

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.501/2013

Jodhpur, this the 17th day of January, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)

- ◆ 1. Ahmed Hussain s/o Shri Malik Mohammad, aged about 47 years, r/o Loko Colony, Jodhpur (Raj.). Office Superintendent.
- 2. Ashok Kumar s/o Shri Ram Chand, aged about 52 years, r/o Bhagat Ki Kothi, Jodhpur (Raj.) SVC.
- 3. Ram Singh s/o Shri Shyam Singh, aged about 36 years, r/o Railway Colony, Jodhpur (Raj.) Khalasi.
- 4. Mahendra Kumar s/o Shri Ram Pal, aged about 34 years r/o Railway D.S.Colony, Jodhpur (Raj.) Khalasi.
- 5. Dilip Singh s/o Shri Narpat Singh, aged about 26 years r/o Railway Old Loko Colony, Jodhpur (Raj.) Khalasi
- 6. Ram Kishore s/o Shri Bakhata Ram, aged about 47 years, r/o Railway Old Loko Colony, Jodhpur (Raj.). Driver
- 7. Khetra Ram s/o Shri Baga Ram, aged about 54 years, r/o Railway D.S.Colony, Jodhpur (Raj.) Khalasi.
- 8. Satta Ram s/o Shri Chokha Ram, aged about 55 years r/o Rameshwar Nagar, Jodhpur (Raj.) Khalasi.
- 9. Pukhraj s/o Shri Bhola Ram, aged about 33 years r/o Bhagat ki Kothi, Jodhpur. Khalasi
- 10. Ram Singh s/o Shri Kalu Ram, aged about 47 years r/o Sector-7, Jodhpur (Raj.) Crane Salinger.
- 11. ~~Niranjan~~ Lal s/o Shri Om Prakash, aged about 33 years, r/o Siwanchi Gate, Jodhpur (Raj.) Khalasi.
- 12. Dharma Ram s/o Shri Ganga Ram, aged about 54 years r/o Railway Traffic Colony, Jodhpur (Raj.) Khalasi.
- 13. Kutla Ram s/o Shri Meh Ram, aged about 54 years r/o Railway D.S.Colony, Jodhpur (Raj.), Khalasi.

14. Jaggu Ram s/o Shri Ishra Ram, aged about 55 yeas, r/o Railway Nehru Colony, Jodhpur (Raj.) Khalasi.
15. Ram Sagar s/o Shri Ram Dev, aged about 37 years r/o Railway D.S.Colony, Jodhpur (Raj.) Office Superintendent
16. Satya Narayan s/o Shri Ratan Lal, aged about 54 years, r/o Railway Loko Colony, Jodhpur (Raj.) Driver
17. Ghamma Ram s/o Shri Anda Ram, aged about 55 years r/o Maderna Colony, Jodhpur (Raj.) Khalasi.
18. Haji Khan s/o Shri Gendu Khan, aged about 54 years r/o Loko Colony, Jodhpur (Raj.) Driver
19. Om Prakash s/o Shri Ram Chand, aged about 54 years r/o Pabupura, Air Force Road, Jodhpur (Raj.) SVC
20. Abdul Kayyum s/o Shri Ramjan Khan, aged about 44 yeas r/o Udai Mandir Aasan, Jodhpur (Raj.) Khalasi.
21. Fakir Khan s/o Shri Hakim Khan, aged about 54 years r/o Loko Colony, Jodhpur (Raj.) Khalasi.
22. Bharat Kumar s/o Shri Kishan Lal, aged about 46 years, r/o Rasala Road, Jodhpur (Raj.) Driver.
23. Sonraj s/o Shri Pukhraj, aged about 54 years r/o Maderna Colony, Jodhpur (Raj.) Driver.
24. Durga Ram s/o Shri Natha Ram, aged about 54 years r/o Sursagar, Jodhpur (Raj.) Khalasi.

All Applicants work under respondent No.3, Dy. Chief Material Manager, North Western Railway, Jodhpur.

By Advocate : Mr. P.S.Chundawat

.....Applicants

Vs.

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jodhpur
3. Dy. Chief Material Manager, North Western Railway, Jodhpur.

...Respondents

By Advocate : Mr. Salil Trivedi

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The present application is filed against the order dated 31.10.2013 (Ann.A/1) and letter dated 10.8.2013 (Ann.A/2) whereby excess payment of Overtime and Traveling Allowance is to be recovered from the salary of the applicants.

The applicants have also stated that they are preferring this joint O.A. as the cause of action and the impugned letters are exactly similarly, except the individual names.

