

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.020/1502/2015

Date of C.A.V. : 07.06.2018

Date of Order : 23.07.2018

Between :

P.Satyanarayana, S/o Tataish,
aged about 62 years, Retired as Senior Booking Clerk,
S.C.Railway, Gudivada Railway Station, Gudivada,
R/o H.No.16/62-B5, Satwika Corporate Residency-2,
Satyanarayananapuram, Gudivada – 521301,
Krishna District.

... Applicant

And

1. Union of India, rep. by
The General Manager, S.C.Railway,
Rail Nilayam, Secunderabad – 500 071.
2. The Chief Personnel Officer.
S.C.Railway, Rail Nilayam,
Secunderabad – 500 071.
3. The Divisional Railway Manager,
S.C.Railway, Vijayawada Division,
Vijayawada.
4. The Senior Divisional Personnel Officer,
S.C.Railway, Vijayawada Division,
Vijayawada.
5. The Se. Divisional Commercial Manager,
S.C.Railway, Vijayawada Division,
Vijayawada.
6. The Commercial Inspector,
S.C.Railway, Gudivada Railway Station,
Gudivada, Krishna District.

... Respondents

Counsel for the Applicant ... Mrs.Rachana Kumari, Advocate
Counsel for the Respondents ... Mrs.A.P.Lakshmi, S.C.for Rlys.

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant, a railway employee, filed the present OA to set aside the order dated 02.05.2014 passed by the 5th respondent denying the Over Time Allowance for the extra hours of services rendered by him during the period from 01.01.2008 to 20.07.2012 by declaring the same as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and to direct the respondents to consider the case of the applicant for grant of Over Time Allowance for the aforesaid period duly calculating the eligibility of the applicant on the basis of OTA Rules applicable to his post and pay the same with interest at 24% per annum.

2. The case of the applicant is that while working as Senior Booking Clerk at Gudivada Railway Station he had performed the duties as per the hours of Employment Regulation, 1969 and his duty hours were classified as continuous in 8 hours shift per day and availed one day rest as per the roster issued by the Senior Divisional Personnel Officer, S.C.Railway, Vijayawada Division. According to him the 6th respondent had illegally extracted the duties of 12 hours a day as against 8 hours roster work in violation of rules, therefore he claims that he is entitled for Over Time Allowance. He submits that Over Time Allowance is an

allowance paid to railway servants for actual time worked in excess of the hours of employment prescribed by any law or rule and the Railway administration is under an obligation to pay Over Time Allowance when such staff are called upon to work in excess of the number of hours prescribed under the said Regulation. He states that he is governed by continuous roster in 8 hours shift in Gudivada railway station for the purpose of granting Over Time Allowance. During the period from 2008-2012, the applicant submitted the bills pertaining to Over Time calculating the extra hours of work but the said bills were kept pending and were not settled on some plea or the other. The respondents have extracted 12 hours of work as against the prescribed roster of 8 hours of working hours for a continuous period of about 5 years much against the rules without assigning any reasons therefor. When he applied through an Advocate for furnishing the information as to the details of Over Time service rendered by him, the 5th respondent provided the relevant muster rolls vide his letters dated 02.09.2013, 10.09.2013 and 02.05.2014. This apart the applicant had also obtained the relevant revised duty roster issued on 16.08.1998 in respect of Ticket Booking Counters of Railway Station, Gudivada which was supplied by the Public Information Officer / Senior Divisional Personnel Officer, Vijayawada Division. But his claim was rejected by the 5th respondent on fictitious and illegal grounds. He further submits that in order to avoid payment of Over Time Allowance, the respondents provided the information which is misleading and incorrect. They took the said pleas only to deny the Over Time Allowance to the applicant without examining the relevant records and ultimately his claim was rejected arbitrarily.

He submits that the muster rolls provided under RTI Act clearly indicate the number of days of overtime of service rendered by the applicant, which is contrary to the stand taken by the respondents. He further stated that when he insisted to record the Overtime period and forward the same to the concerned accounts section, the supervisory officials having extracted over time work were not recording the same in time and were threatening the applicant that he would be shifted to some other station or he will be transferred to far off place. The applicant who was at the fag end of his service could not venture to file the OA at that time.

