

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

O.A. No.475/99

Friday, this the 28th day of January, 2000.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

1. K. Palaniswamy, S/o Kolanden,
Shunting Jamader,
Railway Quarters No.P.8,
Near Podanur Railway Station,
Southern Railway, Podanur,
Permanent Address:
Palamapuram Village,
Karur District.
2. U. Natesan, S/o Uthandikandan,
Senior Gate Keeper (Traffic),
Southern Railway, Karur Railway Station,
Residing at : Railway Quarters,
Karur District.
3. P. Arumugham, S/o Periasamy,
Senior Gate Keeper,
Southern Railway, Karur.
Residing at : Railway Quarters No.47.C,
Karur Railway Station,
Karur, Tamilnadu.

...Applicants

By Advocate Mr TCG Swamy.

Vs.

1. Union of India through
the General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O., Madras-3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O., Madras-3.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.
4. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
5. Shri Harikrishnan,
Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.

...Respondents

By Advocate Mr K.V. Sachidanandan for R 1 to 5.

(Contd..p/2)

The application having been heard on 28.1.2000,
the Tribunal on the same day delivered the
following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek to quash A9, to declare that they are entitled for overtime allowance for the duties performed by them at Karur Railway Station prior to 17.1.95 beyond the limits of 10 hours per day and 60 hours per week, and to direct the respondents to grant them overtime allowance for the extra hours of duty performed by them.

2. The applicants at the relevant point of time were working as Senior Gatekeepers at Karur Railway Station of Palakkad Division. The hours of employment of railway servants are covered under Chapter XIV of the Indian Railway Act, 1989 read with Hours of Employment Regulations 1961 and the various Railway Board instructions on the subject. The hours of employment of railway servants are classified as 'continuous', 'intensive', 'essentially intermittent' or 'excluded/supervisory'. The applicants at the material point of time were rostered under the 'essentially intermittent' classification. The standard duty hours of a railway servant classified as 'essentially intermittent' is 8 hours per day and 48 hours per week. Essentially intermittent railway servants classified under the 'essentially intermittent' classification can be directed to perform additional hours of duty to the extent of 4 hours per day and to a maximum of 72 hours per week, provided they are allotted with residential accommodation within 0.5 kms. from the place of duty, and if no residential accommodation is provided, they can be called upon to perform additional hours of duty to the



extent of 2 hours per day and a maximum of 60 hours per week. Where employees are posted to work beyond the duty hours mentioned above, they are entitled to overtime allowance. The applicants became entitled for payment of overtime allowance from the year 1991 to 1994. During this period, applicants were directed to perform duties for a spell of 12 hours per day and 72 hours per week. As per A5, overtime allowance bills submitted on behalf of the applicants were returned by the third respondent. Immediately after that, a representation was submitted. They moved this Bench of the Tribunal by filing O.A.1102/97. It was disposed of quashing A5 and directing to consider afresh the claim of the applicants in the light of A1, A2, Rule 1502 of the Indian Railway Establishment Code (Volume II) and other rules applicable and pass appropriate orders. In pursuance of the same, A9 impugned order has been passed. As per A9, the claim of the applicants is rejected.

3. Respondents resist the O.A. They content that it had come to the notice of the 3rd respondent that the distance from the residence of the Gate Keepers to their place of employment, the new station house, which was constructed adjacent to the existing one has been marginally increased beyond 0.5 Km. eventhough there was only a negligible increase in the distance, the respondents have taken into account this and revised the roster since it was advantageous to the employees. Overtime claim of the applicants was rejected by the third respondent since the applicants did not work beyond the rostered hours in order to become eligible for grant of overtime allowance, as per the roster prevailing at the material time.



Applicants have submitted overtime claims only after issuance of revised roster with effect from 17.1.95. Applicants have not represented regarding the system of working before the authority at any time before revision was made into effect by the 3rd respondent.

4. According to the applicants, as per A1 and A2 and as per 1502 of the Indian Railway Establishment Manual (Vol.II), they are entitled to the reliefs sought. As per A8 order in O.A.1002/97, respondents were directed to consider afresh the claim of the applicants in the light of A1 and A2 and Rule 1502 of the Indian Railway Establishment Code (Vol.II) and other rules applicable and pass appropriate orders. It was so done after quashing A5. A9 impugned order says that as per para 1502 of the Indian Railway Establishment Code (Vol.II), overtime allowance is paid to Railway servants for the actual time worked in excess of the hours of employment prescribed in law or rules. It is also stated in A9 that the hours of employment of the applicants were regulated by the roster issued by the Administration dated 13.4.88 wherein they were required to work for 72 hours per week. There is absolutely no quarrel on this aspect. Applicants also admit that as per A1 and A2, they are bound to work for 72 hours in a week on average. They say that as per the provision contained in A1, it can be only when they are provided with residential quarters within a radius of 0.5 km. from their place of duty and in the absence of providing residential accommodation, they are entitled to overtime allowance. A9 further says that 'as per Annexure A1 and A2, the Gate Keepers, like the applicants, can be rostered to work 72 hours and there is no illegality in the roster issued above'. It appears that the some

one has raised the question of legality of A1 and A2. It is quite strange that A9 contains an observation which has nothing to do with the dispute. It is something beyond the scope of the question involved. The applicants do not challenge the validity of A1 and A2 and they rely on A1 and A2. Ultimately, the 3rd respondent says in A9 that:

"In the end, I have come to the conclusion that the claim of the applicants is not covered by any rule and hence, is to be rejected."

It is very easy to say in a single sentence that the claim is not covered by any rule. When there is a specific direction as per A8 order to consider the case of the applicants in the light of A1, A2 and Rule 1502 of the Indian Railway Establishment Code (Vo.II) alongwith other rules applicable and the claim of the applicant is based on A1 and A2 and the 3rd respondent do admit the legality of allotting work for 72 hours to the applicants and as per A1 and A2, the 3rd respondent cannot conveniently close his eyes towards certain provisions of A1 and A2 and thereby make a blunt conclusion that the claim of the applicant is not covered by any rule. As stated in A9, one can come to the conclusion in the end, but the conclusion that in the end should not be blunt and should be one based on reasons and not keeping eyes blind towards the relevant provisions on the subject. A1 and A2 make very clear that the applicants are entitled to overtime allowance, if they are made to work for 72 hours on everyday in a week, if they are not provided with residential accommodtion within a radius of 0.5 km from the place of duty. A5 makes it very clear that prior to 17.1.95 for working 72 hours a week, persons so worked were entitled to overtime allowance for the reason that with effect from 17.1.95 it is stated that Overtime

allowance claim cannot be entertained. So from A5 it can be taken the admitted case of the respondents is that prior to 17.1.95, the applicants were entitled to overtime allowance. From A5 itself it is seen that the applicants claim is only for the period prior to 17.1.95. It has been clearly held in A8 that the revised roster will come into effect only from 17.1.95 and it is has got no retrospective effect.

5. In para 5 of the reply statement it is specifically admitted that the distance from the residence of the applicant to their place of employment has been marginally increased beyond 0.5 km. It is reiterated in para 9 of the reply statement. That being so, the applicants are entitled to the reliefs sought for.

6. Learned counsel appearing for the applicants submitted that the procedure for adopting a new roster has been detailed in the reply statement and new roster has been introduced for the benefit of the employees, like the applicants. There is no dispute as to the correctness of the procedure adopted in the new roster. Neither the old roster nor the new roster is under attack. I fail to understand the relevancy of the arguments on this aspect putforward by the counsel for the respondents.

7. A9 order can never be said to be an order after due application of mind with relevance to the direction contained in A8. That being so, it is only to be quashed.

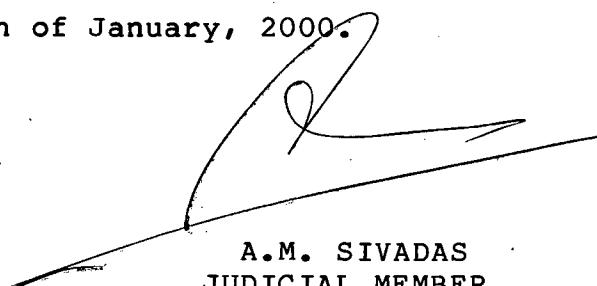
8. Accordingly, the Original Application is allowed. A9 is quashed. It is declared that the applicants are entitled to overtime allowance for the duties performed



: 7 :

by them at Karur Railway Station prior to 17.1.95 beyond the limits of 10 hours per day and 60 hours per week, and the respondents are directed to grant them overtime allowance for the extra hours of duty performed by them within a period of three months from the date of receipt of a copy of this order. No costs.

Dated the 28th of January, 2000.



A.M. SIVADAS
JUDICIAL MEMBER

P/3112000

List of Annexures referred to in this order

A1, True copy of letter No. E(LL)73/HER(MA)/7 dated 13.6.74 issued by the Railway Board.

A2, True copy of the letter bearing No.F(LL)73/HER(MA) dated 11.6.74 issued by the Railway Board.

A5, True copy of the letter No.J/P 65/VIII/II/OTA dated 18.12.96 issued by the third respondent.

A8, True copy of order dated 3.12.98 in OA 1002/97 by this Hon'ble Tribunal.

A9, True copy of letter No.J/P OA 1002/97 dated 2.3.99 issued by the 3rd respondent.