

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

✓

(DESTRUCTION OF RECORD RULES, 1990)

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Disposed Date-11/05/2004

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SECTION OFFICER (Judl.)

GUWAHATI BENCH:GUWAHATI.5

ORIGINAL APPLICATION NO. 2/2001

VERSUS

Union of India & Ors . . . . . Respondents.

For the Applicant(s) *Mr. R. Dulla*

For the Respondents.

Rg. Counsel

NOTES OF THE REGISTRAR	DATE	ORDER
<p>This application is in form but not by the Corporation  Petitioner's name is not in the  list of the respondents.  IPU No. 72/11/6  Dated 21.12.00  <i>on leave</i>  Dy. Registrar.</p>		
<p>2 envelopes H-1-  filed.</p> <p><i>W. J. Chowdhury</i>  502/01/01.</p>	5.1.2001	<p>There was a substance  passed over in the day  Page 44</p>
<p>Free passed and sent to  for issuing the respondents No  by Regd AID vide S/No  10 dtd 10/01/2001</p>		<p>Present : Hon'ble Mr. Justice D.N.  Chowdhury, Vice-Chairman</p> <p>Heard Mr. R. Dutta, learned  counsel for the applicant, and  Mr. J. L. Sarkar, learned Railway  Counsel for the respondents.</p> <p>Application is admitted. C  for the records. Issue usual not  List on 6.2.01 for written  statement and further orders.</p>

Vice-Chairman

- ① No. lks has been filed.
- ② Service rept com. still awaited.

mk

NS  
8/10/07

321  
5,367

6.2. N o s. 13. Adjourned to 7.3. 2001.

7/10

A'K: 5 Jan  
6:2

7.3.01

List on 11.4.01 to enable the respondents to file written statement.

  
Vice-Chairman

lm

11.4.01

No written statement so far filed by the respondents. List on 23.5.01 for written statement.

  
Vice-Chairman

lm

23.5.01

List again on 25.6.2001 to enable the respondents to file written statement.

  
Vice-Chairman

trd

25.6.01

List on 3.8.01 to enable the respondents to file written statement.


  
Vice-Chairman

lm

3.8.01

No written statement has been file. List the case for hearing on 26.9.2001. The respondents may file written statement within three weeks from today.

~~Vice-Chairman~~

  
Vice-Chairman

trd

26.9.01

Mr J.L.Sarkar, learned Railway standing counsel has prayed for adjournment. Mr R.Duttal, learned counsel for the applicant has no objection.

List on 23.11.01 for hearing.

  
Vice-Chairman

pg

No written Statement  
has been filed.

25.9.01

No. Wfs has been  
filed.

23.11.01

13  
4  
③  
O.A. 2 of 2001

Notes of the Registry	Date	Order of the Tribunal
	27.3.02	Mr. R.Dutta, learned counsel for the applicant is absent due to his ailment. The case is adjourned. List again for hearing on 1.5.2002.  <div>Vice-Chairman</div>
	mb	
	1.5.2002	<del>A prayer has been made on behalf of Mr. R. Dutta, learned counsel for the applicant by Mr. M. Chanda. Also heard the learned counsel for the Railways. Prayer is allowed. List the case</del>
Written Statement has been filed  By 23.5.02	1.5.2002	A prayer has been made for adjournment on behalf of Mr. R. Dutta, learned counsel for the applicant by Mr. M. Chanda. Also heard the learned counsel for the Railways. Prayer is allowed. List the case again for hearing on 24.5.2002.  <div>Vice-Chairman</div>
	bb	
Received Prabhu Chandra 24/5/02	24.5.2002	Heard counsel for the parties. Judgement delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.  <div>Vice-Chairman</div>
	bb	

31  
12  
O.A. 2 of 2001

Prayer side is for


Notes of the Registry

Date

Order of the Tribunal

23.11.01

Prayer has been made on behalf of Mr. J. L. Sarkar, learned Railway Standing counsel for adjournment of the case. Prayer is allowed. List on 14.12.01 for hearing.

  
Vice-Chairman

lm

14.12.01

Request has been made by learned counsel for the applicant for adjournment. Prayer is accepted. List on 23.1.02 for hearing.

  
Member

mb

23.1.02

Mrs. N. D. Goswami learned counsel request has been made on behalf of Mr. R. Dutta learned counsel for the applicant for adjournment on the ground <sup>that</sup> he had under the eye treatment. Prayer is accepted. List on 1.3.02 for hearing.

  
Member

lm

1.3.2002

Mr R. Dutta, learned counsel for the applicant is on accommodation. The case is adjourned. List for hearing again on 27.3.02.

  
Vice-Chairman

nk m

No. W/S has been filed.

By  
22.1.02

23.1.2002

W/S on behalf of the Respondent has been submitted.



21.2.2002  
A rejoinder to the original application in response to W/S submitted by the Respondent.



PUC -

Memo No. HC XXI-24,370-74 /RM Dtd 3.12.08  
received from The Asstt. Registrar (B) Hille  
Gauhati High Court, Gauhati.

The Judgment and order Dtd 28.8.08  
passed in WP(c) No. 8322/2002 may  
kindly see.

The union of Indts and ans filed  
the above mentioned WP(c) before the  
Hon'ble Gauhati High Court against  
the order under Dtd 24.5.2002 (Flag 'A')  
passed in OA No. 2/2001. The Division  
Bench of the Hon'ble Gauhati High has  
been pleased to dismiss the WP(c) No. 8322/02  
on 28.8.08 with an observation as:

'In the above background we do  
not see any reason to interfere with  
the order under challenge. The writ  
appeal is without any merit and,  
therefore, dismissed.'

Submitted the same for favour  
of kind perusal.

8/12/08

Subscribed  
Lo (7) 8/12/08

REGISTRAR

8/12

Subscribed  
15/12/08

Hille M(A) may like to  
see the St. S the Hille Court.  
15/12/08

Seen. Thanks.

16/12/08

21

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

**WRIT PETITION (C) NO.8322/2002**

**Petitioners**

1. Union of India  
Through the General Manager, NF Railway,  
Maligaon, Guwahati-11
2. The Divisional Railway Manager,  
NF Railway, Lumding, P.o- Lumding  
Dist - Nagaon
3. The Divisional Railway Manager(P)  
NF Railway, Lumding, P.o- Lumding  
Dist - Nagaon
4. The Chief Travelling Ticket Inspector,  
NF Railway, Lumding, P.o- Lumding  
Dist - Nagaon

By advocate : Mr S Sarma, SC

**Respondent**

Sri Rakesh Chandra Chanda,  
S/o late Rajendra Chandra Chanda,  
Resident of Railway Quarter No.T/30/B,  
Upper Babu Patty, Lumding,  
P/o- Lumding, District - Nagaon

By advocates : Mr K Paul, Mr A Sarma, Mr JP Chanda

**BEFORE  
HON'BLE THE CHIEF JUSTICE MR J CHELAMESWAR  
HON'BLE MR JUSTICE HRISHIKESH ROY**

Date of hearing : 28-8-2008

Date of judgment and order : **28-8-2008**

**JUDGMENT AND ORDER (ORAL)**

(Chelameswar, CJ)

12  
Aggrieved by a judgment in OA No.2/2001 dated  
24.5.02 the respondents therein preferred the present appeal.

2. The sole respondent herein, who was the applicant in the above mentioned OA No.2/01 before the Central Administrative Tribunal, Guwahati, was working as Chief Travelling Ticket Inspector-II in NF Railway at Lumding. The above mentioned Original Application was filed before the Administrative Tribunal contending that the applicant was employed by the appellants herein and the nature of the employment was "continuous" with a further allegation that whenever such a person is employed beyond the roster duty hours in a week he is entitled to over time allowance. According to the respondent/applicant on the various dates indicated in the Original Application he worked over time and he prepared the details of such over time work which is called in the <sup>Jargon</sup> ~~germane~~ of the appellants' administration as "over time journey". The same was submitted to the Chief Travelling Ticket Inspector, NF Railway for verification and onward transmission. According to the applicant the Chief Travelling Ticket Inspector forwarded the application to the Divisional Railway Manager for further action but the payment was not forthcoming.

3. Lot of <sup>irrelevant</sup> ~~available~~ materials on both sides <sup>was</sup> ~~were~~ placed before the Tribunal with which we are not concerned but the Tribunal, in our view, rightly took note of Section 132 of the Railways Act, 1989 which reads as follows :-

**"132. Limitation of hours of work.-** (1) A railway servant whose employment is essentially intermittent shall not be employed for more than seventy-five hours in any week.

