

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 254/2007

Date of order: 31.3.2010

CORAM:

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

Anand Mohan Sharma S/o Shri Pitamber Dutt Sharma, Station Master, North Western Railway, Bikaner, C/o Station Superintendent, North Western Railway, Bikaner - Address Badshwal Niwas, Bulaki-ki-Badi, Subhashpura, Bikaner.

...Applicant.

Mr. B.K. Vyas, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Bikaner.
3. The Divisional Personnel Officer, North Western Railway, Bikaner.
4. The Traffic Inspector, North Western Railway, Bikaner-I, Bikaner.

... Respondents.

Mr. K.K. Vyas, counsel for respondents.

ORDER

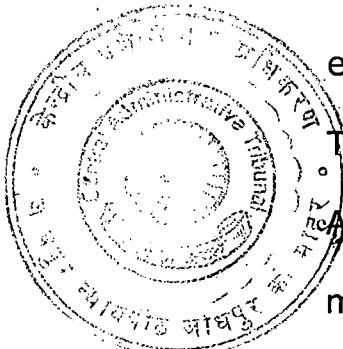
Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant is working as Assistant Station Master, North Western Railway, Bikaner. During the period between 2001-2003, the applicant was posted as Assistant Station Master, Kolayat. It is contended by the applicant that he had performed overtime duties during the said period of 2001-2003 and submitted his claims for overtime allowance to the Traffic Inspector, Bikaner-I for onward transmission to the Divisional

Personnel Officer, North Western Railway, Bikaner. Subsequently, he sent reminder letters on 25.04.2003, 11.11.2003, 29.05.2004 and 09.06.2004 (Annexure A/1 to A/4). By letter dated 28.02.2005 (Annex. A/5), the Divisional Personnel Officer, North Western Railway, Bikaner informed him that his claims for overtime allowance have not been received in his office. The applicant was directed to send duplicate copies duly verified. In response to the aforesaid communication, the applicant submitted duplicate bills through the Traffic Inspector on 15.04.2005 (Annex. A/6). After waiting for a year, the applicant sent another reminder to the Divisional Personnel Officer, NWR, Bikaner on 17.05.2006 (Annex. A/7). The North Western Railway Employees Union, Bikaner also took up the matter with the Divisional Personnel Officer, NWR, Bikaner by letter dated 21.04.2006 (Annex. A/8). The Divisional Personnel Officer, NWR, Bikaner by his letter dated 02.06.2006 (Annex. A/9) addressed to the Station Superintendent and Traffic Inspector directed them to do the needful in this matter. Further letters were written by the applicant on 22.06.2006, 29.01.2007, 23.02.2007 and 26.04.2007 (Annex. A/10 to A/13). There is also an enquiry report dated 24.08.2006 (Annex. A/14) submitted by one Shri Kishan Lal Gupta SWMJ, Bikaner in which it has been found that the overtime claims submitted by the applicant are correct. The applicant also served a notice dated 04.08.2007 through his counsel upon the respondents for settlement of his claim but finding no response to the said notice also, the applicant has filed this Original Application seeking a direction to the respondents to

make payment of overtime allowance claimed by him along with interest @ 18% per annum.

2. The respondents have filed a reply to the Original Application in which they have contended that the overtime claims reported to have been submitted by the applicant were never received in the office of the Divisional Personnel Officer. The overtime claims relate to the year 2001-2003 whereas the Original Application is filed in the month of September 2007, therefore, it is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The employees were not entitled to get overtime allowance during the relevant period.

The subject matter of overtime allowance falls under the Factories Act, 1948 and this Tribunal has no jurisdiction to adjudicate in this matter. The issue regarding the Tribunal's jurisdiction to adjudicate on the overtime allowance has been settled in OA No. 192/1995, A.C. Choube vs. UOI & Ors (FB) by Jabalpur Bench of this Tribunal vide order dated 09.08.2002. The applicant should have asked for extra relief arrangement at the relevant point of time. No such demand of such extra relief arrangement was made. The applicant has not submitted any proof to support his contention that he had submitted the overtime claims. Asking for duplicate bills does not mean that the applicant is entitled to get overtime allowance. The applicant was asked to submit duplicate bills to verify the genuineness of the claims. The enquiry report at Annexure A/14 only contains a recommendation of SWMI. As per the report of the Traffic Inspector, Bikaner dated 22.08.2006, the claim of the applicant has not been found to be genuine. The

report of the Traffic Inspector, Bikaner dated 22.08.2006 is at Annexure R/1.

3. I have heard the learned counsel for the applicant Shri B.K. Vyas and the learned counsel for the respondents Shri K.K. Vyas. I have also perused the records carefully.

