

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 250 of 2009

MONDAY, this the 08th day of March, 2010

C O R A M :

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P. Nagamanickam,
S/o. V.T. Ponnusamy,
Retired Senior Section Engineer/
Carriage Wagon/Erode, Residing at
No. 109/41, Bharathi Nagar,
Near Sree Krishna School,
Chadayam Palayam Road, Erode

... **Applicant.**

(By Advocate Mr. T C Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O,
Chennai – 3
2. The Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad
3. The Senior Divisional Mechanical Engineer,
Southern Railway, Palakkad Division,
Palakkad.
4. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad.

... **Respondents.**

(By Advocate Mr. Thomas Mathew Nellimoottil)

The original Application having been heard on 24.02.10, this Tribunal
on 08.03.10, delivered the following:



O R D E R

HONBLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the denial of payment of break down special allowance for the period between 06.06.97 and 17.06.01 and for the period between 12.08.01 and 31.08.03, the applicant has filed this O.A. He has sought the following reliefs:

- (i) Call for the records leading to the issue of Annexure A1 and quash the same;
- (ii) Direct the respondent to process the OT bills submitted by the competent supervisor after A6 order and as referred to in Annexure A1 and direct further to effect payment of the same forthwith;
- (iii) Direct the respondents to pay interest on the OTA due and payable in terms of the direction in para 8(ii) above to be calculated w.e.f. 01.10.07 upto the date of full and final settlement of the same;
- (iv) Award costs of and incidental to this application.

2. The applicant joined the Railway services as a Head Train Examiner (Junior Engineer/C&W). He was promoted as Chief Train Examiner (Section Engineer/C&W) and further as Carriage and Wagon Superintendent (Senior Section Engineer) from which post he was superannuated on 31.08.2003. He was in continuous charge of Break Down Special at Erode for about 20 years. He was being paid break down overtime allowance as per rules. As Senior Section Engineer he did not claim break down special overtime allowance during 1997 as he was informed by his superior officer that he was not entitled for payment of overtime allowance as per rules. He came to know that in other Divisions overtime allowance was being paid to the persons of applicant's status. He submitted overtime bills for the period between 17.06.2001 to 11.08.2001 and for subsequent period. He was paid a certain amount. He continued pursuing payment of the break down overtime allowance for the period between 6.6.1997 to 22.04.2003 excluding the period between 17.06.2001 to 11.08.2001. Finally, he approached this Tribunal in OA No. 476/2006, which was disposed of vide Annexure A-6 order dated

30.03.2007. The relevant portion of the said order reads as under :

"3. Arguments were heard and documents perused. The retention period of OTA documents is 3 years or one year after the completion of audit. Annexure R-1 reflects that the applicant's OTA for the period 2001 was processed and paid after his retirement i.e. 2003. And the present claim preferred by the applicant relating to the period of 1997 onwards was made in 2003, vide Annexure A-3. As such, in all probability, the records must be available. Perhaps, the respondents would have, on the basis of general period of retention, would have stated that the records are not available. For, If the records had been destroyed, the authorities would have maintained due details of weeding out/destruction and reference would have been made in their reply. This is not done here.

4. Keeping in view the fact that the labour of the employees should be duly rewarded, attempt should be made to locate the records, if not already destroyed, and process the claim of the applicant, who is a senior citizen and after due verification, any amount due to the applicant be paid to him. This drill may be performed within a period of six months from the date of communication of this order.

5. The Original Application is disposed of as above. No costs."

The applicant pursued compliance with the order of this Tribunal. He was informed by Annexure A-1 that he has already been paid break down overtime allowance and in effect, rejected the applicant's claim. Hence the O.A.

3. The applicant submits that the Annexure A-1 order is passed without application of mind. The claim of the applicant was negated on the ground that certain payments were made to him and the details regarding the same is unknown. Therefore, the rejection of his claim for break down overtime allowance is arbitrary. Refusal on the part of the respondents to make the payment of break down overtime allowance without assigning any reason is unjust and is in clear defiant negation of the directions of this Tribunal in Annexure A-6 order.

4. The respondents contested the O.A. The applicant is claiming break down overtime allowance pertaining to the period from May, 1997 onwards after a time lag of 9 years. There is inordinate delay which cannot be condoned. There is no record to

verify and ensure that overtime amount for the period from 1997 to 2003 were not already paid to the applicant. No cogent reason has been advanced by the applicant for the long delay. The applicant was deputed for restoration of work in connection with accident of the train No. 6602 at Kadalundi bridge during 2001. The applicant was paid overtime allowance for the period 17.06.2001 to 11.08.2001. The staff who were deputed for the above work claimed overtime allowance upto 23.5 hours per day which was cleared by the Administration. Two years after retirement, the applicant requested for payment of overtime allowance for the period between 06.06.1997 to 22.04.2003. This representation reveals that the applicant had not claimed overtime allowance by submitting overtime slips periodically within the fortnight of performing such overtime work. There is no proof for the performance of duties by the applicant for his entitlement of overtime allowance. It was not possible to determine whether he was entitled for overtime allowance as the relevant muster roll / attendance register and other connected records to verify the claim of the applicant were not available since preservation period of three years or one year after completion of audit was long over. The applicant was a senior supervisor official. He is supposed to be conversant with the rules for claiming overtime allowance. He cannot plead ignorance of rules or being misled by a superior officer for not claiming the overtime allowance within the prescribed time limit. The applicant who did not make any claim for overtime allowance pertaining to the year 1997 onwards within the time prescribed, is now estopped from making the claim after 9 years. In deference to the order of this Tribunal at Annexure A-6, records were verified and it was advised by the Senior Divisional Finance Manager, Palghat that an amount of Rs. 1,09,777/- had already been paid to him and any other payment now will result in excess. The payment of overtime allowance has been made for the period between 1997 and 2006 during 1999, 2000 and 2006. Any further payment of overtime allowance without verifying the proper records which are unavailable, would lead to excess payment. Therefore, the O.A. is liable to be dismissed.

5. Arguments were heard and documents perused.

6. At the relevant time for which the overtime allowance is claimed, the applicant was a responsible supervisory officer. It does not stand to reason that his superior officer misinformed him about his non-entitlement for payment of overtime allowance as provided under the rules. Any ordinary person would necessarily cross check whether he is entitled to claim such overtime allowance or not. If the applicant has not done so, then he only has to take the blame for it.

7. The applicant has been claiming overtime allowance for a number of years. He was familiar with the rules. It was expected of him to claim the overtime allowance within a fortnight of having performed overtime work. It was also expected of him to be aware of the rules that the records on the basis of which the payment of overtime allowance is paid and other relevant records are preserved for only three years or one year after the audit whichever is later. If he did not prefer his claim for overtime allowance within the prescribed time or within reasonable time before the records were destroyed, he has no locus standi or right to claim it after a long delay of 9 years. The claim of the applicant is time barred.

8. The applicant must have, like other staff, done overtime work in the wake of the train accident at Kadalundi. On a direction from this Tribunal, the Railway Authorities have made sincere efforts to process his belated claim for overtime allowance. An amount of Rs. 1,09,777/- has already been paid to the applicant as overtime allowance for the period from 1997 to 2003. Further payment in the absence of necessary documents for verification is not advisable as it may result in excess payment. Therefore, the respondents are not in a position to grant his request. The refusal on the part of the respondents to arrange for payment of the overtime allowance as sought by the applicant is quite sound legally.

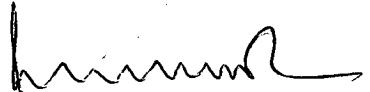


9. In our considered view, none of the grounds raised by the applicant is sustainable in law. The O.A. is, therefore, dismissed. No order as to costs.

(Dated, the 06th March, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

CVR..