
(2018) 09 CAT CK 0170

In the Central Administrative Tribunal

Case No : Original Application No. 4221 Of 2016, Miscellaneous Application No. 3787 Of 2016

Jagbir Singh And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Railway Servants (Hours Of Work And Period Of Rest) Rules 2005 — Rule 3, 4, 4(2)

Citation : (2018) 09 CAT CK 0170

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, Shailendra Tiwary

Final Decision : Disposed Of

Judgement

1. Heard the learned counsel for the parties.

M.A. No.3787 of 2016

This MA filed by the applicants for joining together in a single Original Application is allowed. Accordingly, the applicants are permitted to join together in a single OA.

O.A. No.4221 of 2016

By filing the instant OA, the applicants have sought the following reliefs:-

"(i) That the Hon"ble Tribunal may graciously be pleased to pass an order declaring to the effect that the action of the respondents preparing 12 hours per day/75 hours weekly roaster for the applicant who is working as Gateman is illegal, arbitrary, against the rules and consequently pass an order directing the respondents to prepare 8 hours per day/48 hours weekly roaster for the Gateman.

(ii) That the Hon"ble Tribunal may graciously be pleased to pass an order

directing the respondents to grant of over time allowances to the applicant for 4 hours over time daily from the date of posting of the applicant as Gateman with all the consequential benefits including the arrear of over time allowances with interest.

(iii) Any other relief which the Hon"ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

2. The grievance of the applicants is that they are working as Gatemen in Delhi Division and presently posted between Rohtak-Panipat Section under SSE Gohana and they are performing 12 hours duties daily without any even short break and without any overtime allowance.

2.1 Counsel for the applicants during the course of arguments submitted that this issue of grant of overtime allowance to the Gatemen was earlier agitated by the similarly placed employees by filing OA No.2509/2018 and this Tribunal vide Order dated 21.1.2011 allowed the said OA which was challenged by the respondents before the Hon"ble High Court of Delhi vide Writ Petition (Civil) No.7172/2011 and the same along with other writ petition was dismissed by the Hon"ble High Court vide Order dated 18.2.2013 with the following observations:-

"14. For record we would note that it is the admitted case of the parties that 12 hours shift is permissible without extra wages if the intermittent breaks during working hours i.e. the nature of work is such that a person can take rest at stretches not less than 30 minutes.

15. We dismiss the writ petition highlighting that twice traffic volume was determined and the authorities categorically wrote that the level crossing(s) had to be manned by three gatemen with 8 hours shift and thus the Tribunal has reached the correct conclusion. Indeed, the respondents would be entitled to overtime wages directed to be paid."

2.2 Counsel further submitted when the respondents have not acted upon the aforesaid directions of the Hon"ble Delhi High Court, which compelled the other similarly situated employees to file OA No.4516/2013 and this Tribunal vide Order dated 18.3.2015 disposed of the said OA with the following observations:-

"4. In view of the above position, we dispose of this OA with a declaration that the action of the Respondents in preparing 12 hours per day/75 hours weekly roster for the Applicants is illegal and arbitrary. Consequently, we direct the Respondents to prepare an 8 hours/40 hours weekly roster for the Applicants in future. As the Applicants have already been subjected to extra 4 hours of duty daily, they are also entitled for overtime allowance. Accordingly, we direct the Respondents to calculate the overtime allowance admissible to them for the service rendered by them beyond 8 hours per day/40 hours weekly and pay the same to them. The aforesaid direction shall be complied with, within a period of 2 months from the date of receipt of a copy of this order."

2.3 The aforesaid Order of this Tribunal dated 18.3.2015 in OA 4516/2013 (Prem

Singh and others vs. Union of India and others) was challenged by the respondents before the Hon"ble Delhi High Court vide Writ Petition (Civil) No.8088/2016 and the Hon"ble High Court dismissed the said Writ Petition vide Order dated 27.9.2016 with the following observations:-

"1. The Union of India, through General Manager, Northern Railways has filed the present writ petition impugning the order dated 18.03.2015 passed by the Principal Bench of Central Administrative Tribunal in OA No.4516/2013. The impugned order directs the petitioner to pay overtime allowances admissible to the respondents for the services rendered beyond 8 hours a day / 48 hours per week. The said directions were to be complied with within a period of 2 months from the date of receipt of the copy of the order dated 18.03.2015.

