

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

OA No. 85 of 2018 MA No. 815/2019 MA No. 952/2019	D.Nageswar Rao, aged about 68 years, S/o Late D. Dharma Rao, retired SMR, East Coast Railway, Ichhapuram, resident of Vaisakhi Apartment, Door No. 8-8-14/2, Palace layout, Pedda Waltair, Vishakhapatnam, (Urban), L.B.Colony, Vishakhapatnam, Andhra Pradesh – 530017.
OA No. 89 of 2018 MA No.754 of 2019 MA No.957 of 2019	D.V.Ch.Hanuman, aged about 64 years, S/o Late Subbarao, retired Station Superintendent, East Coast Railway, Rambha, resident of Door No. 54-12-17/11, Bhanu Nagar, Near Krishna College, Meddipalam, Visakhapatnam-530022, Andhra Pradesh.
OA No. 88 of 2018 MA No. 741 of 2019 MA No. 954 of 2019	Yellapu Kondalarao, aged about 69 years, S/o Late Appala Naidu, retired Station Superintendent, East Coast Railway, Palasa, resident of Door No.44-15-86/2, Thatichetlapalam, besides Yerragedda, Visakhapatnam-16, Andhra Pradesh.
OA No.86 of 2018 MA No. 753 of 2019 MA No. 953 of 2019	K.Anadi, aged about 68 years, S/o Late K.Venkat-swami, retired Station Superintendent, East Coast Railway, Sompeta, resident of Maharani Peta, Door No.11-1-200, Kasubugga, Palasa, Dist.-Srikakulam, -532222, Andhra Pradesh.
OA No. 126 of 2018 MA No. 739 of 2019	Mula Apparao, aged about 68 years, S/o Late M. Lokanatham, retired Station Manager, East Coast Railway, Sompeta, resident of Door No. 13-3-6, Tilak Nagar, besides B.E.T.School, Kasubugga, Srikakulam – 532222, Andhra Pradesh.
OA No. 125 of 2018 MA No.740 of 2019 MA No. 956 of 2019 MA No. 958 of 2019	Basu Venkata Durgarao, aged about 64 years, S/o Late B.Nilachalam, retired Station Superintendent, East Coast Railway, Jhadupudi, resident of Door No. 12-1-135L, Potannapalli Street, New Colony, Kasibugga - 532222, Srikakulam District, Andhra Pradesh.
OA No. 87 of 2018 MA No. 756 of 2019 MA No. 955 of 2019	M.Babu Rao, aged about 68 years, S/o Late M.Venkat-swarlu, retired Station Superintendent, East Coast Railway, Mandasa Road, resident of Shree Sampat Residency, flat No.3, Ramakrushna Nagar, Srikakulam -532001, Andhra Pradesh.

.....Applicants

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharapur, Bhubaneswar, Dist.-Khurda-751017.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda-752050.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, At/PO-Jatni, Dist.-Khurda-752050.

4. Chief Office Superintendent (OT & Mileage), Office of Senior DPO, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda-752050.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Nayak, counsel

Heard & reserved on : 18.12.2019

Order on : 03.01.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

These OAs have been filed claiming payment of the Overtime Allowance (in short OTA) at the rate applicable for the revised pay scale with effect from 1.1.2006. Since the disputes and issues involved in all the OAs in this batch are same or similar, these OAs were heard together and are being disposed of by this common order, taking the facts of the OA No. 125/18 for the purpose of this order.

2. The OA No. 125/18 has been filed seeking the following reliefs:-

- “(I) To quash the order dtd. 15.01.2018 under Ann. A/8.
- (II) And to direct the respondents to pay the differential OT arrears for the period from 01.01.2006 to 13.10.2007 with 12% interest as per RBE No. 72/2011.

And pass any other order as this Hon’ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall every pray.”

The applicant has also filed the MA No. 740/2019 with the prayer to condone the delay in filing the OA. The respondents have filed objections to the said MA.

