

THE CHAIRMAN RAILWAY BOARD AND ANR.

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v

T. VITTAL RAO AND ORS.

FEBRUARY 2, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

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Service Law:

Overtime allowance to Train Superintendents—Issuance of a Circular placing them in supervisory category thereby disentitling them to draw overtime allowance—Withdrawal of Circular—Claim of arrear for intervening period—Held: Circular/Notification not prospective in effect—Since the Circular/Notification withdrawn and status-quo ante was restored, the incumbent would be deemed to have been continuing in the non-supervisory capacity only—Hence, they are entitled to claim the overtime allowance for the intervening period.

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Respondents, working as Train Superintendents in the Railway, were entitled to draw overtime allowance. Later, in terms of the Circular dated 2.8.84 they were placed in the supervisory category, thereby, they became disentitled to draw overtime allowance. However, the said Circular was later withdrawn by the Railway Board. Respondents claimed for the arrears for the intervening period, which was rejected by the authorities. They filed a petition before the Central Administrative Tribunal. The Tribunal allowed the petition holding that they were entitled to overtime allowance. The writ petition filed by the appellants questioning the correctness or otherwise of the said judgment of the Tribunal was dismissed by the High Court. Hence the present appeal.

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Appellants contended that the circular dated 11.4.2001 withdrawing the earlier Circular conferring supervisory status on the respondents did not have retrospective effect or retroactive operation and in that view of the matter, the Tribunal and consequently the High Court, committed a serious error in directing payment of overtime allowance in favour of the respondents for the intervening period; and that the petition was barred by limitation.

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Respondents submitted that since the circular dated 2.8.1984 was

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A withdrawn, they became entitled to overtime allowance.

Dismissing the appeal, the Court

B HELD.1.1. Overtime allowance ceased to become payable to the respondents only when they were placed in the supervisory category. By reason of the notification dated 11.4.2001, the *status quo ante* as was obtaining on 2.8.1984 was restored as a result whereof the respondents would be deemed to have been continuing to remain in the non-supervisory category only. It is furthermore clear in terms of the circular letter issued by the Railway Board itself that till an appropriate decision is taken, for the intervening period i.e. C from 2.8.1984 to 11.4.2001 the practice would remain effective. As the practice remained effective, the respondents continued to be in the non-supervisory category and in that view of the matter they had rightly been held to be entitled to the overtime allowance. [1100-F, G]

D 1.2. The Circular letter dated 11.4.2001 does not state that it is prospective in nature. It does not further more state that overtime allowance would be payable to the respondents only after the issuance thereof. The earlier circular dated 2.8.1984 having been withdrawn, the effect of circular dated 2.8.1984 shall stand effaced. Furthermore, from a letter dated 20.9.2001 issued by the appellant, it appears that the circular letter dated 11.4.2001 was also understood in the same manner as was done by the respondents E inasmuch as therein it was stated that the Train Superintendents for the extra work beyond rostered hours would be eligible for overtime allowance as they should be treated under non-supervisory post. [1100-H; 1101-A, B]

F *P. Mahendran and Ors. v. State of Karnataka*, [1990] 1 SCC 411 and *N.T. Devin Katti and Ors. v. Karnataka Public Service Commission & Ors.*, [1990] 3 SCC 157, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 939 of 2006.

G From the Judgment and Order dated 15.3.2005 of the Andhra Pradesh High Court in Writ Petition No. 1625 of 2004.

A. Sharan, Rudreshwar Singh and B. Krishna Prasad for the Appellants.

C.S.N. Mohan Rao and D. Mahesh Babu for the Respondents.

H The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted. A

This appeal is directed against the judgment and order dated 15.3.2005 passed by the High Court of Andhra Pradesh in Writ Petition No. 1625 of 2004 whereby and whereunder the writ petition filed by the appellant herein questioning the correctness of the judgment and order dated 3.10.2003 passed by the Central Administrative Tribunal in O.A. No. 13/2003 was dismissed. B

The basic fact of the matter is not in dispute. The respondents herein at all material times were and still are working as Train Superintendents. Admittedly prior to 2.8.1984 they were placed in the non-supervisory category. The Railway Board issued a circular on 2.8.1984 in terms whereof they were placed in the supervisory category. C

Indisputably, prior to 2.8.1984 those who were to work beyond rostered hours were entitled to draw overtime allowance. As by reason of the aforementioned circular dated 2.8.84 the respondents were placed in the supervisory category, they became disentitled to draw overtime allowance. The said circular letter however, was withdrawn by the Railway Board on or about 11.4.2001, *inter alia*, stating: D

“Pending question of classification of Train Superintendents on trains other than Rajdhani Express being discussed further with the Federations, the matter has been carefully considered by Board and it has been decided as under: E

(i) Instructions contained in Board’s letter No. E(LL)/79/HER/1-13, dated 2.8.84 are withdrawn with immediate effect.

