

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 104 of 2009

*FRIDAY*..., this the *1<sup>ST</sup>* day of *May*, 2009

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER  
HON'BLE MS. K NOORJEHAN, ADMINISTRATIVE MEMBER**

E.N. Prabhakaran,  
S/o. Narayanan,  
Driver (T2),  
National Bureau of Plant Genetic Resources,  
Regional Centre, Vellanikkara, Trichur District,  
Residing at 2/1, NBPGR Quarters,  
Vellanikkara, Thrissur : 680 656 ... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. National Bureau of Plant Genetic Resources,  
PUSA Campus, New Delhi : 110 012,  
Represented by its Director.
2. Principal Scientist and Officer-in-charge,  
NBPGR Research Station, Thrissur : 680 656
3. Z. Abraham,  
Principal Scientist & Officer Incharge,  
NBPGR Research Station, Thrissur : 680 656 ... Respondents.

(By Advocate M/s. Varghese & Jacob)

The Original Application having been heard on 15.04.09, this Tribunal on 15.04.09 delivered the following :


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

The applicant joined the services of the first respondent at their Regional Station at Vellanikara as Ploughman (supporting staff Gr. I) in 1980 and was

confirmed in that grade in 1983. He was later on appointed as ad hoc driver in August 1984 and by 1988 he was appointed as temporary driver, after being sponsored by the Employment exchange and by a properly constituted Board at Delhi. In September 1992 he was confirmed in the capacity as Driver. The post of Driver earlier was an auxiliary category, which was later on converted as Technical category and designated as T-1(Driver). As per rules, after five years he was promoted to T-2 Driver w.e.f. June 2001. The services of the applicant have been utilized as a driver ever since he was appointed as driver. The Power tiller used by the respondent is an automobile without any seat to sit and it could be used for tilling the land and thus is agricultural machinery, and at times, when trailer is attached to the same, it could be used as load carrying vehicle. Whenever such trailer is annexed to the power tiller, the applicant used to drive the same but after he became the driver, he did not operate the power tiller for ploughing purpose as the same is the job assigned to the Ploughman and not the driver.

2. As on account of expressing inability to pick up the third respondent on a Sunday from Nedumbassery, the said respondent has been 'behaving in a vindictive attitude towards the applicant.' Memos after memos were issued to the applicant. Applicant has filed his representation bringing out the vindictive attitude of the third respondent (Annexure A-5). Vide Annexure A-6, the respondents had advertised vacancies of one power tiller and one jeep driver in the newspapers.

3. The applicant was served with a memorandum dated 12<sup>th</sup> May 2008 calling for his explanation, vide Annexure A-7, which reads as under:-



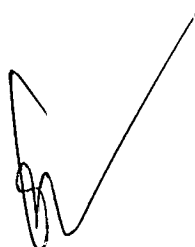
"Refer to headquarters letters No. 10-258/80/P.I/1976 dated 04.09.2004 and No. 10-258/80/P.II dated 9.5.2005 through which you were instructed to perform the duty of driving tractor, power tiller as well as other office vehicles as and when assigned to you by the Officer-in-charge/vehicle-in-charge. But you refused to do your duty of driving the power tiller to the tractor trailer when assigned to you by the vehicle-in-charge on 08/05/2008 at 09.00 a.m. And sat idle even after being instructed orally twice. The vehicle-in-charge had himself kept boulders behind the back wheel tyre of tiller trailer, jacky below the tractor trailer and had kept two wooden planks as platform after opening the door of trailer at 09.00 a.m. On 08/05/2008 to facilitate the smooth entry of the power tiller inside the tractor trailer and to take the power tiller for fixing the riding seat by KAU Workshop at Mannuthy. Again on 12.05.08 at 09.15 a.m. you were instructed to do the same work. Despite this, you sat idle till 09.30 a.m. On 08/05/2008 and today morning, and did not do the assigned work. In view of the seriousness of this matter pertaining to repeated refusal of duty, for having sat idle without doing the assigned work, you are hereby advised to explain why disciplinary action should not be taken against you. Your explanation, if any, may be submitted in writing before 10.30 a.m. today itself."

4. Challenging the same the applicant filed civil Writ petition No. 19019 of 2008 which was disposed of vide Annexure A-8 order dated 27<sup>th</sup> July 2008 by the High Court in the following terms:-

"3. Petitioner cannot insist that he should not be required to drive a Tractor which is also a light motor vehicle. He has licence to drive a Tractor. In so far as the power tiller is concerned the petitioner cannot refuse to operate the same, if the same is also a light motor vehicle.

