

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 759 of 1997

Jabalpur, this the 24th day of March, 2003.

Hon'ble Mr. Shanker Raju, Member (Judicial)
Hon'ble Mr. R.K. Upadhyaya, Member (Admnv.)

1. R.K. Sethi,
S/o Shri Gulab Rai Sethi,
aged about 55 years,
Supervisor/MT
Section-Stores,
Vehicle Factory,
Jabalpur.
2. Subhash Chandra,
S/o Shri Chhedi Lal,
Aged about 46 years,
Charge Man II, N.T.
Section Stores,
Vehicle Factory, Jabalpur
3. N.H. Kushwaha,
S/o Shri Bhya Lal Kushwaha,
aged about 51 years,
charge Man II, N.T.
Section Stores,
Vehicle Factory,
Jabalpur.
4. Mewa Lal,
S/o Shri Bille Ram,
aged about 50 Years,
Supervisor N.T.
Section Stores,
Vehicle Factory,
Jabalpur.
5. Jamuna Prasad,
S/o Shri R.G. Choudhary,
aged about 42 years,
Store-Keeper,
Section Stores,
Vehicle Factory,
Jabalpur
6. Babu Lal,
S/o Shri Chunni Lal,
aged about 46 years,
Store Keeper,
Section-Stores,
Vehicle Factory,
Jabalpur.

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7. Shanti Lal,
S/o Shri Ram Lal,
aged about 45 years,
StoreKeeper,
Section, Stores,
Vehicle Factory,
Jabalpur.
8. Anoop Singh,
S/o Shri Jagdeesh Singh,
aged about 41 years,
Storekeeper,
Section-Stores,
Vehicle Factory
Jabalpur.
9. G.K. Boyat,
S/o Shri Moti Ram,
aged about 44 years,
Store Keeper,
Section-Stores,
Vehicle Factory
Jabalpur.
10. G.P. Tiwari,
S/o Late Shri P.S. Tiwari,
aged about 35 years,
L.D.C./Store/Vehicle Factory,
Jabalpur

- APPLICANTS

(By Advocate- Shri S.Paul)

VERSUS

1. Union of India
through its Secretary,
Ministry of Defence,
New Delhi.
2. Chairman,
Ordinance Factory Board,
Khudiram Bose Marg (10 A Auckland Road)
Calcutta.
3. General Manager,
Vehicle Factory,
Jabalpur

- RESPONDENTS

(By Advocate- Shri S.C.Sharma)

O R D E R

By R.K.Upadhyaya, Member (Admin.)-

The applicants had earlier claimed the following
reliefs:-

"7(b) hold that the action of the respondents in not
paying the O.T.wages to the applicants for their
services rendered on 22.12.96 is bad in law.

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(c) Command the respondents to pay the O.T. wages to the applicants for the aforesaid day forthwith along with interest for delayed payment."

Subsequently, the applicants have filed amendment application by which the reliefs have been amended to read as follows:-

"7(b) Command the respondents to execute and implement its order dated 20-12-1996 ANNEXURE A/1 in favour of the applicants also by giving them dues/fruits arising out of their work on Sundays which has already been granted to similar situated employees.

(c) Consequently, command the respondents to pay the arrear of the dues aforesaid with interest on delayed payment".

2. It is stated by the learned counsel of the applicants that the factory order dated 20.12.1996 (Annexure-A-1) was issued by the General Manager in which it was stated as follows:-

"....As regards Stores Section, the office of Main Stores will not work O.T. on Sundays. However, the godowns which caters to the material requirement of the Production Sections will work O.T. at par with the Production Sections. The Production Section will ensure that adequate material is drawn for the O.T. working hours on Sunday in advance. The Stores Godowns attached to the Production Sections will work O.T. on Sundays in lieu of holidays at par with the Production Sections."

