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CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 241 OF 2005

Dated the 26th February, 2008

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

D. Vijayadharan,
S/o D Divakaran, retired Yard Master,
Southern Railway, Kollam,
Residing at 'VS Nivas',
Uliyakovil PO, Kollam-691 019.

.. Applicant

[By Advocate: Mr Sreeraj for Mr Shafik MA)

-Versus-

1. Union of India,
Represented by the General Manager,
Southern Railway, headquarters Office, Chennai.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office, Chennai.
3. The Divisional Railway Manager,
Southern Railways, Trivandrum Division,
Trivandrum.
4. The Senior Divisional Personnel Officer,
Southern Railways, Trivandrum Division,
Trivandrum-14.
5. The Senior Divisional Operations Manager,
Southern Railway, Trivandrum Division,
Trivandrum-14.

.... Respondents

[By Advocates: Mrs Sumathi Dandapani, Senior, Ms. PK Nandini)

This application having been heard on 26th February, 2008
the Tribunal delivered the following -


ORDER

(Hon'ble Smt. Sathi Nair, Vice Chairman)

The applicant is aggrieved by the refusal of the respondents in granting cash equivalent of 175 days of compensatory rest due to him from the year 1995 onwards.

2] The applicant is a retired Yardmaster of Trivandrum division of southern Railway. He retired from service on 31.5.2004. He was promoted as a yardmaster in 1992 and joined at Quilon in the marshalling Yard w.e.f .2.1.1992. As per the employment classification he was rostered to work for 8 hours a day and 48 hrs in a week and was entitled to a day's rest every week. For duties performed beyond the rostered hours due to the exigencies of service the applicant is entitled to get overtime allowance at the prescribed rates and for forgoing the weekly rest also the applicant is entitled to get further overtime allowance and further compensatory rest, in short that is the claim of the applicant in this OA. According to the applicant due to shortage of staff he was forced to forego his weekly rest continuously from 25.9.98 to 25.3.2003 due to the failure on the part of the respondents in filling up the post of rest giver Yardmaster. He was granted only 42 days of rest against the credit of 175 days. Annexures-A3, A4 and A5 are the representations in this regard.

3] It is further submitted that Annexure-A7 instructions state that there is no provision in the Hours of employment Regulations for condonation of non grant of compensatory offs/rests that are overdue as the same cannot be allowed to lapse. The applicant also relies on Annexure A8 Railway board's letter dated Nil, April 1978 and a report of the Labour enforcement Officer Trivandrum who it is alleged had verified the records and reported that the compensatory rest accumulated in the case of the applicant was not for any reasons attributable to the applicant.




4] The respondents have filed a reply statement. They have submitted that the applicant has not pointed out any rule by which cash equivalent can be paid in lieu of compensatory rest. The applicant has also admitted to having received overtime allowance for the period he had worked over and above the rostered hours of duty. Even the grant of compensatory rest is not mandatory and can be given only if exigencies of service permit.


5] They have disputed the figures shown in annexure A2 as they are not tallying with his own representations in Annexures-A3 to A5. It is further pointed out that the post of Yardmaster was classified as 'continuous' under the Hours of Employment Regulations. Since the work load of Quilon yard had reduced considerably, a factual job analysis on the duties of Yardmaster was conducted in the year 2003 and the classification has been changed to 'Essentially intermittent' by the competent authority and a revised duty roster for 60 hours per week was issued on 25.2.2003 and the scope of claiming overtime allowance had been curtailed and the applicant had represented the matter only on 1.5.2003 after this decision was taken.

Rejoinder has been filed denying the averments of the respondents.

6] We heard the learned counsel on both sides. The respondents also produced the Staff representation Register for the period for perusal of the court.



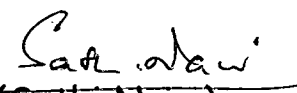
7] The issue is a simple one. The Rule position is admitted on both sides. The instructions for recording extra hours worked and grant of compensatory rest in Section VIII of the Hours of Employment Regulations are produced as Annexure-A7 according to which there is no dispute that an employee who has worked overtime shall be compensated by grant of, OT allowance for the extra hours. In addition to this the employee should be given a day's compensatory rest in lieu of weekly rest foregone. The applicant has admitted to having received the overtime allowance for the extra-hours worked. In this OA, his prayer is limited to payment of cash equivalent of the days of compensatory rest that he was entitled to but foregone by him. There is no such provision in the rules to claim cash equivalent of the compensatory rest not availed of. The respondents are right in holding that the prayer of the applicant is not covered under any of the instructions quoted by him and all that those instructions say is about the entitlement and the need to provide compensatory rest. The only reasoning advanced by the applicant is that in the given circumstances, the only possible compensation is by way of granting monetary benefits. Since the reasons for non-grant are attributable to the respondents. This is a totally flawed and unacceptable argument. A legal right can accrue when there is a lawful entitlement, otherwise any employee can demand that all kinds of grievances shall be compensated by monetary payments. The staff register produced by the respondents shows that the representations made by the applicant on 7/2001 only related to the non payment of OTA and while working in the said post



he had never represented against the nonpayment of compensatory offs before 6/2003. The respondents have also denied the Labour Enforcement officer had reported that the respondents are responsible for the non-grant of weekly rests. Besides we notice from the Annexure-A7 instructions that the compensatory offs have to be granted within a period of one month and hence the issue cannot be agitated after a lapse of many years. Nothing prevented the applicant from asking for it at the appropriate time. The purpose of giving the compensatory rest is to provide a break from strenuous duties so as to recoup lost energy in order to perform better. It is not a benefit to be accumulated and availed of retrospectively after a few years like Earned Leave etc.

8] In short, we do not see any merit in this Application, the prayer of the applicant can only be termed as fanciful if not frivolous. Normally we should have imposed costs in this matter, but we refrain from doing so as the applicant is a pensioner at this point of time. OA is dismissed.


(George Parackal)
Judicial Member


(Sathi Nair)
Vice Chairman