

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.16583 of 2016

Date of decision: 17.08.2016

Kuldeep Singh

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.Barjesh Mittal, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the instant writ petition prays for quashing the impugned order dated May 18, 2016, Annexure P.4, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") being against the provisions of Railway Servants (Hours of Work and period of Rest) Rules, 2005 (in short, "the Rules") as he continued performing overtime right from 30.1.2011 till 29.11.2014 as per the orders of respondent Nos. 3 to 6.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner was selected and appointed as Booking Clerk in the respondent Northern Railway. He joined on the post on 27.7.1989 at the Railway Station, Kapurthala. Subsequently, he was promoted in the grade of Senior Booking Clerk while working at Kapurthala itself. He was promoted as Head Booking Clerk at the Railway Station, Kapurthala during the year 2004. He

was posted as Head Booking Clerk at Lohian Khas from where he was transferred on 20.5.2012 to Railway Station, Kapurthala where he is presently working. In the original application filed by the petitioner before the Tribunal, the dispute was for non release of payment of over time allowance to him and rest for weekly off when he performed the duties right from 30.1.2011 till 2014 and the said bills duly certified by respondent Nos. 3 to 6 were pending with the office of respondent No.2. The respondents withheld the release of payment of the applicant. According to the petitioner, the respondents were paying regularly over time allowance to ASM, SM, Points Man, Gates Man continuously. The petitioner avers that he was working as a subordinate under respondent Nos. 3 to 6 and he was to comply with the continuous orders passed by these officers for carrying out the overtime and was also performing duties without any weekly off. The statutory rules permit fixation of hours of work. As per Rule 8(2)(i), standard hours of duty and Rule 8(3) for working intensive, continuous and essentially intermittent services which is 48 hours a week for which rest of employees posted to work in Essentially Intermittent class of employment is permissible viz. 12 additional hours per week which had not been granted to the petitioner. The application before the Tribunal for release of payment of overtime bills for the period from 30.1.2011 to 19.4.2014 with interest at the rate of 9% per annum from the due dates was disposed of vide order dated 12.8.2014, Annexure A.2 directing the respondents to decide the matter of the petitioner within a period of two months. However, respondent No.2 did not decide the case of the petitioner. Consequently, he filed C.P.No.060/00297 of 2014 before the Tribunal which was disposed of on 9.1.2015 when the respondents produced order dated 30.12.2014. The petitioner thereafter challenged the order dated 30.12.2014 before the

Tribunal. Written statement was filed by respondent Nos. 1 and 2 before the Tribunal to which the petitioner filed rejoinder dated 28.6.2015. Vide order dated 18.5.2016, the Tribunal dismissed the application filed by the petitioner. According to the petitioner, now the post of Head Booking Clerk which had been lying vacant at Kapurthala has been filled up in October 2015 and since then there is no need to perform any overtime on the part of the petitioner and his other colleagues. The petitioner prays through the instant writ petition that the respondents be directed to release duly verified bills for overtime allowance with interest at the rate of 10% per annum.

3. We have heard learned counsel for the petitioner.

4. The claim of the petitioner for grant of overtime allowance for the period in question has been examined by the Tribunal after considering the entire facts and the relevant rule. It has been categorically recorded by the Tribunal that verification by a superior officer cannot be treated as evidence that the same was done in terms of the rules dealing with overtime. Section 132(2) of the Railway Act, 1989 lays down that a railway servant whose employment is continuous shall not be employed for more than fifty four hours a week on an average in a two weekly periods of fourteen days. According to the respondents, an order by the competent authority was required which was not there in the present case. They were taking disciplinary action against the supervisory officer who had authenticated the overtime claim of the petitioner. Even from the document, Annexure A.15 i.e. overtime slip, in the column under the head date, no dates had been mentioned, rather only 10-14 had been mentioned. The entries in various other columns indicated that the same had been made in one go and in a routine manner where the extra hours had been uniformly put as three hours on 12 days and 11 hours on one day. The Tribunal concluded that

maintenance of these documents corroborate the version of the respondents that these claims were perhaps fraudulent and not genuine. It was also recorded by the Tribunal that if at all the petitioner had carried out the overtime, the same was without any authorization or valid order. Despite the verification of a supervisory officer, the competent authority had not considered this work as overtime work. Consequently, the Tribunal rejected the claim of the applicant. The relevant findings recorded by the Tribunal read thus:-