(2) A railway servant whose employment is continuous shall not be employed for more than fifty-four hours a week on an average in a two weekly period of fourteen days.

(3) A railway servant whose employment is intensive shall not be employed for more than forty-five hours a week on an average in a two weekly period of fourteen days.



*(4) Subject to such rules as may be prescribed, temporary exemptions of railway servants from the provisions of sub-section (1) or sub-section (2) or sub-section (3) may be made by the prescribed authority if it is of opinion that such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway or in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling stock or in any emergency which could not have been foreseen or prevented, or in other cases or exceptional pressure of work:*

*Provided that where such exemption results in the increase of hours of employment of a railway servant referred to in any of the sub-sections, he shall be paid overtime at not less than two times his ordinary rate or pay for the excess hours of work."*

From a perusal of the above extracted Section 132 it can be seen that the employment in the Railways is categorised under Section 132 into three categories. Employment which is essentially "intermittent", employment which is "continuous" and employment which is "intensive". Against each of these categories the Parliament specified the maximum number of hours to which such an employee can be made to work in any week while in the case of employment which is essentially "intermittent" the maximum number of hours is seventy-five in any week in the cases of employment which is "continuous" in nature it is fifty-four hours a week calculated on an average period of 14 days. In the case of employment which is "intensive" in nature the maximum number of hours to which an employee can be put to work is 45 hours a week on an average period of 14 days. Sub Section (4) of Sec 132 authorises that the "prescribed authority" if it is of the opinion that such temporary exemptions are necessary from the operation of the first three Sub Sections of Sec 132 to avoid serious interference with the ordinary working of the railway or in case of accident etc the "prescribed authority" can exempt an employee or a class of employees from the

purview of the operation of the relevant clauses of Sec 132 which prescribed the maximum number of working hours.

4. The expressions "continuous", "essentially intermittent" and "intensive" are defined under Section 130 of the Act. Section 130 Sub Section (a) declares that an employment of a railway servant is said to be "continuous" except when it is excluded or has been declared to be essentially intermittent or intensive. Coming to the expression "essentially intermittent" or "intensive" the "prescribed authority" under Sub Section (b) and (d) of Sec 130 can declare any particular category of service in the railway to be either "essentially intermittent" or "intensive".

5. It is not clear from the pleadings or materials before us under which one of the above mentioned three categories the service of the respondent/applicant falls. Obviously the service of an employee of the railway must fall under any one of the three categories mentioned above.

6. In the absence of any material to counter the belief of the applicant, we take that his belief is right that he was made to work beyond the hours prescribed for the class to which he belongs. He, therefore, sought payment of compensation for the over time work done by him. The said application was forwarded by his superior, that is, the Chief Travelling Ticket Inspector. The appellants instead of taking a reasoned decision either to accept his case for payment of over time allowance or reject the case slept over

the matter. Therefore, the applicant was compelled to approach the Tribunal.

7. Before the Tribunal the appellants produced some documents which they called circulars issued by various authorities of the railways to defend the case of the applicant/respondent herein. The Tribunal by the impugned order rejected the defence of the appellants herein and allowed the Original Application directing the payment of over time allowance. Hence the present writ petition.

8. It is not for the first time that the respondent is compelled to seek such a direction as the one before us today. Earlier on more than one occasion the respondent approached the Central Administrative Tribunal with similar grievance, the details of which may not be necessary for the present except to mention that during the pendency of one such Original Application before the Tribunal filed by the present respondent, that is, OA No.3/2000 the appellants herein passed an order dated 13-10-2000 rejecting the representation made by the applicant for payment of compensation for the over time work rendered by him, relying upon certain circulars stated to have been issued by various authorities of the Indian Railways. Such a decision was earlier held to be illegal by the Tribunal in OA No.3/2000.

9. The appellants herein once again pressed into service the same circulars in the instant case also. We have perused the circulars. Apart from the authority of law by the officers who issued those circulars the circulars in our view do not decide anything

conclusively. It is a different matter whether such a decision can be taken by the officers to issue the circulars or not.

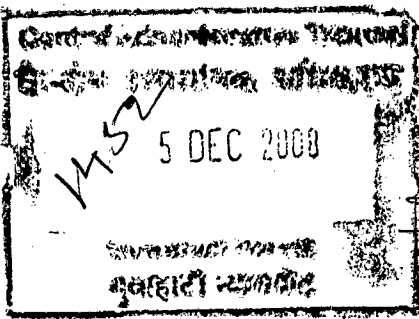
10. The case of the respondent/applicant for payment of compensation for over time work is to be decided first on a determination of the fact to which one of the three classes of service described earlier in this order the applicant belongs and thereafter examine whether as a matter of fact the applicant rendered service for periods beyond which it was permissible under Section 132 of the Act. No such examination appears to have been undertaken by the appellants before rejecting the claim of the applicant. Therefore, what remains on record is the assertions of the respondent/applicant that he worked over time, which was duly forwarded by his immediate superior and which remains unrebutted as a question of fact, coupled with the legal obligation arising under Sec 132 (4) proviso which creates a right in favour of the respondent/applicant to receive compensation for the work done in excess of the prescribed hours in a specific sequence.

11. In the above background we do not see any reason to interfere with the order under challenge. The writ appeal is without any merit and, therefore, dismissed.

**Sd/- HRISHIKESH ROY**  
**JUDGE**

**Sd/- J. CHELAMESWAR**  
**CHIEF JUSTICE**

*Contd...*



WP(c) No. 8322/02

By Spl. Messenger

Memo No. HC.XXI.....24, BFO-74...../R.M. Dtd.....3/12/08.....

Copy forwarded for information and necessary action to: -

1. The Union of India, through the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The Divisional Railway Manager, N.F. Railway, Lumding, P.O.- Lumding, Dist.- Nagaon.
3. The Divisional Railway Manager (P), N.F. Railway, Lumding, P.O.- Lumding, Dist.- Nagaon.
4. The Chief Travelling Ticket Inspector, N.F. Railway, Lumding, P.O.- Lumding, Dist.- Nagaon.
5. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati-781 005. He is requested to acknowledge the receipt of the following case record which was received by this Registry in connection with WP(C) No. 8322/02 vide his letter No.CAT/GHY/68/2001/Judl./127 dated 06-02-2004.

Encl.:-

**O.A. 2/2001 – Part A**

**With Original Judgment**

By order

Asstt. Registrar (B)

Gauhati High Court, Guwahati.

2/12/08

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CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./K.X. No.2 of 2001.. . . XX

DATE OF DECISION 24.5.2002.....

Shri Rakesh Chandra Chanda

APPLICANT(S)

Mr.R.Dutta.

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Others.

RESPONDENT(S)

Mr.J.L.Sarkar & A.Chakraborty.

ADVOCATE FOR THE  
RESPONDENTS.


THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

5.

Judgment delivered by Hon'ble Vice-Chairman.



5

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.2 of 2001.

Date of Order : This the 24th Day of May, 2002.

THE HON'BLE MR JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

Shri Rakesh Chandra Chanda  
S/o Late Rajendra Chandra Chanda  
Resident of Railway Qrs. No.T/30/B  
Upper Babu Patty, Lumding  
P.O:- Lumding, Dist:-Nagaon  
Assam, PIN:- 782 447. . . . Applicant.

By Advocate Mr.R.Dutta.

- Versus -

1. The Union of India  
Represented through the General Manager  
N.F.Railway, Maligaon  
Guwahati - 781 011.
2. The Divisional Railway Manager  
N.F.Railway, Lumding  
P.O:-Lumding, Dist:-Nagaon  
Assam, Pin:-782 447.
3. The Divisional Railway Manager(P)  
N.F.Railway, Lumding, P.O:-Lumding  
Dist:-Nagaon, Assam.  
Pin :- 782 447.
4. The Chief Travelling Ticket Inspector  
N.F.Railway, Lumding, P.O:- Lumding.  
Dist:-Nagaon, Assam.  
Pin:-782 447. . . . Respondents.

By Mr.J.L.Sarkar, Rly.Standing Counsel.

O R D E R

CHOWDHURY J.(V.C.):

The issue relates to granting of Overtime Allowance to Chief Travelling Ticket Inspector - II, a Group - C staff.

