

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A. No. 85/95

Dt. of order: 13-3-95

B.H.Telani & Ors.

: Applicants

vs.

Union of India & Ors.

: Respondents

Mr. P.V.Calla

: Counsel for applicants

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Judl.)

Hon'ble Mr. O.P.Sharma, Member (Adm.)

PER HON'BLE MR. O.P.SHARMA, MEMBER (ADM.).

In this application under Sec. 19 of the Administrative Tribunals Act, 1985, S.Bhri B.H.Telani, Personal Assistant to Chief Medical Superintendent, W.Rly., Jaipur, R.S.Jain, Confidential Assistant to Medical Supdt. (Adm.), W.Rly., Jaipur, Thakur Singh Habira, Office Superintendent, O/o the Chief Medical Supdt, W.Rly., Jaipur, Prabhu Dayal Jat, Chief Clerk, O/o the Chief Medical Supdt, W.Rly., Jaipur, Ajit Singh Tomar, Head Clerk, O/o the Chief Medical Supdt, W.Rly., Jaipur, Mrs.Asha Kumari, Senior Clerk, O/o the Chief Medical Supdt, W.Rly., Jaipur, Nathu Lal Verma, Sr. Clerk, O/o the Chief Medical Supdt., W.Rly., Jaipur and Pawan Kumar, Clerk, O/o the Chief Medical Supdt, W.Rly., Jaipur, have prayed that the letters dated 21.5.'94 and 26.3.'94 (Annex.A1 & A2 respectively) may be declared illegal and the respondents may be directed to extend the relief of 5 days a week working pattern in case of the applicants as provided under para 1 of the letter dated 14/19.9.'88 (Annex.A4). They have further prayed that the rest of the paragraphs of this letter treating the applicants as other than Administrative offices be declared as ultra vires. Their still further prayer is that work may be taken from the applicants not more than 5 days a week and in this regard they may be treated as at par with the staff working under the control of other branch officers. They have also prayed that respondents may be directed to compensate the applicants for the excess number of days they have worked, beyond, 5 days a week. Still another prayer of the applicants is that if the staff working under the control of respondent No.3, Chief Medical Supdt, W.Rly., Jaipur,

are treated as offices other than administrative offices, respondent No.3 may be restrained from participating in the meetings of branch officers. Finally, they have prayed that the applicants working under respondent No.3 may be provided with all facilities of payment of National Holiday Allowance, Overtime, etc. and be governed under the Factories Act and the I.D. Act.

2. The sum and substance of the prayer of the applicants is that they should be asked to work only 5 days a week like other administrative offices at the Divisional level and not be asked to work for 6 days as part of the staff of the Railway Hospital under the Chief Medical Supdt, W.Rly, Jaipur.

3. The case of the applicants is that in 1957, the Zonal and Divisional system was introduced in the Railways and each Branch at the Division level was placed under charge of a Divisional Officer. There are 9 such branch offices at the Divisional level such as Personnel, Mechanical, etc. and these include the Medical Branch formerly under the D.M.O and now under the C.M.S (Chief Medical Supdt.). All these branch offices were located in the Divisional office. There are field units under these branch Offices. Earlier, the working hours of these branch offices were from 10.00 A.M. to 5.00 P.M. with half an hour lunch break between 1.00 to 1.30 P.M. and every Second Saturday of the month was a holiday. These very hours were being observed by the staff working under the Medical Branch. The Railway Board had laid down 37½ hours of working in a 6 day week with Second Saturday declared as a holiday for all branch offices including Medical branch as these were all administrative offices. The field offices are those which function in the field and their description has been given in the application. As regards the Medical branch stated to be under the C.M.S the field offices have been described as those which are Health Units at Jaipur, Bandikui, Phulera, Reengus, Sikar and Achnera. The branch offices are not field units but are part of the Divisional set up.

4. Some time in 1985, the government introduced 5 day week working pattern for the offices of the Central Government in lieu

of the earlier pattern described above. On 10.6.'87 (Annx.A3) the General Manager, W.Rly, issued a letter by which some more field offices of the Construction Branch of Ahmedabad were included in the 5 day week pattern because the office of the Area Superintendent at Ahmedabad of which these offices were part had been considered as a part of the Divisional office situated at Baroda. By letter dated 14/19.9.'88, the General Manager, W.Rly, clarified, relying on the Railway Board's letter dated 12.5.'88 that the Railway Board's order dated 24.5.88 is applicable only to the administrative offices and that other offices including Hospitals, etc. will be treated as other than administrative offices and will work 6 days a week with 40 hours of working.

