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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1752/2000

New Delhi this the 8th day of August, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. All India Station Masters
Association, through its
Secretary Sh. R.D. Swami,
S/o Sh. K. Rama Swami,
Zonal Secretary/All India
Station Masters' Association,
Railway Colony,
Railway Station Delhi Safdarjung,
New Delhi.

2. Sh. S.P. Sharma,
S/o Sh. Hargovind Sharma,
Station Supdt.,
Khurja City, N. Rly. & Others
as per list of applicants.

...Applicants

(By Advocate Shri G.D. Bhandari)

-Versus-

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad...

...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant Association comprising of Assistant Station Masters (ASMs) and Station Masters (SMs) have assailed an action of the respondents, whereby at the concerned station duty hours of Station Masters and Assistant Station Masters were increased from 8 to 12, allegedly in commensurate with the increased work load of trains, without referring the same to the Regional Labour Commissioner and waiting for the order on appeal as directed in OA-2675/92. The applicants have sought

reference of decision to Regional Labour Commissioner as well as direction not to transfer them under the guise of surplus staff. (12)

2. Briefly stated the applicants have been working as ASMs and SMs at Moradabad Division and have been posted on Khurja-Hapur, Chandausi-Attrauli and Gajraula-Najibabad Sections. The respondents have framed Railway Servants (Hours of Employment) Rules, 1961, which, inter alia include declaration of employment of Railway servants as intensive or essentially intermittent by head of the Railway or an officer not below the rank of the senior scale. The Railways servants are classified into intensive, continuous, essentially intermittent and excluded staff categories. The applicants have been classified as continuous and required to perform 8 hours shift a day and on every shift the duty is changed. With the increase in the number of trains and traffic demand on both men and machine has arisen. The applicants are classified in safety category. They have been classified in the continuous category for the last 30 years despite increase in trains and traffic. The respondent No.2 on a telephonic message ordered change of classification from continuous to essentially intermittent increasing the duty hours from 8 to 12 hours a day. It is incumbent before changing the classification for the competent authority, i.e., General Manager to analyse and assess the job work as per the Board's letter dated 3.3.72. The applicants represented against the change of classification which according to them as jeopardised the safety of the public. In OA-461/91 and 462/91 decided on 6.5.97 this Court was pleased to, in similar circumstances, direct the respondents to refer the matter regarding re-classification

under clauses I and II of Rule 4 of the Hours of Employment Rules *ibid* and till then not to implement the orders unless an appropriate order is passed by the Regional Labour Commissioner and thereafter the appeal is decided. In another case filed by the All India Station Masters Association and two others in OA-2675/92 on 24.11.97 the orders in OA-461/91 was *mutatis mutandis* applied to the facts and circumstances of the case. In earlier OA-2675/92 the sections involved were Khurja, Hapur and Attoli and their staff is to be reduced on account of increase in the duty hours. They have to be deputed in the Divisions where the applicants are working.

3. The learned counsel of the applicants by referring to Rule 4 (3) (2) of the Hours of Employment Rules stated that a copy of the declaration of essentially intermittent category is yet to be sent to the Regional Labour Commissioner and under Rule 4 (1) if any question arises in respect of declaration made under sub rule (3) the matter shall be referred to the Regional Labour Commission whose decision shall be final. Under Sub Rule 4 (2) it is provided that any person aggrieved by the decision of the Regional Labour Commissioner may before expiry of the 30 days from the date on which the decision is communicated, prefer an appeal to the Government whose decision thereon shall be final. In this conspectus it is stated that the impugned order at Annexure A-5 dated 15.9.92 where the roster was to be made after declaration has not been issued by the General Manager and there is no reference made to the Regional Labour Commissioner and without his final decision and without according an opportunity to make an appeal the respondents have implemented the declaration on selective basis without

conducting any job analysis. It is also contended that there is no question of any reduction of staff as the work has not been decreased. The applicants have contended that the decisions of the Tribunal (supra) had not been applied mutatis mutandis to their case and it is stated the association and its members who have filed the previous cases are not the same and are pursuing the remedies on a fresh cause of action. It is also stated that now the declaration and action of the respondents have been extended on Gajrola and Nijamabad Sections which necessitated filing of the present OA. It is also contended that after expiry of about 9 years from 1992 the traffic has been immensely increased, which warrants new job analysis, resulting in decrease in the duty hours.

