

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

OA No. 317 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Rabindra Kumar Mallick, aged about 48 years, S/o Late Krushna Chandra Mallick, At – Kotapur, PO – Sanakuani, Dist. – Jajpur, at present working as Sr. DTI, Khurda Road Railway Station, Jatni, Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its General manager, East Coast Railway, Samant Vihar, Rail Vihar Chandrasekharpur, Bhubaneswar.
2. Divisional Railway Manager, East Coast Railway, Khurda Road, At/PO – Jatni, Khurda – 752150.
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road, At/PO – Jatni, Khurda – 752150.
4. L.V.S.S.Patrudu, Sri Divisional Personnel Officer, East Coast Railway, Khurda Road, At/PO – Jatni, Khurda – 752150.
5. Sr. Divisional Finance Manager, East Coast Railway, Khurda Road, At/PO – Jatni, Khurda – 752150.

.....Respondents.

For The applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 15.3.2019 Order on : 29.3.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"(i) To quash the order dated 17.10.2014 under Annexure A/14 order dated 12.3.2015 under Annexure A/18.

(ii) To direct the respondents to release his arrear claims such as OT & DA etc. to the applicant in view of Railway Boards instruction.

(iii) To pass any other order/orders as deemed fit and proper."

2. The case of the applicant is that while he was working as Senior Divisional Transport Inspector (in short DTI) under the respondents and was posted at Talcher w.e.f. 12.5.2005, he had toured different accident cites within his jurisdiction for the period between 16.9.2007 to 4.7.2009 in different spells to attend to the breakdown duties. The claim of the applicant is that he is entitled for Overtime (in short OT) Allowance as per Rule 1420 (2) of Indian Railways Establishment Code (in short 'IREC') in addition to the TA/DA

admissible to him as per rules. He is aggrieved since the respondents have paid him TA/DA, but refused to release the OT allowance. He had submitted the representation for considering his claims for the allowances which was rejected by the respondents. He approached the Tribunal by filing the OA 1047/2014 which was disposed of vide order dated 19.1.2016 directing the respondent No.3 to consider and dispose of his pending representation by reasoned and speaking order and communicate the same to the applicant within a period of 60 days. Accordingly the respondents have passed the order dated 12.3.2015 (Annexure A/18) rejecting his claim by stating as under :

"Your case has been examined by the undersigned along with available records vis-a-vis relevant file 1420 of IREC.

You, while working as sectional DTI at TLHR were deputed to look after restorations work as a supervision during break down in MCL siding,. During your tenure at TLHR you used to attend accident site as per order of the Area Officer i.e. ARM/TLHR for restoration work. It is the assigned duty of sectional DTI to attend accident site not only in your section, but also in other section as per the instruction of the departmental officer. The duties of DTI come under the supervisory category as defined in Estt. Srl. No. 50/72. There is no roster hour of duties prescribed for such category of staff. The nominated staff (Mech, C&W, Elect(G) are entitled for break down allowances as per IREC Rule 1420 sub rule No.I, ii, iii, iv & v to the GP Rs. 4200/- non nominated staff of all departmental including supervisors are entitled for Break down allowance as per IREC 1420 sub rule 2.

Thus from the above it is clear that all the provision of rule 1420 has to be read in totality particularly Rule 1420(2) with Rule 1420(4). The Rule 1420(4) clearly defines breakdown and the duties which has been attended by you does not come under the classification of Break down under Rule 1420(4) since it has not disrupted normal traffic. MCL siding is a private siding separate from running lines. Attending train traffic problems is the normal obligation of DTI for which you have been allowed TA for your travel from HQ servant. Administration has laid TA as per rule 1420 sub rule 4.

Furthermore, regarding your allegation in connection with payment of OT to similarly situated employee you are advised to submit the list of similarly placed staff who have been paid OT in this context. Further it is also informed that no other DTI's of KUR division have been paid any OT. Hence, your claim that similarly placed employees have been paid OT is not correct.

In view of the above your claim to get OT & break down allowance is not advised as per rule."

3. From the above the stand of the respondents, it is contended that the applicant is not entitled for the benefit of Rule 1420(2) of IREC since under Rule 1420(4) the duty attended by the applicant related to the sidings of Mahanadi Coal Fields which are not the Railway sidings and so Rule 1420(2) will not be applicable in view of the sub rule (4) of Rule 1420.