1. The applicant, at the relevant time, was working at Lumding as Chief Travelling Ticket

Inspector-II (CITI-II) under the Chief Travelling Ticket Inspector(CITI), N.F.Railway, Lumding. The applicant pleaded that he was a continuous worker and the roster duty of a continuous worker is 48 hours and the statutory limit to which a continuous worker can be put to work is 54 hours in a week. Whenever a Continuous worker is required to work beyond the roster duty hours in a week, he became entitled to get overtime allowance at the rate of one and half time the normal rate for hours for hours exceeding the roster duty hours upto the statutory duty hours. The worker becomes entitled to overtime allowance at double of the normal rate for period of extra duty beyond the statutory duty hours. According to the applicant, he performed extra duty hours for the period from 11.6.95 to 24.6.95, 13.8.95 to 7.10.95, 5.11.95 to 2.12.95, 3.12.95 to 30.12.95, 31.12.95 to 10.2.96, 7.7.96 to 3.8.96, 4.8.96 to 31.8.96, 8.9.96 to 5.10.96, 6.10.96 to 19.10.96, 3.11.96 to 1.2.97, 2.2.97 to 1.3.97 and prepared the overtime journal and submitted to the Office of the Chief Travelling Ticket Inspector, N.F.Railway, Lumding (Respondent No.4) for verification and onward transmission to the Divisional Railway Manager (P), N.F.Railway, Lumding. After certifying the journals the Chief Travelling Ticket Inspector submitted the same to the office of the Divisional Railway Manager (P) for further action.



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2. The applicant submitted a number of representations to the respondent Nos. 3 & 4 and after a spate of representations the applicant received a copy of the letter written by the respondent No.3 to the respondent No.4 with a copy to the applicant, under No.EB/177-Compu dated 30.11.99, from which the applicant came to know that the overtime voucher of the applicant and another of his colleague were returned by the respondent No.3 to the respondent No.4 on 7.4.97 and 17.4.97 for some clarification, but the respondent No.4 only returned the overtime vouchers that were returned on 17.4.97 and those returned by respondent No.3 to respondent No.4, and requested to send back these overtime vouchers for making early payment. The applicant came to know that all the overtime vouchers of the applicant were resubmitted to the respondent No.3. Finding no other alternative, the applicant finally moved this Tribunal praying for a direction on the respondents for payment of overtime allowance. The said O.A. was numbered and registered as O.A.3/2000. By order dated 4.2.2000 the Tribunal directed the authority to dispose the representations of the applicant. on long last by the impugned order dated 13.10.2000 the respondent No.3 rejected the representations of the applicant. The full text of the impugned order No.EB/177/Compu dated 13.10.2000 is reproduced below :

" Please note that your claim for payment of arrear OTA was examined carefully, but could not be passed for payment dtd.27.7.84 at para-3 of the

said letter, it was stipulated that the question of payment of OTA to TTEs should not arise and if any overtime paid to them should be recovered.

Hence your claim for OTA is not teneable. This letter is in compliance with the Hon'ble CAT/GHY's order under reference."

The aforementioned order is assailed before this Tribunal as unlawful, illegal and arbitrary. The applicant pleaded that overtime allowance that was claimed by the applicant for the period from 17.2.91 to 3.10.92 was also not paid by the respondents. The applicant moved this Tribunal by way of O.A.48/98. The respondents contested the O.A. and submitted its written statement. In the written statement the respondents referred to the note No.AGM/EC/-CON/34 dated 27.7.84 from the Additional General Manager/Maligaon. The said note was referred at para 4.15 of the application which reads as follows :

" That with regard to the statements made in paragraph 4.32 of the application, the answering respondents deny the contentions made by the applicant in this regard. As per Additional General Manager, Maligaon's note No.AGM/EC/EXP-CON/34 dated 27.7.84, the question of payment of OTA to TTEs should not arise. Any overtime paid to TTEs should be recovered. . . . "

The said plea was, however, not accepted by the Tribunal and by judgment and order dated 17.9.97 in O.A.48/96 respondents were directed to allow the claim of overtime allowance to the applicant on scrutiny of factual and arithmetical correctness of the claim.

3. Railway authority submitted its written statement and pleaded that the ticket checking staffs are classified as continuous worker, but they are not entitled to overtime allowance in terms of ADGM/EC/MLG's circular No.AGM/EC/Exp./Con/34 dated 27.7.84. Head TC/TTE in the scale of Rs.5000-8000/- is treated as supervisor and conductor also carry the same scale. Automatically conductor being the in-charge of ticket checking team of the train is supervisor and he is not entitled to OTA. The applicant previously worked as conductor, now CTTI/II and for both the case he is supervisor and hence is not entitled to OTA. In the written statement the respondents also pleaded that ticket checking staff was required to perform their duty as per Link Diagram prescribed for them. They never performed duty as per Duty Roster. Link Diagram means as per train and trip basis. The ticket checking staff who remained absent from his Head Quarter in line for more than 20 days average in a month they are entitled to get Consolidated Travelling Allowance (CTA). The applicant was paid CTA for working as per Link Diagram. Hence, question of payment of OTA in addition to CTA already paid as extra remuneration duties in link train does not arise.

4. I have heard Mr.R.Dutta, learned counsel for the applicant at length and also learned standing counsel for the N.F.Railway. The limitation of hours is

prescribed by Statute, more particularly in Section 132 of the Railways Act, 1989. The full text of the provision of Section 132 is reproduced below :

"Limitation of hours of work ;

(1) A railway servant whose employment is essentially intermittent shall not be employed for more than seventy five hours in any week.

(2) A railway servant whose employment is continuous shall not be employed for more than fifty four hours a week on an average in a two-weekly period of fourteen days.

(3) A railway servant whose employment is intensive shall not be employed for more than forty-five hours a week on an average in a two-weekly period of fourteen days.

(4) Subject to such rules as may be prescribed, temporary exemptions of railway servants from the provisions of sub-section (1) or sub-section (2) or sub-section (3) may be made by the prescribed authority if it is of opinion that such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway or in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling stock or in any emergency which could not have been foreseen or prevented, or in other cases of exceptional pressure of work:

Provided that where such exemption results in the increase of hours of employment of a railway servant referred to in any of the sub-sections, he shall be paid overtime at not less than two times his ordinary rate of pay for the excess hours of work."

From the provision of the Statute also it is made

clear that exemption results in the increase of hours of employment of a railway servant referred to in any of the sub-sections, he should be paid overtime. The standing counsel for the Railway again brought my notice to the Note No.AGM/EC/Exp.Con/34 dated 27.7.84 issued by the Additional General Manager/E.C., Maligaon on the subject Incidence of Over Time. According to the learned Standing Counsel for the Railway, the TTEs are not entitled to Over Time allowance and for that purpose instructions were issued vide ACPO's D.O.No.E/123/22(ADJ)/MISC dt.14.2.84. By the said communication it was ordered for recovery of the over time made, if any and on the otherhand it prescribed for providing suitable rest rooms at originating stations for TTEs, to cope with late running of trains. The said circular was also referred and relied by the Railway authority in O.A.48 of 96. The Tribunal acting on the certificate issued by the Station Superintendent, OPT, N.F.Railway, Lumding submitted by the applicant enclosing with rejoinder on 12.3.97 referred to the same wherein <sup>it</sup> was certified that due to shortage of caretaker, lilen & utensils no rest room was provided to the TTE's since 1990. The Tribunal in the aforementioned O.A. did not accept the said plea of the respondents denying its liability. The respondents referred and pleaded to the circular dated 27.7.84 issued by the Additional General Manager/EC. The

Tribunal, however, granted over time allowance to the applicant rejecting the plea of the respondents. A plea which was turned down by the Tribunal in a case between the same parties and conclusively deciding the issue cannot now be re-opened by the respondents, more so, in view of the Statutory provisions. The denial of the over time allowance in the case is therefore not sustainable. The impugned order dated 13.10.2000 is accordingly set aside and the respondents are directed for taking necessary step for payment of over time allowance to the applicant for the period from 11.6.95 to 24.6.95, 13.8.95 to 7.10.95, 5.11.95 to 2.12.95, 3.12.95 to 30.12.95, 31.12.95 to 10.2.96, 7.7.96 to 3.8.96 to 4.8.96 to 31.8.96, 8.9.96 to 5.10.96, 6.10.96 to 19.10.96, 3.11.96 to 1.2.97 and 2.2.97 to 1.3.97 that are pending before the respondent No.3. The respondents are accordingly directed to make the payment of the said over time allowance within a period of three months from the receipt of the order and after scrutiny and verification of the claim.

