

12
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 396 OF 1991

Cuttack, this the 30th day of April, 1997

Shri Murali Srichandan Applicant

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

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(S. SOM)
VICE-CHAIRMAN
30.4.97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 396 OF 1991
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CORAM:

HONOURABLE SRI S. SOM, VICE-CHAIRMAN

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Shri Murali Srichandan,
son of late Lingaraj Srichandan,
Gr.III Diesel Engine Driver
in the South Eastern Railway,
At/P.O/District-Puri

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Applicant

Vrs.

1. Union of India, represented through the Secretary, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, Puri.
4. Divisional Personnel Officer, South Eastern Railway, Khurda Road, Puri.
5. Electrical Foreman, South Eastern Railway, At/P.O/District-Puri

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Respondents

Advocate for applicant - Mr. D. S. Misra.

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Advocates for respondents - M/s B. Pal/ON Ghose

*Journal of Law
30.4.97*

ORDER

S. SCM, VICE-CHAIRMAN

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a Grade III Diesel Engine Driver in South Eastern Railway, Puri, has asked for payment of overtime allowance of an amount of Rs.43,915.75 as per details given in Annexure-4 to the O.A. along with interest on the amount at 19% per annum.

2. The case of the applicant is that he was a Diesel Engine Driver for lifting water in the Railway Stations. According to him, he has worked overtime on different dates in three spells from 1976 to 1979, from 1.8.1979 to 18.8.1984, and from 27.10.1984 to 30.4.1986 (paragraph 4(a) of the application). According to the details given in Annexure-4, he has done overtime work from 1.2.1976 to 1.10.1986 in 14 different spells which taken together are continuous from 1.2.1976 to 1.10.1986. The applicant had earlier come to the Tribunal in O.A.No.155/88 in which he had mentioned that he was required to work 48 hours per week, but in three spells from 1976 to 1979, from 1.8.1979 to 18.8.1984 and from 27.10.1984 to 30.4.1986 he had worked overtime and the overtime claim as mentioned in OA No.155/88 was around Rs.12,000/-. In OA No.155/88 he had mentioned that his representation to the departmental authorities for payment of overtime allowance had not been considered and therefore, he had prayed for an order from the Tribunal for making payment of overtime dues to him. That O.A. was disposed of in order dated 8.9.1989. At the instance of the learned lawyer for the applicant in that case, the application was disposed of by issuing a direction to the Divisional Personnel Officer to dispose

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of the representation of the applicant within a period of three months from the date of receipt of the order. The applicant was also granted leave to approach the Tribunal in case the order on his representation was adverse to his interest. In the present application, the applicant has alleged that in accordance with the order of the Tribunal, the Divisional Railway Manager in his order dated 19.12.1989 (Annexure-2) rejected his representation on several grounds, which have been assailed in this application. It appears that on 19.4.1990 the applicant sent a further representation to respondent no.2 giving details of his overtime statement and the total claim, as noted earlier, came to Rs.43,915.75 as against Rs.12,000/- claimed by him in OA No.155/88. According to the applicant, the details of the overtime work done by him are available in the departmental records, but even then he has given the above calculations and details to help the respondents.

*Jonnim JDM
30.4.92*

3. The respondents in their counter have submitted that in accordance with the order of the Tribunal in OA 155/88, the representation of the applicant was considered and rejected on the ground of delay as also on merits. It has been averred by the respondents that under the rules overtime bills cannot be submitted and payment claimed after passage of ten years. They have also stated that according to the departmental records, the hours of duty performed by the applicant during the relevant period for did not entitle him to overtime allowance. Moreover, extra work when performed occasionally, he has been given compensatory rest day in lieu of overtime allowance, the details of which, according to

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 the counter filed by the respondents, have been given in Annexure-R/1 to the counter filed in OA No.155/88. Lastly the respondents have also asserted that major part of the claim cannot be considered by the Tribunal because of lack of jurisdiction under Section 21 of the Administrative Tribunals Act,1985.

4. In view of the above rival submissions made by the parties, the prayer of the applicant has to be considered. At the outset, it has to be noted that the applicant was originally appointed as a Khalasi and later on he was made Station Plant Attendant and thereafter Diesel Engine Driver (Rest Giver). At the relevant time, he was required to work at Puri on some days. On some days he was required to go to Sakhigopal to work there or to relieve the worker there as Rest Giver and on certain other days, to Kalupadaghat with similar nature of duties. The respondents have specifically denied that he has worked beyond his duty hours. In support of this, the respondents had filed xerox copy of the duty roster for some days in January and August 1978 and September 1984. It seems that the Railways have a system of statutory duty hours for employees engaged in continuous roster. In such cases, the statutory duty hours is 54 hours and the roster hour is 48 hours. The overtime claim is worked out taking the work in ^a two weeks spell and if the working hour of an employee on continuous roster in two weeks period exceeds 96 hours, then upto 108 hours he is paid $1\frac{1}{2}$ rate and $\frac{1}{2}$ twice the normal rate of wage for beyond 108 hours. The rules also provide that in a mixed roster where the working hour in a week is 50% of continuous roster and 50% essentially intermittent working, then the roster is reckoned as continuous. Again if the working

Journal No. 30. H. 97

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is two days continuous and four days essentially intermittent, then the same is taken as essentially intermittent roster.

There are also differences between a non-roadside station and a roadside station on which the characterisation of essentially intermittent working depends, but for the present purpose it is not necessary to go into further details of those matters.

From the duty roster, which is at Annexure-R/3 to the counter in the earlier O.A., it is seen that the applicant used to work and for one day at Sakhigopal (Sunday) / three days at Puri (Monday and Wednesday), to remain spare at headquarters for one day (Thursday), and to avail two consecutive days rest (Friday and Saturday). The departmental authorities have gone into his claim in great detail with reference to the departmental rules and found that his claim is misconceived. As Rest Giver he was required to travel to Sakhigopal and Kalupadaghat. For such journey he was paid travelling allowance. Therefore, for the time spent on such journey he cannot claim overtime allowance over and above the travelling allowance. Moreover, in the roster applicable to him he has been given compensatory rest day regularly. It is also seen that the applicant has inflated his claim stated according to him to be Rs.12,000/- in OA No.155/88, but at Rs.43,915.75 in the present application.

5. It has been asserted by the respondents that the departmental records in the office of the immediate superior of the applicant, who is Electrical Foreman, Puri, did not bear out the applicant's claim for overtime work. The learned lawyer for the applicant has submitted that this could have been verified from the Log Book and from other connected supporting documents. The respondents claim that those documents have been destroyed after

Omraim J.M.
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18 the period of their preservation was over. According to the instructions, overtime bills of running staff and other staff have to be preserved for three years, but before destruction of those records it should be ensured that all such records have been checked by the accounts inspection staff. It thus appears that those records have been destroyed after those have been checked by the inspecting staff. The onus in this case is on the applicant to prove his case and he cannot gather strength from non-production of connected documents by the Railway authorities when the documents have been destroyed following the departmental rules for preservation of such documents. It is also to be noted that under Section 21(2)(a) of the Administrative Tribunals Act, 1985, any claim relating to a matter arising prior to 1.7.1982 cannot be looked into by the Tribunal. As such, his claim from 1.2.1976 till 30.6.1982 cannot be looked into by the Tribunal. Notwithstanding this, I have looked into his claim on merits with reference to the departmental instructions as also other relevant papers on record. Further it is seen that in OA No.155/88 the period for which he claimed overtime payment ended, according to the applicant, on 30.4.1986, but in the present application, according to the calculation at Annexure-4, he has shown overtime work by him till 28.9.1986, i.e., for another five months beyond what was claimed by him in the earlier O.A. This also raises a doubt about the genuineness of his claim. In consideration of the above, I hold that the applicant has not been able to prove his case of overtime work from 1.7.1982 to 28.9.1986.

6. In the result, therefore, the application is held to be without any merit and is rejected. There shall be no order as to costs.

19
Somnath Das
(S. SOM)
VICE-CHAIRMAN
30/11/97