

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

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

70/

199 0

DATE OF DECISION 21.9.1990

Sr.Divisional Personnel Officer Applicant (s)
S.Rly, Palghat and 4 others

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

T.V Kuttappa Menon and 12 others Respondent (s)

Mr C.P Menon , Authorised Agent 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

Annexure A-4 common order dated 29.4.89 passed by the 13th respondent, the Labour Court, Kozhikode, granting overtime allowance claimed by the respondents 1 to 12 is challenged by the railway in the present application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. According to the railways, the respondents 1 to 12 are railway employees (some of them are retired) working in the Palghat Division of the Southern Railway. They are under the supervisory control of the Bridge Inspector, Palghat who is incharge of the maintenance of the railway bridges coming within his jurisdiction. The headquarters of the respondents during the relevant time was at Palghat. They are deputed for the maintenance works of bridges according to necessity on the basis of the programme of work fixed in advance except in cases of emergent works. After attending

to their duty in a particular station they had to travel to the next station for commencing their work. If the employees have to travel by train for reaching the place of duty, they are given the facility for the same by issuing free railway passes for travel anywhere in the area coming under the said Bridge Inspector. For doing work at places beyond 8 K.Ms from the headquarters, the respondents 1 to 12 and similar staff are given Travelling/Daily Allowance. This allowance is given to meet the expenses for food, accommodation etc. at such outstations. The duty time normally is from 7 A.M to 5 P.M with two hours of lunch break. There was no complaint or representations from respondents 1 to 12 regarding any payment of overtime wages at any time prior to 1983. They had also not raised any complaint of not getting reserved/sleeper accommodation whenever night journey was undertaken in connection with the works. But they had filed before the Labour Court CP 127/83, 131/83, 155/83 and 156/83 claiming overtime wages. They were dismissed by Annexure A1 order. They have again filed petitions with identical claims under Section 33(C)2 of the Industrial Disputes Act, 1947 before the 13th respondent, the Labour Court, Kozhikode. Annexure A2 is one of such claim petition filed by the 1st respondent. Similar petitions were filed by other respondents also.

3. These applications were objected to by the railways by filing detailed counter to the application. Annexure A3 is one of the objection raising the grounds for dismissing the claim petition. They have also produced some evidence in support of their objection. Without considering all the objections raised by the railway and

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the documents produced in this case , the impugned common order has been passed granting the overtime wages claimed by the respondents 1 to 12.

4. The applicants have produced Annexures A5 to A10 orders governing the matter and contended that the respondents are free to choose the mode of conveyance according to their convenience for reaching their place of duty. For joining the work at a place beyond 8 K.Ms from their headquarters, the respondents were given TA and DA as provided under the relevant orders. The duty time of these respondents is normally from 8 A.M to 5 P.M with one hour lunch break. There is no rule or circular to treat the journey time for joining duty as duty time. There is also no provision under the rules or circulars for payment of any overtime wages in respect of such journey undertaken by the employees in connection with their duties.

5. When the matter came up for argument, it was brought to our notice that identical question came up for consideration before this bench and this bench has dealt with the matter in TA 215/87 and O.A.K 227/88.

6. The authorised representative who is appearing on behalf of the respondents 1 to 12 has filed a counter affidavit and argument note. He has stated that the respondents 1 to 12 " had travelled beyond the time of duty, was proved by producing herewith and marked as Ext P12 series before the Labour Court." Though he had raised objections regarding the maintainability of this petition at the time of hearing he only submitted that the clause

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in circular No.147/75 have been superseded by subsequent circulars.

7. The Labour Court after finding that the respondents 1 to 12 have undertaken the journey, disposed of the objections of the Railway without adverting to the relevant documents produced along with the objections. The Labour Court also failed to note to the fact that there was no complaint or any representation from the respondents 1 to 12 regarding the grant of overtime work or overtime wages at any time prior to 1983. They had not raised any complaint of not getting any reserved/sleeper accommodation, whenever they had undertaken any night journey in connection with their works. There was also no overtime slips or any material or evidence about any overtime work being done by respondents 1 to 12 during the relevant time. Since there is no such evidence available in this case, the claims made by the respondents 1 to 12 cannot be sustained.

8. The main contention of the Railway is that the documents produced by them were not considered by the Labour Court. The Railway contended that in the light of the circular No.147/75 dated 17.10.75 as modified by Annexure A7, the facility of Crew Rest Van is given only in goods trains or Breakdown Specials which are to be manned by Running staff in order to give rest facilities to the Driver, Guard Diesel Assistants, Fireman, etc. The Railways produced in this connection orders at Annexures A8, A9 and A10 dated 29.1.76, 17.6.76 and 2.7.76 respectively to explain Annexure A7 and that they are also relevant for considering the eligibility of overtime allowance to the workers.

9. As indicated above the Labour Court has passed an order allowing the claim on the basis of the second sub para of para 11(j) of the Joint Procedure Order

(Annexure A7) dated 2.5.77. While allowing the claim, the Labour Court has not adverted to the instructions at Annexures A6, A8 , A9 and A10 which are necessary for the proper interpretation of Annexure A7 as well as for the disposal of the claim petition.

