

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 21 DAY OF APRIL 1997

Original Application No. 1227 of 1992

HON.MR.JUSTICE B.C.SAKSENA.V.C.

HON.MR.S.DAS GUPTA, MEMBER(A)

1. Bhagwan Din, s/o Bisheshwar Prasad
Pointsman 'A' grade.
2. Parashu Ram, S/o Swami Nath pointsman A grade
3. Maiya Din, S/o Teji Lal, Pointsman A grade
4. Bhawani Din, S/o Jugul Kishore Pointsman A grade
5. Chhotey Lal S/o Jamuna Prasad, Pointsman A grade
6. Raj Narain Bhulai Ram Pointsman A grade
7. Swamidin, S/o Sohan Lal Pointsman A grade
8. Ramanand, S/o Gaya Din Pointsman A grade
9. Sripal S/o Sheo Nath Pointsman A grade
10. Nasirullah, S/o Khadi Pointsman A grade
11. Ram Sukh, S/o Ram Pher Pointsman A grade
12. Hira Lal, s/o Ram deo Prasad Pointsman A grade
13. Habibullah, S/o Abdul Gafoor Pointsman A grade
14. Chandrika Prasad, S/o Ram Sanehi Pointsman B grade
15. Motilal, S/o Ramadhin Pointsman B grade
16. Jagdish Prasad, s/o Bhagi Dutt Pointsman B grade

All posted at Banda Railway station, Jhansi
Division Central Railway.

Applicants

(By Advocate Shri Raja Ram Shiv Hare)

Versus

1. Union of India through General Manager
Central Railway, Bombay V.T.
2. General Manager, Central railway
Bombay V.T.
3. Divisional Railway Manager, Central Railway
Jhansi.
4. Senior Divisional Operating Supdt.
(Movement) Central Railway, Jhansi
5. Station Supdt.. Central Railway, banda
6. Deo Prakash Verma, Station Supdt. Central Railway,
Banda

Respondents

(By Advocate Shri G.P. Agrawal)

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O R D E R (Reserved)

JUSTICE B.C.SAKSENA, V.C.

This OA had come up earlier before a Division Bench for hearing on 1.12.92. A preliminary objection was raised on behalf of the respondents to the effect that the applicants have not exhausted the alternative remedy which has provided in the statutory provisions and as such wanted the OA be dismissed. The learned counsel for the applicant contested the preliminary objection and sought to place reliance on a decision of the Jodhpur Bench of the CAT reported in (1992) 20 ATC 828 Purushottam Lal and Ors Vs. Union of India and Ors. The Division Bench did not agree with the view expressed by the Jodhpur Bench on the said question and directed that the papers be placed before the Hon'ble Chairman for referring the matter to a Full Bench.

2. The matter was referred to the Full Bench and the Full Bench vide its order dated 5.9.94 answered the reference as follows:

- (a) It is implicit in Rule 4 that any person having a legal grievance against a declaration made under Rule 3 can submit a reference to the Commissioner.
- (b) the decision of the Jodhpur Bench of the Tribunal in Purushottam Lal and Ors. vs. Union of India and Ors(Supra) that Rule 4 contemplates a reference by the Central Govt. to the Commissioner is overruled.

The OA was directed to be listed before the appropriate Bench for hearing on merit.

3. The reference to sub rules(2) and sub rule (4) in the order passed by the Full Bench is with regard to para 3504 of Chapter XXXV Section-B of the Indian Railway Establishment Manual which incorporates Chapter VI-A of the Indian Railways Act 1890. The Full Bench took the view that sub rule (1) of Rule 4 of the rules ^{to} say the ¹ ^{BCD}

least ~~would~~ ^{be} not happily ~~hold~~ ^{worded}. A great deal of confusion has been created by ~~views~~ ^{use for} of the expression "shall be referred" to in that provision. The applicants, therefore cannot be penalised in not making a proper reference to the Commissioner." The Full Bench held that "the application presented by them in this Tribunal should not be thrown out on the mere ground that they have approached this Tribunal without exhausting the alternative remedy available to them under the statute. We are giving this concession to the applicants alone keeping in view the facts and circumstances of this case." This OA had come up before us for hearing on merit.

