

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 3 of 2006

Wednesday, this the 21st day of March, 2007

C O R A M :

HON'BLE DR K B S RAJAN, JUDICIAL MEMBER

K. Kumaran, S/o. Chatha,
Catering Supervisor Grade - I,
Now Working in Kerala Express,
Southern Railway, Thiruvananthapuram - 14 ... Applicant.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. The Senior Divisional Personnel Officer,
Southern Railway, Divisional Office,
Thiruvananthapuram - 14
2. The Divisional Personnel Officer,
South Bangalore City, Bangalore,
South Western Railway, Karnataka.
3. Union of India represented by
The General Manager,
South Western Railway,
Headquarters, Hubli,
Karnataka State ... Respondents.

(By Advocate Ms. P.K Nandini)

The Original Application having been heard on 21.03.07, this Tribunal on the same day delivered the following :

ORDER

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant had been functioning at the material point of time as a supervisory staff. His O.T.A. for a specific period from 04.04.93 to 29.04.95



and later from 23.04.00 to 14.09.02 had been processed and cleared for payment. For the intermediate period, the respondents have rejected the claim on the ground that the applicant was a supervisory staff. In fact, even during those periods, during which the applicant was paid OTA as stated above, the applicant was holding the supervisory post only. Thus, the claim of the applicant is that the authorities are in complete error in not paying OTA for the intermediate period from 30.04.95 to 22.04.2000.

2. Respondents have contested the O.A. Their contention is as under:-

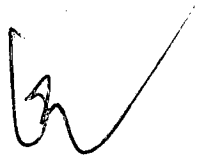
(a) The applicant has approached this Tribunal aggrieved by the non-payment of OTA for the period from 30.04.95 to 22.04.2000. It could be seen from Annexure A/1 that the Chief Catering Inspector/Mobile Unit/Bangalore had advised the Catering Supervisor/Karnataka Express/Batch no. 5 to submit the overtime allowance slips for the period from 1996-97 to December, 2000 vide letter dated 01.03.2001. Therefore, it is evident from Annexure A-1 that the O.T.A. Slips were forwarded to the respondent No. 2 belatedly by the supervisory official and the applicant is having the knowledge of belated submission of O.T. Slips. The applicant has not stated in the O.A. that the O.T. Slips are furnished as per Annexures A/2 and A/3 wherein it could be seen that the O.T. Slips for the period 07.01.96 to 27.12.97 was submitted as per Annexure A/2 and O.T. Slips from 28.12.97 to 22.04.2000 was submitted on 30.08.2001. However, the periods of 2001 and 2002 wherever the O.T. Slips were received by the respondent No. 2, payments have already been made during the year 2002 itself as per the statement at Annexure A/12.

(b) There is no illegality committed by the respondents in



denying the payment of overtime allowance to the applicant. The respondents have acted in accordance with the rules/instructions issued by the Railway Board from time to time and there is no violation of rules or discriminatory treatment meted out as alleged by the applicant. The impugned order passed by the respondents at Annexures A/7 and A/11 are just and correct and are in consonance with the Railway Board orders and sustainable in the eyes of law. Therefore, no interference is required to Annexure A/7 and A/11. The applicant's claim that he has been paid overtime allowance for the subsequent periods is an admitted fact. When instructions were issued by the Railway Board that the supervisory staff of catering department are not entitled for payment of OTA, the respondents are bound by the orders of Railway Board. Therefore, the averment of the applicant that he has been paid OTA for the subsequent periods will not give right to the respondents to commit a mistake in spite of Railway Board instructions dated 14.11.2003. The averment of the applicant that the Railway Board letter dated 14.11.2003 will have prospective effect is not correct. The Railway Board vide letter dated 14.11.2003 had cancelled the sanction already accorded in favour of Shri V. Madhavan, Retd. Catering Inspector of Madras Division of Southern Railway and necessary action has already been taken by the department for recovery of the amount already paid in his favour. Therefore, the applicant is also liable for similar action as per the Railway Board instructions dated 14.11.2003.

3. The applicant has furnished his rejoinder in which he had stated that when he had done his part of the job in preferring the O.T.A. on time, if there was delay on the part of administration, he cannot be made to suffer. In so far

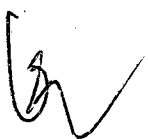


as comparison with Madhavan's case, the contention of the applicant in the rejoinder is that in his case his OTA claim had been processed and money paid even in September and October, 2004 (meaning thereby that had the case of the applicant been comparable with that of Madhavan in whose case show cause was issued in December, 2003, there was no question of the applicant's OTA being processed and paid in 2004.)

4. In their additional reply, respondents have reiterated the fact that as per their action in denying the OTA to the applicant is in accordance with the provisions of the Railway Board's orders dated 14-11-2003.

5. Counsel for the applicant has submitted that the period for which the OTA was claimed was anterior to the date of issue of Railway Board's letter dated 14.11.2003, which inter alia stated, **"The Supervisory staff included in the Annexure to your Railway's letter dated 24-3-2003 are not eligible for OTA in terms of the extant instructions and hence have been excluded from the list."** In so far as the above observation, the same applies only to the case of Madhavan whose case was referred to the Railway Board, whereas, consciously the respondents have passed the bill of the applicant as late as in September and October, 2004 and as such, the respondents cannot deny the OTA for the intermediate period.

6. Counsel for respondents contended that the denial of OTA was justified and as per rules as the Railway Board's letter is unambiguous that the



supervisory staff are not entitled to OTA.

7. Arguments were heard and documents perused. Annexure A-1 is a communication calling for submission of O.T.A. bills and Annexure A-2 is the reply thereto, transmitting the OTA of all the staff members of Karnataka Express. The applicant's name figures at serial No. 2 for the period from 07-01-1996 to 29-07-1997. Again, vide Annexure A-12, admittedly the applicant's claim for OTA from 1993 to 1995 and later from April 2000 to September, 2002 have been paid. What has been left is only for the period between May 1995 to March, 2000 for which necessary OTA bills had already been forwarded as stated above. Respondents themselves have, vide their Annexure A-11 order stated, **"However, the over time allowance claim for the periods prior to the issue of Railway Board letter dated 14-11-2003 had been arranged as per the enclosed statement."** This version clinches the issue and it is evident that even as per the respondents, the decision of the Railway Board shall not have retrospective effect. Since the claim of the applicant is for OTA for the period from 1995 to 2000, the same shall have to be paid to him, just as he had been paid OTA for the period anterior as well as posterior to the said period and admittedly during these entire periods, the applicant was holding only supervisory post.

8. In the end, the OA is allowed. It is declared that even as per the respondents' own words, vide last sentence of the penultimate para of Order dated 24-11-2005 at Annexure A-11 Impugned order, for Over Time performed



prior to the Issue of the Railway Board letter dated 14-11-2003, the applicant is entitled to the OTA. In fact, the applicant has been paid such OTA for the period from April 1993 to April 95 and again from Apr 2000 to September, 2002 but during the intermediate period from 1995 to 2000 the denial of OTA is illegal. The applicant is entitled to the same as claimed by him. Respondents are directed to process the OTA claim already preferred by the applicant and make the payment within a period of five months from the date of communication of this order.

(Dated, the 21st March, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.