

PETITIONER:
DAMODAR VALLEY CORPORATION

Vs.

RESPONDENT:
WORKMEN

DATE OF JUDGMENT 18/04/1973

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
GROVER, A.N.

CITATION:
1973 AIR 2292 1973 SCR (3) 994
1974 SCC (3) 57

ACT:
industrial dispute--Right of employees to construction allowance.

HEADNOTE:

One of the disputes between the appellant and the respondents, referred to the Industrial Tribunal, was whether construction allowance should be payable to any categories of regular employees for extension of existing projects after the operation stage had commenced, and if so, to what extent and to which categories of regular employees. The Tribunal held that the allowance should be payable to all categories of regular employees including school teachers and welfare centre workers at any station where there is both construction work and operational work. Dismissing the appeal to this Court,

HELD : The Tribunal was justified in holding that the employees, who were posted at the same station, some doing construction work and others operational work, will both be entitled to construction allowance, as the two sets of employees have to be treated and paid uniformly.

According to the circulars issued by the appellant the essential qualification for getting construction allowance was that the employee must be stationed at the construction camp site, the reason 'for such payment being the arduous and exacting nature of construction duties and the lack of civic amenities at, the camp site. The evidence in the case, however, disclosed that the appellant had modified these principles, because, construction allowance was paid even to employees who were posted at headquarters but who had to visit the construction site during the process of such construction. If such employees are posted or stationed at headquarters they will be enjoying the civic amenities in the same manner as the other employees who are doing operational work at the same headquarters. There would be no distinction between them in the matter of enjoying civic amenities, but the former are paid construction allowance while the latter are not. Also there is no justification for denying construction allowance to the employees coming under the category of school staff especially when employees coming under the head, of hospital staff are paid construction allowance. The appellant has

neither pleaded nor established any factors distinguishing the two categories of employees.

[998 A; 1001 G-H; 1003 E-H; 1004 A-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1666 of 1968.

Appeal by special leave from the Award dated January 27, 1968 of the National Industrial Tribunal at Calcutta in Reference No. NIT-2 of 1967.

Niren De, Attorney-General for India, and D. N. Mukherjee, for the appellant.

D. L. Sen Gupta and S. K. Nandy, for respondent No. 2.

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The Judgment of the Court was delivered by VAIDIALINGAM, J. In this appeal, by special leave., the question that arises for consideration is the correctness of the award of construction allowance to the operational staff.

By its order dated June 1, 1967, the Central Government referred for adjudication to the National Industrial Tribunal, Calcutta, various disputes. We are concerned in this appeal only with dispute No. 5(a) namely:-

"Should construction allowance be payable to any categories of regular employees for extension of existing projects after the operation stage has commenced? If so, to what extent and to which categories of regular employees?"

The unions claimed payment of construction allowance to them operational staff also while the management contested their claim. The Tribunal by its award dated January 27, 1968, in Reference No. NIT-2 of 1967 has held that construction allowance should be payable to all categories of regular employees at any station where work of extension of the existing project, after the operation stage has commenced, is going on i.e. at any station where there is both construction work and operational work. The Tribunal has further directed such payment to be made uniformly to all categories of regular employees posted at the station, including school teachers and welfare centre workers. According to the directions given by the Tribunal, construction allowance is payable to all categories of regular employees who are posted at any station where both construction work and operational work are being carried on. The learned Attorney General, on behalf of the appellant, urged that construction allowance is paid only to those employees, who are actually on the site where the construction works are going on. Such payment, it is pointed out, was made to compensate those employees for lack of civic amenities at the site, where construction work has been started and is going on. According to him, the operational staff, who are posted in townships enjoy all the amenities provided therein and hence are not eligible for payment of this construction allowance. In support of this contention, the learned Attorney General referred us to, the circulars issued by the management as well as the answers given by the witnesses. According to him, the directions given by the Tribunal, apart from putting the appellant to considerable expense, are contrary to the evidence adduced in, the case and even the claim made by the workmen.

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Mr. Sen Gupta,, learned counsel for the workmen, pointed out

that the unions had placed materials before the Tribunal to show that even certain employees doing operational work and who had nothing to do with construction work, were being paid construction allowance. Therefore, the plea of the appellant that it is only the employees, who are actually posted and work at the construction site that are eligible for much payment, is contrary even to the evidence adduced on behalf of the appellant. The learned counsel also drew our attention to the relevant averments in the unions' written statements as well as the answers given by the appellant's witnesses themselves and urged that the very limited relief granted by the Tribunal is justified.

At this stage we may mention that the learned Attorney stated that even employees posted at headquarters are paid construction allowance provided they have to go to the construction site during the process of construction.

It is now necessary to refer to the circulars issued by the management as well as the material part of the pleadings. Annexure 1 to the Special Leave Petition regarding construction allowance is as follows :-

DAMODAR VALLEY CORPORATION

REVISION OF PAY SCALES

Construction allowance granted in view of the arduous and exacting nature of construction duties shall continue to be paid at places which are declared to be construction camps and it shall be withdrawn from the date the places are declared to have been ceased to be construction camps. To avoid undue hardship, such withdrawal will be made in stages as shown below except in the cases of DIPS and BTPS 4th Unit employees

Allowance admissible,

15 % of pay subject to
maximum of Rs. 75/-

(i) For the first 6 months from the date of withdrawal of the construction allowance.

(ii) For the next 6 months 10% of pay subject to a maximum of Rs. 50/-.

(iii) For the next 6 months 5 % of pay subject to a maximum of Rs. 25/-.

(iv) Thereafter Nil

The above reducible allowance shall be a to such of the employees only as are in receipt of the construction allowance and continue to be stationed at these places."

There is no controversy that the payment of construction allowance began somewhere about 1952. In fact both the unions representing the workmen admitted this fact in their written

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statements. From the extract given above, it will be noted that the allowance is paid in view of the arduous and exacting nature of construction duties at places which are declared to be construction camps. In order; to soften the rigor of its withdrawal, the said payment is slowly stopped in the circumstances and at the rates mentioned therein, when once the concerned places have ceased to be construction camps.

On February 14, 1953, another circular was issued regarding the construction allowance by the appellant. The relevant part of the circular proceeds to state:

"It has been decided by the Corporation to continue the grant of Construction Allowance

at the rate of 20% of pay (rounded to the nearest (rupee) up to maximum of Rs. 100/- p.m. The admissibility of the allowance will be subject to the following conditions:-

(1) Construction Allowance, which will be the nature of a Compensatory Allowance, will be admissible in to:-

(a) all employees in the regular establishment stationed at Construction Camps; NOTE : "Construction Camps" means all camps which have been- specifically set up by the DVC for construction work and where such work is either due to start or is in progress. They will cease to be considered as "Construction Camps" as soon as the construction work has been completed. The following are the Construction camps now in existence:

Tilaiy, Konar, Bokaro, Maithon, Panchet, Durgapur and all other Irrigation Camps;

(b) Employess, stationed at townships not set up by the DVC, such as Asansol, Gopalpur, Burdwan and Hazaribagh, only if and when their activities are connected with construction and lie outside a radius of 5 miles from the respective township.

(c) The staff employed on the construction substation at Loyabad, Sindri and other places as well as the staff stationed at Kodarma, Hazaribagh Road Station, Gomia, Tasra and Muri."

From the circular of 1953 it is clear that the eligibility for receiving construction allowance is that the employee should be stationed at a construction camp, unless he comes under clause

(b) of paragraph 1. Prima-facie these two circulars give importance to the employee being at a particular place where he is discharging an arduous and exacting nature of construction work.

We will now refer to the pleadings. The workmen were represented by two unions, D.V.C. Staff Association (hereinafter to be referred to as the Association) and D.V.C. Karamchari Sangh resented by two unions, D.V.C. Staff Association (hereinafter to its written statement dated September 19, 1967, the Association states :-

"That the construction allowance was introduced by the Corporation in the year 1952 and the same was being given to the workers who work in the construction divisions only. The rate of C.A. was 20% of pay subject to a maximum of Rs. 100/-".

The Sangh in its written statement dated October 7, 1967, has stated that the construction allowance was introduced in the year 1952 and that the same is given to those workers who work in construction divisions. In paragraph 16 of the written statement it has stated:

"That the chart marked annexure 'B' will show at a glance which categories of workmen and at what stage of work and under what circumstances become entitled to the construction allowance and at what rate."

