

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00011/15

With MA No. 290/00011/15

Reserved on : 10.12.2018

Jodhpur, this the 13th December, 2018

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Madho Dan S/o Shri Shakti Dan, aged 68 years, R/o Tiwari Road,
Back of Engg. Colony, RLY Marwar Mathania, Tehsil Osian,
District-Jodhpur. (Lastly worked at respondent No. 4 office)

.....Applicant

By Advocate : Mr B.S. Tanwar.

Versus

1. Union of India through the General Manager, North-Western Railway, Headquarter Jaipur.
2. The General Manager, North Western Railways, Baroda House, New Delhi-1.
3. The Divisional Railway Manager, North Western Railways, Jodhpur.
4. Sr. Divisional Personnel Officer, North Western Railways, Jodhpur.

.....Respondents

By Advocate : Mr V.K. Vyas.

ORDER

The present original application has been filed under Section 19 of the Administrative Tribunals Act, 1985 alongwith Miscellaneous Application under Section 22 of the said Act seeking direction on the respondents to allow the allowances of

O.T. with all consequential benefits with difference of arrear alongwith 24% interest per annum.

2. The pleaded case of the applicant in brief is that he was initially appointed in the respondent-department on 02.07.1969 and superannuated from the post of PDL/I/ELT/JSM w.e.f. 31.05.2007. While applicant was working on the post of Pump Khalassi during 01.08.1974 to 20.10.1983, he was not allotted any residential quarter by the respondent-department as there were only three quarters available which were occupied by the other employees. Therefore, as per RLT award dated 29.01.1982 (Annex. A/2), employees posted at road side station who are not allotted residential quarter, their duty hours are only for 10 hours per day or 60 hours per week. If more than 10 hours duty is taken from them then they are entitled for Overtime Allowance (O.T. Allowance). The respondent-department took the services of the applicant for 12 hours per day during the period 01.08.1974 to 20.10.1983 and vide letter dated 12.10.1981 (Annex. A/3) informed the applicant that he was not allotted any residential quarter as no residential quarter is vacant. The applicant made an application under section 33 C (2) of the Industrial Disputes Act, 1947 but the same was rejected vide order dated 07.01.1998 being not maintainable. Thereafter applicant made another application to the Regional Labour Commissioner (Central),

Ajmer which was decided on 13.06.2000 (Annex. A/6) and vide letter dated 26.07.2000 (Annex. A/7), Divisional Personnel Officer, NWR, Jodhpur requested the DRM, NWR, Jodhpur to decide the claim of the applicant forthwith. The applicant also made an application on 29.12.2000 (Annex. A/8) to the DRM, NWR, Jodhpur and prayed that he may be allowed OT Allowance as per the directions issued by the competent authority. However, vide letter dated 28.02.2001 (Annex. A/9) issued by the Divisional Personnel Officer, NWR, Jodhpur to the office of the DRM, NWR, Jodhpur it was informed that the OT record/bills have been destroyed and the verification of the claim of the applicant cannot be made. Therefore, OT Allowance cannot be allowed to the applicant. Thereafter the applicant agitated his claim before Assistant Labour Commissioner (Central), Ajmer vide application dated 08.03.2001 and through trade union vide letter dated 13.11.2003 but to no avail. Hence, he approached this Tribunal seeking directions upon the respondents to pay O.T. Allowance with 24% interest thereon.

3. In reply, respondents have stated that working hours of the Pump Khallasi posted at Mathaniya Railway Station are classified as "Essentially Intermittent" and required to be rostered for 12 hours a day and 72 hours weekly as per H.O.E.R. rules. The applicant was posted at road side station and if he refuses to avail the railway accommodation by any domestic/personal reason and

the employee is having a suitable/comfortable private accommodation than he is not eligible for the benefit of reduced duty hours and they are required to be restored for 12 hours a day duty. The applicant worked as per roster system and had no objection during the said period. The applicant was offered railway quarter but he denied availing the railway quarter facility because he was residing in private accommodation and availing house rent facility. The respondents annexed copy of application written by the applicant dated 12.04.1981 (Annex. R/1). Respondents further stated that as the applicant was not interested to avail railway accommodation when he was offered with the same, the said accommodation cannot be kept vacant for the indefinite period because doing so railway has to suffer not only loss of revenue but also resulting in the denial of lawful accommodation to other deserving railway employees who had applied for the same. When the railway accommodation was available at that time, the applicant was not interested to avail the same and till July, 1974, the said railway accommodation remained vacant and thereafter, it was allotted to Shri Rameshwar, Khalasi. The applicant himself admitted in his application dated 12.04.1981 (Annex. R/1) that respondents were allotting railway residential quarter to him but he refused to avail the said accommodation due to his personal reasons. It has been categorically stated by the respondents that OT Allowance is to

be paid with the salary bills as per entitlement of the employee and applicant did not submit any overtime claim for the period 01.08.1974 to 30.08.1983 and therefore, no decision can be taken on the over time claim made by the applicant in the present OA. The respondents have further stated that the applicant has not raised any dispute prior to 1992 with regard to OT Allowance claim for the period 01.08.1974 to 30.08.1983. He exhausted the legal remedies by filing of claim application before the Labour Court in the year 1992 and the same has been rejected on 07.01.1998. The Regional Labour Commissioner (Central), Ajmer has already been informed the reasons for non-payment of OT claim raised by the applicant vide letter dated 28.02.2001 & 31.07.2001 (Annex. R/3 & R/4). Thus, respondent have submitted that the present OA is barred by the principle of res judicata and law of limitation and prayed to dismiss the OA with costs.

4. The applicant submitted Miscellaneous Application alongwith the present OA, for condonation of delay stating therein that vide order dated 13.06.2000, competent authority directed the respondents to allow O.T. allowance to the applicant. However, the said amount was not released to the application for the sole reason that the record of the OT has been destroyed. The applicant has made his claim within time and it was the respondent-department who did not take any action on the request of the applicant, therefore, applicant cannot be made to

suffer for the inaction or action on the part of the others. Applicant further stated that he is poor and an old person having old age and he is in poor financial condition and his family is living in difficult condition. The authorities of the respondent-department assured the applicant that his case will be considered once again by the competent authority but after passing of long time his case was not considered and again he approached the competent authority but no heed was paid to his request, therefore, the applicant filed the present OA. Hence, in the facts and circumstances of the case, the delay caused in filing the OA is bonafide one.

On the other hand, respondents while reply to MA for condonation of delay have reiterated the facts mentioned in their reply to the OA and further stated that the OA filed by the applicant is absolutely barred by limitation and delay caused in filing the OA does not deserve to be condoned.

5. I have heard both the parties, considered rival contentions and perused the record.

6. Admittedly, the applicant has filed the present OA in the year 2015 seeking Over Time Allowance claim for the period 01.08.1974 to 30.08.1983. As per averments made in the OA itself, applicant, for the first time, agitated his grievance when he submitted an application No. 1/1992 under section 33 C (2) of the

Industrial Disputes Act, 1947 before Labour Court in the year 1992. However, the same was rejected on 07.01.1998 on the issue of maintainability. Thereafter, he pursued his case before Labour Enforcement Officer (Central), Jodhpur and finally the matter ended when letter dated 28.02.2001 (Annex. A/9) was issued by the Divisional Personnel Officer, NWR, Jodhpur to the effect that OT record/bills have been destroyed and verification cannot be made and therefore, OT Allowance cannot be allowed to the applicant. It is evident that after issuance of Annex. A/9 letter dated 28.02.2001, the applicant conspicuously remained silent for almost 14 years for pursuing his claim pertaining to the period 01.08.1974 to 30.08.1983. It is clear that the applicant's OT Allowance claim is a stale claim and if a lenient view is taken by this Tribunal and order Annex. A/9 is treated to be a final order though the same has not been impugned by the applicant, then also there is gross delay of at least 14 years for approaching before this Tribunal. Furthermore, the applicant has miserably failed to explain the inordinate delay in approaching this Tribunal in the MA filed by him for condonation of such long delay as per Section 21 of the Administrative Tribunals Act wherein each day's delay has to be explained by the applicant in a reasonable manner which is totally lacking in the present case.

7. Apart from above, so far as merits of the case is concerned, admittedly the applicant is seeking payment of O.T. Allowance for

the period 01.08.1974 to 20.10.1983 on the ground that at relevant time there was no vacant residential accommodation with the respondent-department at Marwar Mathaniya Railway Station, which is a Roadside Railway station, therefore, he is entitled for OT Allowance as he has performed duties for 12 hours instead of 10 hours required to be done in case of non allotment of official residential accommodation at Roadside Station. On the other hand, respondents inter-alia contended that applicant voluntarily denied the railway accommodation facility offered to him in the year 1974 and he was paid House Rent Allowance. Thereafter, respondents allotted the residential quarter to other railway servant and therefore, there was no vacant railway accommodation available. The respondents placed on record application dated 12.04.1981 (Annex R/1) submitted by the applicant. In these circumstances, when applicant himself admitted in his application dated 12.04.1981 that as he had already been given advance for the private accommodation in the year 1974, therefore, railway quarter being offered to him at that time was not accepted by him and later on, it was allotted to one Mr Rameshwar, Khalasi. Thus, it is amply clear that applicant was offered railway accommodation at a roadside railway station but he himself refused the same for his personal reasons which later on was allotted to somebody else and the same remained occupied for a longer period. Therefore, it also appear prima-

facie that there is no merits in the OT Allowance claimed by the applicant after such a long period when it is also difficult for the respondents to produce relevant records before the Tribunal.

8. In view of discussions hereinabove made, OA is dismissed on the grounds of delay as well as being devoid of merits. MA is dismissed accordingly. No costs.

[Hina P. Shah]
Judicial Member

Ss/-