

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.319/2010

Friday, this the 21st day of January, 2011.

C O R A M :

**HON'BLE Ms K.NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr V AJAY KUMAR, JUDICIAL MEMBER**

1. V.Janardharan,
Senior Gate Keeper,
Kannapuram Railway Station,
Residing at V.K.House, Bappukal,
Vellarangu, Cherukunnu, Kannur.
2. P.Ravindran,
Senior SCP,
Kannapuram Railway Station,
Residing at Radha Nivas,
Chirakkal, Panamkavu, Kannur.
3. E.Gangadharan,
Pointsman A,
Kannapuram Railway Station,
Residing at Railway Quarters,
Kannapuram.
4. V.K.Asokan,
Senior Gate Keeper,
Kannapuram Railway Station,
Residing at Madathil, Pappinisseri,
Karikkinkulam, Kannur.
5. P.Balan,
SCP, Kannapuram,
Residing at Railway Quarters,
Kannapuram.
6. P.Suresh,
SCP, Kannapuram,
Residing at Railway Quarters,
Kannapuram.Applicants

(By Advocate Mr M.P.Varkey)

Versus

1. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.

v-2- *anu-a*

2. Sr. Divisional Operations Manager,
Southern Railway,
Palakkad Division, Palakkad.
3. Sr. Divisional Personnel officer,
Palakkad Division, Palakkad.
4. Chief Personnel Officer,
Southern Railway, Chennai. ...Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been heard on 17.01.2011 the Tribunal on 21.01.2011 delivered the following :-

ORDER

HON'BLE Mr V AJAY KUMAR, JUDICIAL MEMBER

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- a) Declare that the applicants are "continuous" workers with effect from 2.7.2008;
- b) Declare that the applicants are entitled to overtime allowance with effect from 8.7.2008 for extra work done beyond 8 hours daily/96 hours biweekly and direct the respondents accordingly.

2. The factual matrix of the case are that the applicants 1 and 4 are Senior Gate Keepers, applicant No.2 is Senior Sweeper-cum-Porter, applicant No.3 is Pointsman-A and applicants 5 and 6 are Sweepers-cum-Porters but all of them are working as Gate Keepers/RG Gate Keepers at the Traffic Level Crossing Gates No.252 and 253 at Kannapuram Railway Station. The applicants would submit that the work at the gate is governed by the Station Working Rules No.182/KPQ of 10.06.2002 as amended from time to time and the said gate was manned round the clock by 2+1 RG Gate Keeper in Essentially Intermittent Roster in shift duties. Due to increase in rail and road traffic, there was demand from staff and trade unions to introduce "continuous" roster with 8 hours duty per day per head. In October 2008, the applicants came to know that as per

v.2-aumon

Correction Memo No.3 dated 2.7.2008 to Appendix-A to the Station Working Rules at Kannapuram No.J.182/KPQ issued in connection with the introduction of EKT, it was inter alia stipulated that the said two gates shall be manned round the clock by 3+1 RG Gate Keepers in "continuous" roster (Annexure A-1). The said correction memo was brought into force from 8.7.2008 and accordingly the applicants submit that they became "continuous" workers from 8.7.2008, notwithstanding non-posting of additional Gate Keepers and accordingly they are entitled for Over Time Allowance with effect from 8.7.2008. They further submit that they have made representations dated 20.10.2010 Annexure A-2(a) to (f) requesting the respondents to post additional Gate Keepers and till then to pay Over Time Allowance to them. But the respondents have neither paid the Over Time Allowance nor passed any orders on their representations and hence the O.A.

3. The applicants in support of their claim have also relied on a judgment of this Tribunal in O.A.No.581/2005 dated 2.8.2006 and submitted that in similar circumstances this Tribunal allowed the O.A and that the respondents have implemented the said order and that they are also similarly situated like the applicants in O.A.581/2005. Hence they are also also entitled for the Over Time Allowance with effect from the due date as stated supra.

4. The respondents filed a reply statement denying the contentions of the applicants and sought for the dismissal of the O.A on the following grounds:

(i) The representations in Annexure A-2 series are dated 20.10.2008 and as the applicants should have approached this Tribunal immediately on expiry of six months of submitting the said representations, the O.A is barred by limitation and that they have relied on the decision of the Apex Court in **S.S.Rathore v. State of Madhya Pradesh** [AIR 1990

v-2-*answ*

SC 10].

