

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 581/2005

Wednesday, this the 2nd day of August, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. N Sathyan,
S/o Nanu,
working as Gate Keeper,
Southern Railway,
Mayyanad.
2. H.Taha Koya,
S/o Hamsan,
working as Gate Keeper,
Southern Railway,
Mayyanad.
3. G.Sudhakaran,
S/o Govindan,
working as Gate Keeper,
Southern Railway,
Mayyanad.

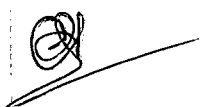
- Applicants

By Advocate Mr M.P.Varkey

1. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.
2. The Divisional Engineer(South),
Southern Railway,
Trivandrum-695 014.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum - 695 014.
4. The Divisional Safety Officer,
Southern Railway,
Trivandrum - 695 014.

- Respondents

By Advocate Mr P Haridas



The application having been heard on 26.7.2006, the Tribunal on 3.8.2006 delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. In this application, the applicants, S/Shri N Sathyan, H Taha Koya and G Sudhakaran working as Gate Keepers, Mayyanad, Southern Railway have assailed two impugned orders which have denied them the roster status of continuous workers and the consequential benefits of over-time allowance.

2. The applicants contend that they have been working as Gate Keepers from 1995 and 1996, 12 hours per day under the classification of Essentially Intermittent(EI) Roster. On account of the increased work load in the section, where they were so working, the duty roster should have been re-classified as 'Continuous' (8 hour shift). This was not done and they were working under Essentially Intermittent roster status, leading to additional work being put in by them without any entitled overtime payments. They came across A-1 document.

The opening lines of this document are as follows:

"C.S.No 2 Dt 10.10.02 V31/MYY

Appendix A

WORKING OF LEVEL CROSSING GATES "

(It was clarified that CS stands for Correction slip). This document was issued under the signature of DSO/TVC and DSTE/TVC. This appendix provided, inter-alia, for the working of Level Crossing No.549, where the applicants were working and the gate was to be manned round the clock by 3+1 Gate Keepers (1 for shift) in continuous roster. They made A-2 representation on 26.12.2003 to the DRM, Trivandrum Central, referring to their earlier representation dated 16.1.2003 (which was not responded to) and claiming over time allowance for the extra hours impliedly with effect from 10.10.2002, the date of A-1 document. Not receiving any response to this representation as well as to a lawyer notice,



O.A.835/2004 was filed. The same was disposed off in the order dated 25.11.2004 vide A-3 document, with a direction, permitting the applicants to make a detailed and consolidated representation within two weeks, which should be disposed off by the respondents within a period of two months of the date of receipt thereof. Accordingly, the applicants made A-4 representation on 6.12.2004. The same was disposed of vide the impugned order (A-5) dated 3.2.2005). In that order, giving a brief account of the system of roster-classification and adverting to the representation of the applicants, the Senior DPO, Trivandrum maintained that vide duty roster dated 24.2.97, they were classified as essentially intermittent and the said roster had not been revised, nor the post reclassified as continuous by the competent authority. Referring to A-1 document, it was clarified that it was applicable to the Station Master concerned for working arrangement. In that order, the Senior DOI had also referred to the A6 document. The opening lines of the A6 documents carry cross references as reproduced below

No.GWR/QIn-Tvc/549/2004 dated 1.2.2004,

(Ref SWR no V/7/411/1/31. Dated 12-2-99 of Mayyanad station)

(GWR referring to Gate Working Rule).The A-6 document contained a narration-"This LC is manned round the clock by 2 GKs one in each shift in essentially Intermittent (EI) roster. In the light of A-6, the Sr Divisional Personnel Officer ruled that the Gate under question is to be manned on EI roster and with these observations, the claim of the applicants was rejected. Aggrieved by A-5 and A-6, they have preferred this O.A

3. The applicants seek the following reliefs:

- i) For a declaration that the impugned orders A5 and A6 are contrary to the rules on Hours of Employment of Railway Servants.
- ii) Quashing of A-5 and A-6 orders.
- iii) For a declaration that they are entitled to be treated as continuous



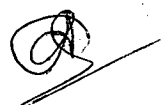
roster workers in terms of A-1 with effect from 10.10.2002.

4. The grounds adduced by them are as follows:

- i) The statement of law contained in impugned A-5 are not fully correct.
- ii) Especially, A-5 document refers to an averment that a duty roster dated 24.2.1997 was already issued classifying this level crossing as continuous. But this roster was neither exhibited at the gate nor intimated to the Gate Keepers.
- iii) The point made in A-5 that the Station Working Rule issued apply only to the Railway Station and the Station Master is not correct in terms of General Rules, 1976, 5.06 (2) page 202. Gate Working Rules are subsidiary and complimentary to Station Working Rules.
- iv) On one hand the respondents contend that the EI duty roster dated 24.2.97 has not yet been amended. But this is contrary to A-1 which places the gate under continuous roster.
- v) The impugned order A-6 was issued by Divisional Engineer, DSTE and DSO. By virtue of Section 130(B) of Indian Railways Act, 1989 read with Rule 3 of Hours of Employment Regulation, 1961, the powers of de-classification rests only with the Head of the Railway Administration.
- vi) The procedure for de-classification have not been followed.

