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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8408/2018 & CM APPL. 32314/2018 (*stay*)

UNION OF INDIA AND ORS.

..... Petitioners

versus

BALWAN SINGH AND ORS.

..... Respondents

+ W.P.(C) 8628/2018 & CM APPL. 33104/2018 (*stay*)

UNION OF INDIA AND ORS.

..... Petitioners

versus

HARI RAM AND ORS.

..... Respondents

Present: Mr. Ashok Singh with Mr. Om Prakash, Advs. for
petitioners.
Mr. A.K. Trivedi with Mr. Naveen Kumar, Advs. for
respondents.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
20.03.2019

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1. The Railway Administration has invoked the jurisdiction of this Court challenging an order passed by the Central Administrative Tribunal on 11.12.2017 in O.A. No.2873/2013 and another order dated 29.08.2017 in O.A. No.643/2015.

2. The respondents in O.A. 2873/2013 before the Central Administrative Tribunal have filed W.P.(C) 8408/2018 with the following prayer:

“a) Issue the writ of Certiorari or any other appropriate writ or order to declare illegal and set aside the order dated 11.12.2017 in O.A. No. 2873/2013 passed by Central Administrative Tribunal Principal Bench, New Delhi.

b) Any other relief which this Hon’ble Court deem fit and proper under the circumstances of the case may also be awarded in favour of the Petitioner and against the respondents herein in the interest of justice.”

3. It was their case that they are presently working as Pointsman at Asoda Railway Station of Northern Railway. The respondent/Railway Administration had placed the Pointsman in ‘essentially intermittent’ category which was defined under Rule 7(3) of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005. The claim of the applicants before the Tribunal was that the work of Pointsman is of continuous nature and the Pointsman have been wrongly placed in ‘essentially intermittent’ category. It was said that for workers in continuous category they are only required to work 8 hours per day subject to maximum of 48 hours per week whereas for the applicants the prescribed work hours are 12 hours of work per day / 75 hours roster has been prescribed per week. The applicants claimed that they should be paid over time allowance @ 4 hours per day since they have been made to work for 12 hours against 8 hours duty. The respondents on being noticed stated that once Pointsman have been classified as ‘essentially intermittent’ category after conducting factual job analysis, the only remedy available to them was to file an appeal before the Regional Labour Commissioner, and as they have not done so, the appeal is not maintainable.

4. The Tribunal took note of the issue in question in Para 5 to the effect as to whether Pointsman would come under 'continuous' category or 'essentially intermittent' category. Thereafter, the Tribunal took note of the duty list of Pointsman and took note of the fact that like Asst. Station Master and Cabinman the petitioners are also working continuously for 8 hours without rest and they have not been provided with any residential accommodation and came to the conclusion that Pointsman work continuously. The duty list of Pointsman indicate that they work continuously for 8 hours or more and therefore it was classified as 'continuous' nature of work.

5. The aforesaid order of the Tribunal is challenged before us and it is stated that the Tribunal in classifying the work as 'continuous' has committed an error. It is tried to be indicated that the work is not continuous in nature and once the Railway Administration has classified the work based on the duty performed, the Tribunal could not have gone into the matter. However, we find that before the Tribunal the main objection raised was that the issue should be raised in appeal before the competent authority, namely, the Regional Labour Commissioner. We find that the Tribunal has taken note of the nature of duty i.e. the duty list of the Pointsman and given a decision.

6. Today, before us, a judgment of the Co-ordinate Bench of this Court in the case of *Union of India & Ors. v. Prem Singh & Ors.*, W.P.(C) 8088/2016 is pointed out by learned counsel for the respondents wherein also similar question pertaining to classification of employees in the category as has been done in the present case and the issue of remedy available under Clause 4 of the Railway Servants (Hours of Work and

Period of Rest) Rules, 2005 have been considered and in Paras 3, 4 and 5 the issue has been decided by the Co-ordinate Bench in the following manner:

“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 (sic, got) 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.”

7. As is evident from the aforesaid, for doing so, reliance has been placed on earlier judgments rendered in the two petitions, namely, W.P.(C) 7164/2011 & W.P.(C) 7172/2011 decided on 18.02.2013 and in our considered view if the Tribunal in the present case has categorized the nature of work based on the duty list of the Pointsman, there is no error in the same. The issue stands covered by both the judgments as detailed hereinabove and we find no reason to take a different view.

8. Both the writ petitions are dismissed. However, we make it clear that this order shall be made applicable only in the case of the applicants who had approached the Tribunal and would not apply in cases where the persons have not invoked the jurisdiction of the Tribunal.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

MARCH 20, 2019

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