The application is allowed to the extent indicated above.

There shall, however, be no order as to costs.

  
( D.N.CHOWDHURY )  
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

O.A. No. of of 2001.

Shri R.C.Chanda ... Applicant

Versus

Union of India & others .. Respondents.

List of dates.

Date	Particulars	para/Annx	page
11.6.95	The applicant, a chief Travelling	4.4 and	2
to			
1.3.97	Ticket Inspector/II ( in short CTTI/II), 4.8		3
	and a continuous worker under the Hours		
	of Employment Regulations (in short HOER)		
	and entitled to overtime allowance when-		
	ever he performed extra hours of duty		
	beyond scheduled duty hours, performed		
	extra hours of duty for the period		
	from 11.6.95 to 24.6.95, 13.8.95 to		
	7.10.95, 5.11.95 to 2.12.95, 3.12.95 to		
	30.12.95, 31.12.95 to 10.2.96, 7.7.96 to		
	3.8.96, 4.8.96 to 31.8.96, 8.9.96 to		
	5.10.96, 6.10.96 to 19.10.96, 3.11.96		
	to 1.2.97 and 2.2.97 to 1.3.97 and		
	prepared the overtime journal and submitted		
	submitted the same to the office of		
	the Chief Travelling Ticket Inspector		
	(in short CTTI), Lumding (Respondt No.4)		
	who transimitted the same after verifica-		
	tion and certification to the Divisional		
	Railway Manager(P)/Lumding (Respdt.No.3) .		

Contd...P/2.

23  
File by  
R.D. G.  
24/5/01  
D. No. 1

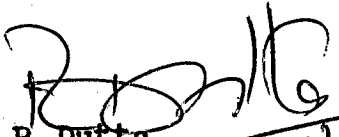
Date	Particulars	Para/Annxure	Page	
30.11.99	The Divisional Railway Manager(P), Lunding ( in short DRM(P) ) vide letter No.EB/77-Compu asked the CTTI/LMG(Respdt.No.4) to return the OTA vouchers of the applicant and another employee which were sent back to Respondent No.4 offer certain clarification and only a part of which were resubmitted by Respdt No.4.The applicant was given a copy of the letter and persued the matter with Respdt No 4 who informed him the entire papers were returned back to DRM(P)/IMG	4.9 & 4.10 Anx.A/1	4 10	24 D.B.L.
6.1.2000	The applicant filed O.A.No 3 of 2000 along with Misc Petition of 7 of 2000 for condonation of delay and for dire- ction for payment of OTA.	4.11	5	
4.2.2000	The Hon'ble Tribunal was pleased to condone the delay and admit the application and thereafter disposed the O.A.No.3 on same date with direction to dispose the representation of the applicant , which was pending within 1 month.	4.11 Anx.A/2	5 11 & 12	
13.10.2000	The DRM(P)/LMG vide letter No EB/ 177-Compu informed the applicant that his OTA could not be passed for payment as the provision contained			

Contd...P/3.

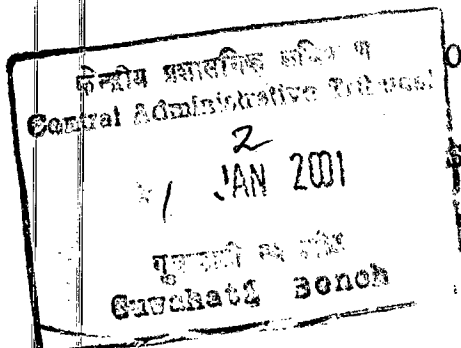


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Date	Particulars	Para/Annex.	Page
	under <sup>note</sup> <del>letter</del> No. AGM/EU/EXP-CON/34 dated 27.7.84 stipulated that the question of payment of over-time allowance to TTE should not <del>arise</del> arise	4.13 & A/3	5 13
1993 to 1996	The applicant was paid over time <del>allowance</del> allowance regularly	4.14	6
17.9.97	The Hon'ble Tribunal in O.A No. 48 of 1996, where similar plea that <del>the</del> under note No. AGM/EC/EXP-CON/34 dated 27.7.84 the question of payment of OTA to TTE should not arise was raised, observed that the respondents are bent upon disallowing the claim of the applicant and directed the respondents to allow the claim of the claim of the applicant and <del>the</del> was paid OTA for 1991 and 1992.	4.15 Anx.A/4.	6 & 7 14 to 18

  
 R. Dutta  
 Advocate . 24/5/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH GUWAHATI.



O.A. No. 2 /2000

Shri R.C.Chanda ... Applicant

-VS-

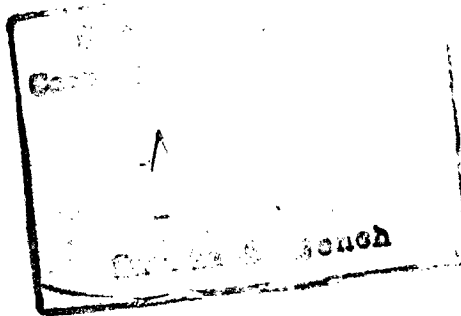
Union of India & Ors. .. Respondents

INDEX

Sl.No.	Particulars of document	Annexure No	page
1.	Application	--	1 to 9
2.	Copy of the letter No EB/177-Compu dated 30.11.99	A/1.	10
3.	Copy of the Hon'ble Tribunal' order dated 4.2.2000.	A/2.	11 & 12
4.	Copy of the Lette r No. EB/177-Compu dated 13.10.2000	A/3.	13.
4.	Copy of the Hon'ble Tribunal's Judgement dated 17.9.97	A/4	14 to 18.

Rakesh, C. Chanda

Signature of the applicant.



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File by  
20/10/2000  
K. Dutta, for J. M. J. 29/10/2000  
Guwahati, Assam-781011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI.

(An application under section 19 of the A.T. Act)

Original Application No. 2/2000

Shri Rakesh Chandra Chanda, son of  
late Rajendra Chandra Chanda, resident  
of Railway Qrs. No. T/30/B Upper Babu  
Patty, Lumding P.O. Lumding, Distt-  
Nogaon, Assam. Pin 782447. .... Applicant.

Versus

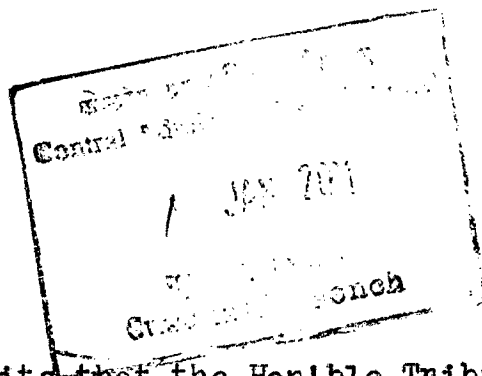
1. The Union of India represented through  
the General Manager, N.F. Railway,  
Mailgaon, Guwahati-11. Pin-781011.
2. The Divisional Railway Manager,  
N.F. Railway, Lumding, P.O. Lumding  
Distt. Nogaon, Assam. Pin-782447.
3. The Divisional Railway Manager (P),  
N.F. Railway, Lumding, P.O. Lumding  
Distt. Nogaon, Assam, Pin-782447.
4. The Chief Travelling Ticket Inspector,  
N.F. Railway, Lumding, P.O. Lumding,  
Distt. Nogaon, Assam. Pin-782447.
1. Particulars of the order against which this  
application is made:

Divisional Railway Manager (P), N.F. Railway  
Lumding's letter No EB/177/Compu dated 13.10.2000 .

(Annexure A/3)  
D2.

Contd...P/2.

Rakesh Ch. Chanda



2. Jurisdiction.

The applicant submits that the Hon'ble Tribunal has jurisdiction over the subject matter of the application.

3. Limitation.

The applicant submits that the application is within the period of limitation.