4. Strongly rebutting the contentions of the applicants the learned counsel for the respondents stated that a job analysis was conducted at Hapur-Khurja section of the Moradabad Division and had sent for approval for change of classification from continuous to essentially intermittent with the concurrence and approval of the General Manager. The learned counsel of the respondents has also taken a preliminary objection that the association which has filed the present OA is not recognized and having filed earlier OA-2675/92 the present OA is barred by res judicata. The learned counsel of the respondents has also stated that the applicants have come belatedly before the Tribunal without exhausting the remedy of appeal as prescribed under the rules. On merits it is stated that though the Moradabad Division was classified as continuous on account of job analysis the same was changed as essentially intermittent and in compliance of the directions in OA-2675/92 reference has already been made to

Regional Commissioner of Kanpur for according permission and despite reminder no permission is accorded to them. It is pleaded that on factual job analysis conducted in the year 1992 downgradation of classification has been done as per the rules as per the work load. It is also pointed out that as the applicant has not filed with the MA for joining together a copy of resolution has not been filed, which is in violation of Rule 4 (5) of the Central Administrative Tribunal (Procedure) Rules, 1987 and they are challenging an order passed in the year 1993 which is barred by limitation. Referring to Rule 4 ibid it is contended that the Act provides an appeal and not filing the same renders this OA liable to be rejected in view of the decision of the Apex Court in S.S. Rathore v. State of M.P., AIR 1990 SC 10. It is also conducted that as the matter has been referred to Regional Labour Commissioner and any order passed by him is beyond the jurisdiction of the Apex Court in Director, Govt. of India v. General Secretary, Small Scale Industries Organisation Employees Union & Anr., 1998 SCC (L&S) 1420.

5. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view the grievance of the applicants is legitimate and is legally sustainable.

6. As regards the preliminary objection of the respondents as to the maintainability of the OA on the ground that All India Station Masters Union is un-recognized the same is not legally tenable as under Rule 4 (5) (b) of the Procedure Rules it is not laid down that the association should be recognized. What has been laid is that it should be an association and application must

disclose the category of persons on whose behalf it has been filed and at least one affected persons join such an application. We find that the present association has filed this along with one other person S.P. Sharma and also we find a list of applicants and affected persons. Apart from it, the same association has filed OA-2675/92 which has been entertained as such we find no illegality as to the locus standi of the applicants. We also find a resolution passed by the association on 15.4.2000 at Annexure A-10 to the OA.

7. As regards the objection regarding res judicata is concerned, we find that the previous OA has been filed by the Association having impleaded persons in that OA who have been in different Divisions in Uttar Pradesh and the present OA has been filed by the applicants who were not parties to the previous OA. As the impugned action of the respondents has now been extended to Gajrola-Najimabad Sections which has given them a fresh cause of action, as such the matter has not been finally concluded in the previous OA, pertaining to the same Division the OA is not barred by the doctrine of res judicata.

8. As regards the question of limitation is concerned, we find that the respondents have not applied the ratio laid down by this Court in OA-2675/92 and on the basis of an illegal order declaring the categories as inter-mittent and increasing the duty hours as well as reducing the strength. The same has now been applied to the applicants who are deputed as ASMs/SMs at Gajrola-Najimabad Sections of the Moradabad Division which has given a cause of action to the applicants and as the wrong is continued by the respondents by not referring the

matter to the Regional Labour Commission and without waiting for his final order and also not waiting for the appellate order to be passed on appeal, implementation of the decision taken under the Hours of Employment Rules the grievance of the applicants has continued and on apprehension of their strength being reduced and they had to work for 12 hours in derogation of the rules the matter is within limitation as per the provisions of Section 21 of the Administrative Tribunals Act, 1985. (VA)

9. Another preliminary objection of the learned counsel of the respondents that the applicants have not exhausted the statutory remedies and by referring to Rule 4 of the Hours of Employment Rules it is contended that there is a provision of an appeal, is not well founded. The question of appeal arises only when a person is aggrieved by the decision of the Regional Labour Commissioner to whom the respondents have referred the declaration. In absence of any reference of declaration to the Regional Labour Commission and his final decision there is no occasion for the applicants to have preferred an appeal as they are not aggrieved by a decision. The learned counsel of the respondents has failed to show any provision or rule where filing of an appeal is laid down as a statutory remedy. In view of this we find that the OA is not barred by Section 20 of the Administrative Tribunals Act, 1985.

