

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 539/96

Date of Decision: 10-12-99.

Narsi & Ors.

Applicant.

Mr. R. Ramesh

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. V. S. Masurkar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. N. Bahadur, Member(A)

~~Hon'ble Shri.~~ -

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (3) Library. *No*

B. N. Bahadur

(B. N. BAHADUR) -
MEMBER(A).

10/12/99

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:539/96.
DATED THE TENTH DAY OF DECEMBER, 99.

(10/12/99)

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

1. Narsi N.
2. A.Paniadimai
3. Sudhakar Shetkar
4. Louis Dias
5. Devi Sshankar Tiwari
6. Rajesh Jain
7. Ashok Tiwari
8. Balwant Singh
9. Bharat Patel
- 10.Dhanaji Ratnaji
- 11.Mussein Abdulla
- 12.Harish K
- 13.B.S.Joshi
- 14.Prakash Jadhav
- 15.Vithal Shetty
- 16.Ramsingh Kalisingh
- 17.S.N.Das.

(All the above Applicants are working as Waiters in the Dining Car Unit at Mumbai Central on Western Railway).

18. Masila Mani
(The Applicant is working as Cleaner in the Base Kitchen at Mumbai Central on Western Railway).

- 19.Motiram G.
- 20.Motilal G.

(Both the above Applicants are working as Waiters in Refreshment Room at Churchgate on Western Railway).

- 21.Kandu Chiman Tambekar
(The applicant is working as Ticket Collector at Baroda).

- 22.Ramnath Shenoy
- 23.Munna Lal
- 24.Hari Shetty



25. Babulal

(Applicant No.22 is working as Assistant Manager, Applicant No.23 and 25 are working as Waiters and Applicant No.24 is working as Head Waiter. All the above four Applicants are working at Ahmedabad in Baroda Division of Western Railway).

... Applicants.

By Advocate Shri R.Ramesh.

v/s.

1. Union of India,
through the General
Manager, Western
Railway, Churchgate,
Mumbai - 400 020.
2. The Chief Catering
Services Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
3. The Chief Personnel Officer,
Western Railway,
Churchgate,
Mumbai - 400 020.
4. The Divisional Commercial
Manager,
Western Railway,
Ahmedabad,
Railway Station Building,
Ahmedabad, Gujarat.

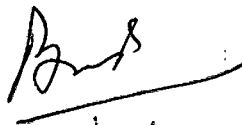
... Respondents

By Advocate Shri V.S.Masurkar.

(ORDER)

This is an application filed by 25 applicants, who are working in capacities as indicated in the OA. The applicants seek the relief from this Tribunal for a direction to the respondents to pay, to the applicants, the overtime due to them as a result of their working on the Jammu Tavi Express for the

...3.



period from October, 88 to February, 1991. Interest at the rate of 18% on such payment is also claimed, apart from ancillary reliefs.

2. The facts of the case, as brought forth by the applicants, are that the applicants were employed in various capacities on the aforesaid train, where the pantry car was run departmentally by Western Railway till 1991, when it was handed over to a private Contractor. On every pantry car, it is averred, there are different categories of employees for whom roster of duty is laid down, separately, and overtime claim computed and paid on the basis of such roster. It is further averred that if any employee works for more than 104 hours, in a period of 14 days, he is paid overtime on graded approved rates. The applicants claim that they have been paid overtime earlier, but denied such overtime for the period for which it is now being claimed.

3. To their claim, of the overtime, the applicants described the timetable/timings of the Superfast Train concerned, the methodology of calculation, the modes of calculation and the circumstances under which overtime is paid. It is contended that in the case of the Express Train in question, overtime occurs in the very nature of the time table of the said train. It is alleged that the Railway Administration is deliberately denying the legitimate claims of the applicants.

4. Applicants further state that the matter was taken up by the Recognised Union (WREU) but the Union has informed them that Railway Administration pleaded that no records were available and that the matter could be taken up before a Labour Court. It is

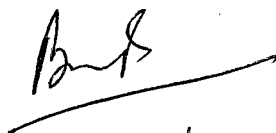
...4.

B.S.

in these circumstances that the applicants are before the Tribunal seeking relief.

5. A written statement has been filed on behalf of the respondents where, in the first instance, a technical objection has been taken to the effect that joint application is not maintainable since applicants are constituted differently in regard to their status, designation, period of over time etc. hence only on this ground, the application deserves to be dismissed. It is also stated that the application suffers from delay and laches since the Judgment of CAT relied upon was delivered on 16.10.1991 and, on this ground also, the application should be dismissed. Number of judgments have been discussed in the written statement on the point of limitation, delay and laches.

6. Coming to the facts of the case, it is stated by respondents that the applicants have based their claim on presumptions and surmises, and without support of any material documents. All allegations and contentions have been denied and it is averred that respondents have neither sanctioned any overtime to the applicants, nor have the applicants claimed it at the time when the cause of action arose. It is contended that applicants have not filed any claim for overtime along with required documents and hence there was no question of making overtime payments to them. A system of rest and compensatory off was prevailing for Pantry Car workers, at that time, and these are stale and baseless claims. Thus, the respondents pray for the dismissal of the application.



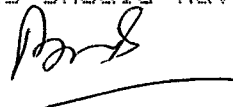
...5.

