

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 21.01.2014

OA No. 99/2011 with MA No. 291/00013/2014

Mr. S. Shrivastava, counsel for applicant.
Mr. Y.K. Sharma, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

(G. GEORGE PARACKEN)
JUDICIAL MEMBER

Kumawat

Date - 24-01-2014

Order pronounced today in the open
Court by the aforesaid Bench.


24/01/14
Per C.O

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 99/2011
WITH
MISC. APPLICATION NO. 291/00013/2014

ORDER RESERVED ON 21.01.2014

ORDER PRONOUNCED ON: 24.01.2014

CORAM

HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER

Jitendra Soni S/o late Shri Kamal Kishor Soni, a/a 32 years, R/o 123, Arjun Nagar, South, Near Sawai Madhopur Line, Near Mahesh Nagar, Jaipur, presently posted as Section Engineer, T/L under S.S.E. (RAC), Jaipur.

...Applicant

Mr. S. Shrivastava, counsel for applicant.

VERSUS

1. Union of India through General Manager, Head Quarter Office, N.W.R., Jagatpura, Jaipur.
2. Divisional Railway Manager, D.R.M. (E) Office of North Western Railway, Jaipur.
3. Sr. D.E.E. (D.R.M.) Office of North Western Railway, Jaipur.

...Respondents


Mr. Y.K. Sharma, counsel for respondents.

ORDER

The applicant in this Original Application has challenged the Annexure A/1 impugned order dated 07/08.03.2011 by which the respondents have ordered recovery of Rs. 1,21,690/-, which was paid to him as overtime allowance, from his salary.


2. Brief facts of the case, as stated by the applicant, are that the applicant was working as Section Engineer, Electrical in the

pay scale of Rs. 6500-10500 with effect from 13.04.2006. Later on, he joined as Section Engineer (T/L), Jaipur on 10.02.2008. While working in the said capacity, he was spared to work as Section Engineer (Sick Line) RAC, Jaipur under Senior Section Engineer with effect from 12.02.2008. During the period from May, 2008 to April, 2010, he worked extra hours in addition to his scheduled duty hours for which he was given overtime allowance to the tune of Rs. 1,21,690/-. The said allowance was paid to him after duly verified by the authorities and was approved by the competent authority to grant overtime allowance. Thereafter, without any notice to him, the respondents have issued Annexure A/2 order dated 23.06.2010 directing the recovery of the aforesaid amount from his pay and allowances. Aggrieved by the said order, he made representation to A.D.R.M. on 25.06.2010. As there was no response to his aforesaid representation, he made reminder through recognized Union (NWREU) on 28.06.2010 to Sr. D.M.E., Jaipur. Since, still there was no response, he had earlier approached this Tribunal vide O.A. No. 481/2010 seeking a direction to the respondents not to make any recovery of the aforesaid amount from his pay and allowance. The said O.A. was disposed of vide order dated 02nd November, 2010 (Annexure A/9) directing the respondents to decide his representation by passing a reasoned and speaking order and till such time not to make any recovery of overtime from the salary of the applicant. However, the respondents, vide the impugned order dated 07/08.03.2011, justified their earlier action of recovery from the applicant's pay.



3. According to the applicant, the aforesaid decision of the respondents for recovering the amount already paid to him as overtime allowance is absolutely arbitrary and illegal. He submitted that under Rule 5 (1) of the Railway Servants (Hours of Employment) Rules, 1961 only supervisory staff are not entitled for overtime allowance but the applicant was not a supervisory staff at the relevant time and, therefore, he was entitled to draw the overtime allowance. In this regard, he has referred to Annexure A/5 DRM (E) order dated 20.07.2007 by which the only Senior Section Engineer (Electrical) has been shown as the Supervisory Officer and the rest of the officers like Section Engineer (Electrical), JE-I, JE-II, MCF (RAC), Technician-I (RAC), Technician-II (RAC), Technician-III (RAC), etc. etc. are shown as non-supervisory officers falling under 'C' category. Therefore, they were entitled for overtime allowance. Moreover, all other officers in the category 'C' have also been paid overtime allowance but no recovery has been ordered from them. In this regard, he has specifically referred to the case of Shri Roop Narayan who was working along with him as Section Engineer and sanctioned over time allowance.


4. Vide his application dated 07.07.2010, the applicant has also sought information under Right to Information Act, 2005 as to whether any other order subsequent to the order of DRM (E) dated 20.07.2007 has been issued by the respondents to classify the employees as 'Supervisor' and 'Common' categories. The respondents, vide Annexure A/7 reply dated 09.07.2010 stated



that only the Senior Section Engineer Shri K.C. Rajora was the Supervisory Officer and rest of them including the applicant were all non-supervisory officers.


5. Learned counsel for the applicant has also relied upon the letter No. E/1160/8/10/227 dated 23.02.2011 issued by the DRM/E/BCT, Western Railway, Mumbai Central, wherein it has been held that supervisory staff when not working in their supervisory capacity and not holding independent charge, are entitled to draw overtime allowance. In other words, supervisory officers while working as incharge only, overtime is not payable.

6. The respondents in their reply have submitted that the applicant has wrongly claimed the overtime allowance for the period from May 2008 to April, 2010 as he was performing the supervisory work for which overtime was not permissible. They have also stated that his representation has been duly considered by the respondents and passed a speaking order in compliance of the directions issued by this Tribunal vide order dated 02nd November, 2010 in OA No. 481/2010 (supra). They have further submitted that, vide their letter dated 09.07.2010, the applicant was informed that Shri K.C. Rajora, SSE has been working as Supervisory Officer but others working under were in the category 'C'.



7. I have heard Shri S. Srivastava, learned counsel for the applicant and Shri Y.K. Sharma, learned counsel for the respondents. First of all, I find that there is no dispute by the respondents themselves that the applicant had not worked on overtime. The only contention of the respondents is that he was performing his duties in a supervisory capacity and, therefore, he was not entitled for the overtime allowance. The respondents have not produced any document to show that he was performing a supervisory duty at the relevant time. On the other hand, the information given to the applicant by the respondents themselves shows that he was not performing the supervisory duty and only the Senior Section Engineer was the Supervisory Officer. The applicant's contention that other similarly placed persons have also been granted overtime allowance has not been disputed by the respondents. It is also not the contention of the respondents that the applicant has misrepresented himself to claim any overtime allowance. In fact, his claim for overtime allowance was duly considered by the higher authorities and sanctioned the same by the competent authority. Further, it is observed that overtime allowance paid to him was for the period from May, 2008 to April, 2010 and any recovery at this belated stage would cause extreme hardships to the applicant.

8. In the above facts and circumstances, I find merit in the contention of the applicant and accordingly this Original Application is allowed. Consequently, the impugned order dated



07/08.03.2011 (Annexure A/1) and order dated 23.06.2010 (Annexure A/2) passed by the respondents are quashed and set aside. The respondents shall not only make any recovery from the pay and allowances of the applicant but they shall also return the amount so far recovered from his salary at the earliest but in any case within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

9. In view of the above order passed in the Original Application, the Misc. Application No. 291/00013/2014 filed by the respondents for taking the documents on record is also disposed of.


(G. GEORGE PARACKEN)
JUDICIAL MEMBER

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