

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.898/93 and O.A.156/94

Tuesday, this the 3rd day of January, 1995.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR SP BISWAS, ADMINISTRATIVE MEMBER

OA-898/93

1. P Kumaran,
Tower Wagon Driver,
Office of the CTFO/O.HE/TRD,
Southern Railway, Salem in
Palghat Division.
2. TN Sivan Kutty Nair,
Tower Wagon Driver,
Office of the CTFO/O.HE,
Southern Railway,
Erode, Palghat Division.
3. KM Balasubramanian,
Tower Wagon Driver,
Office of the CTFO/O.HE,
Southern Railway,
Samal Petty, Palghat Division. - Applicants

By Advocate Mr TC Govindaswamy

Vs.

1. Union of India through
General Manager,
Southern Railway,
Madras-3.
2. The Chief Personnel Officer,
Southern Railway, Madras-3.
3. The Divisional Personnel Officer,
Southern Railway, Palghat.
4. The Chief Electrical Engineer,
Southern Railway, Madras-3.
5. The Divisional Railway Manager,
Southern Railway, Palghat. - Respondents

By Advocate Mr K Karthikeya Panicker

OA-156/94

Baburaj Vallasserri,
Tower Wagon Driver,
O/o the Traction Foreman(OHE)
Southern Railway, Bommidi(BQI)
Palghat Division. - Applicant

By Advocate Mr TC Govindaswamy

Vs.

1. Union of India through
the General Manager,
Southern Railway, Madras-3.
2. The Chief Personnel Officer,
Southern Railway, Madras-3.
3. The Divisional Personnel Officer,
Southern Railway, Palghat.
4. The Chief Electrical Engineer,
Southern Railway, Madras-3.
5. The Divisional Railway Manager,
Southern Railway, Palghat. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicants who are working as Tower Wagon Drivers, challenge A6 and A7 orders(OA-898/93) issued by respondents, amending the rules for appointment to the post of Tower Wagon Drivers. According to them, they were regularly appointed to the post of Tower Wagon Drivers under validly enacted rules, and thereafter acting under dictation from certain Unions, the rules were varied to their detriment, ~~as they have done~~ by the impugned orders. They submit that the power to make rules is vested in the Railway Board and the General Manager by reason of paras 16 and 159 of the Indian Railway Establishment Manual. This contention is not controverted by counsel for the Railways.

2. The short question for consideration is whether the impugned orders have been issued by an authority competent to do so. Otherwise put, the question is whether the impugned orders are ultravires of the powers vested in respondent Chief Personnel

Officer. It is essential to know:

- a) under what authority the rules under which applicants were appointed were issued,
- b) whether the authority which issued the impugned orders(A6 and A7 in OA-898/93) is competent to modify the rules, and
- c) whether rule making powers in this behalf are available to respondent Chief Personnel Officer.

2. Learned counsel appearing for Railways submitted that the posts in question are excadre posts. This submission will not help us to adjudicate the basic question regarding the competency of respondents to issue the orders impugned. A6 and A7(inOA-898/93) will be valid, if only and only if the Chief Personnel Officer is competent to issue rules or modify rules. We are in the dark as far as this is concerned. The case made out by applicants has not been met by respondents. At the same time, we do not want to cross the battle line and enter the grey areas and lay down the law in the nebulous state of pleadings.

3. We would quash the impugned orders(A6 and A7 in OA-898/93) in so far as it relates to Tower Wagon Drivers, and remit the matter for fresh consideration. Applicants may set out their case precisely supporting it with rules and make a representation to respondent General Manager, Southern Railway. The said General Manager will consider the matter in detail, if necessary, hear parties who may be affected and then pass a reasoned order. Till such time, applicants will be allowed to hold the post which they are currently holding.

4. The applications are allowed as aforesaid. No costs.

Dated, the 3rd January, 1995.

SP BISWAS
ADMINISTRATIVE MEMBER

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

trs/3195

List of Annexures

1. Annexure-A6: P(S)535/VI/TRD/PGT/ Vol.II dated 15.4.93
with enclosure.
2. Annexure-A7: P(S)535/VII/38/TRD/PGT dated 7.8.91
with enclosure.