

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

D.A. No. 173 of 1987

~~File No.~~

DATE OF DECISION 31-10-87

G H, S E Rly, Calcutta & another

Petitioner

Mr. P. Venkatarama Reddy, sc for Rlys

Advocate for the
Petitioner(s)

VERSUS

Mr. H. Satyanarayana and another

Respondent

Advocate for the
Respondent(s)

CORAM

The Hon'ble Mr. D. Surya Rao, Member (Jud.)

The Hon'ble Mr. —

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

No

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HDSR
T(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT
HYDERABAD

ORIGINAL APPLICATION NO.173 OF 1989

Dated: 31st October 1989

The General Manager, S.E.Railway,
Calcutta and another ... Applicants

Vs.

M.Satyanarayana and another ... Respondents

....

For Applicants ... Mr. P.Venkatarama Reddy,
Standing Counsel for Railways

For Respondents

CORAM:

Hon'ble Shri D.Surya Rao, Member (Judl.)

(JUDGMENT OF THE ~~EX~~ TRIBUNAL DELIVERED BY HONOURABLE
SHRI D.SURYA RAO, MEMBER (JUDL.)

ORIGINAL APPLICATION NO.173 of 1989

-UNAL

(JUDGMENT OF THE TRIB~~E~~ DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDL.)

--: :-

The applicants herein are the General Manager, South Eastern Railway, Calcutta and the South Eastern Railway, Visakhapatnam. The first respondent is a Motor Trolley Driver, South Eastern Railway, Srikakulam Road Station, Srikakulam District, Andhra Pradesh. The application has been filed against the order passed in CMP No.265 of 1986 dated 9.9.1988 by the Labour Court, Visakhapatnam, 2nd respondent herein. The first respondent had originally filed the application under Section 33-C(2) of the Industrial Disputes Act, before the Labour Court, Guntur claiming that the rostered hours that he had to perform were 60 hours per week whereas he had been performing 12 hours per day, every day from 6 a.m. to 6 p.m. i.e., 72 hours per week ever since 1.8.1974. He contended that under the terms of an award of the Railway Labour Tribunal headed by Justice Miabhoj, he was eligible for overtime for whatever hours of work he had put in over and above 60 hours a week i.e., over and above the rostered hours. He alleged that no overtime allowance was being paid to him. The applicant therein had stated that he was an illiterate worker and he could

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not file any statement of actual over time performed by him. He, however, alleged that the Respondent-Railways were in possession of the T.A. Bills which would indicate the timings during which the applicant had worked beyond rostered hours.

3. On behalf of the Respondents therein (applicants herein), a counter was filed stating that under the Railway Board's letter dated 13-6-74 (Estt. Srl. No. 180/74) the petitioner was liable to perform duty for 48 hours per week and in addition 24 hours a week which would constitute time for preparatory and/or complementary work. He was, thus, liable to perform 72 hours a week. This was because his place of duty was within 0.5 kms. from the residence provided to him. It was contended that the place of duty of the petitioner was the place where he reported for duty first that is where he gave his attendance. Such a place was within 0.5 kms. from his residence. It was contended that though as 'Trolleyman' he might perform duty away from his headquarters, but that did not mean or follow that wherever he performed work it became his place of duty. It was contended that for the purpose of computing over time, his place of duty was the place where he had to report for duty first at a definite/particular place every day. If he performed duty away from his headquarters, that is, at a place beyond 8 kms. from his headquarters, he

would be entitled to T.A. under the rules, but would not be entitled to treat the latter place as a place of duty. As the petitioner had never worked beyond the prescribed period of 72 hours per week, it was ~~con~~ ~~that he was~~ not entitled to an ~~one~~.

4. The Labour Court, by an order dated 9.9.1988 in CMP No.265 of 1986 found that no data was available to compute the quantum of over time which the applicant was eligible in terms of money. The Labour Court, however, upheld that the petitioner was required to work on the line as a Motor Trolley Driver and that there could not be any dispute that he worked at a distance of more than half a kilometre from his residence. It was, ~~now~~ therefore, held that he would be entitled to over time allowance if he had worked for more than rostered hours. The Labour Court, therefore, found that the applicant was eligible for over time allowance beyond the rostered hours i.e., beyond 60 hours a week and directed the respondents therein to compute the O.T. of the petitioner with reference to the claim made in the petition and a direction was also given to work out the same within six months and make the payment.

5. Heard Shri P.Venkatarama Reddy, learned Standing Counsel for the Railways, on behalf of the applicants. The Respondent No.1 has not appeared either in person or by Advocate.