3. The applicant in OA No. 125/18, while working as Station Superintendent, Mandasa Road under the respondent-railways, had discharged overtime duty for the period from 1.1.2006 to 13.10.2007 for which he was paid the OTA at the pre-revised pay scale. Subsequently, the pay scales were revised w.e.f. 1.1.2006 on the basis of the recommendation of the 6th Pay Commission. Regarding the question of the payment of OTA for the period from 1.1.2006 till the issue of the order for revision of the pay scales, Railway Board issued a circular dated 20.5.2011 (RBE No. 72/2011) stating that the OTA will be calculated at the rate of the revised pay w.e.f. 1.1.2006 as per the 6th pay commission recommendations. Thereafter, the applicants through a joint representation dated 7.1.2015 (Ann-A/4), requested for payment of differential amount after calculating the OTA at the revised pay scale and deducting the amount of OTA already paid for the period from 1.1.2006 to 13.10.2007.

4. In a similar OA (No. 90/2017) filed by another similarly placed railway servant, the Tribunal vide order dated 23.2.2017 (Ann-A/5) directing the respondents to dispose of the representation filed in this regard. Giving reference to the OA No. 90/2017, the applicant filed another representation for payment of the differential amount on account of the OTA at the revised rate w.e.f. 1.1.2006 and when no decision was taken the applicant filed the OA No. 662/17 which was disposed of vide order dated 29.11.2017 (Ann- A/7) directing the respondent no. 3 to examine the contentions of the applicant and dispose of the same by passing an appropriate order. Accordingly, the respondent no. 3 has issued the impugned order dated 15.1.2018 (Ann – A/8), rejecting the claim by stating as under:-

“It is pertinent to mention here that as per Appendix-IX of Accounts Code Volume-I of Srl. No.112, the preservation period of the statement of Overtime and allowances is 3 years. Hence,. Ti was not possible on the part of the Rly. Administration to get the vetted copies of overtime allowance for the period from 01.01.2006 to 13.10.2007. Therefore, in absence of O.T. paid vouchers, this office is unable to ascertain the genuineness of the applicant’s claim and to pay the differential of OT arrears for the said period.

It is worth mentioning that the cause of action arose in the year 2006 to 2008 and 6th Central pay Commission was announced in the month of September’ 2008 which came into force w.e.f. 01.01.2006 retrospectively. The applicant ventilated his grievance in the year 2015 only after lapse of 8 years. Thus, onus lies with the applicant for the delay and non-payment of differential O.T. arrears due to non-submission of representation in time, if he had not been paid the difference of OT arrears.

This disposes contentions of the applicant ventilated in representation dt. 08.5.2017 under Annexure-A/6 to the OA.”

5. Counter filed by the respondents to oppose the OA stated the following in para 6 and 7 as under:-

“6. That in reply to the averments made in Para-4.4 of the OA it is submitted that if the differential O.T allowances has not been paid to the Applicant as per RBE No. 71/2011 then the Applicant would have approached the Hon’ble Tribunal at the relevant period without any delay. Further the joint representation under Annexure A/4 does not reflect any date. However, if the Applicant has submitted the appeal dated 07.01.2015 he should have annexed the acknowledgement thereof along with the OA to substantiate his averments. It is humbly submitted that if no action was taken on his appeal dated 07.01.2015, if at all submitted, then he should have approached the higher authorities of the Railways or should have approached the Hon’ble Tribunal at that relevant point of time.

7. That in reply to the averments made in Paras-4.5 & 4.6 of OA it is humbly submitted that in obedience to Hon’ble Tribunal’s order dated 23.2.2017 passed in OA No. 90 of 2017 (Sri K.Mallesam –vs- UOI & Others), a thorough search was made to trace out the old OT allowance vouchers pertaining to the year 2006-2007 to ascertain the genuineness of the claim of the Applicant of the said OA but the old records for the claimed period could not be traced out. Hence, the Station Superintendent, Mandasa Road was asked to submit the duplicate Over Time vouchers for the said period, if available, to take further course of action on the claim of Sri K.Mallesam, the Applicant of OA No. 90 of 2017. However, on receipt of the Xerox copies of Over Time vouchers for the period from 01.01.2006 to 13.10.2007 from the Station Superintendent, Mandasa Road, the differential OT allowance amounting Rs.31,369/- was paid on 19.4.2017.

