

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/000988/2018

Monday, this the 4th day of November, 2019

CORAM:

Hon'ble Mr.Ashish Kalia, Judicial Member

1. Mr.K.C.Prakash, S/o.K.C.Kelappan, aged 50 years
Technician I/AC, O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
2. P.Anil Kumar, S/o.Prabhakaran Pillai, aged 48 years
Technician I/AC, O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
3. Julian Xavier Fernandez, S/o.Xavier, aged 58 years
Senior Technician/E/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
4. S.Ajith Kumar, S/o.P.Sivan Pillai, aged 50 years
AC Coach Attendant
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
5. S.Santhosh Kumar, S/o.S.Shanmughan, aged 55 years
Senior Technician/AC,
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
6. Raju.S, S/o.G.Sreedharan, aged 57 years
Technician II/AC
Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
7. K.Anil Kumar, S/o.V.Sankarankutty Nair, aged 50 years
AC Coach Attendant
O/o.The Senior Section Engineer/E/AC/Trivandrum

Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014

8. V.M.Sreekumar, S/o.Velayudhan, aged 48 years
Technician I/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
9. Mohanan.C, S/o.Chellappan, aged 56 years
Senior Technician/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
10. P.Jayalal, S/o.D.Poulose, aged 59 years
Senior Technician, AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
11. M.Sukesh, S/o.Muraleedharan Nair, aged 58 years
Technician I/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
12. Shoury Kumar Mallela, S/o.M.Lazar, aged 37 years
Technician I/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
13. K.Jayaprakash, S/o.Kochuvallu Pillai, aged 56 years
AC Coach Attendant
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
14. M.Rama Krishnan, S/o.M.Murukeshan, aged 56 years
Technician I/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
15. Jagadeesan P.N, S/o.M.C.Narayanan Nair, aged 59 years
AC Coach Attendant/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division

Thiruvananthapuram – 695 014

16. Ravindra Kumar, S/o. Guneshwar Sah, aged 39 years
Technician I/AC
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
17. Padmakumar.B., S/o. G. Balakrishnan Nair, aged 48 years
AC Coach Attendant/AC
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
18. Sreekumar.K., S/o. Kuttan Pillai, aged 55 years
Senior Technician/AC
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
19. R. Sunil Kumar, S/o. Z. Ramachandran Nair, aged 48 years
AC Coach, Attendant
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
20. M. Sonai, S/o. Muthan, aged 56 years
AC Coach Attendant
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
21. P. Rajesh, S/o. Prasannakumaran Nair, aged 38 years
Technician II/AC
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
22. K. Arjunan, S/o. K. Kesavan, aged 57 years
Senior Technician/E/AC
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
23. Ajithkumar.K.B., S/o. G. Bhaskaran Nair, aged 58 years
Senior Technician/AC
O/o. The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014

24. P.Nadesan, S/o.M.Pachchen, aged 55 years
Technician III/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
 25. Haridasan Avuladan, S/o.Kari.A, aged 48 years
AC Coach Attendant
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
 26. K.P.Sharma, S/o.V.M.Podian, aged 55 years
Senior Technician/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
 27. S.K.Shine, S/o.Samuel Kunjappy, aged 54 years
Senior Technician/AC
O/o.The Senior Section Engineer/E/AC/Trivandrum
Southern Railway, Trivandrum Division
Thiruvananthapuram – 695 014
- **Applicants**

(By Advocate : Mr.P.K.Madhusoodhanan)

V e r s u s

1. Union of India, represented through the General Manager
Southern Railway, Park Town, Chennai – 600 003
 2. The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Divisional Office, Personnel Branch
Thiruvananthapuram – 695 014
 3. The Senior Divisional Mechanical Engineer
Southern Railway, Divisional Office
Trivandrum – 695 014
 4. The Divisional Engineer (Electrical) General
Divisional Office, Southern Railway
Thiruvananthapuram – 695 014
- **Respondents**

(By Advocate : Mr.Millu Dandapani)

This application having been heard on 4.11.2019 the Tribunal on the

same day delivered the following:

ORDER (ORAL)

By Hon'ble Mr. Ashish Kalia, Judicial Member

This Original Application has been filed praying for a declaration and necessary directions that the applicants are entitled for overtime allowance for duties performed by them in excess of 96 hours in a fortnight by extending the benefit as granted to the similarly situated persons by Annexure A1 order of Madras Bench of this Tribunal and Annexure A-3 order dated 7.4.2017 of this Tribunal.

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

The applicants are working under the control and supervision of the Senior Section Engineer/Electrical/AC/Trivandrum in the AC Wing of of the Electrical Department of the Trivandrum Division of the Southern Railway. They have been working in the posts of Technicians/AC Coach Attendants as given against their respective names in the cause title of this application. The applicants have been assigned duties as Technician/AC Coach Attendants in the long running trains and the running staff are classified as “continuous” as envisaged in Hours of Employment Rules, 2005. The applicants are required to perform duty at 48 hours per week and 96 hours for two weeks. Over and above 96 hours of work in a fortnight, the applicants are entitled for overtime allowance as provided under the Rules. However, in view of the modified roster issued by respondent no.2 which was implemented only in Trivandrum Division, the AC staff has to work 48

hours per week and 96 hours in two weeks and instead of overtime allowance they were giving compensatory rest for extra hours of duty performed in excess of 96 hours of duty and for foregoing their statutory weekly rest in violation of Hours of Duty and Periods of Rest Rules, 2005.

