

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.522/2001.

Friday this the 13th day of June 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

A.Rafi Ameen Kidwai,
Store Chaser,
Office of the Senior Divisional Engineer
(Co-ordination), Southern Railway,
Palakkad. Applicant

(By Advocate M/s Santhosh & Rajan)

Vs.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office,
Chennai.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.
3. R.Ravikumar,
Ballast Train Checker,
Office of the Additional Divisional Engineer,
Southern Railway, Palakkad. Respondents

(By Advocate Mr.P.Haridas, (R.1&2)

(By Advocate Mr.T.C.Govindaswamy (R3)

The application having been heard on 13th June 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant in this case is a Senior Gangman and is working as Store Chaser in the office of the Senior Divisional Engineer (Co-ordination) Southern Railway, Palghat Division. As per A-1 notification he applied for the post of Supervisor/Permanent Way in the scale of Rs.4500-7000, as he was also eligible to apply for the same. The eligible categories of employees who could apply for the Limited Departmental Competitive Examination (LDCE for short) against 25% quota were Gangman, Keyman and Gangmate. There were altogether 6 vacancies

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including 4 unreserved ones. The applicant's grievance is that though he is qualified and eligible, he is not empaneled as Supervisor/Permanent Way, while the 3rd respondent, a Ballast Train Checker (BT Checker for short), who does not belong to the eligible feeder category and who has got another promotional avenue as Work Mistry, is selected. Aggrieved, the applicant has filed this O.A. praying for the following main reliefs.

- i. call for the records leading to Annexure A-3 and set aside the same to the extent it includes the name of the 3rd respondent.
- ii. declare that the participation of the 3rd respondent in the selection to the post of Supervisor/Permanent Way and the inclusion of his name in Annexure A3 as illegal.
- iii. declare that the non-inclusion of the name of the applicant in Annexure A3 as illegal.
- iv. direct the 2nd respondent to include the name of the applicant in Annexure A3 panel and also direct the 2nd respondent to promote the applicant to the post of Supervisor/Permanent Way.

2. The respondents 1 & 2 have filed a reply statement contesting the averments in the O.A. on the ground that the 3rd respondent, working as Ballast Train Checker, which is an ex-cadre post had his lien maintained as Senior Trackman in the parent cadre. The respondents have referred to the letter No.P(S) 535/I/Division/Vol.II dated 30.6.2000 issued by the Chief Personnel Officer, Southern Railway, whereby, the post of Ballast Train Checkers was declared to be ex-cadre posts. The respondents have further maintained that the mere fact that the 3rd respondent was transferred to Palghat Division on mutual transfer basis as Ballast Train Checker, does not necessarily mean that he was holding a cadre post as Ballast Train Checker. According to the respondents, both the applicant and the 3rd

respondent were holding ex-cadre posts at the relevant point of time and as such, both of them were eligible to participate in the test. No favouritism was shown to the 3rd respondent in the matter of selection to the post of Supervisor/Permanent Way, since it was based on selection process carried out by a duly constituted Selection Committee.

3. The 3rd respondent has filed a reply statement along with a copy of the Chief Personnel Officer's letter dated 30.6.2000(Annexure R-3(a)) which is referred to by the official respondents in their reply statement. The 3rd respondent has stated that he was holding an ex-cadre post as Ballast Train Checker in the light of Annexure-R3(a), which came into effect only on 30.6.2000. According to the 3rd respondent, he duly exercised his option to be treated as holding the ex-cadre post of Ballast Train Checker with lien in the cadre of Senior Trackman/Senior Gangman and that, in this view of the matter, he was eligible to appear for the post of Supervisor through Limited Departmental Competitive Examination. The applicant and the 3rd respondent stood on equal footing and that the whole selection was on the basis of performance in the examination.

4. We have gone through the pleadings and the material placed on record and have heard Shri TA Rajan, learned counsel for the applicant and Shri P.Haridas, learned counsel appearing for the respondents 1 & 2. We have also heard Shri T.C.Govindaswamy learned counsel appearing for the 3rd respondent. According to Shri Rajan, the 3rd respondent could not have been considered to

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hold an ex-cadre post, since he had availed of all the benefits of a mutual transfer with another BT Checker, in terms of Rule 227 of the Indian Railway Establishment Code (IREC for short). Rule 227 of IREC stated thus:

"A Railway Servant shall not be transferred substantively to or, except in a case of dual charge, appointed to officiate in a post carrying a pay less than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under rule 241 (FR. 14)."