In Annexure 'B' to the written statement, the Sangh had given the particulars regarding the categories of workers who were being given construction allowance, as well as the

rates at which such workers were getting. , It had also given particulars regarding the category of workers who were not getting the construction allowance. It is only necessary to refer, in this Annexure 'B', to the workers coming under items (a), (c) and (d) as well as the note.

ANNEXURE 'B'

CONSTRUCTION ALLOWANCE

Category of Workers	Rate	Stage and circumstances
a. All workers borne on 20% of pay regular Establishment operation		Workers get construction allowance from the very beginning till the stage.
b. X	X	X
c. Workers of common service 20% of pay such as security staff, Hospital staff, staff of Inspection Bungalow and others.		These workers continue to enjoy the benefit of construction allowance at all the stages.
d. Schools staff, Welfare Centre staff etc.	Nil	They cease to get construction allowance after the commencement of these secondary stage.
X	X	X
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NOTE : Construction camp (for the purpose of construction allowance) means all camps which have been specifically set up by the D.V.C. for construction work and where such work is either due to start or is in progress. They will cease to be considered as "Construction Camps" as soon as the construction work has been completed.

It is to be noted that in Annexure "B", the Sangh had categorically stated that the workers of common services, such as security staff, hospital staff, staff of inspection bungalows and others were getting the construction allowance at all stages, whereas the school staff, welfare centre staff, etc. ceased to get the construction allowance after the commencement of the secondary stage.

The appellant filed its written statement on December 3, 1967. In paragraph 46, it has met the allegations contained in paragraphs 51 to 53 of the Association's written statement. It has averred that the construction allowance is intended to compensate the employees, at construction camps, when construction of a project has commenced in rural or hilly areas without any of the amenities of a township for the deprivation of such amenities. The appellant has further stated that the employees engaged in the operation of a project, after it has reached the operational stage, are not justified in claiming a construction allowance. It has further pleaded that the allowance is withdrawn in the course of two years to avoid hardship to the employees, who cease to be in the construction camps. Here again it will be seen that the case of the appellant is that the construction allowance is paid only to those employees who are in the construction camp, that is the site where the construction work is going on. It is only then that those employees will not be having the amenities of a township because the construction site will be in a rural or hilly area. There is a reference to Annexure 'B' in paragraph 50 of the appellant's written statement. A major part of that

paragraph deals with some of the averments made by the Association. With regard to Annexure 'B', it is stated;

"It is denied that the claims made by the employees in Annexure 'B' to the said statement should be granted in full or at all or with retrospective effect or at all or that any part of them should be granted as claims or at all."

The learned Attorney General was prepared to accept the position that the denial regarding Annexure 'B' in this paragraph relates to the same Annexure 'B' filed by the Sangh along with its written statement and referred to in paragraph 16 of their

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written statement. It must be stated that if paragraph 50 has riot' met with the averments in Annexure 'B', there is no other paragraph in the written statement of the appellant dealing with Annexure 'B'. Therefore, it is reasonable to proceed on the basis that the only paragraph dealing with Annexure 'B' is this paragraph 50. The point to be noted is that while the Sangh has categorically stated in annexure 'B' (which was part of the written statement filed as early as October 7, 1967) the workers' coming under category (c), who get construction allowance at all stages, and the workers coming under category (d), who cease to get construction allowance after the commencement of the secondary stage, the appellant, though it filed its written statement only as late as December 2, 1967, has not explained nor given any information as to the circumstances under which these two categories either get or do not get construction allowance, and if so, under what circumstances. The appellant was content with merely denying the claim made in annexure 'B'. It must be emphasised that while the appellant has specifically taken the plea in paragraph 46 of its Written statement that construction allowance is paid only when the employees are actually, so to say, stationed at the construction site, there was a duty on its part to properly explain and given particulars how the workers, such as security staff, hospital staff, staff of inspection bungalows and others got construction allowance and the employees of the schools, welfare centers and other staff did not get that allowance. One would have expected the appellant to clearly refer to the nature of the duties performed by these various employees coming under categories (c) and (d) as well as the places where they are located, namely, whether at the construction site or at places where a township has grown and amenities are available. At this stage we can also mention that even during the trial of the proceedings, the appellant has not adduced any evidence in respect of the matters that we have just mentioned, though it has produced evidence, oral and documentary.