10. The last preliminary objection of the respondents that against the decision of the Regional Labour Commissioner the appropriate remedy lies to the High Court and the Tribunal has no jurisdiction to entertain the OA is also misconceived and cannot be countenanced. We find that firstly no decision has been taken by the Regional Labour

Commissioner and as provided under Rule 4 (2) of the Hours of Employment Rules an appeal is to be preferred within 30 days from the decision of the Regional Labour Commissioner to the Government and their decision is final. As such it is the decision of the Government which is to be challenged and not the decision of the Regional Labour Commissioner and as such the ratio relied upon by the respondents in Director Govt. of India v. General Secretary, Small Scale Industries (supra) would not be applicable in the facts and circumstances of the present case.

II. As regards the action of the respondents by implementing their declaration made in the year 1992 and declaring the ASMs/SMs as essentially intermittent and increasing their duty hours from 8 hours to 12 hours and proposing to reduce their strength of the cadre is not legally tenable on the ground that as per the statutory rules contained in the Hours of Employment Rules and more particularly under Rule 3 a copy of the declaration should be sent to the Regional Labour Commissioner and if any question arises in respect to the declaration the matter shall be referred to the Regional Labour Commissioner whose decision would be final. From the record we find that in 1992 by an order telephonic message the declaration has been issued on the basis of a job analysis and the matter has not been referred to the Regional Labour Commissioner and no final decision has been made. While complying with these directions of this Court in OA-2675/92 now the matter has been sent to the Regional Labour Commissioner and his decision is awaited for the other Divisions which is impugned the action of the respondents in the aforesaid OA the operation of the order has been kept in abeyance whereas in respect of the applicants who belong to the

different Divisions the same ratio has not been applied and rather it has been implemented in the case of the applicants and their duty hours have been increased and there is a proposed reduction to the cadre strength on the basis of decreasing work. The action of the respondents to classify them from continuous to essentially intermittent is contrary to the rules ibid in absence of a reference to the Regional Labour Commissioner and without the final decision thereon. Apart from it, the declaration should not have been given effect to unless the final decision taken by the Regional Labour Commissioner is appealed to the Government and a final decision is taken thereon. The ratio laid down in OA-461/91 as well as OA-2675/92 mutatis-mutandis applies to the case of the applicants also, as in our considered view the applicants are also similarly situated and cannot be deprived of the extension of the benefits of the judgement in OA-2275/92. The applicants have been arbitrarily discriminated despite being identically situated which cannot be legally sustained under Articles 14 and 16 of the Constitution of India. In this view of hours we are fortified by the decision of the Apex Court in B.D. Verma v. Union of India, 1997 SCC (LAS) 1719. This court meticulously dealing with the issue had come to the conclusion that the respondents shall not implement the orders of re-classification of working hours from 8 to 12 hours unless the matter is referred to the Regional Labour Commissioner and provision of appeal under sub rule (2) of Rule 4 of Hours of Employment Rules are exercised and a final decision is available. We agree with the ratio arrived at in both the OAs. In OA-461/91 the issue regarding exhausting of remedies has been taken care of and is no more res-integra. The contention of the respondents that they had on the basis of job analysis has

changed the category of the applicants from continuous to essentially intermittent and increased the working hours of ASMs/SMs cannot be upheld. Even though the classification is approved by the General Manager it was incumbent upon the respondents to have referred the matter to the Regional Labour Commission and to have awaited for the final decision and thereafter on an order passed in an appeal the same should have been implemented. The respondents have not complied with the mandatory provisions and as such their action is unjustified and illegal.

12. In the result, and having regard to the reasons recorded, we allow this OA and direct the respondents to refer the issue of re-classification of working hours to Regional Labour Commissioner under sub rule (2) of Rule 4 of the Railway Servants (Hours of Employment) Rules and get finality of their decision and also await the order on appeal as provided under Rule 4 (2) ibid. Till then they shall not implement the re-classification orders whereby the working hours have been increased. The respondents are also directed not to transfer the ASMs and SMs of three concerned divisions as a consequence of the re-classification under the guise of surplus staff. As regards the relief of the applicants for direction to pay for extra hours of duty ^{realised} ~~received~~ by them, the same would be decided after a final decision is taken by the Regional Labour Commissioner and also on appeal. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San."

(Govindan S. Tampi)
Member (A)