

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 352/2005

MONDAY THIS THE 18th DAY OF APRIL, 2007

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

R. Rajarathinam S/o R.K.Rasiah
Station Master Grade-I, Somanur
Southern Railway
Permanent Address NO. 5/489-A
Madayyan Lay Out, Cheran Nagar
Mettupalayam, Coimbatore District.

Applicant

By Advocate M/s TC Govindaswamy, Heera D,
P.N. Pankajakshan Pillai and Sumy P. Bably

Vs.

- 1 Union of India represented by
the General Manager
Southern Railway, Head quarters Office
Park Town P.O
Chennai-3
- 2 The Divisional Railway Manager
Southern Railway,
Palghat Division,
Palghat.
- 3 The Divisional Personnel Officer
Southern Railway Palghat Division
Palghat.
- 4 The Divisional Operations Manager,
Southern Railway Palghat Division
Palghat.
- 5 The Traffic Inspector/Southern Railway
Coimbatore Junction R.S.
Coimbatore.

Respondents

By advocate Ms P.K. Nandini

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is working as Station Master in the Palghat Division is aggrieved by the refusal of the respondents to grant Overtime Allowance for the Extra Duty performed by him while working at Mettupalayam Railway Station.

2 Briefly the facts are as follows:- The applicant was working as a Station Master at Mettupalayam Railway Station. The roster of Station Masters at Mettupalayam was classified "Essentially Intermittent" under the Hours of Employment Regulation contained in Chapter XIV of the Railways Act, 1989 and the rules made thereunder i.e. for 12 hours per day and 72 hours per week. By an order dated 24.12.1998 the roster of all station staff including Gr.D was allegedly classified as "continuous" ie. 8 hours per day and 48 hours per week. Though the 5th respondent was required to arrange additional staff in the light of the change in classification, no such arrangement was made. As a result, the applicant, the Assistant Station Master and other Group-D staff of the Station put in extra four hours per day. The extra hours slips were sent through the 5th respondent duly countersigned by him for arrangement of OTA but no payment was made despite repeated representations. While so, the rosters were again reclassified to "Essentially intermittent" by another message given by the 4th respondent on 3.7.2001 (Annexure

A-2). Thereafter also the applicant had to work on extra hours on many days for want of relievers. OTA bills were submitted in time and several representations were sent marked as Annexure A-1 and A-3 to which no response was received. A reference was made to the "Grievance Adalat" also which though it was notified to be held was not held. Therefore, the applicant submitted another representation enclosing another set of OTA bills. Despite all efforts there was absolutely no response from the respondents. The applicant then left with no alternative served a lawyer notice dated 17.10.2002 to the second respondent. The applicant then approached the Tribunal through O.A. 9/2004 which was disposed of by order dated 10.11.2004 permitting the applicant to make a detailed representation projecting his claims. Such a representation was made at Annexure A-22 and the impugned order of rejection has been passed in purported compliance of the said directions of the Tribunal. The reasons given for rejection are that the working of extra hours was not with permission of the competent authority and that the applicant had not worked according to the roster and that the claims have been made for working against vacancies of Station Masters/Assistant Station Masters who had been sanctioned leave by the applicant himself in order to claim OTA. The applicant has also produced Annexure A-24 copy of the Chart prepared by the applicant himself indicating the periods for which the OTA was claimed, the number of hours and the telephone message numbers directing the applicant to be available to perform the duty. It is

therefore contended by the applicant that the reasons given in the rejection order are not based on facts.

3 Per contra, the respondents have submitted that the claims have been rejected after examining records connected with the case. The post of Station Masters at Mettupalayam was reclassified as "Continuous" as per the message of Divisional Operations Manager dated 24.12.1998. Alleging that the Divisional Operations Manager is not competent to classify the Station Masters, the applicant had filed OA 571/97 and the Tribunal in its order dated 31.5.2000 upheld the contention of the Railways and dismissed the OA holding that Divisional Operation Manager is competent to reclassify the post as a temporary measure in an emergent situation. The respondents have contended that after challenging the jurisdiction of the DOM the applicant is now claiming OTA based on such exemption granted by the DOM. Hence the OA is hit by estoppel. As per the order dated 22.9.1997 sanction was communicated by Chief Personnel Officer, Southern Railway, Madras who is the competent authority to reclassify the Station Masters at Mettupalayam from "Continuous to "Essentially Intermittent" and Annexure R-2 dated 6.10.1997 was issued for the reclassification of the post from "C" to "E1" on regular measure. The Divisional Operations Manager would have issued the message in 1998 without the knowledge of the Personnel Department. Annexure R-3 instructions dated 20.7.1999 were issued by the Personnel Branch to submit proposals for reclassification of posts to "Continuous" and sanction of additional

shifts, but no proposal was submitted. By another message dated 4.7.2001 roster was again classified as "essentially intermittent" by the DOM. After the receipt of the representation and the direction of the Tribunal in O.A. 9/2004 the DRM have considered the representation of the applicant but it was noticed by him that the applicant had not maintained any OTA Register and suppressed the facts from the Inspection Officials. The applicant has violated the rules regarding leave, compensatory, rest, and Hours of employment regulations. Therefore the respondents held that the applicant is not eligible for the OTA as claimed by him. On the direction of the Court the respondents have produced Annexure R-5 Inspection report of the Traffic Inspector dated 16.6.2004.

