

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1215/92
OA-1216/92 &
OA-1219/92

(16)

New Delhi this the 10th day of October, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

OA-1215/92

1. Northern Railway Men's Union
All Staff working with Civil
Engg. Construction/Electrical
Engg. Branch, (Group 'C' & 'D')
Shivaji Bridge,
New Delhi.
through its Secretary.
2. Radhey Shyam Kushwaha,
Office of the Deputy Chief
Engineer (C), Northern Railway,
Shivaji Bridge, New Delhi. Applicants

(through Sh. M. Hussain for Sh. Anis Suhrawardy)

versus

1. Union of India,
through its General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Administrative Officer/
Construction, Northern Railway,
Kashmere Gate, Delhi. Respondents

(through Sh. R.L. Dhawan, advocate)

OA-1216/92

Sh. R.L. Kanojia,
Superintendent
(Microwave-Maintenance)
under Dy. CSTE,
Northern Railway,
DRM Office,
New Delhi and
(15 others as per Memo of
parties) Applicants

(through Sh. B.S. Mainee, advocate)

versus

Union of India through
1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

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2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Signal &
Telecommunication Engineer,
Northern Railway,
Baroda House,
New Delhi.
4. The Dy. Chief Signal &
Telecommunication Engineer
(Microwave - Maintenance),
Northern Railway,
D.R.M. Office,
New Delhi.

.... Respondents

(through Sh. R.L. Dhawan, advocate)

OA-1219/92

Smt. I.M. Bhardwaj,
Superintendent,
under Senior Signal &
Telecommunication Engineer(TW),
Northern Railway,
DRM Office,
New Delhi and others as per
memo of parties.

.... Applicants

(through Sh. B.S. Mainee, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Signal &
Telecommunication Engineer(Constn),
Northern Railway,
Baroda House,
New Delhi.
4. The Sr. Signal &
Telecommunication Engineer(TW),
Northern Railway,
DRM Office,
New Delhi.
5. The Sr. Signal & Tele-
communication Engineer(PS),
Northern Railway,
DRM Office,
New Delhi.

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6. The Sr. Signal & Telecommunication Engineer (Special), Northern Railway, DRM Office, New Delhi. Respondents
(through Sh. R.L. Dhawan, advocate)

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ORDER
Hon'ble Sh. S.P. Biswas, Member(A)

In OA-1215/92, Group C & D officials like Office Superintendents, Head Clerks, Senior Clerks and Tracers etc. working under Dy. Chief Engineer Civil/Construction (Dy.CE/Con for short) with its office located at Shivaji Bridge, New Delhi are being represented by Northern Railway Men's Union through its Secretary. The applicants in OA-1216/92 & OA-1219/92 are also Group C & D staff working under Dy. Chief Signal & Telecommunication Engineer/Microwave Maintenance (Dy. CSTE/MWM for short) and Sr. Signal & Telecommunication Engineer Special (SSTE/S for short) both being located in the Divisional Railway Manager's (in short DRM) office, New Delhi.

2. But for the differences in the aforesaid background facts, the legal issues raised and reliefs sought for in all these three O.As are identical and hence they are being disposed of by a common order.

3. Applicants in all these O.As are aggrieved by the orders of the respondents hereunder:-

"In terms of G.M. (P)'s letter No. 971-E/13(IERV) dated 22.4.92 received under CAO/C letter No. 971-E/O/Const. dated 24.4.92 circulated

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under this office letter of even No. dated 28.4.92 six working days has been introduced w.e.f. 28.4.92.

As discussed with Dy. CPO/Const. the office timings with 2nd Saturday off will remain as under:-

Class-III

10.00 hrs. to 17.30 hrs. with half hour lunch break between 13.30 to 14.00 hrs.

Class-IV

9.30 hrs to 17.30 hrs. with half hour lunch break between 13.30 hrs to 14.00 hrs.

In the case of Dy. CSTE/MWM and SSTE/S, the above orders have been made effective from 4.5.92."