4. We have heard the learned counsels for the parties. There are 16 applicants who state that they were working as Pointsmen in 'A' grade and some of them in 'B' grade at Banda Railway station, Jhansi Division of Central Railway. They have filed the OA to challenge an order dated 17.3.92 passed by the D.R.M.(O) Jhansi. The said order shows that ~~on~~ job analysis of Pointsmen and Shunting jamadars was conducted by the H.E.R.I. and he has identified 11 of the staff as surplus. The staff identified as surplus included Pointsmen 'A' grade-5, pointsmen B grade-3, Shunting jamadars -3. By the said order it was also recommended to down grade the classification of the categories from 'continuous' to 'essentially intermittent'. The transfer order for the surplus staff were also issued including some of the applicants. The other order under challenge is a letter by the DRM(P) dated 23.7.92 indicating the implementation of a new roster in view of the change in the classification. The applicants have also challenged a third order dated 30.7.92 which is consequential to the two orders aforesaid.

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5. With a view to appreciate the issues involved in the present OA it would be relevant to state that the provisions of Chapter XXXV of the Indian Railway Establishment Manual incorporates the Hours of Employment Regulations. A copy of the said Chapter XXXV as also the relevant ^{provisions} ~~issues~~ involved in the present OA has been filed as Annexure A-11. Paragraph 3501 occurring in Chapter XXXV of the Indian Railway Establishment Manual deals with the Hours of Employment Regulations which consists of:

- (1) Chapter VI-A of the Indian Railways Act, 1890
- (2) Railway Servants(Hours of Employment) Rules, 1961;
- (3) Subsidiary Instructions framed under Sections 71 A to 71 H of the Indian Railways Act. 1890, and the Railway Servants (Hours of Employment) Rules, 1961.

Definition 71-A contains the function of clause.

It provides that;

- (a) the employment of a railway servant is said to be "continuous" except when it is excluded or has been declared to be "essentially intermittent or intensive;

The daily hours of duty of railway employees falling in either of two categories or a third category of those excluded have been provided. Section 71-E(1) provides that;

71-E(1) The Central Government may make rules:-

- (a) Prescribing the authorities who may declare that the employment of any railway servant is essentially intermittent or intensive; and providing for appeals against any such declaration and the manner in which, and in the condition subject to which any such appeal may be filed and heard;

The said provision also ^{enables} ~~have powers~~ by clause(d) for ^{ber}

providing for the delegation of powers
by the Prescribed Authorities referred to
in clause (C).

6. Paragraph 3504 occurring in Section B of Chapter XXXV
of the Indian Railway Establishment Manual contains the
Railway servants (Hours of Employment) Rules, 1961. Rule
3 of the R.S.H.R Rules provides for the power to classify
the employment of a Railway servant. We will advert ^{to} these
rules ^{and other} ~~with the~~ ^{for} provisions while dealing with the pleadings
of the parties.

7. The applicants case is that at Banda Railway station
the sanctioned strength of Pointsmen has been 21 since more
than last 20 years. Their case is that during the last
ten years work load at Banda railway station has
considerably increased. Their case is that on 13.8.87 the
Senior Divisional Operating Superintendent (Movement)
Jhansi by order no.76 had provided the sanctioned strength
of Pointsmen to be 21 and had decided that the batches of
seven pointmen in each shift of eight hours with
authorised rest will work. The applicants case further is
that on 20.2.91 an order was passed by the D.R.M.(P)
Central Railway, Jhansi temporarily transferring 5
pointsman from Banda station to newly opened station
'Khoh'. The applicants case was that this reduction in
strength of Pointsmen in Banda railway station was
impracticable nor proper and therefore a protest was
raised by the Pointsman posted at Banda and also by their
representative body namely the Central railway Mazdoor
Sangh Banda. Some allegations of malafides have been made
against the then station Supdt. Central Railway Banda and
the case of the applicants is ^{that} at his behest the
classification has been changed and instead of 8 hours
working the applicants were made to work for 12 hours.

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When the impugned order dated 17.3.92 was issued stating that 8 Pointsman at Banda railway station was surplus and those posts at Banda were downgraded from 'Continuous' to 'Essentially intermittent', The Central Railway Mazdoor Sangh at Banda made a representation. The applicants also state that the said representation is dated 11.8.92 ^{and was made} to the Regional Labour Commissioner, Kanpur against the said order. In view of the impugned orders and there being no other effective alternative remedy the OA was filed.

