

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.565/07

Friday..... this the 3rd day of October 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

P.Pankajakshan,
S/o.Pattu,
Crane Operator Gr.II/Diesel Shed,
Southern Railway/Ernakulam South.
Residing at "Blossoms", Kossery Lane,
Ponekkara Road, Edappally,
Cochin - 682 024, Ernakulam District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

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,
Thiruvananthapuram - 14.
3. Shri.K.A.Nishad,
Technician Gr.II (Diesel/Electrical),
Diesel Loco Shed, Southern Railway,
Ernakulam Junction, Cochin - 682 016.
4. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Chennai - 3.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil [R1,2&4])

This application having been heard on 18th September 2008 the
Tribunal on 3rd.. October 2008 delivered the following :-



ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against Annexure A-1 letter dated 9.7.2007 and Annexure A-2 letter dated 4.9.2007 issued by the 2nd respondent, namely, the Divisional Personnel Officer, Southern Railway, Trivandrum Division. Vide the Annexure A-1 letter, the 2nd respondent has invited applications from among the Diesel (Electrical) staff of Trivandrum Division who are willing to be considered for the Ancillary ex-cadre post of Technician Gr.II (Crane Driver) in scale Rs.4000-6000 in Diesel Shed, Ernakulam. According to the said letter the volunteers for the above posts should be from the same grade or from one grade below to the Ancillary post, which is proposed to be filled up and they should have a minimum of 2 years of residency period in that grade. It has also been stipulated in the said letter that the seniority of the employee selected for the above post will continue to be maintained in the grade and further avenue of promotion will also be in his parent cadre and as per the extant rules, the staff promoted to ex-cadre posts will be on a tenure of 4 years and thereafter they will be repatriated to their parent cadre. Vide the Annexure A-2 letter dated 4.9.2007 the 2nd respondent has directed the Senior DME/DSL/ERS to arrange trade test in favour of the 3rd respondent, namely, Shri.K.A.Nishad, Technician Gr.II (DSL/Elect.) Wing, Diesel Shed, Ernakulam for considering him for promotion to the post of Technician Gr.II (Crane Driver).

2. The applicant was initially appointed as a Steam Loco Khalasi on 13.2.1979. According to him, on surplusage, he was transferred to the Diesel Loco Shed during 1985 and later promoted as Technician Gr.III in

✓

the scale of pay of Rs.3050-4590. While working in that capacity, he was selected as Crane Operator/Crane Driver Gr.III, an ex-cadre post, in the same pay scale. Thereafter, the 2nd respondent vide letter dated 14.1.2004 advertised vacancies in different grades including Technician Gr.II (Crane Driver) in the scale of pay of Rs.4000-6000 (Annexure R-2) for which the Technicians Gr.III/Elec. wing were the feeder posts. It was also stated in the said letter that the post of Technician Gr.II (Crane Driver) is an ex-cadre post and seniority of staff selected against those posts will continue to be maintained in their parent cadre and their further avenue of promotion will also be in their parent cadre. The applicant who passed the necessary trade test for ancillary (ex-cadre) post of Crane Operator Gr.II was promoted to that post vide Annexure A-3 Office Order dated 15.4.2004. It was mentioned in the said letter that the post being an ex-cadre one, seniority of the employees who are promoted to the above posts, will be maintained in the parent cadre itself. The respondents have now issued the impugned Annexure A-1 letter dated 9.7.2007 inviting applications to fill up the post of Technician Gr.II (Crane Driver) held by the applicant. According to him, since no tenure was fixed for the post of Crane Operator Gr.II in Annexure A-3 letter, once a person is appointed as a Crane Driver, except when he is transferred to his parent line on his own request, normally, no further selection is to be conducted or any action for repatriation is to be undertaken. He has, therefore, submitted a representation on 23.7.2007 (Annexure A-4) to the 2nd respondent stating, inter alia, that he was already holding the post and that, in any case, even going by the analogy of a four years tenure, he would still be entitled to continue up to 15.4.2008. He has further submitted that being eligible to be considered for a fresh selection he submitted an application in the



prescribed proforma in response to Annexure A-1 requesting that he should also be considered, in the event of a fresh selection/trade test is held. However, the respondents did not consider his application. Instead, they have, vide Annexure A-2 letter dated 4.9.2007, called the 3rd respondent Shri.Nishad alone for the trade test. The applicant's contention is that the respondents have done so with the sole intention to select the 3rd respondent alone and to oust him, at any cost. He has also submitted that he came to understand that the aforesaid action of the respondents to notify the vacancies again was in view of the Annexure A-5 order of the Railway Board bearing RBE No.191/2004 dated 27.8.2004, according to which a post should be operated as ex-cadre only when it is inescapable in the exigency of service and with the personal approval of CPO after consultation with FA & CAO. The allegation of the applicant is that the guidelines prescribed in Annexure A-5 has not been followed by the respondents before Annexure A-1 letter was issued and, therefore, the same is arbitrary, discriminatory and unconstitutional. He has, therefore, sought the following reliefs in this O.A :-

1. Call for the records leading to the issue of Annexure A-1 and Annexure A-2 and quash the same.
2. Declare that the post of Crane Driver Gr.II is a cadre post.
3. Declare that the applicant is eligible to continue as Crane Operator/Crane Driver Gr.II and direct the respondents accordingly.
4. Declare that the applicant is entitled to continue as Crane Operator/Crane Driver at least up to 15.4.2008 and direct the respondents accordingly, or in the alternative,
5. Declare that the applicant is entitled to be considered for appointment/promotion as Crane Operator/Crane Driver in response to Annexure A-2 and direct the respondents to consider the applicant accordingly and to grant the consequential benefits emanating there from.