The gist of Shri Rajan's argument is that, the applicant was transferred from one post of BT Checker AEN Office/N.TPJ., TPJ Division to another post of BT Checker, AEN/O/N/SA Palghat Division and therefore, it should necessarily be treated as a cadre post in the strict construction of Rule 227 of IREC. In this view of the matter, he was holding a cadre post and therefore, he could not have been considered for LDC examination, as he is not in the feeder category.

5. Shri Haridas, learned counsel appearing for the respondents would, first of all state that, the 3rd respondent was holding an ex-cadre post always and, in any case, the whole confusion was removed and uniformity was ensured with the coming into force of Annexure R-3(a) w.e.f.30.6.2000. Thus, the date on which the notification R-3(a) was issued, the 3rd respondent was holding an ex-cadre post. Even otherwise, the applicant would not have been included in the panel as there was one more meritorious candidate above him and that, having regard to the number of vacancies available, the applicant would not have found a place in the panel. Both the official respondents and the 3rd respondent invited our attention to this Tribunal's decision in O.A.769/2001 dated 4th September, 2001 turning on the very same issue, though pertaining to a different selection.

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6. On a consideration of the relevant facts we find that, both the applicant and the 3rd respondent are in the feeder category for promotion to the post of Supervisor, Permanent Way. The applicant is holding an ex-cadre post as Stores Chaser, while the 3rd respondent is holding the ex-cadre post of Ballast Train Checker. R3(a) letter dated 30.6.2000 was occasioned by the fact that different practices were followed by different divisions in the matter of treating the BTC's cadre status. By R3(a), issued with the approval of General Manager, Southern Railway, the post of BTC was made ex-cadre. Thus, when the notification was issued, the post of BTC was an ex-cadre post. The 3rd respondent having opted to hold the ex-cadre post of BTC was having his lien as Senior Trackman.

7. It is not denied that, the 3rd respondent has got higher marks than the applicant. The records have been produced to show that the 3rd respondent has performed better than the applicant in the LDC examination.

8. In this connection, we notice that the very same issue was considered by this Tribunal in O.A.769/01 dated 4.9.2001 on identical facts and circumstances. This Tribunal has come to the following findings.

"From A-9 it is evident that in the Southern Railway, there was no consistent practice as to the treatment of the post of Ballast Train Checker as Cadre post or ex-cadre post. In some divisions, the post was treated as ex-cadre post and in some others, it was treated as cadre post as is seen from A-9. By A-9 a uniformity was brought out by treating the post of Ballast Train Checker as cadre post in all divisions. The incumbents who had been appointed as Ballast Train

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Checkers on cadre basis were allowed to exercise option either to continue on cadre post or to be granted lien elsewhere. The 5th respondent had applied pursuant to the notification and it is seen from A-6 dated 11.4.2001 that his name was also included in the list among the persons who were alerted to appear for the written test, the applicant did not raise his grievance at that time. If the 5th respondent was not a person who fell in the feeder category, the applicant should have agitated against the inclusion of the name of the 5th respondent in A-6. Similarly, against A-7, the panel prepared after the written test, of those who are eligible to appear for the viva voce, the applicant did not have any grievance. Finding that the applicant ultimately did not qualify while the 5th respondent did, the applicant has filed this application challenging the inclusion of the 5th respondent in the panel. We are of the considered view that there is no legitimate basis for the claim of the applicant. In Annexure A-8, the 5th respondent has been described as Ballast Train Checker, TVC having lien as Senior Trackman in TVC section. Since the 5th respondent though working as Ballast Train Checker had lien on the post of Senior Trackman. In any case, as the applicant cannot dispute that the 5th respondent had acquired a lien on the post of Senior Trackman at least from the date of issue of Annexure A-9 i.e. 30.6.2000, it is idle for the applicant to contend that the 5th respondent was ineligible to apply because on the last date fixed for receipt of application pursuant to Annexure A-5 in the divisional office viz., 19.7.2000, the 5th respondent had a lien on the post of Senior Trackman and was eligible to apply."

What is referred to as A-9 in O.A.769/01 is Annexure R3(a) in the present O.A. and therefore, we are in a factually identical situation in this case. That being so, we are in respectful agreement with the findings of this Tribunal quoted above.

9. On the facts and circumstances of the case, we hold that the impugned order A-3 cannot be faulted and the application has no merit.

10. Accordingly, the application is dismissed. No costs.

Dated the 13th June 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER