

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri M.P.Singh, Member(Admnv.)
Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1289/2001
with
O.A.No.1291/2001
O.A.No.1533/2001
O.A.No.1031/2001
O.A.No.1048/2001

New Delhi, this the 1st day of October, 2001

O.A.No.1289/2001:

Kanhaiya Prasad
s/o Sh. Dinesh Prasad
Zerox Operator
under Chief Project Administrator
IRCOT, Minto Bridge
New Delhi.
r/o Kanhaiya Prasad
House No.139 'E' Block
Partap Vihar
Ghaziabad (UP). Applicant

(By Advocate: Shri G.D.Bhandari)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Project Administrator
IRCOT, Minto Bridge
New Delhi.
3. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi. Respondents

(By Advocate: Shri Rajinder Khattar)

O.A.No.1291/2001:

Ms. Madhu Bhardwaj
w/o Sh. Pradeep Kumar Bhardaj
Receptionist-cum-Tele. Operator-cum-Typist
Under Chief Project Administrator
IRCOT, Minto Bridge
New Delhi.
r/o D-58, Shalimar Garden
Shahibabad (UP). Applicant

(By Advocate: Shri G.D.Bhandari)

Vs.

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1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Project Administrator
IRCOT, Minto Bridge
New Delhi.
3. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi. ... Respondents

(By Advocate: Shri Rajinder Khattar)

O.A.No.1533/2001:

Shyam Lal Kori
s/o Sh. Sukur Kori
Wireless Maintainer
under Chief Project Administrator
IRCOT, Minto Bridge
New Delhi.
r/o Jhugi No.46, 'B' Block
Railway Colony
Thomson Road
New Delhi. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Project Administrator
IRCOT, Minto Bridge
New Delhi.
3. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.
4. The General Manager
Railway Electrification
Nawab Yusuf Road
Allahabad ... Respondents

(By Advocate: Shri R.L.Dhawan)

O.A.No.1031/2001:

1. Raj Rani
d/o Shri Ratan Singh
2. Chhedi Lal
S/o Shri Dubari Ram

both the applicants are working with
Indian Railways Central Organisation for Telecom
Shivaji Bridge
(Behind Shanker Market)
New Delhi - 110 001. 13
.. Applicants

(By Advocate: Shri Anis Suhrab Wardi)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. Deputy Chief Signal and Telecommunication Engineer
(MWM)
II, Floor, DRM Exchange Building
DRM Office
New Delhi.
3. The Chief Project Administrator
Indian Railways Central Organisation for Telecom,
Shivaji Bridge
(Behind Shanker Market)
New Delhi.
4. The Divisional Railway Manager
Northern Railway, DRM Office
State Entry Road
New Delhi.
5. General Manager
Rural Electrification
Divisional Railway Managers Office
Nawab Yusuf Road
Allahabad ... Respondents
(By Advocate: Mrs. Meera Chhibber)

O.A.No.1048/2001:

Ravinder Kumar
S/o Sh. Bishan Dass
Carpenter (Adhoc)
Indian Railway Central Organisation for Telecom.
Shivaji Bridge, New Delhi.
r/o WZ-585, Gali No.1
Sri Nagar, Shukur Basti
Delhi. ... Applicant
(By Advocate: Shri G.D.Bhandari) Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Project Administrator
IRCOT, Shivaji Bridge
New Delhi.
3. The Dy. C.S.T.E./MWM
Northern Railway, DRM's Office
Exch. Building
New Delhi. ... Respondents

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(By Advocate: Mrs. Meera Chhiber)

COMMON ORDER (Oral)

By Shanker Raju, Member (J):

As the issue involved is a common, in all the aforesaid OAs, the same are disposed of by this common order.

2. The controversy to be resolved in the present OA is whether the person having lien in Group 'D' post is entitled to be regularised in Group 'D' post only and to earn promotion in his own cadre or on being engaged in Group 'C' post (promotional post) on ad hoc basis in construction wing is entitled to be regularised in Group 'C' post directly.