6. Award costs of and incidental to this application.

7. Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

3. Respondents in their reply statement submitted that the post of Technician Gr.II (Crane Driver) has already been declared as an ex-cadre post by the Chief Personnel Officer, Southern Railway, Madras vide his letter dated 29.5.1998 (Annexure R-1). They have also submitted that the applicant's posting as Crane Operator/Crane Driver Gr.III from 1997 itself was against an ex-cadre post as advised in the posting order No.V/P.535/IV/DSL/Vol.IV (O.O.No.26/M/DSL/97) dated 24.5.1997 and after having accepted that post and having continued in that post on ex-cadre basis for more than 10 years, he cannot now plead for a declaration that the said post was not an ex-cadre post. They have also submitted that in the Annexure R-2 letter dated 14.1.2004, by which volunteers to fill up one post of Technician Gr.II (Crane Driver) in scale Rs.4000-6000 were called for, it has been specifically stated that it was an ex-cadre post. The applicant had submitted his application for the aforesaid post and he was selected and posted accordingly. Since there was only one post of Technician Gr.II (Crane Driver) in scale of pay of Rs.4000-6000/- in the Diesel Loco Shed, Trivandrum Division and consequently the promotional prospects of the employee working in that post has not been very good, the respondents have treated it as ex-cadre post so that service in the said post is assured continuously. According to them, an employee working in an ex-cadre post cannot be permitted to continue in that post for years together as he does not have any vested right to do so as he is maintaining his lien in his cadre post. They have also relied upon the Annexure R-3 letter PBC No.169/01 dated 15.10.2001

regarding repatriation of staff holding ex-cadre post and eligibility for holding another ex-cadre post. According to the said letter, ex-cadre posts are filled up by calling eligible volunteers, normally, for a tenure of 4 years and on its completion, the employee concerned should be repatriated to his parent unit. By the said letter, the respondents have also taken notice of the fact that some of the incumbents were not being repatriated to their parent units even after completion of the tenure period of 4 years and in some cases, the incumbents have even switched from one ex-cadre to another without being repatriated to parent cadre. The Railway Board has, therefore, decided that henceforth the tenure will be strictly enforced with the outer limit of 4 years and thereafter the incumbent has to be necessarily repatriated to the cadre post and he will become eligible for consideration for another ex-cadre post only after remaining in the cadre post for a minimum period of 2 years. They have also submitted that there is no illegality or arbitrariness in calling the 3rd respondent for filling up the post on the basis of trade test as the volunteers were to be considered only on the proportion of 1:1 based on their seniority. Since the 3rd respondent herein was the senior most among the volunteers, he has been considered suitable and accordingly selected. They have specifically denied the allegation of the applicant that the 3rd respondent alone was called and it was only for the purpose of selecting him and to oust others including the applicant.

4. We have heard Shri.T.C.Govindaswamy for the applicant and Shri.Varghese John on behalf of Shri.Thomas Mathew Nellimoottil for the respondents. First of all, it is an undisputed fact that the applicant was selected as Technician Gr.II/Crane Driver in the scale of pay of

9

Rs.4000-6000/- on the basis of Annexure R-2 letter dated 14.1.2004.

It has been stated very clearly in the said letter that the post of Technician Gr.II/Crane Driver is an ex-cadre post and the seniority of staff selected against those posts will continue to be maintained in their parent cadre and further avenue of promotion will also be in their parent cadre only. The Railway Board has already issued the guidelines regarding repatriation of staff holding ex-cadre post and their eligibility for consideration and appointment to another ex-cadre post vide PBC No.169/2001 dated 15.10.2001 (Annexure R-3). It has been made very clear in the said letter that normally the tenure for the ex-cadre post is 4 years and on its completion, the incumbent of that post has to be repatriated to his parent unit. They have also noticed that in some cases officials are allowed to continue in the ex-cadre post beyond the prescribed tenure against the instructions and in some cases they have even switched from one ex-cadre to another ex-cadre post without being repatriated to parent cadre. The Railway Board has deprecated such procedures and directed the concerned authorities that they should strictly adhere to the tenure of 4 years in the matter and only after a minimum period of 2 years thereafter, they can be considered again for another ex-cadre post and only in exceptional cases, the said period can be reduced to 1 year, that too, with the personal approval of the concerned PHODs. The applicant has volunteered for the aforesaid post knowing fully well that it was an ex-cadre post and he can not continue in that post beyond the period of 4 years. From the 4th relief sought by the applicant in this O.A itself it is clear that he was well aware of the fact he was not entitled to continue in the present ex-cadre post beyond 15.4.2008.



5. We, therefore, do not find any merit in this application seeking quashing of Annexure A-1 and Annexure A-2 letters. After having worked in the ex-cadre post for so long, the applicant cannot now turn around and say that the post of Crane Driver Gr.II is to be declared as a cadre post as prayed in the 2nd relief. As already noted earlier, it is evident from the 4th relief sought by the applicant that he was not entitled to continue as Crane Operator/Crane Driver Gr.II beyond 15.4.2008. The said period is already over and by efflux of time, the said relief has also become infructuous. We also hold that in view of the Annexure R-3 PBC No.169/2001, the applicant is not entitled to be considered for appointment/promotion as Crane Operator/Crane Driver in response to Annexure A-2 notification. In the result, O.A is dismissed. There shall be no order as to costs.

(Dated this the ...3rd. day of October 2008)



K.S.SUGATHAN
ADMINISTRATIVE MEMBER

asp



GEORGE PARACKEN
JUDICIAL MEMBER