3. The applicant got issued a legal notice and the relevant information was made available through letter of the 5th respondent dated 01.05.2014. He also submitted that he could not prefer the OA earlier due to nonavailability of the relevant information which was denied to him. Ultimately with the assistance of legal counsel, he procured some information and filed the present OA.

4. It is under the aforesaid circumstances, the applicant filed the OA seeking the aforementioned relief.

5. In their reply statement the respondents contended as follows :
The OA filed by the applicant is not maintainable since he has alternative remedy before the Regional Labour Commissioner and the Tribunal has no jurisdiction to entertain the OA. The applicant opted for voluntary retirement

and left railway service. The applicant did not submit any representation / grievance against the roster hours of duty fixed by the 4th respondent office while he was in service. As far as the 5th respondent is concerned, the applicant should work according to the duty roster issued by the 4th respondent office who is empowered to fix duty hours according to the policy issued by the Ministry of Railways. In fact at the relevant point of time the 4th respondent has prescribed two duty rosters for Booking Office, Gudivada Railway Station i.e. (1) Continuous and (2) Essentially Intermittent. The railway servant who opted the post carrying Essentially Intermittent classification required to work for 62 hours with weekly rest of 106 hours and in case of Continuous classification it is 51 hours with 117 hours weekly rest. There are two counters in Booking Office, Gudivada one UTS counter with Essentially Intermittent Roster of 12 hours and the other one is Unified Counter with Continuous roster of 8 hours. The applicant opted for UTS counter on the ground that he is not prolific in PRS transactions. The applicant had availed statutory weekly rest and was also granted compensatory rest in lieu of his utilization in any exigencies. Moreover, having worked in the Essentially Intermittent roster prescribed for certain posts at Booking Office of Gudivada railway station without any objection at that relevant point of time, now the applicant cannot claim allowance for the said statutory duty hours.

6. Nextly it is submitted that the applicant did not submit single piece of evidence to show that he had worked beyond roster hours of 12 hours duty in between 01.01.2008 to 02.07.2012 to claim Over Time Allowance. As the post

carrying Essentially Intermittent Roster for 12 hours, the applicant cannot claim Over Time Allowance on the basis of roster meant for Continuous Roster of 8 hours duty. The respondents quoted Para 1502 of Indian Railway Establishment Code which defined the Overtime Allowance as "Over Time Allowance is an allowance paid to railway servants for actual time worked in excess of the hour of employment prescribed by any law or rule". It is also submitted by the respondents that any claimant claiming Over Time Allowance is required to submit a form indicating extra hours of employment performed by him beyond roster duty hours to claim Over Time Allowance. In the present case they state that the applicant did not submit any proof that he had submitted the requisite form indicating extra duty hours performed by him in time to the concerned supervisory officials claiming Over Time Allowance. The applicant also did not submit any copies of Over Time forms except a copy of the muster obtained through RTI Act and the said muster did not indicate any duty hours. Thus according to the respondents the claim itself is time barred besides imaginary and fictitious.

7. With the above contentions, the respondents sought to dismiss the OA.

8. In the rejoinder the applicant submitted that he was a Senior Booking Clerk, Gudivada Railway Station governed by 8 hours duty per day under the mandatory provisions of the HOER 1969 but the respondents have extracted illegally 12 hours work and also deprived him of rest for a period of 5 years. It is

further submitted that the contention of the respondents that the OA is not maintainable before the Tribunal is incorrect and it is settled law that the Tribunal has concurrent jurisdiction with Assistant Labour Commission as held by the various Courts on similar issue. According to the applicant the version of the respondents that he is governed by 12 hours shift is totally incorrect, since as per the roster given by Senior DPO it is only 8 hours. It is further submitted that the supervisors concerned are responsible to draw the Over Time Allowance when such staff are called upon to work in excess of number of hours. When the train drivers and train guards work for excess hours, the OTA is automatically paid to them. But the same was denied to the applicant arbitrarily as there was no permission to draw OTA for the commercial staff.

