

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 120 of 2009

...THURSDAY... this the 11<sup>th</sup> day of March, 2010

**C O R A M :**

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

U.K. Moideen,  
S/o. M. Unni,  
(Retired Ballast Train Checker),  
Office of the Sr.SE/P.Way/East/Sr/Palghat)  
Residing at : KILIYANGAL,  
10<sup>th</sup> Mile, Cherplasser, Palghat : 679 503

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by  
The General Manager, Southern Railway,  
Headquarters Office, Park Town P.O.,  
CHENNAI - 3
2. The Chief Personnel Officer,  
Southern Railway,  
Headquarters Office, Park Town P.O.,  
CHENNAI - 3
3. The Divisional Railway Manager,  
Southern Railway, Palghat Division,  
PALGHAT
4. The Divisional Personnel Officer,  
Southern Railway, Palghat Division,  
PALGHAT

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 24.02.2010, this Tribunal on 11-03-10 delivered the following :

**O R D E R**

**HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**


In this O.A, the applicant challenges the refusal of the Railway authorities to grant him pay and allowances and all other perks including running allowance applicable to the post of

Guard for the period 23.06.1993 to 09.08.2007.

2. The brief facts of the case are that the applicant joined the Railways as Senior Trolley man on 21.11.1969, He was promoted as Ballast Train Checker (BTC, for short) on 06.05.1986. He took voluntary retirement from service on 09.08.2007. While working as BTC, the applicant had successfully undergone the Guard's training course. As per the certificate given to him, he was competent to work as Guard of the material train as per Para 1208 of the Indian Railway permanent Way Manual, 1986. He was performing both the duties of BTC and Guard. As the applicant was not given any benefit for performing the duties of Guard, he approached this Tribunal in OA No. 1629/1997, which was dismissed. The applicant filed O.P. No. 1481/2001 against the said decision of the Tribunal in the Hon'ble High Court of Kerala. As directed by the Hon'ble High Court, the applicant submitted Annexure A-11 representation for granting him the pay and allowances of having performed the duties of Guard. His representation was turned down by the Railway authorities. Hence this O.A.


3. By filing M.A. No. 149/2009, the applicant has prayed for condonation of delay of 501 days in filing the O.A. According to the applicant, the delay in filing the O.A. was on account of various and personal reasons including voluntary retirement from service on 09.08.2007.

4. The applicant submits that he had worked continuously as a Guard of material train from 23.06.1993 to 09.08.2007. The requirement of the Guard is a must for the material train also. He has been discharging all functions of the Guard in material train including application of hand brakes and vacuum brakes wherever necessary. He was preparing combined train reports (CTR) based on which running allowance for the Driver and Guard are claimed. He has been given all the training and the material used by the Guard. Therefore, the rejection of his request for pay and allowances of the Guard on the ground that the materials produced by him are only indicating his eligibility to work as Guard and not



as the material produced in proof of having performed the duties of the Guard, is discriminatory and contrary to law. The applicant is not seeking any regularization as a Guard. He was officiating against the post of a Guard required for operating material train and so long as he held the post of the Guard de-facto and de-jure, he is entitled to the pay and allowances attached to the post of Guard. He was utilized as a Guard discharging all the duties and functions attached to that post in addition to the duties and functions of the post of BTC. Therefore, the refusal on the part of the respondents to grant the benefits of a Guard is totally arbitrary.

5. Respondents contested the O.A. They submitted that the reasons attributed for the delay in filing the O.A. do not form sufficient grounds for condoning it. He has not proved that the delay was due to reasons beyond his control. The O.A. is barred by limitation. The applicant was sent for one phase of Guard's training in the year 1993 alongwith other staff of Palghat Division so as to make him conversant with various rules / instructions connected with material train working which would enable him to discharge the duties of BTC effectively. The BTCs like the applicant, who had undergone the Guard's training are authorized to work as Guards of material train subject to road learning on par with the Guards. He was supplied with minimum safety equipments supposed to be carried by BTCs. These equipments are being supplied to the BTCs who have not undergone the Guard's training also. When a material train is worked without a Guard, the duties of Guard will devolve on the Driver as per GRS 4.25(3). Mere filing/signing the CTR form by the applicant will not entitle him for Guard's pay and allowances. In O.A. No. 1629/1997, the Tribunal concluded that there was nothing on record which showed that he had been put independently incharge of the Guard and hence the claim for running allowance on that basis is not sustainable. The appeal against the said order was disposed by Hon'ble High Court directing him to make a representation to the Railway authorities which was rejected by a detailed speaking order on 09.10.2006. If the applicant was aggrieved, he should have approached this Tribunal before 09.10.2007. The applicant was working only as BTC till his voluntary retirement and not as



Guard. The applicant could not produce any material to substantiate that he had been independently put incharge of the duties of a Guard. Since the post of BTC is not in the feeder cadre for appointment to the post of Guard, the question of putting him in the officiating duty of a Guard does not arise. The respondents submitted therefore, that the O.A. is devoid of any merit and is liable to be dismissed.

6. In the rejoinder, the applicant submitted that there is no statutory rule to subject the applicant to road learning on par with other Guards. No other person was deployed to work as material train Guard. The CTRs submitted by the applicant unambiguously prove that he worked as material train Guard during the relevant period of time. Those CTRs were never refuted by the authorities. But on the contrary, they were accepted and acted upon. The authorities, therefore, permitted the applicant to function simultaneously as BCT and Guard.