We will now refer to the oral evidence adduced in the case. PW-1, the Joint Secretary of the Association, has stated in chief examination that the management does not pay construction allowance to all categories of workmen at the same place. He has further deposed that at the same station some are paid such allowance and other workmen of the same category do not get the same. In cross-examination, he has stated that construction allowance was given to workers connected with the construction work whether they stayed in the construction camps or not. He has further deposed that construction allowance, was given to remove hardship arising from the site of work and to compensate for' absence of amenities, like schools, hospitals, bazars and benefits of civilised life. When the construction has progressed,

townships and colonies have grown with all amenities at some 1001

stations. PW-2, the Joint Secretary of the Sangh, has stated that all the sites of work under the management have not been provided with schools, bazars, hospitals and other amenities

The material part of the evidence of MW-1, Director of Personnel, who gave evidence on behalf of the management, is as follows :-

When work on any project has started at any site, where no civic amenities are available, the site is termed as 'construction camp' and persons employed therein are given construction allowance to compensate for lack of civic amenities. Till the work there is completed and the camp is declared a non-construction camp, every employee working therein gets construction allowance. It may happen that a portion of a project has been completed and has gone into operation and the remaining portion of the project is at the construction stage. In such cases, the establishment is divided into a construction establishment, attending to construction which is still going on, and an operational establishment. All employees of construction establishment get construction allowance, which is withdrawn in a phased manner from the employees of the operational establishment. When construction work at one construction camp is complete, such of the regular employees, as are required for operational work at the camp are retained there and the remaining regular employees are transferred. If they are transferred to another construction camp, they get construction allowance; whereas if they are transferred to a non-construction camp, they will not get construction allowance. The regular employees, who are at the construction site or who are posted at their headquarters, but have to visit the construction site during the process of construction, are paid construction allowance.

We have generally set out the nature of the materials on record. From the above materials, the following conclusions broadly emerge :-

Construction allowance is paid to employees of the regular establishment, who are stationed at the construction camps, in view of the arduous and exacting nature of construction duties they perform. Construction allowance is given to compensate for the lack of civic amenities. Even the regular employees, who are at their headquarters, but have to visit the construction site during the process of construction, are, according to PW-1, paid the construction allowance.

There is no controversy the employees, who are stationed at the construction site and are employed therein are eligible for being paid the construction allowance. There is also no controversy that the employees, who are doing the operational work, which must be in a place where amenities are available, are not eligible 797SupCII73

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for construction allowance., The controversy arises, regarding the, regular employees, who are in the same;station, but some of whom are doing operational work and others do construction work in an extension project. The claim of the workmen is that no distinction should be made in the matter of payment of construction allowance to the regular employees, who are posted at the same station, me-rely on the ground that some of them are employed in operational work and the others are in construction work, in connection with the extension of a project. According to them, the employees doing work in the construction project

are not stationed at the construction site. On the other hand, they are also stationed in a township where amenities are available. If under such circumstances, they are paid construction allowance, which is really to compensate for lack of such amenities, there is no reason why the said allowance should not be paid to the operational staff working at the same station merely because civic amenities are already provided. The sum and substance of the claim of the workmen is that under such circumstances both types of workmen, posted at the same station should be paid construction allowance.

Very strong reliance has naturally been placed on behalf of the respondents on Annexure 'B' filed along with the written statement of the Sangh on October 7, 1967. We have already referred to the averments in paragraph 16 of the said written statement as well as the contents of Annexure 'B'. The workers under category (c) in this Annexure are getting the construction allowance. There is no evidence placed before the Tribunal by the appellant regarding the places of work of the employees coming under category (c); nor explaining the reasons qualifying such workmen to get the construction allowance. According to the unions, school staff and welfare centre staff coming under category (d) are also similarly situated as the employees under category (c) and that there is no justification for denying construction allowance to those workmen.

