

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(1)

ORIGINAL APPLICATION NO.: 580/91.

Date of Decision 12.9.96

The Divisional Railway Manager,
Central Railway,
Bombay V.T.

... Applicant

Shri S. C. Dhavan

... (Advocate for the
Applicant.)

Versus

Shri C. S. Venkataraman & Anr.

... Respondents.

Shri V. C. Bhaya

... Advocate for the
respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri P. P. Srivastava, Member (A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO.: 580/91

Dated, this 12/11, the July day of 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

The Divisional Railway Manager,
Central Railway,
Bombay V.T. ... Applicant
(By Advocate Shri S. C. Dhavan).

Versus

Shri C. S. Venkataraman & Anr. ... Respondents
(By Advocate Shri V. C. Bhaya).

: O R D E R :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

1. Heard Shri S. C. Dhavan for the applicant and Shri V. C. Bhaya for the respondents. In this O.A. the applicants have challenged the Central Government Labour Court's order dated 21.09.1990 wherein the Industrial Labour Court, after considering the rival contentions of the parties have observed as follows :-

"The workman's right to the entire period of his halt at the outstation being treated as busy time spent on duty, has been expressly held established under the three previous judgements of this Court and the High Court decision referred to above. The workman has given exhaustive details of his claim vide exhibit W-1 to W-33. The Management have not challenged the quantification of the claim or furnished their own date. Accordingly, the Court accept the details given by the Workman as correct.

In the result, the application is granted. The Management are directed to pay a sum of Rs. 42,250.01 to the Workman by way of overtime allowance, by 31st October, 1990. Interest at 9% p.a. will be payable on the amount that

remains unpaid after that day. The Management shall also pay Rs. 1000/- by way of costs to the Workman and bear their own."

2. The brief facts are that the respondent was doing supervisory work, working as A.C.C. coach incharge with the applicant since September 1979 and was required to accompany the coaches of the railway to outstation. The rate of pay of the first respondent is about Rs. 1640/- per month in the grade of Rs. 1320-2040. The first respondent was according to the duty diagram limiting the roster hours to 104 hours in two weeks. The staffs are entitled to overtime at $1\frac{1}{2}$ times the ordinary rate beyond 104 hours upto 108 hours and beyond 108 hours at double the rate whenever they perform overtime. Prior to July 1985, the air-condition coach in-charge were working two hours before departure and two hours after arrival at destination, as per Railway Board's letter dated 13.01.1977. From July, 1985 they are allowed only one hour prior to departure and one hour after arrival at destination as per Railway Board's letter dated 22.06.1985. At destination (outstation), the staffs are required to look the coach and hand over the same to the maintenance staffs who look after the maintenance of the coach. The contention of the applicant in this O.A. is that the A.C.C. coach incharge/staff has nothing to do and is required to stay in the running room for rest and if no running room is available, he may stay in the coach for rest. The staff is required to submit the O.T. slips from time to time to the applicant for the overtime work performed by the staff. The first respondent filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 before the Central Government

Labour Court claiming that the first respondent being a workman of the Central Railway at Bombay V.T. was entitled to receive the said Central Railway Overtime wages for the period from 23.09.1979 onwards till 31.12.1988 in respect of stay/halt of the first respondent at the outstations, when the first respondent accompanied the A.C.C. coaches of outstations, which comes to Rs. 42,250.01 p. on the plea that the first respondent was required to stay with the coach even if not performing any duty, the said period of stay or rest at the halts at outstation ought to be considered as busy time and construed as working and counted for calculating the overtime allowance.

3. The thrust of the argument of the Learned Counsel for the applicant, Shri Dhavan is that the Labour Court had no jurisdiction to entertain and try the said application under Section 33-C(2) of the Industrial Disputes Act, 1947 and the said application is not maintainable in law. He further contends that the claim is barred by limitation. He further urged that the first respondent was not required to do any work nor perform any duty at the outstation/halts. He was only taking rest even when he stayed with the coach at the outstation halts, thereby, he is not entitled to overtime allowance. (Further, the first respondents has not submitted any overtime slips as required nor is his overtime recorded in the O.T. Register maintained by the applicant. Before the Labour Court also, the applicants have taken the similar plea. However, the Labour Court had come to the conclusion that in view of the earlier decisions of the Labour Court as well as the High Court on the very same issue, the Central Government Labour Court had to come to the same conclusion, as there was no dispute regarding the quantum of amount claimed by the respondent. Though the maintenance

work is attended by the maintenance staff of the respective Railways, nowhere it is stated that the first respondent has been provided with any rest house for staying and it is not disputed that the first respondent stayed in the A.C.C. coach even though he had no work to do, such as maintenance work, etc. Regarding limitation, the Labour Court has held that the law does not prescribe any limitation for an application under Section 33-C(2). This right stands vested in him by virtue of the Railway Board's direction and prior decisions of the Labour Court and High Court in this matter. What the applicant is asking this Court to do now is to compute the benefit in terms of money and ask the management to pay the money to him. Further, the halt at outstation cannot be treated as by way of rest but that the time spent by them is busy duty time and should be counted for calculating the overtime allowance. As stated earlier, the Management has not challenged the quantification of his claim nor furnished their own, hence accepted the figure given by the applicant. It is not in dispute that the first respondent is classified as a continuous worker and as such he is entitled to payment of Overtime if he performs the duty ~~excluding~~ the prescribed limit of his duty. Under Section 33-C(2), there is no bar of time limitation in preferring the claim for the money dues. Since no arrangement at the outstation for running/rest room has been provided, they are required to stay in the ACC coach. It is not the case of the applicant that ^{they} have not paid the O.T. ^{first} to the ~~respondent~~. They have already paid the overtime for the running duties except for the period of halt at outstation. The first respondent used to claim the O.T. regularly and the same was paid to him through monthly salary. Similarly, it is not the case of the applicant

that they have provided the rest house at the outstation, thereby ~~the first~~ respondent was required to stay in the ACC coach itself. The Learned Counsel for the respondents, Shri Dhavan draws our attention to the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Ltd. V/s. The Workmen & another [AIR (1974) SCC 1604] wherein it ~~was~~ held that a proceeding under Section 33 C (2) is a proceeding generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged or otherwise, duly provided for. He therefore submits that unless the amount is determined earlier, it is not open to the Tribunal to compute the amount in terms of Section 33-C(2) of the Industrial Disputes Act. He also draws our attention to another decision in the case of Municipal Corporation of Delhi V/s. Ganesh Razek & Anr. etc. etc. reported in 1995 (1) All India Services Law Journal 168 wherein it ~~was~~ held that the applicant's have challenged maintainability of claim in proceedings under Section 33 C(2) on the ground that the claim of workmen being disputed, proceedings under Section 33 C(2) not maintainable.

4. In this case, the decision of the Central Government Labour Court is based on the earlier decisions of the Labour Court as well as High Court. The quantification of the claim has not been challenged in this O.A.

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Against the order of the Labour Court, the applicant filed this O.A. in 1991 and obtained stay from this Tribunal on 18.09.1991 for implementing the order of the Labour Court. The stay order continued till date. As stated earlier, the only claim preferred by the first respondent before the Central Government Labour Court is overtime wages for the period of halt at outstation. The applicant has already paid the overtime wages except the halt period at outstation. This Tribunal has observed the decision of the High Court in the earlier case stating that the A.C. Coach staff has to perform important and onerous duties, such as guarding valuable machinery of the A.C. plant and other property in the coach from outside assaults and interference, and also from theft and pilferage. The fact that actual repairs and maintenance are not required to be done by this staff, was very much present to the mind of their Lordships of the High Court. Even so, the High Court was clearly of the view that the duties of A.C. Coach staff during their halt at the outstations were onerous enough to entitle their entire stay there to be treated as fairly busy time. This was held to be true, not only in respect of sick coaches but also in respect of healthy ones.

5. For the reasons stated above, we are of the view, that the findings of the Central Government Labour Court is just and proper and interference ~~by~~ the ~~Tribunal~~ at this juncture is ~~not warranted~~ ~~uncalled for~~. Accordingly, we uphold the findings of the Labour Court and direct the applicant to make payment in accordance with the directions issued by the Central Government Labour Court vide dated 21.09.1990. to the first respondent, within a period of two months from the date of receipt of a copy of this order. ~~Since the~~

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Since the Labour Court has already awarded interest for not paying the dues in time, no specific finding is called for regarding interest. Therefore, the interim order passed on 18.09.1991 stands vacated and the O.A. is disposed of accordingly. No order as to costs.


(P. P. SRIVASTAVA)

MEMBER (A).


(B. S. HEGDE)

MEMBER (J).

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