

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: ----

199

T.A. NO: 307/87

DATE OF DECISION 7-4-1992

All India Railway Mail Service and MMS Employees
Petitioner
Union Class III, Nagpur Branch

Mr.N.N.Deshpande

Advocate for the Petitioners

Versus
Union of India and ors.

Respondent

Mr.Ramesh Darda

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

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. Whether it needs to be circulated to other Benches of the Tribunal ?

MD


(U.C.SRIVASTAVA)

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.Appln.No.307/87

1. All India Railway Mail Service and MMS Employees Union, Class III, Nagpur Branch by its Secretary.
2. Shri Ganpati Y. Khapekar Platform Inspector (Time Scale) RMS 'F' Dn., Nagpur.
3. Shri Gopalkrishnan K. Natrajan Iyer, LSG Sorting Asstt. RMS 'F' Dn. Nagpur.
4. Shri Vithal Anandrao Gujar, LSG Sorting Asstt. RMS 'F' Dn. Nagpur.
5. Shri Pandurang R. Ambulkar, Sorting Asstt. 'F' Dn. Nagpur.
6. Bhakru Pathu, Sorting Asstt. 'F' Dn. Nagpur.
7. Shri Wardhaman N. Rokde, Bill Clerk, HRO. RMS 'F' Dn. Nagpur.
8. Waman G. Ingole, Sorting Asstt. RMS 'F' Dn. Nagpur.
9. Shri P. V. Fating, Clerk, HRO RMS 'F' Dn., Nagpur
All residence of 230 A, Gandhi Chaowk, Sadar, Nagpur.

.. Applicants

vs.

1. Union of India through, Secretary, Ministry of Communication, New Delhi.
2. The Post Master General, Maharashtra Circle, Bombay.
3. Senior Superintendent, RMS 'F' Dn., Nagpur.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.N.N.Deshpande
Advocate for the
Applicants.
2. Mr.Ramesh Darda
Counsel for the
Respondents.

JUDGMENT:
(Per U.C.Srivastava, Vice-Chairman)

Date: 7-4-92

Writ Petition No.1700 of 1984

filed by All India Railway Mail Service and
MMS Employees Union Class III, Nagpur Branch
through 8 individuals before the High Court
of Judicature at Bombay, Nagpur Bench is
transferred to this Tribunal and numbered as
Tr.Appln.No.307/87. By way of this applica-
tion the applicants have prayed ~~that~~ to
quash the order contained in memorandum
dtd. 4-2-1983 issued by respondent No.3 and
the order rejecting the representations of
applicants No.2 to 9 against the same by
respondent No.2 and declare that Fundamental
Rule 17-A is ultra vires of Article 14,16 and
311(2) of the Constitution of India.

2. The applicants 2 to 9 are the
permanent employees of the Post and ~~Telegraphs~~
Department. The applicant No.1 is said to be
a recognised Union though that fact has been
denied by the respondents. On 19th January,
1983 the applicants were asked ~~to~~ whether they
are willing to do overtime work. The applicants
No.2 to 9 expressed their unwillingness and
applicant No.5, according to them, it was his
rest day having performed duty from 16-1-1983

to 18-1-1983. The grievance of the applicants is that although they declined to perform the over time work when asked to do, without any show cause notice or enquiry a common memorandum was issued to them that they remained unauthorisedly absent on the period mentioned against each of them thereby having incurred break in service including loss of pay and allowances under FR 17-A. The applicants submitted their representations and stated therein that they had performed their duty as usual and as such there was no break in service and that the memorandum was issued erroneously and be withdrawn. Similar representations were also sent to the Chairman P&T Board. But the same was rejected. Adverse entries were also recorded in the confidential reports of the applicants for the year 1982-83. The contention of the applicants is that the wages for the normal duty performed cannot be denied and the deduction of the salary by the respondents are arbitrary, illegal, ~~and~~ unlawful and contrary to FR 17. This deduction from the salary was made in respect of ~~the~~ 19th January, 1983 and the said amount which has paid already been recovered from their salary.

3.

FR 17-A reads as under:

"Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972 a period of an unauthorised absence :-

(i) in the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;

(ii) in the case of other employees as a result of acting in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of, the competent authority; and

(iii) in the case of an individual employee, remaining absent unauthorisedly or deserting the post;

shall be deemed in cause an interruption or break in the service of the employees, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required.

Explanation: For purpose of this rule, "strike" includes a general, token, sympathetic or any similar strike, and also participation in a bandh or in similar activities.

Explanation(2): In this Rule, the term 'competent authority' means the Head of the Department, as defined in Schedule I to the Delegation of Financial Powers Rules, 1978 and in the case of the Indian Audit and Accounts Department 'head of the Department' means the authority declared as such by the Comptroller and Auditor-General."

