

Central Administrative Tribunal

Ernakulam Bench

Dated Tuesday the 6th February 1990.

Present:

Hon'ble Shri A.V. Haridasan, Member (Judicial)

ORIGINAL APPLICATION: 79/89

E. Krishnan Kutty Menon

..the applicant

Versus

General Manager,
Southern Railway,
Madras

..1st respondent

Divisional Manager,
Southern Railway,
Trivandrum

..2nd respondent

Permanent Way Inspector
Southern Railway,
Kottayam

..3rd respondent

Shri S.K. Thampi, Advocate

..appeared for the
applicant

Mrs. Sumathi Dandapani, Advocate

..appeared for the
respondents

JUDGMENT

The grievance of the applicant, an ex-railway employee who retired from service on 31.1.1988 in this application filed on 23.12.88 is that the respondents have wrongly classified the Gate in which he was working as Gate Keeper as 'C' and have consequently denied him ~~of~~ ~~any~~ Over Time Allowance for a period from 13.1.77 to 31.1.1988. The applicant prays that the respondents may

be directed to correct that error and also be directed to pay the applicant Rs.10,363/- being the total amount due to him by way of Over Time Allowance (OTA for short). It is averred in the application that the Gate in which he was working, as gate keeper was frequented by the vehicles coming on the road and also by trains coming on the railway track, making it necessary for him to be on duty without rest for 12 hours a day. The case of the applicant is that, had the gate, where he was working been not reclassified as 'C' he would have been entitled to OTA and that the wrong classification was the reason for the denial of legitimate remuneration to the applicant, and that the respondents have to make good the loss caused to him. It is also averred in the application that he had made representations to the concerned authorities which did not prove to be of any avail and that he was constrained to make this application.

2. To explain the delay caused to file this application the applicant stated that he had been in indigent situation so that he could not approach this Tribunal earlier and it is also stated that no application of any sort was filed or is pending before any forum on this cause of action.

3. The application is resisted by the respondents. It has been averred in the reply filed on behalf of the respondents that for being entitled to claim OTA, a railway employee must have been required to work over

and above regular rostered hours, and that in case an employee is classified as Essentially Intermittent (EI for short) normal hours of work being 12 hours a day the applicant who was classified as EI having admittedly not performed work on any day for more than 12 hours he has not entitled for OTA at all. Regarding the classification as Essentially Intermittent, continuous etc. provisions are made in the rules viz. Railway servants Hours of Employment Regulations framed under Chapter VI-A of the Indian Railway Act, 1890. Rule 3 of Section III framed by the Central Government in exercise of the powers conferred by sub-section (1) of Section 71-E of the Act 9 of 1890, confers powers on an officer not below the rank of a Senior Scale Officer to classify the railway employee as intensive or essentially intermittent etc. within the meaning of Section 71-A. In rule 4 provisions are made for appeal over the decisions of the Regional Labour Commissioner in this matter and period prescribed for filing such appeal is 30 days from the date of decision of the Regional Labour Commissioner. It is not disputed that the applicant was classified as Essentially Intermittent. Until the day of his retirement the applicant has not made any complaint that he has been wrongly classified as essentially intermittent taking recourse to provisions for appeal contained in rule 4. It is not on the basis of the class of Gate in which the Gateman is working,

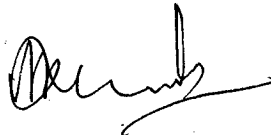
that Over Time Allowance is paid. It is on the basis of classification of employee as Essentially Intermittent, Continuous etc. In the classification of employee into essentially intermittent and other categories the class of gate in which the Gate Keeper is working may have some bearing. But it is the classification of employees that matters for entitlement to Over Time Allowance. Since the applicant has been classified as Essentially intermittent way back in 1976 and or even prior to that and since no appeal had been filed against such classification, I am of the view that the complaint of the applicant at this stage more than a decade after his retirement, is quite stale and that it cannot be sustained before any legal forum.

4. In the reply statement filed by the respondents it has been averred that the applicant along with 11 other persons had made a claim for OTA before the Labour Court in the year 1983 in CP 205/83 on the file of Labour Court, Ernakulam and that application had been dismissed and that the claim in this application is therefore barred by the principles of resjudicata. The fact that the applicant along with 11 others had filed a claim petition before the Labour Court for OTA is not disputed. But what is stated in the rejoinder is that the cause of action was not strictly the same. But anyway the question whether the applicant was entitled for OTA

or not was agitated before the Labour Court and the Labour Court dismissed that claim. The applicant has not pursued the matter any further. The statement of the applicant that no petition of any sort had ever been filed in this regard before any Court or Tribunal, therefore, amounts to suppression of material facts.

5. In the facts and circumstances of the case and the documents placed before me, I am convinced that the applicant has no legitimate grievance. Therefore, the application is dismissed.

6. There is no order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER
6.2.1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

RA No.44/90

O.A. No. 79/89

~~K.M.X.M.K~~

~~199~~

DATE OF DECISION 7-6-1991

E Krishnankutty Menon

Applicant (s)

Mr SK Tampi

Advocate for the Applicant (s)

Versus

General Manager, Southern
Railway, Madras & others

Respondent (s)

Mrs Sumathi Dandapani

Advocate for the Respondent (s) 1-3

CORAM:

The Hon'ble Mr. AV Haridasan, Judicial Member.

~~The Hon'ble M.K~~

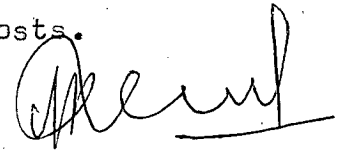
1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

The applicant whose application for recovery of overtime allowance alleged to be wrongly denied to him was dismissed by this Tribunal by the order dated 6.2.90, has filed this review application praying that for the reasons mentioned in the application, the order may be reviewed and the original application may be allowed. Though the review application is posted for hearing before the Bench to-day, neither applicant nor his counsel is present. Nevertheless, I have gone through the review application, the order passed on the original application and the connected papers. Though an anxious search was made to find out whether any error apparent on the face of the records in the decision arrived at in the original application, I could

seenone. The applicant appears to challenge the merit of the finding ~~which application~~ on the basis of some logic which he put-forth in the original application had and eventually lost. In la review application, the applicant is not entitled to reagitate the questions which have been considered and decided in the final order. It appears that the review applicant has misunderstood the statement in the order on the original application that the applicant cannot put-forth a claim after a decade and after his retirement to mean that the applicant retired a decade ago. I would like to make it clear that I never meant that the applicant retired a decade ago. I only meant that the claim related to a period more than a decade earlier than the date of the application. On a careful scrutiny of the records, I am convinced that there is absolutely no ground to review the order. Hence, the review application is dismissed.

2 There will be no order as to costs.


(AV Haridasan)
Judicial Member
7.6.91