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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No 208 of 1990

Date of Decision: 16.11.1993

Budhinath Samantray & Another Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunals or not ?

km 16.11.93  
VICE-CHAIRMAN

— I. G. J. S. —  
MEMBER (ADMINISTRATIVE)

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For the applicant(s)

Mr. Biswajit Mohanty  
Advocate

For the respondent(s)

Mr. Ashok Mohanty  
Standing Counsel  
(Rly. Administration)

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C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

...

JUDGMENT

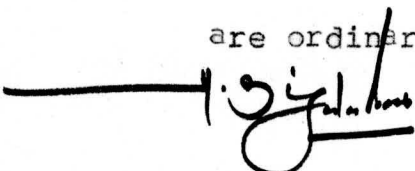
MR. H. RAJENDRA PRASAD, MEMBER (ADMN): In this application, Sarvashri B.N.

Samantray and Brundaban Sethi, Gate Keepers, Class B Level-Crossing, Delanga Railway Station, South Eastern Railway, have challenged two orders issued by the Respondent No. 3 : reclassifying the level-crossing at Delanga R.S. from Class B to C; and rejecting their claim for the grant of overtime allowance. They pray that suitable directions be issued to the respondents to (a) sanction the allowance claimed, and (b) re-categorise the applicants and fit them into a proper scheme of work-hour pattern based on the facts and circumstances of their case; or (c) in the alternative, to continue to pay overtime allowance as claimed.

2. Shri B.N. Samantray and Shri Brundaban Sethi are employed as gate-keepers at a manned level-crossing located at km. 469/14 from Howrah, between Delanga and Motari Railway Stations on Khurda Road - Puri branch (single-line) section. The level-crossing stood classified long as Class B gate. Appendix A to Delanga Station Working Rules describes it so. The Divisional Signals and Telecommunications Engineer (M), Divisional Engineer and Divisional Safety Officer have all referred to it as such in various communications and reports over the years.

3. Since the date(s) of joining their appointments, the applicants have been classified as Essentially Intermittent Employees.

4. As per the standing regulations, and instructions of the Railway Board, the Essentially Intermittent Employees are ordinarily required to work for forty-eight hours in a



week, but also for an additional 24 hours during the same period, provided that -

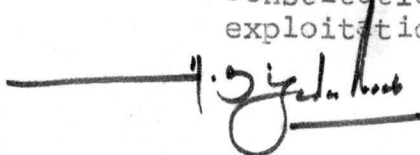
- i) they are deployed at road-side stations and allotted living quarters within 5 kms. of the place of their duty; or
- ii) deployed to man C class crossings.

The remaining Essentially Intermittent Employees, viz, those not covered by the above provisos, are expected, when so ordered, to put in a 12-hour duty cycle besides the 48 hours aforementioned.

4. It is the applicants' contention that, since they are not provided with living quarters so far, they are not required to perform more than sixty hours duty in a week, whereas they have been consistently made to work for seventy two hours from 17th November, 1980, till date. Their grievance is that while their repeated representations for overtime allowance, based on the above ground, were turned down, Respondent No.3 abruptly issued reclassification orders in January, 1990, altering the status of Delanga Manned Level-Crossing from Class B to C., and thereafter made it the basis for rejecting their claim.

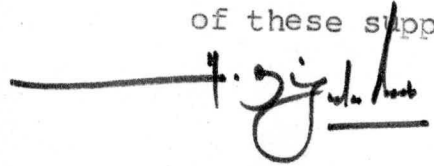
5. The applicants contend that:

- a) Respondent 3 has neither any power nor jurisdiction to reclassify level-crossings;
- b) His refusal to entertain their plea for recasting of their duty roster betrays a non-application of mind, is arbitrary, and therefore, bad in law, besides violating the instructions of the Railway Board in the matter; and
- c) His rejection of their claim for overtime allowance offends Article 300-A of the Constitution and amounts to an unlawful exploitation of labour.



6. In their reply, the Respondents argue that the applicants' claim of overtime allowance from 1980 is grossly barred by limitation. They assert that the level-crossing had always been classed in C category, and was always manned by two gatemen in successive shifts of 12 hours by each of them. It is their plea that Annexures 2 and 3, showing the nomenclature of the crossing as B, produced by the applicants in support of their claims, was a genuine clerical error which was subsequently rectified by the issue of a proper correction. They claim further that all available records merely support this position.

It was explained by Shri Ashok Mohanty, the learned Standing Counsel for the Railways, that the classification of level-crossings is done on the basis of certain well-established criteria. He enumerated the parameters governing the classification as (i) the class of road (ii) the volume and type of traffic and (iii) the number of trains passing through the crossing, and (iv) visibility-state around it. Against the background of these factors, Shri Mohanty added, it is seen that no National or State Highway, important municipal or a district-level road, but only a dirt-track, known as Class III in the Panchayat parlance, goes across it. He averred that as per the census conducted in February, 1990, no more than 39 motor vehicles, 36 carts, 5 cycle-rickshaws, i.e., a total of 82 vehicles of all types, passed through the gate over a 24-hour period, besides 12 pairs of trains. There exists, besides, an unimpaired visibility range of 500 meters. None of these support the Applicants' bid to earn for the crossing

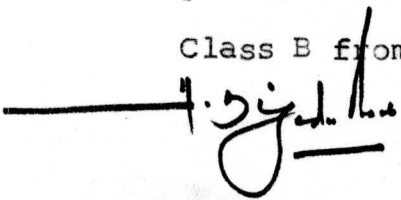


a status or classification which can be higher than Class C.

Based on these facts ~~the~~ counsel argued that the correction slip incorporating the revised status of the level-crossing from Class B to C, issued by Respondent 3, is perfectly justified and legal. In fact, he stated, <sup>to the application</sup> Annexures 2 and 3, on which the applicants have relied heavily, have been issued by officers who are in no way competent to issue any classification or re-classification orders of this type.

Winding up the case the Respondents assert that the level-crossing in question was never more or other than in Class C and the applicants, being Essentially Intermittent Employees, are indeed required by rules to perform a total of 72 hours of duty in a week, even if they are not provided with residential quarters, and are thus not at all entitled to any overtime allowance claimed by them.

7. In a rejoinder to the Respondents' counter, the applicants refute that their application is attracted by any limitation as their grievance is a recurring cause. In any case, they point out, the application was filed soon after their claim for overtime was rejected by the Respondents. They maintain that the impugned Correction Slip dated 5th January, 1990, is an isolated document not bearing any reference to an earlier order or document, nor does it spell out or indicate any basis for the revised classification of the level-crossing. The applicants refer next to the Level Crossing Inspection Register, produced as an additional proof, which indicates the status of the level-crossing as Class B from as early as 1976. A wide variety of officers,



like Permanent Way Inspectors, Block Signal Inspectors, Divisional Traffic Inspectors, Assistant- and Divisional-Engineers and Divisional Safety Officers, have all endorsed its Class B status ever since.

8. The applicants insist that the impugned correction-slip has all the appearance of a hasty after-thought issued apparently to deny their legitimate claim and to regularise an irregular practice. As for the Respondents' contention of an original error and rectification thereof, the applicants draw attention to the fact that no earlier or original record was produced to establish that it was an error and if so, precisely in what manner. Likewise, regarding the assertion that the applicants are not entitled to the overtime claimed by them because they have been manning a merely C Class crossing, the applicants put forth a counter assertion that the crossing in question is clearly B class and the applicants, as such, have been compelled illegally to perform more than their allotted quota of weekly duty-span.

The applicants finally urge that the impugned correction-slip also violates the provisions of Para 20.02 of South Eastern Railway Operating Manual, according to which every change sought to be so incorporated has to be necessarily in the form <sup>of</sup> a wholly fresh page to be newly issued, and not in the shape of an ad-hoc correction slip. The same para stipulates that if there be more than three consecutive corrections necessitating changes in the existing regulations in the Manual, the whole of Station Working Rules is to be re-issued. Against these requirements, the

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applicants' rejoinder points out, only a correction slip has been issued in the instant case, and it is not covered by any rule or stipulated procedure. The impugned correction slip has, in this background, to be held as unlawful.

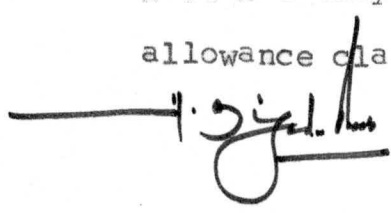
A few more lacunae in the Respondents' counter are highlighted by the applicants. These are:

- According to Para 9 of the counter-affidavit, the classification - and by implication, any subsequent reclassification - of level-crossings has to be decided, or at least ratified, by the Divisional Railway Manager, Chief Engineer, and the Chief Safety Officer, whereas the impugned correction slip altering the existing classification of Delanga crossing has been issued only by the Divisional Signal and Telecommunications Engineer (M) and Divisional Safety Officer. This is clearly inadequate.

- The existence of a Class III road, no matter who maintains it, does not mean that any gate or crossing which lies across it automatically gets a Class C status.

- In a census conducted as long ago as 1979, the then traffic figures revealed that as many as 360 vehicles were passing across the gate then, whereas, according to the Respondents, a count made in 1990 showed that only 82 vehicles passed through it. Such a steep downward plunge is inconceivable and, ipso facto, of doubtful veracity.

9. Based on these assertions, the applicants maintain that their ignorance has been taken advantage of and that they are incontestably entitled to the overtime allowance claimed by them which is legitimate and lawful.





10. From a scrutiny of the somewhat elaborate pleas put forth by the applicants and from an equally lengthy response advanced by the respondents, a few facts emerge loud and clear.

- i) Rightly or wrongly, the manned level-crossing in question was accorded for long a Class 'B' status until it was down-graded to Class 'C' by the impugned correction-slip issued by Respondent No. 3.

The Respondents have claimed that all available records merely support this position. No records have, however, been produced by them to support this claim.

The applicants, on the other hand, have produced a whole set of varied documents in support of their assertion that the level-crossing had always been termed Class-B.

- ii) The level crossing was reduced to a lower classification as it did not fulfil certain basic criteria relating to the type of road, volume of road- and rail-traffic and range of visibility. This is the argument of the respondents who have also produced certain statistics to buttress their argument.

Even if these statistics are accepted as accurate, they do not explain why these could be such an unbelievably steep decline in rail- and road - traffic when the trend everywhere was exactly to the contrary. It is not also clear how the other conditions and circumstances changed so radically when the class of road passing through the crossing remained unaltered.

- iii) The Respondents state that the records produced by the applicants were issued by officers who were not competent to do so. Apart from the fact that these very records were allowed to continue unchanged for a long time, the impugned correction and re-classification too have been issued by another officer who, as brought out by the applicants in their rejoinder, was equally not competent to issue such orders.

The applicants have also produced an additional proof in the form of extracts from another document, the Level Crossing Inspection

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Register which merely confirms their original claim as regards the status of the crossing.

- iv) The provisions of Para 20.2 of SER Operating Manual, cited by the applicants in support of their claim, belies some the arguments of the respondents; on the contrary, if reinforces the version by the applicants

11. In the light of the facts so clearly brought out by the applicants, it is clear that the level-crossing in question was in fact undeniably categorised in 'B' class to start with. This may well have been a mistake although it has not been explained as so why exactly this mistake was allowed to occur in the first instance or whether it was a mistake at all. Secondly, this classification, correct or otherwise, was allowed to continue till it came to be changed by the impugned correction-slip. Thus, whatever may have been the correctness, or otherwise, of the original classification, the crossing continued to be called Class 'B' until the classification was changed in January, 1990.

12. The manner in which the classification was changed has also been shown to have been defective inasmuch as it was not issued by an officer competent or empowered re-classifying crossings on hiw own, nor is there any indication that prior approval of all the higher competent officers so empowered in this regard was secured. Even so, the changes <sup>in documentation</sup> that should necessarily have followed-up the reclassification, subsequent to the issue of impugned correction-slip, have evidently not been completed. These are:

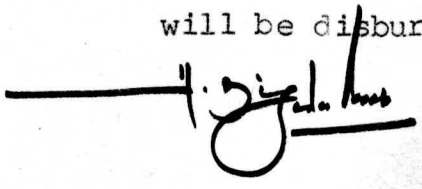
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- 1) no fresh page was issued to replace the relevant page in Station working Rules as specified in the Railway Operating Manual, nor was the existing Station Working Rules substituted by the issue of a fresh copy thereof. Both steps were necessary because such changes/replacement are called-for if more-than three corrections are made. It is significant to note in this connection that the impugned correction slip bears number (5) on it.

13. Considering the above facts, it is felt that the applicants are entitled to the claim advanced by them. It is therefore directed that over-time allowances as admissible under rules may be drawn and paid to the applicants from the date(s) they were ordered to work over-time in excess of 24 hours plus 12 hours per week. This payment shall have to continue <sup>occurrence</sup> until the earliest of one of the following contingencies:

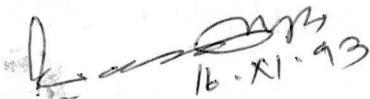
- 1) Allotment of residential accommodation to the applicants within five kilometers of their place of duty;
- 2) Proper re-classification, if justified in view of the authorities, of the level-crossing after observing all due procedures and formalities preceding or attendant on such re-classification.
- 3) Re-deployment of applicants in a revised duty-roster keeping in view their acknowledged status as Essentially Intermittent Workers without residential accommodation (within 5 kms. of their place of duty) until such accommodation is provided.

14. We are <sup>not</sup> inclined to order any interest on over-time arrears claimed by the applicants. The amounts due by way of arrears of over-time allowances will be disbursed to the applicants within 90 days

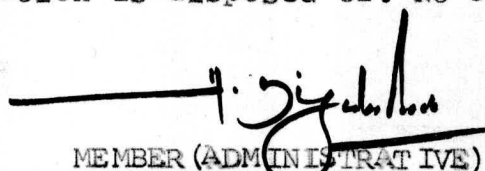


of the receipt of this order.

15. Thus the application is disposed of. No costs

  
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VICE-CHAIRMAN

  
MEMBER (ADMINISTRATIVE)  
16 Nov 93

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 16.11. 1993/B.K. Sahoo