4. Learned counsel for the applicants contended that so far as over time is concerned willingness of the employees are taken and if employees are not willing to perform the over time by which he is to earn extra amount he cannot be saddled with any responsibility and the same cannot be called as strike. The word strike defined under Rx FR 17 includes a general, token, sympathetic or

any similar strike and also participation in a bundh or in similar activities. There is no denial of the fact that overtime work is done in the establishment and those who do overtime work are paid overtime allowance for the same.

5. The respondents have contended that under Rule 9 of overtime rules every employee is a wholetime Government servant at the disposal of the Government and the administration has a right to require any employee to work on a holiday or at any time beyond or outside normal working hours and it is not open to an employee to refuse such work. Under Rule 7(ii) of the CCS(Conduct)Rules, a Government servant is prohibited from resorting to or abetting any form of strike or coercion in connection with any matter pertaining to his service. The Government has long back ruled on clarifications sought on the word 'strike' in the above rule that it includes under item (ii) refusal to work over time where such over time work is necessary in the public interest. It is true that a government servant is said to be an wholetime employee of the government and for overtime work a government servant is entitled to get extra remuneration. In view of the service rules an employee cannot refuse to do overtime work. Non giving of reply or non doing of overtime work obviously will amount to refusal to do such a work and will amount to misconduct as tantamounts to the same ~~xxxxxxxxxx~~ striking of work when the same is needed. Definition of FR 17-A is illustrative and not exhaustive. The same includes any type of strike mentioned therein. Striking of work when

when it is needed would also amount to strike. In the case of B.R.Singh v. Union of India, 1989(4)SCC 710 it was observed that "strike in every situation is only a form of demonstration. There are different modes of demonstration. For e.g. go slow, sit in, work to rule, absenteeism etc. and strike is one such mode of demonstration by workers for their right..... but right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found under section 10A(4)-A 22 and 23 of the Industrial Disputes Act. Similarly in the case of Bank of India v. T.S.Kelawala, 1990(4)SCC 744 it was observed that "it is not a mere presence of the workmen at the place of work but the work they do according to the terms of contract which constitutes the fulfilment of the contract of employment and for which they are entitled to be paid."

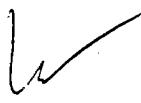
6. The contention of the applicants is that someone was on leave or all of them were physically present during the working hours and as such they are entitled to salary for the day and their refusal to do work thereafter cannot be visited with any non payment of wages or recovery cannot hold ~~xxx~~ good. Government servant under the terms of service are bound by the rules. If the rules enjoined duty upon him to do overtime work for which a payment is made and refusal to do the work without any just or reasonable cause would certainly amount to ~~xxx~~ strike within the meaning of service rules or in any case would amount to unauthorised absence and the same would attract the FR 17-A.

7. Learned counsel for the applicants contended that so far as break in service is concerned the order for the same can be passed by the competent authority as it is provided under FR 17-A which defines the competent authority as head of the department. In the instant case the order was not passed by the head of the department but by a subordinate authority. There is a fallacy in the argument. FR 17-A extracted above itself provides that if there is unauthorised absence or desertion from the post the same shall be deemed to cause an interruption or break in the service of the employees, unless otherwise decided by the competent authority for certain purposes. The FR 17-A by legal fiction makes break in service for that no order of the head of the department is needed as it is automatic by legal fiction the same can be pointed out by a subordinate authority. But the competent authority can condone the same or hold the same not to be break in service in case he is satisfied by the same. This power has been conferred on the competent authority and not that it is he who wishes to decide as to whether it will be deemed to be a interruption or break in service, Even if the matter is not referred to him for condoning or for taking contrary view. Accordingly this plea that the order in this behalf could have been made or clarification in this behalf that it will be deemed to be break in service could have been given by the head of the department i.e. the Post Master General to whom the matter was not referred has got to be rejected.

8. So far as the vires of FR 17-A is concerned no arguments were advanced and rightly so as it cannot be said the same is violative of Article 14 or 16 of the Constitution of India. FR 17-A does not confer arbitrary power on any authority nor it can be said to be unreasonable or unfairly or creates classification which cannot be felt to be reasonable. Break in service will not affect the seniority of the employee and it cannot also affect the retiral benefits if it is so decided by the competent authority.

9. Thus we are of the view that the representations filed by the applicants were rightly rejected and the action which has been taken by the respondents is not in violation of any law or statutory provisions and accordingly this application deserves to be dismissed and it is dismissed. There will be no order as to costs.


(M.Y.PRIOLKAR)
Member(A)


(U.C.SRIVASTAVA)
Vice- chairman

MD