

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

Original Application No. 20/650/2017

**Reserved on: 19.02.2019
Pronounced on: 21. 02.2019**

Between:

1. Bukka Trinadha Rao, S/o. Sita Ramulu (late),
Aged 62 years, Retd. Chargeman, Cin. No. 81306,
R/o. D. No. 10-6-100, Khailash Nagar,
Gajuwaka, Visakhapatnam – 530 026.
2. Gedela Narayana Murthy, S/o. Chinna Appala Naidu (late),
Aged 66 years, Rtd. Chargeman, Cin. No. 82949,
R/o. D. No. 24-111-17, Chinna Gantyada,
Gajuwaka, Visakhapatnam – 530026.
3. Malladi Lakshmi Vara Prasad, S/o. Marriyya (late),
Aged 69 years, Retd. Chargeman I, Cin. No. 81521,
R/o. D. No. 60-32-158, Janatha Colony, Malkapuram,
Visakhapatnam – 530 011.
4. Mogalipuri Dasaradhu, S/o. Anantha Chowdary (Late),
Aged 65 years, Retd. Chargeman I, Cin. No.84343,
R/o. D. No. 4-28, MIG-56, APHB Colony, Purushothapuram,
Visakhapatnam – 530 051.
5. Rongali Gandhi, S/o. R. Byragi (late),
Aged 68 years, Retd. Chargeman II, Cin. No.83145,
R/o. D. No. 39-9-2/2/3, Tennetinagar, Mularinagar,
Visakhapatnam – 530 007.
6. Jaladi Venkateswara rao, S/o. Anjayya (late),
Aged 63 years, Retd. Chargeman II, Cin. No. 83914,
R/o. D. No.26-31-14, Chaitanya Nagar,
Old Gajuwaka, Visakhapatnam – 530 026.
7. Medisetty Venkata Rao, S/o. Musalayya (late),
Aged 62 years, Retd. Chargeman II, Cin. No.84730,
R/o. D. No. 39-1-16, Murali Nagar, Industrial Estate,
Visakhapatnam – 530 007.
8. Kumburu Venkata Lakshmana Rao, S/o. Satyanarayana (late),
Aged 65 years, Retd. Chargeman II, Cin. No.83631,
R/o. D. No. 24-79-5, Samath Nagar, Kanithi Road,
Old Gajuwaka, Visakhapatnam – 530 026.
9. Chodabathina Subramanyam, S/o. Somulu,
Aged 64 years, Retd. Chargeman II, Cin. No.84235,

R/o. D. No. MIG 20, Midhilapuri, VUDA Colony,
P M Palem, Visakhapatnam – 530 041.

10. Nasiruddin Khan, S/o. Allauddin Khan (late),
Aged 66 years, Retd. Chargeman II, Cin. No.81415,
R/o. D. No. 16-2/2, Sainiranjani Colony,
Dagguvanipalem, Pendurthi, Visakhapatnam.
11. Gummudu Narayana Rao, S/o. Parasuramudu (late)
Aged 68 years, Retd. Chargeman II, Cin. No.82962,
R/o. D. No. 21-208/3/2, Kakani Nagar, NAD Post,
Visakhapatnam – 530 009.
12. Kadari Damodara Rao, S/o. Bhagavanulu (late),
Aged 63 years, Retd. Chargeman I, Cin. No.83652,
R/o. D. No. 49-47-8/14, PAR Residency,
Santhi Puram, Visakhapatnam – 530 016.
14. Kunchi Rama Krishna, S/o. Narasimham (late),
Aged 64 years, Retd. Chargeman II, Cin. No.84218,
R/o. D. No. 58-15-65, Sanathinagar, NAD Kotha Road,
Visakhapatnam – 530 009.
15. Mylabathula Vijaya Kumar, S/o. M S Joseph (late),
Aged 64 years, Retd. Chargeman, Cin. No.84217,
R/o. D. No.66-2-61, Sree Rama Nagar,
Malkapuram, Visakhapatnam – 530 011.
16. Valliyathu James Babu, S/o. Valliyathu Iducula James (late),
Aged 62 years, Retd. Foreman, Cin. No.83132,
R/o. D. No. 63-3-21/4, Jawaharnagar, Sriharipuram,
Malkapuram, Visakhapatnam – 530 011.
17. Soorada Jagadish Kumar, S/o. Subramanyam (late),
Aged 61 years, Retd. Foreman, Cin. No.83156,
R/o. D. No. 39-9-19/9,
Muralinagar, Madhavadhara, Visakhapatnam – 530 007.
18. Kanchipati Eswara Rao, S/o. Chinna (late),
Aged 63 years, Retd. Foreman, Cin. No.83643,
R/o. MIG 24, Phase III, D. No. 31-32-13, Rajivnagar,
Kurmannapalem, Visakhapatnam – 530 046.
19. Jakka Chinna Rao, S/o. Narayana (late),
Aged 60 years, Retd. Foreman, Cin. No.83618,
R/o. D. No. 50-41-8, P & T Colony,
Seethamma Dhara, Visakhapatnam – 530 013.
20. Karri Durga Rao, S/o. Thatayya (late),
Aged 61 years, Retd. Foreman, Cin. No.83617,
R/o. D. No. 21-140, Venkatadri Nagar,
Pahladapuram, Visakhapatnam – 530 027.