8. The respondents have filed a detailed counter affidavit. Their case is that job analysis was conducted and on the basis of the job analysis which was concurred by the Chief Personnel Officer the orders have been issued. The respondents case is that the power to declare the hours of employment of a railway servant as 'intensive' or 'continuous' or 'essentially intermittent' within the meaning of Section 71-A of the Indian Railways Act vests with the Railway Administration ^{and} ~~with~~ the officer ^{not} below the rank of senior scale officer. The respondents plea is that job analysis is a policy matter and the same is done according to the work available to the particular station. Action and inaction period was also taken into account in the work of job analysis. The respondents in their counter stated that the orders have been passed after approval by the Competent Authority. The General Manager according to the respondents had delegated the power to Chief Personnel Officer by a letter dated 16.12.1977. Detailed facts and the result of the job analysis have been averred to in the counter affidavit. The detailed pleadings will be adverted to while dealing with the submissions of the counsel for the applicant.

9. The learned counsel for the applicant urged that the job analysis have been done behind the back of the applicants and though they were the persons to be affected they have not been associated with the job analysis for the post of Pointsmen at Banda. The learned counsel therefore submitted that the order dated 17.3.92 deserves to be set aside.

As noted hereinabove the plea on behalf of the respondents is that job analysis is an administrative exercise and is a policy matter. The respondents case is that the job analysis is conducted by the Personnel Branch independent of the Executive branch. Their further case is that the result of the job analysis was vetted by the Sr. D.A.O, Jhansi and was sanctioned by the Chief Personnel Officer, Bombay V.T. by a letter dated 29.5.92. Their case is that in terms of Indian Railway Establishment Manual Para 3504 sub rule (3) and Railway Board's letter dated 12.9.74 the Head of the Railway Administration i.e. the General Manager Central Railway is competent Authority for sanctioning change of roster and this power is delegated to Chief Personnel Officer by a letter dated 16.12.77, copy of which has been filed as Annexure 2. They further plead that an appeal lies to a Regional Labour Commissioner vide Indian Railway Establishment Manual Rule 3504 and sub-rule(4) under Railway Servants H.O.E.R Rules, 1961. The respondents have disputed the figures of trains dealt with at Banda station as indicated in a chart filed as Annexure 4 to the OA. The respondents have given the daily average number of trains dealt with at Banda through a chart Annexure 5 to the counter. The respondents have further taken the plea that Chapter XXXV of the Indian Railway Establishment Manual deals with the Hours of Employment Regulations but

they have been revised after implementation of the Railway Labour Tribunal award effective from 1.8.74. The respondents alongwith their counter have filed extract as Annexure CA 4 dealing with the change of classification of the staff. It is based on Railway Board's letter dated 3.3.71(N.R.S. No. 5265). The said annexure indicates that the Railway Labour Tribunal 1966 has listed the following four methods of job analysis:

- (a) Rough assessment method
- (b) Representative method
- (c) Method of issuance of certificate by executive officer.
- (d) Factual job analysis

10. In the facts of the present case it is clear that the factual job analysis was conducted as it was conducted for 72 hours. The respondents in their counter affidavit have stated that consecutive 72 hour traffic movements at Banda station was observed from 20 hours of 16.7.91 to 20 hours of 19.7.91 and on the basis of the job analysis Banda railway station was declared and classified as essentially intermittent and the roster was accordingly changed. The respondents have also stated that this was done with the consent of the representatives of the recognised ~~State~~ ^{Trade} Union. The respondents have also annexed copy of the work study(job analysis) to assess the requirements of shunting staff at Banda which was submitted to the Senior DAO Jhansi. They have also annexed copy of a document which shows that a Chief Personnel officer had accorded sanction for change of existing classification of Shunting Jamadar/Pointsmen Banda from 'continuous' to essentially intermittent with immediate effect.

11. The respondents have indicated that the rationale behind the job analysis is to get in service of the employees as per requirement. The respondents further

plead that there is no inconvenience nor loss to the applicants as the Pointsmen are subject to transfer to any railway station over the division. They further plead that there is nothing in the service records of the applicant that they will remain posted at Banda or that their roster duty hours will remain continuous. In fact, they are also subject to transfer in exigency of service. In the counter affidavit Annexure CA 5 gives out the movement of traffic at Banda at the relevant period. In view of the averments and the documents we are not satisfied that the applicants have made out a case for interference at our hands. The respondents have clearly indicated that the Competent Authority as per the rules had sanctioned the change in the classification and consequently in the roster. The respondents are also right in pleading that the job analysis is an administrative work and a policy matter. Even otherwise they have placed on record in their counter affidavit the detailed factual positions and we are satisfied that the job analysis does not suffer from any illegality. It was ^{done as} laid down in the Railway Board's letter and the provisions made by the Railway Labour Tribunal 1966. The rationale behind the job analysis has also clearly ^{been} kept in view.

12. The provisions in the Indian Railway Establishment Manual and the hours of Employment Rules clearly indicates and provides for an appeal against the classification and it also provides that the matter shall be referred to the Regional Labour Commissioner whose decision shall be final. We find that the applicants understood the said provision clearly and have in fact preferred a ~~representative~~ ^{representation} to ~~with~~ the Regional labour Commissioner as per the said provision but since no interim order could ^{not} be obtained, perhaps there is an absence of that power with the Regional Labour Commissioner, the applicants have filed 102

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this OA.

13. We also wish to indicate that much changes ^{have} taken in the judicial decisions laying down the ambit of the power of this Tribunal since after the decision by the Full Bench arising in the present OA, but we are bound by the direction given in the Full Bench and we have proceeded to decide the matter. We had put to the learned counsel for the applicant a specific question whether he can indicate any specific provision contained in Chapter XXXV of the Indian Railway Establishment Manual wherein even by implication adherence to the principles of natural justice can be spelt out. The learned counsel was unable to indicate any such provision. on the contrary, we find that Rule 3 of the Railway Servants Hours of Employment Regulation, 1961 as given out in para 3504 of the Indian Railway Establishment Manual vest the power to declare the employment of railway servant as intensive or essentially intermittent within the meaning of Section 71-A ~~vest~~ with the head of the Railway Administration or with an officer not below the rank of the Senior scale officer as a temporary measure during the period of emergency.

Shows Annexure CA 4 ~~is~~ that the job analysis has to be done by the H.E.R staff. It no where provides nor can by implication it be held that the staff likely to be affected has any right to be associated with the job analysis.

14. The learned counsel for the applicant cited a decision reported in A.T.R 1988(2) C.A.T 499 Anant Kumar Mondal Vs. Union of India and Ors. The said decision is by a learned Single Member of the Calcutta Bench of the Tribunal. A perusal of the said decision shows that in view of the fact that the Railways were not able to produce

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any document to prove that the necessary declaration as to the posts being 'essentially intermittent' ^{as} having been made by the General Manager or the Senior scale officer, during the period of emergency it was held that the applicant should be treated to have worked in a post which was of the 'continuous' category.

15. The said decision is wholly unhelpful. Since in the present case the respondents have not ^{only} produced the copy of the order making the declaration but have also filed copies of the order delegating the power of declaration and have also ^{annexed} ~~alleged~~ all relevant documents in support of the declaration so made.

16. The learned counsel for the respondents cited a Full Bench decision in 'A. Padmavalley and Others Vs. CPWD & Telecom reported in Full Bench Judgments C.A.T Vol(2) at pg 334. The said decision has been cited in support of the plea that if the applicants have any grievance about the job analysis as per the provisions of sub-section(4) of Section 71-A ~~or~~ reference lies before the Regional Labour Commissioner and thereafter the appeal to the government and the same cannot be adjudicated by this Tribunal. This plea on behalf of the respondents had already been adjudicated when such a preliminary objection was raised at the hearing of the OA and the matter was referred to a Full Bench. We are bound by the mandate of the Full Bench directing the OA to be listed for hearing on merits. No other point is raised.

17. In view of the discussion hereinabove, the OA lacks merit and deserves to be dismissed and is accordingly dismissed. The interim order passed earlier is hereby vacated.

MEMBER(A)

VICE CHAIRMAN