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CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Date of order : 19.01.200

O.A. NO. 367/99

1. All India Shunting Cabin and Traffic Staff Association Jodhpur Division, Northern Railway, Through its Divisional Secretary, Shri Babu Lal S/o Shri Motiji, aged about 41 years, R/o Jodhpur.
2. Misri Lal S/o Shri Teja Ji aged about 46 years, R/o Shunter NOT-12E Railway Colony, Bhagatki Kothi, Jodhpur presently working as Pointsman, at Bhagat Ki Kothi, Northern Railway, Jodhpur.

... Applicants.

Versus



1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager (P), Northern Railway, Baroda House, New Delhi.
3. The Secretary, Railway Board, Rail Bhawan, New Delhi.
4. The Divisional Railway Manager, Northern Railway, Jodhpur (Rajasthan).

... Respondents.

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CORAM :

HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. S. K. Malik, Counsel for the applicant.

Mr. Kamal Dave, Counsel for the respondents.

PER MR. A. K. MISRA, JUDICIAL MEMBER :

The applicants have filed this O.A. with the prayer that the impugned order dated 30-8-99 (Annex.A/1) and impugned order

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dated 17.8.99 (Annex.A/2), be declared illegal and be quashed. The respondents be directed to take 8 hours duty from the employees of the category mentioned in the impugned orders instead of 12 hours duty from them. The applicants had also prayed for staying the operation of the impugned orders. However, only dasti notices were ordered to be issued.

2. Notice of the O.A. was issued to the respondents who have filed their reply. It is stated in the reply that the applicants have not availed the remedies available under the provisions of law and have come to the Tribunal without availing the opportunity which are available to them under the Act, therefore, the O.A. deserves to be dismissed. It is also stated by the respondents that the working hours of Railway servants are fixed as per the provisions contained in Railway Servants (Hours of Employment), Rules, 1961, (for short 'the Rules'), and if the applicants are aggrieved of any such order governing their working hours they have to agitate the matter before the Regional Labour Commissioner and thereafter, if remaining dis-satisfied then they shall have to go to the Government. It is further stated by the respondents that fixation of working hours has been done after assessment of duties which the applicants discharged. In Railways regular work assessment is conducted and duty hours are accordingly fixed for the type of employees who are of the category mentioned in the O.A. The fixation of duty hours of the employees is based on the job analysis conducted by the experts and, therefore, the matter cannot be agitated before the Tribunal. The O.A. is devoid of any merit and deserves to be dismissed.

3. We have heard the learned counsel for the parties

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and have gone through the case file. By the impugned order Annex.A/2, the category of Railway servants like, Cabin Man, Block Boy, Token Porter etc. was changed from Continuous to Essentially intermittent by the competent authority and vide Annex.A/1, the decision of the competent authority was further communicated to the concerned supervisory authorities. The applicants are aggrieved of these two orders. As per the pleadings of the respondents, we had summoned the original file and had an occasion to look into the same. From the administrative file of the Railways, we found that the order relating to change of category of Railway servants/Continuous to Essentially Intermittent was communicated to the Labour Commissioner and at the same time the orders were further circulated to the units concerning these persons. A note to this effect of the OA was made on the file/on 15.11.2000. Rule 3 of the said Rules provides that power to declare employment of a Railway servant as continuous or essentially intermittent, shall vest with the Head of the Railway Administration or with an officer not below the rank of Senior Scale Officer. By a further Notification, it was declared that Head of the Railway Administration can delegate the power of such declaration to the Chief Personnel Officer. In this case, the Chief Personnel Officer, used the powers vested in him under the rules and passed the order relating to change of the category. The order dated 17.8.99 (Annex. A/2) was issued in pursuance thereof.

4. The Rule 4 of the said Rules provides that any question which may arise in respect of declaration under Rule 3 then the same shall be referred to the Regional Labour Commissioner. Rule also provides that declaration should be forwarded to the Regional Labour Commissioner.

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In this case, copy of Annex.A/2 was forwarded to the Regional Labour Commissioner as per the administrative file. In view of this, the applicants should have agitated the matter in view of such declaration, before the Regional Labour Commissioner but the applicants have not done so and have straightaway come to the Tribunal to seek redressal. There is nothing on record to show that the applicants ever made any representation against such declaration, as was ordered vide Annex.A/2 dated 17.8.99, questioning the correctness of such a declaration. They could have as well agitated the matter of such declaration before the Regional Labour Commissioner to whom a copy of the declaration was sent by the concerned authority of the Railways. Therefore, in our opinion, applicants approached to this Tribunal without exhausting the remedies available to them under the relevant rules. The O.A. deserves to be dismissed on this count alone.

5. However, examining the matter on merits, we find that assessment of work-load and requirement of hours of work to be discharged by each individual belonging to the category mentioned in Annex.A/2, is a specialised job and only an expert body can assess the same by thorough investigation and observing the work-load for some period of time <sup>either</sup> throughout the day or for a week. If, after examining the work-load the expert body or the body responsible for such recommendation, has gone into the question of work-  
<sub>and duty hours</sub> load then the same cannot be interfered with by this Tribunal as the Tribunal is not an expert body in respect of the question in dispute. Moreover, we are of the opinion that administrative decisions are not required to be interfered with by the Tribunal which relate to the running of administration from day to day and <sup>are</sup> rather more of a policy matter.

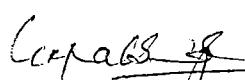
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In this regard, a decision of Hon'ble the Supreme Court reported in 1988 (4) SCC Page 117 - State of Punjab and Others Vs. Ram Lubhaya Bagga and Others, can be usefully quoted.

"It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

6. In view of the above, we are of the opinion that fixation of duty hours of the Railway servants, as mentioned in Annee.A/2 dated 17.8.99, is an administrative action relating to the day to day working of such Railway servants and, therefore, cannot be interfered with by us. The O.A. in our opinion, deserves to be rejected on merits also. The O.A. is, therefore, dismissed and the parties are left to bear their own costs.

  
(GOPAL SINGH)  
Adm. Member

  
(A.K. MISRA)  
Judl. Member

mehta

Rec'd  
28/11

Pearcey  
Bawden  
28/11/2007

Part II and III destroyed  
in my presence on 28/11/2007  
under the supervision of  
section officer ( ) as per  
order dated 19/12/2007

Section officer (Record)