

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 613 OF 1992.

Cuttack this the 3rd day of December, 1998.

Naval Civilians Employees' Union,
Chilika represented by its President
Mr. Prafulla Kumar Patnaik, aged about
37 years, S/o late Raghavananda Patnaik,
At/Po/Ps. Chilika, Dist. Puri. ...

Applicant.

- Versus -

Union of India & Others. ... Respondents.

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12/98

3-12-98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 613 OF 1992.

Cuttack this the 30th day of December, 1992.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

Naval Civilians Employees' Union
Chilka represented by its President
Mr. Prafulla Kumar Patnaik, aged about
37 years, S/o. late Raghavananda Patnaik,
At/Po/PS. Chilka Dist. Puri. ...

APPLICANT.

By Legal practitioner:- M/s. R. B. Mchapatra, D. R. Rath, Advocates.

-VERSUS-

1. Union of India represented by the
Chief of the Naval Force, Naval
Headquarter, New Delhi.
2. Director of Civilian Personnel,
Naval Headquarter, New Delhi.
3. Flag Officer, Eastern Naval Command,
At/Po. Vishakhapatnam (Andhra Pradesh).
4. Commanding Officer, I.N.S. Chilka,
At/Po/PS. Chilka, Dist. Puri. ...

RESPONDENTS

By legal practitioner: Mr. Ashok Mohanty, Senior Standing
Counsel (Central).

....

O R D E R

MR. G. NARASIMHAM, MEMBER(JUDICIAL) :-

Applicant a registered Trade Union of some, if not all, Civilian Employees of INS Chilka at Chilka seeks direction to the Respondents to implement five days week system and to give service and financial benefits to the Civilian Employees for rendering service on Saturdays w.e.f. 1.1.1986. This application has been filed through the President of the Trade Union, Shri Prafulla Kumar Patnaik, who is one of the Civilian employees.

The version of the applicant is that, Civilian Employees of I.N.S. Chilka are Central Government employees and service conditions meant for the Central Government employees are fully applicable to them. Government of India introduced five days work in a week in the Civil Administrative Offices from 03-06-1985. These five days are from Monday to Friday. Offices are closed on Saturdays and Sundays. Accordingly Office hours have been fixed either from 9 A.M. to 5 P.M. or 10 AM to 6 PM with half an hour break depending upon the local conditions. Respondent No. 4 i.e. Commanding Officer, INS Chilka, implemented this decision of the Government of India by introducing five days in a week with effect from 3.6.1985. The said system continued till 1.1.1986, whereafter, it was discontinued without consultation with the representatives of

the Union. On the other hand, Respondent No. 4 switched over to six days working in a week and thus, deprived the employees availing the saturdays as holiday. One of the employees, though represented to Respondent No. 4 requesting for implementation of five days working routine (Annexure-A/5), but without any effect. Hence this application.

2. Respondents in their counter take the stand that the introduction of five days working in a week by the Government of India in their circular dated 21-5-1985 (Annexure-A/4) is specifically for the administrative offices of the Central Government only. Respondents have not received any specific order or instruction from the Ministry of Defence in regard to implementation of five days week in the units/establishments of Defence instalations and specifically in Defence Training Establishments. However, on experimental basis, the five days week routine was implemented in INS Chilka w.e.f. 3.6.85 but was reverted to six days week routine w.e.f. 13.1.1986 in order to ^{with} cope up _{the} training commitments, as INS Chilka is the basic training establishment of the Indian Navy. This scheduled working routine meant for Training Establishment has been duly communicated to Respondent No. 4 under Annexure-R/1 i.e. copy of letter dated 13.8.1990 of Headquarters P & C(V). I.N.S. Chilka being a basic Training Establishment of the Indian Navy, under the

Ministry of Defence is engaged in imparting basic training to the new recruits who are enrolled from various parts of the country for the combat force of the Indian Navy, which is one of the wings of Indian Armed Forces. Hence this Training Establishment can not be compared with that of a Civil Administrative Offices so far as its main role and functions are concerned. The other two Defence units located at Chilka i.e. MES (Army Wing) and INHS Nivarini located at Chilika and holding Civilian Staff in their sanctioned strength are also following six days a week routine. These allied units are basically meant to give full support to this Training Establishment. This apart, various training activities to be imparted in the Training Establishment can not be covered or accommodated in daily time table of five days a week routine, as this will adversely affect the Training efficiency of the raw recruits who are trained to join the combat force of the Indian Navy as full fledged sailors. Further the Civilian staff of INS Chilka are of two categories i.e. Industrial and Non-Industrial. As per the Government orders, working hours prescribed for Industrial staff are 45 hours a week and for non-Industrial staff 40 hours a week which excludes lunch break. The duties carried out by Industrial staff being of skilled nature they can not be continuously employed on duty for nine hours a day in five days week routine without rest.

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Applicant's Trade Union, according to the Respondents does not represent all the Civilian Employees and has also not been recognised by the employer and as such is incompetent to maintain this application which is also violative of Rule 5(b) of Central Administrative Tribunal (Procedural) Rules, 1987. Moreover, Trade Union activities are not permitted officially in the training establishment and hospital.

Lastly, it is urged that this application is barred by limitation.

3. Applicant, in rejoinder, while reiterating the facts mentioned in the application states that the other two training centres of Indian Navy i.e. INS Satvahan and INS Circars located at Madras and Cochin adopted the routine of five days working in a week for the Civilian staff. Hence, there is no reason why the Civilian staff of INS Chilka would be deprived of the same. It has been further averred that the statement in the counter that no instruction has been received from the Ministry of Defence to adopt the routine of five days in a week is false. Further Respondents' plea that Trade Union activities are not allowed in the training centre has been countered by filing letter dated 22.10.1986 of Government of India Ministry of Labour addressed to the Deputy Secretary to Government of Orissa, Labour and Employment Department raising no objection to the Civilian Employees of INS Chilka forming an association and getting

it registered under the Provisions of the Trade Unions Act, 1926 (Annexure-14).

The plea of limitation raised by the Respondents has also been countered stating that it is a continuing cause of action.

4. The new facts averred in the rejoinder, have not been challenged by the Respondents. Hence the admitted facts are that the applicant is a registered trade union representing atleast some of the Civilian employees of the INS Chilka. The Civilian employees are engaged in the Naval Training Centre of INS Chilka. Though these Civilian employees enjoyed five working days i.e. Monday to Friday in each week i.e. 3.6.1985 to 1.1.1986, are being made to work for six days in a week i.e. from Monday to Saturday from 13.1.1986. INS Satvahan and INS Circars Training Centres of India located in Madras and Cochin having Civilian employees who are working five days in a week ~~from~~ from Monday to Friday. Central Government had permitted the Civilian Employees of INS Chilka to form a Trade Union.

5. The point for determination ^{are} is whether the application is maintainable in view of the requirement under Rule 5(b) of CAT (Procedural) Rules, 1987 and whether this Tribunal can direct the Respondents to engage the Civilian employees of INS Chilka only for five days in a week.

6. Rule 5(b) of Central Administrative Tribunal

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(Procedure) Rules, 1987 lays down that the Tribunal may permit an association representing persons desirous of joining in a single application to file an application provided that the application shall disclose the class, grade, categories of persons on whose behalf it has been filed in which case atleast one affected person joins such an application. Thus, it is clear that Trade Union filing of an application of this nature, need not represent all the employees so far as class of employees is concerned. It is mentioned in the application that the employees are Civilian employees and this has not been denied. It is true that there is no applicant No.2 in this application. Further it does not necessarily mean that one affected person will have to be impleaded as applicant No.2. This Trade Union, in this application has been represented through its President Shri Prafulla Kumar Patnaik who is a Civilian employees of the INS Chilka. This hasnot been denied in the counter. In other words, the Trade Union has been represented through its President who is one of the affected person.

7. For filing an application under section 19 of the Administrative Tribunals Act, 1985 the concerned legal aggrieved person who is necessarily a legal person need not be a recognised Trade Union. All that is required is that the Association or Union must be a legal person, in the sense, a registered one. Hence, in our view, legal requirement of Rule 5(b) of the CAT(Procedural) Rules, 1987

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has been complied.

8. One of the contentions of the Respondents is that since routine of six days in a week has been introduced since June, 1986, this application filed in the year 1992 challenging that introduction, is barred by limitation. We do not agree ^{with} ~~to~~ this contention because introduction of this routine continues to affect the service conditions of the applicant in each week. Hence, it is a case of continuing cause of action and as such, the application is not barred by limitation.

9. It is an admitted ^{fact} ~~that~~ that on 21.5.1995, under Annexure-A/4, Government of India in the Deptt. of Personnel and Training, New Delhi introduced five working days in a week i.e. from Monday to Friday. On careful perusal of this Annexure-A/4, contents of which has ^{not} been denied in the counter, will make it clear that this arrangement is not only applicable to administrative offices of Central Government but also all other offices of Government of India as mentioned in para-2 of the circular. It is also a fact that five days working routine in a week implemented in ^{was} INS Chilka w.e.f. 3.6.1985 but withdrawn w.e.f. 13.1.1986 from which day routine of six working days in a week has been in force. There is no denial of the averments of the applicant that INS Satvahan and INS Circars,

other two Training Establishments of Indian Navy, like INS Chilka, are following five days working routine in a week. Viewed ~~it~~^{from} ~~an~~ this angle that introduction of six working days in a week for the Civilian Employees of INS Chilka is in a way of discriminatory. But the main contention of the Respondents is that they have no specific instruction from the Ministry of Defence for implementation of the routine of five working days in a week and as per the quarterly Command Staff meeting held at Head Office on 9.1.1986, a decision was taken to follow six days routine by all training establishments viz. INS Chilka, INS Satavahana and INS Circars yet as regards working routine, Head of the establishment at his discretion can decide the same keeping inview of the local conditions (Vide Annexure-R/1, letter dated 13.8.90 of Naval Headquarters, Visakhapatnam). In other words, the contention is that the local conditions at Chilka, in view of various training programmes, enumerated in the counter, required six working days in a week for completion of the training. Yet it has neither been decided nor averred that the training programmes in other two training centers at INS Satavahan and ISS Circars are different from the training programmes in INS Chilka. Yet the fact remains that the stand of the Respondents is that since they have not received any specific instruction from the Ministry of Defence for implementation of

Government of India Circular dated 21-5-1985 (Annexure-A/4 for introducing five working days in a week, they can not introduce this system simply on the demand of the applicant. though in the rejoinder, the applicant asserted that this statement of the Respondents in the Counter is false, no paper to that effect has been filed. In other words, the applicant has not come up with any documents wherein instructions have been conveyed by the Ministry of Defence for introduction of five working days in a week. Hence we presume that the Ministry of Defence under whom, the four Respondents, in this application are working, have not taken any policy decision in this regard. This Tribunal has no jurisdiction to introduce a policy and give direction for enforcement of that policy though it can give directions for enforcement of the Policy decision of the Government, if there is breach in its compliance.

10. We, therefore, can not grant relief prayed by the Applicant. The applicant, however, can represent to the concerned competent authority under the Ministry of Defence through proper channel about the relief claimed in this application within fifteen days from the date of receipt of a copy of this order and in that event the Ministry of Defence, through a reasoned

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order, will dispose of the representation and communicate the same to the applicant within 90 days thereafter. It is made clear that ^{at} every stage of forwarding representation of applicant, the concerned Authority ^{shall} forward the same to the next higher Authority within a week on receipt of the same with necessary comments thereon under intimation to the applicant.

11. In the result, with the observations made in paragraph 10 above, the Original Application is disposed of. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
3.12.98

3.12.98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KN M/CM.