5. The applicants' case is that they are not working in the Hospital but in the office under the control of CMS who is an officer of Senior Administrative Grade and this office is a branch/wing of the Divisional set up. For this view they have relied upon Annx.A5 dated 16.2.93, by which the respondent No.2 i.e. the Divisional Railway Manager, Jaipur, called a meeting of branch officers. They represented to the authorities but their grievance has not been redressed. Their further case is that festivals like Diwali, Christmas, were not declared as a holiday for them. In case they are treated as part of the Hospital staff they should be treated as governed under the Factories Act and the Industrial Disputes Act and that all the other facilities such as 15 days Casual Leave which is available to the Hospital staff should be available to them also. According to them "likes can't be treated as unlikes". The respondents are acting with a malafide intention causing discrimination against the applicants. Merely because the Medical branch was shifted to the Hospital premises it did not mean that the ministerial staff working in the office became part and parcel of the Hospital. The applicants are not concerned with the affairs of the Hospital for which Para-medical staff have been posted. They have, therefore, prayed that 5 days week working pattern should be adopted in their case also and their hours of working should be same as those of the administrative

office i.e. other branch offices at the Divisional level.

6. During the arguments, the learned counsel for the applicants stated that Annex.A3 which is a letter dated 10.8.'87 issued by the General Manager, W.Rly, has conveyed the decision that certain Construction Offices of Area Supdt., Ahmedabad, are to be treated as administrative offices as the office of the Area Supdt. itself is part of the Divisional Office and therefore they should observe 5 day week. Such a decision cannot be taken by the General Manager but can be taken only by the Central Govt. Further, according to him the case of the applicants is covered under para 2 of the General Manager's letter dated 14/19.9.'88 (Annex.A4) which provides that 5 day week with 40 hours working is admissible to administrative offices of, amongst others, Divisional Railway Managers' offices. The General Manager was not justified in providing in a sub para of this para that all other offices including Hospitals would be offices other than administrative offices and will observe 6 day week with 40 hours working. If the construction wing can be treated as administrative office, how can it be that the applicants/<sup>who</sup> are not indeed actually part of the Hospital staff but are part of the branch office are not treated as working in an administrative office. The learned counsel for the applicants also cited before us 3 judgments of the Hon'ble Supreme Court to support the case of the applicants. The first judgment cited is State of Himachal Pradesh & Anr. Vs. Union of India & Ors, AIR 1974 SC 1276. In this judgment, the Hon'ble Supreme Court held that equation of Taxation Inspectors of the Former State of Punjab with Inspectors of Himachal Pradesh by upgradation of the posts of Himachal Pradesh Excise Sub Inspectors without getting the approval of the Central Govt. was illegal. On the basis of this judgment, the learned counsel for the applicants stated that similarly the General Manager could not be empowered to declare certain offices as administrative offices and certain others as Field offices, without the approval of the Central Govt., because the scheme of 5 day week working was introduced by the Central Government. He next cited the

judgment of the Hon'ble Supreme Court in N.Subba Rao Vs. Union of India & Ors. AIR 1973 SC 69. In this judgment the Hon'ble Supreme Court held that if there is any question of change of conditions of service it will have to be found out whether in the first place it amounts to change the conditions and if so secondly to find out whether there was prior approval of the Central Govt. This judgment has also been cited to support the view that the approval of Central Govt. was necessary for the General Manager before he could declare certain offices as field offices. Finally he cited the judgment of the Hon'ble Supreme Court in State of Mysore & Anr. Vs. H.Grinivasmurthy AIR 1976 SC 1104. In this judgment the Hon'ble Supreme Court were dealing with the issue of deputation of employees from one department to another and their absorption. The Hon'ble Supreme Court found that the principle of the policy evolved by the State of relating back date of absorption to date of deputation was not followed in case of the petitioner similarly situated. Thus, there was violation of Articles 14 and 16 of the Constitution. This judgment was cited by the learned counsel for the applicants to canvass the view that there had been discrimination against the applicants, by not granting them a 5 day week working pattern as done in respect of other offices.

