

(2023) 07 CAT CK 0036

In the Central Administrative Tribunal

Case No : Original Application No. 235 Of 2022

Mohammad Mustaquim @ Mustkeem

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Railway Servants (Hours Of Work And Period Of Rest) Rules, 2005 — Rule 3, 4, 7(3),
8, 8(2)(ii), 8(3), 8(4), 8(4)(a)(i), 8(4)(a)(ii), 8(4)(a)(iii), 10, 10(1)
Constitution Of India, 1950 — Article 14, 16, 21

Citation : (2023) 07 CAT CK 0036

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Gautam Saha, Chakrapani Vatsyayan

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Gautam Saha, learned counsel for the applicant and Shri Chakrapani Vatsyayan, learned counsel for the respondents, were present at the time of hearing.

2. The instant original application has been filed seeking following relief:

"8.1 This Hon'ble Tribunal may graciously be pleased to quash the order dated 20.04.2021 (Annexure A/1) by which genuine claim / case of the applicant for granting the applicant Over Time Allowance for the duty performed by him as Gateman from 30.09.1995 to 31.01.2017 in excess to Eight (8) hours duty per day i.e. Four (4) hours extra duty per day, has been illegally and arbitrarily rejected without taking into account the fact that similar relief has been granted to the applicants of O.A. No. 643/2015 [Hari Ram and others v. Union of India and others] [Retired Gateman] pursuant to the Judgment and Order dated 29.08.2017 passed by the Coordinate Bench of this Hon'ble Tribunal i.e. Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi taking into account

several judgments of the other Coordinate bench of this Hon'ble Tribunal passed in similar matters as is apparent from the fact of the record itself and which has attained its finality.

8.2 This Hon'ble Tribunal may graciously be pleased to direct the respondents to extend the same and similar relief / benefit i.e. granting Over Time Allowance (in short OTA) to the applicant for the duty performed by him as Gateman from 30.09.1995 to 31.01.2017 in excess to Eight (8) hours per day i.e. Four (4) hours extra duty per day, as has been granted to the applicants of O.A.No. 643/2015 [Hari Ram and others v. Union of India and others] [Retired Gateman] vide Judgment and Order dated 29.08.2017 by the Coordinate Bench of this Hon'ble Tribunal i.e. Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.

8.3 This Hon'ble Tribunal may also graciously be pleased to pass an order declaring to the effect that the applicant is legally entitled to payment of Over Time Allowance for the extra Four (4) hours duty per day in excess to the Eight (8) hours duty from 30.09.1995 to 31.01.2017 performed by the applicant as Gateman.

8.4 This Hon'ble Tribunal may also graciously be pleased to grant any other appropriate relief or reliefs which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. The compendium of the facts narrated in the instant original application is that the applicant is aggrieved by the impugned order dated 20.04.2021 by way of which his claim regarding grant of Over Time Allowance for the duty performed by him as Gateman from 30.09.1995 to 31.01.2017 has been rejected. The applicant has claimed that he had put in an extra duty of four hours each day in addition to the eight hours prescribed duty for the entire period as mentioned above. By way of the instant OA, the applicant seeks a direction to the respondents to pay the entire Over Time Allowance to him in a time bound manner.

4. Disclosing a brief history of the case, learned counsel for the applicant submits that the applicant was initially employed with the respondents' department as Casual Labour on 24.04.1976. He was granted temporary status on 01.01.1982 and his services were regularized on 03.11.1992 on being absorbed in the open line from construction organization to the post of Gangman. Subsequently, the applicant participated in the test for appointment to the post of Gateman (Engineering) in which he was declared successful by the respondents after which he was appointed and posted as Junior Gateman (Engineering) in the scale of Rs. 775-1025/- at gate No. 16-B on 01.11.1995. As per the direction of the respondents, the applicant continuously worked at Gate No. 16-B for Twelve hours per day instead of the prescribed duty of eight hours from 30.09.1995 till 10.03.2008. Thereafter, he was transferred to Gate No. 59-C which was situated in different locality than the previous Gate. Here also, the applicant worked from

11.03.2008 till his retirement on attaining superannuation on 31.01.2017 for twelve years per day as per the directions of the respondents instead of the prescribed duty of eight hours.

