

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 429 OF 1986.
~~Ex No~~

DATE OF DECISION 9.12.1988

SHRI MAHASHANKAR MANILAL PANDYA, Petitioner

PARTY - IN - PERSON.

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS.

Respondents.

MR. N.S. SHEVDE

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Shri Mahashankar Manilal Pandya,
residing at Block No. 150,
Dharamnagar Society,
Opp. Milan Mandir,
Sabarmati,
Ahmedabad. 380 005.

..... Petitioner.

(Party-in-person)

Versus.

1. Union of India,
Ministry of Railway,
having its office at
Rail Bhawan, New Delhi
(Notice to be served through
concerned Secretary).
2. The General Manager of
Western Railway, having its
office at Churchgate,
Bombay - 400 020.
3. The Senior Divisional Commercial
Superintendent, having his office
at Pratapnagar, Baroda (WR). Respondents.

(Advocate : Mr. N.S. Shevde)

J U D G M E N T

O.A.NO. 429 OF 1986.

Date: 9.12.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Shri Mahashankar Manilal Pandya, working as Head Booking Clerk (HBC) at Sabarmati (Broad Gauge Railway Station, Ahmedabad) has filed this application on 4.2.1986 under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"). According to him, he was working as Senior A.C.C. & A.C.C. in the scale of Rs. 330-560(R) prior to 1984 and thereafter the post has been upgraded in the scale of Rs. 425-640(R) with effect from 1.1.1984. It is alleged that as per "the hours of employment"

regulations the staff working at Sabarmati was classified as C "continuous", but due to the wrong roster showing the classification as "EI" (Essentially Intermittent), he was required to work for more time, than required for which he made his claim under his letter dated 21/25th May, 1983. It was further submitted that as the Respondents-Railway Administration, failed to consider his claim, he approached the High Court of Gujarat by filing a Special Civil Application No. 3775/85. But as the counsel representing the railway administration, agreed to consider his representation by the General Manager or his nominee, he conceded to make representation before the General Manager relying upon the inspection report dated 25.11.79 of L.E.O. ADI TF 360214 (Annexure 'G' of S.C.A.No. 3775/85) and accordingly, he withdrew the said application. It is further alleged that the respondents authorities passed the order dated 19.12.85 and denied his claim without giving him a personal hearing and without giving him any chance to represent his case. He has therefore prayed that the impugned order dated 19.12.85 be quashed and set aside and he should be awarded a decree in the sum of Rs.80,000/- on the count of arrears of over-time dues which had accrued since in the year 1971.

2. The Respondents-Railway Administration conceded that the petitioner was working at Sabarmati as Head Booking Clerk in the scale of Rs. 425-640(R)/1400-2300(RP) upto 3.9.87, however they denied the petitioners' assertions that he had done extra work over and above the schedule hours as HBC and contended inter-alia that he is not

entitled to any monetary benefits for such extra work. According to them, the petitioner can not compare his case with a person working as ACC at another station viz; Goraghuma for the purpose of classification, as the post of HBC at Sabarmati is classified as "EI". It was further submitted that as per the job analysis of ACC working at Goraghuma conducted during the period from 21.11.85 to 24.11.1985, it was revealed that there was no justification to continue classification 'C' and is accordingly, changed to "EI" and since there is no justification for change in classification from EI to C of HBC at Sabarmati, the question of payment of overtime to the applicant does not arise.

3. The petitioner was initially represented by the learned counsel Shri N.R. Tandel. However, when the matter came up for hearing the petitioner stated that he will conduct his petition personally as Mr. Tandel has declared his inconvenience to represent him. The petitioner is heard in-person and his written arguments are also taken on record. He also relied on the copy of the letter No.EE 487/0 dated 24.7.76 from General Manager(E-CCG), - the material portion whereof reads as under :-

It should be noted carefully that the powers to classify the employment of railway servants vests with the General Manager alone and as such no one else should change the classification of any staff working under him. Except for Supervisory staff, there should be a roster available for each employee in each office directly signed by the Gazetted Officer, indicating the classification the working hours of each individual railway employee. Any change to be made in the roster should be with the approval of competent authority. In exceptional circumstances, working permitted by the supervisor by making temporary exemptions which should be in writing and noted in the Register of Extra Hours of work, even where no overtime may become due. Compensatory

rest should be granted as soon as possible and if possible, within the averaging period of the employee concerned. In any case, no railway servant should be forced to work for more than 14 days without a period of rest of at least 30 consecutive hours if his employment is 'Intensive' or at least 24 consecutive hours including a full night, if his employment is 'EI'.

4. Mr. N.S. Shevde, the learned counsel for the respondents strenuously urged that the petitioner was interviewed by the Divisional Commercial Superintendent before passing the impugned order and as per the job analysis report dated 31.10.85 there is no justification for change of classification from "EI" to "C" for the post of HBC at Sabarmati. According to him, the decision taken in this regard becomes final as the petitioner has not preferred to file an appeal. In this regard, he has pressed in service Rule 4 of Railway Servant Rules, 1961 which reads as under :-

Appeals against classification :-

(1) If any question arises in respect of a declaration made under Rule 3, the matter shall be referred to the Regional Labour Commissioner whose decision, subject to the provisions of sub-rule (2), shall be final.

(2) Any persons aggrieved by the decision of the Regional Labour Commissioner may before the expiry of 30 days from the date on which the decision of Regional Labour Commissioner is communicated to him, prefer an appeal to the Government whose decision thereon shall be final.

5. At the outset it may be stated that the reliance placed by Mr. Shevde, on Rule 4 of the Railway Servants Rules 1961, is not well-conceived. In order to attract the aforesaid provision, he has first ^{to} establish that competent authority has classified the staff at Sabarmati as "EI" (Essentially Intermittent). No such decision has been placed on record to show that the staff at

Sabarmati is classified under "EI" category as required under the Rules. Mr. M.L.Jand, in his book, "Railways' Establishment Manual" (2nd Edition 1986) has dealt with the subject of Hours of Employment Regulations in Chapter XXII, he has observed that after the acceptance of the Railway Tribunal Award - 1969, the Railway workers have for the first time become entitled to get additional remuneration in the shape of overtime payment for hours of work done beyond their daily rostered hours of duty. It is statutory to display the "Duty Rosters" at the place of work and also maintain a Register of Extra Hours of work.

6. The HOER (Hours of Employment Regulations) comprise of -

- (i) Chapter VI-A of the Indian Railways Act 1890.
- (ii) Railway Servants (Hours of Employment) Rules 1961.
- (iii) Subsidiary instructions under (i) & (ii) above.

The aforesaid regulation classify railway workers into four main groups - (i) Continuous, (ii) Intensive, (iii) Essentially Intermittent and (iv) Excluded. The criteria for determining the various classification are as follows :-

- (i) Continuous. An employment is said to be 'continuous' except when it is 'Excluded' or declared to be 'Intensive' or 'Essentially Intermittent'.
- (ii) Intensive. The employment of a Railway servant is said to be 'Intensive' when it is declared to be so by the prescribed authority on the ground that it is of a strenuous nature involving continued concentration or hard manual labour with little or no periods of relaxation. The following two factors should be present in deciding the classification of an employment as "Intensive".

- (a) the work involved is of a strenuous nature tending to cause mental or physical strain,
- (b) continuous application to such work with little or no periods of relaxation.

The sustained and strenuous attention or physical exertion involved when the work is performed must be such that (a) periods of rest, inaction or relaxation do not aggregate 6 hours or more in a cycle of 24 hours or (b) in any shift of 8 hours the employee does not get periods of inaction, rest or relaxation of at least one hour in the aggregate.

- (iii) Essentially Intermittent. The employment of a Railway servant is said to be "E.I" when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the railway servant normally include periods of inaction aggregating to six hours or more (including at least one such period of not less than one hour or two such periods of not less than half an hour each) during which the railway servant may be on duty but is not called upon to display either physical activity or sustained attention.

- (iv) Excluded. The employment of a railway servant is said to be excluded if he belongs to any one of the following categories :-

- (a) Rly. servants employed in confidential capacity.
- (b) Armed Guards and other Personnel subject to discipline similar to that of the Armed Police forces.
- (c) Staff of Railway Schools imparting technical training or academic education.
- (d) Such staff as may be specified as supervisory staff by the Central Government.

(Vide Rly. Board No.E(LL/70 HER/16 of 4.1.72, 17.11.73 and 22.1.74 ER7880, SE 6171, NR 5528, 6063, 6089)

- (e) Such categories of staff of the Health & Medical Deptt. as may be specified by the Central Government.

7. It is conceded that the statutory maximum hours of work and the periodic rest to be given to the staff in various classifications ^{are} as shown below :-



Classification.	Statutory maximum of hours of work.	Periodic rest
(i) Continuous.	54 hours of an average per week.	Net less than 30 consecutive hours in each week. Running Staff shall be granted either 4 rests of 30 hours each for 5 rests of 22 hrs each in a month.
(ii) Intensive.	45 hours of an average per week.	-do-
(iii) Essentially Intermittent.	75 hours per week.	Not less than 24 consecutive hours including a full night, in a week.
(iv) Excluded.	None	48/24 consecutive hours in a month/fortnight.

It is further conceded that the power to declare a staff as "Intensive" or "EI" shall vest in ^{the} Head of the Railway Administration i.e., the General Manager. Now under the aforesaid scheme the employment is said to be 'Continuous' when it is ^{not} regarded as 'Excluded' or declared to be 'Intensive' or 'Essentially Intermittent'.

8. The main grievance of the petitioner is that prior to 1979, when LEO checked the station cadre classification was 'C' and since then no change is recorded from 'C' to 'EI'. However due to wrong roster his duty is regarded as "EI" and more hours of duty are taken from him. In his representation dated 21/25th May, 1983, he claimed that his cadre classification is 'C', but his roster is wrongly given as "EI" with the result, he has to attend more duty hours and does not get rest for two days, as enjoyed by his counter-part at

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Gorghuma railway station which is also classified as 'C'. In support of his submission, he has relied on the statement showing cadre of classification at Sabarmati for the year 1978, 1981 & 1982, wherein his classification is referred to as 'C' (Continuous). He has also sought reliance on the Inspection Note dated 25.11.79 prepared by J.C. Sharma, LEO ADI TF 360214. The material portion whereof is reproduced as under :-

Inspected the station on date under PW Act HER and ECA - following significant observations as under which should be rectified early.

(1) Sr.Booking Clerk was roastered as E.I. vide roaster dtd. 17.3.76; according to the roaster-cadre strength made effective from 1.4.77. His classification has been showing continuous but the revised roaster was not supplied and he has all along being performing 60 hours duty each week, there is thus appear contradiction in the cadre strength classification and roaster hours. The anomaly should be removed. In case the classification has been up-graded w.e.f. 1.4.77 from "E.I" to "C", then the overtime accrued to the incumbent should be paid immediately.

A statement showing cadre of Class as on 1.4.82 at Sabarmati reads as under :-

Sl. Particulars		(2)		Permanent Posts	
No. of categories. (1)		Working posts		Leave Total	
		Rest givers		reserve. No.	
1.	Sr.ACC	1	-	-	1
2.	Sr.ACC	5	-	1	6
3.	ACC	-	1	1	2
Classi- fication.	No. Class.	Temporary posts. Sanctioned for period		Grade	Remarks
		(3)	(4)		
		From	To	(5)	(6)
C				330-560	
C				330-560 + 1 WP	from SBI ST 261/3/95 dt 10.6.81
C	1	9.5.77	to 6.5.82	260-480	For Hindustan Steel Ltd.
	1	7.4.80	to 6.5.82	"	For EPH siding - tfd to SBI ET/261/3/
-25 of 10.1.81.-					

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9. It transpires from letter dated 20.12.83 addressed to Station Master, Sabarmati by Sr.D.C.S. (E) Baroda authorities, have come out with a version that it is a typographical error for having shown classification as 'C' instead of "EI" in the cadre of the station. This stand has been also reiterated by the respondents in their written statement, which is also not substantiated by any record. In order to establish that the staff of Sabarmati has been classified as "EI", it is required to be shown that a competent authority has passed such an order. In absence of any such order, it is presumed that the employment at Sabarmati is "Continuous". This position gets support from the statement showing cadre classification and the inspection report prepared by LEO ADI dated 25.11.79. Even during the course of ^{his} arguments it was brought to the notice of Mr. N.S. Shevde appearing for the respondents to place the relevant order on record to show that hours of employment at Sabarmati has been classified as "EI" by the competent authority. However he has expressed his inability to do so. He has merely sought reliance on copy of the job analysis report dated 31.10.85, which in my opinion has no relevancy whatsoever. The respondents have failed to establish that the employment of the petitioner was covered under the classification of "EI" under the rules. The petitioner's register as per cadre classification 'C' should be $48+3=51$, instead of $60+3=63$. On this basis LEO had recommended overtime, as in his opinion the employee concerned was eligible for overtime for 12 hours. Thus the petitioner has successfully established his claim for overtime. He has however claimed the arrears of overtime from the

year 1971, but he has preferred to claim for the first time under his letter dated May, 21/25, 1983. Even otherwise his claim for the period of three years prior to the date of the institution can not be denied.

10. For the reasons stated above, I have no hesitation in holding that the petitioner is entitled to claim overtime wages for the work done by him at Sabarmati on the basis of statement showing the cadre as 'C' (Continuous). However, he is held to be entitled to claim the arrears of such claim only from the date of his first representation i.e., dated May 21/25, 1983. Accordingly, the impugned order dated 19.12.85 is hereby quashed and set aside. The respondents are directed to workout the wages for the period of overtime work done by the petitioner during the relevant period at Sabarmati station on the post held by him and pay the same within a period of three months from the date of this order.

The application succeeds to the extent stated above and the same is accordingly disposed of with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER