

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00815-00858/2017

DATED THIS THE 05TH DAY OF FEBRUARY, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

1. K. Parthasaradhi Rao,
S/o Late K.R.K. Rao,
Aged about 46 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

2. Jyothi D Pawar,
S/o Sh. Ganappati,
Aged about 32 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

3. Jyoti Laxmi Badad,
S/o Sh. Doddanawar,
Aged about 41 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

4. Malo K. Patil,
S/o Sh. Chindambar,
Aged about 52 years,

working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

5. K.J. Lakshmaiah
S/o Sh. Javaraiah,
Aged about 54 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

6. Smt Rohini K. Desai,
S/o Sh. Krishna,
Aged about 51 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

7. N. Bhagat,
S/o Late D. Bhagat,
Aged about 49 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

8. P. Chandra,
S/o Late Ninga Naik,
Aged about 49 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

9. Subhalakmi L.T.
Sh. Shankar,
Aged about 55 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

10. S.S.N. Murthy Koyyana,
S/o Sh. Venkateswara Rao. K,
Aged about 35 years,
working as Senior Section Engineer,
Central Workshop,
South Western Railway,

Hubli.

11. C.T.R. Reddy
S/o Late C. Thivumalaih,
Aged about 59 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

12. Francis K. Potugol
S/o Sh. Kristonand,
Aged about 34 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

13. M.S. Sulakhe
S/o Sh. Shivaji Rao,
Aged about 56 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

14. Premnath Y Kadam
S/o Sh. Yeshwant Rao,
Aged about 58 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

15. B. Nagaraj
S/o Sh. B. Sriramulu,
Aged about 42 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

16. R. Vijay Kumar
S/o Late P. Rangappa,
Aged about 57 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

17. M.B. Angodi

S/o Sh. Basappa,
Aged about 31 years,
working as Sr. dr.
Central Workshop,
South Western Railway,
Hubli.

18. Chandra Kumar C
S/o Sh. Chinnakulandai. M,
Aged about 50 years,
working as Ch. OS
Central Workshop,
South Western Railway,
Hubli.

19. Surekha V. Kavalekar
S/o Sh. Laxman,
Aged about 54 years,
working as Office Superintendent
Central Workshop,
South Western Railway,
Hubli.

(The applicants from 01 to 19 are working as Ministerial Staff)

20. T.G. D'sa
S/o Late H.F. D'sa,
Aged about 57 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

21. B. Chandra Mandal
S/o M.G. Mandal,
Aged about 56 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

22. V.V. Vishwanath
S/o Late V.N. Satry,
Aged about 53 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

23. Viltor Rebello
S/o Late J.Y. Rebello,

Aged about 52 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

24. Lingaraj R. Bhadrapur
S/o Sh. R.N. Bhadrapur,
Aged about 38 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

25. Y. YenkataRao
S/o Sh. Y. Rakaiah,
Aged about 37 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

26. Ashok Kumar G
S/o Sh. Satyanarayana G,
Aged about 34 years,
working as CMS
Central Workshop,
South Western Railway,
Hubli.

27. G. Chowdra Reddy
S/o Sh. G. Ramachandra Reddy,
Aged about 40 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

28. Vasanth Kumar,
S/o Sri Sidramappa,
Aged about 51 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

29. JohnTopno
S/o H. Topno,
Aged about 34 years,
working as Senior Section Engineer
Central Workshop,

South Western Railway,
Hubli.

30. S.A. Nayak
S/o Sh. Annappa Naik,
Aged about 48 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

31. Vasant J. Daskonavar
S/o Sh. Jeevappa,
Aged about 53 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

32. Ravi Raj Saboji
S/o Sh. D.H. Raboji,
Aged about 51 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

33. Shekhar Sarkar,
S/o Sh. G.P. Sarkar,
Aged about 38 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

34. Eshwar Chand Yadav
S/o Sh. Sundar Yadav,
Aged about 38 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

35. Ravi Raja Sagar. U
S/o Sh. U. Karunaka Rao,
Aged about 54 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

36. V. Prabhu
S/o Sh. N. Vedachalam,
Aged about 34 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

37. P.B. Raravi
S/o Sh. Bheemachar,
Aged about 58 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

38. Anup Biswas
S/o Sh. Ajit Kumar Biswas,
Aged about 38 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

39. Dalton Louis
S/o Sh. Ancey Louis,
Aged about 55 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

40. Prabhanjan Kumar
S/o Sh. J. Nagana Gowra,
Aged about 43 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

41. S.K. Nithyananda
S/o Sh. Sharanaswamy,
Aged about 58 years,
working as CMS
Central Workshop,
South Western Railway,
Hubli.