21. Akkilam Someswara Rao, S/o. Thyaga Raju (late),
Aged 67 years, Retd. Foreman, Cin. No.81227,
R/o. D. No. 1-65, Tharakarama Nagar,
Madhurawada, Visakhapatnam – 530 041.
22. Yalamanchili Seetha Ramaiah, S/o. Venkata Subba Rao (late),
Aged 61 years, Retd. Chargeman, Cin. No.81590,
R/o. D. No. 21-113, Kakani Nagar, NAD Kotha road,
Visakhapatnam – 530 009.

... Applicants

And

1. The Union of India, Rep. by its 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	...	Ms.G.R. Mercy Vijaya, Advocate for Dr.P.B. Vijay Kumar
Counsel for the Respondents	...	Mr. B. Laxman, Advocate for Mrs.K. Rajitha, Sr. CGSC

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

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

2. The applicants in the present OA are seeking extension of the orders of this Tribunal in OA No.115/2013 dt 2.12.2015 for grant of OTA to them.
3. Applicants who are retired employees, worked as Chargemen under 4th respondent organisation, which is treated as an Industrial Unit as per Factories Act 1948. The applicants carried out duties which were technical in nature and that they were never categorised as Supervisors under Section 64 (1) of the Factories Act for grant of Over Time allowance (OTA) by the competent authority or any other authority. As such they are “Workers” as per Section 59 of

the Factories Act, 1948 and therefore, eligible for OTA. “Workers” are granted OTA without any wage limit as per the revised pay scales of the 6th CPC. When orders were passed by G.O.I on 10.5.2011 for grant of OTA to employees working under defence establishments, as per rates in accordance with Section 59 of Factories Act 1948 based on 6th CPC scales, applicants were not paid from 1.1.2006. OTA was paid to them by treating them as Supervisors as per Section 64(i) of the Factories Act. In contrast, the Joint Chief Inspector of Factories, Vizag vide letter dt. 19.7.2012 has clarified that Chargeman has not been included under Section 64(1) of the Factories Act. Being confronted with such a clarification, Chairman of the Joint Consultative Machinery has taken up the matter on 15.7.2011 with Min. of Defence who in turn sought advice of Min. of Labour for deciding the issue. Applicants represented on 24.1.2016, 22.8.2016 and 7.4.2017 but of no avail. Hence the present OA.

4. The contentions of the applicants are that there is no order stating that the Chargemen are not entitled for OTA as contemplated under Factories Act. The applicants allege that the respondents have been discriminative in granting OTA to them. The order of the Tribunal in OA 115/2013 dt 7.12.2015 directing the respondents 1 to 3 to pay OTA is binding on the 4th respondent too.

5. Respondents agree that the 4th respondent organisation is treated as an Industrial Unit as per Factories Act of 1948. OTA for Workers and Supervisors are governed by Section 59 and Section 64 of the Factories Act 1948 respectively. Ministry of Defence has also clarified on 10.5.2011 that OTA is a statutory provision and is admissible to employees working under the statutory provisions of the Factories Act, based on the revised wages as per 6th CPC. Payment of OTA as per 6th CPC is governed by conditions stipulated in Min. of Defence letter dt 1.7.1998 and letter dt 22.7.2013. OTA is paid to Supervisors

whose pay does not exceed the wage limit of Rs.18,000, which is fixed as per Wages Act as indicated in Govt. of India Notification dt 20.9.2012. Further under SRO 8/2017, Chargeman I and Chargeman II are considered as technical supervisory staff and it is further clarified so in Min. of Defence letter dt. 4.8.2006. All the applicants have exceeded revised minimum wage limit of Rs.18,000 as per 6th CPC as on 1.1.2006 and hence OTA for the applicants was paid on the notionally determined pay of Rs.18,000. Besides, Supervisors and Workers have been distinguished in terms of dress, salary, facilities in the canteen. Moreover, applicants after being members of the Supervisory Association which takes up issues of Supervisors claiming that they are workers is illogical. Thus the applicants being Supervisors are ineligible for grant of OTA on par with Workers. The orders issued in OA 115/2013 are being examined by the competent authority and decision is awaited.

6. Heard both the counsel. Arguments made by them were in tune with those made in the written submissions. Perused documents and other material papers submitted.

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 Ir. 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. Therefore the respondents are directed to consider as under:

- i) To pay OTA to the applicants on par with the Workers for performing duties in excess of 48 hours per week as per Section 59 of Factories Act.
- ii) The arrears of OTA due shall be paid from 01.01.2006 for a period of 3 years or till the date of retirement, whichever is earlier, in terms of the judgment of the Hon'ble Supreme Court in U.O.I vs Tarsem Singh in CA No 5151 of 2008 -5152 of 2008.
- iii) The arrears shall be paid after deducting OTA payments made, if any, to the applicants based on the notional pay of Rs.18,000.
- iv) Time allowed to implement the order is 3 months from the date of receipt of this order.
- v) With the above directions the OA is allowed. There shall be no order as to costs.

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

Dated, the 21st day of February, 2019

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