

(2019) 10 CAT CK 0043
In the Central Administrative Tribunal
Case No : Original Application No. 92 Of 2018

Umed Singh And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Railway Servants (Hours Of Work And Period Of Rest) Rules, 2005 — Rule 3, 4, 8(2)
(ii), 8(3), 8(4), 10

Citation : (2019) 10 CAT CK 0043

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

Bench : Single Bench

Advocate : Yogesh Sharma, Kripa Shankar Prasad

Final Decision : Disposed Of

Judgement

1. By filing this OA, the applicant is seeking the following reliefs:-

(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 27.7.2017 (Anex.A/1) declaring to the effect that the action of the respondents preparing ` 12 hours per day/75 hours weeks 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 arrears 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. Brief facts of the case are that some of the applicants in this case were retired

as Gateman and some of them are working as Gateman. Their grievance in this case is with order dated 27.7.2017 (Annexure A/1) which was passed in pursuance to direction of this Tribunal passed in OA 1642/2017 (filed by the same applicants) dated 15.5.2017 in which the respondents were directed to decide the legal notice dated 2.1.2017 of the applicant within three months. In the said order, the respondents by placing reliance on the Rule on the subject have stated at as per study conducted, this crossing was determined as C? class to be manned by two gateman (1 each in 12 hours shift) and thus they are mandated to work 12 hours shift as per gate classification, which implies that there is no overtime due to them. They further stated that regarding the submission that they have not been provided railway quarters, it is stated that a number of applicants are currently residing in railway accommodation near to these gates, i.e., the place of their duties. As such no over time is due to them and their claim for overtime performing duty for 12 hours is not tenable.

3. During the course of hearing counsel for the applicants placed reliance on the decision of coordinate Bench in OA No.643/2015 (Hari Ram and others vs. Union of India and others) decided on 22.8.2017 in which this Tribunal observed as under:-

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 8 hours per day. The OA is, therefore, allowed in terms of the order of this Tribunal in the case of Om Prakash & Another (supra).?

Counsel for the applicants also placed reliance on R.B.E. No.131/2005 issued by the Railways on revision of the Railway Servants (Hours of Employment) Rules, 1961 and drew our attention to para 7 which reads as under:-

7. Criteria for determining classification of railway servants-

(1) Continuous : All employments of Railway servants except those exclude: from the purview of the Hours of Employment Regulations are assumed to be 'Continuous'. Thereafter, on the basis of factual job analysis, the employment may be classified either as 'intensive' or 'essentially intermittent', as the case may be.

(2) Intensive : The two important factors in declaring an employment as 'Intensive' under clause (d) of section 130 of the Act are :-

(i) strenuous nature of the work tending to cause mental or physical strain; and

(ii) continuous application to such work with little or no periods of relaxation

Explanation I:- The term 'continued concentration' in clause (d) of the Section 130 is intended to convey that the attention demanded of the Railway servant concern&:: for a particular nature of job should be exclusive not to allow any other thought or idea to enter the mind and must be of such nature as to cause strain (physical or mental or both) upon the Railway servant concerned as a result of continuous application to such work over certain period without reasonable periods of respite. Thus, having regard to the entire period of duty and nature of work, the prescribed authority shall before declaring any employment as 'Intensive', satisfy itself that the above factors are present in the job concerned. In other words, the prescribed authority shall consider whether the job is of such a character that it demands continued concentration without any reasonable periods of relaxation.

Explanation II:- Factor (ii) should be considered to have been satisfied where the periods of rest, inaction or relaxation do not aggregate 6 hours or more in a cycle of 24 hours or one hour or more in a shift of 8 hours.

(3) Essentially Intermittent: The work of an employee is to be regarded as '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 per cent 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. On the other hand, learned counsel for the respondents submitted that in pursuance of order of this Tribunal dated 15. 5.2017, the respondents have passed the order dated 27. 7.2017 which is legally sustainable as the same is based on the rules on the subject. Counsel by referring to their counter affidavit submitted that applicants have worked at 'C' category gates, which generally implies lowest amount of traffic (except of 'D' class). Counsel for the respondents admitted that only 07 applicants out of 15 applicants in this OA were provided residential facility within 0.5 Km, i.e., applicant nos.2, 3 5, 9 10, 11 and 13. Counsel further submitted that as per Rules of 2005 ibid the standard hours of duty of essential intermittent employees is 48 hours + 24 hours as per week and Gateman C category are also classified as essential intermittent.