3. To resolve the above stated controversy the brief facts leading to these OAs are as under:

O.A.No.1533/2001:

4. The applicant was engaged as Casual Khalasi and was accorded temporary status in pursuance of a decision of the Apex Court in Indrapal Yadav's case w.e.f. 1.7.1985. The applicant further screened and declared suitable, he was appointed as temporary Wireless Khalasi in Group 'D' post on 31.12.1993. The applicant was working in IRCOT which is a Construction Organisation and was appointed to officiate as Wireless Maintainer in the grade of Rs.950-1500 purely on ad hoc basis with the stipulation that it would not bestow him a right to claim promotion/seniority over a senior in future. The applicant had his lien in the

open line. On the decision of the Railways on account of financial constraints to reduce the strength of Construction Organisation, the orders have been issued for repatriation of such employees to the parent cadre.

O.A.No.1291/2001:

5. The applicant was initially engaged as Casual Labourer in IRCOT and was accorded temporary status and was subsequently screened for Group 'D' in 1993 and regularised as Wireless Khalasi in Microwave Organisation where her lien was kept for further career advancement. While working in IRCOT the applicant was promoted on ad hoc basis i as Receptionist-cum-Telephone Operator in the grade of Rs.950-1500 in 1991 with a stipulation that this would not confer any right of seniority or promotion over her seniors in the parent cadre. The posts in the Construction Organisation are treated as ex-cadre posts.

O.A.No.1048/2001:

6. The applicant was engaged as Casual Carpenter and was screened for regular appointment as Group 'D' on open line in Microwave organisation. His name figures in the screening list dated 29.5.1993. The applicant was appointed as Wireless Khalasi and has appeared in the Trade Test of Helper Khalasi in his own Micro Wave Organisation and is posted on

15.12.2000. The applicant was repatriated as his lien was maintained at Micro Wave Organisation for further promotion.

O.A.No.1289/2001:

7. The applicant was initially engaged as Casual Labour in IRCOT and was accorded temporary status and was regularised as Wireless Khalasi in Micro Wave Organisation where his lien was kept. The applicant was given ad hoc promotion as Xerox Operator in 1991 with the stipulation that it would not confer him right of regularisation, etc. and claim for seniority or promotion over his seniors in the parent cadre.

O.A.No.1031/2001:

8. The applicants No.1 and 2 were initially engaged as Khalasi and Casual Khalasi respectively in IRCOT. Applicant No.1 was promoted as Clerk-cum-Typist on 1.5.1986 initially for a period of six months and Applicant No.2 as Telephone Operator (Ad hoc) w.e.f. 29.4.1991 with the stipulation that the same would not confer any claim for promotion or seniority over their seniors. The applicants were declared suitable for absorption in Group 'C' post and their names figured in the screening list issued on 29.5.1993 and were appointed as Wireless Khalasi which was accepted by them on 3.12.1993. Having lien in open line in Micro Wave Organisation. The applicants in their parent cadre have appeared for the trade test

for regular promotion to which they appeared and passed as such they were repatriated on account of letter written by the parent organisation.

9. The main ^h trust of the learned counsel for the applicants is that relying on the case of Inder Pal Yadav & Others Vs. Union of India & Others, pertaining to CWP No.548/2000 before the Apex Court wherein an attempt has been made to show that Construction Organisation is a permanent organisation of the Railway Administration and as such the applicants are entitled for being regularised in Group 'C' posts after having rendered long service. The learned counsel for the applicants further stated that Robert D'Souza Vs. Executive Engineer, Southern Railway & Anr., (1982) 1 SCC 645 has held that Construction Department of the Railway has to be treated as a regular unit and cannot be treated as Project as such an incumbent on the rolls of Construction Unit is entitled for all the benefits as admissible to other employees. In this view of the matter, it is stated that having maintained status-quo, the present OAs be kept in abeyance till the decision is arrived at by the Apex Court pertaining to the status of construction department.

