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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 907 OF 2011

Cuttack this the 22nd day of August, 2014

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)

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Rabindra Kumar Mallick,
aged about 43 years,
Son of Late Krushna Chandra Mallick,
At – Kotapur, PO- Sanakuanl, Dist.- Jajpur,
At present working as Sr. D.T.I.,
Khurda Road Railway Station,
Jatni, Khurda.

...Applicant

(Advocates: Mr. D.K.Mohanty)

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Union of India Represented through

1. General Manager,
East Coast Railways,
Rail Sadan, Chandrasekharapur,
Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager,
East Coast Railway,
Khurda Road, At/PO- Jatni,
Dist- Khurda-752050.
3. Senior Divisional Personnel Officer,
East Coast Railway,
Khurda Road, At/PO- Jatni,
Odissa - 752050.
4. Senior Divisional Finance Manager,
East Coast Railway,
Khurda Road, At/PO- Jatni,
Odissa - 752050.

... Respondents

(Advocate: Mr. S.K.Ojha)

.....

S.K.Ojha

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The case of the applicant in nutshell is that he was selected and joined in the post of Jr. D.T.I. at Cuttack and subsequently promoted to the post of Sr. DTI and posted to Talcher. The duties of DTI have been stipulated in Para 3.09 of Accident Manual in which it has been provided that on receipt of the information of accident all concerned Inspector shall reach the sight of the accident by the quickest available means and take the general charge of the situation. The Respondents issued letter dated 06.12.2007 in which it was directed that the Sectional DTI should proceed immediately to the accident site without awaiting any formal order from the higher authority or from the Division and render necessary assistance at the accident site. While he was continuing at Talcher he was required to visit different accident areas in MCL sidings as well as other areas for restoration of normal work. In terms of Rule 1420(1) of Indian Railway Establishment Code Volume-II, the nominated railway employee deputed to breakdown duties are entitled to get allowances and other benefits. As per the above rule the nominated staffs are Carriage and Workshop staff and Electrical Department staff. As such the applicant is entitled to get allowance for the breakdown duties in terms of Rule 1420(2) of the IREC. Further Rule 1420(2) provides that all other non-gazetted staffs of all departments who are called out in connection with accidents/breakdown including supervisory staffs who are not eligible for breakdown allowance, shall be allowed the concessions enumerated in Clauses (iii), (iv) and (v) of Sub-Rule (1) of the Rule 1420. As such



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in terms of Rule 1420(2) the applicant is entitled to get concessions enumerated in the Rules as stated above. Further as per the provision of 1420(1)(iv) the time taken in traveling to the site of the accident and back shall be counted for the purpose of payment of O.T. Besides, Rule 1420 (1)(v) provides that the persons engaged for the above duties shall be entitled to payment of full daily allowances at the rate applicable to ordinary localities without any stipulation that they should be out of headquarters beyond 8 Kms for a period exceeding 12 consecutive hours and Rule 1420(1)(v)(a) provides that daily allowances at full rate will be admissible for each breakdown occurring at different places on the same day. Though the applicant is entitled to all the benefits he has been paid only T.A. as per Rule 1420(iv). After performing the duty he has submitted the required bills/vouchers for release of legitimate dues but the Respondents have paid deaf ear to the said grievance. After becoming unsuccessful he had approached this Tribunal and in pursuance of the order of the Tribunal dated 24.02.2010 in O.A. No. 74/10 the Respondents rejected the claim of the applicant by invoking the provision of Rule 1420(2) of the IREC, which is not applicable to him. Hence, by filing the instant O.A. he has prayed to quash the order of rejection dated 21.04.2010 and to direct the Respondents to release the arrear claims such as OT & DA etc as per the Railway Boards Instruction within stipulated period to be fixed by this Tribunal.

2. Respondents have filed their counter resisting the claim of the applicant. According to the Respondents, while the applicant was working as Sr. Divisional Transportation Inspector at Talcher attended accident site at MCL siding for restoration of normal work for which he

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has been paid the T.A as per the extant rules. The MCL siding is a private siding and restoration work at MCL siding does not fall within the scope of definition of breakdown as indicated in Rule 1420((4) of the IREC. Payment of dues/allowances are being made on the basis of Rules and Circulars issued from time to time. Taking the decision in this regard is the ministerial business and falls within the domain of the administration. The duties of DTI comes under the supervisory category as defined in Estt. Sl. No. 50/72. There is no roster hour of duties prescribed for such category of staffs. Such staffs hold a position of responsibility and is employed mainly for a supervisory duty. Therefore, the applicant is not entitled to get any OT and breakdown allowance as he comes under supervisory post. The railway administration had not authorized the applicant to go to the accident site of MCL siding to attend the restoration work. Hence, it has been stated by the Respondents that this O.A. being devoid of merit is liable to be dismissed.

3. I have heard Mr. D.K.Mohanty, Ld. Counsel for the applicant, and Mr. S.K.Ojha, Ld. Panel Counsel appearing for the Respondent-Railways, and perused the materials placed on record.

4. Mr. Mohanty submitted that though the applicant is entitled to the benefits as claimed by him as per the Rules, the Respondents rejected his claim by applying wrong provision of IREC although the said provision is not attracted to the case of the applicant. It has been submitted that as the applicant has performed his duties at MCL siding, denying him the benefits which he is other wise entitled as

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per Rules, cannot be said to be bonafide exercise of power and, therefore, he has prayed for the relief claimed in this O.A. It has been further submitted by Mr. Mohanty that similarly situated employees have also been granted the benefits as claimed by him where as his claim has been rejected, causing discrimination to him and thereby the Respondents have committed injustice to the applicant.

