



# BHARATIYA PRATIRAKSHA MAZDOOR SANGH

(AN ALL INDIA FEDERATION OF DEFENCE WORKERS)

(AN INDUSTRIAL UNIT OF B.M.S.)

(RECOGNISED BY MINISTRY OF DEFENCE, GOVT. OF INDIA)

CENTRAL OFFICE: 2-A, NAVEEN MARKET, KANPUR – 208001, PH & FAX : (0512) 2296229  
MOBILE: 09335621629, 08765070982 Email: gensecbpms@yahoo.co.in WEB : www.bpms.org.in

REF: BPMS / MOD / DDP / OTA / 43 A (7/2/L)

Dated: 26.07.2022

To,  
The Secretary,  
Department of Defence,  
Govt of India, Min of Defence,  
South Block, DHQ PO,  
New Delhi – 110011

## REMINDER – 5

**Subject: Notional Extension of Judicial Pronouncement in favour of similarly placed non-petitioners – Inclusion of HRA, Transport Allowance, SFA for the purpose of calculating Overtime Allowance under the Factories Act, 1948.**

Reference: This federation's letter of even number, dated 15.05.2019, 22.11.2020, 06.09.2021 & 23.10.2021.

Respected Sir,

With due regards, it is submitted that the employees of Ordnance Factories, DGQA etc. are covered under the provisions of Factories Act, 1948. They are detained for duty beyond the Normal working of 44¾ hrs in a week or 09 hrs in a day. When the working hours go beyond the 48 hrs in a week or 9 hrs in a day, they were entitled for Overtime Allowance, calculated and computed by including all allowances admissible to the employees like House Rent Allowance, City Compensatory, Transport Allowance & Small family Allowances (SFA) as per Sec 59 of the Factories Act, 1948.

Later, concerned authorities decided that HRA, Transport Allowance, SFA would stand excluded for the purpose of computation of Overtime Allowance w.e.f. 02.01.2006. This federation raised serious objection against the above unilateral decision before the concerned authorities including 88<sup>th</sup> & 89<sup>th</sup> Departmental Council (JCM) (MoD) meetings.

Meanwhile, this unilateral decision was challenged vide OA No. 1144/ 2009 before the Madras Bench of CAT, which was dismissed on 24.12.2010. Against the order of the Tribunal, Writ Petition No. 609/ 2011 along with other Writ Petitions was filed before the Hon'ble Madras High Court. Vide judgement- dated 30.11.2011 Hon'ble Madras High Court allowed the Writ Petitions. Against the order of Hon'ble Madras High Court, Union of India through Secretary, DDP/ MoD filed SLP No. 12845-12852/ 2012. In the said SLP, no stay was granted and the judgement of Hon'ble Madras High Court was implemented subject to outcome of the SLP. Now, all the employees of this factory are getting the above benefit.

Another trade union of Ordnance Factory Medak also filed OA No. 1372/ 2012 before CAT Hyderabad Bench seeking the benefit of the judgement of the Hon'ble Madras High Court. The same was allowed vide judgement dated 04.04.2014. Now, all the employees of this factory are getting the above benefit.

Further, trade unions of Ordnance Factory Dehradun filed O.A. No. 650/2016 before

CAT, Principal Bench New Delhi seeking the benefit of Hon'ble Madras High Court's judgement dated 30.11.2011 in Writ Petition No. 609/2011 and other connected cases and the judgement of Hyderabad Bench of CAT in OA No. 1372/2012 dated 04.04.2014. Hence, Principal Bench of CAT ordered on 25.04.2018 that the applicants are also entitled for similar consideration and the relief may be granted to them provisionally subject to the final outcome of the decision of Hon'ble Court in SLP No. 12845-12852/2012. Now, all the employees of this factory are getting the above benefit.

Apart from above, the employees of Ordnance Clothing Factory Avadi, Engine Factory Avadi and Cordite Factory Aruvankadu are also getting Overtime Allowance, calculated and computed by including all allowances admissible to the employees like House Rent Allowance, Transport Allowance as per Sec 59 of the Factories Act, 1948.

Now, unions representing the employees of rest of the Ordnance & Ordnance Equipment Factories (in Uttar Pradesh, West Bengal, Maharashtra etc.) are being compelled to file litigations to get the overtime allowance as mentioned above.

Considering the Government regarded to be the biggest contributor to litigation in India, reducing litigation has been the prime focus of the Govt of India and is being repeatedly emphasized by various circulars from Cabinet Secretariat, Min of Law & Justice. Vide MoD ID No. 4(5)/D(CMU)/2018, Dated 07.09.2018, Min of Defence has decided to implement the recommendations of Expert Committee constituted by Hon'ble Raksha Mantri Shri Manohar Parrikar which stipulates that unnecessary appeals should be avoided and as a matter of principle, the attempt of the Government should be to accept the verdicts as far as possible.

It is well settled law that similarly situated employees have to be granted the relief as was granted to those similarly placed. If the administrative authorities discriminate amongst persons similarly situated, in matters of concessions and benefits the same directly infringes the constitutional provisions enshrined in Articles 14 and 16 of the Constitution. Tribunal relies on the observations of the Hon'ble Supreme Court made in a cornucopia of judgments given hereunder, while asserting as stated;

***Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714:***

*"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."*

***Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:***

*"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."*

***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.”*

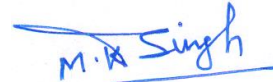
*In the case of Uttaranchal Forest Rangers’ Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346, the Apex Court has referred to the decision in the case of State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747, as under:*

*“29. Service jurisprudence evolved by this Court 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.”*

Therefore, you are requested to take appropriate action so that the provision of payment of Overtime may be continued in letter and spirit of Factories Act, 1948 and the House Rent Allowance, Transport Allowance, SFA may be included for the purpose of calculating Extra Wages for Overtime under the Factories Act, 1948 without further delay/litigation.

Thanking you.

Sincerely yours



**(MUKESH SINGH)**

General Secretary/BPMS &  
Member, JCM-II Level Council (MOD)

Copy to: The Director General,  
Dte of Ordnance (C & S),  
10-A, S K Bose Road,  
Kolkata - 700001

- Sir, you are requested to take appropriate action so that non-petitioner employees may also be paid the overtime allowance along with arrear at par with petitioner employees.