

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

O.A. 956/97

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. N.D. Dayal, Administrative Member.

~~Shabani~~ Prasad Ghosh and 28 Ors.

- v e r s u s -

1. The Union of India,
Through the Secretary, Ministry of
Railways, Government of India,
having its office at "Rail Bhawan",
New Delhi-1.
2. The Indian Railway Board,
Through its Secretary, having his
office at "Rail Bhawan",
New Delhi-1.
3. Eastern Railway, Through the
General Manager, having his office at
Fairlie Place, Calcutta-700 001.
4. The Chief Personnel Officer,
Eastern Railway, having his office
at Fairlie Place, Calcutta-700 001.
5. The Chief Works Manager,
Eastern Railway Workshop,
Kanchrapara, having his office
at Kanchrapara, District-North 24-Parganas.

...Respondents

For the applicants : Ms. B. Banerjee, counsel.

For the respondents : Mr. P.K. Arora, counsel.

Date of order: 24.06.2004

O R D E R

N.D. Dayal, AM

29 applicants in this case have joined together to seek the following reliefs:-

"8.

- (b) To direct the respondents to implement annexures 'B' and 'C' herein and grant benefits accruing thereon and make payments thereof forthwith.
- (c) To direct the respondents to calculate the benefits on daily basis in the ratio of 7 : 8 as specified in annexure-'A' herein."

2. We have heard the ld. counsel for both parties & perused the pleadings and written notes and arguments submitted with leave of the court. The applicants, one to nine are Office Superintendents Gr.I (OSGr.I) and applicants ten to twenty nine are Office Superintendents Gr.II (OSGr.II) and posted in the Eastern Railway Workshop at Kanchrapara. According to the applicant, they are performing duties in the shop floor for the same number of hours as Shop Clerks. They work for 46 hours a week as per the following timings :

Monday to Friday - 7.30 am to 11.30 am and
12.30 pm to 4.30 pm.

Saturday - 7.30 am to 1.30 pm.

By their letter dated 28.8.61 (Annexure-A), the Railway Board, having considered the recommendation of the Jagannatha Das Pay Commission on split duty, had with the approval of the President, accepted the recommendation contained in para 16 of Chapter-XXXV of their report. It was decided that where the spells of duty are two or three and the employees whose place of residence is beyond a distance of 1.6 Kms. from their place of work, the duty hours should be so regulated that 7 hours of split duty should be treated as 8 hours of normal duty. This weightage should be allowed only to staff classified as 'continuous' and not to those classified as 'essentially intermittent'. By their letter dated 5.9.62 the Railway Board, with the sanction of the President, further clarified in response to S. Rly's letter dated 10/14.5.62 that the concession of treating 7 hours of split duty as 8 hours of normal duty will not be applicable where the rosters have been framed in such a manner that the shifts are split for the convenience of staff (eg. to give them a lunch break) and not in the interests of administration, even though the distance between their places of residence and work exceeds 1.6 K.M.

3. The applicants have drawn our attention to O.A. 517 of 1992 decided by this Bench of the Tribunal on 17.1.1995 allowing the application and directing the respondents to implement the order of the Railways dated 28.8.1961 and grant the benefit thereof within a period of six months. The applicants in that case were clerical staff working as

Shop Clerk, and the Tribunal observed that the interval between their two spells of duties was for the convenience of the administration. It was found that such interval had been given to them only with a view to bring the roster duty hours at par with the factory workmen who are governed by the Factory Act. The applicants herein have informed that the respondents have expressed their intention to grant the benefits of this judgment, but an application for contempt is pending in the matter. However, no details of such application have been provided. It is the case of the applicants that even though they have been promoted as OS-I and OS-II they fulfill the requirements laid down by the Railway Board in their orders at Annexures-B and C to the application which are the letters dated 14.5.62 and 5.9.62 noticed above. It is contended that since the respondents have been unable to reduce the break of one hour or alter the hours of work of the applicants, it is clear that the break provided to the applicants is for the benefit of the administration. The applicants argue that the use of the term 'employee' in the letters of the Railway Board does not exclude them or deprive them of their eligibility. The representations of the applicants have met with no result. The applicants have further indicated that despite restructuring in C & D cadres, there has been no basic change in their earlier duties and responsibilities as shop clerks although pay scale is changed and selection procedure got modified. It is stated that they were ministerial staff and hence 'continuous' staff and continue clerical duties with some additional duties and responsibilities as entrusted by the Shop Superintendent and Senior Section Engineer. The applicants function under their supervision and it is they who control others including ministerial staff of the shop office and hence it cannot be said that the applicants perform supervisory duties and not ministerial duties. It is, however, stated that they have not been designated as 'Excluded' staff and should be deemed to be Continuous staff by virtue of Railway Board's letter dated 29.11.1954, a copy of which has, however, not been

produced. It is emphasised that the break between two spells of duties is one hour i.e. more than 1/2 hour and in the interest of administration besides ~~their~~ residence is beyond 1.6 K.M. from the place of work. Hence the judgment in O.A. 517 of 1992 is applicable to them.

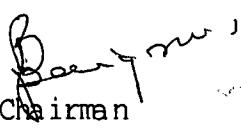
4. The respondents in their reply have resisted the claim of the applicants. It is submitted that the applicants who fulfilled the condition in accordance with the judgement of this Tribunal in O.A. 517/92 have already got the split duty allowance till they all were classified as 'Continuous' and as they all are now classified as 'Excluded' under Hours of Employment Rules 1961 (HOER) they are not entitled to get the relief of split duty allowance. We find that the respondents have also drawn attention to judgments in O.As 129/96 and 428/96 and stated that as per C.P.O., Calcutta's Circular SI. No. 7880 all classes of Office Superintendent are treated as supervisory staff, and as per HOER Supervisory staff are classified as 'Excluded'. Copies of these documents have been enclosed. It is informed that as per recommendation of the 4th CPC the number of hours of duty of clerical staff attached to Administrative Offices have since been increased. In the rejoinder, the applicants have disputed that they are classified as 'Excluded' under HOER. They have reiterated that they are posted at the shop-floor doing the same hours of work as shop-clerks.

5. Having given careful consideration to the case before us, we find force in the submissions of the respondents and are unable to agree that the applicants herein are entitled to the benefits accruing from the Railway Board's orders in question or from the decision of this Tribunal in O.A. 517 of 1992. The applicants are OS-I and OS-II and not shop clerks. After restructuring their pay scale and selection procedure changed. Admittedly some additional duties and responsibilities were also entrusted to them. In both the OAs 428 and 129 of 1996 this Tribunal had underscored the need for prior fulfillment of conditions specified in Railway Board orders dated 28.8.61 before the benefit of judgment in O.A. 517/92 could be availed as per rules by the applicants therein.

In O.A. 129/96 the applicants included those who were Superintendents. The respondents submit that the applicants herein even though ministerial staff are designated as Office Superintendent and listed as Supervisory Staff as per CPO Calcutta's Circular Sl.No.7880, and further as per HOER supervisory staff are classified as 'Excluded' and not entitled to split duty allowance. We find from the Circular No.7880 dated 22.1.72 annexed with the written notes of argument that Superintendents are listed under Railway Servants who shall only be classified as 'Supervisory' under Rule 5(2) of the Railway Servants HOER 1961 w.e.f. 1.2.72. Further, as per sub clause (v) of clause (c) of section 71 A of the Indian Railways Act, 1890 (as amended in 1956) contained in Chapter VI-A thereof the employment is considered to be 'Excluded' of such staff as may be specified as Supervisory staff by the Central Government by rules made under Sec.71 E.

6. In the above conspectus, the application does not succeed and is dismissed. There shall be no order as to costs.


Member (A)


Vice-Chairman