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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No.102/94

Date of Judgment: 11/6/96

Between:

1. The Divisional Railway Manager,
South Central Railway,
Guntakal.
2. The Senior Divisional Personnel
Officer, South Central Railway,
Guntakal.

.. Applicants

And

1. W. Krishnamurthy
2. Chairman,
Industrial Tribunal-cum-Labour
Court, Anantapur.

.. Respondents

Counsel for the Applicants : J.R.Gopala Rao, SC for
Railways.

Counsel for the Respondent : Sri P.Veera Reddy,
No.1 Advocate.

C O R A M:

HON'BLE SRI R. RANGARAJAN, MEMBER (ADMINISTRATIVE)


J U D G M E N T

{ as per Hon'ble Sri R.Rangarajan, Member(Administrative) }

Heard Sri J.R.Gopala Rao, Standing Counsel for
Railways/Applicants herein and Sri P.Veera Reddy, learned
counsel for Respondent No.1.

2. The 1st respondent in this OA was engaged as a
Commercial Clerk in Guntakal Division of South Central
Railway and was posted to work at Muddanur Railway Station
during the period from 1973 to 1981. It is stated for
the said respondent that he had performed over-time
during the period from 2.9.1973 to 23.2.1980. He was

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paid over-time allowance for the period after 20.11.1976, but for the period from 2.9.1973 to 20.11.1976 he was not paid over-time allowance (OTA for short). Hence, he had filed M.P.No.13 of 1989 in the Industrial Tribunal -cum-Labour Court Under Sec.33-C(2) of I.D.Act for a direction to the respondents therein to pay the O.T.A. claimed by him with interest thereon. That M.P. was disposed of by Labour Court by its order dt. 17.12.1991 allowing the M.P. and further directed the respondents therein to pay the O.T.A. to the petitioner for the period from 2.9.1973 to 20.11.1976 without interest.


3. This OA is filed assailing the order passed in M.P.No.13/89 and for a further direction to set aside the same holding it as arbitrary and illegal.

4. The facts of the case are as follows:-

(i) The 1st respondent in this OA while working as Commercial Clerk in Guntakal Division is reported to have performed over-time which had arisen because of Railway Tribunal Award passed in the year 1969 and that award was accepted by the Railway department in the year 1980 with retrospective effect. The Additional Divisional Manager, Guntakal Division passed the order to process such cases of payment of OTA arrears by stipulating that the O.T.Bills in that connection should be submitted on or before 31-12-1981 (Ex.W.4) by his proceedings No.G/G/ADRM/OT Cell dt. 10.11.1981.

(ii) It is stated that the Respd.1 has submitted the Bill which was received by the Personnel Branch of

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Guntakal Division by 3.12.1981 and non-processing of his bill as per his O.T. claim is against rules. He kept on representing his case right from 1981 onwards but everytime it has been rejected. The Respdt.No.1 was informed by letter bearing No.G/P.483/I/GTL/Cl.III dt. 16.12.1985 (Ex.W.1(c)) that his claim for over-time was rejected as the claim is preferred during 1981 after a lapse of 5 years for the claims pertaining to 1973 to 1976 and that there was no over-time register in support of the claim was maintained by Station Master, Muddanur in the absence of which the claims cannot be verified. In view of the above, he has filed M.P.No.13/1989 in the Labour Court, which was adjudicated in his favour and hence the present O.A. is filed by the applicants herein for setting aside the orders of the Labour Court dt. 17.12.1991.

5. The main point which arise in this OA is whether there were records to prove the claim of the 1st respondent for granting him OTA for the period in question viz. from 2.9.1973 to 20.11.76. The respondents though informed that the claim is belated in view of Addl. Divisional Railway Manager's letter dt. 16.12.1985 (Ex.W.4), the claim cannot be stated to be belated. In any case, the case has to be examined on the basis of merits to come to a conclusion whether the applicant is entitled for payment of O.T.A. as claimed by him on the basis of records.

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6. The first contention of the applicants is that there was no order authorising the 1st respondent to perform the over-time. The claim of the 1st respondent is that there is an Office Order No. DCS/GTL/O/O No.G/C.310/34 dt. 11.3.1973 (Ex.W.1(a) issued by the Commercial Branch of Guntakal Division whereby he was authorised for performing over-time as claimed by him. This office order was enclosed as Ex.W.1(A) in the Labour Court. ---
order is in ^{hand}written one without any signature.

The applicants in this OA submit that no such office order was issued. When we asked the learned counsel for R-1 to produce the original office order, he was unable to produce the same. But mere non production of this office order cannot be a reason for not granting him the OTA if there are records to prove that he is entitled for payment of OTA as claimed by him.