5. Learned counsel for the applicant further submits that while the applicant was working at Gate No. 59-C, the Additional Divisional Engineer, Fatehgarh issued an office order dated 11.03.2008 by which the applicant was granted promotion to the post of Gateman (Engineering) w.e.f. 01.01.2008. It is further submitted that for the entire period which is under contention, the respondents have posted only two Gateman at the above said two Gates wherein the applicant worked for 12 hours regularly but the respondents have not paid the Over Time Allowance for the extra four hours service which was put in by the applicant for the entire period as mentioned above. Learned counsel submits that Over Time Allowance is an allowance paid to railway servants for the duty performed in excess to the duty as per Hours of Employment prescribed by rule and law and as such the respondents' department is under obligation to pay the Over Time Allowances to the applicant for the extra duty rendered by him.

6. Learned counsel for the applicant further submits that in the judgment and order dated 29.08.2017 passed by the Principal Bench of the Central Administrative Tribunal in OA No. 643 of 2015 titled Hari Ram and others Vs. Union of India and others, similar remedy as sought by the applicant herein was extended to the similarly placed applicants in the above case. Learned counsel further submits that the above judgment of the Tribunal was further upheld by the Hon'ble High Court of Delhi in its judgment dated 20.03.2019 passed in WP(C) No. 8628 of 2018 titled Union of India and others Vs. Hari Ram and others.

7. Learned counsel for the applicant further submits that similar remedy as claimed by the applicant herein was extended to the similarly placed applicants in the judgments passed by the Principal Bench of the Central Administrative Tribunal in following cases:

i. OA No. 2509 of 2008 titled Rohtas & Another Vs. Union of India and others decided on 21.01.2014

ii. OA No. 107 of 2009 titled Om Prakash & Ors Vs. Union of India and others decided on 21.01.2011

iii. OA No. 4516 of 2013 titled Prem Singh and others Vs. Union of India and others decided on 18.03.2015

Learned counsel for the applicant further submits that the above judgment were challenged by the respondents therein before the Hon'ble High Court of Delhi wherein the same were dismissed and thus, it can be considered that the judgments have attained finality and as such similar relief as claimed by the applicant herein can be extended in the instant case.

8. To substantiate his arguments, learned counsel for the applicant further submits that in the judgment passed by the Constitution Bench of the Apex Court

in case titled K.C. Sharma and others Vs. Union of India and others reported in 1997 (6) SCC 721, the Hon'ble Court laid down the ratio that "Application filed by similarly placed persons should not be rejected for bar of limitation" and as such the applicant in the instant case is liable to be granted the relief as claimed herein.

9. Learned counsel for the applicant further refers to the judgment dated 18.10.2010 passed by the Apex Court in case titled Sant Lal Gupta and others Vs. Modern Cooperative Group Housing Society Limited and others reported in (2010) 13 SCC 336 held that coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law.

10. Learned counsel for the applicant further submits that seeking redressal of his grievance, the applicant has also preferred a representation dated 02.03.2021 to the respondents but the same was rejected by the respondents vide impugned order dated 20.04.2021 without paying heed to the judgments as have been quoted above and without consideration of all the facts and circumstances of the case and without any application of mind.

11. Learned counsel for the applicant goes on to further submit that the impugned order dated 20.04.2021 cannot sustain in the eye of law as the respondents have passed that order only on the ground that right from the beginning the Duty Roaster of both the Gates i.e. Gate No 16-B and Gate No. 59-C is of 12 Hours per day, which implies that respondents failed to take into account the law laid down in various judgments as have been quoted above. Learned counsel submits that having been discriminated against by not being extended the benefit as have been extended by the others Courts to the similarly placed candidates who approached those Courts, gross violation of Articles 14, 16 and 21 of the Constitution has occurred and thus, the instant original application may be allowed with the relief claimed by the applicant.

12. Learned counsel for the respondents vehemently opposes the submissions of the learned counsel for the applicant and by way of his counter affidavit, he submits that as per the classification under H.O.E.R., for the C-class gate which comes under 'Essentially intermittent' category, total 72 (48+24) hours duty in a week has been prescribed. This has been clearly prescribed as per Circular RBE No. 131/2015.

13. Learned counsel for the respondents further submits that the applicant was posted at Gate No. 16-B and the duty roaster was 12 hours and even at present also, the duty roaster of Gate No. 16-B is of 12 hours. The duty roaster was never of 8 hours and as such the applicant is not entitled for any overtime allowances. He further submits that same applies for Gate No. 59-C as well.

14. Learned counsel for the respondents further submits that all the judgments which have been relied upon by the applicant claiming that the aggrieved

persons who got relief therein were similarly placed as with the applicant herein, have no scope of implementation or reference in the instant case of the applicant. The facts and circumstances of the applicants in those judgments were completely different with that of the applicant. Thus, learned counsel submits that the instant case is liable to be dismissed being devoid of merits.

15. I have considered the rival contentions advanced by the learned counsel appearing for the parties and also gone through the documents on record and judgments referred to.

16. As the facts of the case have already been narrated above, the same are not reiterated for the sake of brevity. There is no dispute as regards to the fact that the applicant had put in a service of 12 hours regularly for the period from 30.09.1995 to 31.01.2017 while working as Gateman at Gate No. 16-B and 49-C. The limited question which is required to be settled here is whether the applicant is liable to be paid overtime allowances for the entire period.

17. It would be in the fitness of things to straightway refer to the judgment dated 29.08.2017 passed by the Principal Bench of the Central Administrative Tribunal in OA No. 643 of 2015 titled Hari Ram & Ors Vs. Union of India which has been referred to by the applicant counsel in support of his arguments. A perusal of the said judgments reveals that it dealt with similar facts and circumstances as are being dealt with in the instant case of the applicant. For the sake of clarity, the operative portion of the above judgment is reproduced herein below:

"10. I have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. I find that the Tribunal has clearly held in Om Prakash & Another, Rohtas and Another and Prem Singh & Others (supra) that a Gateman does not come under the 'Essentially Intermittent' category and is thus required to work for only 08 hours a day. Since he is made to work for 12 hours per day, he is entitled for the grant of OTA for 04 hours of extra work per day. The judgment of the Tribunal in the case of Rohtas and Another (supra) has been upheld by the Hon'ble High Court of Delhi in Writ Petition (C) No.8088/2016, the operative part of which reads as under:

"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."

11. The respondents have not challenged the *ibid* judgment of the Hon'ble High Court of Delhi and thus the said judgment and so also the orders of the Tribunal mentioned *supra* have attained finality.

12. The sole contention of the learned counsel for the respondents was that the applicants come under the 'Essentially Intermittent' category and that in terms of the order of this Tribunal in *Vijay Pal Singh & Ors. (supra)*, they are not entitled for OTA.

13. I have considered the order of the Tribunal in *Vijay Pal Singh & Ors. (supra)*. The issue involved therein was entirely different. The applicants therein were seeking reclassification of Noli Railway Station, where they were working, from 'Essentially Intermittent' to 'Continuous'. The Tribunal, however, did not find any merit in their contention and dismissed the OA vide order dated 15.05.2017. The relevant portion of the order is extracted below:

14. OA No. 107/2009 (*supra*), OA No.3378/2011 (*supra*) and W. P. (C) No.7164/2011 (*supra*) all pertained to payment of overtime allowance whereas the applicants are seeking reclassification of Noli Station from "essentially intermittent" to "continuous". Therefore, these orders/judgments do not help the applicants in any manner as they are not applicable at all. Secondly, as the respondents have pointed out, the Railway Servants (Hours of Work and Period of Rest) Rules, 2005, and specifically Rules 3 and 4 provide for channels of appeal. In case an employee is dissatisfied with the declaration of the employment of the Railway servant as "intensive" or "essentially intermittent" the same can be challenged under Rule 3 by filing an appeal before the Regional Labour Commissioner within 90 days. If he is aggrieved by the decision of the Regional Labour Commissioner then, under Rule 4, he may prefer an appeal to the Secretary to the Government of India in the Ministry of Labour within a further period of 90 days. The applicants have not done so and approached this Tribunal directly. Moreover, the learned counsel for the respondents has correctly pointed out that there is enormous delay on the part of the applicants in filing this OA, which is not adequately explained.

15. In view of above, I am of the opinion that the OA is not maintainable as being violative of both Sections 20 and 21 of the Act and is, therefore, dismissed. No costs."

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)*."

18. Furthermore, the case of *Om Prakash (supra)* and *Rohtas (supra)* has also been discussed in the judgment dated 29.08.2014 passed by the Hon'ble High

Court of Delhi in W P (C) No. 5510 of 2014 titled Union of India Vs. Shri Dharambir and others wherein the prayer of the respondents was dismissed and further, the Hon'ble Court also dealt with and recorded the exact position as regards to the grant of overtime allowances to the similarly situated applicants. For the sake of clarity, the relied upon paragraphs are reproduced herein below:

"3. Rule 7(3) of the Railway Servants (Hours of Work & Period of Rests) Rules, 2005 (hereinafter referred to as, 'the Rules') provides as follows:

"3. Essentially Intermittent:

The work of an employee is to be regarded a 'essentially intermittent' if his daily duty hours which should be assumed to be twelve hours per day include-

- a. one period of inaction of not less than one hour, or two such periods of not less than half an hour each and
- b. various periods of inaction including the period of inaction specified in Clause (a) aggregating 50 percent or more, during which he is not generally called upon to display either physical activities or sustained attention.

Note: In assessing the work-load of the 'essentially intermittent' classification in accordance with sub-section (b) of section 130, periods of inaction of less than 5 minutes shall be ignored."

4. Rule 8 provides for fixation of hours of work. Rule 8(3) & 8(4) provide as follows:

"3. The standard hours of duty for different classes of employment of Railway servants shall be as under:

- a. Intensive - 42 hours a week;
- b. Continuous - 48 hours a week; and
- c. Essentially intermittent - 48 hours a week;

4. (a) Railway servants having essentially intermittent class of employment shall called upon to work as per rule 8(2)(ii) additional hours as indicated below:

(i) Gatemen 'C' Caretakers of Rest houses and Reservoirs Etc. Chowkidars and Saloon attendants. - 24 additional hours per week.

(ii) Railway servants posted to work in Essentially Intermittent employment at road-side stations and provided with residential quarters within 0.5 from their place of duty. - -do-

(iii) Rest of the employees posted to work in Essentially Intermittent class of employment - 12 additional hours per week.

b. such additional hours of work shall be reflected in the duty rosters of the Railway servants concerned."

5. The respondents had approached the Tribunal by filing OA No.3378/2011 on the basis that they were working on the posts of Gatemen on different roadside gates at Rohtak Station. The respondents claimed that they were performing 12 hours duty without any overtime allowance. The respondents raised the plea that they were categorized as in 'essentially intermittent' employment. Their submission was that the standard hours of work under Rule 8(3) is 48 hours per week, and additional hours of work can be taken as per Rule 8(4) only. The respondents contended that their cases were not covered by Rule 8(4)(a)(i) or (ii). Therefore, they could not be required to work for 48 + 24 i.e. 72 hours per week. They could, at best, be subjected to 12 hours of extra duty under clause 8(4)(a)(iii). The second relief sought in the Original Application was to seek a direction to the petitioner to grant overtime allowance to the applicants for four hours overtime daily, on account of the fact that they were assigned 12 hours of duty on a daily basis as opposed to 8 hours duty which they were bound to render as a term of their employment.

6. The aforesaid O.A. No. 3378/2011 was disposed of on 16.09.2011 by the Tribunal. The respondents relied upon earlier orders of the Tribunal in Rohtas & Others Vs. Union of India and others and Om Prakash and another Vs. Union of India and others in O.A. No. 107/2009 decided on 21.01.2011. The Tribunal disposed of the said O.A. with a direction to the petitioner to consider the respondent's claim having regard to the order of the Tribunal in Om Prakash and another (supra).

7. The petitioner, consequently, passed an order dated 01.12.2011 wherein the petitioner stated as follows:

"In reference to above subject Gangman's are informed that the judgment of the Hon'ble CAT, New Delhi is based on the judgment in the case of Sh. Om Parkash S/o Shri Nath R/o Q.No. 6D, Maha Laxmi Garden, Gurgaon Vs. Union of India CAT/NDLS January, 2011. The duty roster of Sh. Om Parkash is stated to be eight hours whereas your duty roster is twelve hours and therefore, over time is not payable to you this is for your information."

8. In consequence thereof, the respondents preferred O.A. No. 3054/2012 which has been disposed of by the Tribunal. The order of the Tribunal reads as follows:

"Heard the matter in great detail.

The respondents raised a preliminary objection that applicant should have approached to Regional Manager for his grievance redressal as provided in the Act itself but since in Administrative Tribunals Act, 1985 also some provision is available it falls within the pattern of choice which is available.

After hearing both the counsel, it appears that the matter is covered by an earlier order of this Court in O.A. 1097/2009 dated 21.01.2011 (sic O.A. 107/2009). It is also to be noted that the same case was taken to Hon'ble High Court of Delhi in WP(C) No. 7164/2011 and was heard along with other matters

of similar nature and it was found that Tribunal has reached on the correct conclusion and directed the respondents therein, who are the applicants earlier were entitled to overtime wages. Therefore, the same is the case also here. Judicial propriety demands that we follow the dictum. Therefore, the OA is allowed to the same extent. No order as to costs."

9. From the aforesaid, it would be seen that the Tribunal entirely relied upon the earlier order in O.A. No. 107/2009 in the case of Om Prakash and Anr. (supra).