4. Facts of the case.

4.1 The applicant is a citizen of India and is entitled to the rights and privileges available to a citizen of India.

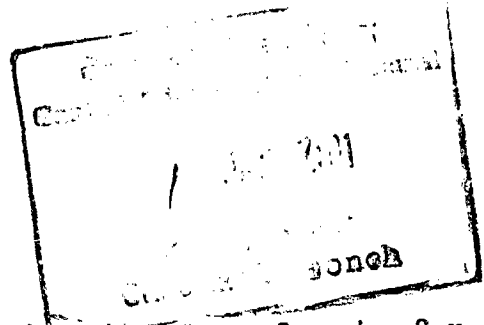
4.2 That, the applicant is a Group-C employee of N.F. Railway and is now posted at Lunding as Chief Travelling Ticket Inspector II (in short CTTI/II) under the Chief Travelling Ticket Inspector (in short CTTI), N.F. Railway, Lunding. (Respondent No.4).

4.3 That the applicant is classified as continuous worker under the Hours of Employment Rules.

4.4 That the rostered duty hours of a continuous worker is 48 hours and the statutory limit to which a continuous worker can be put to work is 54 hours in a week. Whenever a continuous worker is required to work beyond the rostered duty hours in a week he becomes entitled to get overtime allowance at the rate of one and half time the normal rate for hours exceeding the rostered duty hours upto the statutory duty hours. The worker becomes entitled to

Contd...P/3.

Rakesh R. Rande.



overtime allowance at ~~xxxxx~~ double the normal rate for period of extra duty beyond the statutory duty hours.

4.5 That for Ticket Checking staff the over time is calculated on the basis of duty performed in a fortnight and overtime vouchers are prepared for fortnight of a wage period.

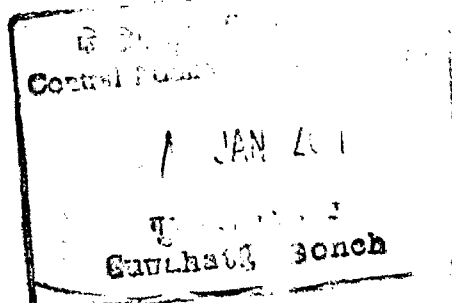
4.6 That the travelling ticket checking staff are required to perform their duty in running trains and for the purpose a duty roster has been prescribed. But when ever a train runs late the staff is required to continue their duty and thereby performs extra hours of duty.

4.7 That, for maintenance of records of extra hours of duty performed by the staff a register~~ed~~ is required to be maintained in the office of the authorised official in terms of the Railway Servants(Hours of Employment)Rules 1961. Accordingly a register is maintained in the office of the Chief Travelling Ticket Inspector, Lunding(Respondent No.4) and the overtime vouchers are prepared on the basis of this register.

4.8 That the applicant performed extra hours of duty for the period from 11.6.95 to 24.6.95, 13.8.95 to 7.10.95, 5.11.95 to 2.12.95, 3.12.95 to 30.12.95, 31.12.95 to 10.2.96, 7.7.96 to 3.8.96 to 3.8.96, 4.8.96 to 31.8.96, 8.9.96 to 5.10.96, 6.10.96 to 19.10.96, 3.11.96 to 1.2.97, 2.2.97 to 1.3.97] and prepared the overtime ~~journal~~ journal and submitted the same to the office of the Chief Travelling Ticket Inspector, N.F. Railway, Lunding (Respondent No.4) for verification and onward transmission

Contd...P/4.

Rakesh. R. Chandra.



to the Divisional Railway Manager (P), N.F. Railway, Lumding. (Respondent No.3). The Chief Travelling Ticket Inspector (Respondent No.4) after certifying these journals submitted these to the office of the Divisional Railway Manager (P) (Respondent No.3) for further action.

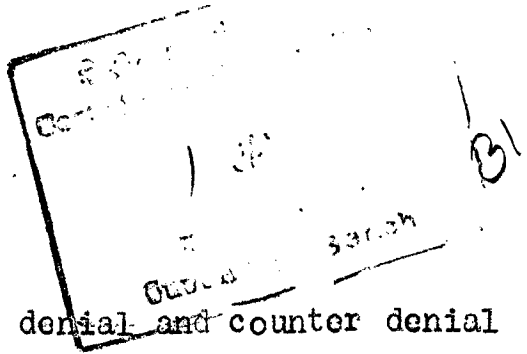
4.9 That the overtime allowance for the aforementioned period was not paid and the applicant made a number of representations to the Chief Travelling Ticket Inspector (Respondent No.4) and the Divisional Railway Manager (P) (Respondent No.3). Ultimately after a number of representations the applicant received a copy of letter written by the Divisional Railway Manager (P) (Respondent No.3) to the Chief Travelling Ticket Inspector (Respondent No.4), with copy to the applicant, under No EB/177-Compu dated 30.11.99, from which it was learnt that the overtime voucher of the applicant and another of his colleague were returned by the Divisional Railway Manager (P) (Respondent No.3) to the Chief Travelling Ticket Inspector (Respondent No.4) on 7.4.97 and 17.4.97, for some clarification but respondent No.4 only returned the Over time vouchers that were returned on 17.4.97 and those returned by respondent No3 to respondent No.4 on 7.4.97 were not resubmitted by Respondent No.4, and requested to send back these overtime vouchers for making early payment.

A copy of the letter No.EB/177-Compu dated 30.11.99 is annexed as Annexure A/1.

4.10 That on receipt of the letter dated 30.11.99, the applicant enquired from the Chief Travelling Ticket Inspector (Respondent No.4) ~~verbally~~ who verbally informed the applicant <sup>that</sup> all the overtime vouchers of the applicant <sup>20</sup> were resubmitted to the Divisional Railway Manager (P).

Rakesh. R. Bando.

Contd...P/5.



4.11 That in the inter-office denial and counter denial the applicant's legitimate over time allowances remained unpaid for years. Finding no alternative the applicant filed O.A.No 3 of 2000 along with Misc.Petition No. 7 of 2000 before this Hon'ble Tribunal for a direction to the respondents for payment of his overtime allowance and for condonation of delay in filing the application. The Hon'ble Tribunal by orders dated 4.2.2000 was kind to condone the delay. The Hon'ble <sup>Tribunal</sup> by the ~~same~~ order dated 4.2.2000 disposed <sup>of</sup> the O.A by ~~attaching~~ to dispose the ~~xxx~~ representation of the applicant within a period of 1 month from the date of receipt of the order.

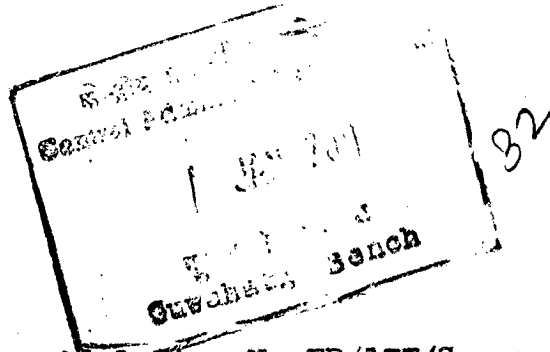
A copy of the Hon'ble Tribunal' order  
dated <sup>4.2.2000</sup> in O.A.No. 3/2000 is annexed  
<sup>as</sup>  
as Annexure A/2.

4.12 That as no orders were passed by the Divisional Railway Manager(P) even after 6 months of despatch of the order, the applicant's advocate wrote to the respondents, along with a copy of the Hon'ble Tribunal's orders dated in O.A.No. 3/2000 for immediate finalisation of the overtime claim, on 31.7.2000.

4.13. That on 13.10.2000, the Divisional Railway Manager(P) N.F.Railway, Lumding vide his letter issued under No. EB/177-Compu dated 13.10.2000 informed the applicant that his claim for payment of over time allowance was examined carefully but could not be passed for payment as the provision contained under note No. AGM/EU/EXP-CON/34 dated 27.7.84 stipulated that the question of payment of over time allowance to TTE should not arise.

Rakesh A. Bhandari

Contd....P/6.



A copy of the said letter No. EB/177/Compu dated 13.10.2000 is annexed as Annexure A/3.

4.14 That the applicant was paid overtime allowance always, even after the alleged note of No. AGM/EU/EXP-CON/34 dated 27.7.84. In fact the applicant was <sup>paid</sup> overtime allowance by the respondents of their own in the months of May 1993, July 1995, October, 1995, Nov'95, January 96, March 1996 to August 1996, November 1996, as seen from the available pay slips with the applicants.

4.15 That the overtime allowance that was claimed by the applicant for the period ~~from~~ between 17.2.91 and 3.10.92 was not paid by the respondents to the applicant and the claim was turned down by the respondents and the applicant filed O.A. No. 48 of 1996 before this Hon'ble Tribunal. Respondents contested the O.A. filing written Statement. One of the plea taken was that as per Additional General Manager/Maligaon Note No. AGM/EC/-CON/34 dated 27.7.84 the question of payment of over time allowance should not arise. Para 6 of the said written statements reads as under:-

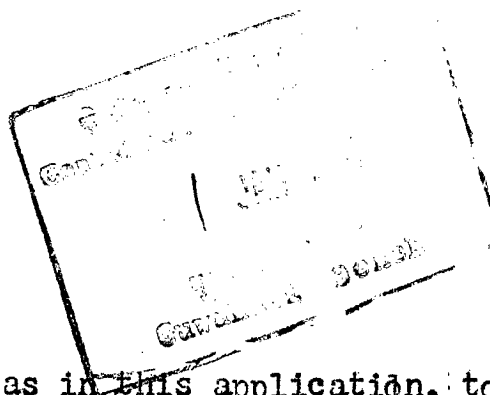
[ " That with regard to the statements made in paragraph 4.32 of the application, the answering respondents deny the contentions made by the applicant in this regard. As per Additional General Manager, Maligaon's note No. AGM/EC/EXP-CON/34 dated 27.7.84, the question of payment of OTA to TTEs should not arise. Any overtime paid to TTEs should be recovered ..... "

This contention of the respondents was not accepted by the Hon'ble Tribunal. The Hon'ble Tribunal stated in the judgement and order that the respondents are bent upon disallowing the claim of the applicant and by judgement and order dated 17.9.97 directed the

Rakesh. R. Chandra,

Contd...P/7.





respondents, who are same as in this application, to allow the claim of over time allowance to the applicant after scrutiny of factual and arithmetical correctness of the claim. On the basis of the judgement the applicant was paid the over time allowance for the period between 17.2.91 to 3.10.92.

A copy ~~is~~ of the judgement in O.A.No. 48/96 dated 17.9.97 is annexed as Annexure A/4.

4.16 That the applicant is entitled to the ~~appt~~ the overtime allowance as has been decided by the Hon'ble Tribunal in O.A.No.48 of 96 and the respondents cannot disallow his claim on the same plea again.

5. Grounds for relief

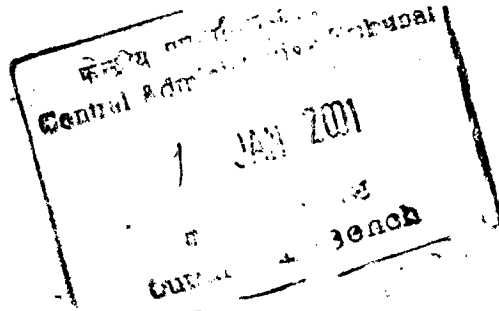
5.1 The applicant is entitled to the overtime allowance as he performed extra hours of duty beyond his rostered duty as per the over time register and as certified by the Chief Travelling Ticket Inspector, the authorised official.

5.2 That the applicant is entitled to the over time allowance under the Railways Act and the Hours of Employment Rules.

5.4 That the decision of the Hon'ble Tribunal, rejecting the plea of the respondents that the TTE's are not entitled to overtime, is binding on the respondents under the principle of res-judicata and the respondents cannot reject ~~the~~ the claim on the same plea.

Rakesh. G. Pandey.

Contd...P/8.



5.5 That the ~~the~~ statutory liability of payment of overtime allowance when an employee is put to extra hours of duty cannot be denied by an office note which was not even circulated for general information.

5.6 That the order passed by the Divisional Railway Manager(P), N.F.Railway, Lunding under No EB/177-Compu dated 13.10.2000 (Annexure A/3) is illegal void and without any basis.

6. Details of the remedies exhausted:

That the applicant preferred number of representations and the representation has been disposed of by the Divisional Railway Manager(P), N.F.Railway, (Respondent No.3) against which this application.

7. Particulars of previous suit/application.

Applicant submits that he filed O.A.No, 3 of 2000 which was disposed of by the Hon'ble Tribunal with direction on the respondents to dispose of the representation. Respondent No. 3 disposed of the representation denying the relief. Hence this application.

8. Relief sought.

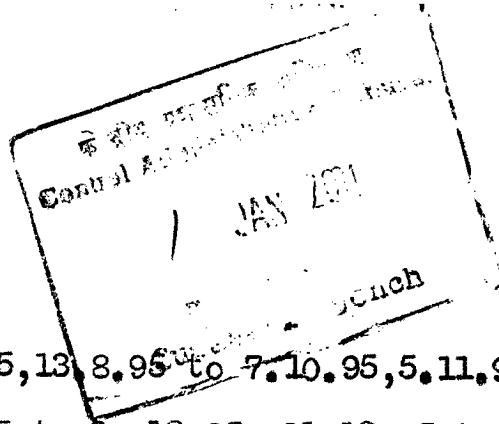
On the facts and circumstances submitted above:  
the applicant prays for:-

(a) Setting aside the order issued by Respondent NO.3 under No EB/177/Compu dated 13.10.2000 (Annexure A/3).

(b) A direction be issued on the respondents for payment of overtime allowance of the applicant for the period from 11.6.96

Rakesh. R. Chandra.

Contd...P/9.



11.6.95 to 24.6.95, 13.8.95 to 7.10.95, 5.11.95 to 2.12.95, 3.12.95 to 30.12.95, 31.12.95 to 10.2.96, 7.7.96 to 3.8.96, 4.8.96 to 31.8.96, 8.9.96 to 5.10.96, 6.10.96 to 19.10.96, 3.11.96 to 1.2.97, and 2.2.97 to 1.3.97 that are pending with respondent No.3. and to pay interest at the rate of 12% per annum from the date of claim.

And for this act of kindness the applicant as duty bound shall ever pray.

9. Interim relief

Nil.

10. Particulars of the application fee:

Indian Postal Order No. = 6 G 771116  
dated 21.12.2000 for Rs.50/- is enclosed.

11. List of enclosures: As in index.

VERIFICATION

I shri Rakesh Chandra Chanda, son of late Rajendra Chandra Chanda, aged about 58 years, resident of Grs. No T/30 (B), Upper Babu Patty, Lunding, Assam, do hereby verify that contents of para 4.1 to 4.3, 4.6 to 4.15 and paras 6 & 7 are true to my knowledge and those in paras 4.4 & 4.5 are true to my information which I believe to be true and the rest are my submissions before the Hon'ble Tribunal. And I have not suppressed any material facts.

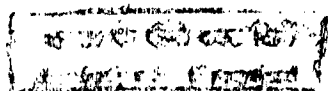
Date 28.12.2000.  
Place-Guwahati.

Rakesh Ch. Chanda.  
Signature of the applicant.

OA 3/2000 - 4.2.00  
48/9

- 10 -

Annexure A/1<sup>36</sup>



RECEIVED  
10/11/99

30/11/99

No: 203/177 compo.

Office of the DM (e)  
dumding.

ET 12/LMG.

non-payment of tax to Shri R. C. Chandra

This office letter no: 203/177 compo.  
dated: 7/4/97 and 17/4/97.

Please refer to this office letter no: 203/177 compo.  
dated: 7/4/97 and 17/4/97 O.T.A. vouchers of District checking  
staff of LMG station mainly in favour of Shri. Rakesh Ch  
Chandra ET 12/LMG and Shri. R. C. Chandra have been  
returned to you for resubmission after duly compliance  
with the objections as raised by staff which have stated  
in the letter dated 7/4/97.

In accordance the above you have submitted O.T.A. vouchers  
of District checking staff of LMG to this office vide your  
letter no: 203/177 compo dated: 17/99. In accordance of this office  
letter no: 203/177 compo dated: 17/4/97. But O.T.A. vouchers  
of this office letter no: 203/177 compo dated: 7/4/97 has  
not been received yet. In absence of which presentation  
and submission of bills to appropriate finance could not  
be proceeded.

In view of the above you are hereby advised to  
send the O.T.A. vouchers to this office which has been  
returned as the staff concerned is pressing hard  
for making early payment. Delay or late submission  
responsibility will rest on you.

For, Divisional Rly. Manager (P)

N. B. Rly. Lucknow

copy to Shri. Rakesh Chandra Chandra. ET 12/LMG  
for information.

