

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 01<sup>st</sup> day of JUNE 2007

Original Application No. 26 of 2006

Hon'ble Mr. P.K. Chatterji, Member (A)

Heera Lal, S/o Darbari Lal, R/o Village - Saibasa,  
P.O. Babhni Heta, District Allahabad.

. . . . Applicant

By Adv: Sri S.P. Srivastava

V E R S U S

1. Union of India through General Manager, Northern Railway, Railway Department, New Delhi.
2. Divisional Railway Manager, Allahabad.
3. Divisional Superintending Engineer-I Northern Railway, Allahabad.
4. Divisional Engineer-I, Northern Railway, Allahabad.
5. Divisional Superintending Engineer III, Northern Railway, Allahabad.
6. Divisional Engineer, Rail Path, Northern Railway, Bharwari, Allahabad.
7. Assistant Engineer, Line, Northern Railway, Allahabad.
8. Junior Engineer, Line, Northern Raiway, Allahabad.
9. Rail Path Nirikshak, Northern Railway, Allahabad.

. . . . Respondents

By Adv: Sri P. Mathur

O R D E R

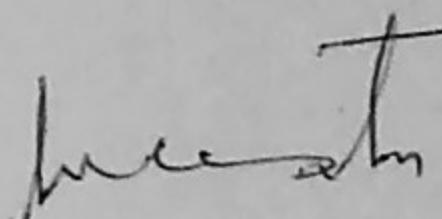
The dispute is regarding quantum of Over Time (OT) Allowance performed by the applicant while

*meekah*

working as Gateman. The applicant has stated in the OA that he has performed 35 Hrs OT from 12.09.1997 to 26.05.1998. However, the respondents have only granted him OT to the tune of seven hours. He has aggrieved that his claim for 28 hours of OT Allowance actually performed by him has been rejected.

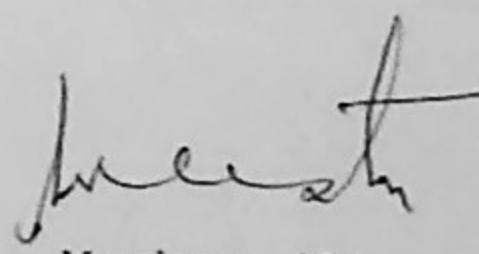
2. The respondents have denied the allegation in the counter affidavit. It has been stated clearly at para 12 of the reply that the claim of the applicant was duly verified with reference to the office record and only the admissible amount on the basis of actual duty has been granted by him. The applicant has performed only 07 OT hours during the period and accordingly the amount has been paid to him.

3. A question was asked of the applicant's counsel whether he has documentary evidence to show that 35 hours duty was actually performed by him. The only document which has been produced is at page 20 of the OA, which is the statement by the applicant himself. Usually the OT duty performed by any official is written down in a statement at the end of the day which is signed by the official/officer controlling the official. In absence of such statement the claim of the applicant cannot be stated to be justifiable. Respondents' counsel has

A handwritten signature in black ink, appearing to read "J. Meethan".

brought to my notice the judgment of this Tribunal in OA 428 of 1995 in which it was decided by the Tribunal that matter regarding OT are not to be entertained by the Tribunal as this pertains to Railway Servant (hours of employment) Rules 1961 which had to be adjudicated by the labour Commissioner. However, having seen that the pleadings have been exchanging during the last 04 years I think it is too late in the day to dismiss the OA being outside the jurisdiction. Several other cases relating to TA has also decided by the Tribunal.

4. After hearing the learned counsel for the parties and going through the pleadings I am of the view that the claim of the applicant is not justified. The OA is, therefore, dismissed. No cost.



Member (A)

/pc/

the view that the O.A. is not liable to be dismissed on the ground of alternative remedy. Section 20 of the A.T. Act, 1985 does not create any absolute bar against entertainement of an application unless the applicant has exhausted all the remedies available to him under the service rules for redressal of his grievances. Sub Section (1) of Section 20 only provides that a Tribunal shall not 'ordinarily' admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of his grievances. We are also of the view that Rule 23(iv) of CCS(CCA) Rules will not be attracted to the facts of the present case. Rule 23 of CCS(CCA) Rules, 1965 provides that subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely.

- i) .....
- ii) .....
- iii) .....
- iv) an order which -

- (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
- (b) interprets to his disadvantage the provisions of any such rule or agreement.

The impression 'an order' in sub rule (iv) of Rule 23, in our opinion, is referable to an order passed in disciplinary proceedings which may have the effects as visualised in sub clauses (a) and (b) of Rule 23. The clarification issued by the Ministry of Home Affairs that an appeal against ~~supercession of~~ <sup>supercession of</sup> supercession in promotion fall within the purview of Rule 23(iv) of the CCS(CCA) Rules, 1965, does not appear to be in consonance with the rules. We are, therefore, of the view that the applicant did not have an alternative remedy by way of an appeal as submitted by learned counsel for respondents.

(RJG)

6. We are also of the view that this O.A. is not liable to be dismissed on the ground of latches and delay. The applicant was making representation and the earlier O.A. was not dismissed on the ground of delay and latches, <sup>Rally,</sup> and the competent authority was directed to consider and decide the applicant's representation by a reasoned order. The competent authority has also not rejected the representation on the ground of delay and latches instead it has rejected the applicant's claim for promotion on the basis of the instructions contained in the O.M. No.27(4)/EO/89-ACC dated 11.4.1989 read with the O.M. No.22011/11/89-Estt. (D) dated 25.1.1990. It stipulates that no officer should be promoted to a higher post in his own line of promotion unless he would have a minimum service of three months before retirement. The said office memorandum ~~have~~ <sup>has</sup> since been rescinded vide G.I. Department of Personnel & Training O.M. No.22011/2/2003-Estt. (D) dated 16.6.2003 and requirement of three months residual service before retirement for promotion to the post which requires approval of the ACC has been rescinded. The earlier office memorandum which visualised that no officer should be promoted to a higher post in his own line of promotion unless he would have a minimum service of three months before retirement has been held to be arbitrary by a Division Bench of the C.A.T., Mumbai in Krishna Kumar Versus Union of India & others, 2004(2) CAT AISLJ, Vol.VI page 133. The principle is that administrative order can not ever-ride the statutory provisions. There is no such limitation in the statute governing promotion to the post of DIG, SSB. In the circumstances, therefore, we are of the view that the applicant has illegally been denied the promotion recommended by the Departmental Promotion Committee vide decision taken in its meeting held on 26.6.1989.

7. The fact that there is no specific prayer for quashing of the order dated 14.8.2001 will not come in the *(Signature)*

way of the applicant in as much as the relief (ii) gives ample power to the Tribunal to pass suitable orders or direction not specifically prayed for.

8. Accordingly, the O.A. succeeds and is allowed. The order dated 14.8.2001 is quashed. Respondents are directed to give effect to the recommendation made by the DPC in their meeting held on 26.6.1989 and give national promotion to the applicant with effect from the date of occurrence of vacancy provided the same had occurred before applicant's retirement, and accordingly, re-fix the pension of the applicant.

Cost on parties.

*Asthana*

A.M.

*Raj*  
V.C.

Asthana/