10. The Tribunal takes note of the fact that the said order (which was passed in case of Om Prakash & Karan Singh Vs. Union of India had been upheld by this Court in WP(C) No. 7164/2011 and several other matters.

11. At this stage, we may refer to the decision in Om Prakash & Karan Singh Vs. Union of India in O.A. No. 107/2009, decided on 21.01.2011. In that case as well, the issue of classification of the petitioners' employment has been raised. The petitioner had defended the classification of the applicants Om Prakash & Karan Singh who were also working as Gatemen, as being employed 'essentially intermittent' employment. The Tribunal, however, found in favour of the applicants and in the operative part, held as follows:

"Therefore, the O.A. is allowed. It is hereby declared that the 'A' class Gatemen are bound to work 8 hours duty and in case of additional working hours, they are to be paid the overtime allowance, as stipulated under the rules. It is pointed out that Rule 10 of the Rules ibid prescribes the method of calculating the overtime allowance. It shall be taken note of by the respondents as a methodology. It is made clear that within the three months next, the respondents shall calculate the overtime allowance payable to the applicants from the date of institution of the OA and make it available to the applicants. No costs."

12. The said decision of the Tribunal was assailed before this Court along with another similar decision of the Tribunal in O.A. No. 2509/2008 in the case of Rohtas and Mange Ram.

13. As noticed above, the said writ petition including WP(C) No. 7164/2011 arising from the Tribunal's order in the case of Om Prakash were dismissed. However, in paragraph 14 of the said order, this Court recorded as follows:

"For record we would note that it is the admitted case of the parties that 12 hours shift is permissible without extra ages 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."

14. Rule 8(3) prescribes standard hours of duty of 'essentially intermittent' category as 48 hours a week even for the 'continuous' classification. The standard hours are prescribed as 48 hours a week. Gatemen and the Railway servants posted to work in 'essentially intermittent' employment in roadside stations can be assigned additional duty of 24 hours per week if the condition stipulated in Rule 8(4)(a)(ii) are satisfied. In all other cases-not covered by Rule

8(4)(a)(ii) or (iii), the number of additional hours that work could be assigned is limited to 12 hours per week. Since the standard hours of duty is 48 hours per week, the total number of hours per week would translate to 60 hours per week or 10 hours per day for a 6 day week.

15. The aspect of payment of overtime allowance is dealt with in Rule 10 of the Rules. Rule 10(1) reads as follows:

"10(1) Where a Railway servant is required to render extra hours of duty beyond the roster hours fixed in accordance with rule 8 or beyond the limits specified for different classes of Railway servant under Section 132 he shall be paid overtime for such extra hours of work subject to the principle of averaging as specified in sub-rule (2).

16. From the aforesaid, it is evident that if railway servant is required to render extra hours of duty beyond the roster hours fixed in accordance with Rule 8, or beyond the limits specified for different classes of railway servants, he shall be paid overtime for such extra hours of work subject, to the principles of averaging as specified in sub-rule (2). This being the position, we fail to appreciate as to how the petitioner can contend that the respondents would not be entitled to overtime allowance for services rendered beyond 60 hours per week to be calculated as per Rule 10 of the Rules. We find that the issue raised by the petitioner is covered by the earlier decision of the Tribunal which has been affirmed by this Court.

Despite the decision in the case of Om Prakash (supra) having attained finality in WP(C) No. 7164/2011, the petitioner continuous to pursue the same issue before this Court leading to unnecessary waste of time and resources, inter alia, of this Court. Accordingly, we dismiss the present writ petition with costs quantified at Rs. 25,000/-. Costs be paid within four weeks."

19. Thus, after going through the entire judgment of the Hon'ble High Court of Delhi as have been quoted above wherein the case of Om Prakash (supra) and other cases which have similar facts and circumstances as the instant case of the applicant, it leaves no doubt that the applicant is liable to be granted the benefit as claimed. This is especially when the judgment of Om Prakash (supra) and other similar cases have been affirmed by the Hon'ble High Court on more than one occasion. Thus, the instant original application is liable to be allowed and is accordingly, allowed. Impugned order dated 20.04.2021 is hereby set aside. The competent authority amongst the respondents is hereby directed to grant the benefit of Over Time Allowance to the applicant as has been claimed in the OA. The said exercise must be completed within a period of three months from the date of receipt of certified copy of this order without fail.

20. All associated MAs stand disposed of accordingly.

21. No costs.