

**SIN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 20/352/2017

Date of Order: 08.03.2019

Between:

1. All India Naval Technical Supervisory Staff Association, Rep. by its Secretary, Sri B.S. Naidu, S/o. Sri Arjuna, Aged 39 years, O/o. Naval Dockyard, Visakhapatnam, R/o. D. No. 57-6-26, Mall Suri Street, Kancharapalem, Visakhapatnam – 530 008.
2. Madaka Visweswara Rao, S/o. Sri Simhadri, Aged 52 years, R/o. D. No. 37-10-10/1, Balaji Nagar, Industrial Estate (PO), Visakhapatnam – 530 007.
3. R. Ganeswara Rao, S/o. Late Sri Appa Rao, Aged 52 years, R/o. No. 60-31-201, Janatha Colony, Malkapuram, Visakhapatnam – 530 011.
4. R. Satish Kumar, S/o. Sri Chandra Rao, Aged 34 years, R/o. D. No. 10-8-9, Somaraju Peta, Voppala Vari Street, Anakapalli, Visakhapatnam.
5. P. Ratna Kishore, S/o. Sri Jacob Raju, aged 37 years, R/o. D. No. 7-351, Prashanthi Nagar, Gopalapatnam, Visakhapatnam – 530 027.
6. B.S. Naidu, S/o. Sri Arjuna, Aged 39 years, R/o. D. No. 57-6-26, Malla Suri Street, Kancharapalem, Visakhapatnam – 530 008.

... Applicants

And

1. Union of India, Rep. by Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Naval Staff, Naval Headquarters, South Block, New Delhi.
3. The Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Visakhapatnam.
4. The Admiral Superintendent, Naval Dockyard, Visakhapatnam.

... Respondents

Counsel for the Applicants ... Mrs. G. R. Mercy Vijaya, Advocate for
Dr. P.B. Vijaya Kumar

Counsel for the Respondents ... Mr. A. Radha Krishna, Sr. PC for CG

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA has been filed for extending the orders passed by this Tribunal in OA 115/2013 in regard to grant of OTA (over time allowance) on 7.12.2015 to the applicants.

3. The 1st applicant is an Association of All India Naval Technical supervisory staff and the rest of the applicants are Chargemen working for the respondents organisation. The work performed by the Chargeman is of technical nature and have not been declared as supervisors under Section 64(1) of the Factories Act for the purpose of grant of OTA by the competent authority or any authority. Therefore they come under the category of workers as per section 59 of the Factories Act, 1958 and hence are eligible for OTA. Accordingly Ministry of Defence has issued orders in regard to OTA on 10.5.2011 under section 59 of the Factories Act, 1958. The Joint Inspector of Factories has also clarified that the Chargeman has not been included under section 64(1) of the Factories Act. Based on the above when the supervisors association approached the respondents requesting for extension of the orders contained in OA 115/2015 it was not heeded to and hence the OA.

4. The contentions of the applicants and the association are that the action of the respondents are against the provisions of the Factories Act and VI Pay Commission recommendations. Granting OTA to Supervisors who deal with the function of quality and not to the applicants, though they belong to the same cadre, is discriminatory. When the law is no more *res integra* with the findings

of this Tribunal in OA 115/2013 in favour of the applicants it ought to have been implemented without forcing the applicants to approach the Tribunal.

5. Respondents inform that the 4th respondent organisation is an Industrial organisation. The Chargeman supervises the jobs done by the Tradesman. Section 64 of the Factories Act covers the aspect of OTA to Supervisors. Payment of OTA has to be restricted for Supervisors whose pay plus grade pay exceeds the wage limit of Rs.18,000/- fixed under the Wages Act 1936. The respondents claim that if applicants are Workers then how can they be members of Supervisors Association. Recruitment Rules categorised them as Supervisors. Orders are awaited from the competent authority in respect of the judgment delivered in OA 115/2013. The applicants have been paid OTA as per relevant rules. The Chairman of the Joint Consultative Committee has taken up the matter with the Ministry of Defence on 15.11.2011 and that a reply is awaited.

6. Heard both the counsel and perused documents plus the material papers submitted.

7. A) The issue is about grant of OTA to Supervisors. Respondents negate the relief sought on the grounds that being Supervisors they can be granted OTA as per Wages Act and provisions of the Factories Act to the extent permissible. Recruitment Rules defines them as Supervisors and not as Workers. The matter was dealt in OA 115/2013 and the relief sought was granted. Hence the issue is no more *res integra*. Recently, the issue once again fell for consideration of this Tribunal in OA 650/2017 wherein the issue was discussed threadbare and relief prayed for was agreed to. The operative portion of the judgment is as under:

“7(I) The dispute is about the applicants status. Applicants state that they are Workers and the respondents grade them as Supervisors. Applicants claim that there are no orders classifying them as Supervisors. However, SRO 8/2017 issued by the respondents and Ministry of Defence

Letter dated 04.08.2006 indicate that Chargeman I and Chargeman II are considered as Technical Supervisory Staff. Respondents claim that the orders of Min. of Defence vide letters dt 1.7.1998 and 22.7.2013 are clear that OTA is to be paid to the Supervisory cadre considering their notional pay to be Rs.18,000 as on 1.1.2006. The wage limit of Rs.18,000 to grant OTA for Supervisors as laid down by the Wages Act has to be adhered to. The entire foundation of the respondents resistance to grant OTA is based on their assertion that the applicants are Supervisors and not Workers. In this regard, an important clarification was issued by the Joint Chief Inspector of Factories, Vizag vide lr. dt. 19.7.2012 stating that Chargeman has not been included under Section 64(1) of the Factories Act. This is clearly against the submission of the respondents that applicants who are Chargemen are treated as Supervisors. Chief Inspector, who is the competent authority as per Section 64(1) of the Factories Act has not defined the applicants as Supervisors.