It is humbly submitted that in the case of the Applicant, as stated earlier no records are either available either in the office of the Respondent No.3, Sr. Divisional Finance Manager, Khurda Road or in the office of the Station Managers, Jagannathpur and Sompeta. Hence, the Respondents are not in a position to establish whether the Applicant had performed Over Time duty during the period from 01.01.2006 to 13.10.2007 and was paid Over Time allowance during the year 2006-2007 and if at all he had performed Over Time from 01.01.2006 to 13.10.2007, after issuance of RBE No. 72/2011 under Annexure-A/1 he has not been paid the differential Over Time allowance.”

6. Rejoinder has been filed by the applicant, mentioning the OTA received by him every month from January, 2006 till October, 2007 at the pre-revised pay scale, for which he was claiming the differential amount. It is stated the OT bills are part of the pay bills for which the preservation period is 10 years and hence, the respondents could have found out the details of OTA paid for the period in question from the pay bills. It is also stated in para 4 of the Rejoinder as under:-

“That in reply to para-2(J) & 7 of the counter it is humbly and respectfully submitted that the same are false and incorrect as such denied. It is humbly and respectfully submitted here that Ann-R/6 is a procured document of the Respondents to deprive this applicant from getting the differential O.T. Amount.

It is pertinent to mention here that 3 documents which are permanent in nature are maintained in each and every station are Muster Roll, Train Signal Register and Station Master’s Diary, from which the date and time of arrival and departure clearly mentioned,. If the O.T. Register is not available then on the basis of three permanent documents the Over Time period of the applicant could have been assessed, but nothing has done except issuance of Annexure-R/6.”

7. Heard learned counsel for the applicant who submitted that after retirement of the applicant on 31.8.2014, he submitted the representation requesting payment for the differential amount on account of overtime duty for the period from 1.1.2006 till 13.1.2007, which was not considered by the respondents. Regarding non-availability of the documents relating to the overtime duty done by the applicant, it was submitted that the Muster Rolls and the Pay Bills for which the preservation period was 10 years, could have been referred to by the respondents for settling the claims of the applicant. It was further submitted that as stated in the Rejoinder, Train Signal Register and Station Master’s Diary, apart from the Muster Rolls, will have the details regarding the applicant’s overtime duty for the period in question to settle the applicant’s claims.

8. Heard learned counsel for the respondents, who reiterated the averments in the Counter that the applicant has approached belatedly for which the records based on which the differential amount of the OTA can be assessed, are not available as the same was beyond the prescribed preservation period. Learned counsel for the respondents also cited the judgment in the case of C. Jacob vs. Director of Geology & Mining & Anr. AIR 2009 SC 264 and Union of India & Anr. vs. Tarsem Singh in Civil Appeal No. 5151-5152 of 2008 in

support of the respondents' argument on the ground of delay on the part of the applicant in pressing for his claim in the OA.

9. Before considering the OA on merit, it is necessary to consider the MA No. 740/19 for condoning the delay in filing the OA. In the said MA, the applicant stated that the earlier OA No. 662/17 was filed by him with the MA for condoning the delay in filing the aforesaid OA, which was disposed of with a direction to the respondents to examine the matter, which amounted to granting the prayer made in that MA to condone the delay in filing the OA. Hence, the objections raised by the respondents in this OA are not sustainable. It is also stated that as per the Railway Board's instructions at RBE No. 72/2011, the authorities should have considered the matter suo motu and there was no provision in that circular for exclusion of retired employees. The applicant being a retired employee, was not aware of the said circular RBE No. 72/2011 and as soon as it came to his knowledge, he submitted the representation.

10. The respondents have filed their objections to the MA stating that the applicant raised the claim for the first time in the year 2015 after a lapse of 8 years from the date of implementation of the 6th Pay Commission report and 4 years from the date of issue of the RBE No. 72/2011 for which the claim is barred by limitation. The contention that the order of disposal of the OA No. 662/17 implied acceptance of the MA No. 621/17 was opposed by the respondents. It was further averred that the OT vouchers of the applicant for the period in question were not available for which the applicant's claim for differential OTA could not be settled by the respondents.