5. Respondents oppose the application on the following grounds:

- i) Assailing A-6 document dated 1.2.2004 is barred by limitation.
- ii) Equally so, the applicants have not challenged the roster dated 24.2.1997 made under Hours of Employment Regulation, 1961, which classified the level crossing as Essentially Intermittent.
- iii) The level crossing has never been notified as continuous as per any approved communication. This being so, the post remains as EI



roster and A-1 does not have any over riding effect on such classification.

iv) The A-1 notification cannot be treated as a proper roster issued under the HOER and it was a roster only for the guidance of the Station Master under the Station Working Rules.

6. Heard both sides and perused the documents.

7. During the hearing, the learned counsel for the applicants restricted the scope of reliefs to (b) which essentially sought a declaration that the applicants are entitled to be treated as continuous workers in terms of A-1 with effect from 10.10.2002 till the date issue of A-6 which is dated 1.2.2004. In that sense their assailing A6 impugned order was no longer insisted upon.

8. According to the applicants, roster is defined under Section V entitled General Instructions under the Hours of Employment Regulations. Such regulations comprise of Chapter VI-A of the Indian Railways Act, 1890, the rules made thereunder as well as subsidiary instructions issued by the Railway Board. According to him, no such roster is maintained except A-7 document. He brought to my attention SR 16.03(ii)(a), according to which, instructions for the working of level crossing inside station limits shall be embodied in the Station Working Rules. As already referred to, A-1 document is an Appendix-A carrying the title "Working of Level Crossing Gates". This document was a correction slip dated 10.10.2002. The applicants' counsel would argue that this is an appendix to Station Working Rules referred to above. This document refers to five level crossings respectively denoted as A-1, A-2, A-3, A-4 & A-5, the last one referring to the level crossing under dispute. Though information was sought that if it was a correction slip what was the pre-correction version, no information was forthcoming from the respondents. The applicants' counsel referred to Section 71-A of Chapter-VI-A of the Indian Railways Amendment Act, 1956 which in sub clause-a provides as follows:



The employment of a Railway servant is said to be continuous except when it is excluded or has been declared to be essentially intermittent or intensive.

His case is that, by virtue of such default clause, ever since their commencement of service under the Railways, in any case, since 12.2.1999, the date referred to under A-6 document, their service was continuous.

9. The two questions that require answers are the following:

i) What is the effect of the correction slip

ii) What is the validity of the same?

10. As relating to the first question i.e., what is the effect of the correction slip, first thing to be noted is the A-1 document is a correction slip to Appendix A, which undisputedly has reference to Station Working Rule. A-6 document also refers to Station Working Rule dated 12.2.1999. Presumably, they refer to the same Station working Rule. Prima facie, it is not fair to rush to the conclusion that the correction sought to be brought about by this slip at least as relating to A-5 disputed level crossing, related only or exclusively to the classification of the roster. Assuming that the correction slip refers to some variables in the pre-corrected version including the roster, two scenarios are possible-the pre-correction version as relating to the roster referred to continuous status or to Essentially Intermittent status. But, the respondents are unable to provide any suitable explanation as relating to such version. It appears safer to presume that at least from the date of the correction slip i.e. 10.10.02, the said gate was on continuous roster. Incidentally, the claim of the applicant also is restricted to the commencement of the said classification only from that date i.e. 10.10.02. The roster changed classification vide A-6 on 1.2.04 to Essentially Intermittent. Hence I find that the status of the roster can be reasonably presumed to be continuous from 10.10.02 till 1.2.04.

11. As regards the second question, ie., what is the validity of the same, it may



be seen that a combined effect of the documents produced illustrate the existence of the following rosters:

- i) Roster dated 24.2.97 classifying it as essentially intermittent(Such roster is not part of the material papers).
- ii) A-1 document dated 10.10.2002 which declares the said gate to be operated under continuous roster.
- iii) A-6 document(impugned) dated 1.2.2004 asserts the same to be under essentially intermittent roster.

When a pointed question was put to the learned counsel for respondents as to whether all the three could co-exist harmoniously, the only reply received was that A-1 document could have been issued by mistake. In their reply statement, they would say that A-1 document is only a Station Working Rule issued for the guidance of the Station Masters and the same does not change the classification of the post of Gate Keepers. Railway gates are essentially a sensitive safety device relating to the life and property of the public as well of the Railways. A discordant declaration in the SWR and GWR cannot co-exist, precisely for the same reason. If at all A-1 was issued by incompetent hands, it should have been corrected duly under the prescribed legal dispensation. Besides, both A-1 and A-6 documents trace their origin to SWRs, presumably dated 10.2.1999. Despite opportunities given, the respondents were unable to produce any document to substantiate or validate such discordance.

12. Under these circumstances, the only harmonious construction possible is that the gate was under Essentially Intermittent roster till the issue of A1, after that and till the issue of A6, it was under continuous roster and thereafter it reverted back to essentially intermittent roster.

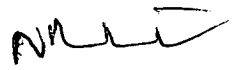
13. I find therefore that the impugned document A5 does not stand on a



sound and consistent footing and in the absence of the documents proving the contrary, the A1 document should govern the field and the roster would be continuous from the date of A1 document ie 10-10-2002 to that of A6 document ie., 1-2-2004 and the applicants are entitled to the benefits of the due allowances on this basis. I order accordingly setting aside A-5.

14. With these directions the OA is disposed off . No costs

Dated, the 2nd August, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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