

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 542 of 2007

Friday..., this the 20th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER

K.V. Mohanan,
S/o. Achuthan Nair,
Technician Gr.III/Signals/
Southern Railway, Trichur
Residing at Kondampurath Vrindhavan,
Cheruthuruthy, Trichur District. ... 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 Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue involved is short. The applicant was initially engaged as substitute Khalasi and granted Temporary Status w.e.f. 01-06-1980. Later on, his services were regularized as a Khalasi in the Signalling & Telecommunication Department. He was then promoted as Trolleyman and later as Senior Trolleyman in the scale of Rs 2650 – 4000/-. When his further promotion as Senior



Trolleyman Gr. I in the higher scale of Rs 2,750 – 4,400 was denied to the applicant, he approached the Tribunal by filing OA No. 729/2000 which was disposed of by order dated 24-05-2001, recording the submissions of the respondents that action has been initiated at the Divisional level to fill up the vacancy of Senior Trolleyman Gr. I (signals) and that the applicant being the senior-most, would be considered and promoted, if found suitable. In pursuance of the order of the Tribunal, the applicant was considered and promoted as Senior Trolleyman Gr. I, in the scale of Rs 2,750 – 4,400/- vide Annexure A-1 order dated 02-01-2002. Annexure A-2 is a minor modification to the above order, with regard to place of posting.

2. The applicant was further promoted as Signal Maintainer (Technician Gr. III/Signals) in the scale of Rs 3,050 – 4,590/- vide Annexure A-3 order dated 28-11-2006 and the pay was fixed at the stage of Rs 4,030/-. At the time of promotion the applicant was drawing a pay of Rs 4,175/- and as such, fixation of his pay on promotion, according to the applicant should have been Rs 4,350/- instead of Rs 4,030/- fixed by the respondents and in this regard the applicant had submitted Annexure A-4 representation dated 06-12-2006. This was followed by an expeditor dated 03-01-2007, vide Annexure A-5. Though the respondents had not replied to the above, in reply to a communication by the Trade Union, the respondents, vide Annexure A6 order dated 24-04-2007 rejected the claim of the applicant, without any detailed reason. Through this OA the applicant has prayed for quashing of the order dated 28-11-2006 (Annexure A-3) in so far as it fixes the pay of the applicant at the stage of Rs 4,030/- and for a direction to the respondents

to fix the pay of the applicant at the stage of Rs 4,350/- in the scale of Rs 3,050 – 4,590/-.

3. Respondents have contested the O.A. According to them, the applicant belongs to the Signalling and Telecommunication cadre, but the post he was holding as Trolleyman Grade II was an ex-cadre post and the applicant's lien has been maintained in the cadre post of Khalasi in signal & Telecommunication Department of Trivandrum Division. As such, on his posting back to the parent department, and on his promotion as Signal Maintainer (Tech. Gr. III/Signals), his pay was fixed taking into account the presumptive pay, he was assumed to have drawn in the cadre post in the scale of Rs 2,550 – 3,200/- and Rs 2,650 – 4,000/-. The respondents have denied receipt of Annexure A-4 and A-5 representations from the applicant. The respondents have further averred "*... the post of Trolleyman has all along been treated as ex-cadre. It is not treated as cadre previous to 2004 and as excadre from 2004... Accordingly the pay drawn by him in the post of Trolleyman cannot be considered as his substantive pay and hence there is no violation of any of the Fundamental Rules.*" It has also been stated by the respondents that as per Annexure R-1 communication from the Headquarters, Personnel Branch to the D.R.Ms of various Divisions, the post of Trolleyman are to be kept as Ex-Cadre. Vide Annexure R-2 the applicant had accepted this position and opted "*to continue in the present post of Head Trolleyman in the scale of Rs 2750 – 4,400 being an ex cadre post and maintaining my seniority position in the present cadre of Helper I, for consideration for selection to Technical Grade III (signal) According to seniority.*"

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4. The applicant has filed his rejoinder, denying various contentions of the respondents. Especially, as the character of the post of Trolleyman, which is claimed by the respondents as Ex-cadre right from the beginning, the applicant had annexed the following documents to substantiate that the said post was earlier not falling within ex-cadre posts:-

- (a) Annexure A-7 order of the Divisional Office dated 10-12-93. where, the post of Trolleyman was given cadre-structure.
- (b) Annexure A-8, Provisional Seniority list of *Trolleymen cadre* wherein the name of the applicant figured in vide serial No. 3.
- (c) Annexure A-9 communication, wherein it has been stated, "*The Trolleyman post in S & T Department was considered as cadre post as clarified in terms of Railway Board's letter No. PC-3/93/CRC/5 dt. 28-10-93, communicated through CPO/MAS letter No. F(FC) 524/General/Cadre restructuring 1993 dt. 29-10-93/1-11-93.(PC No. 135/93).*
- (d) Annexure A-10 Memorandum dated 9-7-2002 fixing the pay of the applicant on his **promotion** to the post of Trolleyman Gr.I
- (e) Annexure A-11 Letter dated 17-10-2001 spelling out alert list for **promotion** to the post of Trolleyman Gr. I,

5. Counsel for the applicant argued that in none of the other Divisions/Railways, have the railways taken such a decision to treat the post of Trolleymen as ex-cadre post. He has also produced a copy of the communication dated 22-11-2007, which provides for pay scale for Tech III at Rs 2,750 – 4,400 and on promotion, fixing the scale of Rs 3,050 – 4,590/- He has further submitted when documentary evidences vide Annexure A-9 to A-11 in unequivocal term displays that the post of Trolleymen has never been an ex-cadre post, the averment



in the counter, duly sworn in, to the effect that it is not treated as cadre previous to 2004 and as ex-cadre from 2004 would mean that the Divisional Personnel Officer has deliberately tried to misguide this Tribunal by giving incorrect information and distorted facts.