7. I have seen the papers in the case and I have heard learned counsels on both sides.

8. The learned counsel for applicants took me over the facts of the case, in detail, and specially the exhibits, to state that similar claims were earlier made as can be seen from the correspondence at Ex. 'A', 'B' etc. The method of payment, it was argued has been clearly explained at page 7 of OA. The counsel for applicants referred to the Contempt Petition that was taken out, where it was ordered that Affidavits be filed in the matter. In regard to the point made about the applicants not possessing any evidentiary material to support their claim, it was argued by learned counsel for applicant that the period was from 1989 to the date of handing over of the system.

9. The counsel for applicant further went on to argue that delay and laches was not relevant here, and that technical reasons should not be brought forth to deprive the applicants of their rightful dues. The correspondence made in 1995, through the Western Railway Employees Union (WREU), was referred to in detail by counsel for applicant, who strenuously argued that this correspondence showed that the point relating to limitation did not hold water.

10. The case was argued by learned counsel for respondents by first reiterating strongly the point relating to non-maintainability of the application due to reasons cited in reply statement. Similarly, the point relating to limitation, delay and laches was also urged strongly stating that when the system is to clear all overtime dues in 30 days, it was not clear why the applicants should have waited for a decade.

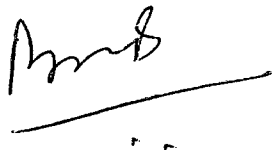


11. Counsel for respondents further stated that no rules have been cited and only a judgment. Similarly, no evidence was brought on record. In regard to the letter/judgment at Ex.'A' and 'B' (page 28 and 29 of paper book) relied upon heavily by the counsel for applicant, it was argued that Ex.'A' was not a letter from the Railways, but only a letter from the Union advising the Branch Secretary of "Yard" (and not the applicants) to go up to Labour Court. Thus, this letter was of no value for meeting the objection regarding limitation. Similarly, the judgment in OA 130/89 showed the parties to be the Union, and the Government and the present applicants are nowhere involved.

12. Counsel for respondents cited the case of L.Chandrakumar regarding limitation as also the case of A.Padmavalli Vs. CPWD (1990 (14) ATC 914). The counsel for respondents concluded by saying that this was government money that was involved, and such claims, lightly made after keeping quiet for a decade, did not deserve consideration. The learned counsel for applicant re-argued on a few limited points, substantially regarding jurisdiction in Labour matters and stated that there was no bar coming to this Tribunal since overtime payments constituted service matters. Since OA was admitted after hearing respondents counsel, it was argued that points relating to limitation and maintainability had stood decided when the decision for admitting the case was taken.

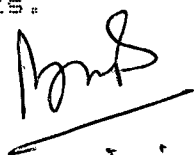
13. On the merits of the case, it is seen that the applicants have indeed come up without any material that can be judged to form a solid basis for indicating that a claim indeed existed and

...7.

A handwritten signature in dark ink, appearing to be 'AmB', is written over a horizontal line.

that it had been squarely denied. There is no evidence by way of a document from the railway authorities regarding rejection of claim or a self-contained representation being rejected or likewise. It is true, as pointed out by counsel for respondents that the letter at page 28 (Ex.'A') and the judgment at page 29 (Ex.'B') cannot help the case of the applicants. The letter dt. 24.5.1995 at Ex.'A' is addressed to Branch Secretary, "Yard Branch" and refers to non-payment of overtime to Catering Staff. It does not refer to any name of any particular staff, let alone the present applicants. It, in fact, acknowledges that "as no records are available it is difficult to establish the claim and as such it is not possible to get OT"; the letter itself goes against the case of the applicants.

14. Similarly, there is no relevance that can be established to the decision given in OA 130/89 and the claims that are being made by the present applicants. It is true that what is involved here is the payment of hard cash as overtime (not salary or such like payment) and it is well established that for any payment of overtime to be made, it must be substantiated by hard facts and details regarding number of hours of work, dates, recommendations by controlling staff etc. and that too for each person. No such paper or any evidence is available, which will help the case of the applicants. In para 9 of the Rejoinder which was specially brought out by the applicants counsel an attempt is made to rebut contents of para 8 of the reply statement. Even if this point is accepted and no question about jurisdiction raised, this in itself will not help in any manner in meeting the more substantial infirmities of the case of the applicants.



15. Coming to the point regarding delay and laches, there is no gainsaying the fact that there has been an inordinate delay in the applicants' coming up before this Tribunal and no cause has been established which can be deemed as sufficient to justify this delay. Since the fact is that even on merits the applicants do not have a case, as discussed above, the fact of this delay certainly makes their case worse, even assuming that the application is not to be dismissed merely on the point of limitation, which has been argued to be a technical point. It is not possible, therefore to establish that an overtime claim should be considered and paid in the light of the above discussions and the infirmities pointed out. Thus, the applicants have not made out any convincing case before me which will enable them to get the reliefs that they have sought in this application. In view of this, the point regarding maintainability of application on the ground of wrong joinder is not even being examined.

16. In view of the discussions above, this application deserves to be, and is hereby, rejected. The issue contained in M.P. No.215/98 was touched upon by the learned counsel for the applicant and opposed by the learned counsel for the respondents, and relates to oral evidence and cross-examination etc. being allowed. Upon consideration of all aspects, this M.P. is also rejected. No costs.

B.N. Bahadur

(B.N. BAHADUR)

10/12/99

MEMBER(A).

B/ABP.