10. Shri G.D.Bhandari, learned counsel for the applicant contended that having failed to produce the record regarding appointment of the applicant an adverse inference should be drawn against the respondents. It is also contended that having

discharged the job of Group 'C' post for several years, the induction of the applicants in Group 'C' posts was in terms of provisions of Railway Rules and cannot be treated as a back-door entry. It is also stated that having worked for more than 10 years, the applicants cannot be subjected to a formal process for regularisation. The learned counsel for the applicant further placed reliance on Para 216 of IREM to contend that ad hoc promotion should be resorted only for a short duration and also stated that as per Para 2007 of IREM, Vol. II, Casual Labour engaged on work charge establishment and having promoted to skilled category should be straight-away regularised. It is also contended that as held by the Apex Court in T.Vijayan Vs. DRM & Others, 2000(4) SCC 20 that as per para 216 of IREM, ibid ad hoc appointee is entitled to count entire services for the purpose of regularisation and placing reliance on a decision of the Apex Court in Direct Recruit Class-III Engineering Officers Association Vs. State of Maharashtra, 1990(13) ATC 340, it is contended that once an incumbent is appointed on a post, according to the rules, his seniority has to be counted from the date of appointment and even if the appointment is not made following the procedure but as the applicant has uninterruptedly continued he is entitled for regularisation. Further placing reliance on a decision of this Court in Shri Dilip Singh Vs. UOI & Others, OA No.491/99, decided on 19.7.2000, it is contended that directions have been issued to the respondents not to spare forcibly the applicant for regularisation in Group 'D' and even if spared, he should be taken back on the same post. It is also

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stated that the applicants have already granted temporary status and cannot be regularised in Group 'D' post and the orders amount to reversion order from Group 'C' to Group 'D' post on which the applicant is holding his lien for a long years. It is also stated that in view of the joint meeting and in terms of PS 11229, Casual Labour and Group 'C' shall have to be regularised in Group 'C'. It is also stated that the applicant is holding a regular pay scale and was granted increments too. It is also stated that juniors to the applicant having lien in other divisions as Khallasi lower post than Wireless Khallasi have already been promoted to the next higher post. It is also stated that no notice has been issued to them before reverting them to Group 'D' posts.

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11. In OA 1291/2001, it is stated that having completed three years service, as Typist-cum-Clerk/Receptionist-cum-Telephone Operator, the applicant is entitled for regularisation in Group 'D' post. It is stated that as per the policy of the Railways, wherein the Construction Organisation has been ordered to regularise ad hoc Typist-cum-Clerk/Reception-cum-Telephone Operator be holding a selection who had been worked before 16.12.1994 as one time measure and they are not required to compete in the regular selection process the same also should have been applied to the case of the applicant. The applicant also alleges hostile discrimination violating the Articles 14 and 16 of the Constitution of India. It is also contended that the applicant was forced to appear in the screening test

held in the year 1993 for regularisation as Wireless Khallasi. Thereafter, never relieved by IRCOT to join Microwave Department. This shows that the applicant has holding the post in substantive capacity. 20

12. Shri Anis Suhrawardy, learned counsel for the applicant appearing in OA No.1031/2001, contended that as per the decision in Robert D'Souza's case supra, construction unit is held to be a regular Unit and cannot be treated as a project. The Construction Division is existing since 1948 and has not been closed down. This shows that the projects are continuing the same is permanent and is continued and rules for project cannot be applied. It is contended that the applicants have acquired the post of Helper Khallasi after qualifying the trade test and were posted on their own violation by the respondents, as Clerk-cum-Typist and Telephone Operator for long years against an existing vacancies. Though the applicants have been initially working in the Microwave Organisation and Open Line Unit and were appointed in IRCOT from the date of their respective promotion on ad hoc basis. In this back ground, he submits that the action of the respondents, reverting the applicants in Group 'D' posts, is bad in law. The learned counsel for the applicant further states that the respondents cannot be allowed to say that the services of the applicants on work charge basis and their right for regularisation has been accorded on the basis of continuous length of service in IRCOT either an organisation of Construction Department, which is treated to be a regular unit the applicant cannot be put by way of reversion. It is also stated

that the applicants have been found suitable on screening all have been accorded temporary status as Khallasi, the learned counsel for the applicant placing reliance on a decision of this Court in Badri Prasad & Others Vs. Union of India & Others, OA No.1941/99, decided on 15.2.2001 contended that similar circumstances Group 'D' employees who have been worked on ad hoc basis for number of years, this Court has directed for regularisation of the applicants in Class-III post.