(ii) For the intervening period from 2.8.84 till 11.4.2001 (i.e., the date of issue of this letter), the practice followed on each individual railway in regard to classification of Train Superintendents on trains other than Rajdhani Express as Supervisory or non-supervisory shall remain effective. F

(iii) The matter regarding classification as ‘Supervisory’ of Train Superintendents on trains other than Rajdhani Express shall be finalized expeditiously in consultation with the two recognized staff Federations.” G

The respondents in view of the aforementioned circular letter dated 11.4.2001 filed an original application before the Central Administrative Tribunal H

A which was marked as O.A. No. 13/03. The Tribunal arrived at a finding of fact that whereas rostered hours of duty of the respondents were 108 hours every fortnight, the respondents having worked for 205 hours are entitled to 97 hours' over time allowance every fortnight. The writ petition filed by the appellants herein questioning the correctness or otherwise of the said judgment of the Tribunal was dismissed.

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Mr. A. Sharan, learned senior counsel appearing on behalf of the appellant submitted that the said circular dated 11.4.2001 did not have retrospective effect or retroactive operation and in that view of the matter, the Tribunal and consequently the High Court, committed a serious error in directing payment of overtime allowance in favour of the respondents for the period from 2.8.1984 to 11.4.2001. In any view of the matter, the learned counsel contended that the original application was barred by limitation. Our attention has further been drawn to the fact that the respondents did not deny or dispute that they had drawn the over time allowance from the date of the clarification issued by the Railway Board.

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Mr. C.S.N. Mohan Rao, learned counsel appearing on behalf of the respondents, on the other hand, submitted that as by reason of the aforementioned circular dated 11.4.2001 the earlier circular dated 2.8.1984 was withdrawn, the respondents became entitled to over time allowance.

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A bare perusal of the circular dated 11.4.2001 clearly demonstrates that thereby the earlier circular letter dated 2.8.1984 stood withdrawn. It is not denied or disputed that the practice prevailing in the Division was that apart from Train Superintendents of Rajdhani Express, others were entitled to overtime allowance. Overtime allowance ceased to become payable to the respondents only when they were placed in the supervisory category. By reason of the said notification dated 11.4.2001 indisputably, the *status quo ante* as was obtaining on 2.8.1984 was restored as a result whereof the respondents would be deemed to have been continuing to remain in the non-supervisory category only. It is furthermore clear in terms of the circular letter issued by the Railway Board itself that till an appropriate decision is taken, for the intervening period

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i.e. from 2.8.1984 to 11.4.2001 the practice would remain effective. As the practice remained effective, the respondents continued to be in the non-supervisory category and in that view of the matter they had rightly been held to be entitled to the overtime allowance. Circular letter dated 11.4.2001 does not state that it is prospective in nature. It does not further more state that overtime allowance would be payable to the respondents only after the

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issuance thereof. The earlier circular dated 2.8.1984 having been withdrawn, the effect of circular dated 2.8.1984 shall stand effaced. Furthermore, from a letter dated 20.9.2001 issued by the Division Railway Manager (P) SC to the Sr. DCM/SC, it appears, that the circular letter dated 11.4.2001 was also understood in the same manner as was done by the respondents inasmuch as therein it was stated that the Train Superintendents for the extra work beyond rostered hours would be eligible for overtime allowance as they should be treated under non-supervisory post. A B

P. Mahendran & Ors. v. State of Karnataka, [1990] 1 SCC 411 relied upon by the learned counsel for the appellants is of no assistance in the instant case. The question which arose for consideration therein was as to whether the qualification contained in the amended rules should be given retrospective effect or whether the rules being prospective in nature, the right of the candidates cannot be taken away. C

N.T. Devin Katti & Ors. v. Karnataka Public Service Commission & Ors. [1990] 3 SCC 157 is an authority for the proposition that the changes in the reservation policy cannot be effected retrospectively so as to affect the candidates' existing right in terms of the advertisement for selection which had been issued much prior to the change in policy. D

For the foregoing reasons we do not find any merit in this appeal and it is accordingly dismissed. In the facts and circumstances of the case, the parties shall bear their own costs. E

S.K.S.

Appeal dismissed.