

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

HON'BLE MR. A.K. GAUR, MEMBER (J).

Original Application Number. 1651 OF 2009.

ALLAHABAD this the 3 day of 4, 2009.

1. Nesar Ahmad son of Late Shri Noorul Haque Khan, working as Lab Assistant, DLW Inter College, Varanasi.
2. Ajay Kumar Verma son of Shri V.G. Verma, working as Lab Assistant, DLW Inter College, Varanasi.

.....Applicants.

VE R S U S

1. Union of India through General Manager Diesel Locomotive Work (DLW), Varanasi.
2. Secretary (Establishment), Railway Board, Ministry of Railways, New Delhi.
3. Deputy Chief Personnel Officer (Controlling Officer of Schools), DLW, Varanasi.
4. Principal, DLW Inter College, Varanasi.

.....Respondents

Advocate for the applicants: Sri Satish Mandyan
Advocate for the Respondents: Sri A.K. Sinha

O R D E R

The applicants through this O.A filed under section 19 of Administrative Tribunals Act, 1985 have prayed for following main relief(s):

1. to quash the impugned order dated 7.3.2002 passed by General Manager (P), DLW, Varanasi (Annexure No. 1 to compilation No. 1);
2. to direct the respondents after visualizing the extra duty of one Lab Asstt. Right from July 1991 and extra duty of one Lab Attendant right from the dates the applicant joined the post separately, allow the payment of extra remuneration, which the respondents might have given in cases of providing above mentioned posts, which have been obligatory with 10% compound interest per annum;
3. to direct the respondents for provisions of lab attendants and limiting the duty hours of the applicants up to one shift duration like the other school staff;

✓

4. to direct the respondents after visualizing the facts discussed in the body of this application regarding promotion extend privileged.
 5.
 6."

2. The short controversy involved in the instant case is with regard to applicability of provisions of Hours of Employment Regulations for railway service as none of the fervent appeals of the applicants have been considered in right perspective and there is total non-application of mind. The competent authority has passed the impugned order in flagrant violation of the provisions of the aforesaid Regulations. According to the applicants, they have been appointed as Lab Assistant and not as Lab Boys hence the work of Lab Boy cannot be taken from them. The grievance of the applicants is that despite repeated representations till date, 9 hours duties i.e. more by 1 $\frac{3}{4}$ than the normal working hours are being taken from the applicants. The action of the respondents is most discriminatory and arbitrary. Learned counsel for the applicant further submitted that as per clause 5(v) of Chapter II of HOER, which provides for classification of staff, which includes 'continuous', 'intensive', 'essentially intermittent' and 'excluded' and, as per the applicants, their case fall in 'excluded category'. Learned counsel for the applicants would further contend that they are fully and duly entitled to get Sr. Grade/Selection grade like Primary School Teachers but the same it has not been provided to the applicants.

3. On notice, the respondents have filed Counter Reply. In their Counter Reply, they have denied the claim of the applicants mainly on the ground that the applicants neither fall in the class 'Intensive', 'Essentially Intermittent' nor 'Excluded' as they are not teaching staff and do not impart any educational or technical training to the students of the School.

✓

training to the students of the School. In para 11 of the Counter Reply it has been stated that the applicants are simply Laboratory Assistant and their main duty is to assist practical classes of the students being conducted by Science Teachers. Vide letter No. Deereka/IC/38 dated 04.10.2002 , the applicants have been advised to discharge the work of Lab Assistant.

4. Applicants filed RA in which they have not denied the facts and contents of para 11 of Counter Reply except in para 16 of RA it is stated that they are staff of the college, and being non-teaching staff, they cannot be compelled to work beyond the prescribed limit of working hours.

5. I have heard rival contentions of the counsel for the parties and perused the pleadings as well as the written submissions filed by either side carefully.

6. It is seen from the record that the applicants have sought plural relief for limiting duty hours, payment of extra remuneration as well as for their promotion and other privileges. I have also noticed that the respondents have clearly taken stand that the applicants are not teaching staff of the collage and thus are not excluded staff under HOER and the work done by them per day does not exceed 54 hours in a week. Since the applicants are continuous staff, they have been assigned duty hours in accordance with letter dated 04.10.2002. I have also noticed from the Counter Reply filed by the respondents that there are four classifications of staff namely (i) Intensive, (ii) Essentially Intermittent, (iii) Excluded and (iv) Continuous. For convenience, para 3 (B) – Page 7 to 11 of Counter Reply is being reproduced herein under: -

✓

" (B) That there are four classifications of staff under the Hours of Employment Regulations (herein after in short called as HOER) viz.

1. *Intensive*
2. *Essentially Intermittent*
3. *Excluded and*
4. *Continuous*

(1) *Intensive:* only that staff is declared to be 'Intensive' whose work is of a strenuous nature involving continuous concentration of mind or hard manual labour with little or no period of relaxation. The staff covered by this call include Signalers, Telephone and Wireless Operators, Cabinmen, Section Controllers., etc, who are declared as such. The limitation of hours of work for this class of workers is 45 yours a week on the average in any month (rostered hours of duty are 42 hours) and they must have a minimum of thirty consecutive hours of rest in a week.