13. Strongly rebutting the contentions of the applicants, the learned counsel for the respondents, Shri R.L.Dhawan, Shri Rajinder Khatter and Mrs. Meera Chhibber, it is contended that the IRCOT is a Construction Railway Organisation having no permanent cadre. The promotions are given ad hoc on local basis purely temporary basis with the stipulation that the same would not confer the right of regularisation seniority or promotion in preference to the seniors in the parent cadre. The applicants having been engaged as Casual Labour in view of the decision of the Inder Pal Yadav & Others Vs. Union of India & Others, SLJ 1985(2) 58, accorded temporary status after screening in Group 'D' post as Wireless Khallasi the applicants have been put in the Construction Organisation. The respondents have decided to repatriate the applicants to the present cadre, to seek promotion in the parent cadre. As the applicants have been regularised in Group 'D' post and had neither challenged the order of granting temporary status nor the seniority and had also further participated in the trade test later on the applicants are estopped from challenging the same

and it is further contended by the learned counsel for the respondents that the applicants have their lien in Open Line, i.e., in regular railway establishment where they continued to hold their lien and were only accorded ad hoc officiation. The applicant on closure of the project version of the IRCOT and meanwhile process was initiated to regularise casual workers in Group 'D' posts on Open Line in IRCOT and some of them were appointed as Wireless Khallasies in Group 'D' which has been accepted by them. The applicants further appeared in the Trade Text of Helper Khallasi in Microwave Organisation and as they had become due for promotion in the parent cadre they have been worked to repatriate back where the lien is maintained. As per Para 206 of IREM Vol.II, absorption of casual labour in regular Group 'D' employment is to be considered subject to availability of vacancies and merely the applicants have been allowed to work in IRCOT does not get their right to continue as such de hors the rules as the work in IRCOT Construction Organisation reduced considerably and the applicants have been promoted in the parent cadre in the Microwave lost for want of further productivity working in IRCOT having rendered the service the applicants being repatriated back. Placing reliance on a decision of the Apex Court in Suneeta Aggarwal Vs. State of Haryana & Others, JT 2000 (2) SC 168, it is contended that the doctrine of acquiescence applies to the case of the applicants having no challenge against the accord of temporary status and no challenge to seniority the applicants have deemed to have accepted their promotion and regularisation and subsequently they cannot challenge

the same. It is further contended that the decision of a Division Bench would no longer be a binding precedent ~~on another division~~ as the Full Bench of this Court in OA 103/1997 and connected OAs, Ram Lubhaya and Others Vs. Union of India & Others, by an order dated 4.12.2000 has clearly ruled that Railway servants holding lien in their parent cadre and on deputed to Construction Organisation and having promoted on an higher post on ad hoc basis and continued to perform duties for a very long time would not be entitled to regularisation on the same post in their parent division/office but they are entitled for regularisation in their parent cadre division. In this view of the matter and further placing reliance on an another Full Bench decision of this Court in Aslam Khan Vs. Union of India & Others, OA 57/96, decided on 30.10.2000 by the Full Bench of this Court it has been held that a person engaged in Group 'C' a promotion post of casual post and has been subsequently granted temporary status shall not be entitled to be regularised on Group 'C' post directly and would be liable to be regularised in the feeder cadre in Group 'D' post only. However, the pay which he drew in Group 'C' post shall be protected. Further placing reliance on an order passed by the Delhi High Court in CWP 5057/2001 in Union of India Vs. Badri Prasad & Others, it is contended that the operation of directions of this Court contained in order dated 15.2.2001 has been stayed as such Badri Prasad's case cannot be treated as precedent. The learned counsel for the respondents has further placed reliance on a decision of the High Court of Judicature for Rajasthan, Jodhpur in Durbeen Singh Vs. Union of