(ii)As per rules applicants are to work only according to the approved roster and if any exigencies arises for working extra hours, temporary exemption has to be given by the competent authority and the claim for OTA in the concerned overtime slip is to be submitted within a fortnight of performing such overtime and the applicants have not obtained such exemption and submitted any OT slips within the stipulated time.

(iii)As per the approved roster (Annexure R-1), Gate Keepers at Kannapuram Station are classified as "Essentially Intermittent" and no revision has been made to the said classification till date and that the applicants have never represented against the said roster.

(iv)Station working rules are framed exclusively for safe train operations only and have no way any connection with the roster to be adhered by the employees and the said Station working Rules cannot override the classification made as per Railway Servants Hours of Employment Rules 2005.

(v)The applicants have not produced any proof to establish that factual job analysis has been conducted for review of classification of employment in the Level Crossing Gate in which they are working and a revised roster has been issued as per orders of the competent authority and that the 2nd respondent is competent to declare the applicants as "continuous" and that the GM/CPO alone is competent to revise the classification based on factual job analysis.

(vi)The judgment of this Tribunal in O.A.581/2005 dated 2.8.2006 is not applicable to the applicants as the same is pertaining to another Division.

v-2-*out*

5. The applicants filed a rejoinder and the respondents filed a reply to the rejoinder. Heard both sides and perused the Annexures.

6. The classification of the post of a railway servant for Payment of Over Time Allowance is governed by Section 130 and 132 of the Railways Act, 1989 and the Railway Servants ((Hours of Work and period of rest) Rules, 2005 and also the General and Subsidiary Rules issued for effective implementation of the same. In exercise of powers conferred by the Indian Railways Act, the General and Subsidiary Rules are issued and in terms of the General Rule 5.06, the Station Working Rules are issued. It is true that as per Annexure R-1, duty roster of Gate Keeper post of Kannapuram Station is classified as "Essentially Intermittent" but after issuance of Annexure A-1 Correction Memo No.3 dated 2.7.2008 the same post is reclassified as "Continuous". Though the respondents have contended that the post of Gate Keeper at Kannapuram station has not been reclassified from "Essentially Intermittent" to "Continuous" but not denied the existence of Annexure A-1. It is also not the case of the respondents that the signatory to Annexure A-1 issued the same in violation of any rule and that they have initiated any action against him for contravention of any rule or regulation. Railway gates are essentially a sensitive safety device relating to the life and property of public as well of the Railways. Therefore, when the Station Working Rules classified the post as "Continuous" requiring more attention and caution, the same should be suffered particularly keeping in view the safety and security of the public and of the Railways. Hence it could be safely concluded that the respondents have reclassified the post of Gate Keeper of Kannapuram Station from "Essentially Intermittent" to "continuous" by virtue of Annexure A-1.

7. The contention of the respondents that the order of this Tribunal in O.A.581/2005 dated 2.8.2006 is not applicable to the present case on the

ground that the same is pertaining to another Division is untenable and liable to be rejected, since all the Divisions are governed by the same set of rules and provisions of law. On the other hand, a perusal of the said order reveals that the facts of the said O.A. are similar in nature to that of this O.A.

8. Coming to the contention of the respondents that since the Annexure A-2 representations are dated 20.10.2008, the applicants should have approached this Tribunal immediately on expiry of six months and the O.A is barred by limitation is concerned, the same is not supported by Section 21 of the Administrative Tribunals Act, 1985. Annexure A-2 representation dated 20.10.2008 and whereas the O.A is filed on 12.4.2010. That means within one year from the date of Annexure A-2 representations and accordingly the O.A is well within the period of limitation prescribed under Section 21 (1)(b) of the Administrative Tribunals Act, 1985. In the Judgment in **S.S.Rathore v. State of Madhya Pradesh** [AIR 1990 SC 10] cited by the respondents in fact while interpreting Section 21 of the Act, the Apex Court declared that under Section 21 (b), the period of limitation starts only after expiry of six months from the date of representation and one year from the date of expiry of the said period of six months. Since the present O.A is filed within the said period, the same is within limitation as stated supra.

9. In the circumstances, the O.A is allowed and the respondents are directed to pay the Over Time Allowance to the applicants with effect from 8.7.2008 for the extra work done within two months from the date of receipt of this order. No order as to costs.

V-2-awwas
V AJAY KUMAR
JUDICIAL MEMBER


K.NOORJEHAN
ADMINISTRATIVE MEMBER