7. We have heard the learned counsel for the parties and perused the documents.

8. The judgement of the Hon'ble High Court in O.P. No. 1481 of 2001 is extracted as under :

"The petitioners working as Ballast Train Checkers claimed that they shall be promoted as Material Train Guard or in the alternative they shall be given the pay for the work they have done in that capacity. The Tribunal below after appreciating the contentions from either side came to the conclusion that , promotion can be made from one post only if it forms the feeder category. As per para 2 of the impugned order, BT Checker does not come within the feeder category for promotion to the post of Guard. So they cannot as of right claim for promotion as rightly found by the Tribunal. As regards the claim for salary for the period they had been put in independent charge of the Guard, the Tribunal came to the conclusion that there was nothing on record which shows they have been so put independently in charge of the Guard. If the petitioners have got any evidence or material to substantiate that they had been independently put incharge of the Guard, that is a matter for them to approach separately before the pay master with sufficient details. In case such a representation is filed within two months from today, the Railway shall look into the matter and pass appropriate orders.

Original Petitions are disposed of."

9. The finding of this Tribunal that the BT Checker does not come within the feeder category for promotion to the post of Guard and hence, not eligible for promotion as material train Guard, was confirmed by the Hon'ble High Court. Regarding the pay for the work, the applicant was directed to approach the concerned authorities with sufficient details to substantiate that he had been independently put incharge of the Guard. The point to be substantiated is not whether he had done the work of material train Guard but whether he had been independently put incharge of the Guard. The evidence submitted by the applicant are :

- (i) he had successfully undergone Guard's training in 1993 as per certificate dated 23.06.1993;
- (ii) he was provided with all safety equipments used by the Guard; and
- (iii) he had prepared Combined Train Reports (CTRs).

10. The certificate dated 23.06.93 at Annexure A-6 reads as follows :

"This is to certify that Shri U.K. Moideen, Sr. BT Checker/PGT has passed the Guard's examination conducted on 07.06.1993 at the Zonal Training Centre, Tiruchirappalli Jn. He is competent to work Material Train as Guard as per Indian Railways Permanent Way Manual, 1986 – para 1208."

This certificate is to be read with the note dated 21.11.95 at Annexure A-9 reproduced below :

" Extract from CSO/MAS letter No.T.411/90/TTM-CB dated 14/16-8-95 as advised by the Sr. DSO/PGT under his note cited is reproduced below for your information and necessary action:

The BT Checkers who have passed the Guards course at ZTC/TPJ and are certified competent by PRTC/TPJ are authorised to work as material train Guards (only) subject to road learning on par with Guards as per SR.3.78.

All concerned may be advised accordingly."

The Annexures A-6 and A-9 put together show that the certification of the applicant as competent and authorised to work as material train Guard is subject to road learning on par with Guards.

11. The respondent authorities sent the applicant for Guard's training for the purpose of enabling him to effectively discharge the duties of BTC for the safe working of the material train. They did not not subject him to road learning on par with the Guard. Therefore, the Annexure A-6 certificate, in the light of Annexure A-9, does not make the applicant competent to work as a Guard. The certificate the applicant has produced is not good enough to turn him into a Guard. The equipments supplied to the applicants were minimum safety equipments given to BT Checker to protect the track and train formation. The applicant acknowledged the same with the designation of BT Checker and not as Guard. The same equipments could be given to the Guards also. Both the BT Checker and Guard may carry similar safety equipments. That does not mean that the BT Checker is a Guard or vice versa.

12. The applicant had submitted a number of Combined Train Reports (CTRs). The CTR is to be prepared and signed by the Guard / Driver of a train after having performed the duties. When the material train is worked without a Guard, the duties of Guard devolves on the Driver as per GRS 4.25(3). As a material train is having only three or four boggies, the Driver can perform the duties of a Guard also. The applicant was not required to prepare and sign the CTR forms. He was not authorized to do so. He was not put in charge of the Guard independently. He assumed the role of Guard and signed the CTR forms without any authority. The fact that he voluntarily performed the duties of a material train Guard does not entitle him for the pay and allowances attached to that post because the competent authority had not authorized him to do so. If the applicant is not eligible for pay and allowances of Guard, then he is not eligible for overtime allowance of Guard also. Besides, he never claimed overtime allowance within a fortnight of performing the so called overtime work of Guard.

13. The order of the Chief Personnel Officer dated 3.10.2006 at Annexure A-12, rejecting the claim of the applicant for the pay and allowances attached to the post of Guard, is a

reasoned and speaking order. There is no infirmity in the order which calls for interference by this Tribunal. The applicant in the absence of a Guard in the material train appears to have designated himself as Guard-cum-BT Checker and simultaneously performed the duties of both. The post of BT Checker and Guard are falling in separate and distinct categories with different recruitment rules and avenues of promotion. The applicant was enthusiastic to perform the functions of the Guard without being qualified and authorized to work as a Guard. The respondents have not contested that he had worked unauthorizedly as Guard. It would have been better had the respondents restrained the applicant from doubling up as a Guard for over four years without necessary qualification and authority. However, this failure on the part of the respondents does not entitle the applicant to the pay and allowances of the Guard. The applicant needs to produce only one essential thing, an order putting him incharge of Guard of the material train but that is the thing he does not have.

14. As regards the limitation, we hold that the O.A. is barred by limitation as we do not find any good and sufficient reason for condoning the delay of 501 days.

15. In our considered view, the applicant has not substantiated that he was put incharge of the material train Guard independently and, therefore, he is not eligible for any pay and allowances for and above what he has already been paid for performing the function as a BT Checker. The O.A. fails for want of merit besides being time barred. Accordingly, it is dismissed.

16. There shall be no order as to costs.

(Dated, the 11<sup>th</sup> March, 2010)



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**

cvr..



**(GEORGE PARACKEN)**  
**JUDICIAL MEMBER**