42. Nishat Ahmed
S/o Obaidullah Ansari,
Aged about 35 years,

working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

43. T.K. Wilson,
S/o Sh. T.B. Krishna Murthy,
Aged about 55 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

44. Rajiv Kumar,
S/o Gopal Prasad,
Aged about 36 years,
working as Senior Section Engineer
Central Workshop,
South Western Railway,
Hubli.

(Applicants from 20 to 44 are working as Supervisory staff)

.....Applicants

(By Advocate Shri Izzhar Ahmed)

Vs.

1. Executive Director
(Establishment) IR
Railway Board,
Ministry of Railways
Rail Bhavan,
New Delhi – 110 001.

2. Union of India,
Through the General Manager,
South Western Railway,
Gadag Road,
Hubli – 20.

3. Chief Personnel Officer
(Personnel Branch),

Head Office
South Western Railway,
Gadag Road,
Hubli – 580 020.

4. Chief Works Manager,
Central Workshop,
Carriage Repair Workshop,
South Western Railway,
Gadag Road,
Hubli – 580 020.

....Respondents

(By Shri N. Amaresh, Senior Panel Counsel)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is in a very small compass. Earlier this matter was before us and it was represented that a representation was pending before the Railway Board, therefore, we had directed the Railway Board to dispose off the matter. Now the Railway Board has passed the impugned order and had disposed off the matter. We quote from it:

***“Government of India (Bharat Sarkar)
Ministry of Railways (Rail Mantralaya)
(Railway Board)***

No. E (G) 2016/EM 1-22

New Delhi, dated 11.08.2017

*The General Managers (P),
South Western Railway,
Hubli.*

Kind Attn: Shri S.K. Albela, CPO

Sub: O.A. No. 170/467 to 513/2016 filed by supervisory staff of Hubli Workshop before Hon'ble CAT/Bangalore regarding Unpaid Holidays.

*Ref: (i) SWR's letter No. SWR/P.420/UBLS/Un-paid Holiday dated 25.05.2015
(ii) SWR (P) HQ/209/Court case Corresp/2016 dated 18.07.2016
(ii) D.O. letter No. SWR/P.420/UBLS/Un-paid Holiday dated 13.10.2016
(iv) South Western Railway's letter No. SWR (P) HQ/209/467 to 513/2016/KPR/UBLS dated 03.1.2017
(v) CPO/South Western Railway's DO No. SWR/P.420/UBLS/Un-paid Holiday dated 24.4.2017
(vi) South Western Railway's letter No. SWR/P.420/UBLS/Un-paid Holiday dated 05.05.2017*

Hon'ble CAT/Bangalore, vide its order dated 26.04.2016, has directed as under:

.... "It appears that a representation was pending with the Railway Board from 21.10.2013. It was forwarded by CPIO (sic) to the Railway Board, therefore, a clarificatory order needs to be passed by the Railway Board. We feel that the matter can be redressed if a direction is given to the Railway Board to look into the matter objectively and pass appropriate order...."

2. Pursuant to aforementioned order, this office has examined, in depth. (i) the referred representation dated 21.10. 2013, (ii) Applicable laws/rules/administrative instructions on the subject and (iii) Government of India's instructions on the subject of "Unpaid Holiday".

3. It is seen that a system of "Unpaid Holiday" is prevalent amongst only few of the Railway Workshops despite the fact that the Government of India does not have any such system of allowing "Unpaid Holiday" at variance from normal applicable rules governing Holidays. The main demand of these Supervisors of Hubli workshop is that they should be permitted fully paid "Unpaid Holidays" over and above the normal Holidays and moreover, their leave account should not be debited for such availed "Unpaid Holidays". It is also seen that since year 1997, in Hubli Workshop, there is a system of debiting Leave account for the days "Unpaid Holidays" are availed. These supervisors are contesting such debiting of leave account. In nutshell, they wish to avail "Unpaid Holidays" (over and above normal Holidays) while availing full pay for such period of no work and also does not want their leave account to be debited.

4. As far as Supervisors working in Indian Railways are concerned, they are governed by statutory provisions of The Railways Act, 1989. The Chapter XIV of the said Act regulate "Hours of Work and Period of Rest" of all Staff including supervisors. Supervisors of Indian Railways are classified as belonging to 'Excluded' category under Section 130 (c) (iv) of this Act. Under Chapter XIV, there is no provision of granting "Unpaid Holidays" to such supervisory staff. Moreover, under Railway Servants (Hours of Rest and Period of Rest) Rules, 2005 framed pursuant to Section 136 of the Act, there is no provision of "Unpaid Holidays".

5. Furthermore, Railway servants are bound by conditions of service as laid down in statutory rules viz. 'Indian Railways Establishment Code' Vol. I 1985 ed. Rule 237 of the code stipulates that whole time of a Railway Servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority without claim for additional remuneration. Here too, there is no mention of granting "Unpaid Holidays" i.e. without doing any work and getting paid for that.

6. It is further observed that as far as debiting of leave (including Leave on Average Pay viz LAP i.e. also known as 'Earned Leave' on Civil Side) of Railway Servants is concerned, this aspect of condition of service is governed by statutory rules framed by the President of India under his powers under proviso to Article 309 of the Constitution of India. These Rules are known as Railway Servants (Liberalised Leave) Rules, 1949. Under these statutory Rules too, the Railway Supervisors are not entitled to any free "Unpaid Holidays". Rather, any period of absence from duty (Unpaid Holiday is also an absence from Duty) has to be covered by some or other kind of leave. For the period of leave (barring Extraordinary leave etc.) availed, Railway Servants including Supervisors are to be paid Leave Salary. In this connection, attention is also drawn to Railway Services (Pension) Rules, 1993. Rule 42 deals with the effect of interruption (i.e. break) in service that is a period of absence from work not covered by any kind of statutory leave. Any kind of absence not covered by authorized leave i.e. LAP, LHAP, EOL etc. would lead to interruption in service and concomitant civil consequence of forfeiture of past service for pensionary etc. purposes. Therefore, coming to the practice of granting "Unpaid Holidays" on few of the workshops on Indian Railways is concerned. It is seen that in terms of Board's letter No. E(NG) 631/C/1/2 dated 01.07.1963. "Unpaid Holidays" granted to workshop staff and staff in stores depot are to be converted into leave due if a request to this effect is made by the Railway Servant concerned. It is clarified that these periods of "Unpaid Holidays" has to be covered by some or other kind of leave due. If supervisors wish to avail LAP/LHAP, they may be granted such leave with due leave Salary as applicable. Besides, if they wish to avail Extraordinary Leave for periods for such "Unpaid Holidays", they may be granted

such EOL. Obviously, they would not be entitled to Leave salary of such EOL availed.

7. *It is gleaned from the records available that Hubli Workshop has been declaring 20 holidays every year including 15 paid holidays and 5 "Unpaid Holidays". In respect of every unpaid holiday availed, one LAP is being debited from the leave account of all staff of the workshop including ministerial staff, supervisor etc. Therefore, any absence over and above these authorized absences from duty (such as declared paid Holidays, restricted Holidays [wherever applicable] or authorized leave taken) would tantamount to interruption in service as per Section 42 of Railway Services (Pension) Rules, 1993.*

8. *Therefore, the practice of deducting LAP is in conformity to statutory provisions contained in Chapter 14 of The Railways Act, 1989, Railway Servants (Hours of Rest and Period of Rest) Rules, 2005, Railway Servants (Liberalised Leave) Rules, 1949 and Railway Services (Pension) Rules 1993 and other administrative instructions. Moreover, the very fact that these holidays are termed as "Unpaid" confirms the connotation that these holidays, if availed, would remain "Unpaid". For getting payment for such holidays, one has to avail any kind of leave. This is also in line with the settled principle of law i.e. "No work, No pay" – upheld by the Hon'ble Apex Court in multitude of judgments.*

9. *Therefore, the concerned litigants may be informed of this clarificatory order. This also disposes of the representation of the applicants dated 21.10.2013.*

(Alok Kumar)
Executive Director, Estt. (IR)
Railway Board"

2. The issue appears to be, after hearing both the counsels, that at one stage, maybe in one workshop or two workshops, as a part of collective bargaining, the applicants or others like them were able to impress upon the then concerned officials that they may be permitted a leave on a particular day even though it was not warranted by the rules in force at that point of time. To justify this, we now found that a new perception was created that it will be treated as an unpaid leave, i.e., even though leave, it will not be a

leave. But then, as time went on, again as a part of collective bargaining they were able to justify the stand in one or two of the institutions under the massive Railway organization. It appears that applicants and others like him were able to subdue the railway administration in these isolated pockets so, without resistance, they buckled. Now, this is being sought as a way to impose this on other segments of railway administration as well.

