

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00023 of 2019

Friday, this the 3rd day of January, 2020

CORAM

Hon'ble Mr.Ashish Kalia, Judicial Member

1. K.G. Gopi, aged 50 years, S/o. Govindan, AC Coach attendant, Under Senior Section Engineer/AC/Trivandrum Central, **Southern Railway, Residing at Erattuvila Vadakkthil Veedu**, Perumpuzha P.O., Kundara, Kollam.
2. Sinumon P.J. aged 37 years, S/o. Jayaprakash K, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at Parappil House, Mannancherry P.O., Alappuzha-688538.
3. K.B Sasidharan Nair, aged 51 years, S/o. Balakrishnan Nair, AC Coach attendant, Under Senior Section Engineer/AC/ Trivandrum Central, Southern Railway, Residing at Malamel Kunnathu House, Channanikdu Chozikad, Kottayam.
4. S. Jagadeesh Babu, aged 57 years, S/o. P. Sankara Pillai, AC Coach Attendant, Under Senior Section Engineer/AC/ Trivandrum Central, Southern Railway, Residing at Nellikkala Veedu, Bhootakulam P.O., South Paravur, Kollam.
5. K. Sreekumaran Pillai, aged 54 years, S/o. Kochunaran Pillai, AC Coach Attendant, Under Senior Section Engineer/AC/ Trivandrum Central, Southern Railway, Residing at Sreedevi Vilasam, Karicode Chanathope P.O., Bharath Nagar 42, Kollam.
6. P. Jyothivel, aged 50 years, S/o. Ponnusamy, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at Thangammapatty, Ayyalur P.O., Dindigul, Tamil Nadu-624801.
7. T. Remesh Kumar, aged 50 years, S/o. Thankappan, working as AC Technician Grade-I, under Senior Section Engineer/AC/ Trivandrum Central, Southern Railway, residing at Thottumugham, Iswariya Nagar, Mangad P.O., Kollam.

8. S.S. Rajan, aged 53 years, S/o.N.Soman, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at Kadayil Veedu, Kalliyode, Panavoor P.O., Nedumangadu, Trivandrum

9. S. Zakir Hussain, aged 50 years, S/o. M. Shmsudeen, AC Coach Attendant, Under Senior Section Engineer/AC/ Trivandrum Central, Southern Railway, Residing at Thara Manzil, Thazamooth, Chathannoor, Kollam.

10. N. Ajikumar, aged 51 years, S/o. K. Natesan, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at A.R. Nivas, 62 Keli Nagar, Kilikollur P.O., Kollam.

11. S. Mohan, aged 58 years, S/o. Sahadevan Nadar, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at Kuzhivilai Veedu, Vettuvenni, Marthandam P.O., Kannyakumari District.

12. G.K Umamaheswaran, aged 57 years, S/o. G. Kuttanpillai, AC Coach Attendant, Under Senior Section Engineer/AC/ Trivandrum Central, Southern Railway, Residing at Kamalalayam, TC 20/262, Chekittarilakam Line, Melaranoor, Karamana.

13. E. Binu, aged 44 years, S/o.Evabeezarm AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at TC 26/663, Vanross Jn., Trivandrum-695001.

14. R. Subramanian, aged 50 years, S. Ramaiah, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at Plot No.2, Alamalu Mangai Nagar, Selvaraj Nagar Etn.-5, Urapakam, Chennai.

15. S. Sreekantan Nair, aged 55 years, S/o. P. Sukumaran Nair, AC Coach Attendant, Under Senior Section Engineer/AC/ - Trivandrum Central, Southern Railway, Residing at Sreeragam, Nambu Konam, Anacode, Panniyode P.O.

16. Anil Kumar, A, aged 48 years, S/o. Appukuttan Nair, AC Coach Attendant, Under Senior Section Engineer/AC/Trivandrum Central, Southern Railway, Residing at Panavila House, Pirappancode P.O., (Via) Venjaramood, Trivandrum.. ... Applicants

(By Advocate M/s.Varkey & Martin)

Versus

1. Union of India, represented by The General Manager, South Railway, Park Town, Chennai - 600 003.

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2. Senior Divisional Electrical Engineer, South Railway, Trivandrum Division, Trivandrum – 14
3. The Senior Divisional Personnel Officer, South Railway, Trivandrum Division, Trivandrum - 14
4. The Senior Section Engineer/AC, Southern Railway, Trivandrum Railway Station, Trivandrum-695014.
..... Respondents

(By Advocate, Mr.P.R.Sreejith, ACGSC for Respondents)

This application having been heard on 3rd January, 2020, the Tribunal on the same day delivered the following :

O R D E R (ORAL)

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The reliefs prayed for in the Original Application are as follows:

- (i) Declare that the applicants are entitled for payment of overtime allowance for duties performed in excess of 96 hours in a fortnight with effect from 1.1.2012 to 10.1.2015 and; direct the respondents accordingly.
- (ii) Declare that the applicants are entitled to be paid the balance OTA with effect from 10.1.2015, the date from which the respondents have been paying them OTA for work beyond 104 hours only, instead of beyond 96 hours in a fortnight and; direct the respondents accordingly.

