

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....

Date of order : 31.8.2000

O.A.NO.117/99

1. Muse Khan S/o Shri Adam Khan aged 48 years, Gateman Gate No. C-165, Northern Railway, Jodhpur R/o Between Banar and Raikabagh, Jodhpur.
2. Nimbha Ram S/o Shri Dhokal Ram aged 43 years, Gateman, Gate No. C-165, Northern Railway, Jodhpur, R/o Between Banar and Raikabagh, Jodhpur.

.....Applicants.

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Senior Sector Officer (P-Way), Northern Railway, Jodhpur.

.....Respondents,



CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

Mr.Vijay Mehta, Counsel for the applicants.

Mr.Manoj Bhandari, Counsel for the respondents.

.....

PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

The applicants had filed this application with the prayer that the respondents be directed to take work from the applicants only for eight hours and they be restrained from taking work from the applicants for twelve hours continuously. It is also prayed by the applicants that the respondents be directed to pay over-

2/11

.2.

time allowance to the applicants for four hours per day. Alternatively, the respondents be directed to specify the hours of interval/in action during the working hours.

2. Notice of the application was given to the respondents who have filed their reply to which a rejoinder was also filed by the applicants.

3. It is contended by the applicants in the application that they are posted at Gate No. C-165 which was previously Gate No. C-193, situated between Banar and Raikabagh Railway Station. There are number of other gates in this section and they are also manned by the persons like the applicants. However, on Gate No. C-165, two persons are deputed and each one of them has a shift of twelve hours, whereas the Gatemen of other gates have a shift of only eight hours. Thus, the applicants are being put to work more at the rate of four hours per day. It is also the contention of the applicants that during the period of 24 hours, passenger trains, goods trains and engines, totaling 40 trains passed through the Gate manned by the applicants and, therefore, the applicants get very little period of in-action between the two trains. The roster which is in force is discriminatory inasmuch as the Gatemen of neighbouring gates are rendering only eight hours duty whereas the applicants are put to twelve hours continuous duty. Thus, the orders of the respondents are discriminatory in nature and violative of fundamental rights.



4. The respondents have contended that the duty roster is in force since February 1990 and although the Gatemen posted on this gate were giving duties as per the roster. The roster has been challenged after almost nine years, therefore, the claim of the applicants is highly belated and suffers from laches and

2/11/90

limitation. It is also alleged by the respondents that quarter has been allotted to these two Gatemen. As per the rules, a Gateman who has been provided with a living accommodation, is required to discharge duty for twelve hours. The working hours have been fixed after job analysis of the gates. Where job analysis has not been done, Gatemen are required to discharge duty for eight hours as per 'C' category roster. Therefore, there is no discrimination amongst the Gatemen of different gates as their categories are different. Only 30 trains at an average, passed through this section. It is also alleged by the respondents that new roster has been formulated in December 1999 as per the job analysis and no change in duty hours is contemplated as the present gate is in the category of essentially intermittent, therefore, the applicants are not entitled to get any relief.

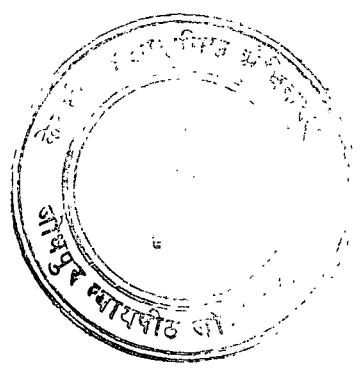
5. Explanatory pleas and clarifications, have been pleaded in the rejoinder by the applicants.

6. We have heard the learned counsel for the parties and have gone through the case file. When the applicants filed this O.A. the duty hours roster of the year 1990 was in force and the applicants were discharging their duties as per that roster, therefore, challenging the fixation of duty roster of the year 1990 in the year 1999, is highly belated and the applicants cannot be permitted to challenge the same on the ground that more duty hours gave the applicants recurring cause of action. The cause of action for challenge relating to fixation of duty hours, had arisen in the years ~~xxxx~~ 1990 and the same cannot be challenged after nine years. Duties of the Gatemen are fixed as per rules keeping in view the number of trains which pass through the gate and the accommodation which is provided to the

2m

.4.

gatemmen. The applicants have not given any train timings in the application from which it can be analysed as to whether there is sufficient gap of time between two trains or not. Fixing the duty hours is a specialised job and is more related to policy matter than the rules relating to eight hours work. In the year 1999 a revised job analysis has been effected by the respondents and consequently, the grievance of the applicants relating to the old duty chart has come to an end. If at all the applicants are aggrieved of the new duty hours roster, they have got to challenge the same by first making a proper representation to the concerned authorities and on remaining dis-satisfied, they can take appropriate legal action. The Tribunal is not an expert body for examining the pressure of work on the Gatemen and fixation of working hours. In this respect, the rule propounded in (1988 (4) SCC 117), State of Punjab and Others Vs. Ram Lubhaya Bagga and Others case can be usefully quoted :-



"It is not normally within the domain of any court to weigh the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

As per the above rule, the administrative decision relating to the policy, cannot be interfered with by this Tribunal.

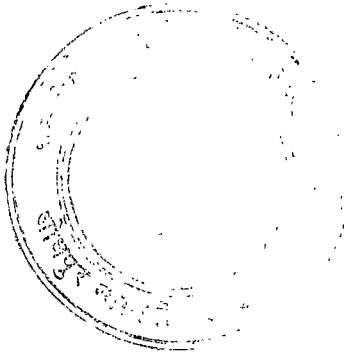
7. In view of this, we are of the opinion that fixation of duty hours of a Gateman, as per the category of the Gate, is an administrative action relating to policy, therefore, the same

3m

15
5.

cannot be interfered with by this Tribunal. The O.A., in our opinion, is ill-advised and deserves to be rejected.

8. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.



Gopal Singh
(GOPAL SINGH)
Adm. Member
✓

Am 31/8/2001
(A.K.MISRA)
Judl. Member

.....