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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00425/2018

Thursday, this the 28th day of November, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

T.Muraleedharan, Aged 60 years

S/o.Thevan

(Retired Trackman, O/o Senior Section Engineer/
Permanent Way/Alappuzha)

Residing at: "Usha Bhavanam), Thurayoor South PO
Pathanamthitta Dt. - 691 552

Kerala State

...Applicant

(By Advocate – Mr.T.C.G Swamy)

v e r s u s

1. Union of India, represented by
The General Manager, Southern Railway
Headquarters Office, Park Town P.O
Chennai – 600 003

2. The Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum – 695 014

3. The Senior Section Engineer/
Permanent Way
Southern Railway
Alappuzha – 688 012

...Respondents

(By Advocate- Mrs.Girija K.Gopal)

This application having been heard on 20th November 2019, the
Tribunal on 28.11.2019 delivered the following :

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ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/425/2018 is filed by Mr.T.Muraleedharan, retired Trackman, O/o Senior Section Engineer/Permanent Way/Alappuzha, aggrieved by the non-feasance on the part of the 2nd respondent to grant the applicant the benefit of Overtime Allowance for the extra hours of duty performed at Level Crossing Gates, beyond his normal duty hours in accordance with law. The reliefs prayed for in the Original Application are as follows:

“(i) Declare that the non-feasance on the part of the 2nd respondent to pay overtime allowance for the extra hours of duty performed by the applicant in the Level Crossing Gates included in A1 is arbitrary, discriminatory and hence unconstitutional;

(ii) Direct the respondents to arrange to pay overtime allowance for the extra hours of duty performed by the applicant as Gate Keeper in the Level Crossing Gate included in A1 and direct further to grant all the consequential arrears thereof with interest calculated @ 9% per annum from the date from which the overtime allowance became due up to the date of full and final settlement of the same

(iii) Award costs of and incidental to this application

(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case. ”

2. The case of the applicant in brief is as follows:

He is a retired Trackman under Trivandrum Division. When the

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applicant was working as Gate Keeper from 1992 to 2004 under the 3rd respondent, he was compelled to work for a period of 12 hours per day ie., 72 hours per week. As per Chapter XIV of the Railways Act 1989, Gate Keepers of the Level Crossing Gates should have been rostered under “Continuous” classification and the standard duty hours is 8 hours per day. Similarly, under the “Essentially Intermittent” classification, though the standard duty hour is 8 hours per day, the concerned railway servants working in the said classification can be called upon to perform certain additional hours of work subject to fulfilment of certain conditions. The applicant was not provided with any residential accommodation.

3. As per the Railway Rules, the Regional Labour Commissioner (Central) of the Ministry of Labour is the statutory authority competent to decide the classification of employment. Hence representations were submitted before him by those working in the Level Crossing Gates and decisions were taken in favour of the Gatemen as early as in 1997. The appeal filed by the Railway Administration against this was dismissed by holding that the Railway authorities were not justified in compelling railway servants to work beyond 8 hours per day and directed that Overtime Allowance be paid for the extra work performed (Annexure A-1). As the Railway authorities have not granted the benefits, applicant submitted a representation before respondent no.2 (Annexure A-2) which was not responded to. Similarly situated persons had approached this Tribunal through O.A 1036/2014 and O.A 11/2017 for the same benefits and this

Tribunal allowed the O.As in favour of the applicants.

4. As grounds, applicant submits that in terms of Annexure A-1 orders of the Government of India, Ministry of Labour, the respondents are bound to pay Overtime Allowance to the applicant for the extra hours of duty performed at the Level Crossing Gates included in Annexure A-1 and refusal on the part of the respondents to pay the same is arbitrary, discriminatory and contrary to law.

5. Respondents have filed reply statement wherein it is stated therein that the Original Application has not been filed within the limitation period as per Section 21 of the Administrative Tribunals Act, 1985. As regards granting the benefit of OTA for the duties performed beyond his normal duty hours, respondents submit that the applicant had not submitted duly filled-up overtime journals with details, duly countersigned by his immediate superior for verification. However, the respondents have admitted that the roster hours to the gate where he was posted are 72 hours per week. They have quoted IREM Vol.I paragraph 1001 to state that the claims preferred after the expiry of the period prescribed for the preservation of records for their verification, should be rejected and contended that the O.A is liable to be dismissed *in limine* on the point of unexplained delay and laches.

6. Heard Mr.T.C.G Swamy, learned counsel for the applicant as well as

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Mrs.Girija K.Gopal, learned counsel for the respondents and perused the records.

7. It is seen that identical issues were considered by this Tribunal in O.A No.180/1036/2014 and in O.A No.180/00011/2017 and this Tribunal passed the following order in O.A No.180/1036/2014:

“5. In the circumstance, the OA is allowed. Respondents are directed to calculate and pay the applicants overtime allowance for the extra duty they have performed as Gate Keepers in the Level Crossing Gates situated at KM 8/9/10 between Kumbalam and Aroor rd. Level Crossing Gate No. 35 situated at KM 34/9/10 between Cherthala and Mararikulam in terms of Annexure A/1 order and to grant all consequential arrears thereof with interest at 6% from the date from which such overtime allowance became due, to the date of retirement of the applicants. No order as to costs.”

8. Since the applicant in this case is also similarly situated and is seeking a similar relief, the Original Application succeeds. The applicant is entitled to get the benefits as prayed for in line with the orders in O.A Nos.180/1036/2014 and 180/11/2017 quoted above. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - True copy of order bearing F.No.Z-20025/8/1999-CLS.I dated 11.2.2013 communicated by letter of even number dated 5.3.2013, issued by the Section Officer, Ministry of Labour & Employment (CLS.Section)

Annexure A2 - True copy of representation dated 26.10.2017 addressed to the 2nd respondent, submitted by the applicant

Annexure A3 - True copy of the postal receipt no.4244 dated 30.10.2017

Annexure A3(a) - True copy of the acknowledgement card indicating the receipt of A3 on 1.11.2017

Annexure A4 - True copy communication bearing no.No/ALLP/6 dated 14.8.2018 addressed to the applicant

Annexure A5 - True copy of the reminder bearing number ALLP/6/OTA dated 19.9.2018

Annexure A5(a) - A true translation of Annexure A-5

Annexure A6 - True copy of the reply given to Annexure A4 direction submitted by the applicant dated 23.9.2018

Annexure A7 - True copy of the postal cover with endorsement of refusal dated 25.9.2018

Annexure A8 - True copy of the extract of Section VIII of the Hours of employment Regulations issued by the Railway Board

Annexure A9 - True copy of the order in O.A 1036/2014 dated 20.11.2015 rendered by this Tribunal