India & Others, in CWP No.2697/2001, decided on 31.8.2001 to contend that therein it has been held that the petitioners therein who have substantially employed in Group 'D' where they have chance for promotion is to be considered in his parent cadre and is not entitled for regularisation against group 'C' post as contending in Para 2007 of IREM. In this view of the matter, where the petitioner having lien in Group 'D' post Khallasi and working as Clerk on ad hoc post their claim has been rejected, the applicants have been accorded temporary status as Wireless Khallasi. It is contended that the applicants retained their lien in Microwave Organisation. It is also stated that the except few cases where the action of the respondents is assailed the other similar circumstances persons have been repatriated back to their parent cadre.

14. Shri Rajinder Khatter, 1d. counsel for the respondents stated that in his case the applicant has approached this Court prematurely as the reversion is yet to take place and orders are not yet issued. It is one of the contentions that the applicants cannot be promoted or regularised in group 'C' in preference to their juniors in their parent cadre.

15. Lastly, the learned counsel for the respondents have contended that the interim orders passed by the Apex Court in Inder Pal Yadav's case by maintaining the status-quo cannot be treated to be a precedent under Article 141 of the Constitution of India.

16. Having regard to the rival contentions of the parties and perusal of the material on record, and after application of mind and considerable thought to the rival contentions of both the parties, we are of the considered view that the applicants have no valid legal claim for being regularised as in Group 'C' post. The claim of the applicant, placing reliance on a decision of the Apex Court in Robert D'Souza's case supra that the construction wing of the Railways is a regular unit is concerned, we find that the aforesaid observation has been made in the decision on the basis that casual labour have been transferred on numerable occasions to the Constructions Wing and there has been reference to the project in the latter. If the incumbent had become surplus on completion of projects, there is no need to absorb him. This clearly transpires the Apex Court to hold that the construction unit is a regular unit but having regard to the pendency of the controversy before the Apex Court in Inder Pal Yadav's case and that the same has not been concluded and ~~in~~ ⁱⁿ ~~view~~ finally the status-quo orders issued passed by the Apex Court shall not amount to precedent under Article 141 of the Constitution of India. Further more, IRCOT is a Construction Railway Organisation having no permanent cadre of its own and the posts are created on work charge basis from year to year on the basis of the sanctioned estimates. The staff requirements of the organisation is met through regular suitable employees from Open Line, i.e., from regular railway establishment where they continued to hold their lien. The promotions are only ad hoc on next higher grade temporarily with stipulation that the same would not

confer upon them the seniority or promotion. The applicants who have been initially engaged as Casual Labourers and Khallasis in Open Line have been accorded temporary status and had lien in their parent establishments. As such on being appeared for screening, in open line in regular appointment to Group 'D' category and having declared suitable, the applicants accepted the same and thereafter never challenged the order nor their seniority list published which clearly indicates that they had lien in the open line, i.e., Microwave Organisation and the doctrine of acquiescence would have application in the present case. The applicants have become due for their promotion in their own cadre and having, the parent organisation has written to the IRCOT to repatriate them, the absorption in Group 'D' is not automatic subject to availability of vacancies, as the work in IRCOT had reduced considerably the action of the respondents to repatriate them back to the parent organisation, wherein the lien has been maintained, cannot be found fault with. It is an established principle of law that a person cannot have lien at two places and has to go back to the places where the same is maintained. Having worked at ad hoc for number of years without being subjected to the usual procedure would not confer upon them a right of being regularised against Group - III post which would certainly have an affect of rendering/~~rendering~~ the applicants seniors in their parent cadre organisation. This would be prejudicial to the interest of employees working in parent organisation. In Full Bench decision of Ram Lubhaya's case supra, this Court, having regard to the lien of the applicant in Group

'D' post, in their parent organisation and having regard to the fact that there is no cadre of its own in Construction Organisation against which the applicants have been promoted and continued on ad hoc post, which are work charge posts, the post do not found part of any cadre and are created for a specific job but for a short duration, keeping in view the work estimate and expenditure the applicants are no enforceable right to compel the respondents to regularise them in the Construction Organisation merely on the basis of their working long period. As per the General Manager's office letter dated 15.2.1991, clarification has been made that MCCs working in Construction Organisation would be regularised by their respective parent department where they hold a lien. The posts which the applicants are holding on ad hoc basis are not in their direct line of promotion.

17. As regards the consistent plea of the applicant, taking resort to Badrinath's case supra the same would have no help to them as the same has been stayed by the High Court. The contention of the learned counsel for the applicant that the constructions Division continued and is not treated as project and the Rules for project cannot be applied and their resort to para 239 and 240 of IREC Vol.I to contend that the applicants have been substantively appointed to permanent post and after the PNM meeting, it has been decided to regularise the ad hoc Group 'C' employee after rendering three years continuous service is concerned, the Full Bench of this Court in Ram Lubhaya's case supra where the reference was

whether the person who is holding lien in parent cadre under a Division of Railways and on being deputed to a Construction Division and there having been promoted on a higher post on ad hoc basis and continued for long time has any right of regularisation. This Court ^{after} taking meticulously dealing with the issue and placing reliance on various notifications observed that having lien in the parent cadre, the employees deputed to constructions organisation and promoted to higher post are only entitled for regularisation in their turn in the parent division is strictly in accordance with the Rules and Instructions on the subject. The aforesaid ratio was further reiterated by another Full Bench by this Court in Aslam Khan's case supra wherein after taking note of the ratio of Apex Court in Union of India & Others Vs. Motilal Vohara, 1996(33) ATC 304 it has been observed that a casual workers on directly engaged on Group 'C' post, promotional post, on a casual basis and granted temporary status would not be entitled to be regularised in Group 'C' post but would liable to be regularised in feeder cadre in Group 'D' post in which his pay of Group 'C' is liable to be protected. The same issue was also dealt with by the Bench of High Court of Judicature for Rajasthan, Jodhpur wherein the reversion of Clerk-cum-Typist to Khallasi in the parent organisation was assailed. Taking note of the various provisions including Para 2007 of the IREM, it has been held that the Petitioners herein who were substantive employee in Group 'D' having avenues of promotion in parent organisation on deputation post have no right to be considered either for promotion or absorption. Para 2007 has no application as such. Further ⁱⁿ on the

decision of the Division Bench in Vijay Kumar OA 860/2001 dated 6.9.2001, it has been held that taking resort to the Full Bench decision supra that no right is accrued to continue in the construction division which is a temporary division when there is a paucity of work, the employees sent on loan to the construction organisation have to be repatriated to the parent divisions in substantive post for further promotions. The decisions of the Full Bench of this Court and followed consistently by the Co-ordinate Benches, have consistently held that the Group 'D' employees have no right for regularisation on Group 'C' posts and their lien is maintained at the parent organisation where they can be accorded promotion and further service benefits. We respectfully agree with the ratio of Full Bench and also reiterates the ratio of Division Bench.

18. Merely the applicants have continued on ad hoc basis would not confer them any right of regularisation the pre-requisite under Para 216 of IREM that the person should have been subjected to the requisite selection procedure and the same should have been made in accordance with the Rules. As the applicants have been appointed on ad hoc basis in the Construction Organisation with stipulation that the same should not confer them any right of promotion or regularisation in Group 'C' post and as the lien of the applicants have been maintained in the parent organisation for seeking regularisation in Group 'D' and for further promotional prospectus without effecting the right of seniors and juniors their reversion to the parent organisation cannot be

terminated as arbitrary or against the rules. The regularisation cannot be accorded in Group 'C' post unless the person is regularised in Group 'D' post. The ratio cited in Durbeen Singh (supra) would have ^{an} application in view of the decision in Full Bench of this Tribunal.

19. In this view of the matter, having failed to establish the case on merits, the applicants are not entitled for the relief claimed as such these OAs are accordingly dismissed. No costs.

A copy of this be kept in the relevant OAs.

(SHANKER RAJU)
MEMBER(J)

(M.P.SINGH)
MEMBER(A)