

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 461/91 & 462/91

New Delhi, this the 6th day of May, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P.Biswas, Member (A)

OA 461/1991

1. Rati Ram,
Son of Shri Panno Ram,
Shunting Jamadar,
Surat Garh.
2. Shri Balwant
Son of Shri Mahtam,
3. Brij Mohan,
Son of Shri Babu Ram,
4. Satish Kumar,
Son of Shri Kashi Ram,
5. Ram Dayal,
Son of Shri Girdhari Lal,
6. Shri Hazari Lal,
Son of Mado Ram,
7. Mohan Lal,
Son of Shri Chetu Ram,
Surat Garh.
8. Munna Lal,
Son of Shri Ram Das,
9. Gauri Shankar,
Son of Shri Bheekam Ram,
10. Ram Kirat Ram,
Son of Shri Sanghi Ram,
11. Mam Raj,
Son of Shri Denesha Ram,
12. Ram Kishan
Son of Shri Hardari Lal
13. Parsa Ram,
Son of Shri Bheeka Ram
14. Om Prakash
Son of Shri Shyam Lal
15. Rattan Chand
Son of Shri Partap Singh
16. Gauri Shankar,
Son of Shri Mohan Lal,

17. Sultan,
Son of Shri Krishna Ram
18. Mangla Ram,
Son of Shri Chunni Lal
19. Prem Kumar,
Son of Shri Guru Ram
20. Motu Ram,
Son of Shri Tulsi Dass
21. Jagdish
Son of Shri Kanya Lal
22. Kishan,
Son of Shri Laloo
23. Birbal Rai
Son of Shri Bhogolu Ram
24. Narainu Prasad
Son of Shri Mangi Lal
25. Bheeka Ram,
Son of Shri Mohan Lal
26. Chandu Lal
Son of Shri
27. Kishori Lal,
Son of Shri Nathi Lal

(Petitioners at Sl. No. 1 and 7 are Shunting
Jamadar and rest of them are Pointsman 'B')

(By Advocate: Shri G.D. Bhandari)

-Versus-

1. Union of India
through General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Bikaner (Rajasthan)
3. Station Superintendent,
Northern Railway,
Surat Garh (Rajasthan) Respondents

(By Advocate: Shri P.S. Mahendru

OA / 62/1991

1. Vijay Shankar Singh
Senior Trains Clerk
Northern Railway,
Surat Garh (Rajasthan)

2. Sardar Mal Meena
Son of Durga Prasad,
Trains Clerk.,
Railway Station,
Surat Garh (Rajasthan)
3. Raj Singh Saxena
Son of Hari Mohan Saxena
Trains Clerk
Railway Station,
Surat Garh (Rajasthan)

Petitioners

(By Advocate: G.D.Bhandari)

-Versus-

1. Union of India,
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Bikaner.
3. The Station Superintendent,
Northern Railway
Surat Garh.

(By Advocate: Shri P.S. Mahendru)

O R D E R (Oral)

The petitioners in these two OAs have challenged the re-classification and restructuring of the working hours from 8 hours to 12 hours which the respondents intended to implement by an order dated 1.2.1991 and the order has been passed at the instance of the Divisional Railway Manager. Both the OAs have been filed in this court in the year 1991 and at the initial stage this court had granted a status-quo order regarding the implementation of the impugned order dated 1.2.1991. The said interim order is still continuing with an effect that the hours of duty has remained for the last six years under these orders to be 8 hours duty instead of 12 hours.

Learned counsel for the respondents submitted that the petitioners have not exhausted all the remedies available before approaching this court and have filed these applications under Section 19 of the Administrative Tribunals Act, 1985. He has brought to our notice sub rule (1) of rule 4 of the Railway Service(Hours of Employment) Rules, 1961 under which once a declaration is made under rule 3, the matter shall be referred to the Regional Labour Commissioner whose decision subject to the provision of sub rule (2), shall be final. Sub rule 2 provides for an appeal. Thus, under the rule cited above, the matter would reach finality after the disposal of the appeal given therein under the sub rule (2) of rule 4.

Learned counsel for the petitioner, on the other hand, submitted that the remedy available to him as an alternate remedy is not efficacious in the strict sense for the reason that the Regional Labour Commissioner has no power under the rule to stay the operation of the order, that would mean that during the pendency of the dispute the re-classification or re-structuring of the hours would have been implemented from day-one. Now when stay order dated 1.2.1991 is under stay, he has no objection to refer the matter in accordance with rules, to the concerned Labour Commissioner, if found necessary by the respondents.

He also stated that the rules referred to above namely clauses (1) and (2) of rule 4 may not be applicable for the reason that the required declaration under rule 3 is not made. We do not intend to go into that dispute at this stage. Rather we would like, in the interest of justice, to give liberty to the respondents to approach the authorities

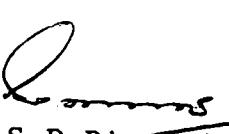
prescribed under clause (1) of rule 4 namely Regional Labour Commissioner and refer the matter if so advised and obtain appropriate orders from the concerned authorities approving their order dated 1.2.1991, whether the change of working hours from 8 hours to 12 hours is justified or not. Thereafter, if aggrieved, the parties may approach the appellate authority as prescribed under clause (2) of rule 4 which alone can render finality to the issue under the said rule.

The learned counsel for the respondents has raised a question of jurisdiction as well, that the issue should have been raised as a dispute after referring the same before the Regional Labour Commissioner under clause (1) of rule 4 of the Railway Service (Hours of Employment) Rules, 1961. We considered the question of jurisdiction alongwith section 20 of the Administrative Tribunals Act, 1985. We have already stated that it is not an efficacious remedy after the AT ACT has come into operation. The learned counsel for the respondents also brought to our notice a decision of the Hon'ble Supreme Court wherein a decision rendered was with reference to the Payment of Wages Act. Under the said decision once an appeal is provided under the rules, it is shown to be mandatory that the matter should be first filed before the prescribed authority (under statute) before coming to this Tribunal. We would have agreed with the contention of the learned counsel for the respondents but for the fact that the said decision has been decided in view of section 29 of A.T. Act, 1985. It was also brought to our notice that in L.Chandra Kumar's case the section 29 has been struck down

and consequently, the ratio of that decision is not now available to the respondents in support of the objection raised on the basis of the said decision.

We are of the opinion that the respondents may at their discretion refer the matter and get finality of their decision of re-classification under the rule, through the mechanism prescribed by the rule, and in the meantime the respondents shall not implement the orders before an appropriate order is passed by the Regional Labour Commissioner and thereafter an appeal is decided under sub rule (2) of rule 4 of the Railway Service (Hours of Employment) Rules, 1961.

With these observations these OAs are disposed of finally with no order as to costs.


(S.P. Biswas)
Member (A)

Ahuja


(Dr. Jose P. Verghese)
Vice-Chairman (J)

Attested
K.L.Singh
21/5/97
C.O.C. #