2. Brief facts of the case are that the respondent department issued notices dated 4.7.2013 to the applicants for recovery of the excess payment of Over Time and Traveling Allowance (T.A.) from their salaries for the period 2009-2012. The said recovery was based on the letter dated 1.12.2012 of the Vigilance Department wherein certain observations were made in regard to excess payment of Overtime and T.A. to the employees. The applicants filed their replies to the aforesaid notices wherein it was stated that the said recovery is illegal as the payment was made to them, after passing the bills from all the levels/departments. It is stated that the respondent department without considering reply of the applicants straightway proposed to make recovery from the salary of the applicants. It is averred that the provisions of post check is made for the cases wherein payment is being made without checking at the department level, but in the present case, the forms of Overtime and T.A. were checked at various levels/department and only after being satisfied by the authorities up

to the audit department, the said excess payment was released. It is further averred that the recovery order is passed without application of mind on the part of the respondent department and the concerned officer has not properly taken into consideration the reply of the applicants, therefore, the impugned order is bad in the eye of law. Aggrieved by the action of the respondents, the applicants have filed the present OA thereby praying for the following reliefs:-

- ◆ (a) By an appropriate order or direction, the impugned recovery order dated 31.10.2013 (Annexure-A1) & letters dated 10.08.2013 (Annexure-A2) seeking recovery of the excess payment of over time & T.A. from the salary of the applicants, be declared illegal and be quashed and set aside, qua the applicants.
- ◆ (b) Any other appropriate order or direction, which may be considered to be just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicants.
- ◆ (c) Cost of the application may kindly be awarded in favour of the applicants.

3. The respondents have denied the right of the applicants and have submitted that the orders of post check were received under covering letter of Sr. Accounts and Financial Advisor letter dated 19.7.2005. Prior to receipt of above instructions, all the claims of employees were pre-checked and passed for payment as per instruction of Northern Railway Hq. office. In accordance with the instructions, the claims of the applicants along with others were got post-checked. During the post check, Vigilance Department has also carried out the check on 1.12.2012 and given instructions to complete the exercise by 15.12.2012. On completion of exercise of the post check of claims, the same was sent to Associated Accounts Office for



further verification and vetting of recovery. On receipt of vetted recovery from the Accounts Office, all the affected employees were given notice to show cause vide letter dated 4.7.2013 and after considering the representation in response to show-cause, Ann.A/5, the same was replied by the competent authority vide Ann.A/2. Thus, the respondents have followed the extent policy of post check and thereafter by following the principles of natural justice and after considering the representations, the recovery order was passed as per the direction of the Vigilance Department. Therefore, the order of recovery is perfectly legal and does not require any interference by this Tribunal.

4. Heard both the parties. So far as averment made by the applicants for pursuing the matter jointly is concerned, the applicants are permitted to pursue the matter jointly.

5. Counsel for the applicants contended that although applicants have been served with a notice and after considering the reply, the competent authority has issued order to recover the excess amount paid, but while considering the representations of the applicants, the competent authority has not appreciated the fact that when the duty of the employee is assigned on the delivery vehicle, he cannot leave the vehicle as he is tagged with it and when the workshop is locked after duty hours i.e. 5 P.M. then the employee has to remain on the assigned vehicle till it departs. Thereafter, the said vehicle make deliveries to all the stations coming in the way, where the items are checked and downloaded, which consumes a lot of time. Thus, even the station having distance of 100 km may take more than 4-5

hours to complete the job and all these facts have not at all been taken into consideration by the railway authorities before passing the order of recovery, therefore, orders Annex. A/1 & A/2 require to be quashed and set aside.

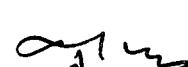
5. Per contra counsel for the respondents contended that Railway Department while considering the reply of the notices, did consider all the aspects and after post check, it was found that excess amount was paid to the employees, therefore, orders Annex. A/1 & A/2 are as per law.

6. I have considered the rival contentions of both the parties and also perused relevant orders passed by the respondent-department.

7. Having considered rival contentions, I propose to dispose of this OA with following directions :

- (i) Applicants are directed to file detailed representations to the respondent-department within 15 days from the date of receipt of this order raising all the available grounds with respect to recovery, before competent authority in the respondent-department.
- (ii) Thereafter, the competent authority shall decide the representations of the applicants within 2 weeks keeping in view the duty assigned to the individual applicants as well as the time consumed in delivering the goods at various stations and also other relevant facts as raised or averred in the representations.
- (iii) Annex. A/1 & A/2 shall remain 'kept in abeyance' till above exercise is completed.
- (iv) Thereafter, if any grievance remains to the applicants, they may approach this Tribunal, if so advised.

8. In the above terms, the OA stands disposed off with no order as to costs.


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

R/ss