

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.D.A.820 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

PREM NATH S/o Genda Lal,
aged about 59 years.
Retired Radiographer, B.R.
Singh Hospital, Eastern
Railway, Sealdah, at present
residing at C/o S.K.Lal,
110/1/E, Cossipur Road,
Calcutta-2, P.S.Cossipur.

... Applicant

Vs.

1. Union of India through General Manager,
Eastern Railway, Fairlie Place,
Calcutta-1.
2. General Manager, Eastern Railway,
Fairlie Place, Calcutta-1.
3. Chief Personnel Officer, Eastern
Railway, Fairlie Place, Calcutta-1.
4. Chief Medical Director, Eastern
Railway, 14, Strand Road, Calcutta-1.
5. Divisional Railway Manager, Eastern
Railway, Sealdah.
6. Medical Director, B.R.Singh Hospital,
Eastern Railway, Sealdah.
7. Sr.Divisional Personnel Officer,
Eastern Railway, Sealdah.

... Respondents

For the applicant : Mr.B.C.Sinha, counsel.
Mr.P.K.Ghosh, counsel.

For the respondents: Mrs.Uma Sanyal, counsel.

Heard on : 16.4.1998

Order on : 16.4.1998

ORDER

The short dispute arising in this case for adjudication is whether the applicant is entitled to get overtime allowance as Radiographer in the B.R.Singh Hospital, Sealdah, w.e.f. 1984, as stated in the prayer portion of the application.

2. According to the applicant, the question of entitlement of overtime allowance for Radiographer has been decided by this Tribunal in O.A.1042 of 1988 ~~decided~~ on 4.11.1992. After the passing of the order dated 4.11.1992, the applicant had applied for payment of overtime allowance w.e.f. 1984, but the respondents did not grant him benefit of overtime allowance as per the judgment of this Tribunal. Hence he has filed this application before this Tribunal.

3. Mrs.Uma Sanyal, ld.counsel appearing on behalf of the respondents, raises objection regarding the claim of the applicant though no reply has been filed by ^{the respondents} her. She submits that the claim of the applicant is not maintainable in view of the order passed subsequently on 17.7.1995 in CP(C) 21 of 1994 arising out of O.A.1042 of 1988. Mrs.Sanyal submits that the applicant is not entitled to get benefit of the judgment in respect of over time allowance from 1984 since it has been held by this Tribunal in the contempt petition that since the allegation of contempt rests upon non-payment of overtime allowances from 1984 and the explanation given by the respondents for not making such payment is found to be acceptable, it was held that no case for contempt has been made out. Hence, Mrs.Sanyal prays for dismissal of the instant application.

4. Ld.counsel, Mr.B.C.Sinha, appearing on behalf of the applicant, submits that the order passed on 17.7.1995 in CP(C) 21 of 1994, does not create any bar for fresh adjudication of entitlement of overtime allowance allowance w.e.f. 1984. Thus the applicant should be given the benefit of the judgment in the O.A. w.e.f. 1984.

5. I have considered the submissions of the ld.counsel, Mr.B.C. Sinha on that score and also the submissions made by Mrs.Uma

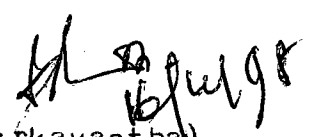
Sanyal, appearing on behalf of the respondents. I have also gone through the judgment passed by this Tribunal in O.A.1042 of 1988 and the order passed in CP(C) 21 of 1994. In the contempt petition filed before this Tribunal, the applicants therein had claimed the benefit of overtime allowance from 1984 alleging that the respondents did not act upon the judgment in O.A.1042 of 1988 for granting them reliefs by way of giving overtime allowance w.e.f. 1984. I find that the same claim has been adjudicated by this Tribunal in CP(C) 21 of 1994 vide order dated 17.7.1995. ^{for decision, about the allegation of contempt} This Tribunal had specifically held in paragraph 3 of the order dated 17.7.1995 (annexure 'A-8' to the application) that "since the allegation of contempt rests upon non-payment of overtime allowances from 1984 and since the explanation given by the respondent for not making such payment is found to be acceptable, we must hold that no case has been made out for contempt". From the aforesaid observation, it is found that the applicant's claim for overtime allowance from 1984 has not been ^{considered} ~~accepted~~ by this Tribunal in the contempt proceeding. ^{It is true that} ~~therefore,~~ when a subject matter has been decided and adjudicated by any court of law, subsequent application on the same subject matter shall be deemed to be barred by res judicata. ^{with} Whatever might be, the application related to contempt proceedings and from the order dated 17.7.1995, it is found that the respondents have not implemented the judgment in the O.A. excepting the overtime allowance on daily-rate basis which has been paid only for the months of July and August, 1983. According to the applicant, he was entitled to get an amount of Rs.1,29,000/- as overtime allowance for different periods since 1984. It is found from the record of this O.A. that the respondents could not decide from which date the arrears ^{of} overtime allowance is to be paid to the applicant since there was no mention of the date in the judgment delivered on 4.11.1992 in O.A.1042 of 1988. The judgment in the O.A. was delivered on 4.11.1992. Thereby, it

is found that the applicant is entitled to get the benefit of the judgment at least from 4.11.1992 in respect of overtime allowance. However, according to annexure 'A/6' to the application, confusion had arisen ^{in the minds} amongst the authorities regarding ^{delay} payment of overtime allowance in absence of the date mentioned in the judgment in the O.A. as to from which date the overtime allowance will be operative.

6. In view of the aforesaid circumstances, I am of the view that in the absence of any effective date in the judgment for payment of overtime allowance, the date of judgment in O.A.1042 of 1988 is a material one. Therefore, the applicant is entitled to get the benefit of overtime allowance at least from 4.11.1992, the date of judgment of the O.A.

7. Accordingly, the respondents are directed to make payment of overtime allowance to the applicant, if not paid already, w.e.f. 4.11.1992 i.e. from the date of judgment and ^{he is not entitled to} ~~no~~ payment of overtime allowance ^{after passing of the} ~~can be made before the passing of the~~ judgment dated 4.11.1992, as claimed by the applicant. The above mentioned payment be made to the applicant within three months from the date of communication of this order ^{as per} ~~by~~ giving ^{effect} ~~effect~~ to the judgment in O.A.1042 of 1988.

8. Application stands disposed of awarding no costs.


(D. Purkayastha)
Judicial Member