3. Applicants have made representations against the modified roster and same have not yield any result. Though as claimed by the applicants they have performed extra hours of duty during the period till date were denied overtime allowance on the pretext that compensatory rest has been granted. Feeling aggrieved by this, similarly situated persons approached the Madras Bench by filing O.A No.1158 of 2012 and same was allowed by order dated 12.4.2013 (Annexure A-1). Subsequently, the Writ Petition filed before the Madras High Court and SLP filed before the Hon'ble Apex Court challenging Annexure A-1 order were dismissed. The learned counsel for the applicant has also cited orders of this Tribunal in O.A Nos.885/2015, 948/2015 and 988/2015 in support of their claim.

4. Notices were issued and the respondents put their appearance through their counsel and filed reply statement. It is submitted therein that this application is liable to be dismissed as this application has been filed after 4 years from the date of claim of overtime allowance. It is further submitted that they have already availed compensatory rest and now they are asking for overtime allowance in lieu of the compensatory rest availed. Both benefits cannot be claimed by the applicants.

5. The respondents have also cited judgment of *Union of India v. Tarsem Singh*, wherein the Hon'ble Supreme Court has restricted the payment of arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It is also submitted that as per Rule 4(1) of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005 “Any railway servant aggrieved by the declaration of classification made under Rule 3 may, within ninety days from the date of such declaration, prefer an appeal to the Regional Labour Commissioner, who, after scrutiny of relevant documents or if considered necessary, after a fresh job analysis, may order for a change in the classification”. As submitted by the respondents, applicants have failed to prefer an appeal before the Appellate Authority, but also preferred not to challenge the modified roster as per which all the applicants were granted compensatory rest apart from the grant of due overtime allowance.

6. It is further submitted that Rule 17(3) of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005 states that “if any Railway Servant is adversely affected by any such modification made under sub-rule (1) he may prefer an appeal before the expiry of 90 days from the date of effecting such modification to the Ministry of Railways whose decision thereon shall be final.” Though the applicant had neither approached the Labour Commissioner nor the Railway Board against the modified roster, but they had availed the compensatory rest as per the modified roster. As such, they are precluded from claiming OTA in lieu of compensatory rest availed and after a period of 4 years, they cannot seek both the benefits. Hence the

respondents pray for dismissal of the Original Application.

7. The applicants have also filed rejoinder to the reply reiterating the pleadings made in the Original Application.

8. Heard the learned counsel for parties at length and perused the documents.

9. The issue raised by the applicants in the present Original Application is whether they are entitled to get the benefit of judgments passed by this Tribunal and by the Hon'ble High Court of Madras.

10. The applicants have worked in AC Coach as AC Coach Attendants / Technician in long running trains and the running staff are classified as continuous. They are entitled for overtime allowance as per Rule 10 of Railway Servants 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 the long running trains they are working continuously without getting any compensation. Even they are working in their off days too because they cannot leave trains in between the journey time. This issue has already dealt with by this Tribunal in Annexure A-1 order wherein this Tribunal has considered all these aspects. The relevant part of 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 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.”

11. This Tribunal, after considering the rival contentions, had directed the respondents to adopt a uniform method to grant overtime allowance for the employees of all Divisions without restricting it to a particular division which is violative of the guidelines in Railway Servants (Hours of Work and Period of Rest) Rules, 2005 and held that the applicants are entitled for overtime allowance for excess hours of duty performed in excess of 96 hours + 8 hours P&C hours in a fortnight in terms of Rule 10 of Railway Servants (Hour of Work and Period of Rest) Rules, 2005 and also directed to pay overtime allowance to the applicants for extra duty hours exceeding 96 hours for two weeks instead of giving compensatory rest for extra hours of duty. The learned counsel for the applicant has cited judgment of the Hon'ble Apex Court in *Abid Hussain and others v. Union of India and Others* in Writ Petition Nos.13748-84 of 1984 with Writ Petition Nos.15806-26 of 1984 in support of applicants claim.

