

(2013) 02 DEL CK 0282

In the Delhi High Court

Case No : Writ Petition (C) 7164 of 2011

Union of India and Others

APPELLANT

Vs

Om Prakash and Another

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0282

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jagjit Singh and Mr. Amit Dubey, for the Appellant; A.K. Trivedi, Advocate and Mr. Vivek B. Saharya, Advocate for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 16311/2011 in WP(C) No. 7164/2011 and CM No. 16329/2011 (delay) in WP(C) No. 7172/2011

Allowed.

WP(C) 7164/2011 & 7172/2011

1. Rohtas and Mange Ram filed OA No. 2509/2008 and succeeded before the Central Administrative Tribunal and the order passed by the Tribunal in their favour on January 21, 2011 is under challenge in WP(C) No. 7172/2011. Order dated March 20, 2008 passed by the petitioner was set aside. The order reads as under:-

On reference to above subject it is brought to your kind notice that factual job analysis have also been carried out where it is examined that the action period on an average basis come in 10-17 minutes per day (i.e. out of 24 hrs) which is less than 50 statutory limit i.e. 12 hrs per day. Hence, it does not warrant to change in present classification as such status quo is to be maintained.

Om Prakash and Karan Singh filed OA No. 107/2009 laying a challenge to an order dated April 09, 2008 which reads identical to the aforesaid order which was challenged by Rohtas and Mange Ram and have succeeded before the Tribunal.

2. Learned counsel for the parties state that except for Railway Crossing Number which is different, the facts are identical and thus we may note the relevant facts pertaining to OA No. 2509/2008 filed by Rohtas and Mange Ram. It is not in dispute that various railway crossings which are manned are put in different categories depending upon the volume of traffic to be handled i.e. the railway crossing to be closed for vehicular traffic. It is also not in dispute that for such railway employees who perform continuous duty, with vigilance, the shift is 8 hours but where the duty is of a kind where the person can take intermittent rest, the duty duration is 12 hours. Pertaining to railway crossing, where the numbers of trains pass with high frequency, upon the plain logic that the man manning the railway crossing would have to repetitively and with frequency shut and open the gates for vehicular traffic to cross over, it could not be treated that the duty is of a kind where there is intermittent rest. But where the frequency is low, the person concerned would be having the benefit of intermittent rest.

3. The two railway crossings with which we are concerned were in the erstwhile jurisdiction of Bikaner Division when an exercise was carried out to determine the frequency with which the trains passed at the crossings. After a detailed study it was specifically recorded that the level crossing is of Class A to be manned by three gatemen i.e. for a duration of 8 hours each.

4. Since counsel agree that facts pertaining to the claim made by Rohtas and Mange Ram be noted, we record that the railway crossing is No. 23 and the level crossing gate is numbered 23A. It was classified as in Class "A" as per report dated March 18, 2001 after studying the volume of traffic. The report clearly records that the crossing has to be manned by three gatemen.

5. Similar is the position in the other case.

6. When the two railway crossings were assigned to the Delhi Division, a similar exercise was carried out and it was once again recorded that the crossing was of Category "A" to be manned by three gatemen. Pertaining to the gate and the railway crossing manned by Rohtas and Mange Ram it was once again recorded that the same was to be manned by three gatemen as per an order dated July 08, 2006 which was issued after the senior DSTE (Coordination), Senior DEN-V and Senior DOM had conducted the survey.

7. The four claimants were simply highlighting that being required to perform duties for 12 hours, they should be paid overtime allowance and for which they highlighted the orders issued after survey when the two crossings were under Bikaner Division as also when re-survey was done when the crossing came under Delhi Division. They admittedly had worked for 12 hours each day.

8. For reasons unknown and with respect to which learned counsel for the

petitioner has been unable to throw any light, while passing the impugned orders, it was written that job analysis carried out would warrant it to be recorded that action period was less than 12 hours per day.

9. Learned counsel for the petitioners would urge that the actual reason is a typing error in the reports prepared by the Bikaner Division and the Delhi Division. Instead of the figure "2", the figure "3" got typed by mistake.

10. We do not agree. The reason is simple.

11. 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".

12. 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".

13. 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.

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

CM No. 16312/2011 (Stay) in WP(C) No. 7164/2011 and CM 16330/2011 in WP(C) No. 7172/2011(Stay)

Disposed of as infructuous.