5. On the other hand, Mr. Ojha, Ld. Panel Counsel for the Railways, vehemently opposed to the aforesaid contention by stating that in pursuance of the order of the Tribunal, Respondents have examined the case of the applicant with reference to the rules applicable on the subject. It cannot be said that rejection of the representation of the applicant is by application of any wrong provision. It has been stated that Rule does not permit payment of such allowance to the supervisory staffs like the applicant and though the applicant is insisting for such benefits as similarly situated persons have received but no proof in support of the above has been annexed by the applicant in this O.A. On the above ground, Mr. Ojha has reiterated his prayer made in the counter.

6. I have considered the rival contention of the parties. Before proceeding to examine the various aspects canvassed by the Counsels appearing for respective parties, I would like to quote the order of rejection dated 21.04.2010, which reads as under:

“Your representation for payment of Over Time Allowance for breakdown duty as submitted by you vide Annexure-A/8 in the above OA has been examined and it is observed that you have claimed

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OT for the period from Sept,07 to July, 09 in different spells. Further, against each spell you have indicated the number of hours you have worked over time and also indicated the dates on which you have submitted the vouchers to the Personnel Branch. The relevant rules regarding claiming of OT in your favour as submitted vide Annexure-A/3 of the OA has also been examined. After examining your claim in terms of the above circular, it is to inform you that the above circular is specifically pertaining to the staff of loco running sheds & C & W depots.

Further, you have enclosed a copy of the rule 1420 of Indian Railway Establishment Code vide Annexure-A/3 in the above OA. As per para 1420, sub-para-4, "breakdown" has been explained as follows:

- (i) Any accident which involves the calling out of a breakdown train or engine with special staff or equipment (including MFD equipment or traffic crane) from the nearest breakdown train depot or shed, or a breach or washaway on the line which interrupts normal traffic or
- (ii) Any of the following which interrupt normal traffic on running lines:
 - (a) Snapping of overhead electric traction lines which involves calling out of Tower Wagon or Breakdown lorry;
 - (b) Damage/Bursting of points requiring the attendance of a Breakdown/Repair/maintenance Gang;
 - (c) Breakdown of interlocked lifting barriers;
 - (d) Total interruption of telecommunication/communications or of power supply.

Further, as per your representation, vide Annexure-A/5 you have indicated that you used to attend several accidents in MCL siding and also vide para-4.5 in the above OA, you have mentioned that you are required to visit different accident areas in MCL Sidings as well as other areas for restoration of normal work.

In this regard this is to inform you that MCL siding is a private siding and the restoration work at MCL siding does not fall within the scope of definition of breakdown as indicated in sub-para-4 of rule -1420 of IREC.

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Accordingly, you are hereby informed that you are not entitled for OT for having worked in different spells at MCL sidings. However, you are eligible for TA and the same has already been paid to you and it has also been admitted by you in para-4.6 of the O.A.”

7. Rule 1420 of IREC deals with regard to the entitlement of the Railway employees who are deputed for breakdown duties. Sub Rule 1 (iii) of the above rule clearly stipulates that the staff to be supplied of free food, departmentally or otherwise, during the period they are engaged in breakdown duties. Similarly, sub rule 1(iv) of the said rule directs for payment of overtime work in accordance with the normal rules, time taken in traveling to the site of the accident and back shall also be reckoned for payment of overtime. Sub rule 1(v) directs for payment of full daily allowance at the rates applicable to ordinary localities without the stipulation that they should be out of headquarters beyond 8 Kms. For a period exceeding 12 consecutive hours. The applicant claims the payment of dues as per the rules cited above whereas the Respondents resist the applicant's claim as per para 4 of Rule 1420 of IREC, which inter alia provides as under:

(4) For the purpose of sub-rule (1), (2) and (3) above, a breakdown may be :-

(i) Any accident which involves the calling out of a breakdown train or engine with special staff or equipment (including MFD equipment or traffic crane) from the nearest breakdown train depot or shed, or a breach or washaway on the line which interrupts normal traffic; or

(ii) Any of the following which interrupt normal traffic on running lines:-

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- (a) Snapping of overhead electric traction lines which involves calling out of Tower Wagon or Breakdown Lorry;
 - (b) Damage/Bursting of points requiring the attendance of a Breakdown/Repair/Maintenance Gang;
 - (c) Breakdown of interlocked lifting barriers;
 - (d) Total interruption of telecommunication/communications or of power supply."

8. On perusal of the order of rejection, it appears that the Respondents rejected the claim of the applicant by taking into consideration the provision of para 4 of Rule 1420 of IREC although it is the specific stand that applicant is entitled to the benefits as claimed in the O.A. as per Rule 1420(2) of the IREC. It is also the specific case of the applicant that similar benefits have been given to other DTIs deputed to the accident site to clear the traffic for normal operation of the Railway. The order of rejection shows that the Respondents rejected the claim by applying Rule 1420 (4) but without taking note of the provision of IREC and that similar benefits have been granted to others in other Divisions. When applicant claims that he is entitled to benefits by application of certain provision, he has minimum expectation, which is legitimate, that the authority will decide the matter being unbiased. In view of the above, the order of rejection dated 21.04.2010 is quashed and the matter is remitted back to the Respondents to reconsider the case of the applicant by making the analysis of the provision cited by the applicant and the Rule 1420(4) and the allegation of the applicant that the benefit in question has been paid to similarly situated employees and communicate the result in a well-reasoned order

[Signature]

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within a period of 60 days from the date of receipt of copy of this order.

11. In the result, this OA is allowed to the extent stated above. There shall be no order as to costs.



(A.K.PATNAIK)
Member (Judicial)

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