

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.397 OF 2008

Wednesday, this the 15th day of July, 2009.

CORAM:

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

R. Rajarathinam,
Safety Counselor, Southern Railway,
Salem Divisional Office, Salem,
permanent address at 5/489-A,
Mathalyan lay out, Cheran Nagar – 1,
Mettupalayam, Coimbatore District.

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Applicant

(By Advocate Mr. TCG Swamy)

versus

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, Palghat Division, Palghat.
3. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.
4. The Divisional Operations Manager, Southern Railway, Palghat Division, Palghat.
5. The Divisional Personal Officer, Southern Railway, Salem Division, Salem.

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Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 10.07.2009, the Tribunal on 15.07.2009 delivered the following:

ORDER

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

The applicant has been pursuing his claim for overtime allowances

for the period from 1998-2001 since 2004 when he filed O.A. No.9/2004 which was disposed of by order dated 10.11.2004 permitting him to make a detailed representation projecting his claim for Over Time Allowance and with direction to the respondents to dispose of the same within a time frame spelt out therein. (Annexure A1 refers). Annexure A2 is the representation dated 06/12/2004 of the applicant to the respondents. In response to the said representation the Divisional Railway Manager, Southern Railway, Palghat rejected his representation giving following reason :-

"As you are aware, the Traffic Inspector, Coimbatore was deputed to enquire into the issue to find out as to how such a large amount had accrued towards Over Time Allowance and the Inspector reported that you had permitted the Station Masters in the station to avail Leave of different kinds and this resulted in accumulation of Compensatory Rest in your favour. There are rules to the effect that leave is not a matter of right and circulars have been issued that leave should be granted sparingly, especially, when the employees have more than ten years of service to go. Similarly circulars have also been issued to the effect that Compensatory Rest should be availed within 30 days of its occurrence and it should not be accumulated. You have never intimated the undersigned or any other authority regarding shortage of staff so as to enable the Sr. DOM to provide additional staff. Further, the Traffic Inspector, Coimbatore is in a position to arrange Leave Reserve Station Master, in case of casualty. But, you have violated all the rules regarding leave, CR and this has resulted in the claiming of OTA. It is also observed from the OTA slips that you had shown that you had

worked before the rostered hours and also after it, which is in violation of the rules of HOER. For example, the action period commence at 06 A.M. and ends at 20.30 P.M., whereas you had claimed OTA, stating that you were on duty at 4 A.M. and continued upto 22 hours, on certain days. This type of functioning is clear violation of HOER, for which you had never sought permission of the Sr. DOM.

The Traffic Inspector or other competent authority could not find any Over Time Allowance Register, maintained by you in the station and this is also a clear violation of HOER.

From the Inspection report of the Traffic Inspector, Coimbatore and on verification of documents, I have come to the conclusion that you had violated rules on the subject of Leave, HOER and Station Working Rules and suppressed facts from the Inspection Officials to create over time hours. In the circumstances, you are not eligible for the OT Allowance claimed by you."

2. The above rejection order was a cause of action for the applicant to move this Tribunal in O.A. No.352/2005. The Tribunal analyzed the entire issue and rendered its finding vide paragraph 11 & 12 of order dated 18.04.2007 (Annexure A4). The said portion of the above judgment order is extracted below :-

"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 R3 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 submission 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 A1 and A2 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 scrutinized 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



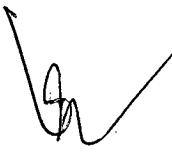
the train goes. Normally the Station Master would be required to be present in the station before the arrival of the train and he cannot be expected to come only at the exact time of the arrival of the train. Again observation like the applicant had permitted his subordinates to avail compensatory rest 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 Mettupalayam 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."

