

ENQUERY: As per the Factories Act, 1948, overtime wages should be calculated on which component of salary?

RESPONSE: Section 59 of the Factories Act, 1948 deals with Extra Wages for Overtime

(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

*(2) For the purposes of sub-section (1), "**ordinary rate of wages**" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.*

Explanation of Section 59:

Sub-section (1):

If a worker exceeds:

- 9 hours in a day, or
- 48 hours in a week, the worker becomes entitled to overtime wages at a rate that is double the ordinary rate of wages.

This provision ensures fair wages for extra hours and discourages excessive working hours, aligning with welfare principles.

Sub-section (2):

The "**ordinary rate of wages**" forms the basis for overtime pay (*basic wages plus such allowances*). It is calculated as:

- **Basic wages:** The fixed portion of the salary paid monthly.
- **Allowances:** Includes all regular monetary benefits like:
 - Dearness Allowance (DA)
 - House Rent Allowance (HRA)
 - Special Allowance
 - Cash equivalents of concessional benefits (e.g., subsidized food or goods).
- **Exclusions:** Ordinary rate of wages specifically **excludes**:
 - Bonus
 - Prior overtime wages.

This subsection ensures that the worker's compensation for overtime is calculated fairly by including all components of their monthly earnings except bonus and prior overtime.

Example:

Let's consider the provided salary structure:

Basic wages: 20,000 | **DA:** 10,000 | **HRA:** 10,000 | **Special Allowance:** 10,000

Total Gross Monthly Wages: 50,000

1. Determine Ordinary Rate of Wages:

Ordinary rate includes:

- Basic: 20,000
- DA: 10,000
- HRA: 10,000
- Special Allowance: 10,000

Ordinary Rate of Wages = 50,000

2. Overtime Wages:

If the worker puts in **10 overtime hours** in a month:

- **Hourly Wage** = ₹50,000 ÷ (30 days × 8 hours/day) = 208.33/hour
- **Overtime Pay Rate** = 2 × 208.33 = 416.66/hour
- **Total Overtime Wages** = 416.66 × 10 hours = 4,166.60

Critical Points to Note:

1. **Components Included in Overtime Calculation:** The "ordinary rate of wages" includes **all allowances** (DA, HRA, Special Allowance, etc.) along with basic pay in the scope of **"plus such allowances" in the sub-section (2) of section 59.**

2. **Excluded Components:** Bonus or prior overtime wages are not included in the ordinary rate of wages for this purpose.

Case Law: Union of India & Ors. vs Suresh C. Baskey & Ors, 1996

1. Issues of the Case:

- Whether employees of the Government Mint who are provided government accommodation (and hence do not receive House Rent Allowance, or HRA) are entitled to have the notional amount of HRA included in their "ordinary rate of wages" for calculating overtime allowance under Section 59 of the Factories Act, 1948.
- Whether the Central Administrative Tribunal (CAT) was correct in interpreting government instructions to allow such inclusion of notional HRA.
- Whether parity in benefits (between employees receiving HRA and those in government housing) is required in the context of overtime allowance computation.

2. Parties' Arguments:

Petitioner: Union of India:

Statutory Basis: The Factories Act defines "ordinary rate of wages" as basic wages plus allowances the worker "is entitled to" and excludes bonuses and overtime.

Employees not receiving HRA are not entitled to include it in their wages for overtime.

Government Instructions: The instructions from the Ministry of Finance allowed for HRA inclusion in wages only for employees who actually receive it; they do not permit notional inclusion of HRA.

Practical Considerations: Employees in government housing already enjoy benefits (e.g., subsidized rent, proximity to work, and free maintenance) not available to those receiving HRA. Including notional HRA would unfairly benefit employees in government accommodation.

Equity: Parity between the two categories of employees should consider the overall benefits they receive, not just monetary allowances.

Respondent: Suresh C. Baskey & Others:

Parity: Employees in government housing argued for parity with those receiving HRA, claiming their total emoluments should include notional HRA for overtime calculations.

Tribunal's Precedent: The CAT had earlier ruled in a similar case (OA 13/1987) that employees receiving government accommodation were entitled to compute overtime with HRA included notionally, based on government instructions.

Implementation of Orders: Government orders directing the computation of overtime including HRA had been issued but not implemented for employees in government accommodation.

3. Court Observations:

Section 59 of the Factories Act, 1948: Defines "ordinary rate of wages" as basic wages plus allowances the worker "is for the time being entitled to." The court clarified that allowances not payable (like HRA for employees in government accommodation) cannot be included in the computation of overtime.

Government Instructions: The court noted that the instructions relied upon by the Tribunal did not explicitly authorize notional inclusion of HRA for employees not entitled to it.

Equity and Fairness:

The court recognized that employees in government accommodation receive several non-monetary benefits, such as:

- Nominal license fees for rent.
- Proximity to work and lower transport costs.
- Guaranteed tenure until retirement and maintenance by the government.
- Including notional HRA would place such employees in an unfairly advantageous position compared to those receiving HRA.

Previous Tribunal Judgment:

The CAT's earlier decision in OA 13/1987 was found to misinterpret government instructions, as it extended benefits not explicitly provided.

Policy Implications:

The legislature deliberately included certain allowances (e.g., cash equivalents of concessional food sales) in the computation of wages but excluded others like HRA. The court emphasized respecting legislative intent.

4. Final Ruling:

Appeal Allowed: The Supreme Court set aside the CAT's judgment.

No Notional HRA: Employees in government accommodation are not entitled to include notional HRA in their "ordinary rate of wages" for overtime computation.

Prospective Application: Employees who had already received payments based on the earlier Tribunal rulings would not need to refund them. The ruling was applied prospectively from the date of judgment.

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