The grounds on which the staff can be classified as intensive workers are that the periods of rest, inaction or relaxation do not aggregate six hours or more in a cycle of 24 hours and that in a shift of 8 hours, the employee does not get periods of inaction, rest or relaxation of at least one hour in the aggregate.

(2). *ESSENTIALLY INTERMITTENT:* - The staff whose daily hours of duty include periods of inaction aggregating to 6 hours or more (including at least one such period of not less than one hour, two such periods of not less than half an hour each) during which although they are required to be on duty but called upon to display either physically activity or sustained attention, are declared as Essentially Intermittent Staff, such as waiting Room bearers, Sweepers, Bhisties etc. The limitations of hours of work for such workers is 75 hour a week (Rostered hour duty is 72 hours).

They must have a minimum of 24 consecutive hour of rest in a week including a full night

Waiting room bearers , sweepers, bhisties, etc., who are declared as such and "C" calls gateman caretakers of rest houses and reservoirs , saloon, attendants and bungalow peons, are covered under this category.

(3). *EXCLUDED:* - The employment of railway servants is said to be 'excluded' if he belongs to any one of the following categories of staff-

- (a). Railway servants employed in a confidential capacity;
- (b). Armed guards or other personnel subject to discipline similar to that of the armed police force;
- (c). Staff of the Railway Schools imparting technical academic education;
- (d). Certain staff of medical department such as Asstt. Surgeons, Matrons, Sisters-in-Charge, Mid-wives, etc.

✓

(e) Supervisory staff such as Inspector, Superintendent, Foreman, Charge men etc.

(f). Such categories of class IV staff as may be specified by the prescribed authority, such as Saloon Attendants, Caretakers of Rest Houses, Reservoirs and other railway property, Gate Keeper of 'C' class level crossing gates where the gates are normally closed against road traffic etc.

For 'Excluded' workers no statutory maximum limit for the hours of employment has been prescribed but this should not absolve the railway administration of their responsibility on humanitarian grounds, of seeking that unreasonable conditions are not imposed.

There is no provision for period of rest to the excluded staff except in case of call IV excluded staff who shall be given a periodical rest or not less than 48 consecutive hours each fortnight.

(4). **CONTINUOUS STAFF**: - The staff who are neither classified as intensive, nor essentially intermittent nor excluded are treated as continuous workers such as Guards, Drivers, TTE's, Clerks, Typsts etc. Limitation of hours of works in the case of continuous staff is 54 hours a week on average in a month (rostered hours of duty not exceeding 48 hours). They must be allowed a period of rest of 30 consecutive hours each week.

NOTE:-The daily statutory limits should be arrived at by dividing the prescribed weekly statutory limits by 6. Thus in the case 'Intensive', 'Continuous', 'Essentially Intermittent' employees the daily hours of work will be 7 $\frac{1}{2}$, 9 hours and 12 hours respectively.”

7. It has been vehemently argued by the learned counsel for the applicant that the respondents have committed serious irregularity and illegality by taking nine hours duties from the applicants and also that of Group 'D' employees i.e. Lab Boy/Lab Assistant and also not providing them selection grade. The applicants have also clearly stated in O.A that they have already preferred a detailed representation before the concerned authority on 20.10.2003 addressed to the Secretary (Establishment), Railway Board, Ministry of Railways, New Delhi, a copy of which ^{has been} ~~is~~ enclosed as Annexure A-11 ^{to} of O.A, but till date no action has been taken

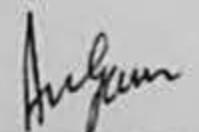
✓

by the competent authority on the said representation nor grievance of the applicants have been redressed by the respondents

8. As the applicants have sought plural relief/s, without entering into merits of the case, it would be appropriate to direct the competent authority / Secretary (Establishment), Railway Board, Ministry of Railways, New Delhi (respondent No. 2) to consider and decide the pending representation of the applicant taking into account the applicability of the provisions of H.O.E.R (quoted above) in the case of the applicants and pass appropriate reasoned and speaking order within a specified period of time.

9. As the representation of the applicants are dated 20.10.2003, I direct the applicants to file a fresh comprehensive representation taking all pleas before the competent authority within two weeks from the date of receipt of copy of this order and if such representation is filed by the applicants within stipulate period, the competent authority is directed to consider and decide the same, by a reasoned and speaking order taking into account the points raised therein and the applicability of H.O.E.R (referred to above), within a period of three months from the date of receipt of copy of the representation alongwith certified copy of this order.

10. With the aforesaid directions, the O.A is disposed of finally with no order as to costs.



MEMBER- J.

/Anand/