

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 32/91
~~K.A.C.W.~~

~~199x~~

DATE OF DECISION 12-11-1991 ✓

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

Mr. M.C. Cherian & T.A. Rajan Advocate for the Applicant (s)
with him

Versus

E. Raman Kutty and 2 others Respondent (s)

Shri George Joseph, ACGSC for R-3. Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman (Admve.)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

N. Dharmadan, M(J)

This is an application filed by the
Railways challenging Annexure-4, common order
of the Labour Court, Kozhikkode in CP(C) 12/88
and 13/88 allowing the applications filed by the
respondents 1 and 2 under Sec. 33-C(2) of the
Industrial Disputes Act 1947 claiming over time
allowance in respect of their employment in the
Jayanthi Janatha Express train prior to 1979.

...../

2. The applicants submitted that the Labour Court has considered the claim of R-1 and R-2 (the petitioners before Labour Court) on the assumption that there is no rule or order governing the claim of over time allowance in respect of the journey of R-1 and R-2 while they were on duty in the train. The applicants have filed Annexure-3 detailed written objection to the claims of R-1 and 2. They have also produced Annexure-6 to 9 circulars and orders governing the matter. But according to the applicants the impugned order was passed by the Labour Court directing the Railways to pay the sum of Rs.2115/- and Rs.2088/- to R-1 and R-2 respectively, without advertting to the orders and circulars. The Labour Court also did not decide ^{the} issue as to whether the claim of the respondents 1 and 2 comes within the purview of section 33-C(2) of the I.D. Act.

3. When the matter came up for hearing the learned counsel for the applicants, Railways, submitted that identical question was considered by this Tribunal in the judgment in OA 70/90 dated 21-9-90. Though notices were served on respondents 1 and 2, at the time of hearing, none appeared nor did they file any written

statement or reply in this case.

4. We have heard the arguments of the learned counsel for the railways and perused the documents and judgment in OA 70/90. The findings of the Labour Court in connection of the claim of the respondents 1 and 2 are not correct and cannot be sustained in the light of the relevant orders and circulars. The relevant portion of the award reads as follows:

".....In my opinion the petitioners as cleaners of the compartments will also come within the scope of crew. So much so they are also entitled to this particular benefit if they are not provided with crew rest van. As stated earlier it is the conceded fact that the long distance trains in which these petitioners have worked were not provided with a crew rest van but on the other hand they were given only a bay in the sleeper compartment. So much so they are entitled to claim 50% of the travel time spent by them as duty. It is, therefore held that the claim of the petitioners are sustainable....."

5. This Tribunal examined this question in detail in the light of the orders and circumstances applicable to the claim in OA 70/90 while considering the legality of a similar order passed by the Labour Court, Kozhikkode . We extract the relevant portion of the judgment in OA 70/90.

"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 A-9 to mean 'accommodation in trains'. Further, Annexure A-10 clarifies that the provision of 'accommodation in trains' does not mean provision earmarked accommodation. It is also clarified that provision of sleeper Iclass 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 A-8 A-9 and A-10 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 Annexure 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...."

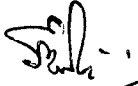
6. We follow the judgment in OA 70/90 and quash the impugned order at Annexure-4. We are also of the view that the Labour Court exceeded its jurisdiction under Sec.33-C(2) of the Industrial Disputes Act 1947 in having granted the reliefs to respondents 1 and 2.

7. Accordingly, the application is allowed.

However, in the circumstances, we make no order

as to costs.


(N. Dharmadan) 12.11.91.
Memner(Judicial)


(S.P. Mukerji) 12/11/91
Vice Chairman

12-11-1990

ganga?