

28

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 572/2003

New Delhi, this the 23rd day of December, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Sh. K.S.Tyagi
S/o Sh. Rangiv Singh
C/o Sh. U.P.Bhatia
189, Mansi Colony
Raj Nagar, Sector-23,
Ghaziabad (U.P.).

...Applicant

(By Advocate Sh. S.K.Gupta for Sh. B.S.Gupta)

V E R S U S

1. Union of India through
General Manager
Northern Railway
Baroda House, New Delhi.
2. Divisional Railway Manager
Northern Railway
Moradabad Division
Moradabad, U.P.
3. Senior Divisional Personnel Officer
Northern Railway, Moradabad Division
Moradabad (U.P.).

...Respondents

(By Advocate Sh. R.L.Dhawan)

O R D E R

The applicant retired from the post of Station Supdt. on 31.12.2001. He has approached this Tribunal for the second time for the reliefs as had been broadly prayed for earlier vide OA 135/2000, which was decided on 4.9.2001 with the following directions:-

'In this view of the matter and having regard to the circumstances of the case, the present OA is disposed of with a direction to the applicant to make a detailed representation to the respondents, enclosing all the relevant documents which, inter alia, prove his rightful claim of OTA, within two weeks and the respondents are, thereafter directed to consider the same, more particularly the official record annexed with this OA, which makes the applicant entitled for accord of OTA as per the hours shown

[Signature]

in the record. In this process the respondents shall accord a personal hearing to the applicant and thereafter pass a detailed and speaking order, calculating the amount and to disburse the same to the applicant, within four weeks from the date of receipt of representation of the applicant.

The applicant thereafter submitted a representation to the respondents as directed and the same was given consideration by the respondents and who issued an order dated 4-3-2002 (Annexure A-1) paying an amount of Rs.9639.90/- to the applicant and also conveying to him that the rest of his claims are not admissible as per Hour of Employment Regulations. The applicant is not satisfied with this and has now come up with this OA seeking the reliefs as submitted in paragraph 8 hereof.

2. The respondents in their reply have, however, submitted that the claim of the applicant for payment of overtime allowance for the period from 6-7-97 to 13-3-99 for different spells has already been adjudicated upon by this Tribunal while disposing of OA 135/2000 and CP 80/2002 and, therefore, this OA attracts the Doctrine of Res-judicata. It has also been argued by them that this OA is barred by limitation and is, therefore, not maintainable under Section 21 of Administrative Tribunals Act, 1985. Claim pertains to the year 1997-99 and he ought to have agitated the matter while he was in service. To support this point, the respondents have referred to the decision of the Hon'ble Supreme Court in the case of **Rattam Chandra Sammanta v. UOI & Ors.** (JT 1993 (3) SC 1418) in which it was held that 'delay deprives a person of the remedy available in law, a person who has lost his remedy by lapse of time, loses his right as well.'

3. They have affirmed that they examined the claims of the applicant as per the directions of the Tribunal and also afforded personal hearing to him on 12-12-2001 before their detailed order dated 4-3-2002 was issued. The applicant has been paid an amount of Rs. 34,264/- and another amount of Rs.9639.90 towards payment of his claims. The respondents have observed that most of the facts which the applicant has submitted in this OA are mere reiteration of the facts as submitted earlier by him in OA 15/2000 and, therefore, they have not responded to the same in some cases.

B. P. /

4. Going through the rejoinder as filed by the applicant, I find that he has argued that as already the respondents have paid him the said amounts during the pendency of the previous OA and also in compliance with the orders of the Tribunal while disposing of the same, to contend that the matter is barred by limitation is not proper. He has also questioned the assertion of the respondents that the remaining claims of the applicant are not admissible in terms of 'Hour of Employment Regulations'. According to him, the said regulations specify the classes of staff into different categories which only prescribe hours and roster in case of workers who have to perform shift duties in respect of which railway administration is under an obligation to pay over time allowance when such staff are called upon to work in excess of number of hours prescribed under the said Regulations. He has also disputed the submissions of the respondents in paragraph 5 of their reply and has argued that the matter raised in this OA has not been adjudicated upon in the previous OA.

5. I have gone through the submissions of both the parties carefully and find that the matter has been given due consideration by the respondents vide their letter dated 19-3-2004 by which each claim of the applicant has been examined and the reasons for not allowing the same has been specifically mentioned in the last column (column 5) of the letter. It is also mentioned in the said letter that his claims have been examined under Hour of Employment Regulations and that the amounts which became due to the applicant during the period from 6-7-97 to 13-3-99 have been allowed to him. I also find that the applicant has responded to each of the remarks of the respondents in his additional affidavit filed on 13-5-2004. In this additional affidavit, he has referred to the casual leave record, C.L., L.A.P, Office Attendance, Sick etc. being counted as duty and being charged as roster hours, half average pay being converted into average pay on medical grounds as per Appendix B of Operating Manual as issued by the Northern Railway, preparatory and complementary work not being allowed in the shape of over time allowance etc. and has pleaded that these need to be looked into with reference to official records/manual referred to etc. Claims of the applicant with regard to the exact number of hours of over time put in by him on the respective dates

S. P. W.

are again matters of record which can be verified by the respondents with reference to their records. It is, however, expected that the respondents, while examining the claims of the applicant, must have gone into their official records in addition to having kept in view Hour of Employment Regulations. As the matter has already gone into by this Tribunal earlier while disposing of OA 135/2000 and necessary orders given and whereafter the respondents have examined each claim of the applicant giving specific reasons before issuing the impugned order whereby an amount of Rs.9639.90/- has been paid to the applicant towards payment of his claims, it will not be appropriate to take a view that the matter requires any further discussion. At the most, the respondents could be asked to see whether the Manual etc. which has been referred to by the applicant in his additional affidavit has been gone through by the respondents while considering the claims of the applicant and, if not, the same may be done now and needful done.

6. With these observations and finding no further merit in the OA, the same is disposed of with directions to the respondents that they examine the claims of the applicant as made in the additional affidavit as referred to hereinabove with reference to the Manual which has been referred to therein and dispose of the matter by issuing a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.



(Sarweshwar Jha)
Member (A)

/vikas/