

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 242/91
XXXXXX

14892

DATE OF DECISION 14.8.92

The Central Government Fishing Applicant (s)
Seamen's Association, Cochin

represented by its Gen. Secretary
Mr. C. P. Kamalakshan & 9 others.

Mr. M. C. Cherian Advocate for the Applicant (s)

Versus

The Director, CIFNET, Dewan's Respondent (s)
Road, Kochi-16 and another.

Mr. Ajith Narayanan, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr.

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

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The question of eligibility of 'messing allowance' to the floating staff in the Central Institute of Fisheries & Nautical Engineering Training (CIFNET for short) during duty time (onboard the fishing vessel) when the vessel is onshore is the question which arises for consideration. The first applicant is the Central Government Fishing Seamen's Association and applicants 2 to 10 are employees working as floating staff in the fishing vessels under the 1st respondent. They are under the control and supervision of the Skipper of the vessel concerned when they are in the fishing vessel. During sailing which may extend to 15 to 20 days at a stretch, meals are prepared in the fishing

vessel itself and supplied to the floating staff. The arrangement for meals is the same when the fishing vessel is waiting at the shore. According to the applicants, even when the fishing vessel is remaining in the shore it is not practicable for the floating staff to go out for taking meals. In other words when once the floating staffs enter into the vessel for duty they will not be in a position to come out and they are eligible for messing allowance. Originally the floating staffs were used to be given free food in the vessel. Later, due to some inconvenience and practical difficulty in serving free food, monthly allowance was being paid to the floating staff irrespective of the fact whether the floating staffs have been in the sea or in the shore. The only criterion for eligibility of this allowance was whether the members of staff are on duty in the vessel or not. After the IIIrd Pay Commission the monthly allowance was substituted by daily allowance called the 'messing allowance'. Annexure-R1(a) is the main order dated 4.11.1975 governing the matter. The relevant portion reads as follows:-

".... The president has now been pleased to decide that, in partial modification of the previous orders, dated 22.11.1974 referred to above the messing allowance will be admissible to the floating staff of fisheries organisations only for the days on which they are required to remain on duty on board the fishing vessels. The messing allowance will not be admissible to them when they are not on duty, e.g. on leave or when the vessel is ashore and the staff stay at their residences and perform duty on board the ship for eight hours or less a day."

(emphasis supplied)

After the IVth Pay Commission the rates were revised and a fresh order, Annexure-I, dated 1.10.1987 was issued in this behalf. The relevant portion of the same is extracted below:-

".... The Messing Allowance will be admissible to the floating staff only for the days on which they are required to remain on duty on board the fishing vessels. The messing allowance will not be admissible to them when they are not on duty e.g. on leave or when the vessel is onshore and they stay at their residences and perform duty on board the vessel for 8 hours or less a day."

(emphasis supplied)

On 3.11.1989 when the Director-in-Charge issued a further order apparently clarifying xxxx Annexure-I, the grievance of the applicants arose. Under the Annexure-IV order messing allowance is payable to the staff if they carry out work beyond 8 hours when the ship is on shore and they furnish a certificate from Skipper/Officer-in-Charge of the vessel. Prior sanction is also necessary. Clause 3 of Annexure-IV reads as follows:-

"3. When the vessel is on shore, messing allowance is allowed if work beyond 8 hours is carried out and a certificate is also furnished by Skippers/Officer-in-Charge of vessels to that effect. However prior sanction from the competent authority to be obtained for the work to be carried out beyond office hours."

When the applicants filed this application challenging Annexure-IV, the respondents have filed the reply producing Annexure-R1(b), a further letter issued by the Government in this behalf. The applicants have amended the application and challenged Annexure-R1(b) also. Annexure-R1(b) is also extracted below:-

" I am directed to refer to your letter No.3-9/90-Accts. dated the 14th September, 1990 on the above mentioned subject and to clarify that the half-an-hour lunch break cannot be included in the working hour when the vessel is at shore. Accordingly the messing allowance will not be admissible unless duty is performed beyond eight hours (excluding the half-an-hour lunch break) with prior approval of the competent authority and for work of such an emergent nature as cannot be postponed to the next working day. Therefore the demand of the floating staff for treating the half-an-hour lunch break as working hour when the vessel is at shore for the purpose of granting messing allowance cannot be acceded to."