10. After the completion of the arguments on 1.8.90 the case was taken for orders. But we posted the case for further arguments on 24.8.90 so as to clarify certain doubts regarding the connections between Annexure A7 and other circulars. We have heard the arguments. Briefly stated the interconnection is as follows:-

- (i) Annexure-5 dated 17.10.75 (para 11(j) of Joint Procedure Order) was issued by the Southern Railway on the authority of the Board's letter dated 7.8.75 mentioned therein.
- (ii) Annexure-8 clarification dated 29.1.76 of the Board refers to the same letter of the Board dated 7.8.75 on which Annexure-5 is based and the clarification is in respect of the matters dealt with therein.
- (iii) Annexure-9 clarification dated 17.6.76 of the Board is with reference to the letter dated 29.1.76, i.e. Annexure-8.
- (iv) Annexure-10 clarification dated 2.7.76 of the Board is given to the General Manager, Southern Railway with reference to certain doubts raised by him in regard to the interpretation of the Board's letter dated 29.1.76, i.e. Annexure-8.
- (v) Annexure-6 dated 24.5.77 is issued by the Southern Railway in pursuance of the Board's letter dated 2.7.76, i.e. Annexure-10.
- (vi) Annexure-7 is the current Joint Procedure Order replacing Annexure-5 issued by the Southern Railway after taking note of some of the aforesaid clarifications. To the extent it is incomplete in this respect, it can be interpreted only by reference to Annexures 8, 9 and 10 orders of the Board and Annexure-6 letter of the Southern Railway.

11. It is noticed from the petition filed before the Labour Court(Annexure A2) that it is a sample petition of TV Kuttapa Menon. The claim is rested on the ground that as no crew rest van accommodation or reservation accommodation was provided to the staff travelling on duty, the travelling time should be treated as duty and hence, for the periods indicated in the table to the petition, he is entitled to OTA in accordance with para 11-J of the RLP Award(i.e. Annex.7).

12. The first Joint Procedure Order regulating payment of overtime allowance in certain circumstances for the railway employees was issued on 17.10.75 (Annex.A5) as para 11(j). The learned counsel for the Railways submitted that this was issued by the Personnel Branch from the Headquarters Office on the authority of the Railway Board's letter dated 7.8.75 referred to therein.

13. As this was found to be defective and not clear, the same office replaced it by Annexure A-7.

14. Annexure-7 mentions in para 1 the facility available to a worker travelling as spare on duty who is not provided with the facility of crew rest van. The clarification dated 29.1.76 issued by the Railway Board (Annexure-8) has a bearing on this issue as it refers to the earlier letter dated 7.8.75 which is the basis for Annexure-5 Joint Procedure Order, since replaced by Annexure-7. The second para of Annexure-8 clarifies that the instructions regarding such worker will apply to only those who, prior to 1.8.74, had been getting the benefit of counting the periods of spare travel, as duty, if not provided with 'travel benefits'. This clarification is already incorporated in Annexure-7.

15. Subsequently, referring to Annexure-8 letter dated 29.1.76, the Railway Board further clarified that such staff should be identified in consultation with the FA & CAO. Accordingly, after such consultation, the staff eligible for the concession under para-1 of Annexure-7 was identified and spelt out in the letter dated 25.4.77 of the Headquarters Office, Personnel Branch (Annexure A6). These staff fell under the category of drivers, diesel assistants, firemen, guards, breakmen, assistant drivers and motor men.

16. The connection between para 1 of Annexure-7 and Annexures 6, 8 and 10 have been explained above. Therefore, the Labour Court should have read all these instructions together, which it failed to do. Had that been done, it would have been clear that the applicants before the Labour Court, who are the present respondents, do not belong to the above category, i.e. workers travelling as spare on duty, and therefore, they could not have made any claim under para 1 of Annexure-7 on the ground that they were not provided with crew rest vans.

17. The Annexure A2 claim does not contain essential details. It is stated that the work is from 7 hrs. to 17 hrs. with the break of 2 hrs. in between and after attending to his duty in a particular station, the claimant had to travel to the next station during night time, without reservation of accommodation and commence the work in the next station from 7.00 A.M. The table to the application does not indicate the particulars of the journeys performed to prove this claim.

18. In this regard also Annexure-8 clarifies that in regard to staff who travel, otherwise than as spare on duty, but who are provided with accommodation in trains, the period of travelling will not count as duty. If travelling facilities are not provided

50% travel time would be credited to their duty hours subject to a limit of 70 hrs. in a month. This clarification has been incorporated in Annexure A7 and it is on this basis that the claim of OTA was allowed by the Labour Court.

19. However, the expression "travelling facilities" used in Annexure-8 in the context of travel otherwise than as spare on duty, has been clarified by the Board in Annexure A9 to mean 'accommodation in trains'. Further, Annexure A10 clarifies that the provision of 'accommodation in trains' does not mean provision of earmarked accommodation. It is also clarified that provision of Sleeper/1st Class accommodation in trains, whether reserved or otherwise, would be equivalent to providing 'accommodation in trains'. All these clarifications apply to Annexure-7. Annexure-7 itself clarifies further that when staff travelling in trains where there are no facilities for reserved accommodation, even for fare paying passengers, or, where travel is taken on reservation of seats, the question of treating travel time on duty does not arise.

20. It is thus clear that in regard to the second para of Annexure A7, under the provisions of which the Labour Court has allowed the claim, that Court should have looked into the provisions of Annexure A8, A9 and A10 also, as mentioned above, which severely restrict the concession of OTA.

21. In this view of the matter we are satisfied that this situation would not have arisen if the Personnel Branch of the Headquarters Office had taken more care to paraphrase the orders of the Railway

Board while issuing the revised Joint Procedure Order i.e. Annexure-7. This was issued on 2.5.77, by which date all the clarifications in Annexures 8,9 and 10 to the Board's letter dated 7.8.75 which is the original authority for the Joint Procedure Order had been issued. The fault is primarily due to the fact that Annexure-7 is neither comprehensive nor self-contained. Therefore, the Labour Court, unfortunately, failed to consider relevant orders.

22. In these circumstances we are satisfied that the claimants have not preferred a valid claim before the Labour Court and they have hardly substantiated any of the claims. In this view of the matter, the impugned order of the Labour Court is quashed.

23. In the circumstances, there will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

21.9.90.


(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

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