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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO. 437/89

~~T.A. NO.~~

DATE OF DECISION 19/9/89

G.A., SE&R, Calcutta Petitioner

Advocate for the Petitioner (s)

Versus

R. Narayana Swamy Respondent

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. D. Surya Rao, V.C.

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? No
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)

(D.S.R.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO:437/89 DATE OF ORDER: 19-9-89

Union of India represented by
The General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
and another

...Applicant

versus

1. B.Narayana Swamy

2. The Labour Court, Visakhapatnam,
Rep. by its Presiding Officer.

...Respondents

FOR THE APPLICANTS :- Mr.P.Venkatarama Reddy, SC for Railways

CORAM:

THE HONOURABLE MR.D.SURYA RAO : MEMBER (JUDICIAL)

(JUDGMENT OF THE BENCH DELIVERED BY SRI D.SURYA RAO : MEMBER(J)

contd...

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O.A.No. 437 of 1989

(JUDGMENT OF THE TRIBUNAL DELIVERED BY HON'BLE SRI D.SURYA RAO, MEMBER(J)).

The applicant herein is the General Manager, South-Eastern Railway, Calcutta and the first Respondent is a Trolleyman working under Permanent Way Inspector,Gr.II S.E.Rly., at Srikakulam Road . The application has been filed questioning the order dated 9-9-88 in CMP No. 271 /86 passed by the Presiding Officer, Labour Court (C), Visakhapatnam, the 2nd Respondent herein.

2. The first Respondent herein 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 12hours 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 Miabhoy, he was eligible for over time 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 over time allowance was being paid to him. The applicant therein had stated that he was an illiterate worker and he could

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 ofthe 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

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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 contended that he was not entitled to any over time.

4. The Labour Court, by an order dated 9-9-88 in CMP No. 271 /86 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 Trolleyman 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, 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. The Respondent No.1 herein has not appeared either in person or by advocate, but has sent a written statement by post. A preliminary objection was taken that this Tribunal has no jurisdiction to entertain the

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Application against an order of the Labour Court passed under Section 33-C(2) of the I.D.Act. It is contended that on this ground alone the O.A. is liable to be dismissed. This contention is untenable in view of the Full Bench decision rendered by the Madras Bench of the Central Administrative Tribunal reported in 1988 (2) ATLT (CAT) 336 (G.M., S.Rly., Vs. Labour Court and others) wherein the jurisdiction of the Tribunal to hear a transferred Writ Petition against an order of the Labour Court was upheld. On the same analogy, it would follow that after the coming into force of the Central Administrative Tribunals Act, 1985, any application or petition questioning an order of the Labour Court if covered by Sec.14 of the Act, can be filed only in the Tribunal.

6. It is further contended in the counter that the duty of the respondent stretched over an area of many kilometres beyond 0.5 kms. from the Railway quarter provided to him and as such his roster hours of duty should be 60 hours per week and not 72 hours per week. It is contended that the question whether the Respondent No.1 herein worked beyond 0.5 kms. or not is a question which was rightly decided by the Labour Court in his favour. It is also contended that the Labour Court order is legal and justified, that the presiding officer has acted judiciously and correctly in his thinking that the place of work of the respondent-petitioner

extended over the length and breadth of the entire track on which he is required to work and that he has given a correct and reasonable interpretation to the words 'place of work'. It is, therefore, contended by the respondent herein that he is rightly entitled to payment of over time allowance for the work taken from him beyond 60 hours a week from 1-8-74. He, therefore, prayed that the O.A. may be rejected.

7. Heard Sri P.Venkata Rama Reddy, learned Standing Counsel for the Railways, on behalf of the applicants. The Respondent No.1, as stated supra, has not appeared either in person or by advocate, but he has filed a written statement contesting the claim or contention of the Railways.

8. The Respondent No.1 herein is a trolleyman. The work which he is required to perform is to push the trolley of his inspector between K.M.No. 720 to K.M.No. 762 that is, between Kotabommali and Ponduru stations. He had stated in his application that his residence is located at K.M.No. 748/14 at Srikakulam Road. Thus, 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 an 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 sustain 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 station 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 quarter 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, that is, those who reside beyond 0.5 kms. from the places of their duty, 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 namely between KM No. 720 and KM No. 762 . Since his place of residence is at Srikakulam Road which is situated at KM No. 748/14 he sought to contend that he would be entitled to over time whenever he pushes the trolley of his inspector at any point between KM No. 720 and KM No. 762 This contention was accepted by the Labour Court. The contention of the Railways, on the other hand, was that the place of duty means, as contended in their counter before the Labour Court, 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 to the Subordinate/ Inspector/Supervisor under whom he is working at Srikakulam Road every day. If there is work, he and his supervisor would proceed to the point within the jurisdiction ofthe Subordinate namely anywhere between KM No. 720 to KM No. 762 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 the headquarters of

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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 the only reasonable interpretation which can be placed to the expression 'place of duty'.

9. A perusal of the order of the Labour Court discloses that it has not applied its mind to this contention or argument advanced by the Railways in their 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 which is at KM No. 748/14 to anywhere on the line between KM No. 720 and KM No. 762 would not render his place of duty only between KM No. 720 and KM No. 762 . If the Respondent-Petitioner's argument is to be accepted, the time taken by him to proceed from Srikakulam Road to the point between KM No.720 and KM No.762 has to be excluded and would never count for duty. Similarly, if there is no 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 No.720 and KM No. 762 . This contention, if accepted, would lead to anamolous results. On the other hand, the reasons put forth by the 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 Permanent Way Inspector Gr.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 over time since he is liable

Sd/-x x x
(D.SURYA R AO)
MEMBER (J)

// true copy //

COURT OFFICER

To

1. The Presiding Officer,
   Labour Court, Visakhapatnam
2. The Divisional Railway Manager,
   South Eastern Railway,
   Visakhapatnam.
3. The General Manager, (Union of India)
   South Eastern Railway, Garden Reach, Calcutta.
4. B.Narayana Swamy, Trolleyman under P.W.Inspector,
   South Eastern Railway, Srikakulam,
5. One copy to Mr.P.Venkatarama Reddy,
   SC for Railways, CAT., Hyderabad.
6. One spare copy.

YLKR

To

① The Port Siding officer,
Labour Court, Visakapatnam.

② The Divisional Railway Manager,
South Eastern Railway, Visakapatnam.

③ ~~One Copy to Mr. P Venkata~~ The General manager (union of India)
South Eastern Railway,
Garden Reach, Calcutta.

④ B. Narayana Swamy, Trolleyman under P.W. Inspector, S.E. Railway, Srikakulam

⑤ One Copy to Mr. P. Venkata Ramana Reddy, SCAW Rly's, CAT, Hyderabad.

⑥ One spare Copy.

13 Advocate
16/10

Ans
Received at 15.15 hrs
on 26/8/10

to work for 72 hours per week. For these reasons, it would follow that the order of the Labour Court dated 9-9-88 in C.M.P.No. 271 /86 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 1-8-74 is accordingly rejected.

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

(D.SURYA RAO)
Member(J)

Dated: 19th September, 1989.
Dictated in open court.

mhb/

REGISTRAR

P.T.O.