

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.694/2015

Dated this Monday, the 18th day of February, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)

1. Ammunition Factory Workers Union
"S.M. Joshi Bhavan", Sr. No.81,
Dr. Babasaheb Ambedkar Road,
Khadki, Pune 411 003.
Through its Joint Secretary Mr. Jijo Mathew
aged about 37 yrs.
 2. Mr. Harish Kailash Bhoir,
Aged about 34 years, Residing at 63/4,
Type II, Ordnance Facotry, Dehuroad,
Pune 412 101.
 3. Mr. Renjith Radhakrishnan Nair,
Aged about 30 years,
residing at Sr. No.4/1/1/1, Nandanam,
Jai Malhar Nagar, Near Khadoba Mal,
Lohegaon, Pune 411 047.
- ... Applicants
- (By Advocate Ms. Pavitra Manesh)

VERSUS

1. Union of India, Through its Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi 110 001.
 2. The Chairman, Ordnance Factories Board,
10-A, S.K. Bose Road, Kolkatta 700 001.
 3. The General Manager, Ammunition Factory,
Khadki, Pune 411 003.
 4. The Principal Controller of Accounts (Factories),
10-A, S.K. Bose Road, Kolkatta 700 001.
- ... Respondents
- (By Advocates Shri D.A.Dube)

Order reserved on 04.01.2019
Order delivered on 18.02.2019

O R D E R

Per : Dr. Bhagwan Sahai, Member (Administrative)

This OA has been filed by the Ammunition Factory Workers Union for Ordnance Factory, Khadki, Pune through Mr. Jijo Mathew working with that Ordnance Factory, along with Mr. Harish Kailash Bhoir and Mr. Renjith Radhakrishnan Nair, also working with that Factory. The applicants have filed this OA seeking declaration as illegal of Circular dated 26.06.2009 and letters / communications dated 12.09.2015 and 22.09.2015, and setting them aside and direction to the respondents to include all compensatory allowances such as House Rent Allowances (HRA), Transport Allowances (TA) and Small Family Allowances (SFA) in calculation of Over Time Allowance (OTA) from 01.01.2006.

2. Facts of the case :-

2(a). The applicant No.1 i.e. Ammunition Factory Workers Union is represented through its Joint Secretary Mr. Jijo Mathew and applicants Nos.2 and 3 are members of the applicant No.1 union and all of them are working as Factory Workers with respondent

No.3 i.e. General Manager, Ammunition Factory, Khadki, Pune. The Ordnance Factory, Khadki manufactures Ammunition cartridges and it is claimed that it is covered under the Factories Act, 1948 and therefore, the respondent No.3 has to provide all the facilities and benefits to the employees for which they are entitled.

2(b). In the present case, the applicants are seeking benefit of Overtime Allowance by including in its calculation compensatory allowances such as HRA, TA, SFA, etc. They claim that similar circulars issued by the Heavy Vehicles Factory, Chennai and Ordnance Factory, Hyderabad have been quashed and set aside by Madras High Court and Hyderabad Bench of this Tribunal respectively. The Madras High Court decision was with respect to Workers of Heavy Vehicles Factory, Chennai. When the Heavy Vehicles Factory Employees Union filed an OA before the Chennai Bench of the Tribunal for quashing the above circular, the Tribunal dismissed the OA. However, Writ Petition filed by the Heavy Vehicles Factory Union Employees before the Madras High Court against the

order of the Chennai Bench of this Tribunal was upheld whereby setting aside the order of the Tribunal (Annex A-5). Against that decision of the Madras High Court, the respondents have filed SLPs No.12845 to 12852 of 2012 before the Hon'ble Supreme Court which are yet to be decided and no stay has been granted on the order of the Madras High Court decision.

2(c). The Ordnance Factory Civilian Employees Union also filed an OA No.1372/2012 before the Hyderabad Bench of this Tribunal challenging the circular of 26.06.2009 and after considering the order of the Madras High Court, the Hyderabad bench of this Tribunal in its order of 04.04.2014 in OA No.1372/2012 has directed the respondents to include HRA, TA and SFA in calculation of overtime allowances from 01.01.2006 (Annex A-6).

2(d). It has been claimed by the applicant that as provided under the Factories Act, 1948, the overtime allowance is to be computed on the ordinary rate of wages which includes House Rent Allowance, Transport Allowance and Small Family Allowance but by

circular of 26.06.2009 issued by respondent No.1 (Annex A-4) for the purpose of computing the overtime allowances, house rent allowance, transport allowance and small family allowance have been excluded.

2(e). In spite of the decision of the Madras High Court and Hyderabad Bench of this Tribunal, the respondents in the present case have not implemented inclusion of HRA, TA and SFA in calculating the overtime allowances for the applicants. Applicants No.2 and 3 represented on 31.07.2015 seeking clarification on exclusion of the above allowances. Applicant No.1 has also made another representation on 20.08.2015.