4 The applicant has denied the averments of the respondents as factually misleading and incorrect. According to him Annexure R-3 and R-4 documents are non-existing documents. The applicant has submitted that if these orders exist why the so called orders were not implemented has to be explained by the respondents. It is also strange that the respondents are maintaining that the DOM has issued the letter without the knowledge of the CPO. He has also disputed the findings of the Traffic Inspector in the report that no OTA Registers were maintained in the Station. In fact the report itself shows that one of the documents taken by the Inspector for verification was the OTA Register of 1996-2000.

5 An Additional reply statement was filed by the respondents in which they have submitted that in O.A. 571/97 itself it was held that

the jurisdiction of the Senior Divisional Operations Manager can reclassify a post only on a temporary measure during emergent situations which classification cannot last for a long period of four years. They further submitted that applicant cannot question the Office Memorandum issued by the Administration.

6 I have heard Shri TCG Swamy the learned counsel for the applicant and Ms Nandini, the learned counsel appearing for the respondents.

7 The learned counsel for the applicant drew my attention to the provisions of the 1961 Railways Act and Instructions/Rules and the original Hours of Employment Regulations issued under the said Act as also the amendments made later. The grant of OTA to the Railway Station Masters is regulated under the provisions contained in Chapter XIV of the Railways Act, and the instructions and rules made on the subject thereunder. There were four types of classification for the purpose of payment of OTA and after the acceptance of the 1969 Award of the Railway Labour Tribunal Annexures A-26 and A-27 instructions of the Railway Board were issued. These regulations essentially classify the hours of work under three different categories of "Continuous" and "Essentially intermittent" and "intensive." For the purpose of these orders the "continuous" workers are required to put in 54 hours of work, the "essentially intermittent" workers 70 hours of work. The payment for the Over Time work done between the roster hours and the statutory hours will be at one and a half times the ordinary rate and the OT

✓

5

work done beyond statutory limits will be made at twice the ordinary rate. The learned counsel argued that the respondents have not raised any questions regarding the quantum of the OTA paid but have rejected the claims on the ground that Mettupalayam Station was following the "continuous" roster when actually it had been classified under "essentially intermittent" and that the applicant had manipulated the leave records and granted compensatory rest to his subordinate ASMs and other staff so that he could put himself on Over Time. According to them the roster hours are between 0600 hours and 2030 hours and that the documents have been got clarified by the Traffic Inspector and because of the violations of the office working hours and suppression of the facts the OTA was refused. It was argued that the respondents have not denied the veracity of Annexure A-1 which is a message given by the Divisional Operations Manager, Palghat. The respondents were also relying on the message of the same DOM Palghat given in Annexure A-12.

8 The learned counsel for the respondents argued that the CPO, Chennai is the only competent authority to classify the post of Station Master as "Continuous" or "intermittent" and the Divisional Operations Manager is competent as a Senior Scale Officer to make such classification in an emergent situation and this position was upheld by this Tribunal in O.A. 571/97. In as much as in Annexure R-2 Memorandum dated 6.10.97 has been issued by the competent authority and also confirmed by Annexure R-3 order, the applicant cannot contend that Annexure A-1 order continued to operate till

Annexure A-2 order was issued.

9 I have gone through the records and orders produced before me. The first question to be determined is what is the status of the post of Station Master Mettuppalayam, whether it is falling under "continuous" or "essentially intermittent" category. There appears to be enough confusion in this regard. Annexure R-2 order on this issue by the respondents dated October, 1997 is reproduced below:-

"The DOM/PGT has exercised his powers vested with him under the provisions of section 71-A of HOER and reclassified the posts of the Station Masters working at MTP from "C" to "E1" temporarily from 16.12.1996 onwards vide his reference cited above.

Sanction has since been received from CPO/MAS who is the competent authority vide his letter No. P(L) 347/Recl./PGT/DG dated 22.9.97 for the reclassification of the post from "C" to "E1" on regular measure."