7. We have heard the learned counsel for the applicants and have gone through the records and the judgments cited before us. The applicants have not placed on record the scheme under which 5 day working week was introduced. We have however located the instructions issued by the Govt. of India in this regard which are contained in their OM No.13/4/85-JCA dated 21.5.'85 issued from the Department of Personnel and Training. These have been reproduced at pages 20-21 of the Journals Section of All India Services Law Journal 1985 (Vol. II). A copy of these instructions has been taken by us on record as Court document-1. A perusal of these instructions shows that 5 day working week was to be applicable to the civil administrative offices of the Govt. of India w.e.f. 3.6.1985. There is no dispute that the office in which the applicants are working, as well as the branch offices with

which they are comparing their cases are all civil offices. The question is only whether the office in which they are working is also an administrative office. These instructions are only applicable to administrative offices of the Govt. of India. These do not say anything about offices which are not administrative in nature. The argument of the applicants is that the General Manager could not declare any office as a field office i.e. an non-administrative office on his own without the approval of the Central Govt. is not tenable because it has not been stated in these instructions that for declaring any office as a field office the Head of the Department or the other appropriate authority has to obtain prior approval from the Central Govt. The learned counsel for the applicants could also not cite any other instructions or scheme which would show that approval of the Central Govt. for this purpose was necessary. Since these instructions issued by the Central Govt. are applicable only to the administrative offices, by implication the competent authorities could continue the working of field or non-administrative offices on 6 day or any other pattern depending upon the requirement of such offices. The first two judgments cited by the learned counsel for the applicants are to the effect that the impugned action referred to in these judgment had to be taken with the approval of the Central Govt. However, the facts of these two cases are totally dis-similar to those of the case of the applicants. The judgment reported in AIR 1974 SC 1276 is in the context of the Punjab re-organisation Act of 1966 under which the Central Govt. had a statutory role to play in the matters which were the subject of the judgment. The case reported at AIR 1973 SC 69, once again <sup>was</sup> in the context of <sup>the</sup> States re-organisation Act of 1956 and it has no applicability to the facts of the present case.

8. The question is whether there was any discrimination against the applicants in not treating them as part of administrative offices of the Divisional set up of the Divisional office at Jaipur. It is a question of fact whether a particular office is a field office or it is the administrative office as part of the

head quarters office. The applicants may have been part of the Head-quarters office or the branch office of the Division at one time but they are now all attached to the office of the Chief Medical Supdt. who according to the learned counsel for the applicants is also the Head of Jaipur Railway Hospital and also performs functions such as Surgical operations in the hospital. There can be no denying therefore that the hospital is a field office. The applicants are posted in the hospital premises. They claim that they had nothing to do the functioning of the Hospital as such. It is not clear why they would be posted in the ~~25th~~<sup>Hospital</sup> premises if they had nothing to do with the working of the Hospital. A bare description of their designations as mentioned above would shew that they are in fact part and parcel of the staff of the Hospital though they may be clerical, ministerial or supervisory staff and not medical or para-medical staff. If they have been posted in the Hospital to be of assistance in the functioning of the Hospital, it is logical to expect that they should also have 6 day working week if the Hospital has 6 day working week. The applicants have not placed on record the details of the working hours of the Hospital but it was not denied during the arguments that the Hospital works 6 days a week.

9. It is for the administration to decide in the exigencies of work and smooth running of administration of the Hospital that the Ministerial, Clerical or Supervisory staff attached to the Hospital should also work 6 days a week. No question of discrimination vis-a-vis the administrative staff of the branches would arise in this context. It has been admitted by the applicants that they also work 40 hours a week during the 6 days working, at par with the officials working in administrative offices who also work 40 hours a week over a 5 day working period. Thus the question of discrimination against the applicants does not arise. Accordingly the judgment of the Hon'ble Supreme Court reported at AIR 1976 SC 1104 will have absolutely no applicability to the present case.

10. The applicants have claimed that if they are to be treated as part of the Hospital staff and not as part of the administrative set up of the Division, they should be granted the same facilities and benefits which are available to the medical and the para-medical staff of the Hospital. The applicants have however not placed on record what are the duties, responsibilities and obligations of the medical and para-medical staff, what are their precise duty hours, whether they have to attend the hospital or to the patients on emergency basis on holidays, sundays, etc. The limited issue here is only of the length of the working week of the applicants vis-a-vis the length of the working week of the officials in the administrative offices. In spite of the fact that the applicants have been asked to work on 6 days, their working hours remain as the same as those for administrative offices namely 40 hours. We do not see any justification for grant of the same conditions of service to the Clerical, Ministerial or Supervisory staff as available to the medical or the para-medical staff which, apparently, are in a different category altogether.

11. We find that the applicants have not been able to make out even a *prima facie* case in their favour. This application is, therefore, dismissed at the stage of admission.

  
(O.P.Sharma)  
Member (A).

  
(Gopal Krishna)  
Member (J).