5. In rebuttal counsel for the applicant submitted that all the gates are on heavy traffic road sides, which are required to open and closed on every arrival of train and therefore, in such a situation particularly when the post of Gateman is safety post on account of both i.e. Train Safety as well as Public Traffic safety with signal control and telephone controlled and therefore in such circumstances treating the applicant in the category of Essentially Intermittent is not only wrong but also arbitrary. Counsel for the applicant emphasized that the applicants come within the category of continuous and therefore 12 hours working roster should be amended to 8 hours and they are also entitled for over time allowance for extra hours of working in terms of Rule 10 of the Rules of 2005 and applicants have admitted that in the category of essentially intermittent the working hours are only 48 hours and only in some of the category additional hours are prescribed for which the applicants are not coming in these additional hours category.

6. Having heard learned counsel for the parties and perusing the pleadings available on records, it is observed that the similar issues have also been considered by this very Bench while deciding the OA 1433/2018 vide Order dated 13. 9.2019, this Tribunal observed as under:-

2. This case was earlier heard by this very Bench on 5.9.2019 and the following orders were passed:-

Counsel for the applicant was heard. He makes out a case for payment of overtime allowance. However, we have noted that in the judgment discussed by

him, one very important consideration while framing these rules, was the determination of the fact that those, who are working as Gateman in different crossing/gates, were being given accommodations within a short distance from the said gates where they were expected to man. These crossings had been designated as such in which there is intermittent passage of trains and hence accommodation given closeby was the reason why the intermittent period of duty was taken into account and hence, the duty period was counted as 8 hrs.. Counsel for the applicant is asked to file the actual location of the residences allotted by the Railways and the distance from these gates where the applicants were stationed....?

3. In compliance of the aforesaid directions, the respondents have filed their additional affidavit in which they have given the details of the Railway Quarters provided to most of the applicants except six applicants, being applicant nos.10, 20, 21, 22, 23, 24 and 25 and most of the said Railway Quarters are within a distance of 500 meters from their place of posting except two Railway Quarters that too are also within 900 meters. Since the category of the applicants do not come within the class of special level crossing and the same come within the class of Essentially Intermittent and as per clauses (3) and (4) of Rule 8 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005, applicants who are in possession of Railway Quarters near to their place of duty are not entitled for the over time allowance. However, for the sake of clarity, clauses (3) and (4) of the Rule 8 of the Rules ibid 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

Now so far as applicants nos..... are concerned, since they are not provided any Railway Quarter near the place of duty and applicant nos. ... and ... appears to have quarters beyond the prescribed distance of 500 meters from the Gate, they are permitted to submit their representation individually giving the details of their residence and place of their duty within 30 days from the date of receipt of a certified copy of this Order and thereafter respondents will consider the same and pass a reasoned and speaking order 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 six applicants.

4. In the result, the present OA is disposed of in above terms. There shall be no order as to costs.?

7. This Tribunal is of the considered view that present case is squarely covered by the aforesaid decision of this Bench and accordingly since the respondents have admitted in para 4. 5 of their counter affidavit that except the aforesaid seven applicants (applicant nos.2, 3 5, 9 10, 11 and 13), none of other applicants were provided the residential quarter within 0. 5 Km. Therefore, the applicants, except applicant nos.2, 3 5, 9 10, 11 and 13, are permitted to submit their representation individually giving the details of their residence and place of their duty within 30 days from the date of receipt of a certified copy of this Order. Thereafter respondents will consider the same and pass a reasoned and speaking order keeping in view the rule position and instructions on the subject, within a period of 60 days from the date of receipt of such representations from the remaining eight applicants and make payments for OTA, if found due, within 45 days thereon.

8. In the result, the present OA is disposed of in above terms. There shall be no order as to costs.