(II) It is thus clear that Chargeman is not a Supervisor. Thus the applicants cannot be categorised as Supervisors. They necessarily fall under the definition of Worker. In fact, the letter issued by the Office of the Principal Controller of Accounts (FYS), Ministry of Defence, Kolkata, vide No. Pay/Tech-II/73 dt. 12.9.2017 supports the plea of the applicants. Relevant portion is given hereunder to drive home the point that the applicants are employees of the 4th respondent organisation who are to be reckoned as workers.

“As per GOI, Min of Defence No. 18(5)/2008-D/Civ-II dated 10.05.2011, the OTA is a statutory provision and it would be admissible to the employees covered under the Statutory provision of the Factory Act, 1948. Section 2(I) of the Factory Act, 1948 defines the word ‘worker’ as a person used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process.

In view of the above, all employees engaged inside the factory premises and maintaining the same time schedule as that of the direct industrial works are to be treated as worker irrespective of their nature of work. Hence the payment of OTA in r/o the NGOs/NIEs of the Ordnance factory and or Allied Estt of Ordnance Factory may not be stopped w.e.f. 01.07.2017 on the basis of the Govt. Resolution notified by Min of Finance (Dept. of Exp) vide No. 11-1/2016-IC dated 06.07.2017.”

(III) Applicants are employees engaged inside the 4th respondent organisation, which is an industrial unit as per Factories Act of 1948, during the same time schedules of the direct industrial workers and hence, they are to be treated as Workers irrespective of the nature of the work done by them. The applicants are to maintain the same time schedules as that of the workers since they have to guide the workers. The Hon’ble Bombay High Court while disposing a similar issue in 2006 (3) BomCR 788, 2006(3) MhLJ 355 between Union of India Vs. A.K. Biswas & Ors, has held that supervisors are to be paid OTA as per section 59 (1) of the Factories Act without restricting the same to the basic pay of the employee concerned. The relevant para reads as under:

"11. In this background, the application filed by the respondents came up for consideration before the Central Administrative Tribunal. The Tribunal allowed the application relying upon its own decision in Ashok Pandharinath Padwal v. Union of India (O.A. 761 of 1988) which has been decided on 6th January, 1993. The Tribunal was of the view that the order of remand that was passed by the Division Bench of this Court did not leave anything for the Tribunal to decide save and except to allow the application and accordingly, the application was allowed with the following observations:

In view of the earlier order of the Tribunal which has been upheld by the Apex Court and in view of the views expressed by the High Court in the present O.A. we do not think that anything is left for us to consider any further. The High Court in para 6 of their order in W. P. 4917/01 have in effect given its view in the matter. Accordingly, the respondents are directed to make payment of Overtime Allowance to the applicants at double the rate whenever they performed 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 to the basic pay of the employee concerned. As for arrears, in view of the recent direction given by the Apex Court, the respondents are directed to pay arrears of Overtime Allowance to the applicants w.e.f. one year prior to the date of filing the present O.A. The respondents are at liberty to adjust any honorarium paid to the applicants during the said period for such additional work taken from them. "

Besides, this Tribunal in OA115/2013 has also held in an identical issue that the Supervisors are eligible to be paid OTA.

(IV) Other issues like the applicants have been distinguished as Supervisors on the basis of dress, periodicity of pay and canteen facilities, etc are not relevant in view of the clarification and legal position explained in paras supra. To sum up, the key clarification given by the Joint Chief Inspector of Factories, letter of Principal Controller of Accounts and the verdict of Honourable Bombay High Court on the issue as well that of this Tribunal favour the cause of the applicants. Hence the OA fully succeeds. "

B) To conclude, by allowing the relief of granting OTA to the applicants in the Supervisory grade in OA 115/2013 and OA 650/2017 by this Tribunal, a precedent has been set. As per Hon'ble Supreme Court decision in the case of Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644, a set precedent has to be followed.

C) Service jurisprudence evolved from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. Hon'ble Supreme Court has observed that once a person approaches the court and gets a relief then similarly placed persons who are facing an identical issue should be granted relief without compelling them to go over to the courts in *Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714, Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648, Uttarakhand Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346*. Even the 5th pay commission report has a similar observation as under:

“V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:

We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of **C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991)**, wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like *G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)]*, dt. 20.07.1998; *K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]*; *Abid Hussain V. UOI [(JT 1987 (1) SC 147)]*, etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee.”

Superimposing the observation of the Hon'ble Apex Court it would be evident that Supervisors dealing with quality have been granted the OTA but the same relief has not been extended to the applicants who are similarly placed. All the more when the matter has been decided by this Tribunal in OA 115/2013, applicants are eligible for the relief sought without even filing the OA. Thus, the decision of the respondents is contrary to the Hon'ble Apex Court judgments.

D) In view of the aforesaid the OA succeeds. The action of the respondents in not granting OTA is against rules, arbitrary and illegal. Hence the respondents are directed to consider as under:

- i) To extend and pay the OTA in terms of Section 59 of the Factories Act w.e.f 1.1.2006 by implementing the directions of this Tribunal in OA No. 115/2013, dt 7.12.2015.
- ii) Judgment rendered be treated as *in rem* so that other similarly placed employees in the respondents organisation are not forced to come over to the Tribunal seeking similar relief. This would save precious National Resources in terms of valuable man hours, time and financial resources in pursuing an issue which has been adjudicated upon by the Tribunal. Further unnecessary litigation can be avoided.
- iii) Time permitted to implement the Order is 3 months from the date of receipt of this order.
- iv) With the above directions the OA is allowed.
- v) No order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 8th day of March, 2019

evr