4. The respondents in their counter have reiterated the stand. In this connection para 6 of the counter states as under:

"In reply to the averments, it is humbly submitted that para 3.9 of letter dtd. 6.12.2007 (Annexure A/2) is applicable for the accidents occurred in the territorial jurisdiction of Rlys. only & not for the private sidings. Hence, the averments of the applicant cannot be accepted from any angle. Further, it is submitted that there is no dispute with regard to Annexure A/2,. However, this circular or subsidiary instruction was issued by the Administration for the

purpose of Railway siding not to attend the accident place at private siding. Moreover, the applicant is not the person to do the work and he is not coming under the Breakdown category of staff. Therefore he is not entitled for OT or any other allowances what Breakdown staff are getting for accidents occurred in the Railway premises."

5. It is further stated in the counter that the applicant has already received the benefit as TA/DA for his tours as admissible under the rules for his tour to the siding area of Mahanadi Coalfields Ltd (in short MCL) siding area as TA/DA and he is not entitled for any Overtime Allowance for the period in question.

6. The applicant has filed the Rejoinder stating that MCL siding as well as other areas for restoration of normal work are included in the system map of Khurda Division. Therefore, it cannot be excluded for calculating the OT allowance of the applicant for attending the breakdown duty in MCL sidings.

7. In reply to averments made in para 6 of the counter it is stated by the applicant in the Rejoinder as under:

"For that in reply to para 6 of the counter are hereby denied. It is a serious violation of Establishment manual of IREM. An authority cannot take two stand on a single subject which clearly indicating the malafide and whimsical intention which is beyond acceptance before the judicial system. Again averments made in this para is misleading to deny the claims of the applicant by taking fake argument for differentiating the status of place that it is private siding. It is worthwhile to mention here that this organization is claiming expenditure from the private party for its staff cost and accept the same. Hence the respondents denied which is beyond rules."

8. Heard learned counsel for the applicant who reiterated the stand taken by the applicant in the OA. His submissions emphasised the fact that the applicant had not received any overtime allowance as well as dietary allowance for attending to the breakdown works in MCL sidings on getting information about the accidents. It was further submitted that the respondents in the impugned order have stated one of the reason that the applicant being a DTI, is working against a supervisory post for which the overtime allowance is not permissible. But as per Rule 1420(2) of IREC, the supervisory staffs are also eligible for overtime allowance as stated in the rules. It is also pointed out that there is a cabin of the Railways in the private siding as stated in the rejoinder. It is also contended by the learned counsel that as mentioned in para 11 of the rejoinder, similar benefit has been extended to similarly placed persons.

9. Learned counsel for the respondents was also heard. He submitted that the applicant's tours to MCL siding areas were beyond the normal route map of the Railways and these cannot be termed as breakdown duty under Rule 1420 of IREC. What is breakdown for which a Railway servant is entitled for overtime allowance, has been defined under the sub rule (4) of Rule 1420 as extracted in the order dated 7.10.2014 passed by the respondents while rejecting the order by the respondents.

10. I have considered the submissions made by both the parties and also perused the pleadings of the parties available on record.

11. The relevant question in this case is whether the applicant is entitled for claim under sub rule (2) of Rule 1420 of the IREC in spite of the under sub rule (4) of same rule.

12. As explained by the respondents in the impugned order dated 7.10.2014 the sub rule (4) defines a breakdown for which a Railway servant will be entitled to the overtime allowance. Sub rule (2) of Rule 1420 of the IREC reveals that the supervisory staffs are also entitled for attending to breakdown duty. However, what will constitute the breakdown duty has been specified in sub rule (4). Therefore the entitlement under Sub rule (2) will be subject to attending the breakdown work which must fulfil the definition of breakdown, for which overtime allowance and dietary allowances will be admissible. From the reading of sub rule (2) & (4) together, there is nothing in the rules to show that the breakdown in a private siding like MCL siding can be termed as breakdown for the purpose of these rules.

13. No rule or guidelines have been furnished by the applicant in support of his contention that by attending the breakdown in a siding which does not belong to the Railways, the allowance under sub rule (2) of Rule 1420 of the IREC will be admissible. The applicant in his rejoinder has stated that the overtime allowance has been allowed to many other similarly placed persons (para 11 of the rejoinder). However, the name of any specific person who has been allowed overtime allowance for attending the breakdown duty in private siding like MCL sidings has not been furnished by the applicant. It is seen that the impugned order dated 12.3.2015 (Annexure A/18) extracted in para 2 supra, has also mentioned the fact that the applicant has not been able to furnish the list of the similarly placed staffs who have been allowed overtime allowance and he was also advised by the respondents to furnish a list of such staffs. It was also mentioned in the impugned order that no DTIs under Khurda division has been allowed overtime allowance.

14. In view of the circumstances as discussed above, I do not find any merit in the OA to justify any interference with the decision of the respondents in the matter. The OA is accordingly dismissed with no order as to costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

