

(76)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.770/99
M.A.No.737/99

Hon'ble Dr. A.Vedavalli, Member(J)

New Delhi, this the 26th day of June, 2000

1. The National Union of
R.M.S. & M.M.S. Employees
Union Class-III, H.R.O.
RMS 'D' Division
New Delhi
through Shri C.M.Bhaskar
Divisional Secretary
employed as Head Sorting Asstt. (BCR).
2. Shri Prem Nath I
s/o Sh. Lekh Raj
working as Stg. Asstt. (BCR)
3. Shri Jograj Pathania
s/o Shri M.R.Pathania
working as Stg. Asstt. (BCR)
4. Shri Sohan Lal II
s/o Shri Gulzari Lal
working as Stg. Asstt. (BCR)
5. Shri Hans Raj II
s/o Shri Daulat Ram
working as Stg. Asstt.
6. Shri Nathu Ram III
s/o Shri Tunday Ram
working as Stg. Asstt.

All the above applicants are residents of Delhi/New
Delhi.

7. Shri Umesh Kumar
s/o Sh. Shakti Raj Vaid
working as Stg. Asstt.

All the applicants are working in Haryana Sorting
Office under Head Record Office R.M.S. 'D' Division
New Delhi. The address for service of notices is c/o
Shri Sant Lal Advocate, C-21(B) New Multan Nagar
Delhi-110 056. ... Applicants

(By Shri Sant Lal, Advocate)

Vs.

1. The Union of India, through
the Secretary
Ministry of Communications
Deptt. of Posts
Dak Bhawan
New Delhi - 110 001.
 2. The Chief Postmaster General
Haryana Circle
Ambala Cantt. - 133 001.
- ✍

12

3. The Superintendent R.M.S. 'D' Division
Asaf Ali Road, New Delhi-110 002. ... Respondents

(By Shri K.R.Sachdeva, Advocate)

O R D E R

By Dr. A. Vedavalli, M(J):

This Original Application is filed by the National Union of R.M.S. & M.M.S Employees Union Class-III, H.R.O.RMS 'D' Division, New Delhi through its Divisional Secretary and six other applicants who are working as Sorting Assistants in Haryana Sorting Office which comes under Head Record Office R.M.S. 'D' Division, New Delhi. They are claiming their rights of periodical rotation of their duties from Haryana Sorting Set No.2 (Night set with working hours from 22.00 to 04.00 hrs) to Haryana Sorting Set No.1 (Day Set with working hours from 11.00 to 19.00 hrs) Delhi in accordance with the standing instructions issued by the Director General Posts and Telegraphs, New Delhi by his letter dated 22.9.1964 (Annexure-A1) as modified by Department of Posts letter dated 8.5.1986 (Annexure-A2).

2. Heard the learned counsel for both the parties. The pleadings and the material papers and documents placed on record have been perused. I have considered the matter carefully.

3. M.A.No.737/99 for joining together under Rule 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1987 is allowed.

4. The facts of the case, briefly, are as under:



78

4.1. There is an RMS Sorting Office which is known as Haryana Sorting Office, Delhi, under the supervision and administrative control of Respondent No.3. The said office works in two sets with the staff strength and working hours as given below:

HARYANA STG. SET NO.1 HARYANA STG. SET. NO.II

Working
Hours : 11-00 to 19-00 hrs 22-00 to 04-00 hrs.

Establi- : H.S.A. (HSG-I) One. H.S.A. (HSG-II) One
shment Supervisor(BCR) Two. Supervisor(BCR) Two
Sorting Asstts. 25. Sorting Asstts. 22

4.2. According to the instructions contained in DGP&T, New Delhi letter dated 22.9.1964, (Annexure-A1) the Sorters, now designated as Sorting Assistants, who are working in the night sets of mail offices may be permitted to rotate their duties with other sets of the same Mail Office weekly or fortnightly according to the working hours and other circumstances. The said order was modified by DG Posts letter dated 8.5.1986 (Annexure-A2) under which the periodical rotation was changed from weekly or fortnightly to that of monthly.

5. The grievance of the applicants in this OA, in a nutshell, is that the female Sorting Assistants are not being posted for night duty (Set No.2) in rotation and as a result, the turn of the male Sorting Assistants in night duty (Set No.2) comes more frequently thereby affecting their health adversely and also causing them serious hardships.

A

6. The applicants allege that the standing instructions contained in the DGP&T's letter dated 22.6.1994 (Annexure-A1) as modified by letter dated 8.5.1986, Annexure-A2 are not being implemented by the respondents inspite of representations given by the Union dated 10.4.1998 (Annexure-A3); dated 21.4.1998 (Annexure-A5); dated 12.9.1998 (Annexure-A6) and a joint representation by some Sorting Assistants dated 'Nil' (Annexure-A4) and meetings with the respondents. The reliefs sought by the applicants by this OA are:

"1. To direct the respondents to enforce the orders of periodical rotational transfers in Haryana Sorting Office Delhi from night set to day set and vice versa strictly with immediate effect.