4. The case of the applicants is that they are working as Superintendents, Head Clerks, Sr. Clerks, Typists and Stenographers and belong to the ministerial category of staff of Signal, Telecommunication and Civil Engineering (Construction) organisations located at New Delhi and belong to the same seniority group in which their colleagues in the headquarters office at Baroda House and D.R.M. office are working.

5. All of them have been working 5 days in a week as per Railway Board's order dated 24.5.85. Drawing strength from Railway Board's letter No. RG-58/HE-1/1 dated 4.6.60, the applicants would submit that the system of 5 day a week working was applicable to those Railway Offices which were observing second Saturday of a month as a holiday and they have been following the same.

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6. The main plank of applicants attack is that the new policy of 6 day working week has resulted in an invidious discrimination against the employees of various departments of the Northern Railway. The responsibilities and functions of the applicants are identical to the working of the staff in Headquarter office as well as D.R.M. office and as such the applicants cannot be discriminated against in the matter of working per week. 70

7. It has been further argued by the applicants that the General Manager Northern Railway have no powers to over rule the orders passed by the Railway Board. The office of Dy. CSTE (MWM), SSTE(S) and Dy. CSTE (CON) are not field units and hence applicants could not be denied the privileges of working 5 days in a week as permitted in the case of ministerial staff in the headquarters and DRM office. The officials working under Dy. CSTE (MWM) or SSTE(S) have argued, in particular, saying that their office being an extra Divisional Office within the DRM Delhi, the staff working therein are entitled to 5 days a week otherwise permissible to the staff working under the DRM.

8. In the counter, the respondents have vehemently opposed the claims. The stand of the respondents is based on the following:-

That 5 days a week has to be observed only in those offices which had functions purely of administrative

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nature and not linked to field units/establishments and that such of the staff who have their working linked to the field units/workshops should continue to observe 6 day week. (Authority Railway Board's letter No. E(LL)85/HER/1-15 dt. 20.8.86)

9. The learned counsel for respondents contends that observance of second Saturday as a holiday prior to 3.6.85 is not the criterion for introducing 5 days a week working. The organisation of Dy. CSTE (MWM) or Dy. CSTE (CON) are responsible for working the Microwave System and laying down of track or undertaking project works in particular areas and are not purely administrative offices but field units.

10. Main duties of the applicants include not only preparation of pay bills, passes, PTOs etc. and other correspondences connected with maintenance of microwave links or civil project works in respective beats but also other vital matters like dealing with local purchases maintenance of imprest etc. In the case of emergent local purchases, presence of the office staff is unavoidable. Ministerial staff are working as supporting staff to the non-ministerial workers in the fields. As per respondents, corrective steps had to be taken when discrepancies in the matter of implementation of Railway Board's orders came to their knowledge.

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11. Before we examine the issues involved, it would be necessary to indicate what is the definition of 5 days a week, where it is applicable, which offices are covered and what subjects ministerial staff are supposed to handle. (22)

12. 5 days a week is meant for offices having working hours from "10 A.M. to 6 P.M. with half an hour lunch break from 13.00 P.M. to 2.00 P.M. from Monday to Friday with all Saturdays and Sundays closed." This is as per orders of the Railway Ministry dated 24.05.85.

13. The above orders are applicable to such of the Railway offices which have been observing second Saturday of a month as a holiday in terms of orders of the Railway Board (letter No.RG-58/H-1/1) dated 4.6.1960. Who shall get covered under 6 days a week working have already been communicated by General Manager Northern Railway vide its letters dated 22.4.92 and 27.4.92. This includes headquarters office, DRM office as well as the office of the Chief Administrative Officer (Construction) Kashmere Gate. The said letters also stipulate that other offices such as loco shed, workshop, hospital and health unit, including office of AEN's and Dy. CE, Sr. Engineers, Dy. C.E.E./S.E.E., Dy. CSTE/SSTEs (Construction) have to observe 6 days a week. It has also been clarified that field units such as IOWs office, EDP Centres, Control offices are not part of the administrative office.

