

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 2nd August, 2001

OA No.393/96

Asha Bhojwani D/o Mr.V.Bhojwani, Accouncer, Railway Station, Jaipur
r/o.My-Nest, 3-74, Jawahar Nagar, Jaipur.

..Applicant

Versus

1. The Divisional Railway Manager, Western Railway, Jaipur.
2. The Union of India through the Secretary to the Govt. of India, Ministry of Railways, New Delhi.

.. Respondents

Mr. V.Bhojwani] counsel for the applicant

Mr.Sunil Bhojwani,]

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The applicant was appointed as an Announcer vide letter dated 13.7.1985 (Ann.A1) in the scale of Rs. 260-400 against the quota for the physically handicapped, being visually impaired person. She was posted at Jaipur Station of the Western Railway. Ever since her appointment, she was put in a 10 hours duty roster. She made several representations to reduce her working hourse changing her classification from "Essentially Intermittent" to "Continuous" and "Intensive". Her plea has been that she is also entitled to overtime allowance. The reliefs prayed by the applicant are as follows:-

"8.1 That the applicant is entitled to the relief of -



payment of overtime allowance for the excess hours of the work.

8.2

That the applicant is entitled to the relief of declaration that her job of Announcer deserves to be categorised as "Continuous & Intensive" and not as "Essentially of Intermittent" as even according to the definition of the Continuous employment u/s 130 (a) of the Railways Act, 1989 the job of Announcer does not fall within clause (c) of Section 130 and is as such not excluded from the category of continuous employment. As per clause (d) of Section 130 of the Railways Act, 1989 the job of the Applicant as Announcer is so strenuous nature involving continued concentration, hard manual labour with virtually no period of relaxation and as such deserves to be declared as intensive also.

8.3

That the applicant is further entitled to reduction in her working hours on account of her job being falling within the category of continuous and intensive work. Section 132 of the Railways Act, 1989 provides for not more than 54 hours a week on and average in a two weekly period of 14 days for continuous employment.

Sub-section 3 of Section 132 provides for not more than 45 hours a week on and average in a two weekly period of 14 days for intensive employment. In case any temporary exemptions from provisions of Sub-section 2 and Sub-section 3 of Section 132 is made by the competent authority then as per Sub-section 4 of the Section 132 the employee concerned is entitled to payment of overtime at not less than 2 times his ordinary rate of pay for excess hours of work.

8.4

That the applicant is further entitled to the relief of



grant of periodical rest of not less than 30 consecutive hours for every week commencing on Sunday. Such relief is admissible to the applicant as per clause (d) of Sub-section 1 of Section 133 of the Railways Act, 1989.

8.5 The applicant is also entitled to the declaration that the categorisation of the employment of the applicant made in violation of S.130, 132 and 136 (2) of the Rly. Act.1989 or corresponding provision of the Rly Act 1869 or in violation of principles of natural justice is invalid and incompetent".

2. The respondents have opposed the claim of the applicant by stating that ever since her appointment, the post against which she has been working, remained classified as 'essentially intermittent'. The respondents have raised the preliminary objection on the ground of jurisdiction of this Tribunal and have taken a plea that the subject matter pertains to Railway Servants (Hours of Employment) Rules, 1961 as contained in Chapter XVI of the Indian Railway Act, 1989. The respondents' case is that according to Rule 3 and 4 of the said Rules and Section 9 of the Indian Railways Act, if the applicant has any grievance with regard to her working hours, the appropriate authority who should be approached is the Assistant Labour Commissioner and not this Tribunal.

3. We find from the ordersheets that the learned counsel for the applicant had raised a plea of necessity of declaration under Section 130 of the Indian Railways Act, 1989 for classifying the post of Announcer as ^{'Essentially} ~~as~~ 'intermittent'. The Tribunal had directed the respondents to produce the relevant record for the purpose. When the matter was taken up for hearing, the learned counsel for the respondents placed copies of 3 documents in 4 pages. This has been

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taken on record. The learned counsel for the applicant also filed an affidavit in rebuttal and the same has also been taken on record.

4. The learned counsel for the respondents raised an objection on the maintainability of this application before this Tribunal on the ground of jurisdiction. The learned counsel for the applicant submitted that he was not pressing for the reliefs as mentioned in Para 8.2 to 8.5 of the OA and that he was only confining to relief in Para 8.1. The relief sought in para 8.1 is as follows:-

"8.1 That the applicant is entitled to the relief of a payment of overtime allowance for the excess hours of the work."

5. The learned counsel for the applicant argued that the applicant was entitled to overtime allowance as she had been made to work for 10 hours in a day, though she was a continuous worker. His contention was that for the entire period when she worked for 10 hours in a day, she is entitled to overtime allowance.

6. We have perused the records and we find that the post of Announcer at Jaipur Station had been declared as falling under the EI classification i.e. Essentially Intermittent. This classification appears to have been issued on 3.1.1961. It has not been made clear to us whether any further amendment was carried out in view of the changing nature of the traffic being handled at Jaipur Station of Western Railway or any other changes in the work pattern which might affect the work of Announcer. Further, the fact remained that classification under Hour of Employment Rules is a subject beyond the jurisdiction of this Tribunal and in the instant case what has been placed before us is the factual position continuing since 1961 that the post of Announcer is in EI classification. If that be the position, there is no way that this Tribunal can hold that applicant

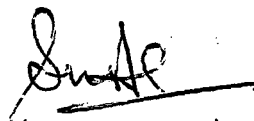


should fall under 'continuous' classification. The claim of overtime allowance is based on the assumption that the applicant is 'continuous worker'. We do not find this plea acceptable as the applicant has not placed before us any revised classification. Thus, claim of the applicant that she is entitled to the overtime allowance has no basis.

7. We, therefore, dismiss this application with no order as to costs.


(A.P. NAGRATH)

Adm. Member


(S.K. AGARWAL)

Judl. Member