
(2020) 02 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application No. 4150 Of 2016

Sombir And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

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

Citation : (2020) 02 CAT CK 0005

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, Shailendra Tiwary

Final Decision : Disposed Of

Judgement

1. The applicants (eight in number) are Gatemen working under respondent no.4. They have filed this OA jointly and have also prayed for joining of parties by filing MA No.3733/2016, which has already been allowed vide order dated 29.05.2019.

2. The applicants have prayed for the following reliefs:-

â??(i) That the Honâ??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 roster for the applicants is illegal, arbitrary, against the rules and consequently pass an order directing the

respondents to prepare 8 hours per day/48 hours weekly roster for the applicants who are working to the post of Gateman.

(ii) That Honâ??ble Tribunal may graciously be pleased to pass an order directing the respondents to grant of over time allowances to the applicants

for 4 hours over time daily from the date of posting of the applicants on these gates with all the consequential benefits including the arrear of over time

allowances with interest.

(iii) Any other relief which the Honâ??ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.â??

3. It is the contention of the applicants that their services are categorized as â??essential intermittentâ?? whereas they claim that

they come under the category of â??Continuous Serviceâ?? and therefore, should have 8 hours per day working roster instead of 12 hours working

roster. They have also stated that they have not been provided residential accommodation within the prescribed distance of 500 meter from the place

of their duty. They contend that if more work is taken from them then they should be given over time allowance.

4. The respondents have denied the claims of the applicants and have stated that as per rules the applicants have been categorized as â??Essential

Intermittentâ??. They have further stated that in case the applicants were aggrieved by this categorization, they should have complained to the

Regional Labour Commissioner as provided under Rule 4 of the Railway Servants (Hours of work and Period of Rest) Rules, 2005, which they have

not done.

5. The respondents have not admitted the claims of the applicants that they have not been given accommodation within 500 meters from the place of

their duty. However, there is some confusion in the reply regarding details of the applicants who have been given residential accommodation and those

who have not been given.

6. Heard Sh. Yogesh Sharma, learned counsel for the applicants and Sh. Shailendra Tiwary, learned counsel for the respondents. Both sides have filed

rulings in support of their respective contentions.

7. The applicants have cited orders passed by this Tribunal in Hari Ram & Others Vs. Union of India & Ors. [OA No.643/2015 decided on

29.08.2017]. In the said OA, the Tribunal had held that Gatemen perform

â??Continuousâ?? and not â??Essentially Intermittentâ?? duty and are thus entitled for OTA for extra hours of work beyond 8 hours per day. This

order of the Tribunal was upheld by the Honâ??ble High Court of Delhi in WP(C) No.8408/2018 [Union of India & Ors. vs. Balwan Singh & Ors.]

and WP(C) No.8628/2018 [Union of India & Ors. vs. Hari Ram & Ors.] decided by a common order dated 20.03.2019.

8. The respondents have stated that against the Tribunal's order in Hari Ram's case (supra) a Review Petition has been filed

before the Hon'ble High Court of Delhi. They have also stated that this Tribunal in Hari Ram's case (supra) did not consider the rule position

by which the factum of having accommodation within 500 meters disentitles them from any over time allowance.

9. The applicants have also cited the decision of this Tribunal in case of Prem Singh & Ors. V/s Union of India & Ors. [OA No.4516/2013 decided on

18.03.2015] wherein the respondents were directed to prepare eight hours per day/40 hours weekly roster for the applicants who were

Class Gatemen. The respondents have submitted that the decision of this Tribunal in Prem Singh's case (supra) is clearly distinguishable as the

same pertains to class Gatemen only.

10. The respondents have cited the orders of this Tribunal in Sunil & Others V/s Union of India & Ors. [OA No.1433/2018 decided on 13.09.2019]

and in Narender Kumar & Ors. V/s Union of India & Ors. [OA No.4301/2018 decided on 22.10.2019].

11. In Sunil's case (supra), this Tribunal held that those of the applicants who had been provided railway quarter within the prescribed distance of

500 meters from their place of duty were allowed overtime allowances and those who had quarters beyond the prescribed distance of 500 meters

from the Gate, were permitted to submit their representation individually giving the details of their residence and place of duty after which the

respondents would consider the same and pass a reasoned and speaking order keeping in view the rule position and instructions on the subject.

12. First of all, for the sake of clarity, it is necessary to go through Clauses 3 & 4 of Rule 8 of the Rules *ibid*, which reads as under:-

(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 be 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

(ii) Railway servants posted to work in

Essentially Intermittent employment at -24 additional

road-side stations and provided with hours per week

residential quarters with 0.5 Kms. from

their place of duty.

From a perusal of the above, it is clear that the reasoning behind the rule is that where the traffic load is not very heavy and the employee has been

provided residential quarter within 500 meters from the place of duty, it is possible for the employee to be at home and go for gate duty only as and

when required. Therefore, the conditionality of provision of residential quarter within 500 meters from the gate becomes very critical in this matter.

13. Having discussed the facts and circumstances of the case, it is held that in Hari Ram's case (supra) the conditionality of provision of

residential quarter within 500 meters from the place of duty was not taken into account in the decision taken. As discussed above, this was a very

essential conditionality which has been pointed out at length in the current OA. Further, the decision of this Tribunal in Prem Singh's case (supra)

pertains to 'A' Class Gateman whereas none of the present applicants claim to be 'A' Class Gatemen therefore, this decision is

distinguished from the present case.

14. Having discussed all the circumstances of the case and rulings relied upon by both the parties, I am of the view that Sunil's case (supra) and

Narender Kumar's case (supra) are applicable in the current matter since they are identical and have taken into account all essential elements

provided in the Rules.

15. Hence, this OA is disposed of accordingly. The applicants are permitted to give their representation individually clearly indicating the category of

Gateman to which they belong, their place of posting as well as the status of residential accommodation provided to them within 30 days from the date

of receipt of a certified copy of this order. Thereafter the respondents shall consider the same and pass a reasoned and speaking order keeping in

view the position of rules and law as well as instructions on the subject, within a period of 90 days from the date of receipt of such representations from the applicants.

16. There shall be no order as to costs.