

(2019) 10 CAT CK 0066

In the Central Administrative Tribunal

Case No : Original Application No. 4301 Of 2018, Miscellaneous Application No. 4888 Of 2018

Narender Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Citation : (2019) 10 CAT CK 0066

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

Bench : Single Bench

Advocate : Yogesh Sharma, Sonika, Shailendra Tiwari

Final Decision : Disposed Of

Judgement

1. MA No. 4888/2018 for joining together is allowed for the reasons stated therein.

2. The applicants have filed this OA, seeking the following reliefs:-

"(i) That the Hon"ble Tribunal may graciously be pleased to pass an order declaring to the effect tht 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 applicants as Gateman with all the consequential benefits including the arrear of overtime allowances with interest.

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

3. It is the case of the applicants that they have not been provided with any residential Railway quarters within the prescribed distance from the place of their posting as Gateman and hence they are entitled to OTA under Para 10 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005 Board, which reads as under:-

"10. Principle of averaging and payment of overtime allowance.

(1) Where a Railway servant is required to render extra hours of duty beyond the rostered 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).

(2) Averaging shall be done by averaging of the hours of work over the averaging periods as specified in Section 132 which has been adopted to provide a reasonable measure of elasticity as essential in railway working for certain classes of Railway servants and it shall apply to-

(i) running staff;

(ii) operating staff;

(iii) shift workers; and

(iv) those other Railway servants whose work is connected with the work of any of the categories of Railway servants mentioned in clauses (i), (ii) and (iii).

(3) Subject to the provisions contained in sub-section (4) of Section 132, payment of overtime for excess hours of work shall be made as under :-

(i) for the excess hours of work rendered by a Railway servant between the limits of prescribed rostered hours of work and the hours prescribed in Section 132, during the relevant averaging period, payment shall be made at 1 1/2 times the ordinary rate of pay; and

(ii) for the excess hours of work rendered beyond the limits prescribed in Section 132, payment shall be made at two times the ordinary rate of pay."

4. It is further noticed that the applicant had even served a legal notice to the respondents on 28.09.2017, but the same has not been responded to by the respondents.

5. In their CA, the respondents have responded in a general manner by stating that a number of Gateman are appointed on the Gates as per the actual job analysis and the gate on which the employee is classified as Essentially Intermittent and hence, their duty hours would be 12 hrs. However, in Para 4.10 to 4.13, without answering the specific issue stated in the legal notice, they have tried to deny the averments without making any clear assertion.

6. Hence, in view of the factual situation as explained by the learned counsel for

the applicants, the OA is disposed of in terms of OA No. 1433/2018. Accordingly, the applicants are permitted to submit their representation individually giving the details of their residence and place of their duty and duty hours served within 30 days from the date of receipt of a certified copy of this order and thereafter respondents shall consider the same and pass a reasoned and speaking order thereon, keeping in view the rule position and instructions on the subject, within a period of 90 days from the date of receipt of such representations from the aforesaid applicants.

7. With the aforesaid directions, the OA is disposed of. No order as to costs.