2. Learned counsel for the petitioners submits that the said directions could not have been issued in view of Clause 4 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005.

3. We have considered the said contention but do not find any merit in the submission. Clause 4 relates to appeals against classification. In the present case, the issue of classification was adjudicated and decided by the Tribunal in OA No.2509/2008 titled "Rohtas and Another v. Union of India through the General Manager, Northern Railway and Others vide order dated 21.01.2014 in favour of the respondents holding that the respondents being a Class "A" Gateman were bound to work for 8 hours and in case of additional working hours, they were entitled to be paid overtime allowance as stipulated in the rules.

4. This decision was challenged by the petitioners in W.P.(C) No.7164/2011 and W.P.(C) No.7172/2011. The High Court by a common order dated 18.02.2013 upheld the order of the Tribunal observing as under:

"12. We highlight survey report resulting in the order dated July 08, 2006 being issued when the level crossing manned by Rohtas and Mange Ram i.e. level crossing No.23 having gate No.23A came under the jurisdiction of the Delhi Division. Pertaining to the work at the interlocked engineering level crossing gate No.23A, with respect to the traffic the order records that the crossing has to be manned by : "3 (Three) Engineering Gatemen in 8 hours shift".

13. Now, the numeral "3" is succeeded by the number being typed in words. Further, on the assumption that instead of typing "2" followed by writing "two" somebody erroneously typed "3" followed by writing "three", it remains unexplainable as to how come it was then typed "8 hours shift". For the reason if the traffic was less and as a consequence the gateman enough rest period in between requiring normal duty hours to be 12 hours, it had then to be recorded "in 12 hours shift" and not "in 8 hours shift".

14. For record we would note that it is the admitted case of the parties that 12 hours shift is permissible without extra wages if the intermittent breaks during working hours i.e. the nature of work is such that a person can take rest at

stretches not less than 30 minutes.

15. We dismiss the writ petition highlighting that twice traffic volume was determined and the authorities categorically wrote that the level crossing(s) had to be manned by three gatemen with 8 hours shift and thus the Tribunal has reached the correct conclusion. Indeed, the respondents would be entitled to overtime wages directed to be paid.

16. The writ petitions are dismissed but without any order as to costs."

5. In view of the findings recorded by the High Court above, the petitioners cannot now agitate and rely upon the aforesaid Rules. The question of filing an appeal etc. is foreclosed and decided by the aforesaid decision which would operate as *res judicata*. The clear finding of the High Court was that the respondents can work for 8 hours. The directions given by the Tribunal in their order dated 21.01.2014 that the respondents would be paid overtime allowances over and above the work for 8 hours had to be complied with. It is unfortunate that the petitioners did not comply with the said directions, compelling the respondents to file a fresh OA. This OA has been rightly allowed by the Tribunal, being in violation of the directions and the findings recorded by the High Court in their order dated 18.02.2013.

6. The writ petition has no merits and is accordingly dismissed."

2.4 Counsel for the applicants further submitted that when the respondents have not taken any action to consider the cases of the applicants for fixing their 8 hours daily/48 hours weekly roaster and continuously taking 12 hours daily duties from the applicant without granting any over time allowances which is totally illegal, arbitrary and against the rules, the applicants have served a legal notice dated 21.11.2016 upon the respondents. However, when the same was not decided by the respondents, the applicants have filed this OA seeking redressal of their grievances.

3. Pursuant to notice issued to the respondents, Shri Shailendra Tiwary, learned counsel put appearance on behalf of the respondents and has also filed reply. Shri Shailendra Tiwari, learned counsel for the respondents submitted that the applicants (1 to 22) are working as Gateman in the sub division under SSE/P-Way/GHNA on different road side gates and the applicant are performing 12 hours duty daily as per the SWR and duty roaster issued by DPO/HOER N.Rly, Delhi so that the overtime could not be paid. He further submitted that as per rules, all the gateman of Engg. And those who are working on L-Xing on road side are as Essentially Intermittent Classification.

3.1 Counsel further submitted that as per Rule 4 of the Railway Servants (Hours of Work and Period of Rest) Rules 2005 (in short "Rules of 2005"), if the Railway Servant is aggrieved and there is any complaint, a methodology of complaint to the Regional Labour Commissioner has been provided and therefore, this Tribunal has no jurisdiction in this regard as there is already alternative remedy available

with the Regional Labour Commissioner to the redressal of the grievances of the applicants and hence this OA be dismissed on the ground of jurisdiction.

3.2 Counsel also submitted that as per Rule 4 of the Rules of 2005, if the Railway Servant is aggrieved by the declaration of classification made under Rule 3, a methodology of Appeal to the Regional Labour Commissioner has been provided, who after scrutiny of relevant documents or if considered necessary, after a fresh job analysis, may order for a change in the classification.

3.3 Counsel further submitted that Rule 4(2) of the Rules of 2005 provides that any Railway servant or Railway Administration aggrieved by a decision of the Regional Labour Commissioner may, before expiry of 90 days from the date on which the decision of the regional Labour Commissioner communicated to him, prefer an appeal to the Secretary to the Govt. of India in the Ministry of Labour who will dispose it of after hearing the parties concerned.

3.4 Counsel also submitted that as per the Rules of 2005, standard hours of duty of essential intermittent employee is 48 hours + 24 hours per week and the applicants are also in classification of essential intermittent. He further submitted that change in classification can be done only after scrutiny of relevant documents or after a fresh job analysis on the basis of Appeal made by the parties concerned before the competent authority.

3.5 Counsel further submitted that the gates where applicants are working have not been covered under special category, hence, the Gateman have to perform the duty of 12 hours in accordance with the SWR and duty roaster and only two gateman are to be posted on these gates and they have to perform 12 hours duty.

3.6 Counsel further submitted that respondents have stated in reply to paras 4.7 to 4.12 that no representation by the applicants is received by the respondents in connection with changing the roasters and no claim of over time received by the respondents up till date.

3.7 Counsel further stated that the judgments cited by the applicants are not applicable to the facts of the present case and as such the same are distinguishable. Classification has been done according to the laid down procedure and if even then the applicants have any grievance, they can approach the appropriate forum by filing an appeal to the Regional Labour Commissioner.

4. During the course of arguments, learned counsel for the applicants submitted that the applicants have raised their grievances by submitting legal notice dated 21.11.2016 (Annexure A/1) to the respondents but till date they have not decided the same. He further submitted that applicants' grievances will be redressed at this stage if the respondents are directed to take a decision on the said legal notice dated 21.11.2016 (Annexure A/1) and pass a reasoned order on the same within a specified time frame.

4.1 Counsel also submitted that similar issue was again raised by similarly

situated employees of the Railways before this Tribunal by filing OA No.643/2015 (Hari Ram and others vs. Union of India and others) and this Tribunal vide Order dated 29.8.2017 allowed the said OA with the following directions:-

"14. In view of the discussions in the foregoing paras, I am of the considered opinion that the case of the applicants is fully covered by the orders of this Tribunal in the cases of Om Prakash & Another, Rohtas and Another and Prem Singh & Others (supra). The Tribunal has consistently held that Gatemen perform "Continuous" and not "Essentially Intermittent" duty and thus are entitled for OTA for extra hours of work beyond 08 hours per day. The OA is, therefore, allowed in terms of the order of this Tribunal in the case of Om Prakash & Another (supra).

4.2 Counsel further submitted that issue involved in this case is squarely covered by the decisions of this Tribunal as well as of the Hon"ble Delhi High Court (supra) and requested that respondents be also directed to consider those judgments while deciding the cases of the applicant.

5. Counsel for the respondents submitted that respondents have no objection if a direction is issued to the respondents to decide the aforesaid legal notice submitted by the applicant.

6. In view of the above limited prayer made by the learned counsel for the applicant, the instant OA is disposed of with a direction to the respondents to consider the legal notice dated 21.11.2016 (Annexure A/1) and pass a reasoned and speaking order within a period of 90 days from the date of receipt of certified copy of this Order. The respondents are also directed to consider the aforesaid judgments of this Tribunal as well as Hon"ble Delhi High Court (supra) while deciding the aforesaid legal notice of the applicants.

7. It is made clear that while disposing of this OA, this Tribunal has not gone into the merits of this case. There shall be no order as to costs.