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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8088/2016 & CM 33515/2016 (stay)**
UNION OF INDIA & ORS.

..... Petitioner

Through Mr Malaya Kumar Chand, Adv.
versus

PREM SINGH & ORS.

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **27.09.2016**

1. The Union of India, through General Manager, Northern Railways has filed the present writ petition impugning the order dated 18.03.2015 passed by the Principal Bench of Central Administrative Tribunal in OA No.4516/2013. The impugned order directs the petitioner to pay overtime allowances admissible to the respondents for the services rendered beyond 8 hours a day / 48 hours per week. The said directions were to be complied with within a period of 2 months from the date of receipt of the copy of the order dated 18.03.2015.
2. Learned counsel for the petitioners submits that the said directions could not have been issued in view of Clause 4 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005.
3. We have considered the said contention but do not find any merit in the submission. Clause 4 relates to appeals against classification. In the present case, the issue of classification was adjudicated and decided by the Tribunal in OA No.2509/2008 titled "*Rohtas and Another v. Union of India*

through the General Manager, Northern Railway and Others vide order dated 21.01.2014 in favour of the respondents holding that the respondents being a Class 'A' Gateman were bound to work for 8 hours and in case of additional working hours, they were entitled to be paid overtime allowance as stipulated in the rules.

4. This decision was challenged by the petitioners in W.P.(C) No. 7164/2011 and W.P.(C) No.7172/2011. The High Court by a common order dated 18.02.2013 upheld the order of the Tribunal observing as under:

"12. We highlight survey report resulting in the order dated July 08, 2006 being issued when the level crossing manned by Rohtas and Mange Ram i.e. level crossing No.23 having gate No.23A came under the jurisdiction of the Delhi Division. Pertaining to the work at the interlocked engineering level crossing gate No.23A, with respect to the traffic the order records that the crossing has to be manned by : '3 (Three) Engineering Gatemen in 8 hours shift'.

13. Now, the numeral „3" is succeeded by the number being typed in words. Further, on the assumption that instead of typing „2" followed by writing „two" somebody erroneously typed „3" followed by writing „three", it remains unexplainable as to how come it was then typed „8 hours shift". For the reason if the traffic was less and as a consequence the gateman enough rest period in between requiring normal duty hours to be 12 hours, it had then to be recorded 'in 12 hours shift' and not 'in 8 hours shift'.

14. For record we would note that it is the admitted case of the parties that 12 hours shift is permissible without extra wages if the intermittent breaks during working hours i.e. the nature of work is such that a person can take rest at stretches not less than 30 minutes.

15. We dismiss the writ petition highlighting that twice traffic volume was determined and the authorities

categorically wrote that the level crossing(s) had to be manned by three gatemen with 8 hours shift and thus the Tribunal has reached the correct conclusion. Indeed, the respondents would be entitled to overtime wages directed to be paid.

16. The writ petitions are dismissed but without any order as to costs.”

5. In view of the findings recorded by the High Court above, the petitioners cannot now agitate and rely upon the aforesaid Rules. The question of filing an appeal etc. is foreclosed and decided by the aforesaid decision which would operate as *res judicata*. The clear finding of the High Court was that the respondents can work for 8 hours. The directions given by the Tribunal in their order dated 21.01.2014 that the respondents would be paid overtime allowances over and above the work for 8 hours had to be complied with. It is unfortunate that the petitioners did not comply with the said directions, compelling the respondents to file a fresh OA. This OA has been rightly allowed by the Tribunal, being in violation of the directions and the findings recorded by the High Court in their order dated 18.02.2013.

6. The writ petition has no merits and is accordingly dismissed.

Pending CM is also disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 27, 2016/rd