“7. First of all, we have considered the ruling cited by the applicant in OA No.822/HR/2007. We find that the said OA was dismissed as become infructuous and there was no order on merit of the case. It is not contended by the applicant that he had worked overtime without proper authorization. The applicant does not contend that he has performed the overtime in pursuance of a valid order by the competent authority. He, of course, argues that as his overtime has been certified by his immediate superior, this may be taken as proper authorization for overtime. Such a contention cannot be accepted. The verification of a superior officer cannot be treated as evidence that the same was done in terms of the rules dealing with overtime. Coming to such a conclusion may be erroneous.

8. It will be appropriate to examine the rule position with regard to grant of overtime to railway employees. Rule 11 of the Railway Servants (Hours of work and period of rest) Rules, 2005 (Annexure A.5) deals with registration of extra hours of work. The same is reproduced below:-

“11. Register of extra hours of work – The particulars of all extra hours of work done by a railway servant beyond the prescribed rostered hours of duty shall be recorded in a register to be maintained in Form A appended to these rules by the officer authorized in this behalf by the Head of the Railway Administration.”

Further, Chapter XIV of the Railway Act, 1989, Section 132

deals with the limitation or hours of work. Section 132(2) lays down that a railway servant whose employment is continuous shall not be employed for more than fifty four hours a week on an average in a two weekly period of fourteen days.

9. The respondents in their written statement have stated that the claim of overtime for the period 30.1.2011 till date i.e. filing of the O.A. dated 18.1.2015 comprises as under:

30.1.2011 to 19.5.2011 Lohian Khas Railway station

20.5.2012 to 19.4.2014 Kapurthala Railway station

20.4.2014 to 18.1.2015 Full details not available.

They have further stated that this period is continuous and without interruption, overtime extending to 48 hours bi weekly duty roster prescribed by the competent authority. This requires an order by the competent authority which is not there in this case. They have further stated that as per Rule 8 of the Railway Servants (Hours of work and period of Rest) Rules, 2005, in the case of the railway servant classified as continuous like the applicant, employment per week extends to 54 hours i.e. 12 hours bi weekly over and above the standard 48 hours per week. A perusal of Annexure A.15 which is a claim for the period 19.10.2014 onwards would show that in none of the bi weekly periods the applicant worked beyond the prescribed period – the period of extra hours of work being 3 hours bi week and invariably dotted with 11 hours only for rest days. This claim, therefore, is not tenable. The applicant's claim considered in the light of these rule provision casts serious doubts about the authenticity and admissibility of the claim of the applicant.

10. We have taken note of the statement made by the learned counsel for the respondents that the respondents are taking disciplinary action against the supervisory officer who has authenticated the overtime claim of the applicant.

11. The respondents have also brought to our notice the contents of overtime slip (Annexure A.15) which is record of the extra hours put in by the employee. He points out that in the column under the head "date", no dates have been mentioned, rather only "10-14" has been mentioned. This raises doubt about the

authenticity of this document We do however find from this document that “19-10-14 to 1-11-14” is mentioned on top of this page. Notwithstanding this, serious doubt about the authenticity of this document, particularly in the way the dates have been mentioned, arise. The entries in various columns seem to indicate that the same have been filed in one go and in a routine manner where the extra hours has been uniformly put as 3 hours on 12 days and 11 hours on one day. The maintenance of these documents seems to corroborate the claim of the respondents that these claims are perhaps fraudulent and not genuine

12. Giving these facts, we are of the view that the applicant has not been able to establish beyond doubt that he has indeed carried out the overtime as has been claimed by him. The fact that gets established clearly is that if at all he had carried out the same was without any authorization or valid order. A further fact is that despite the verification of a supervisory officer, the competent authority has not considered this work as overtime work. These facts leave us with no option but to reject the claim of the applicant and disallow the prayer made in the OA.”

5. Learned counsel for the petitioner has not been able to produce any material on record to show that the findings recorded by the Tribunal are illegal or erroneous warranting interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 17, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes