(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A. No.784 /1989 Date of the order: 26-2-1990.

Between:

1. Union of India, rep. by the General Manager, S.C.Railway, Secunderabad.

2. The Divisional Railway Manager, South Central Railway, Vijayawada.

... Applicants

A N D

1. N.Yesu Ratnam

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

... Respondents

Appearance:

For the Applicants : Mr.N.R.Devaraj, Additional Standing Counsel for the Railways

For the Respondents : Neither appeared in person nor represented by an advocate.

CORAM:

The Hon'ble Mr.B.N.Jayasimha, Vice-Chairman

A n d

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

(23)

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

The applicants herein are the respondents in C.M.P. No. 34/88 on the file of the Labour Court, Visakhapatnam. The Respondent No.1 while working as a Watchman in the Engineering Department, South Central Railway, Vijayawada Division, had filed CMP No. 34/88 before the Labour Court, Visakhapatnam under Section 33(c)(2) of the Industrial Disputes Act, 1947, claiming that ever since 1970 the respondents had been extracting 12-hour work per day from him and other similarly situated employees. It was contended that according to the provisions of the Minimum Wages Act they were entitled to be paid wages for work performed over and above normal duty hours and that as per Railway Board Circular No.E(LL)73/AER/MA/7 dated 13-6-74 circulated by the Chief Personnel Officer, South Central Railway alongwith his Letter dated 3-7-1974 as Estt.Serial No.180/74 the duty hours of staff was classified as 'continuous' and "Essentially Intermittent". The respondent herein stated that he was entitled to be paid a sum of Rs.15,538.32as over-time wages for work performed over and above the working hours notified under revised duty rosters from 1-8-1974. This amount was calculated on the basis that the respondent had performed 2 hours over-time every day from 1-8-1974 till the date of filing of the application.

2. On behalf of the Railways, applicants/respondents, a counter was filed denying the claim of the Respondent/ Petitioner in CMP No.34/88 . It was contended that the respondent was relying upon a Railway Labour Tribunal Award whereby "Essentially Intermittent" staff are rostered to do 72 hours per week or 60 hours per week depending upon their the number of rostered hours prescribed for them or the place of residence of the employee and the distance between the place of residence of the employee and the place of his work. All "Essentially Intermittent" staff working at other than road side stations who are provided with railway quarter within 0.5 kms. from their place of work are to be rostered as 72 hours per week while those not provided quarters within 0.5 kms. of their place of work are to be rostered for 60 hours per week. The counter stated that the applicant was provided with a quarter only from 10-5-1976 . Wherever railway accommodation was not provided within 0.5 kms. two rests were granted to all such employees. However, if two rests could not be given for any reasons, over-time allowance was paid. They claim that the petitioner was paid Rs.809.06 ps. towards over-time allowance for the period from 4-8-74 to 29-11-1975. As the petitioner received this over-time allowance, it was contended that the petitioner was not entitled to over-time allowance claimed.

3. The Labour Court by its order dated 31-1-1989 in CMP No. 34/88 did not go into the question whether the petitioner was given two days off as claimed by the Respondents (applicants herein) for the period upto . . It also did not go into the question whether the petitioner was paid Rs. 809.06 ps. towards over-time allowance for the period from 4-8-74 to 29-11-75. It proceeded on the basis that the applicant was working at Pithapuram station which a "road side station" and that he has been provided with a quarter. The Labour Court found that the petitioner before it was performing duty on the railway track covering a distance of 20 kms. on Pithapuram section as such the place of work is not within 0.5 kms. from the place where the residential quarter is allotted to him. Under circular Estt. Serial No.180/74 (marked as Exhibit M-1) the applicant was classified as Essentially Intermittent staff and he was liable to perform only 48 hours plus 12 hours per week since his place of duty was more than 0.5 kms. from his place of work. The Labour Court directed payment of over-time wages for any work rendered by the employee in excess of his rostered hours calculated at 60 hours per week.

4. We have heard the arguments of Sri N.R.Devaraj, learned Standing Counsel for the Railways, on behalf of the applicants herein. The Respondent No.1 herein has not appeared either in person or by advocate. Under the rules, Essentially Intermittent Staff 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

(26)

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 as accepted by the Labour Court, his place of duty was anywhere on the line to an extent of 20 kms. from Pithapuram station whereas according to the Railways the place of duty is Pithapuram station where he is headquartered.

5. So far as the period prior to 10-5-1976 when the Respondent/petitioner was not provided with quarter, it is clear that he was liable to perform only 60 hours per week and if he performed any hours in addition thereto he was entitled to over-time. However, it is specifically averred that he was given two rests during this period and therefore, not eligible for over-time. For the days on which he was not given two rests he was paid a sum Rs. 809-06 ps. towards over-time allowance. This has not been denied by way of rejoinder by the respondent/petitioner,

in the lower court. The lower court also held that he did not lead any evidence in regard to the over-time performed by him. In the present application also no counter has been filed denying these averments of the railways. It is, therefore, clear that the Respondent No.1/petitioner cannot claim any over-time wages for the period upto 10-5-76 . In so far as the period after 10-5-76 i.e. the period during which the applicant was provided with a quarter, the Labour Court has given him the relief prayed for on the assumption that the place of duty of the employee means anywhere on the line to an extent of 20 kms. on Pithapuram section. If this contention is accepted then the place of duty keeps varying from day to day. Obviously such a view would be untenable. The contention ofthe applicants herein that the place of duty is the place where the employee is headquartered is though more plausible has not been dealt with by the Labour Court. It stands to reason that the place where the employee reports every day and signs his attendance register is the place of duty and that his duty commences from such time. If the Respondent/Petitioner's argument is accepted, the time taken from signing of the attendance register and proceeding to work on the line anywhere in the section of 20 kms. would not count for duty. Similarly if on a particular day, after reporting at the head-quarters and signing the attendance register there is no work on the line, then if the headquarters is not the place of duty, then it must be deemed that he has not done any work for that day. The contention of the Respondent/Petitioner if accepted would lead to absurd

and anamolous results. It would follow that his place of duty is where he is headquartered. It is nobody's case that the quarter allotted to him is within 0.5 kms. of the headquarters. If that be the case then the Respondent/Petitioner is liable to work for 72 hours a week.

6. For the reasons given above, it is clear that the order of the Labour Court dated 31-1-1989 in C.M.P. No. 34/88 is based merely on the assumption that the Respondent/Petitioner's place of duty is more than 0.5 kms. from his residence. The order is accordingly set aside. The Respondent No.1's claim that he is entitled to over-time wages is accordingly rejected. The application is allowed with these directions. There will, however, be no order as to costs.

(B.N.JAYASIMHA)
VICE-CHAIRMAN

(D.SURYA RAO)
MEMBER(J).

26th Feb 1990

DEPUTY REGISTRAR(J),

mhb/

1/3/90

SR
1/3/90

Draft by: Checked by: Approved by
D.R.(J)

Typed by: 1/3/90 Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR.B.N.JAYASIMHA: (V.C.)
A N D
HON'BLE MR.D.SURYA RAO:MEMBER(JUDL.)
A N D
HON'BLE MR.J.NARASIMHA MURTHY:(M)(J)
A N D
HON'BLE MR.R.BALASUBRAMANIAN:(M) (A)

DATED: 26/2/90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. in
T.A.No. (W.P.No.)
O.A.No. 784/89

Admitted and Interim directions issued.

Allowed.

Dismissed.

Disposed of with direction.

M.A.Ordered.

No order as to costs.

Sent to Xerox on:

1/3/90