The learned Attorney General no doubt urged that except filing Annexure 'B' along with the written statement, neither PW-1 nor PW-2, who gave evidence on behalf of the unions, has explained the contents of Annexure 'B' and given any information as to the circumstances under which the workers coming under category (d) are eligible to get construction allowance. The learned Attorney General is right in his criticism that these two witnesses have not said anything in their evidence about Annexure 'B'. But, in our opinion, that does not absolve the appellant, who is in possession of all information regarding the matters mentioned therein, from placing the necessary materials before the Tribunal to show the distinguishing and differentiating features of the two

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categories of workmen coming under items (c) and (d). We have already referred to the facts that Annexure 'B' was before the Tribunal as early as October 7, 1967. The appellant filed its written statement only on December 2, 1967. Except a bald denial regarding Annexure 'B', the appellant has not assisted the Tribunal by placing before it details or particulars such as the nature of work, the place where the work is being done and other relevant factors regarding the eligibility of the particular group of workmen under category (c) to get construction allowance. Nor has the appellant placed any such material regarding the non-eligibility for construction allowance of the workmen coming under category (d). The appellant, who is in possession of all facts, has furnished no information regarding the distinction between the workmen coming under the two categories. The material part of the evidence of MW-1 has already been referred to by us. He has stated that the regular employees, who are at the construction site or who are posted at their headquarters but have to visit the construction site during the process of construction, are paid construction allowance. That witness could have, very well referred to the different types of work, if any, done by the employees coming under categories (c) and (d) of Annexure 'B'. No such evidence has been furnished by that

or any other witness. He has also admitted that at the same station a time will come when there are two sets of employees, some connected with the operational work and the others connected with the construction work of an extension project. The point to be noted from this evidence is that when the above two types of employees are posted at the same station, both of them will be having the benefit of the civic amenities provided at that station, because, even according to the appellant, by the time the operational stage is reached, full civic amenities are already provided. According to the circulars already referred to, the essential qualification for getting construction allowance is that the employees must be stationed at the construction camp site. This is emphasised by the circular dated 14-2-1973. The reason for such payment is the arduous and exacting nature of construction duties and the lack of civic amenities at the camp site. Obviously, the appellant has modified the above principle. The evidence of MW-1 shows that construction allowance is paid to employees who are posted at headquarters but have to visit the construction site during the process of construction. The essential qualification for receipt of construction allowance viz. of being stationed at construction camp site, has been modified by the appellant. If such employees are posted or stationed at headquarters, they will be enjoying the civic amenities in the same manner as the other employees who are doing operational work at the same headquarters. Thus there

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is, no distinction between them in the matter of enjoying of civic amenities. The former as paid construction allowance while the latter do not get the same.

For instance, according to the respondents, the entire hospital staff coming under item (c) in annexure 'B' get construction allowance. This has not been controverted by the appellant. Nor is it the case of the appellant that the Hospital staff, referred to earlier, is stationed at the construction site. It is not even the case of the appellant that the Hospital staff is covered by clause (b) of paragraph 1 of the circular of 1953. In fact the appellant, except making a general denial, has not cared to place any material before the Tribunal regarding the location of the Hospital and its staff. It was faintly suggested by the Attorney during the arguments that a Doctor now and then visits the construction site to attend on employees who may require medical assistance. We will assume that it is so. Even then, according to the circular, the said Doctor cannot get construction allowance, as he is not stationed at the construction site. Leaving out the Doctor for the moment, there is not justification for the entire staff of the Hospital being paid the said allowance. Even the plea made regarding the Doctor, has not been advanced before us regarding the remaining staff of the hospital.

Though we are not concerned with the question whether the staff of the hospital should or should not get construction allowance, we have referred to the above circumstances only to show that there is no justification for denying construction allowance to the employees coming under item (d) or Annexure 'B'. The appellant has neither pleaded nor established any factors distinguishing the school staff coming under item (d) from the hospital staff referred to in item (c) of Annexure 'B'. If so, it follows that when the employees under item (c) are paid construction allowance, it stands to reason that the employees under item (d) should also get the said allowance, when both of them are posted at the same place.

In view of the materials on record, in our opinion, the Tribunal was justified in holding that the employees, who are posted at the same station, some doing construction work and other operational work, will both be entitled to construction allowance, as the two sets of employees have to be treated and paid uniformly. The appeal in the result fails and is dismissed with costs of the respondents one set.

V.P.S.

Appeal dismissed

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