10 Annexure A-1 order produced by the applicant is dated 24.12.1998. Hence even if Annexure R-2 is accepted as they have been issued by the competent authority, and that the classification of the post was changed to "essentially intermittent" it does not explain the Annexure A-1 order which is a subsequent reclassification of the post from "essentially intermittent" to "continuous". Annexure A-1 reads as under:

"With immediate effect the stations on CEE-MTP Section will work on "continuous" Roster instead of E-1 Roster being followed at present."

11 The above Annexure A-1 message has been referred to in Annexure R-3 in which it is stated that the above message dated 24.12.1998 has not been received in the Personnel Branch. Annexure R-3 is only a letter addressed to the DOM, Palghat to submit proposals of re-classification of the post and also suggesting that the classification may be changed to "continuous" duly accepting the need for the same, it has not directed any withdrawal of Annexure A-1 message and has only directed the DOM, Palghat to obtain a formal sanction in order to ensure compliance with the rules and procedures. The respondents themselves in the reply statement admitted that the DOM did not send any proposal. Therefore the only conclusion which can be drawn is the respondents have allowed the situation as in Annexure A-1 to continue till 2001 without any active interference on their part when Annexure A-2 message dated 3.7.2001 was issued directing that the duty rosters have been changed as "essentially intermittent". Therefore having allowed the situation to remain fluid, without taking any action either to cancel the orders of the DOM or to issue revised instructions, the respondents cannot argue that the lower down staff had manipulated the OTA Registers. The respondents' submissions in the reply statement amount to an admission that the Personnel Branch and the DOM (Palghat) were functioning independently and if so, the station staff cannot be blamed for the confusion existing at higher levels. Moreover it is not a short period, but a long period of three years during which several Inspecting Officers would have visited the

Station and they could have pointed out this transgression on the part of the applicant if any. Hence I am of the view that Annexures A.1 and A.2 cannot be brushed aside and should be held as deemed to have been in force during that period.

12 It is also seen that the applicant had been submitting his OTA bills right from 1999 onwards as evident from Annexure A-3 to A-13. If they were scrutinised at the right time as and when received in accordance with the roster hours prescribed by them the violation of the rules would have been brought to the notice of the applicant and the claims rejected. Instead the respondents have just kept the bills with them without returning them with objections, if any. After the Tribunal permitted the applicant to submit a representation, he submitted Annexure A-22 enclosing a chart showing the period of the bills and also giving the number and date of telephone messages received by him in accordance with which he had undertaken the work beyond the normal hours, all these particulars should have been verified with reference to records. The inspection report produced by the respondents at Annexure R-5 in support of the rejection of the claims had not gone in to any of these facts. In para 3(ii) of the report the Inspection Officer states that the duty roster available has not been replaced. But he does not state whether the roster has been "continuous" or "essentially intermittent". Since it was only on the basis of this classification that the genuineness of the claim could be established. The respondents have themselves

admitted that the actual roster hours are from 0530 hours to 0930 hours and again from 1500 hours to 2100 hours which is clear from Annexure A-25 issued by the respondents themselves. The Inspector has found out that the applicant has worked from 0500 hours to 2100 hours and that he comes one hour before the train arrives and leaves half an hour after the train goes. Normally the Station Master would be required to be present in the station before the arrival of the train and he cannot be expected to come only at the exact time of the arrival of the train. Again observation like the applicant had permitted his subordinates to avail compensatory rest etc. in 1999 cannot be proved at this stage particularly when the leave had been sanctioned by the applicant as the competent authority and had also been certified by the Traffic Inspector. Such observations would have any validity if it had been made at the relevant time, but not in an inspection carried out in 2004. The casualness with which the claims have been retained by the respondents without any action cannot be taken lightly. However, this Tribunal is not in a position to examine each and every claim now with reference to the records. This should be done by the appropriate authority. I would therefore refer the matter to the appropriate authority with a direction to examine the OTA claims of the applicant with reference to the records and either accept or reject the claims in terms of the rules and whenever rejection is made the applicant shall be informed the relevant reasons for rejecting the same. However, I would make it clear that since there is an ambiguity about the

classification of the duty roster in Mettuppalayam Station under "essentially intermittent" during the period from 24.12.1998 up to 3.7.2001 when Annexure A-2 was issued, this period shall be reckoned as "continuous" classification only for examination of the OTA bills of that period. The learned counsel for the applicant is also in agreement with this course of action.

13 Accordingly, I direct the respondents to examine the claims submitted by the applicant at Annexure A-18 with reference to the records and to grant the Over Time Allowance as found admissible to the applicant and if any claim mentioned therein is rejected, to furnish the reasons in writing there of to the applicant. This exercise shall be complied within a period of three months from the date of receipt of a copy of this order. The O.A. is disposed of as above. No costs.

Dated 18.4.2007.

Sathi nair
SATHI NAIR
VICE CHAIRMAN

kmn