7. The main question involves in this issue is whether there was a proper authorisation for R-1 to perform over-time during the period in question. He has enclosed the OTA slips submitted by him as Ex.W.1 in his M.P. filed in the Labour Court. The letter dt. 25.2.1981 (page-14 in the M.P.) gives the consolidated period of OTA working ^{various} for various periods. A perusal of the OT slips indicate that the OTA bills were signed for Station Master though the 1st Respondent states that the OT slips were signed by Station Master. On perusal, it reveals that it is only signed for the Station Master and not by Station Master himself. In spite of this lacuna, the

applicant was asked to name the Station Master who has signed the OT Slips during the period in question. The learned counsel for Respondent No.1 could not recollect the name of the Station Master who had signed the OTA Bills. Further, it is also seen that the consolidated bills of OT working was sent to DCS/GTL on 25.2.1981. The OTA slips for the various periods enclosed as annexure to the consolidated list does not indicate the date on which the said OTA slips were submitted by the Station Master. In the absence of any date on which the OTA slips for the various periods ~~were submitted~~, it has to be held that they were submitted only on 25.2.1981. If that be so, whether the Station Master who signed OTA slips was the Station Master at the time the 1st respondent performed over-time in Muddanur Station. The learned counsel for Respondent No.1 could not give any clear indication in regard to this aspect also.

8. Over-time has to be performed only on the basis of the approval from the authorised authority. Nobody can do the over-time without proper permission from the authorised official who can give orders for performing the O.T. in a Station. Prior sanction has to be obtained except in the case of staff involved in train passing. This is evident from the Ex.M.1 dt. 27.4.1985 bearing No.G/P.483/I/GTL. Hence, we have to see whether there was any authorised instruction for the 1st respondent to perform the Over-time during the period from 2.9.1973 to 20.11.1976. Normally, prior

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permission is obtained earlier to the period for which OT is to be performed or in case the permission could not be issued in time due to the reasons beyond control, such post-facto instructions can be issued in writing by the competent authority within a short period immediately after that period. In any case, the competent authority informs the Station Master to engage an official under his control to perform over-time either through the Control phone or through other means. When such orders are issued through phone or otherwise, the same has to be entered in OT Register by the Station Master Incharge and has to be signed by him as a token of having received such instructions. The register should also indicate the official who gave such instructions to the Station Master. On the basis of those instructions only, the official under his control can perform over-time and Station Master can sign the OT slips on that basis. As there was no such indication either in the O.A. or in the M.P. filed in the labour court, I asked the learned counsel for R-1 to produce any evidence available in this connection in his custody to substantiate that R-1 was given permission to perform the duty by Station Master on the basis of the instructions received from the higher-ups and entered in the OT register. The learned counsel for R-1 could not produce any such evidence. It is seen from the judgment of the Labour court that in 1985, the 1st respondent herein was asked to produce evidence in this connection, but he did not produce the same. Eventhough, it is belated, he could have easily produced the same in 1985, which

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in my opinion is the failure of R-1. Hence, there is a reasonable suspicion that the 1st respondent had not performed the over-time work after proper authorisation from the official. Mere submission of OTA slips in 1981 does not give the 1st respondent any right to claim over-time dues without obtaining permission from the competent authority to do over-time. This is the main point in this O.A. The judgment of the Labour Court glossed over this fact. ... came to conclusion that this aspect was not considered fully by the lower court. Even when I asked for such an evidence now, the learned counsel for R-1 could not produce the same. R-1 in his rejoinder submit that by letter No.G/C/310/OT-Bills dt. 3.12.1981 (page-95 (Ex.W.1) his claim was approved. But this letter was written by one Sri P.Ethiraj, ACS, Guntakal addressed to the Personnel Branch. It is not clear whether Sri P.Ethiraj, ACS/GTL was an officer authorised to permit R-1 to perform over-time during the period from 1973 to 1976. If he is not, the letter written by him in 1981 is only through hearsay as he has not quoted any documentary instructions in this connection in his letter. No record has also been produced that Sri Ethiraj was Incharge of Commercial Branch for authorising OT to be performed by R-1 during the period from 1973 to 1976. It is also to be noted that this letter was not produced in the lower court when the M.P. 13 of 1989 was heard in the Labour Court. It is likely that this may be a created letter to help

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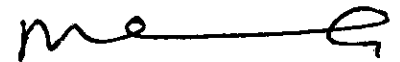
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the 1st respondent. Hence, no reliance can be placed on the above referred letter to come to conclusion that R-1 was authorised to perform O.T. during the period from 1973 to 1976.

9. In view of the fact that there was no concrete evidence to prove the case of the Respondent No.1 the Labour Court has erred in awarding O.T.A. for the period in question. Hence, the judgment of the Labour Court has to be set aside as prayed for by the applicants herein.

10. In the result, the OA is allowed and the impugned judgment dt. 17.12.1991 in M.P.No.13 of 1989

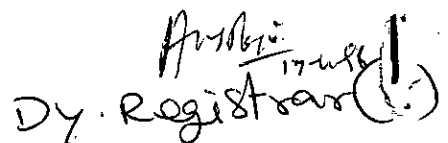
~~is set aside~~ No costs.



(R.Rangarajan)
Member (Admn.)

Dated 11th April, 1996.

Grh.


Dy. Registrar

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

HON'BLE SHRI A.B.GORTHY : MEMBER(A)

DATED: 11/4/96

ORDER/JUDGMENT

M.A.NO./R.A./C.A.No.

IN

O.A.NO. 102/94

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED ✓

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

* * *

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