2. The case of the applicants is that they are entitled to messing allowance in terms of Annexure-I order without any further restriction as contained in Annexure-IV and R1(b). In other words they are challenging Annexures-IV and R1(b) to the extent they curtail the eligibility of messing allowance in terms of Annexure-I order issued by the Government of India.

3. The crux of the matter pertains to the interpretation of the words "perform duty on board the vessel for 8 hours or less a day" as contained in Annexure-I order of the Government. Relying on para 3 of Annexure-R1(e), an order No.13/11/86-JCA dated 7.11.1986 of the Department of Personnel and Training, Shri M.C.Cherian, learned counsel for the applicants submitted that a working day inclusive of obligatory half an hour lunch break would be $8\frac{1}{2}$ hours in a day. According to the learned counsel the floating staff are bound to perform duty on the vessel for $8\frac{1}{2}$ hrs. while it is on shore and they will be eligible for messing allowance automatically under Annexure-I. There is no basis or justification for exclusion of half an hour obligatory lunch break as per Annexure-IV and Annexure-R1(b). The Government and the Director has no authority to make such an exclusion modifying Annexure-I to the detriment of the applicants. The floating staff cannot be equated or compared to the office staff or workshop staff of the Central Government for the purpose of service conditions and eligibility of allowances including messing allowance.

4. It is a fact that the working hours of floating staff are not fixed while fishing vessel is on voyage. Staff will have to be on duty through out the day or for

days together till the vessel completes the journey. The question of duty time assumes importance only when the ship is anchored and the vessel is on shore. The orders giving interpretation, Annexures-I, R1(a), Annexure-IV and R1(b) are all orders dealing with the working hours of the floating staff while the ship is on shore.

5. When the ship is on shore floating staff are not entitled to messing allowance when they are absent or on earned leave, half pay leave or other casual leave. But when they are required to remain on duty on board the fishing vessel when it is on shore they can claim messing allowance provided their claims come within the ambit of Annexure-I. Annexure-I clearly stipulates that messing allowance will be admissible to the floating staff only when they are on duty on board the fishing vessel, but such allowance will not be admissible to them when they stay in their residences and perform duty onboard the vessel for 8 hours or less in a day. They should establish that they worked beyond 8 hours even when the ship is on shore. The respondents have contended that the orders for payment of messing allowances to the floating staff, while the vessel is at shore for more than 8 hours duty, were effected when the duration of the working hours per day was seven hours with half an hour lunch break during the period of six-days week was being observed. That means floating staff have to work $1\frac{1}{2}$ hours more than the shore staff to make them eligible for messing allowance when the vessel is on shore. After the introduction of the five-day week the duration of working hours of all the staff including the floating staff was increased to 8 hours per day including half an hour lunch break with effect from 3.6.1985. During this period the floating staff had to work more than half an hour to make them eligible for messing allowance when the vessel is on shore. In fact the department had paid messing allowance counting half an hour lunch break as working hours

This is contrary to the object of Annexure-I. Hence the Government of India increased the working hours by half an hour i.e. from 9 AM to 5.30 PM with half an hour lunch break, in which case in order to make the floating staff eligible for messing allowance they have to be on duty, if required, beyond 5.30 PM while the vessel is at shore. At present the actual duty period of floating staff is only 8 hours per day though the prescribed working hours is from 9 AM to 5.30 PM which includes half an hour lunch break from 1 PM to 1.30 PM. The Director-in-Charge in Annexure-IV clarified the position making it clear that when the vessel is onshore, messing allowance is paid only if the work is carried out beyond 8 hours and a certificate is furnished in this behalf from the Skipper/Officer-in-Charge of the vessel. Annexure-R1(b) also clarifies this position by stating that messing allowance will not be admissible unless the work is performed beyond 8 hours with the approval of the competent authority, excluding the half an hour lunch break.

6. The applicants want to include the half an hour lunch break along with the 8 hours duty so that they will be eligible for messing allowance by showing that they have worked beyond 8 hours when the vessel is on shore.

7. It is basic and fundamental that any remuneration is payable depending upon the duty. The period of lunch break between 1 PM to 1.30 PM cannot be considered by any stretch of imagination as part of duty for calculation of duty and remuneration. The orders produced in this case satisfies the duty hours and the lunch break. Annexure-I is very clear in this behalf. It stipulates that messing

allowance will be admissible to the floating staff only for the days on which they are required to remain on duty on board the fishing vessel. But the question is whether they are on duty on board for 8 hours or more than 8 hours. By merely including half an hour lunch break with 8 hours duty, it can never be treated as duty for more than 8 hours.