2. The brief facts of the case are as under:

Applicants are aggrieved by the denial of overtime allowance by

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extending the benefits of Madras Bench decision in Annexure A-1. Applicants were working as AC Coach Attendants in the Trivandrum Division of Southern Railway from 1.1.2012 to 10.1.2015. This Original Application is filed seeking a direction to the respondents to extent the benefits granted by Madras Bench of this Tribunal in O.A 1158 of 2012 as the applicants are also similarly situated like the applicants in O.A 1158 of 2012.

3. Heard Mr.Martin G.Thottan representing M/s.Varkey & Martin, learned counsel for the applicant and Mr.P.R.Sreejith,ACGSC, learned counsel for the respondents. Perused the records.

4. Learned counsel for the applicant submits that this matter is squarely covered by the decision of the Madras Bench of this Tribunal in O.A 1158/2012. He pointed out that the grievances of the applicant in this O.A were akin to those of the applicants in O.A No.1158/2012. The relevant part of the Annexure A-1 order dated 12.4.2013 of the Madras Bench is extracted below:

“8. The short question that arises for consideration is whether the applicants are entitled for the relief viz., payment of OTA for extra duty hours exceeding 96 hours for two weeks instead of giving CR for extra hours of duty as claimed in this OA.

9. There is no dispute that the applicants are coming under the staff category classified as “Continuous” and they are entitled for Over Time Allowance as per Rule 10 of Railway Servants (Hours of Work and Period of Rest) Rules, 2005 and they have been granted OTA so far. It is only due to the issue of modified roster which came into effect from 25.12.2011 and subsequently came into effect from 1.1.2012, there appears to be some change in payment of OTA and the applicants are granted extra hours of compensatory rest instead of OTA. In this regard it is

relevant to peruse Rule 10 of Railway Servants (Hours of Work and Period of Rest) Rules, 2005, which reads as follows:

Rule 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) operation 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).....

(4) The hourly rate of overtime shall be worked out on the basis of rostered hours over the relevant averaging period.....”

Thus it is clear that the applicants are entitled for OTA beyond the rostered hours fixed in accordance with Rule 8(3)(b). The standard hour of duty for the category of “Continuous” in which the applicants are working is 48 hours per week and 96 hours bi weekly. This is a common and uniform rule adopted by the railways in various divisions of the Railways and there can not be a separate modified roster by the southern Railway alone. The submission made by the respondents in the reply that the applicants have to render duty for 54 hours per week and 108 hours in two weeks time for being eligible for Over Time Allowance is not correct as the rostered hours fixed in accordance with rule 8 of HOER Rules, 2005 stipulates 48 hours in a week and 96 hours in a fortnight and where a railway servant is required to render extra hours of duty beyond this period is entitled for OTA subject to the principle of averaging as specified in sub rule (2) supra.

10. That apart, a careful perusal of communication dated 23.12.2011 at Annexure A-6 page No. 28 of the OA reveals that for the better utilization of man power economically, the existing roster for AC accompanying staff has been Modified. This communication is issued from the Divisional Office, Electrical Branch, Thiruvananthapuram Division where the applicants are working. A further perusal of the impugned order dated 4.6.2012 (Annexure A1 at page 9 of the OA reveals that in the case of AC staff, no change of classification took place and only the link has been revised with the existing classification. Further, third paragraph of the communication dated 4.6.2012 reveals that there is no violation of the provisions notified in the case of AC staff at NC. The respondents have not mentioned about the modified roster anywhere in the impugned order and only in the last paragraph of the communication, the respondents have denied compliance of modified roster (emphasis added). Also the respondents can not modify the roster for Thiruvananthapuram division alone without following the principles of HOER Rules, 2005.

11. Under the circumstances, I am of the opinion that there is no necessity to interfere with the impugned order dated 4.6.2012 as the respondents themselves agreed that they have not complied with the modified roster. Further the respondents have to adopt uniform method to grant OTA for the employees of all divisions without restricting it to a particular division which is violative of the guidelines in HOER Rules, 2005. Accordingly, I hold that the applicants are

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entitled for over time allowance for excess hours of duty performed in excess of 96 hours + 8 P&C hours in a fortnight in terms of Rule 10 of Hour of Work and Period of Rest) Rules, 2005 and the respondents are further directed to pay OTA to the applicants for extra duty hours exceeding 96 hours for two weeks instead of giving CR for extra hours of duty. OA is allowed. NO order as to cost.”

5. It is seen that identical issue was considered by this Tribunal in O.A Nos.180/942/2018 also by following the above mentioned judgment. The first prayer in this Original Application is allowed in terms of the order of this Tribunal in O.A 942/2018. As regards the second prayer, the applicant may approach respondent no.3 by making a detailed representation within fifteen days from the date of receipt of a copy of this order. The respondent no.3 is directed to dispose of the representation so received in accordance with law within 60 days from the date of receipt of the representation.

6. This Original Application is disposed of as above. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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List of Annexures

Annexure A-1 - True copy of the order dated 12/4/2013 in
Original Application 1158 of 2012 passed by the Madras Bench of
this Hon'bleTribunal