Accordingly, the applicants worked on Sunday, 22.12.1996. However, they have not been paid the overtime allowance which is otherwise payable to the applicants. The applicants have further stated that "the tendency of the employer in extracting over time work but not paying the wages in lieu thereof tantamounts to victimisation, exploitation and unfair labour practice as defined under Industrial Disputes Act 1947". The applicants have further stated that the order of the General Manager dated 20.12.1996 has remained in force till 4.1.1997 when it was modified by another order of the General Manager.

2.1 At the time of arguments, the learned counsel of the applicants stated that the applicants are not treated as industrial employees, therefore, they should be given protection by this Tribunal and the respondents should be ordered to pay overtime dues to the applicants.

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3. The learned counsel of the respondents invited attention to the reply filed wherein it has been stated that the applicants were not required to work on Sundays in view of the order dated 20.12.1996 of the General Manager. The Dy. General Manager, S-II on 21.12.1996 had specifically directed that his staff including industrial employees working under them should not work on 22.12.1996. In spite of these directions, the applicants attended their duties on 22.12.1996 and booked themselves for overtime in clear violation of orders. However, taking a lenient view, the respondents have allowed the applicants to avail an off in lieu of the work done on 22.12.1996. Therefore, this application being misconceived deserves to be rejected. The learned counsel of the respondents further stated that the applicants cannot claim any relief under the Industrial Disputes Act without exhausting the remedy under the Industrial Disputes Act. The present application under Section 19 of the Administrative Tribunals Act, 1985 is not maintainable for want of jurisdiction.

3.1 The learned counsel of the respondents invited attention to the Full Bench decision of this Tribunal in the cases of A.C. Choubey Vs. Union of India & another, O.A.No. 192/1995 and Rajendra N. Kotasthana Vs. Union of India & ors., O.A.No. 607/97 in which this Tribunal vide order dated 9.8.2002 has held that this Tribunal has no jurisdiction to entertain the grievances of the applicants for grant of overtime allowance under Section 59 of the Factories Act, 1948 having regard to the provisions of Sections 14 and 28 of the Administrative Tribunals Act, 1985.

3.2 The learned counsel of the respondents further stated that the amendment brought in by the applicants in the relief clause of this O.A., does not change the real intent and purpose of the filing of this O.A. by the applicants. In substance, the claim is the same, whether it is non-payment of overtime allowance or just dues as such. He, therefore, urged that this Tribunal having no jurisdiction should

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refuse to entertain the claim of the applicants.

4. We have heard the learned counsel of parties and have perused the material available on record carefully.

5. The fact that the applicants worked on 22nd December, 1996 and consequently they are entitled to overtime allowance or not cannot be gone into by this Tribunal in view of the Full Bench decision of this Tribunal in the cases of A.C.Choubey and Rajendra N.Kotasthana (supra). The applicants themselves had initially stated that the claim of the applicant is an industrial dispute. However, an amendment has been attempted to camouflage the claim so as to attract the provisions of the Administrative Tribunals Act, 1985. But, the substance remains the same. Whether the applicants are entitled to overtime allowance or not cannot be gone into by this Tribunal. Therefore, it is held that this Tribunal has no jurisdiction to decide the claim of the applicants for want of jurisdiction. The applicants may be at liberty to agitate their grievance before the appropriate forum if advised in accordance with law.

6. In view of the facts and law stated hereinbefore, this application is dismissed without any order as to costs.

(R.K. Upadhyaya)

(R.K. Upadhyaya)
Member (Admin.)

S. Raju

(Shanker Raju)
Member (Judicial)

rkv.

पुस्तक सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि आदि विवरण:-

- (1) सचिव, उच्च न्यायालय, जबलपुर
- (2) अध्यक्ष, उच्च न्यायालय, जबलपुर
- (3) न्यायाधीश, उच्च न्यायालय, जबलपुर
- (4) न्यायाधीश, उच्च न्यायालय, जबलपुर

S. Paul, Adm.

S.C. Sharma, Adm.

Thirustana
26/3/03

Issued
on 26.3.03
BS