

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD BENCH) ALLAHABAD.

C.A. NO. 75/90
TA. NO.

OF 199

Date of decision 26/11/92

...Union of India through D.P.O... Petitioner

...Sri G.B. Agarwal..... Advocate for the petitioner

Versus

...Daya Shanker & another..... Respondent

...Sri P.K. Kashyap..... Advocate for the Respondents

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CORAM :-

The Hon'ble Mr. Justice S.K. Dhaon, V.C.
The Hon'ble Mr. K. Chagga, A.M.

1. Whether Reporters of local papers may be allowed to see the judgment
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Benches ?

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Signature

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

O.A No. 75/90

Union of India..... Applicant
through D.P.O.

Versus

Daya Shanker and another..... Respondents.

Hon'ble Mr. Justice S.K.Dhaon, V.C.

Hon'ble Mr. K.Obayya, A.M.

(By Hon'ble Mr. Justice S.K.Dhaon, V.C.)

This is an application at the instance of Union of India through the Divisional Personnel Officer, Divisional Railway Manager's Office , Northern Railway , Allahabad. The employer has directed the application against the order dated 22.12.1988 passed by the Labour Court, Kanpur, accepting the application under section 33-C(2) of the Industrial Dispute Act of the respondent no.1 hereinafter referred to as a workman and ^{awarding} providing him certain amount as over time wages.

2. The employer ^{had filed a} written statement consisting of 2 paragraphs only. The crux of the defence, in our opinion, is that, since the workman was performing ^a the supervisory job, he did not come within the definition of a "workman" within the meaning of the Act. The second aspect of the case is that since the workman was performing the job of supervisory character, he was not entitled to claim the over time wages.

3. The Labour Court examined the first question in detail and recorded the finding that the employer had failed to lead any evidence to indicate that the ~~applicant~~ ^{workman} was performing the supervisory function. In this application, the employer in paragraphs no.3,4 and 5 referred to three letters of the Railway Board dated 30.11.1984, 22.10.1985 and 22.12.1986. Curiously enough, ~~the~~ ^{by} copies of neither of the three letters

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have been produced before us. However, to the rejoinder affidavit filed a communication dated 22.10.1985 from the Head Quarter Northern Railway issued on behalf of the General Manager is purported to have been filed. We may indicate that this particular document was not filed before the Labour Court. However, we have perused the same and we find that it does not advance the case of the applicant. The crux of the letter is that a railway servant may be declared as ^a supervisor on the ground that he held the position and responsibility i.e. the employees on duties of position and responsibility, and his duty comparatively free to adjust the hour of working during certain hours. No material has been placed before us to indicate ^{that} the Personnel Officer, ^{on the} General Manager ^{advised} that the post of Chief Train Examiner had been classified as one ~~for the head~~ of supervisory staff.

4. On the contrary, the workman relied before the Labour Court and has relied before us ~~a~~ ^{on a} communication dated 24.3.1988 from the Carriage Wagon Superintendent, Kanpur to the D.R.M. Northern Railway, Allahabad. This purports to be ⁱⁿ a reference to some letter sent by the D.R.M. on 19.2.88 which recites ^{that} ~~that~~ it is to communicate that Chief Train Examiner Rs. 2000 - 3200 and Head Train Examiner Rs. 1600 - 2660 for performing the same duty as they were performed prior to their promotion in the scale. "No supervisory work has been entrusted to them - They governed under continuous roster and eligible for payment of over time provided for honour sanction its please".

5. Having ^{considered} ~~consulted~~ the material available

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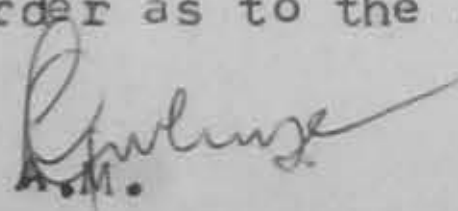
with us, we are satisfied that the Labour Court was right in recording the finding that the respondent no. 1 did not fall in the category of supervisory post within the meaning of the Act and, therefore, he was entitled to invoke section 33C(2) of the said Act.

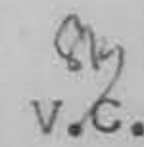
6. It is urged that the finding of the Labour Court that the respondent no.1 is a workman is based of no material and is perverse. The labour court relied upon the affidavit of the respondent no.1. It is also noted that the employer had not led any evidence in rebuttal. The Labour Court, therefore, held the evidence led by the respondent no.1 as sufficient. No reason has been given even now as to why the affidavit of the respondent no.1 should be discarded. Therefore, it cannot be said that the finding of the Labour Court is either perverse or rational.

7. The Labour Court has after considering the evidence recorded a finding that the respondent no.1 was entitled to be paid over time allowance as he has worked beyond the working hours. It has considered the material before us before coming to that conclusion. Nothing has been shown to us to disagree with that finding, apart from making the submission ^{that} the findings given on this question is perverse.

8. No other argument had been advanced before us.

9. This application is dismissed with no order as to the costs.


A.M.


V.C.

Dated: Allahabad
26th Nov., 1992
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