2. To direct the respondents to stop applying rotation orders selectively and end discrimination between the employees attached to the H.R.O. RMS 'D' Dn. New Delhi on ground of Sex and giving preferential treatment to the lady employees by giving them the posting exclusively in the day sets at the cost of their male colleagues.

3. To grant such other or further relief as this Hon'ble Tribunal deem fit in the facts and circumstances of this case in the interest of justice.

4. To award the costs of this application."

7. Learned counsel for the applicants, Shri Sant Lal submitted that the standing instructions of the Department as contained in Annexure-A1 and A2 regarding rotation of staff working in day sets with staff working in the night sets and vice-versa once a month should be implemented without any special preference on the ground of Sex and that there is no reason as to why female staff cannot be put on night duty in RMS Mail Officers/Sorting Officers since female nursing staff working in various Hospitals have shift duties like morning, evening and night by rotation. He contended that the action of the respondents in not implementing the aforesaid standing

→

(20)

instructions is arbitrary, discriminatory, illegal and violative of Articles 14 and 16 of the Constitution of India and principles of natural justice. He has also contented that the non-implementation of the said standing instructions has certain adverse affects on the health of the applicants as they have to perform night duty more frequently since female employees are not posted for such duty in rotation. He prayed that the OA may, therefore, be allowed with costs.

8. Learned counsel for the respondents, Shri K.R.Sachdeva in reply, denied the contention of the applicants that the action of the respondents in not posting female staff on night duty is arbitrary, discriminatory, illegal, violative of Article 14 and 16 of the Constitution of India and the principles of natural justice. He submitted that the female staff are not being rotated to night sets keeping in view their safety and security. He further submitted that in view of the Judgment of the Supreme Court in Vishaka and Others Vs. State of Rajasthan & Others, JT 1997(7) SC 384 = 1997(6) SCC 241 in which the Hon'ble Supreme Court laid down the norms and guide-lines for prevention of harassment of women in the work place, the Postal Directorate by their letter dated 29.4.1998 (Annexure-R1) has advised that posting of women may be avoided (1) where there are no basic and essential amenities available for them and (2) where there are no other lady staff members, as far as possible. He has also submitted that there are no basic amenities for female staff in the Haryana Sorting Office and it is very isolated at night since other offices in the surrounding area remain closed

✍

(21)

and it is not safe and secure to post female staff in the night shift (Set No.2) in the Haryana Sorting Office. It was further submitted that the case of the Hospital Nurses being given shift duty including night duty cannot be compared with the present case since nature of their work is different and there is a public dealing and emergency in Hospitals and the female nursing staff is in a different category. The contention of the applicants regarding discrimination and unconstitutionality, etc. is therefore without any merit and substance, he submitted.

9. Learned counsel for the applicants invited my attention to Para 5.5 of the rejoinder and submitted that the respondents have now agreed in the meeting held with DPS Ambala on 26.7.1999 that SRM will be directed to make rotation of staff of day and night sets.

10. Learned counsel for the respondents submitted that as per the additional reply to the rejoinder, the said orders of Director of Postal Services (DPS), Haryana Circle, Ambala are being complied with and the duties of male staff of the day and night shifts of HSO 'D' Division are being rotated but Lady staff is not brought on night duty as explained particularly in paras 4.4, 4.7, 4.8, 5.5 and 6 of the counter.

11. Re the contention of the applicants that their health is being affected adversely by the non-implementation of the aforesaid standing instructions, i.e., non-posting of female staff in

A

22

night sets, learned counsel for the respondents contended that the said contention is without any basis or substance. He submitted that there are about 325 night duties in a year and as per the table given in Para (1) of the counter, Applicant No.1 did not perform any night duty at all during the period 1.4.1998 to 30.4.1999 and that the remaining applicants also did not perform more than 25% of night duties. There are 16 male staff members who have given their willingness to work continuously in the night sets whereas total strength of the night sets is 22 and the benefit of night duty performed by those willing persons goes to the applicants as well as other staff members and hence the contention of the applicants is untenable and deserves to be rejected. He prayed that for all the above reasons the OA be dismissed with costs.

12. I have considered the matter carefully. The relevant portion of the two letters contained in the standing instructions issued by the respondents whose implementation or enforcement is sought by the applicants in this OA are extracted below:

Annexure-A1:

"Copy of letter No.69/35/64-SPB-I dt.22nd September, 64 from the D.G.P&T, New Delhi-110001, addressed to the All Heads of circles.

....

Sub:- Rotational transfers of RMS staff between sections and mails offices.

.....
.....
.....

B. ROTATION OF STAFF WORKING IN NIGHT SETS OF MAIL OFFICES WITH DAY SETS.





1. 1. Sorters working in night sets of mail offices may be permitted to rotate their duties with other sets of the same Mail Office weekly or fortnightly according to the working hours and other circumstances.

Annexure-A2:

Copy of letter No.6-53/84-PE.II(Pt.) dt.8-5-86 from Deptt. of Posts, New Delhi addressed to PMG Ambala and endorsed under PMG Ambala No.Staff/139-1/VI dt. 27-5-86 to all heads and further endorsed under SRM Ambala No.132/28/Rlg. dt.30-5-86 to all.

Subject: Rotation transfers of RMS staff between sections and Mail Offices and staff working in night sets of mail offices with day sets.

Ref.:- This office letter No.69-35/64-SPB I dt.22-9-64 and No.69-35/79-SPB I dt. 7.8.80.

In modification of Orders contained in para B(1) of this office letter No.69-35/64-SPB-I dt. 22-9-64 regarding rotation of Sorting Asstts. working in night sets of mail offices with other day sets of the same mail offices it has been decided that Sorting Asstts. working in night sets of mail offices may be permitted to rotate their duties with other sets of the same mail office once a month instead of weekly or fortnightly. Officials who are willing to continue in the night sets need not normally be disturbed unless the circumstances so warrant.

Superintendent RMS HR-Dn.
Ambala - 133001."

13. Ex-facie there is no mention of non-posting/exemption of female staff members from night duty in the aforesaid letters. However, it is seen that certain guidelines/instructions are issued by the Department of Posts by their letter dated 29-4-1998 [(Annexure-R1) (running Page-25)] to prevent sexual harassment of the women at their work place. Guidelines/Instructions which are relevant to the present case are as under:

"(1) avoid posting women where there are no basic and essential amenities for women.

(2) As far as possible avoid posting women in isolated offices or where there is no other lady staff member.

24

- (3) any other action which would minimise the incidence of sexual harassment like conduct of workshops to create awareness etc."

14. The Department of Posts while issuing the letter containing inter-alia the above instructions/guidelines have referred to the Judgment of the Supreme Court in Vishaka & Ors.(Supra) and have stated inter-alia that:

"I am enclosing a copy of this judgement (Annexure-I). I would like to draw your attention to para 16 in particular where the duties of the employer have been highlighted. This will require immediate and effective action on our part and any laxity can be construed as contempt of the Supreme Court. The DOP&T has amended the Central Civil Service Conduct Rules and inserted Rule 3C which also defines sexual harassment of women in work place. (Annexure II)."

15. Moreover, as per Article 14 of the Constitution of India, "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." However, the said provision does not prevent the State from making a reasonable classification of persons or things based upon intelligible different having a rational relation or nexus to the object sought to be achieved.

16. Article 15 Clause (3) of the Constitution provides that "nothing in this Article shall prevent the State from making any special provision for women and children."

17. As per the provisions of Article 51(A) of the Constitution, - "It shall be the duty of every citizen of India"

xxx

xxx

xxxx

~~24~~

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious; linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

xxxx

xxxxx

xxxxx

(emphasis added).

18. According to one of the Directive Principles of State Policy, namely, Article 42 of the Constitution of India, "the State shall make provision for securing just and humane conditions of work and for maternity relief". (emphasis added).

19. The contention of the applicants that the non implementation of the standing instructions as contained in Annexures-A1 and A2 by non posting of female employees for night duty in my view is thoroughly misconceived and not capable of acceptance.

The directives in the respondents' letter dated 29.4.1998 (Annexure-R1) were issued pursuant to the decision of the Apex Court in Vishaka & Others case (Supra). These are the measures to ensure the interests of the women employees and creation of "safe working environment" and taking such a as held by their Lordships in the said case was primary responsibility of the Legislature and the Executive. On the basis of the said decision and Article 15(3) of the Constitution, the aforesaid impugned action of the respondents not only has to be upheld but also deserves commendation and not condemnation.

[Signature]

26

The respondents in their counter and additional affidavit have narrated the detailed reasons and indicated the circumstances under which the female employees were directed not to be deployed for night sets. The same provide adequate grounds for passing of the said directives.

In this connection, the learned counsel for the applicants has cited the instance of the Nurses in the Hospitals being given night duty. In my view, the same does not furnish any analogy. The posting of Nurses on night duty in Hospitals cannot be equated with the posting of female Sorting Assistants in the Postal Department on night duty, more so in view of the circumstances mentioned in the counter and the additional affidavit filed by the respondents.

That apart, even Article 14 of the Constitution, as noted earlier, permits reasonable classification and treating women as a class will not be hit by the said Article.

I do not therefore find any merit in the aforesaid contention of the applicants.

20. The other contention of the applicants that their health is adversely affected by early rotation regarding night duty due to the non-posting of female staff in the night duty, it is obvious from the factual data given in Para 5.5 of the counter and



the arguments advanced by their learned counsel as noted supra that there is no solid basis for the aforesaid contention. In case the health of the applicants is suffering due to frequent night duty, they can approach the competent authority for redressal of their grievance in an appropriate manner, and trying to compel the respondents to post female staff on night duty is not the solution. The applicants have also never given any factual data as to whether the female staff were ever posted on night duty in the past. No information is also furnished as to whether there are any female members in the applicants' Union. In the above facts and circumstances, the aforesaid contention, I find, is without any merit.

21. In the facts and circumstances of the case and in the light of the foregoing discussion and the legal position, I am of the view that the OA is devoid of any merit. In the result, the OA is dismissed. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER(J)

/RAO/