2(f). The respondent No.2 vide letter dated 12.09.2015 rejected the applications in view of the Ministry of Defence instructions of 26.06.2009 to the effect that the allowances of compensatory nature be excluded for the purpose of overtime allowance under the Factories Act, 1948 (Annex A-1). Thereafter, the respondent No.3 also issued the order on 22.09.2015 rejecting the applications of applicants Nos.2 and 3 for the same reason. Therefore, this OA.

3. Contentions of the parties -

The applicants have contended that -

3(a). the impugned orders of 12.09.2015 issued by the respondent No.2 and 22.09.2015 issued by the respondent No.3 are contrary to the provisions of law and decisions of the Madras High Court and Hyderabad Bench of this Tribunal. Since the respondents in this OA were also the respondents in the OA filed before the Hyderabad bench of this Tribunal, they cannot take plea of ignorance of decision of Hyderabad Bench of this Tribunal. The Circular of 26.06.2009 is contrary to the provisions of the Factories Act, 1948, which are unambiguous. Therefore, the benefit of inclusion of HRA, TA and SFA in computing the overtime allowance should be given to the present applicants also.

The respondents have contended that -

3(b). the present OA is not maintainable because this has been filed by the Ammunition Factory Workers Union and no aggrieved person has filed this OA. The decision of the Madras High Court relied upon by the applicants is not a good law and

therefore, it has already been challenged by the respondents in the SLPs in the Hon'ble Supreme Court on which notices have already been issued to the parties. The applicants are also aware of the fact that the SLPs filed by the respondents have been admitted and they are yet to be decided;

3(c). the decision of Madras High Court and Hyderabad Bench of this Tribunal are applicable only to the workers of their respective Ordnance Factories located in their jurisdiction and therefore, they are not strictly applicable to the present applicants;

3(d). payment to the applicants working under the Ordnance Factory, Khadki are governed by the rules of the Ordnance Factory Board and therefore, the OA should be dismissed;

3(e). the claim of the applicants is hopelessly time-barred as they should have challenged the order of 26.09.2009 instead of subsequent order issued by the respondents in 2015; and

3(f). the exclusion of HRA, TA and SFA in computing the overtime allowance has been

ordered by the Ministry of Defence, Government of India, after consulting Ministry of Law and Ministry of Labour and Employment, Government of India and therefore, these instructions are valid and need to be complied with. Hence, the OA be dismissed.

4. Analysis and conclusion -

We have perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents, various case laws cited by the parties and considered the arguments advanced by both of them on 04.01.2019.

4(a). The claim of the applicants involved in the present OA i.e. against exclusion of HRA, TA and SFA in calculating overtime allowance was also covered in the OA filed before the Hyderabad Bench of this Tribunal and also before the Chennai Bench of this Tribunal. Rejection of the OA by the Chennai Bench of the Tribunal was subsequently set aside by the Madras High Court and against that decision of the High Court, SLPs already filed by the respondents are awaiting adjudication before the Hon'ble

Supreme Court. This means finality on this issue will be achieved only after the Supreme Court decision on those SLPs becomes available, which would be applicable to all the Ordnance Factories.

4(b). While the impugned instructions of the respondents have clearly directed exclusion of TA, HRA and SFA while calculating the payment of overtime allowance, the view taken by the Madras High Court by interpreting the meaning of ordinary rate of wages as covered under Sub Section 2 of Section 59 of the Factories Act, 1948 has been contrary to the view of the respondents.

4(c). In this context, the decision of the Kerela High Court, Ernakulam Bench on the same subject matter is very relevant in which it has been held that Section 59(2) of the Factories Act, 1948 does not authorize payment of extra wages for overtime work by including the compensatory allowances. The overtime allowance is to be calculated only based on the ordinary wages which mean pay and allowances paid to the workers, including dearness allowance and that compensatory allowances and allowances in

the nature of incentives are not covered under Section 59(2) of the Factories Act, 1948. This is so because the amounts of such allowances are applicable to specific employees and they cannot be uniform for all the employees. But the overtime allowance can be paid at uniform rate to all the employees for the extra hours of work put in by them.

4(d). Also similar OA No.133/2010 and OA No.2251/2016 have already been decided by this Tribunal on 03.01.2014 and 26.10.2018 respectively. Therefore, on similar lines, the present OA can also be disposed of. In view of differing decisions of the High Courts on this issue and pendency of the SLPs before the Hon'ble Supreme Court for adjudication, at this stage it would suffice for us to mention that since the subject matter of the present OA will also get decided in the course of the pending SLPs and hence, it would be proper to dispose this OA at this stage only. Once the final outcome of the pending SLPs becomes available, the present applicants may represent on their pending grievances, if

any survives, before the concerned respondents for appropriate decision thereon.

5. Decision -

The OA is disposed of. The applicants may represent on their grievances, if any, to the respondents as per the provisions of law after the final decision of the Apex Court on the subject matter in the pending SLPs Nos.12845 to 12852 of 2012 becomes available.

(Ravinder Kaur)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

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SD
20/4/10