4. The learned counsel for the respondents raised the issue of jurisdiction and referred to the order dated 09.08.2002 passed by Jabalpur Bench of the Tribunal in OA No. 192/1995 – A.C. Choube vs. UOI & Ors. Even though, counsel for the respondents could not produce a copy of the said order; copy was obtained by this Bench of the Tribunal from the Jabalpur Bench, in order to facilitate the adjudication of this matter. I have gone through the said order of this Tribunal in OA No. 192/1995 & OA No. 607/1997. The applicants in those cases were employed in the Bank Note Press, Dewas (MP) and the reference before the Larger Bench was as follows:

"Whether the Tribunal has jurisdiction to entertain the grievances of the applicants for grant of OTA under section 59 of the Factories Act, 1948 having regard to the provisions of sections 14 and 28 of the Administrative Tribunals Act, 1985?"

After discussing the issue in the light of the legal provisions, the Larger Bench of this Tribunal had answered the reference in the negative. Thus, as far as the claim of overtime allowance in respect of the employees covered by the Factories Act is concerned, this Tribunal cannot have a jurisdiction. However, it is necessary to see whether the applicant in this case is covered

by the Factories Act, 1948. In the Factories Act, 1948, the "factory" is defined as follows:

"(m) "factory" means any premises including the precincts thereof –

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)], or [a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating-place]."

Further the word "manufacturing process" is defined as follows:

"(k) "manufacturing process" means any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; [or]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or]

(vi) preserving or storing any article in cold storage;]"

It would be clearly evident from the aforesaid provisions that Factories Act is applicable to a printing press while it cannot be said to be applicable to a Railway Station where the applicant of the present O.A. was working. It cannot be said that the

activity being done at the Railway Station is a 'manufacturing process' as defined in the Factories Act. Therefore, I am unable to accept the contention of the respondents' counsel that the issue of overtime allowance raised by the applicant who was employed as Assistant Station Master in the Railways, cannot be entertained by this Tribunal.

5. The respondents have also contended that the claim of the applicant is time barred on the ground that the cause of action arose in the year 2002-2003 while the Original Application is filed in the year 2007. It is seen from the record that the applicant has been making repeated representations right from the year 2003 as mentioned in para 1 (supra), but the respondents did not take a decision about the claim. Under Section 21 of the Administrative Tribunals Act, 1985 where a representation is pending for more than six months, an application can be filed before the Tribunal. I do not therefore accept the contention of the respondents that this Original Application is hit by limitation. This is not a case in which the matter was once decided and the applicant tried to revive the cause of action by making another representation.

6. Now on the merits of this case, the applicant has produced copies of several letters / representations made by him from time to time starting from 25.04.2003 to 26.04.2007 seeking payment of overtime allowance claimed by him for the period between 2001-2003. In the reply filed by the respondents, they have contended that they have not received the bills submitted by the applicant. However, they have not disputed the act of asking for

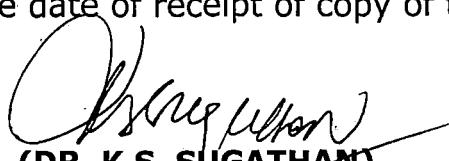
duplicate bills. Since the respondents have received the duplicate bills, there is a duty cast upon them to decide the genuineness of the bills and decide the claim according to rules. However, the respondents have not taken a final decision regarding the genuineness of the claim so far. The respondents have also not explained the reasons why the decision about the genuineness of the claim could not be taken and communicated to the applicant.

The main grounds on which the respondents sought the dismissal of the Original Application is that they had not received the overtime claims and that as per the report of the Traffic Inspector dated 22.08.2006 the claims are not genuine. As regards the non-receipt of overtime bills, after having asked the applicant to submit the duplicate bills, the respondents cannot now take that ground for refusing to entertain the claim. It is upto the respondents to verify the correctness or otherwise of the claim submitted by the applicant and decide about his entitlement. The second ground is the report of the Traffic Inspector, Bikaner dated 22.08.2006 in which the Traffic Inspector has reported that in the absence of the original records relating to the relevant period, it is not possible to verify the genuineness or otherwise of the overtime claim. As against the said report of the Traffic Inspector, there is another enquiry report dated 24.08.2006 (Annex. A/14) submitted by Shri Kishan Lal Gupta, SWMJ, Bikaner in which it is stated that even though the original records are not available, on the basis of supporting documents it can be said that the claims made by the applicant is genuine. It is upto the respondents to now finally decide on the

basis of these two enquiry reports as well as any other relevant record whether the claims made by the applicant is genuine or not.

7. I am, therefore, of the considered opinion that the ends of justice would be served in this case, if a direction is given to the respondents to consider the enquiry report dated 24.08.2006 (Annex. A/14) as well as the report dated 22.08.2006 (Annex. R/1) and take a decision on the genuineness of the claims submitted by the applicant, within a stipulated period.

8. In view of the above, the Original Application is disposed of with a direction to the respondents to consider the enquiry report dated 24.08.2006 (Annex. A/14) as well as the report dated 22.08.2006 (Annex. R/1) and any other relevant record and take a decision on the correctness or otherwise of the claims submitted by the applicant as well his entitlement as per rules and communicate the same to the applicant within a period of three months from the date of receipt of copy of this order. No order as to costs.


(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

RM

~~RM~~ (B.A. Chaudhury)

8/4/10

for B.K. wps

R/Copy

3/8/14