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3. The Tribunal after giving the above finding directed the respondents to examine the claims of the applicant and grant Over Time Allowance as found admissible. With the above decision of the Tribunal at his credit, the applicant expected the respondents to pay him the Over Time Allowance for the period of Over Time rendered by him. Annexure A5 and A6 series are the details of Over Time stated to have been performed by the applicant. Annexure A7 is a communication from the Divisional Office (Personnel Branch) addressed to TI/CBE, Coimbatore stating that Sr. DOM desires that the details of Over Time performed should be verified by Section TI and Section PI and report submitted along with Over Time slips if the applicant and certain others have worked during the period in question. Annexure A8 is the rejection by the respondents giving the main reason that the records are not available to verify the details of Over Time performed by the applicant. Hence the applicant has filed this OA seeking the following reliefs :-

"(i) Call for the records leading to the issuance of Annexure A8 and to quash the same and direct the respondents to pay Over Time Allowance for the extra hours of duty performed and as indicated in Annexure A4 read with Annexure A6, extra hour slips submitted by the Station Master, Mettupalayam Railway Station.

(ii) Direct the respondents to pay interest at the rate of 9% per annum on the Over Time Allowance payable to be calculated from the date of Annexure A4 order of this Hon'ble Tribunal, in Original Application No.352/05 up to the date of full and final settlement of the same".



4. Respondents have filed their reply. According to them the Annexure A6 details were not earlier produced by the applicant. If the claim was verified with Extra Hours Register (PB-3 Register) the reference in respect of page No. and entry No. should have been entered. It was observed that no such reference was found entered. Hence the alleged OT slips are invalid and unacceptable. None of the Annexure A6 OT slips contains any letter or message number of the competent authority as well. Thus the alleged over time stated to have been performed by the applicant is without any proper intimation and sanction of the competent authority and in gross violation of the provisions contained under the hours of Employment Regulation. There is no clear proof for the work of Over Time by the applicant.

5. The applicant has filed his rejoinder wherein he has stated that it is too late in the part of the day for the respondents to make objections as to the so called absence of certain reference after the pronouncement of order dated 18.04.2007 of this Tribunal where there is a clear finding. As regards availability of documents for verification, Annexure A9 communication dated 16.06.2004 would go to show that the Traffic Inspector, Coimbatore had perused the Over Time Register etc., and dealt with the same.

6. Counsel for the applicant vehemently argued that the respondents are bent upon negativing the legitimate claim of the applicant under one pretext or the other. It cannot be that, the records are unavailable for, it was in June 2004, verification had taken place. It cannot lie in their mouth to make objections to the over time slips with one reason or the other after the Tribunal has given its finding vide para 11&12 of Annexure A4 order.

7. Counsel for the respondents submitted that the stand taken by the respondents right from the beginning has been consistent and in the absence of documents to verify and compare the details, there is no possibility of grant of Over Time Allowance to the applicant.

8. Arguments were heard and documents perused. The Tribunal in its order has adversely commented that the casualness with which the claims have been retained by the respondents without any action cannot be taken lightly. However, the Tribunal has also stated that the bills are to be examined with reference to the records available in the respondent's organizations and OTA claims are to be examined. The finding by this Tribunal, of course, is to the effect that since there is ambiguity about the classification of the Duty Roster in Mettupalayam Station under "essentially intermittent" during the period from 24.12.1988 up to 03.07.2001, that period shall be reckoned as "continuous" classification only for the examination of OTA bills of that period.

9. Annexure A9 goes to show that the records were available as on 16.06.2004. As on 09.02.2005 vide Annexure A3 when the claim of the applicant was rejected giving certain other reasons, there has been no mention about non-availability of the records. That the records are not available seems to have been the situation after 2005. However, by the time O.A. No. 352/2005 was already filed and as such even after the record retention schedule would have permitted for destruction or weeding out of documents, it was expected of the respondents to maintain the records relating to the applicant's claim for Over Time. Thus the fault in not securing

the Over Time Records/Register lies entirely upon the respondents for which the applicant need not have to be penalized. At the same time, it is to be ensured that the applicant's claim for Over Time Allowance is as per Rules. All that could be done at this distance of time is that the matter may be considered with the available documents by a Senior Officer who may arrive at a judicious decision as to the admissibility of Over Time Allowance claimed by the applicant.

10. In view of the above OA is disposed of with a direction to the Chief Personnel Officer to detail a Senior Officer of DRM, Palghat/Salem to undertake the exercise of verification of the claim with the available documents and report by such an officer may be considered by the Chief Personnel Officer to arrive at his decision and act accordingly. This drill may be performed within a period of 6 months from the date of communication of this order. No costs.

Dated, the 15th July, 2009.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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