6. The Respondent No.1 herein is a Motor Trolley Driver. The work which he is required to perform is to push the trolley of his Inspector in the Wailtair-Palasa Section of the S.E.Railway. He had stated in his application that ^{before the Labour Court}

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his residence is located beyond 0.5 Km. from his ^{place of work} residence. The Labour Court has held that the distance from his residence to the place where he has to work is more than half a kilometre and that there cannot be any dispute in this regard. The Respondent No.1 is treated as a Essentially Intermittent worker. Under the rules relating to hours of employment, an essentially intermittent employee is one whose daily hours of duty include periods of inaction aggregating six hours or more, during which, although he is required to be on duty but not called upon to display either physical activity or sustained attention, is declared as Essentially Intermittent Staff such as Waiting Room Bearers, Sweepers, Maistries, etc. Under the rules, Essentially Intermittent Workers posted at road side stations who are provided with residential quarters within 0.5 kms. from their place of duty, have to work for 48 hours per week plus additional 24 hours a week. The 48 hours a week are the standard duty hours which they have to perform while the additional 24 hours constitute preparatory and/or complementary work. Thus, the total hours, which an essentially intermittent worker who is provided with residential quarters within 0.5 kms. from his place of duty has to perform is 72 hours per week. In the case of other essentially intermittent workers, that is, those whose quarters are beyond 0.5 kms. from their places of duty, the additional hours which they have to perform in addition to standard hours, is 12 additional hours per week. Thus, these essentially intermittent workers, i.e., those who reside beyond 0.5 kms. from the places of their duty, ~~xxxx~~ have to perform



60 hours a week, compulsorily. If they perform duty beyond 60 hours a week, they would be eligible for over time. The dispute, therefore, centered on the question what is the place of duty of the Respondent No.1. According to the Respondent No.1, the place of his duty is anywhere on the line between K.M.No.675-9 to K.M.No.764 in Waltair-Palasa Section. Since his place of residence is at KM 749/9 at Srikakulam Road, he sought to contend that he would be entitled to over time whenever he pushes the trolley of his Inspector at any point in Waltair-Palasa Section. This contention was accepted by the Labour Court. The contention of the Railways, on the other hand, as contended in the counter before the Labour Court, was that the place of duty means the place where he has to report for duty every day and where he has to give his attendance. According to the Railways, the Respondent No.1 herein has to report every day to the Assistant Engineer-II at Srikakulam Road, under whom he is working. If there is work, he and his Assistant Engineer would proceed to the point within the jurisdiction of the said officer namely on the line between KM 675-9 and KM 764 and perform their duties. If there is no work, the Respondent No.1 would have to remain at Srikakulam Road itself. It is, therefore, contended that ~~not~~ the headquarters of

the Respondent No.1 herein is only Srikakulam Road which is within 0.5 kms. from his residence. He is, therefore, liable to work for a total rostered hours of 72 hours per week. It is contended by Sri Venkata Rama Reddy that this is the only reasonable interpretation which can be placed to the expression 'place of duty'.

7. A perusal of the order of the Labour Court discloses that it has not applied its mind to this contention. ~~in argument advanced by the Petitioner in the written statement~~ The Labour Court assumed that the place of duty means a place anywhere on the line where the petitioner before it, has to push the trolley. If this contention is to be accepted, the place of duty of the Respondent No.1 herein would keep on varying from day to day and there would be no definite or specific place of duty. Obviously such a view would be wholly untenable. The contention in the written statement of the Railways, before the Labour Court that the place of duty is the place where the petitioner has to report every morning for duty and sign his attendance, is on the other hand, more plausible and proper method of determining the place of duty. Immediately on his reporting and signing his attendance, the Respondent-Petitioner would commence his duty. The fact that he

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proceeds from Srikakulam Road to anywhere on the line between KM 675-9 and KM 764 in the Waltair-Palasa Section would not render his place of duty between those places. If the Respondent-Petitioner's argument is to be accepted, the time taken by him to proceed from Srikakulam Road to the point of duty on the Waltair-Palasa Section has to be excluded and work on a particular day and he had remained only at Srikakulam Road that is at his headquarters, then it would mean that he has not performed any duty on that day since he has not reported for duty at any place between KM 675-9 and KM 764 on the Waltair-Palasa Section. This contention, if accepted would lead to anomalous results. On the other hand, the reasons put forth by Railways viz., that the place of duty means, the place which is declared as his headquarters and where the Respondent-Petitioner has to report every day for performing the duty and signing the attendance, is a more plausible and reasonable interpretation. It would follow that the place of duty of the Respondent No.1 is the place where the Assistant Engineer-II, Srikakulam Road is stationed. If this is the place of duty, his residence being less than 0.5 Kms. from his place of duty, he would not be eligible to claim ~~xxxxxxxx~~ overtime since he is liable

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to work for 72 hours per week. For these reasons, it would follow that the order of the Labour Court dated 9.9.1988 in C.M.P.No.265 of 1986 is clearly not passed on the basis of any valid material and is based merely on the assumption that the petitioner works at a distance of more than half a kilometre from his residence. The said order is accordingly set aside. The Respondent No.1's claim that he is entitled to over time wages under the rules from 1.8.1974 is accordingly rejected.

8. The O.A. is allowed and in the circumstances, there will be no order as to costs.

D. Surya Rao
(D. SURYA RAO)
Member (Judl.)

Dated: 31st October, 1989.
Dictated in Open Court

Deputy T. Venkateswaran (A.)

*9th Jan 1990
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vsn

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

HON'BLE MR. D. SURYARAO: MEMBER (J)

AND

HON'BLE MR. D. K. CHAKRAVORTY: M(AD.)
AND

HON'BLE MR. J. NARASIMHAMURTHY: M(J)

DATED : 31/10/89

ORDER/JUDGMENT

T.A. NO. / (W.P. No.) /

O.O.A. No. 173/89.

Allowed ✓

Dismissed

Disposed of

Ordered

No order as to costs.

PSR