8. It has been held in some American cases that the time spent in eating and drinking notwithstanding the fact that it comes in between the time of duty cannot be treated as part of duty because during that period the employees will be permitted to engage themselves in pleasure pursuits and other diversion (Adam Wantock and Frank Smith vs. Armour & Co., 7 Labour cases 61976). The reason for not including such lunch break as part of duty is that during that period the employee is not required to work and to be present in the premises. It was held in Robbert Herris vs. Rexwell Petroleum Company, 13 Labor Cases 64083 that when an employee was not required to work during the entire period of the day and the period in which he is not required to be present in the premises is not hours worked and if the total hours worked does not exceed 40, then he is not entitled to overtime compensation. In Super Cold South West Co. vs. F.L. Moride, 5 Labor cases 60798 the Court held that the employee could only claim the overtime for the period during which he has actually worked. When the employees were free to sleep or engage in pleasure pursuits at their convenience then they are not entitled to any overtime for time during which they are available for calls (Fim Skidmore vs. Swift & Company, 7 Labor Cases 61628). In Livingston vs. Todd Shipyard Corp., 10 Labor Cases 93040 it was held that the work beyond 5 hours and work during meal periods gave no right of action for a recovery under a labour agreement since statute gives no right of action

for a violation of any of its provisions. If an employee is permitted to absent from the place of work then even though he is liable to be called back in case of emergency, it does not constitute the hours worked when during the idle time under the contract he is free to attend to any personal matter and is not required to remain at the place. When the employees could utilise the time of waiting for any work they liked or for personal convenience or social obligation then the claim for vacant time would be contrary to the piece work terms of his employment as held in Hanzely vs. Hooven, 7 Labor Cases 61781.

9. In the light of these decisions it would not be proper to include the half an hour lunch break as part of duty for making the floating staff eligible for messing allowance as contended by them.

10. The further submission made by the learned counsel for the applicants is that Annexure-I does not in any where stipulate that the floating staff on duty when the vessel is on shore should obtain prior sanction from the competent authority or certificate from Skipper/Officer-in-charge of the vessel for getting messing allowance when they discharge the duties as provided under the order. This is answered by the respondents by placing reliance on Annexure-R1(c), extract of Accountant General's comments made during the audit. It is indicated in the audit report that the messing allowance will not be admissible to floating staff when the vessel is on shore and the staff are at their residences and perform duty on board only 8 hours or less in a day. But because of the fact that the log book in the vessel did not correctly mention the leaving time and arrival time of the crew there is possibility of wide range misuse in the grant of messing allowance. So the Auditor indicated that the Director should ensure that

the facility of messing allowance is not misused by the practice adopted by the staff of remaining in the ship for a short time beyond 8 hours continuously and claim such allowance. Apparently, in pursuance of these comments and caution made by the Auditor in the report that Annexure-IV order was issued by the Director-in-Charge. This has been approved by the Government in Annexure-R1(b).

11. Under the circumstances pointed by the respondents as indicated in Annexure-R1(c), I do not see any illegality in the clarification as contained in Annexure-IV or in Annexure-R1(b). They are not in any way coming counter to either Annexure-I or Annexure-R1(e). The importance is for the duty time and not for the hours of work on a day including the half an hour lunch break. The question is after excluding the lunch break what is the duty time and duty that has been performed by the crew when the ship is on shore.

12. The learned counsel for the applicants, Mr. M.C. Cherian, also submitted that if there are restrictions such as prior sanction and certificate from the Skipper/Officer-in-charge mentioned for getting messing allowance for the normal work of the staff, it may be used against the individual working in the vessel for victimisation. It is true that such possibilities are there but in this case the applicants have not pointed out any such act of victimisation on the part of the respondents. If such an action can be pointed in any individual case, I am sure that it will be handled by the respondents properly in accordance with law and prevent such act of individual victimisation.

12. In the light of the foregoing discussion, I am of the view that the applicants have not made out a case for interference by this Tribunal. According to me the application is devoid of any substance. It is only to be rejected. Accordingly, I dismiss the same with no order as to costs.


14.8.92

(N.DHARMADAN)
JUDICIAL MEMBER

v/-