

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00942/2018

Monday, this the 2nd day of December, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

P.V.Pradeep, aged 51 years
S/o.M.N.Vasudevan Namboothiri
Senior Technician/AC,
SSE/Electrical, Kochuveli
Trivandrum Division of Southern Railway
Residing at Pranavam
Irukunnam, Trivandrum **Applicant**

(By Advocate : M/s.Varkey & Martin)

V e r s u s

1. Union of India, represented by The General Manager,
South Railway, Park Town, Chennai – 600 003.
2. The Divisional Personnel Officer, South Railway,
Trivandrum Division, Trivandrum-14. **Respondents**

(By Advocate : Mr.Sunil Jacob Jose)

This application having been heard on 2.12.2019 the Tribunal on the same day delivered the following:

ORDER (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 overtime

allowance for duties performed in excess of 96 hours in a fortnight by extending the benefits granted to the similarly situated persons by Annexure A1 order of Madras Bench of this Hon'ble Tribunal.

(ii) Direct the respondents to grant overtime allowances to the applicants for extra hours of works performed in excess of 96 hours of duty in a fortnight during the period from 1.1.2012 to 10.1.2015 ”

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

Applicant is aggrieved by the denial of overtime allowance by extending the benefits of Madras Bench decision in Annexure A-1. Applicant was working as Senior Technician(AC) at Kochuveli 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 applicant is 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.Rajesh representing Mr.Sunil Jacob Jose, 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 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 No.180/951/2017 also by following the above mentioned judgment. Since the applicant in this case is also similarly situated and is seeking a similar relief, I do not find any reason to deny the prayer for extending the benefits to the present applicant in terms of Annexure A-1 order. Hence this Original Application is disposed of as in the same line of Annexure A-1 order. This exercise, including payment of OTA in terms of Annexure A-1 order, shall be completed by the respondents within two months from the date of receipt of a copy of this order.

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

(ASHISH KALIA)
JUDICIAL MEMBER

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'ble Tribunal

Annexure A-2 - True copy of the due and drawn statement submitted by the applicant

Annexure A-3 - True copy of the letter No.V/P O.A 1158/2012/62 dated 9.9.2014 issued by the 2nd respondent

Annexure A-4 - True copy of Supplement No.24/75 of fortnightly railway gazette dated 15th December, 1975

Annexure A-5 - True copy of the judgment dated 22.1.1987 of Hon'ble Supreme Court in Writ Petition © 13748-84 of 1984

Annexure A6 - True copy of the worksheet issued to the 6th appliance in O.A 885 of 2015

Annexure A7 - True copy of the letter dated 26.6.2019.

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