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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 259 of 2005
with
Original application No. 58 of 2006

Thursday, this the 26th 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**

1. O.A. NO. 259 OF 2005

S. Ramachandran,
S/o. Swaminathan Pillai,
Tower Wagon Driver,
Office of the Senior Section Engineer,
Over-head Equipments, Southern
Railway, Podanur, Residing at
73/A, Railway Hospital Road, Near
Southern Railway Signal & Tele-
Communication Workshop, Podanur,
Coimbatore : 23

... 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 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 Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Mr. P. Haridas)

2. O.A. NO. 58 OF 2006

V.P. Vasudevan Namboodiri,
S/o. V.P. Krishnan Namboodiri,
Tower Wagon Driver,
SSE/OHE/Southern Railway, Palghat,
Residing at No. 621-C, Railway Quarters,
Hemambika Nagar, Palghat. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

versus

1. Union of India, represented by
The Secretary to the Govt. of India,
Ministry of Railways, Rail Bhawan,
New Delhi.

2. The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai : 3

3. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.

4. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat. ... Respondents.

(By Advocate Mr. Sunil Jose)

ORDER**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

As the law point involved in these two O.As is one and the same, these O.As are dealt with in this common order.

2. Facts in OA 259/05: - When the applicant was functioning in the Palghat division as Grade I Motor Truck Driver in the pay scale of Rs 1320 – 2040 (RPS Rs 4,500 – 7,000), respondents issued Annexure A-1 notification dated 20-01-1997 inviting volunteers for the post of Tower Wagon Driver in the scale of Rs. 1200 – 1800. The said notification stipulated that the post is an 'ex-cadre' post and the selection will be conducted on the basis of a viva-voce test. Candidates selected would be allowed to retain their seniority and lien in the original unit. The applicant having volunteered and he having been selected, he was selected and posted as Tower Wagon Driver, vide Annexure A-2 order dated 29-06-1998. The post of Motor Truck Driver being treated as cadre posts and having the channel of promotion including J.E. II on the basis of integrated seniority of all the skilled Gr. I, the applicant was asked to exercise his options as to whether he would opt for maintaining his lien in the cadre of Motor Truck Driver. Annexure A-3 communication dated 2nd March, 2000 refers. The applicant accordingly opted for his lien at M.T.D. vide Annexure A-4 letter dated 29-03-2000 (The last date for exercising option was 10th March, 2000 but since the applicant was

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on leave, he gave the option on 30th March, 2000). The applicant, however, continued to function as Tower Wagon Driver. Vide Annexure A-5 order dated 14-10-2003 another notification for filling up of the post of Tower Wagon Driver was issued. The applicant preferred a representation dated 07-11-2003 (Annexure A-8) stating that in his order of appointment, vide Annexure A-2, there was no mention that the post of Tower Wagon Driver was an ex cadre post and as per an order in OA 591/95, the post of Tower Wagon Driver has been held to be a cadre post and hence, he be treated as a person holding the cadre post of Tower Wagon Driver from the date of his initial posting with all resultant benefits. While there was no response to the abovementioned representation, the respondents have once again notified certain vacancies of Tower Wagon Driver stating that the same is an ex cadre post. The applicant submitted another representation dated 25-02-2004, vide Annexure A-10. Annexure A-11 is yet another communication calling for volunteers for the post of Tower Wagon Driver, which was notified as an ex cadre post. The applicant has challenged Annexure A-9 and A-11 notifications and has prayed for a declaration that he is holding the cadre post of Tower Wagon Driver and that he is entitled to all consequential benefits thereto.

3. Facts in OA No. 58/06:- The applicant who was holding the post of Motor Truck Driver in the scale of Rs 4,500 – 7,000 was, on his

volunteering for selection to the post of Tower Wagon Driver was so posted in the grade of Rs 4,000 – 6,000/- vide Annexure A-1 order dated 14th December, 2001. Like the applicant in the other OA, he was also asked option in regard to his lien in the M.T. Driver Cadre, vide Annexure A-2 order dated 02-03-2000 in response to which he exercised his option for maintaining his seniority as Skilled Artisan in the M.T. Driver Grade. Annexure A-3 is a notification calling for volunteers for the post of Tower Wagon Driver, to which the applicant made a representation dated 18-12-2003 stating that as per the order of the Central Administrative Tribunal in OA No. 591/95, the post of Tower Wagon Driver is a cadre post and he be given the due benefit as for that post from the date of his initial posting. The applicant could find yet another notification dated 12th February, 2004 (Annexure A-7) on the same lines as earlier, treating the post of Tower Wagon Driver as an Ex cadre post and the applicant had preferred another representation dated 15-03-2004, vide Annexure A-8. No reply was given to the above representation but the respondents had published one more notification dated 17-11-2004 (Annexure A-9) on the same lines as of Annexure A-7. Hence, the applicant has preferred this O.A.

4. Respondents have contested the O.A. According to them, the decision in OA No. 591/95 was on the basis of different set of circumstances and the benefit of the order in that O.A. cannot be

extended to the applicant who was not a party in the said O.A. Of the ten posts of Tower Wagon Driver, only one post, occupied by one of the applicants in OA No. 591/95 had been treated as cadre post in view of the court order, while all the other 9 posts of Tower Wagon Driver have been treated as only ex-cadre post. Normally while posting against ex cadre post, the span of tenure is scheduled as four years. As soon as training of selected candidates is over, they would be positioned and the applicants would be relieved. Earlier the applicant was not repatriated as there were no eligible volunteers when so notified.

5. Counsel for the applicant took us through the order at Annexure A-5 order dated 6th February, 1997 in OA No. 591/95 wherein the operative portion is as under:-

"4. The contention of the respondents with regard to the applicants being appointed, as an interim measure, and on an ad hoc basis are not borne out by the appointment order A-1. The contention in the impugned order A-10 that applicants had been transferred as Khalasis/Khalasi Helpers before the closure of the cadre is also borne out by the appointment order A1. A-1 quite clearly states that it is a promotion which will take effect from the date of assuming higher responsibilities. Nowhere was it mentioned that the promotion was ad hoc or that it was only as an interim measure. There is also nothing in A1 to show that the lien of the applicants is maintained in their parent cadres. The applicants were clearly in position as Tower Wagon Drivers promoted as such well before the closure of the cadre, which according to the respondents, is on 1.5.93. That being so, they cannot be treated as ad hoc promotees who are having a lien in their parent department. Since the applicants

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had been appointed as Tower Wagon Drivers after proper selection and training well before the closure of the cadre, they have to be treated as holding cadre posts of Tower Wagon Drivers on the cadre being closed.

5. We also find that the classification of applicants as Skilled Artisans, who have to seek promotion to the Skilled Grade II in the scale of Rs. 1200-1800, cannot be accepted since applicants were already in the scale of Rs. 1200-1800. The classification of applicants as Skilled Artisans in A-10 also goes against A-6, having the force of statutory rules. Therefore, A-10 issued by the General Manager under Rule 124 of the Indian Railway Establishment Code without the approval of the President and being inconsistent with A-6 issued under Rule 123 with the approval of the President, cannot be sustained."
6. The counsel contended that Annexure A-2 order does not specifically mention that the post of Tower Wagon Driver is an ex cadre post. He has also stated that when one post is treated as cadre post, there is no logic to treat the other posts as Ex cadre. Again, if the post is ex cadre one, then the applicant would have to be repatriated after the tenure of four years is over whereas he was allowed to continue in the post. He has further submitted that no prejudice would be caused to the Respondents if the prayer of the applicant is allowed.
7. Counsel for the respondents submitted that right from inception the post of Tower Wagon Driver has been treated as an ex cadre post only. In the Notification, it has been conspicuously indicated that it is an ex cadre post. Annexure A-2 in OA No. 259/06 cannot be read in

isolation and when read in the context of Annexure A-1, the same would go to mean that the applicant was appointed as Tower Wagon Driver, which is an ex cadre post. He had opted to remain in his original Motor Truck Driver Cadre, as could be seen from Annexure A-3 and A-4. The tenure of the applicant had to be extended as there were no volunteers at one time when notification was issued.

8. Counsel for the applicant in his oral rejoinder submitted that in para 7 of the reply the respondents had stated that the post was reserved for S.T. candidate and this itself is a concrete proof that the post is a cadre post.

9. Arguments were heard and documents perused. As regards the argument by the Counsel for the respondents that the fact that the post was reserved for S.T. vide para 7 of the reply confirms that the post is a cadre post, the same has to be summarily rejected for, in the case of *Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217*, the Apex Court has held as under:-

304. An appointment is necessarily to a post, but every appointment need not necessarily be to a post in a service. An appointment to an ex-cadre post is as much an appointment to a post as it is in the case of a cadre post. The words 'appointments or posts' used in the alternative, and in respect of which reservation can be made, indicate that the appointment contemplated in Article 16(4) is not necessarily confined to posts in the services, but can be made to any post whether or not

bore on the cadre of a service. Inadequate representation of any backward class of citizens enables the State to make provisions for the reservation of 'appointments or posts'.

305. The word 'post' is often used in the Constitution in the wider sense for various purposes [see for example, Articles 309, 310(1) and 335]. It is in that sense that the words 'appointments or posts' in Article 16(4) should be understood. The reasoning to the contrary in *General Manager, S. Rly. v. Rangachar* was partly influenced by certain concessions made by the respondents' counsel as to the nature of the post contemplated in Article 16(4) and the applicability of reservation to selection posts.

306. The object of reservation is to maintain numerical and qualitative or relative equality by ensuring sufficient representation for all classes of citizens. In whichever service a backward class of citizens is inadequately represented, it is open to the State to create sufficient number of posts for direct appointments. No matter whether the appointment is made to a cadre post or an ex-cadre post, the State action is beyond reproach so long as the constitutional objective of numerical and qualitative equality of opportunity is maintained by making direct appointments at the appropriate levels whenever inadequate representation of any backward class in the services is noticed by the State.

(Emphasis supplied)

10. The applicant's volunteering for the post of Tower Wagon Driver is in the wake of Annexure A-1 notification (OA No. 259/05). So is the case with reference to the applicant in OA 58/06. Thus, with their eyes wide-open they had accepted the terms and conditions of the appointment the spine of which is that the post is an ex cadre post.

Applicant in OA No. 259/05 opted to have his lien maintained as M.T. Driver vide Annexure A-4. Thus, all the evidences would go to show that

the post is one of ex cadre character. In so far as Annexure A-7 order of this Tribunal is concerned, this Tribunal had dealt with the manner in which the notification and offer had been made at that time and since nowhere was there any inkling to the applicant to the said O.A. that the post was an ex cadre post, the Tribunal held that the post was to be treated as a cadre post. That was purely on technicality that that OA came to be allowed. However, in contrast to the same, the applicants in the present O.As, were fully aware of the character of the post of Tower Wagon Driver. As such, the decision in OA No. 561/95 is not of much assistance to the applicants.

11. In view of the above, no case has been made out by the applicants. Hence, the O.As are dismissed. However, under the circumstances, there shall be no order as to costs.

(Dated, the 26th June, 2008)

(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.