4. In the result, the 2<sup>nd</sup> respondent shall consider the petitioner's objections in this regard and pass an order with specific reference to the question as to whether the power tiller is also a light motor vehicle. If it is so, then the petitioner can be required to operate the same also.

5. Further proceedings pursuant to Exhibit P7 shall stand stayed till orders in the nature as directed above is passed by the 2<sup>nd</sup> respondent. Thereafter, if the finding of the 2<sup>nd</sup> respondent is that the power tiller is also a light motor vehicle, petitioner shall be granted three weeks time to file a reply to Exhibit P7 and the matter shall be proceeded with thereafter, in accordance with law. I make it clear that these findings are only tentative. If the petitioner has any dispute as



to the nature of the duties assigned to him then it is open to him to work out his remedies under the Industrial Disputes Act."

5. The applicant has furnished his objection to his being assigned the duties of ploughman instead of duties as of a driver. Annexure A-9 refers. Respondents have issued Annexure A-10 communication dated 17<sup>th</sup> October, 2008 which reads as under:-

"This has reference to the Writ Petition (Civil) No. 19019 of 2008 (L) filed by you at the Hon'ble High Court of Kerala at Ernakulam and the judgement thereof dated 10/07/2008, which was submitted to this Office on 24.07.2008 alongwith your letter and objection dated 22.07.2008. As per the direction in the said judgement in para 4, you are required to operate the Power Tiller if the Power Tiller is also a Light Motor Vehicle (LMV). Since it is confirmed from the Regional Transport Office., Thrissur that the "Power Tiller is an LMV", you are hereby instructed to operate the Power Tiller also in addition to the other vehicles (Tractor and Jeep) for all official purposes including tilling, leveling, inter-culturing and ploughing of both wet and dry lands, transportation of men and goods and for such other purposes to which these vehicles are to be used as and when instructed to you by the officer-in-charge or vehicle-in-charge or any other officer designated for that purpose from time to time in the interest of the Station. The objection raised by you in this matter is not sustainable."

6. The applicant furnished his reply to the above, by annexure A-11 representation dated 21<sup>st</sup> October 2008. The applicant has also moved the High Court, in WPC No. 32985/2008 which by its order dated 10<sup>th</sup> November 2008 passed an ad interim restraint order that the respondents shall not engage the applicant to do the ploughing work in the field. However, later on as the respondents had contended before the High Court that the jurisdiction lies with the Tribunal, the writ petition was closed and thus this OA came to be filed.



The grounds of challenge as contained in the O.A. are as under:-

- (a) In no other centre under the respondents does a driver is asked to perform the job of a ploughman.
- (b) The applicant having been appointed as a regular driver cannot be expected to plough a field. Thus, the impugned orders at Annexure A-7 and A-10 are vitiated by Malafide.
- (c) Respondents have relied upon the opinion claimed to be obtained from the R.T.O vide Annexure A-10, whereas it is not what was directed by the High Court in its judgment dated 27<sup>th</sup> July 2008 (Annexure A-8).
- (d) The description of the power tiller does not come under motor vehicle as per the provisions of the Motor Vehicles Act 1988 or Rule 2(v) of Central Motor Vehicle Rules. It is agricultural machinery. The registration certificate, vide Annexure A-13, describes the power tiller as an articulated vehicle which by definition means a vehicle attached to a semi trailer.
- (e) Only sales tax for agricultural machinery applies to the power tiller and not as for motor vehicle.
- (f) It is not exactly known as to how the R.T. Office could describe the power tiller as a light Motor Vehicle.
- (g) Even if it is assumed that power tiller is a motor vehicle, tilling, levelling, inter cutting and ploughing operations cannot be equated to driving.
- (h) Petitioner is aged 51 and physically incapacitated to perform ploughing work.

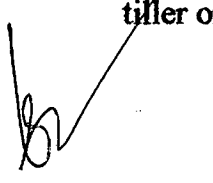
7. Respondents have contested the O.A. According to them, they have acted strictly as per the directions given by the High Court, vide its order at Annexure A-8. The applicant was originally appointed as a ploughman and later on as a driver, which was at that time an auxiliary post. The auxiliary posts were re-categorized as Technical posts and it was thus only on re-categorisation that the post became technical, while the functional responsibilities remained the same. All

along the applicant was asked and he was performing the duties which inter alia include ploughing as could be seen from R-5 and R-6 and R-9 (log book). The vehicle in question is certified as a LMV, vide Annexure R-10 and R-11.

8. Applicant furnished his rejoinder, denying the contentions of the respondents and reiterating his contentions as stated in the OA and added two more annexures regarding the Operators' Manual of the Kamco Power Tiller and copy of the relevant portion of the website of Kerala Motor Vehicle department.

9. Counsel for the applicant took the Tribunal through the provisions of definitions of the term motor vehicle, articulated vehicle, light motor vehicle etc., and argued that a driver is to drive the vehicle, while power tiller is operated and not driven. There is no seat to sit and drive the power tiller. The applicant has no objection to drive the power tiller when attached to a trailer. He has no objection to drive a tractor. But, asking him to perform the duties of a ploughman would mean downgrading his status.

10. Counsel for the respondents submitted that the High Court directed to ascertain as to whether the item in question is a light motor vehicle and accordingly, the RTO was contacted who had certified that the same as an light motor vehicle and thus, the applicant cannot refuse to drive or operate the power tiller on the ground that he has been inducted as a driver.



11. Arguments were heard and documents perused. The High Court is specific in its direction and the same is to the effect that the respondents shall pass an order with specific reference to the question as to whether the power tiller is also a light motor vehicle. If it is so, then the petitioner can be required to operate the same also. To a pointed question as to whether the pleadings before the High Court included Annexure A-13 Registration certificate, the answer was in negative. The question to be decided was whether the power tiller comes under the term L.M.V. The certificate of registration issued by the RTO clearly shows that the description of the vehicle is Power Tiller , articulated vehicle – LMV. This certificate has been issued as early as in 1988. This has also been confirmed later by the R.T.O. recently. Thus, no further evidence is required to ascertain that the item in question is one that comes under the term L.M.V. "Driving licence", "motor vehicle" or "vehicle", "transport vehicle", "light motor vehicle", "goods carriage", "heavy goods vehicle" and "medium goods vehicle" have been defined in Section 2 of the Act as under:

" "Driving Licence" (clause 10) means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

*"motor vehicle" or "vehicle" [clause (28)] means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and ~~includes~~ includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with an engine capacity of not exceeding twenty-five cubic centimetres;*

"transport vehicle" [clause (47)] means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

"light motor vehicle" [clause (21)] means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or roadroller the unladen weight of any of which, does not exceed 7500 kilograms;

"goods carriage" [clause (14)] means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

"heavy goods vehicle" [clause (16)] means any goods carriage the gross vehicle weight of which, or a tractor or a roadroller the unladen weight of either of which, exceeds 12,000 kilograms; and

"medium goods vehicle" [clause (23)] means any goods carriage other than a light motor vehicle or a heavy goods vehicle." "

12. The applicant has a driving licence of Light Motor Vehicle and the power tiller has been categorized by the R.T.O. as articulated vehicle – LMV. To drive or operate the said power tiller, a licence should be a must. In the absence of such a licence of LMV, the said Power Tiller with or without trailer cannot be operated. As such, when the applicant has been appointed as a driver, he cannot claim that he could drive only when the said power tiller is made to run on the road etc., Counsel for the applicant made strenuous attempt to distinguish the power tiller that is made to plough and the power tiller that is attached to a trailer and contended that the applicant has no objection to drive the power tiller if it is fitted with trailer and his objection is only when he is asked to plough the field with the power tiller as he is to drive the vehicle and not operate the power tiller. In other words, according to the applicant's counsel the very same automobile has to be operated when used as a power tiller and driven when used with a trailer! This kind of interpretation by the counsel is far fetched. Be it a power tiller or a power tiller with trailer, to operate the same what is required is a driving licence. Once



the Registration certificate contains the type of vehicle as LMV and the applicant has a licence to drive light motor vehicle, he cannot refuse to operate the said power tiller either with or without trailer. After all the employer has recruited persons to operate power tiller in addition to other light motor vehicles such as jeep or cars.

13. In view of the above, the applicant has failed to establish his case. The O.A, is therefore, dismissed.

14. Under the circumstances, there shall be no order as to costs.

(Dated, the 1<sup>st</sup> May, 2009)

  
(K. NOORJEHAN)  
ADMINISTRATIVE MEMBER

  
(Dr. K B S RAJAN)  
JUDICIAL MEMBER

CVT.