11. In the case of C. Jacob (*supra*), the concerned employee remained under unauthorized absence for more than 20 years and in the background of non-production of records due to lapse of time, the relief was granted to him. On the issue of delay in approaching the Court, Hon'ble Apex Court held as under:-

"8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of

justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages."

12. In the case of Tarsem Singh, Hon'ble Apex Court. On the issue of delay and laches held as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

13. From the above judgments cited by learned counsel for the respondents, it is clear that in a case involving a serious issue like absenting oneself from duty without availing leave for about 20 years without any intimation, as in the case of C. Jacob (supra) will make the claim stale and belated. In this OA, there is a delay of about 4 years from the date of issue of the RBE No. 72/2011 when the applicant first approached the authorities about his grievance in 2015 pertaining to his claim for differential amount on account of the payment of OTA. Moreover, there is an application for condoning the delay in filing the present OA, unlike the case of C. Jacob (supra), which is factually distinguishable.

14. Applying the ratio of the judgment in the case of Tarsem Singh (supra) to the present OA involving the claim of differential amount on account of the overtime duty, it is clear that the claim of the applicant in this OA will not affect the rights of any other employee within the same organization. Further, the circular of the Railway Board RBE No. 72/2011 (Ann.-A/1), was applicable for all the employees. There was no provision in the said circular requiring the employees who had discharged overtime, to submit an application furnishing

the details of overtime duty discharged by him. Further, the respondents have not explained why the applicant's claim for differential OTA could not be released as soon as the RBE No. 72/2011 was received by the authorities allowing such claims. It is not the case of the respondents that on the date of receipt of the RBE No. 72/2011, no record relating to the applicant's OTA was available. Therefore, I am inclined to agree with the contention of the applicant in the MA 740/19 that the respondents should have allowed the differential amount from the existing records without requiring the applicant to submit representations and hence, the respondents' contention that the applicant should have submitted his application for the claim in time does not have much force.

15. For the reasons as discussed above, the grounds for delay in the MA No. 740/19 are considered to be satisfactory and accordingly, the said MA for condoning the delay in filing the present OA is allowed.

16. Regarding merits of the OA, it is seen that as stated in the impugned order as well as in the Counter, the dues of the applicant could not be released since the related documents could not be traced out. But the reason for which such dues could not be released immediately after receipt of the Railway Board circular RBE No. 72/2011 (Ann – A/1), has not been mentioned by the respondents in their pleadings. As per the RBE No. 72/2011, the applicant is entitled for the differential amount of the OTA for the period from 1.1.2006 to 13.10.2007 on account of the revision of pay scale w.e.f. 1.1.2006, as claimed by him. There is nothing in the pleadings of the respondents to show that the applicant was ineligible for the claim.

17. In view of the above discussions, the OA is allowed and the respondents are directed to refer to the records like the Muster Rolls and/or the Train Signal Register and/or the Station Master's Diary to find out the details of the OTA claim of the applicant for the period from 1.1.2006 to 13.10.2007 and disburse the differential amount for the OTA as per the RBE No. 72/2011 within four months from the date of receipt of a copy of this order. The applicant will also furnish the copy of the documents available with him to the respondents/competent authority for assessing the amount payable in absence of the OT bills of the applicant for the period. In case of non-availability of the documents required to assess the claimed arrear OTA after necessary efforts by the respondents and the applicant, then such amount will be disbursed to the applicant within the time as stated above, at the same ratio to the amount of the OTA amount already paid to the applicant for the period in question as stated in para 3 of his Rejoinder, as the ratio of the arrear differential salary

paid to him on account of revision of pay scale w.e.f. 1.1.2006 to the amount of salary which was paid to him earlier at the pre-revised scale.

18. The other OAs with similar facts and circumstances as the OA No. 125/18 are also allowed in terms of the directions in paragraph 17 of this order. There will be no order as to the costs for the OAs in this batch.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath