

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~P.A. No.~~

68/90

~~xxx~~

DATE OF DECISION 17.9.90

Sr. Divisional Personnel Officer Applicant (s)
Southern Railway, Palghat and 3 others

M/s. M.C Cherian, Saramma Cherian, Advocate for the Applicant (s)
& T.A Rajan

Versus

P.V.Panchali and 5 others Respondent (s)

____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

In this application filed under Section 19 of the Administrative Tribunals Act, the railway is challenging a common order passed by the 6th respondent, the Labour Court, Kozhikode on 25.3.89 granting the claim made by the respondents 1 to 5 under Section 33C(2) of the I.D Act.

2. The short facts are as follows. Respondents 1 to 5 are Group D railway servants working as Sanitary Cleaners and Sweepers under the medical department of Palghat Division of Southern Railway. Though they were paid salary and allowances due to them, they have filed petitions under 33C(2) of the I.D Act claiming 'gas allowance' payable to this category of employees for the period from 1962 onwards. Annexure A1 is the claim petition filed by the first respondent claiming an amount of Rs.660/- in this behalf. Similar petitions

were filed by other respondents also. The railway filed written objections in all these cases. Annexure A2 is one of the same filed by the railway objecting to the claims of the first respondent. They have disputed the claim of the respondent from 1962 onwards and her eligibility for the entire period. Even though there is recommendations by the Pay Commission for the grant of 'gas allowance' to special category of employees, such employees will be eligible only when such recommendations of the Pay Commission were accepted by the railway and after issuing specific orders granting pay revision and salary enhancement to respondents 1 to 5. The relevant order accepting the recommendations of the Pay Commission for payment of special pay to Class IV categories was itself passed by the Board on 2.7.1979 as seen from Annexure A3. But necessary sanction in consultation with the FA&CAO was made as per Annexure A4 memorandum dated 26.5.1987. Under this, sanction is accorded to grant a special pay of Rs.10/- per month to 102 Safaiwalas in Palghat Division. Even this 102 posts are distributed in that Division as indicated in Annexure A5 memorandum as follows:-

"MS/PGT vide his letter No.J/MD.52/P(spl.Pay) dated 7.7.87 has distributed the above 102 posts as indicated below:

Name of the Stn.	No. of Sanitary cleaners recommended for allowance of Rs.10/- per month			
	Station	Trenching ground	Colony	TB Isolation Ward
MAQ	3	-	1	-
CAN	3	-	1	-
CLT	3	-	2	-
SRR	3	-	2	-
PGT	3	-	2	3
PTJ	3	7	40	3
CBE	3	-	-	-
MTP	2	-	1	-
ONR	-	-	2	-
ED	4	-	4	-
KRR	1	-	1	-
SA	3	-	2	-
TOTAL	31	7	58	6 TOTAL:102"

They have also stated that such of the respondents who came within the sanctioned posts as per rotation and eligible for the special pay, had received the same during the month when their services were utilised as Safaiwalas. So the claim of respondents 1 to 5 that they were working continuously as Safaiwala from 1973 onwards is not correct and their claim cannot be accepted. The special pay, as stated above, is admissible only to the Safaiwalas working in the isolated wards in major hospitals at Palghat and Podanur as shown in Annexures A4 and A5.

3. On behalf of respondents 1 to 5, a recognised agent filed a reply affidavit and submitted his argument notes. The counter affidavit and the argument notes do not give any details as to the period of engagement of respondents 1 to 5 as Safaiwala and the places thereof in terms of Annexures A4 and A5. Further details regarding the amounts, if any, received by each of the respondents when they were actually engaged for the work were also not given. There is also no evidence to substantiate the eligibility of the respondents for the special pay with reference to specific orders and postings contemplated under Annexures A3 to A5.

4. The Labour Court seems to have taken the decision for granting the claim of respondents 1 to 5 without reference to Annexures A3 to A5 after finding that the claim petitions of the respondents under Section 33C(2) are maintainable. The Labour Court failed to examine the eligibility of the claimants for the special pay in the light of the contentions of the railway in the objections that respondents 1 to 5 who worked as per rotation as Safaiwalas had received special pay in the respective

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months from 1983 to 1986 when their services were utilised in terms of Annexures A4 and A5, especially when there is an indication that the respondents have received the special pay when their services were utilised by the railway.


5. It has been submitted before us that similar issue had came up for consideration before this bench in O.A 75/89 and CA 153/89. In those cases we have considered the identical question and after setting aside the award, we have remanded the cases for further consideration in the light of the facts and circumstances mentioned in the judgment.

6. In fact in this case also there is a real dispute as to the eligibility of the special pay by all the respondents 1 to 5. Only such of those workers who were specially deputed for the work on the basis of rotation alone will be entitled for the special allowance on the basis of specific orders. The eligibility is restricted by the period mentioned in the documents produced by the railway before the Tribunal. The railway has a further case that the entire claim is barred by limitation. The railway has produced the Board's letters and office memorandum dealing with the decisions taken by the railway for fixing the rosters of work and also granting of special allowance on the basis of the recommendations of the Pay Commission. Since all these relevant aspects have not been considered by the Labour Court before passing the common order challenged in this case, we are of the opinion that we should quash the award and remand the case to the

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Labour Court, Kozhikode for a fresh disposal, according to law.

7. Accordingly we follow our judgment in OA 75/89 and OA 153/89 and set aside Annexure A6 common order passed by the Labour Court and remit the case back to the Labour Court, Kozhikode with the direction that the Labour Court should consider whether the disputed claim falls within the purview of Section 33C(2) of the Industrial Disputes Act in the light of the averments of the railway and the documents produced by them in this case and if so, whether any portion of the claim made by respondents 1 to 5 is barred by limitation. If the findings of the Labour Court on these issues are in favour of the respondents 1 to 5, it may further consider and decide the quantum of amount payable by the railway to each of the respondents 1 to 5 in the light of the evidence adduced by both the parties. The parties are at liberty to produce further evidence in case they are interested in giving any further evidence or materials in support of their respective contentions. The application is allowed to the extent indicated above. There will be no order as to costs.


17.9.92
(N.DHARMADAN)
JUDICIAL MEMBER


17/9/92
(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

n.j.j.