

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 106/1991

DATE OF DECISION 25.3.93

C.Vembadi \_\_\_\_\_ Applicant (s)

M/s.K.Ramakumar &  
V.R.Ramachandran Nair \_\_\_\_\_ Advocate for the Applicant (s)

Versus

The Union of India represented by the Respondent (s)  
General Manager, Southern Railway,  
Madras and two others.

Mr.M.C.Cherian \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

## JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 1.1.91 the applicant who has been working as B.T Checker in the Southern Railway has claimed arrears of officiating pay, mileage allowance and all other consequential benefits as are available to Guards for the period the applicant officiated as Guard from 1984 onwards while working as B.T Checker.

2. The applicant was appointed as Gangman on 12.8.1975 and promoted as B.T Checker on 27.6.1978 in the old scale of Rs. 225-308. He was given officiating promotion as B.T Checker in the scale of Rs.260-400 with effect from 18.7.1979. His contention is that while working as B.T Checker he was looking after the duties of a Guard also from 1984 "thereby eliminating the working of a separate guard in the Ballast train in which the applicant was working". He has, therefore, claimed that for such period he should be paid salary of Guard, i.e., Rs.1200-1800 <sup>in the pay scale</sup> instead of in the pay scale of B.T. Checker, i.e., Rs.950-1500. He has relied

upon the judgment of the High Court of Kerala in O.P No.2231/1979 at Annexure-B . He has, however, conceded that pursuant to the judgment , the Railway authorities had issued an order, as indicated in the communication dated 26.11.83 at Annexure-C in favour of the petitioner Shri A. Kumaran by which he was given officiating promotion as Guard 'C' along with the arrears. That communication solicited higher orders for grant of similar benefits for one Shri Periasamy. The applicant had sought similar benefits through representations but without avail. He has also sought incidental promotion as Works Mistry which is in his line of promotion. He has also relied upon the certificate dated 17.4.1984 at Annexure-A , issued by the Senior Divisional Engineer, Palghat stating that he was competent to work as a Guard for Material Trains in the absence of a regular Guard.

3. In the counter affidavit the respondents have strongly opposed the application stating that the material trains are totally different from the passenger and goods trains for which regular Guards are appointed. The ballast trains consisting of 3 or 4 wagons travel only 10 or 15 KMs per day and B.T.Checkers are responsible for loading and unloading of the materials. They are not expected to discharge the duties of a Guard. They have referred to the general instructions (Ext.R1) by which the duties and functions of the Guards in ballast trains are to be performed by the drivers. They have asserted that even in absence of Guards, B.T Checkers cannot discharge the duties of a Guard. They have argued that the certificate at Annexure -A does not entitle the applicant to claim privileges of a Guard as per instructions dated 10.7.84 at Ext.R2. As regards Shri Periasamy they have stated that Annexure-C did not grant officiating pay to Shri Periasamy and his petition before the Central Govt. Labour Court was dismissed by that Court vide Ext.R3.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The certificate produced by the applicant at Annexure-A simply certifies that the applicant is competent to work as a Guard. Thus, he cannot claim the pay and allowances of a Guard merely on the basis of this certificate. As regards the judgment of the High Court of Kerala dated 6th April, 1982 at Annexure-B, the relevant portion of the judgment reads as follows:-

"2. It is not disputed on behalf of the respondent that a person who served in an officiating capacity is entitled to full emoluments payable in respect of the higher post in which he officiated. In the circumstances, it is declared that the petitioner is entitled to be paid full emoluments payable to a Guard for the period during which he officiated in that post."

(emphasis added)

<sup>before us</sup>  
The applicant has not been able to produce any order, according to which, he was given officiating promotion as a Guard. The petitioner before the High Court Shri A.Kumaran had been given such officiating promotion vide Annexure-C. Shri Periasamy was not given such officiating promotion and his petition for the privileges of a Guard was dismissed by the Labour Court with the following observations:-

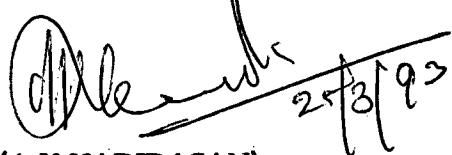
"5. Now the first point that arise for consideration is whether the petitioners though B.T.Checkers have worked as Guards in B.T Trains as alleged by them. Their case that they have worked as Guards on certain occasions in B.T. Trains though vehemently disputed by the department cannot be brushed aside in toto since from the circular marked as Ext.R1 it is clear that the Southern Railway is in the practice of deputing B.T.Checkers as Guards in B.T.Trains. In Ext.R1 this practice is seen deprecated by the superiors giving a direction to the respective departments that the practice of deputing B.T. checkers as Guards in B.T. Trains should be discontinued forthwith. Thus from the contents in Ext.R1 one thing is obvious that there is every possibility of the petitioners who are B.T. Checkers doing the functions of a Guard in B.T. trains.

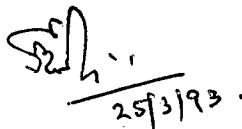
6. But the crucial question is even then whether they are entitled to the emoluments of a Guard as claimed by them. For this, sufficient answer is given by Ext. R2 which is yet another circular issued by the Railway

Department. Ext.R2 is to the effect that even if persons other than a regular guard are put on duties of a Guard of a pilot trains or B.T. trains they will not be entitled to the emoluments of a guard since they will not have to attend any extra duties as Guards other than what they have to do as B.T.Checkers. It is further clear from the circulars that such arrangements will not confer them the status of guards and for all practical purposes they will be treated only as B.T. Checkers or drivers as the case may be. Thus, from the circulars it is manifestly certain that even if a B.T.Checker is asked to function as a Guard in a B.T.Train that will not be tantamount to posting him as a regular guard and consequently such B.T. Checkers or drivers as the case may be, cannot claim the emoluments of a Guard, however long the period might be. For these reasons the claim of the petitioners for emoluments as regular guards cannot be upheld. These three petitioners are therefore dismissed but however I make no order as to costs."

We entirely agree with the ratio of the Labour Courts' order. The instructions of the Railways dated 10.7.1984 at Ext.R2 prohibits privileges of a Guard to B.T.Checkers, if they happened to discharge the functions of a Guard. Normally the functions of a Guard are to be discharged by the Driver. Though the applicant has signed the daily sheets on his own as a Guard, that too to our mind, does not entitle him to the privileges of a Guard.

5. In the above light, we see no force in the application and dismiss the same without any order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

  
(S.P.MUKERJI)  
VICE CHAIRMAN