Recd  
12/12/99

For, Divisional Rly. Manager (P)

N. B. Rly. Lucknow

Atkhs

R. Dutta, (Advocate)

Delhiana, Guwahati 781011

**In The Central Administrative Tribunal**  
**GUWAHATI BENCH : GUWAHATI**

ORDER SHEET  
APPLICATION NO. 2/2000

OF 199

Applicant(s) *Karun Chandra Choudhary*

Respondent(s) *Union / India and ors.*

Advocate for Applicant(s) *A K Kishor*

Advocate for Respondent(s)

*By Advocate*

4.2.00

In view of the order passed in M.P. No. 7/2000(O.A. 3/2000) the instant O.A. is treated as filed within time.

In this application the applicant is seeking certain directions to the respondents. According to the applicant his over time allowance has not been paid. He submitted number of representations. The said representations have not been disposed of. Hence the present application.

Contd...

*A K Kishor*  
*[Signature]*  
A. K. KISHOR, (Advocate)  
Tribunal, Guwahati Bench

O.A. No. 1/2000

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Order of the Registry

Date

Order of the Tribunal

4. .00

Heard Mr. R. Dutta, learned counsel appearing on behalf of the applicant and Mr. J.L.Sarkar, learned Railway Standing Counsel.

On hearing the counsel for the parties I dispose of this application with direction to the respondents more specifically respondent No.3 to dispose of the representation of the applicant within a month from the date of receipt of this order by a reasoned order and communicate the same to the applicant. If the applicant is still aggrieved he may approach the appropriate authority.

Considering the facts and circumstances of the case, I, make no order as to costs.

Sd/VICE-CHAMAN

Memo No. 6/93 Dated 14.2.2000

1. Mr. R. Dutta, Advocate, CAT Gauhati Bench, Gauhati-5.
2. Mr. J.L.Sarkar, Rly. Advocate, CAT Gauhati Bench, Gauhati-5.

DEPUTY REGISTRAR

Atte No

R. Dutta (1st scale)  
Gauhati, Gauhati-5

N. F. Railway.

Office of the  
Divisional Rly. Manager (P).  
Lumding.

No. EB/177/Compu

Date : 13-10-2000.

To,  
Shri R.C. Chanda,  
CTTI/II/Lumding.

( Through : CTTI/I/LMG )

Sub :- Payment of arrear OTA.

Ref :- CAT/GMY's order dtd. 04-02-2000 on  
OA/3/2000 and your appeal dtd. 19-8-99.

please note that your claim for payment of arrear OTA was examined carefully, but could not be passed for payment as the provision contained under note No. AGM/EU/EXP-CON/34 dtd. 27-7-84 at para-3 of the said letter, it was stipulated that the question of payment of OTA to TTEs should not arise and if any overtime paid to them should be recovered.

Hence your claim for OTA is not tenable. This letter is in compliance with the Hon'ble CAT/GMY's order under reference.

for Divnl. Rly. Manager (P).  
N. F. Railway, Lumding.

Copy for information to :-

- 1) GM(Law)/MLG.
- 2) APO/Legal cell/MLG.
- 3) CLA at office.

for Divnl. Rly. Manager (P).  
N. F. Railway, Lumding.

Attested  
[Signature]  
L. Datta (Advocate)  
Mokpan, Guwahati-781011

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 48 of 1996.

Date of Order : This the 17th Day of September, 1997.

Shri G.L.Sanglyine, Administrative Member.

Shri Rakesh Ch.Chanda,  
 Qrs.No.T/30(B), Upper Babu Patty,  
 Lumding, P.O. Lumding,  
 Dist.Nagaon, Assam.

. . . Applicant.

By Advocate Shri R.Dutta.

- Versus -

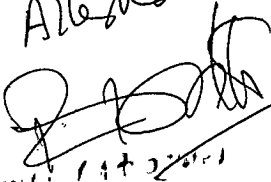
1. Union of India  
 represented by General Manager,  
 N.F.Railway, Maligaon,  
 Guwahati-11.
2. The General Manager,  
 N.F.Railway, Maligaon,  
 Guwahati-11.
3. The Divisional Railway Manager(P)  
 N.F.Railway, Lumding.
4. The Sr.Divisional Commercial Manager,  
 N.F.Railway,  
 Lumding.
5. The Chief Travelling Ticket Inspector,  
 N.F.Railway,  
 Lumding-782447. . . . Respondents.

By Advocate : None present.

ORDERG.L.SANGLYINE, ADMINISTRATIVE MEMBER,

In this application the applicant prays for a direction to respondent No.3 and 4 for production of all relevant records including the case file for perusal of the Hon'ble Tribunal, to quash the order passed by respondent No.3 under No.EE/177(Compu) dated 24.3.95 (Annexure A/20) and for a direction for payment of over time allowance for the extra hours of work performed by the applicant between 17.2.91 to 3.10.92, in the similar manner as his other over time

A.L.S.



G.L. Sanglyine  
 17.9.1997  
 Guwahati

Chief Travelling  
contd..2Ticket Inspector  
(11)



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vouchers have been passed and to pay 18% interest from the date of payment was due.

2. According to the applicant the post of Conductor in the N.F. Railway was redesignated as Head Travelling Ticket Examiner in 1993-94 and was again designated as Conductor now. He is a Group 'C' employee under N.F. Railway and is working as Conductor and posted at Lumding under respondent No.4, the Senior Divisional Commercial Manager. He is classified as a continuous worker under Hours of Employment Rules 1961. The rostered duty hours of a continuous worker is 48 hours and statutory limit to which he can be put to work is 54 hours per week. Whenever a continuous worker works beyond the rostered hours, he becomes entitled to over time allowance at the rate and in the manner prescribed. Further, according to the applicant he had performed duties in excess of the prescribed hours in various spells from 17.2.91 to 3.10.92 as narrated in the present application. The applicant was not paid the over time allowance claimed by him and was agitating the matter both before the authorities concerned and before the Tribunal by filing O.A.No.37/94, which was disposed of with directions on 6.4.1994. Subsequent to that the Divisional Railway Manager(P), N.F. Railway, Lumding, respondent No.3, issued a letter No.EB/177(Compu) dated 24.3.95 stating that :

"you are not entitled to O.T.A. as you are performing duty of Hd.TTE, as per 'link diagram' and accordingly 'consolidated travelling allowance' was paid to you through your salary bill like other Travelling Ticket checking staff of the division."

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*[Signature]*

A. Dutta, (14.10.94)  
Muzam, Guwahati 781011

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The applicant is aggrieved with this order and has submitted the present O.A. The contention of the applicant is that he was not holding the post of Head TTE during the material period, that is, 17.2.91 to 3.10.92 and therefore, this order was issued under a misconception. In the written statement the ground given by the respondents was that he was not entitled to over time allowance as TTE's rest room was available at Lumding station. Relying on para 8 of AIR 1978 SC 851 Mr Dutta submitted that the respondents cannot now change their stand indicated in the impugned order dated 24.3.95 at any rate. He submitted that in his rejoinder which was served on the Railway counsel on 12.3.97 he had enclosed a certificate from the Station Superintendent, OPT, N.F.Railway, Lumding which reads as below :

"Certified that there is no Rest Room for TTE's in Lumding Division since 1990. Once upon a time TTE's Rest Room was provided at LMG. But due to shortage of caretaker, linen & utensils it can't be utilised. As a result it was closed."

In view of this certificate he submitted that there is no ground for the respondents to refuse over time allowance to the applicant. In the written statement it is stated that when there was no rest room in the originating station over time allowance is paid to the TTEs alongwith consolidated travelling allowance. Moreover, the applicant himself was paid OTA by the respondents as Travelling Ticket Checking staff since 1982 and even in 1995 and 1996 with consolidated

Attns

*[Signature]*

A. Dutta, (Advocate)  
Dillipore, Guwahati-781001

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travelling allowance, which shows that the grounds given by the respondents for refusing OTA for the period under consideration is without any valid foundation. Under the circumstances he submits that the impugned order dated 24.3.95 is liable to be quashed.