3. The Hon'ble Apex Court had time and again held that there cannot be any equality in illegality. No railway authority could have devised a system of unpaid leave. If a leave is to be granted and a holiday is to be granted, it is on the basis and understanding that it will be a paid holiday. This sort of temporary adjustments are not to be read into the realm of law at all. In Board of Education Vs. Rice reported in (1911) AC 179 the highest Court had held "**But there is a minimum standard to be observed by anyone who decides anything.**" The concerned authority who decided on this unpaid leave had not factored in that nowhere else in the governance system such a thing is in operation. If a holiday is to be granted, it is understood by the entire governance system that it is a paid holiday. This sort of adjustment made in is illegal and cannot be sustained at any branch of the railway administration. Applicants submit that Article 14 will come to their rescue as others like them had been granted the same thing and therefore, reasonable expectation would lie in their favour. The Hon'ble Apex Court in State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat & Ors. reported in AIR 2006 SC 212 had observed that, even though Directive Principles are also relevant consideration in deciding reasonableness of

restrictions, it is to be understood that there cannot be any reasonableness in upholding the illegality.

4. Therefore, we hold that, even though the way in which impugned order was formulated had forgotten to indicate the compulsive elements in bringing in this illegal scheme into operation by some of the segments of Railway Board, the fact remains that they are illegal. Railways cannot have a management pattern which is obverse and contradictory to government administration. Therefore, the perception of unpaid holidays is illegal and it is quashed all over the railway administration.

5. At this point of time, Shri Izzhar Ahmed, learned counsel for the applicants, submits that Mysore is following the same system. They should not have and could not have followed this illegal system. All these illegal systems are hereby quashed. Article 13 of the Constitution of India declares that any system of law which is obverse to the Fundamental Rights of the general public shall be unconstitutional and void. Therefore, this perception of unpaid holidays itself is illegal and it is quashed. At this point of time, Shri Izzhar Ahmed, learned counsel for the applicants, says that several segments in railway administration are not following Railway Board's order. We are not going into the merits of this but we will direct the Secretary of the Railway Board to issue necessary instructions to all segments of Railways following the quashment of this illegal scheme. This shall be done within the next two months.

6. The OA is dismissed. No order as to costs.

(C.V. SANKAR)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00815-00858/2017

Annexure-A1: Copy of the letter dated 04.03.1998

Annexure-A2: Copy of the representation dated 21.10.2013

Annexure-A3: Copy of the letter dated 19.12.2013

Annexure-A4: Copy of the letter dated 25.05.2015

Annexure-A5: Copy of the list of holidays dated 10.12.2015

Annexure-A6: Copy of the order dated 26.04.2016 in O.A. No. 467/2016

Annexure-A7: Copy of the letter dated 09.09.2016

Annexure-A8: Copy of the letter dated 11.08.2017

Annexure-A9: Copy of the list of holidays dated 29.11.2017

Annexure-A10: Copy of the Chapter-14 of Railway Act – 1989 read with HOER Rule 2005

Annexure-A11: Copy of the Rule 237 of IREC-I, 1987

Annexure-A12: Copy of the Chapter-5 of IREC, I-2008

Annexure-A13: Copy of the Railway Board order dated 13.04.2010

Annexure-A14: Copy of the Rule 42 of Pension Rule 1993

Annexure-A15: Copy of the Rule 501 (7) of Pension Rule 1950

Annexure-A16: Copy of the Chapter-IV of Pension Rule 1993

Annexure-A17: Copy of the Railway Board order dated 01.07.1963

Annexure-A18: Copy of the Rule 2022 of IREC, II-1971

Annexure-A19: Copy of the Rule 1320 of IREC-II, 1987

Annexure-A20: Copy of the FR-26 of IREC-II, 2005

Annexure-A21: Copy of the Para – 10.4 of Master Circular - 47

Annexure-A22: Copy of the letter dated 10.10.2012 under RTI

Annexure-A23: Copy of the letter dated 23.11.2012 under RTI

Annexure-A24: Copy of the letter dated 06.09.2013

Annexure-A25: Copy of the letter dated 27.09.2013

Annexure-A26: Copy of the letter dated 11.03.2014 under RTI

Annexure-A27: Copy of the Rule 815 of IREM I-1989

Annexure-A28: Copy of the letter dated 12.07.2017 under RTI

Annexure-A29: Copy of the letter dated 02.08.2017 under RTI

Annexures with reply statement

Nil

Annexures with rejoinder

Annexure-A30: Copy of the application under RTI dated 28.10.2018

Annexure-A31: Copy of the Railway Board's order dated 24.06.1992

Annexure-A32: Copy of the reply under RTI dated 22.11.2018

Annexure-A33: Copy of the Railway Board's order dated 04.06.1992

Annexure-A34: Copy of the Railway Board's order dated 22.12.1998

* * * * *