

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 744 of 2002.

Allahabad, this the 23rd day of November, 2004.

Hon'ble Mr. D.R. Tiwari, A.M.

Akhtar Mahmood,
Section Engineer,
Ist, Under Senior
Divisional Mechanical Engineer,
Carriage and Waggon, Northern
Railway, Allahabad.Applicant.

(By Advocate : Shri K.K. Yadav)

Versus

1. Union of India,
through General Manager,
(RE) Allahabad.
2. Senior Divisional Mechanical
Engineer, Northern Railway,
Allahabad.
3. Divisional Mechanical Engineer,
Northern Railway, Allahabad.
4. Upper Mandal Rail Prabhandhak,
Allahabad Division, Allahabad,
Northern Railway.
5. Section Engineer, Carriage and Waggon,
Northern Railway, Shikhabad.

.....Respondents.

(By Advocate : Shri A.K. Pandey)

ORDER

By this OA filed under section 19 of A.T. Act, 1985,
the applicant has prayed for the following relief(s) :-

"(i) to issue a writ, order or direction in
the nature of Certiorary to quash the
impugned order dated 17.01.2002 by which
the Representation of the applicant
regarding the payment of overtime night
duty allowances from 28.1.1995 to June 1996
by rejected by the respondent No. 2.

....2.

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(ii) to issue a writ, order or direction in nature of mandamus, thereby commanding the respondents to release the payment for over time (N.D.A) allowance discharged by the petitioner from 28.1.1995 to June 1996."

2. The facts of the case as per the applicant are that the applicant at the relevant time was working as Junior Engineer in the Railway. He was transferred from Aligarh to Shikohabad on 22/12/1994 and he joined his duties at Shikohabad on 28.1.1993. He has discharged his duties as per roaster and due to rush of work he has worked in over time night duty as per roaster. The over time night duty from 28.1.1995 to 14.6.1996 and the chart showing the working hours day to day is at Annexure-I of the second compilation. When his over time duty was not sanctioned, he made a representation to the Assistant Mechanical Engineer, Uttar Railway Tundla (Annexure-3). Even after that he did not receive the payment and finally his representation was rejected on 17.1.2002.

3. The applicant has challenged the impugned order dated 17.1.2002 (Annexure-I) on various grounds mentioned in Para 5 of the OA and its various paragraphs. The main ground of attack is that the rejection of his representation by respondent No.2 is very arbitrary. He has also argued that he is legally entitled for the payment of over time but without giving him any show cause notice or any opportunity of hearing, the respondents have rejected his representation. Non payment of the claims of over time and night duty allowance is causing great financial hardship to him and his right to receive the payment is hit by fundamental rights and Article 226^{of} the Constitution of India.

4. The respondents, on the other hand, have resisted the OA and filed a detailed counter affidavit in which his

contention has been refuted. They have submitted that the representation of the applicant has been decided by means of subjecting and reasoned order, in pursuance of the order passed by this Tribunal in OA No.296/00. It is submitted that all the dues to which the applicant was entitled had already been paid to him and the claims of the applicant which cannot be paid under the present rule has also been explained. They have also submitted that the applicant being the Supervisor and incharge of Sub Depot, Farukhabad was never allowed for over time and his immediate Controlling Authority instructed him from time to time not to perform his duty as per his own choice. However, the applicant disobeyed orders and according to his choice he has shown wrong duty to charge overtime allowance. It has been further argued that night duty allowance has been paid to him correctly and for Non-payment of over time he was timely informed not to perform over time more. They have also submitted that as per the record, the applicant forged duty by overwriting in the Attendance Register. They have further submitted that the applicant was never ordered to perform double duty and also he was instructed time to time through the remark on the Attendance Register, but he always disregarded the order of the SE (CAW)/SKB, Annexure CA-I.

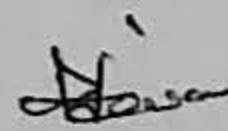
5. During the course of the arguments, learned counsel for the applicant reiterated the fact and the legal pleas from the pleadings of the applicant whereas the counsel for the respondents have also reiterated the facts from the counter affidavit filed by the respondents.

6. I have heard the rival contentions made by the counsel for both the parties and perused the records.

7. The only question which survives for decision is the validity of the impugned order (Annexure-I) by which the claim of the over time and night duty allowance was rejected by the respondents. From the records, it appears that there are some grounds in so far as the contentions of both the parties are concerned. The impugned order shows that the applicant though joined on 28.1.1995 at Farukhabad and he has claimed over time beginining from much earlier i.e. 22.1.1995. It appears that by the present OA he has claimed over time from 28.1.1995 to June 1996 (Annexure -8 of the OA) which is about the duty roaster at the station. The applicant has objected regarding the duty roaster from 6 to 8, 12 to 16, 20 to 23 and he has returned that he has not agreed to this.

8. I am of the view that ends of justice will be met if the present OA is treated as a supplementary representation and the respondents taking into account the facts mentioned here as well as the observations made above, decide by a reasoned and speaking order. The liberty is given to the applicant to file a fresh representation mentioning all the points about his grievance.

9. Accordingly, the OA is disposed of with a direction to the Competent Authority to consider and decide his case by passing a reasoned and speaking order and communicate to the applicant within a period of two months from the date of receipt of copy of this order. No order as to costs.


Member (A)

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