

Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No.1086 of 1986

{Civil Appeal No.206/85 of the Court}
{of ~~the~~ District Judge, Kanpur }

Union of India Appellant

Versus

Kedar Nath Gupta Respondent

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. A.B. Gorthi, A.M.

(By Hon.Mr.Justice K.Nath, V.C.)

Civil Appeal described above is before us under Section 29 of the Administrative Tribunals Act, 1963, against a judgement in Original Suit No.522/75 of the Court of IIInd Civil Judge, Kanpur decreeing the respondent's claim of overtime allowance amounting to Rs. 8153-60 with 6% interest.

2. Notice of the appeal was sufficiently served upon the respondents but no appearance has been made. We have heard Shri S.P.Srivastava for the appellant and have gone through the record.

3. The plaintiff-respondent was working as a Parcel Delivery Clerk in the Northern Railway, Kanpur and had to travel on duty with the Parcel Van in Train No.71 UP and 72 DN between Mugalsarai, Kanpur and Delhi during the period from 1.11.70 to 14.10.72. His grievance is that although normally he was expected to put in 108 hours in fourteen days, he had to put larger number of hours during that period because quite often the trains used to run late and he had to wait at the railway station. He submitted a chart setting out the details of the alleged overtime work put by him.

4. The claim was denied by the Railway Administration who raised the plea of limitation and also stated that the plaintiff had failed to prove by any evidence that he had worked overtime as alleged.

5. Documentary evidence was adduced on both sides; the oral evidence consists of only plaintiff's own statement. The defendant-appellant raised the plea of limitation and denied the plaintiff's claim. The learned Munsif decreed the Suit for a lesser amount of Rs.8153-60.

6. In this appeal, it is urged by the learned counsel for the appellant that the plaintiff's application under Section 15 of the Payment of Wages Act before the Prescribed Authority ^{under} ~~that~~ that Act was not bonafide and therefore he could not get the benefit of Section 14(2) of the Limitation Act. It appears that when the claim was made in 1972 it was opposed by the Railway Administration on the ground that the plaintiff could not maintain the application because his monthly wages were more than Rs.400/- within the meaning of Section 1(6) of the Payment of Wages Act. The Prescribed Authority accepted that objection and dismissed the claim by order dated 11.2.72. The District Judge in appeal under Section 17 of the Act held that certain elements of the applicant's salary did not constitute wages and that the Prescribed Authority ought to reconsider the matter after excluding those elements. The case again figured before the Hon'ble High Court in a Writ Petition by the Railway Administration and the view of the District Judge was partly modified.

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The Prescribed Authority was again directed to rehear and decide the matter in the light of the judgement of the Hon'ble High Court contained in the body of the judgement. When the matter figured before the Prescribed Authority again, it was again held that the plaintiff's monthly wages were more than Rs.400/- and therefore the application was not maintainable. Thereafter the Civil Suit was filed on 19.2.75.

7. The question whether or not a workman earned Rs.400/- or more as monthly wages is a question within his specific knowledge and it should not have been difficult for him to appreciate whether he could make the application under Section 15 of the Payment of Wages Act. We are of the opinion that the institution of the application under Section 15 of the Payment of Wages Act was not bonafide and that in any case it has been dismissed by the Prescribed Authority on 28.11.72. The plaintiff should not have further pursued the remedy of appeal under Section 17 of the Act.

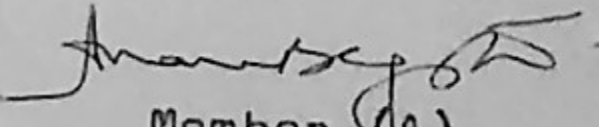
8. Even so the claim before the Civil Court would be partly within limitation because wages under Article 7 of the Limitation Act may be claimed within three years from the date when it accrues. Since the Suit was filed on 19.2.75, it was within limitation in respect of the claim for the period from 19.2.72 to 14.10.72 which according to the chart would amount to about Rs.2061/-.

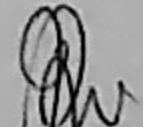
9. The next question is whether on the merits the plaintiff was entitled to the overtime claim. The Board's circular dated 3.11.70 circulated by letter dated 2.4.71, Exb.11 mentions that the duty hours ought to be counted as in the case of other continuous worker from 'signing on' to 'signing off' as provided under

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para 18(i) of Subsidiary Instructions under Hours of Employment Regulations. We notice that the Hours of Employment Regulations ^{contained in IREM} provide for a Register in Form 'A' to Hours of Employment Regulations to be maintained by the office of the Railway Department. Column 12 of this Form is for entry regarding the number and date of submission of slip of overtime. The learned Munsif has mentioned that the Railway Administration had put up a case that the plaintiff never submitted a slip for the alleged overtime work and therefore it was not possible to sanction overtime allowance. The learned Munsif held that it was the duty of the Railway Administration to give the slip to the plaintiff and if the plaintiff did not give the slip, the Railway Administration was responsible for it. We find no basis for this view. It is plain enough that an employee who seeks a claim for wages on account of overtime work is the best person to state and thereupon to claim that he has put in overtime work and therefore it is to be expected that a slip for overtime work must be submitted by the employee himself. It is plain enough that the Railway Administration would not be aware on its own whether or not a particular employee has put in overtime work. We should hold therefore that it was the duty of the plaintiff to submit a slip for overtime work. Since it is admitted that he did not submit any such claim we do not think that he can succeed because the claim cannot be said to be established by the best evidence.

10. The appeal is allowed. The Original Civil Suit is dismissed.


Member (A)


Vice Chairman

Dated the 13th Feb., 1991.

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