are engaged only for 44 $\frac{3}{4}$ hours in a week. Employees detailed in shifts are doing 7 $\frac{1}{2}$ hours duty excluding 1 hour lunch break in a day for first 5 days of the week and 7 $\frac{1}{4}$ hours duty excluding 1 hours lunch break on the 6th day of the week so that the total working hours in a week do not exceed 44 $\frac{3}{4}$ hours. The respondents also contended that the applicants were detailed for duty during the period in question i.e. April, 1991 to April, 1998 as per the norms mentioned above with 1 hours lunch break and as such worked upto 44 $\frac{3}{4}$ hours in a week. Further the applicants were detailed in day shift/general shift had also performed 44 $\frac{3}{4}$ hours duty in a week. Hence they did not performed any extra hours duty during the period April 1991 to April 1998. The respondents have specifically submitted that working of Over Time is not a right and also not a regular practice in the respondents establishment. It is subject to exigencies and need. Pursuant to Ministry of Defence OM dated 25.6.1983, deployment of staff on Over Time work beyond the prescribed office hours is not to be *restored to as a matter of course* and as far as possible working in all offices should be so organized so that the need to deploy staff on Over Time is not required. In view of this the present OA is liable to be dismissed.

4. Heard the learned counsel for the applicant. None is present on behalf of the respondents, since it is an old matter of the year 1999, I



am disposing of this OA by invoking the provisions of Rule 16 of Central Administrative Tribunal (Procedure) Rules, 1987.

5. The learned counsel for the applicants has argued that according to circular dated 13.9.88 (Annexure-A-2) the applicants are entitled for the relief claimed by them and he has drawn my attention towards the order dated 4.3.1994 passed in TA No.363/1986 the case of **All India Ordnance Factories Para Medical Staff Association Vs. Union of India** in which the Tribunal has considered the order passed by the Chennai Bench of this Tribunal in the case of **Ordnance Factory Hospital Employees Association Vs. Union of India**, (1990) 20 ATC 653. The applicants are also members of All India Ordnance Factories Para Medical Staff Association. Thus, the aforesaid order of the Tribunal is applicable for the applicants. Hence, this OA deserves to be allowed.

6. I find that this Tribunal has dismissed this case vide order dated 2.12.2003 on the ground of lack of jurisdiction. The Hon'ble High Court vide order dated 5.5.2005 has quashed and set aside the aforesaid order of the Tribunal dated 2.12.2003 and remitted back this matter to this Tribunal on the ground that "the Administrative Tribunals have jurisdiction to decide the question relating to Overtime Allowance payable by a Government Department."

7. Accordingly, I have heard the learned counsel for the applicants and carefully perused the records.

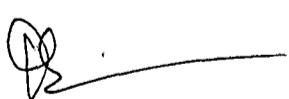
8. I also find that the respondents have specifically mentioned in their written that "the systematic Overtime was stopped from 1990. However, the applicants were deployed for working upto 48 hours in a week upto March, 1991 and accordingly paid Overtime Allowance for the extra hours beyond 44 $\frac{3}{4}$ in a week. This was also stopped in April, 1991 and the applicants were bought at par with other employees of the factory." Subsequently, the overtime allowance was started to be paid to the applicants from 3.5.1998. I have perused the circular dated 13.5.1988 (Annexure-A-2) which seems to be not applicable to the present case because all the applicants are belonging



to Para Medical Staff whereas the aforesaid circular is applicable for Durwan, Fire Brigade Staff, Telephone Operators etc. not for Para Medical Staff. I have also perused the order of this Tribunal passed in TA No.363/1986 and the order of the Chennai Bench of this Tribunal in the case of **Ordnance Factory Hospital Employees Association (supra)** wherein I do not find that the respondents have contended that the applicant has not put over time work for a particular period. However, in the present case the respondents specifically mentioned in para 7 of their reply that "for the period in question i.e. April 1991 to April 1998 none of the employees were rendering over time and therefore, they were not paid accordingly". I further find that the applicants while filing the rejoinder have not replied to the aforesaid averment made by the respondents. Thus it is the admitted position that the applicants have not put over time work during the relevant period from April 1991 to April 1998. Hence, the facts and grounds of the aforesaid cases and the present case are different. Therefore, the aforesaid cases are not applicable and the contentions of the applicants are rejected.

9. Considering all the facts and circumstances of the case, I do not find any merit in this OA. Accordingly, the same is dismissed. No costs.

10. The Registry is directed to always supply the copy of memo of parties along with this order while issuing the certified copy of this order to the concerned parties.


(Madan Mohan)
Judicial Member

SKM

पूलांकन सं औ/न्या.....जबलपुर, दि.....

यस्तिविधि वर्ती विषय:—

- (1) सचिव, उत्तर प्रदेश वर्ती एवं विधायिका, जबलपुर
- (2) उत्तर प्रदेश वर्ती एवं विधायिका, जबलपुर
- (3) उत्तर प्रदेश वर्ती एवं विधायिका, जबलपुर
- (4) वर्ती एवं विधायिका, जबलपुर

सूचना एवं आवश्यक कार्यपाली द्वारा

S. K. Rao BVRB
B. Dasgupta BVRB

17/11/1998
उप सचिवालय

17/11/1998
F.O.S.