6. Counsel for the respondents has invited the attention to Annexure R-1 and R-2 and stated that these two making it very clear that the applicant had accepted that the post of Trolleyman is an ex-cadre post and as such, he cannot now come and challenge the action on the part of the Respondents.

7. Arguments were heard and documents perused. Generally, if an individual is posted against an ex-cadre post, he would be appointed to that post and not 'promoted'. Even if it is a promotion to that post, it would carry attendant condition that the post that the person holds being an ex-cadre post, he would retain his lien in the parent department and in the event of any promotion being given in the parent department to his junior, he would be given promotion in the parent department, under 'Next Below Rule'.

8. Again, the seniority list would be only in the parent department and not in the ex-cadre post. The provisional seniority list of Trolleyman is separately given vide Annexure A-8 and had the post been ex cadre post, the name of the applicant would have figured in the seniority list of the parent department. According to the applicant in none of the seniority list of parent cadre in the Signal & Telecommunication Department, does the name of the applicant appeared.



9. In the case of the applicant, vide Annexure A-1 read with A-2, it was by way of promotion that the applicant had been posted as Senior Trolleyman Gr. I. Again, there has been no indication in the said promotion order that the post he would be holding is an ex-cadre post.

10. To ascertain as to whether a post is an ex cadre post or cadre post, the relevant document creating the post may have to be looked into. In the absence of that document being available, other contemporaneous documents can also be considered. In the case of *Ran Singh Malik v. State of Haryana*, (2002) 3 SCC 182, the Apex Court has observed, “*Usually if the employer decides to create any ex-cadre post which may be necessary for any specialised scheme in keeping with the qualification of the personnel required to man that post, it is so indicated in the order of creation of the post. But unfortunately in the case in hand the relevant document creating the post of Deputy Director (Feed and Fodder) is not forthcoming. All the same, the contemporaneous document which is a letter from the Director to the Secretary to the Government can also be looked into for the purpose of coming to the conclusion whether the post of Deputy Director (Feed and Fodder) is in the regular cadre in Haryana Veterinary Service Class I or is an ex-cadre post*”. In *O.P. Singla v. Union of India*, (1984) 4 SCC 450, the Apex Court has held, “*Normally, an ex-cadre post means a post outside the cadre of posts comprised in a Service.*” Vide Annexure A-9, the post of Trolleyman has been clearly held to be considered as Cadre post.



11. If the above dictum of the Apex Court is pressed into service in the instant case, it would be evident that Annexure A-9 communication dated 14th March, 2003 clearly reflects that the post of Trolleyman in S & T Department was considered as Cadre post as clarified in terms of Railway Boards letter dated 28th October, 93. Other Annexures A-10 and A-11 also do not give any indication that the post of Trolleyman was ever treated as an ex-cadre post.

12. When the applicant challenged in OA No. 729/2001 the inaction on the part of the respondents when they did not take action to fill up the then existing vacancies of senior Trolleyman Gr.I, in their counter there has been no reflection of the fact that the post is an ex-cadre post but to the contrary, it was stated, "*It is respectfully submitted that due action has been initiated at the divisional level to fill up the vacancies of Senior Trolleyman Gr. I (Signal) in scale of Rs 2750- 4400. The applicant is the seniormost Trolleyman Gr. II to be considered for promotion to the higher grade. He would be promoted if he is found suitable for promotion*"

13. All these would go to show that the post of Trolleyman had never been treated as ex cadre post at the time when the applicant was promoted to the post.

14. The case could be viewed from another angle. Even if it be assumed that the post of Trolleyman was an ex-cadre post, the applicant has been holding the post of Trolleyman, Senior Trolleyman Gr. II and Senior Trolleyman Grade I for a substantial period. It has been held in the case of *Bhadei Rai v. Union of India*, (2005) 11 SCC 298, as under:-

"The appellant had to undergo a screening test in the year 1995 and in the result declared in 1997, the appellant had qualified. A long period of twenty years has been spent by the appellant on a higher post of Rigger in Group 'C' post. In such circumstances, he is legitimately entitled to the relief of pay protection and consideration of his case for regular appointment to Group 'C' post on the basis of his long service in Group 'C' post."

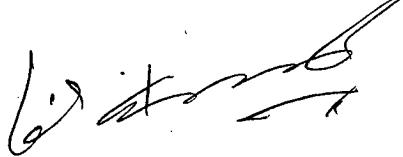
14. Thus, viewed from the above angle, even if it assumed without being accepted that the post of Trolleyman is an ex-cadre post, since the applicant has been in the higher grade for the past decades, it would be appropriate that his pay is protected.

15. In view of the above, the O.A. is allowed. The impugned Annexure A-3 and A-6 order, so far as they relate to the applicant is quashed and set aside. It is declared that the applicant is entitled to the pay protection (drawn by him as Trolleyman Grade I) on his being posted as Technician Gr. III/Signals in the grade of Rs 3,050 – 4,590/- Respondents are directed to work out the same and pass suitable orders in this regard. Difference in pay due and so far paid to him shall be paid as arrears of pay and allowances. This order shall be complied with, within a period of three months from the date of communication of this order.

16. No costs.

(Dated, the 20th June, 2008)


(Dr. K. S. SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K. B. S. RAJAN)
JUDICIAL MEMBER