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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 636/2001
M.A. NO. 557/2001

New Delhi this 08th day of February 2002

Hon'ble Shri Govindan S. Tamai, Member(A)

1. Dinesh Kumar S/o Gulab Rai Sharma,
Staff Car Driver,
Under Chief Traction Loco Controller,
DRM Office, Northern Railway,
New Delhi.
2. Mir Singh S/o Hazari Lal
Staff Car Driver,
Under Sr. Div. Elec. Engineer (RSO)
Northern Railway, New Delhi
3. K.K. Sharma, S/o A R Sharma,
Vehicle Driver,
Under Chief Traction Power Controller,
DRM Office, Northern Railway New Delhi
4. Khema Nand S/o Inder Dev,
Vehicle Driver,
Under Senior D.E.E. (TRD)
DRM Office, Northern Railway
New Delhi

.....Applicants
(By Shri B.S. Mainee, Advocate)

VERSUS

1. Union of India through General Manager,
Northern Railway,
Baroda House, New Delhi
2. Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi
3. Divisional Railway Manager,
Northern Railway,
New Delhi.

.....Respondents.

(By Sh. P M Ahlawat, Advocate)

O R D E R (ORAL)

Letters No. 3-E/312/RLT/1969/VIII/ADJ dated 4.11.99 and No. 971-E/11/ADJ dated 21.12.99, issued by the respondents No. 2 & 3, whereby the classification of the drivers (applicants) has been changed, increasing their working hours are under challenge in this OA.

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2. S/Shri B.S. Mainee and P.M. Ahlawat, learned counsel represented the applicants and the respondents, respectively during the oral submissions.

3. The applicants who are driven are included in the category of 'continuous' staff performing 54 hours in a week. The category is changed only when it is felt necessary that too after a factual job analysis (FJA) is undertaken. However, by letter dated 14.11.99, respondent directed that the drivers category be changed to essentially intermittent, which was followed by the order of respondent No.3, adopting it and increasing the working hours to 10 hours a day i.e. 60 hrs. a week. This was done without undertaking any FJA, which clearly amounted to unfair labour practice. Reiterating the above points, Sh. B S Mainee, learned counsel for the applicants argues that the above change in classification was also discriminatory, in that this has been introduced only in Division of the Northern Railway.

4. On behalf of the respondents, it is pointed out by Sh. P.M. Ahlawat, their counsel that the change in classification of drivers from continuous to essentially intermittent has been ordered provisionally subject to FJA. He also points out that FJA conducted subsequently during 7-9/2/2001, also justified the change over. There was nothing irregular or arbitrary about this decision. He also points out that Tribunal's jurisdiction in the matter of working hours in Rlys is ousted in terms of the decision dated 26.4.2000 of the Patna Bench of the Tribunal in OA No. 542/93 and 161/97, filed by Ram Lal Prasad [AISLJ - X-2001(3)].

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5. I have considered the matter. OA relates to the change of classification of drivers from the category of 'continuous' staff to 'essentially intermittent' staff without undertaking FJA. Impugned order No. 971-E/11/Adj dated 27.12.99 reads as below:

"In terms of CPO's DO No. 3-E/312/RLT/1969/Pt. III/Adj. dated 14.11.99 DRM has approved to classify all Vehicle Drivers except those who works in (cycle shift in EI Classification) under HOER, and as such they are rostered from 8.30 hrs. to 13.30 hrs. and 14.00 hrs and 14.00 to 19.00 hrs. , 10 hours per day and 60 hours in a week provisionally pending FJA results."

Obviously the changeover has been ordered without the required data which would come only from FJA. Order is therefore arbitrary. Respondents seek shelter in the order dated 24.2.2000 of Patna Bench, which has declined jurisdiction in the matter of change of classification, deeming it to be a labour matter. On the other hand, Principal Bench in OA No. 1789/95, filed by Ram Lal Prasad decided on 30.9.99, entertained the OA and directed holding of periodic FJA. I bow to the decision of the coordinate court in the Principal Bench and hold that in this case the respondents should have effected the Changeover in Classification only after conducting FJA in which the staff also participates. Decision to effect the changeover, without FJA has to be annulled.

6. OA in the above circumstances succeeds to a great extent and is accordingly allowed. The impugned order dated 27.12.99 from Respondent -3 is quashed and set aside. Respondents are directed to have FJA in the case of drivers, participating them also in the process and take a decision in the matter, based on the results of FJA. This

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shall be done within three months from the date of receipt of a copy of this order. Letter dated 14.11.99, from respondent No. 2, details general principles for dealing with the problem of greater incidence of overtime allowance, and is only an advisory communication. It does not call for any interference. No costs.

(Govindan S. Tamai
Member (A))

Patwal/

mt/1606/ for M/s for system of law
mt/1607/ for M/s for codification of law