3. Opportunity was allowed to the respondents to rebut the contentions of the applicant but no proof was forthcoming from them to show that there was rest room for TTEs which was functioning in Lumding station during the period from 17.2.91 to 3.10.92 and further that the applicant was not paid travelling allowance in the periods preceeding and following the above mentioned period when he was posted in Lumding Station. Moreover, the applicant cannot be denied the Over time allowance on the ground that the rest room for TTEs was available in Lumding Station at the relevant time because according to the impugned order dated 24.3.95 at Annexure A/20 this was not the ground of rejection of Over time allowance recorded therein as reproduced above. It is presumed that the reason recorded in their order had emerged after due application of mind of the competent authority to the facts under consideration by him. The impugned order cannot therefore be thrown away by the respondents after the applicant submitted this application before the Tribunal. This contention of theirs betrays that the respondents are bent upon disallowing the claim of the applicant by any means. In the impugned order they had disallowed the claim without reasonable ground and contrary to facts as they have not disputed the contention of the applicant that Conductor was not designated

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as Head TTE in the period between 17.2.91 to 3.10.92. The rejection of the respondents therefore does not carry any weight. In the facts and the circumstances the impugned order dated 24.3.90 is therefore, not sustainable in law. Accordingly, it is hereby set aside and quashed. The respondents are directed to allow the claim of over time allowance under consideration to the applicant after scrutiny of factual and arithmetical correctness of the claim. Payment of admissible amount shall be completed within 3 months from the date of receipt of this order by any of the respondents. I do not however, consider this to be a fit case for granting interest.

The application is disposed of as indicated above.  
No order as to costs.

sd/- MEMBER (A)

TRUE COPY

3/1/93

Deputy Registrar (A)  
Central Administrative Tribunal  
Gurgaon Branch

1/2/93

20/1/93

RECEIVED  
1/2/93

Central Administrative Tribunal

22 JAN 2002

Guwahati Bench

In The Central Administrative Tribunal  
Guwahati Bench at Guwahati.

O.A. NO. 02/2001

Shri R. C. Chanda

Vs.

Union Of India & Ors.

In the matter of :

Written Statement on behalf of  
the respondents.

The respondents in the above case most  
respectfully beg to state as under :

1. That the respondents have gone through the  
original application and have understood the contents  
thereof.

2. That the respondents do not admit any  
statement except those which are specifically admitted in  
this written statement. Statements not admitted are denied.

3. That in reply to statements in paragraph 4.4  
to 4.5 it is stated that ticket checking staff have been  
classified as continuous worker but they are not entitled to  
Overtime Allowance (for short OTA) in terms of ADGM/EC/MLG's  
circular No. AGM/EC/Exp./Con/34 dated 27.7.1984. Head TC/TTE  
in the scale of Rs.5000-8000/- is treated as supervisor and  
conductor also carry the same scale. Automatically conductor  
being the in-charge of ticket checking team of the train is  
supervisor and he is not entitled to OTA. The applicant  
previously worked as

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Sourin Das Narayan Das

Divisional Personnel Officer  
N.E. Railway  
Lending

Filed by the respondent's  
Wrotey B. Chakrabarti  
22/01/02

conductor, now CTTI/II and for both the case he is supervisor and hence is not entitled to OTA.

As per working procedure conductor is the in-charge of the team working with him in train. If any CTTI/II is deputed to work as conductor, then in that case CTTI/II working as conductor is the in-charge of the team. On the other hand occasionally, if any, CTTI/II works as conductor, he will be the in-charge of the team.

It is further stated that calculation of overtime allowance in case of continuous workers is to be made on the basis of duty performed in a fortnight. But, in case of ticket checking staff this is not applicable in terms of ADGM/EC/MLG's circular No. AGM/EC/EXP/CON/34 dated 27.7.1984 and they are not entitled to any OTA.

4. That in reply to statements in para 4.6 it is stated that the ticket checking staff are required to perform their duty as per 'Link Diagram' prescribed for them. They never perform duty as per 'Duty Roster' as stated. 'Link Diagram' means as per train and trip basis. The ticket checking staff who remain absent from his Head Quarter in line for more than 20 days average in a month, they are entitled to get Consolidated Traveling Allowance (for short CTA). Accordingly the applicant has been paid CTA for working as per 'Link Diagram'. Hence, question of payment of OTA in addition to CTA already paid as extra remuneration for performing duties in link train does not arise.

Somendra Nayyar Day

Divisional Personnel Officer  
N.F. Raipur, Lumding

5. That in reply to statements in paragraph 4.7 to 4.9 it is stated that the applicant is not entitled to OTA.

6. That in reply to statements in paragraph 4.13 to 4.14 it is stated that the DRM(P)/LMG paid OTA to the applicant for some periods, as during that time the said circular dated 27.7.1984 was not available in the available in the office of the DRM(P)/LMG. On receipt of the same during pre-checking of OTA it was examined and in terms of that circular the OTA already paid to the applicant became recoverable.

7. That in reply to statements in paragraph 4.15 it is stated that ~~during the course of defending the case in~~ OA No. 48/96 before the Hon'ble Tribunal the relevant ~~instructions in Addl. G.M.'s Note No. AGM/EC/Exp. con/34 dt. 27.7.84 could not be produced adequately in time.~~ 27.7.84 could not unfortunately be placed before the Hon'ble Tribunal for consideration.

8. That in reply to statements in paragraph 4.16 it is stated that the OTA already paid to the applicant became recoverable in terms of the circular dated 27.7.1984. The applicant and other ticket checking staffs of all the divisions of N.F. Rly are not entitled to OTA and hence they are not being paid any OTA.

9. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

I, Sourindra Narayan Ray....., working as .....Lumding....., N.F.Rly, ~~Maligaon~~, do hereby verify that, the statements made in the paragraphs 1 to 09 are true to my knowledge.

~~Sourindra Narayan Ray~~ Lumding.

Sourindra Narayan Ray  
Signature  
Divisional Personnel Officer  
N.F. Railway, Lumding





principle of res-judicata and the respondent cannot raise the plea any more. In respect of plea that the applicant is not entitled to the overtime allowance due to some circular of the ADGM/EC/MLG, the applicant begs to state that no such general circular was issued by the AGM/EC/MLG to the knowledge of the applicant. Besides this plea is also barred by the principle of res-judicata as this plea was raised by the respondents in O.A.No.48 of 1996 and the Hon'ble Tribunal inspite of it decided by judgement dated 17.9.97 that the applicant is entitled to overtime and ordered for payment which was paid by the respondents.

2. That, in respect of paragraph 4 of the written statement the applicant does not admit the correctness of the statements made therein. The applicant begs to state that the applicant performed the duty as per roster and worked overtime and submitted the overtime vouchers which were duly signed by the Chief Travelling Ticket Inspector I (Respondent No.4) and submitted to Respondent No.3 for check and payment. The plea that the applicant is not entitled to overtime allowance as he is paid CTA it may be submitted that the CTA is consolidated travelling allowance and has no relation with payment of overtime allowance. There is no rule to the effect that where CTA is paid no overtime is to be paid. The CTA is called fixed TA and the applicant was paid overtime allowance with CTA/ fixed TA. It may be mentioned <sup>that</sup> in the pay bill <sup>pp.</sup> there is no mention of CTA and it is shown as Fixed

(Fixed ) TA and the applicant was paid overtime allowance along with the fixed TA. Besides, the applicant humbly begs to submit that this plea that the applicant is not entitled to overtime allowance as he is paid CTA is also barred by the principle of res-judicata as this plea was ~~not~~ also raised in O.A No.48 of 96 and was not accepted by the Hon'ble Tribunal .

3. That, the applicant begs to submit that the contents of para 7 is not admitted as the plea of AGM/MLG not-e was made one of the plea in the written statement in O.A.No.48/96 and the Hon'ble Tribunal didnt accept it. The applicant also submits that the payment of overtime allowance is a statutory liability and the AGM/MLG can not change it.

4. That, the applicant humbly submits that the Hon'ble Tribunal may be kind to call for the records of O.A No.48/96 and take the same for consideration.

VERIFICATION

Contd ... P/4.

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VERIFICATION

I, shri Rakesh Chandra Chanda, son of late Rajendra Chandra Chanda, aged about 59 years, residing in Rly Qrs. No. T/30(B), Upper Babu Patty, Lumding, Assam, do hereby verify that the contents of paras 1 to 3 are true to my information which I believe to be true and the rest are my submissions before the Hon'ble Tribunal. And I sign this verification on this 16<sup>th</sup> day of February 2002 at ~~Guwahati~~ <sup>Lumding</sup> *R.R.*

Date  
16.02.02.

Place - ~~Guwahati~~ <sup>Lumding</sup> *R.R.*

*Rakesh C. Chanda.*

Signature of the applicant.

.....

*R.R.*  
*16/2/02*