9. The version of the applicant is that whenever he performed the duties of Over Time Allowance he insisted to record the same and forward the same to the concerned accounts section. The supervisory staff have taken over time work from the applicant but have not recorded the same in the register and threatened that he would be shifted to some other station or transferred to far off place.

10. I have heard Mrs.Rachana Kumari, learned counsel for the applicant and Mrs.A.P.Lakshmi, learned standing counsel for the respondents.

11. Now the point for determination in the present OA is whether the

applicant is entitled for Over Time Allowance claimed by him for the period from 01.01.2008 to 20.07.2012.

12. One of the issues raised by the respondents is as to the maintainability of the OA before this Tribunal. Their contention is that the appropriate forum for the applicant to make the claim for Over Time Allowance is before the Regional Labour Commissioner, but not the Tribunal.

13. In ***Pashupathi Sardar & Others Vs. Union of India & Others in W.P.C.T.No.345 of 2012*** the Division Bench of Hon'ble High Court of Calcutta held that the Central Administrative Tribunal can exercise concurrent jurisdiction with the authorities under the Industrial Disputes Act, in the matters relating to entitlement of Over Time Allowance to railway employees. In view of the above referred judgement, the Tribunal has jurisdiction to entertain the present OA filed by the applicant.

14. However, it is argued by the learned counsel appearing for the applicant that since all the records relating to discharge of duties of the applicant during the relevant period are with the respondents, they have to produce the said records before the Tribunal in proof of their contention that the applicant is not entitled for Over Time Allowance.

15. Learned counsel for the applicant in support of her contention relied

on the order passed by the **Central Administrative Tribunal, Ernakulam Bench in OA 180/00651/2014 (R.Rajarathinam Vs. Union of India and others)** wherein the learned Member who rendered the order expressed the following view :

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

16. Learned Member disposed of the OA with a direction to the Southern Railway to detail a senior officer of the DRM, Palakkad/Salem to verify the claims of the applicant with available documents and the report by such officer shall be considered by the Chief Personnel Officer of the Southern Railway and who shall arrive at a decision and act accordingly.

17. Though in the case before the Ernakulam Bench of the C.A.T. also the applicant was unable to furnish the details of the Over Time duties, the facts of the said case are not identical to the facts of the present case. In the said case there were no latches on the part of the applicant, he had been consistently pursuing the Over Time Allowance claim. Further as no ratio has been laid down in the order passed by the Ernakulam Bench of C.A.T., the decision ultimately rendered need not be followed in the present case, since the facts are not identical.

18. In the instant case the applicant took voluntary retirement in the year

2012. He filed the present OA in 2015. He claims Over Time Allowance from 01.01.2008 to 20.07.2012. Copies of the muster rolls filed by him along with the OA do not indicate that he performed any Over Time duties. According to the respondents the employee who claims Over Time Allowance has to submit a form indicating extra hours of work performed by him beyond the rest duty hours to the supervisory officials concerned. Obviously the applicant did not submit any such form. It is submitted by him in the OA that though he insisted upon the supervisory officials to record the Over Time duty they did not record the same. But while in service he did not take any steps to get overtime work recorded by submitting representations to the higher officials. Only 3 years after retirement, he filed the present OA. He merely stated in the OA that he performed Over Time Allowance for the period from 01.01.2008 to 20.07.2012, but he did not furnish any details.

19. In ***Capt. Harish Uppal Vs. Union of India and others (1994 Supp (2) SCC 195)*** the Hon'ble Supreme Court held as follows :

"It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinate long time, the court may well choose to decline the interfere in its discretionary jurisdiction under Article 226 of the Constitution of India."

20. The above decision rendered by the Hon'ble Supreme Court is very much applicable to the facts of the present case. No material is produced by the applicant claiming Over Time Allowance before the authorities while he was in

service. He filed the present OA 3 years after his retirement without furnishing any details. On account of latches and inordinate delay in approaching the Tribunal, the applicant is not entitled for the relief prayed.

21. The O.A. is therefore dismissed without any order as to costs.

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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