12. As regards the objection raised by learned counsel for the respondents

that the claim is barred by time, it cannot be held that unsustainable as the claim of the applicants have a continuous cause of action and cannot be brush aside on the simple ground of limitation. This is not the case that where the respondents have stated that the applicants have not performed duty beyond 48 and 96 hours. Thus, if they have worked for this period, they are entitled to get overtime allowance as per Rule 10 of Railway Servants (Hour of Work and Period of Rest) Rules, 2005. The judgment cited by the respondents in the matter of *Union of India v. Tarsem Singh*, where the Hon'ble Apex Court has restricted the claim of payment of arrears to 3 years. In the present case, the applicant is only claiming 2 years arrears. If we strictly go by this judgment, the applicants will get nothing which is the part and parcel of their salary. The Apex Court in *Union of India v. Tarsem Singh* has laid down a principle to those petitioners who had approached the Court of law very late and their back wages or payments could be restricted to 3 years. In my view, the ratio of the Apex Court has no effect in the present case because being part of wages, OTA is recurring cause of action. The learned counsel for the respondents has also raised objection that the applicants have not made any appeal to the concerned authority within 90 days though the applicants are supposed to approach the concerned authority for their alleged right. But in reply to this, the contention raised by the applicants is worth considering. The learned counsel for the applicant has submitted that they are all deputed on running trains. They have hardly any time to make representations. More so, they have come to know their right on first time in 2017 when a favourable order has passed by this Tribunal in O.A 885/2015 wherein the applicants have

also performed similar duties like the applicants herein.

13. Thus, this Tribunal has no hesitation for extending the benefit as allowed in O.A 1158/2012 to this case as well. This Tribunal is of the considered view that the respondents themselves should have given the benefit of the ratio laid down by this Tribunal as per Annexure A-1 judgment of Madras Bench of this Tribunal to the applicants also. Thus, it is held that the applicants are entitled for claiming overtime allowance for the duties performed in excess of 96 hours for two weeks as granted to the similarly situated persons. The payment shall be given, after verification of claims from the records of the applicants, within 120 days from the date of receipt of a copy of this order.

14. The Original Application is allowed as above. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

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List of Annexures

Annexure A1 - True copy of the order dated 12.4.2013 in O.A No.1158 of 2012 passed by the Madras Bench of this Tribunal

Annexure A2 - True copy of the order dated 27.1.2014 in W.P(C) No.33228/2013 of the High Court of Madras

Annexure A3 - True copy of the common final order dated 7/4/2017 in O.A Nos.180/885/2015, 180/948/2015 & 180/988/2015 of this Tribunal

Annexure A4 - True copy of the order dated 3.7.2018 issued by the 2nd respondent

Annexure A5 - True copy of the representation submitted by the 1st applicant dated 5/4/2018

Annexure A6 - True copy of the representation dated 18/10/2018, submitted before the 2nd respondent, through proper hannel, by the 2nd applicant

Annexure A7 - True copy of the representation dated 7/6/2018, submitted before the 2nd respondent, through proper channel, by the 3rd applicant

Annexure A8 - True copy of the representation dated 7/6/2018, submitted before the 2nd respondent, through proper channel, by the 4th applicant

Annexure A9 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 5th applicant

Annexure A10 - True copy of the representation dated 27/7/2018, submitted before the 2nd respondent, through proper channel, by the 6th applicant

Annexure A11 - True copy of the representation dated 5/4/2018, submitted before the 2nd respondent, through proper channel, by the 7th applicant

Annexure A12 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 8th applicant

Annexure A13 - True copy of the representation dated 28/7/2018, submitted before the 2nd respondent, through proper channel, by the 9th applicant

Annexure A14 - True copy of the representation dated 30/7/2018, submitted before the 2nd respondent, through proper channel, by the 10th applicant

Annexure A15 - True copy of the representation dated 5/4/2018, submitted before the 2nd respondent, through proper channel, by the 11th applicant

Annexure A16 - True copy of the representation dated 5/4/2018, submitted before the 2nd respondent, through proper channel, by the 12th applicant

Annexure A17 - True copy of the representation dated 7/6/2018, submitted before the 2nd respondent, through proper channel, by the 13th applicant

Annexure A18 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 14th applicant

Annexure A19 - True copy of the representation dated 7/6/2018, submitted before the 2nd respondent, through proper channel, by the 15th applicant

Annexure A20 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 16th applicant

Annexure A21 - True copy of the representation dated 3/8/2018, submitted before the 2nd respondent, through proper channel, by the 17th applicant

Annexure A22 - True copy of the representation dated 30/7/2018, submitted before the 2nd respondent, through proper channel, by the 18th applicant

Annexure A23 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 19th applicant

Annexure A24 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper

channel, by the 20th applicant

Annexure A25 - True copy of the representation dated 18.12.2017, submitted before the 2nd respondent, through proper channel, by the 21st applicant

Annexure A26 - True copy of the representation dated 23/1/2018, submitted before the 2nd respondent, through proper channel, by the 22nd applicant

Annexure A27 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 23rd applicant

Annexure A28 - True copy of the representation dated 7/9/2018, submitted before the 2nd respondent, through proper channel, by the 24th applicant

Annexure A29 - True copy of the representation dated 18/12/2017, submitted before the 2nd respondent, through proper channel, by the 25th applicant

Annexure A30 - True copy of the representation dated 5/4/2018, submitted before the 2nd respondent, through proper channel, by the 26th applicant

Annexure A31 - True copy of the representation dated 15/8/2018, submitted before the 2nd respondent, through proper channel, by the 27th applicant.

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