

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Registration No. RA-04 of 2003

(Arising out of OA-588/96)

Date:- 30.7.2004

Ganesh Prasad Saha, son of late Ranjit Prasad Saha,
resident of P.O. and P.S. Naugachhia, District
Bhagalpur retired Chief Booking Clerk, Naugachhia
Station, North Eastern Railway, Gorakhpur

...Applicant

- By Shri M.N. Parbat, Advocate

Versus

1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur.
2. The General Manager, North Eastern Railway,
Gorakhpur.
3. The Divisional Railway Manager (Personnel),
Sonpur Division, Sonpur.
4. Divisional Personnel Officer, North Eastern
Railway, Sonpur.
5. The Station Superintendent, Naugachhia Railway
Station, P.O. and P.S. Naugachhia, District
Bhagalpur


...Respondents

- By Shri M.K. Thakur, Advocate

Coram:- Hon'ble Smt. S. Dogra, Member (Judicial)

ORDER

Hon'ble Smt. S. Dogra, Member (Judicial):- This
Review Application has been filed by the applicant
for review/modification of the order passed by this
Court in the above referred O.A. on 24.1.2003.



2. The main prayer of the applicant is that Court has erred while giving finding to the effect that his case was hit by principle of res judicata. Whereas such point though raised by the applicant in earlier O.A. No. 365 of 1994 decided on 21.5.96, but the same was not decided or entertained by the Court on the ground of plural relief.

3. Second ground as taken by the applicant for review of the order is that Court has wrongly not held the applicant entitled for over time allowance though he had worked for over time between Feb., 1989 to 31st January, 1992 while working as C.S. Grade II and also submitted his bills for the purpose.

4. In support of these contentions it is submitted by learned counsel for the applicant that officiating allowance was different for over time allowance & he was entitled for both in view of the fact that he was performing the duties of higher responsibilities on a higher post & was also doing over time.

The learned Counsel for applicant has drawn my attention to the decisions cited in 1994 (1) PLJR 46 (Patna Bench) titled Abhoy Chander Mehta Vs. Union of India, AIR 1990 SC 185 LIO Vs. Gangadhar Vishwanath, AIR 1979 Patna 169; Lakshmi Prasad Bhagat Vs. State of Bihar.

5. The respondents have countered the present review application on the ground that principle of res judicata was applicable in his case & the applicant has failed to point out any error apparent on the face of the record and he

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can not agitate the issue already raised & disposed of in the earlier case. This remedy does not lie here by way of filing the RA as the scope thereof under the A.T. Act is very limited.

6. It is submitted by the learned counsel for the respondents that the applicant has also tried to re-open the entire case as if this Court is sitting in appeal & that is not the scope of review.

7. I have heard the learned counsel for the parties & gone through the record.

8. If the plea of the applicant is taken to be true with regard to officiating allowance and over time payment being two different categories of payment then certainly the principle of res judicata will not apply as admittedly applicant's earlier O.A. was disposed of without deciding that point though raised as plural reliefs. That means applicant has sought payment of officiating allowance for performing higher duties & for payment of over time allowance for working over time beyond scheduled hours of his duties. Therefore, it appears that these are two different kinds of allowances.

9. It is found from the order passed in earlier O.A. that no finding has been given for the non-entitlement or entitlement of the applicant for payment of over time allowance.

10. Section 11, Order 2 & Rule 2 of the CPA is very clear on that point which goes as under:-

"No Court shall by any Suit or
issue in which the matter directly and
substantially in issue in a former Suit



between the same parties, or between parties under whom they or any of their claim, litigating under the same title in a Court competent to try such subsequent Suit or the Suit in which such issue has been subsequently raised has been heard & finally decided by the Court."

11. Therefore, if it is taken that officiating allowance & over time allowances were two different categories for which the applicant was allegedly entitled for them certainly that point/issue though raised & prayed in O.A. by the applicant but has not been decided by the Court as observed above. In such eventuality principle of Res judicata will not apply.

12. However, be that it may be, either of the parties, has again failed to show any relevant rules on this point as to whether these were two different allowances & applicant was entitled or not entitled for the said over time allowance *though* ~~as~~ officiating allowance he had already received.

13. However, in support of his contentions the learned counsel for the applicant has placed reliance on the decision passed by Patna Bench referred to hereinabove 1994(1) PLJR 46. Relevant para 7 thereof reads as follows:-

"The learned counsel for the applicants, with conspicuous ability, referred to us the decision of the Supreme Court of India reported in 1987 PLJR page 74 (Abid Hussain and others Vs. U.O.I.) and submitted that where some of the employees

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working in the AC coaches under similar circumstances were paid overtime allowances, the applicants working similarly and employed to accompany AC coaches of the train leaving Hatia to other destination stations and doing extra duty hours exceeding the scheduled duty hours cannot and should not be discriminated and denied overtime allowances. This argument of the learned counsel for the applicants is not without substance and gets support from above decision of the Supreme Court (supra) which laid down the law as follows:-

"It is not disputed that Air-conditioned Coach Incharge-Attendants are being paid overtime allowances for extra hours exceeding 96 hours in two weeks in the Western Railway, Central Railway and Eastern Railway. There is no justification for denying overtime allowances on the same basis to the Air-Conditioned Coach Incharges-Attendants in the Northern Railway. We accordingly direct the Union of India and the Railway Administration to pay with effect from July 1, 1984 the overtime allowance to the Air-conditioned Coach Attendants-Incharges working in the Northern Railway on the same basis on which the Air-conditioned Coach Incharges-Attendants in the other three Railways, referred to above, are paid. All arrears of such allowances upto-date shall be paid as early as possible and in any

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event not later than four months from today. The benefit of this order shall be extended to all such employees including those who have retired and those who have not joined as petitioners herein.

14. Therefore, after careful consideration of the matter, I am of the view that there is an error apparent on the record with regard to applicability of principle of res judicata in the given facts & circumstances of the case provided these officiating allowances & overtime allowances are of two different kinds of allowances.

15. So far as plea of the applicant for his entitlement & payment of overtime allowance is concerned this Court has already observed while giving liberty to the applicant to approach the respondents & it is left open to the respondents to consider it in judicial manner, particularly on the basis of alleged discrimination.

16. Therefore, so far as second relief sought for by the applicant for payment of overtime allowance is concerned, I am of the considered opinion that since the said point is already left to be decided by the respondents on the application of the applicant, therefore, he is at liberty to raise all legal points submitted hereinabove in this regard before the concerned authority. Hence, I find no reason or error to modify the order in this regard.

17. Resultantly in view of the overall discussions as given hereinabove para 5 of the order dated 24.1.03 passed in OA-588 of 1996 is hereby directed

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to be treated as deleted from the said order and the order shall be read as if the said para 5 was never in existence. However, para 6 of the order be read the same as before. Rest of the order will also remain unchanged.

18. That this present Review Application is partly allowed as above and disposed of accordingly, however, no order as to costs.

sks

S. Dogra
(S. Dogra)/M(J) 30/7/04.