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14. Two questions fall for consideration, namely, (i) what would constitute an office as a field organisation and (ii) who is the competent authority to determine the character. We shall now proceed to examine them.

15. What makes an office a field unit is not its location but its activities. What is controlled is very crucial; where from it is controlled is irrelevant (**emphasis added**). Thus, the most important Northern Railways "Central Reservation Office" situated within the DRM office complex (near New Delhi Railway station) is a field unit but the DRM's office/staff working in the same building are not treated as field units. This is a statement of fact and not disputed by either of the parties. We find that the applicants have relied on the communication of Annexure A-8 dated 29.4.92 issued by respondent No.4 saying that the office of Dy. CSTE (MWM) are observing 5 days a week since his office had been observing second Saturdays as holidays earlier. Though communication has been issued by the Controlling Officer of the applicants in OAs 1216 & 1219/92, but the pleas taken in OA No.1215/92 are the same as well. Thus the same respondent N.4 (in OA-1216/92) vide his A-7 communication dated 28.04.92 had requested General Manager (Personnel) Northern Railway to clarify the position as to whether the second Saturday will be a closed days for that organisation. Doubts were resolved by respondents' letter dated 30.04.92 which has been issued in reference to the communication of A-7 and A-8. In

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other words, the main issue was taken up by respondent No.4 with respondent No.2 General Manager (Personnel) and the same authority apparently in consultation with the Establishment Branch, decided to implement 6 days a week w.e.f. orders dated 4.5.92. (X)

16. Being issues related to the policy matters touching upon establishment issues like weekly rest, hours of employment/regulations etc. clarifications were given vide A-5 and A-6 by General Manager (P) which is virtually the office of Chief Personnel Officer under the General Manager who is the competent authority in such respects. The respondent No.4 is the controlling officer of the applicants and not competent to declare working hours for administrative units.

17. That apart, we find that the applicants in all these O.As are performing field related functions. It is seen that the Dy. CSTE(MWM) or Dy. CSTE (CON) are responsible for working of microwave system in a particular area or completion of the new projects/works outside their headquarters. They are essentially administrative officers meant for supporting and providing administrative facilities to the field units.

18. How many days employees are to work in a week, what will be the total working hours in a day, how much will be the statutory rest to different categories of employees are essential matters of policy decision which is within the domain of the

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executive authorities. Where will be the location of an administrative unit, what will be the responsibilities of those working in that unit, and for whom they are to work are matters to be decided by the appropriate administrative authorities. If any authority is needed for this proposition, it is available in UOI & Ors. Vs. Makan Chandra Roy etc. (1997(2) SC SLJ 19).

19. We find controvercies were brought to an end and by G.M. (P)'s letter dated 30.06.92 on the basis of which an order dated 2.7.92 was issued. That order mentions:-

"Accordingly Second Saturday will not be observed as a closed day in our office. The Office hours are accordingly revised to 10.00 to 17.00 Hrs. with hald an hour lunch break from 13.30 to 14.00 Hrs. The change may be implemented with immediate effect."

The above is with reference to the officers of Dy. CSTE/MWM & SSTE(S).

As regards the Dy. CE(CON), Railway Board's letter dated 23.10.96 put^{all} the doubts to rest. It says:-

"However, all the field offices of Construction Organisation like Dy. CEs, XENs, AENs etc. will continue to follow 6 nday week."

20. Here we shall also do well to remember the word of caution indicated in English Service Jurispredence while deciding circumstances where

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matters can be left to the departments/organisations.

As observed by Lord Serman in Notting ham Country Council Vs. Secy. of State (1986(1) All England Law Reports, 197:-

"Where the existence or non-existence of a fact is left to the discretion of a public body, and that fact involves a broad spectrum of ranging from the obvious to the debatable or the just conceivable, it is the duty of the Court to leave it to that body, save in cases where it acts perversely."

21. We find no grounds, much less convincing good grounds, to interfere with the impugned orders and dismiss the applications. No costs.

(S.P. ~~Biswas~~)
Member (A)

(Smt. Lakshmi Swaminathan)
Member (J)

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