

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.38/86

Original Application No.39/86

1. Shri Allibhai Punjabhai,
22, Tank Street,
Gr.Floor,
Room No.8,
Bombay - 400 008.
2. Shri Vinayak Motilal Desai,
Kalparuksha Housing Co-op.
Housing Society Ltd. Block
No.1, near Parleshwar Post
Office, Vile Parle (East)
Bombay - 400 057.

.. Applicants

V/s

1. Divisional Railway Manager,
Western Railway,
Bombay Central - 400 008. .. Respondents

Coram: Hon'ble Vice-chairman B.C.Gadgil

Hon'ble Member (A) J.G.Rajadhyaksha

Appearances:

- 1) Mr.G.D.Samant for applicants
- 2) Mr.R.C.Master for Respondents.

JUDGMENT:

¶ Per J.G.Rajadhyaksha, Member (A)¶ Dated: 28.11.1986

Original Applications Nos 38 and 39/86 filed by the applicants being on identical grounds, in an identical dispute, can be disposed of by a common judgment.

2. The applicants are retired Chief Ticket Inspectors of the Western Railway. They worked as Train Superintendents from 23.5.1976 to 27.8.1977. Their duties were to accompany certain trains from Bombay Central to Ratlam & back. Both of them claimed over time payment for the said period as they were classified as 'continuous Railway Servants' under the

Indian Railways Act, 1940 and they felt that they were governed by the Railway Servants (Hours of Employment) Rules, 1961. The Railway Board published a list of persons classified as 'Supervisory' under Rule 5(2) of the said Rules and it is the applicants' claim that they were not classified as Supervisory Staff. By a letter dated 2.8.1984 the Railway Board amended entry No.105 in the list published earlier i.e. on 4.1.1972 whereby instead of reading "Train Superintendents attached to Rajdhani Express in the scale of Rs.370-475", the entry now read "Train Superintendents in the grade Rs.370-475 and higher grades." The applicants' grievance is that by such an amendment which the Railway sought to make retrospective they were deprived of the benefit which would have accrued to them under the old dispensation. Therefore, they seek that the amendment be quashed and it should be declared that the applicants are entitled to receive overtime allowance to the extent specified by them in their applications.

3. Shri G.D.Samant the learned Advocate for the applicants narrates the history of the applicants and argues that though Section 71E of the Indian Railways Act permits Government to make Rules, such power cannot be used with retrospective effect and, therefore, the orders issued by the Railway depriving the applicants of their overtime claims is bad.

4. Mr.Master for the Respondents clarified that when the original entry 105 pertaining to Train Superintendents in Rajdhani Express was introduced, there was only one post of Train Superintendent attached to the Rajdhani Express. The number of posts was

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increased in 1976 and such Superintendents were attached to other trains as well. Since Rule.5(2) of the Railway Servants (Hours of Employment) Rules, 1961 excluded Supervisory Staff, from overtime allowance, the applicants were excluded after the General Manager, Western Railway, made a reference to the Railway Board and the Railway Board issued the clarification and an amendment to the entry in 1984.

5. Shri Samant, Advocate for the applicants had also contended that two other Chief Ticket Inspectors had approached the Central Government Labour Court in 1982 and a judgment of the Learned Presiding Officer of the Labour Court No.2 in Bombay permitted the two applicants before that Court, Mr.G.K.Mistry and Mr.A.G.Waswani to get the benefit of the original entry, since the Learned Judge then held that the fact that lower categories were termed as 'Supervisory' could not help the Railways to refuse to calculate and pay overtime allowance as might be due to those applicants. The present applicants had also approached the Central Government Labour Court in 1984, but the Learned Presiding Officer gave the Judgment on the 19th November, 1984 whereby, he declared that since the entry No.105 had been modified the applicants could not succeed. The Learned Presiding Officer had also referred to the limited scope of section 33C of the Industrial Disputes Act. This had prompted the applicants to come to the Central Administrative Tribunal. Mr.Master's request on behalf of the Respondents was that the Learned Presiding Officer was right in his decision and since the Railway Board had very specifically clarified that the entry No.105

"should read and be deemed always to have

read as Train Superintendents Grade Rs.370-475 and higher grades",

the applicants had no case. He argued further that it is possible and legal to make Rules retrospectively effective.

6. The only dispute that remains to be resolved therefore, is whether the Railways are within their rights to amend an entry with retrospective effect. We have studied this aspect with reference to Maxwell "on interpretation of statutes" and we have come to the conclusion that if the wording and the intention of a statute is clear that it should be retrospectively effective, then it is neither unconstitutional nor illegal for that statute to have retrospective effect. In the instant case, it is an entry attached to a letter issued by the Railway Board in consultation with the Departmental Council of J.C.M. classifying certain categories as 'Supervisory' under the Hours of Employment Regulations, and it would not be incorrect to say that if a statute could be made effective retrospectively, administrative instructions issued under certain regulations can also be made effective retrospectively, without infringing any constitutional or legal rights of persons affected thereby. In the circumstances we feel that there is nothing wrong with the Railway Board's instructions issued in 1984 amending the entry No.105 ab initio. The applicants, therefore, cannot succeed.

7. The application ^{are} fails ~~is~~, therefore,
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dismissed. In the circumstances of the case, however,
there shall be no order as to costs.

B.C. Gadgil
(B.C. GADGIL)
VICE - CHAIRMAN

22/11/86
[Signature]
(J.G. RAJADHYAKSHAD)
MEMBER(A).