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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 860/2001

This the 6th day of September, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Vijay Kumar Singh S/O Harbans Narain Singh,
R/O A-6, Prem Nagar Extension,
Nangloi, Delhi-110041.

... Applicant

(By Shri Ravinder Raj, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Dy.C.S.T.E./SW,
Northern Railway,
New Exchange Building, IIInd Floor,
DRM Office, N.Rly,
New Delhi-110001.

3. Dy.Chief Personnel Officer/Const.,
Headquarter Office,
Northern Railway, Kashmeri Gate,
Delhi-110006.

... Respondents

(By Shri H.K.Gangwani, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has assailed Annexure P-8 notice dated 27.2.2001 whereby the applicant who has been working in the construction division as MCC on ad hoc basis, has been asked why he may not be repatriated to his parent division in his substantive cadre. It is stated that the work entrusted to construction division is tapering off and almost nearing completion; thus, his services in the construction organisation are no longer required. The applicant has stated that through this notice the respondents have attempted at unlawful reversion/reduction of the applicant from higher post of

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MCC grade Rs.950-1500 in Group 'C'/Class-III to lower post of khallasi grade Rs.750-1400 in Group 'D'/Class-IV service after a long service of over nine years in the construction organisation. The applicant has maintained that this amounts to imposition of a major penalty which cannot be awarded without an enquiry and service of charge-sheet upon him. The applicant has contended that the respondents are duty bound to regularise/confirm him in his present post of MCC instead of reverting/reducing his rank. He has sought quashing and setting aside of Annexure P-8 notice and direction to the respondents not to reduce him to lower post/grade.

2. On the other hand, in their counter reply, the respondents have stated that Annexure P-8 seeking repatriation of the applicant to his parent division does not amount to imposition of any penalty. According to them the applicant had been promoted as MCC vide notice dated 12.11.1991 on ad hoc basis as purely temporary and local arrangement. The respondents have maintained that promotion as MCC purely on ad hoc basis by way of temporary and local arrangement is confined to the construction organisation only and that the applicant has no claim to this promotion for seniority or for non-appearance in a trade test/selection to be conducted by the division where the applicant has his lien, on repatriation.

3. The applicant has filed a rejoinder as well.

4. We have heard the learned counsel on either side and considered the material on record. The learned

counsel for the applicant stated that the respondents have themselves admitted in their counter reply that the applicant's name was sent to Dy.CPO/C for inclusion in the list of MCCs. A reference was made to the Railway Board by the headquarters office for approval for conversion of few posts of direct recruitment quota into promotee quota. He also stated that application dated 30.3.2001 submitted by the applicant was forwarded to Dy.CPO/C in respect of the impugned notice Annexure P-8. The learned counsel relied on order passed by the Tribunal in OA No.2389/1995 on 27.8.1999 in Babu Ram v. Union of India (Annexure RP-1 to the rejoinder). In this judgment it is stated that a decision was taken by the department to regularise the services of MCCs who had been working as such on ad hoc basis for more than three years. Accordingly, a number of employees had been regularised who had been working in various organisations of the Railways including the construction organisation as MCCs in grade Rs.950-1500. The learned counsel stated that on the basis of the said decision, the applicant should also have been regularised as MCC instead of repatriation, amounting to reversion. The learned counsel also relied on Hem Raj v. Union of India, SLJ 1997 (1) CAT 242, wherein it was held that where appointments are made to Class-III clerical posts or Class-IV posts on ad hoc basis and if the appointees continue for a long period, it is open to the government to regularise their services by making appropriate provisions consistent with the reservation policy of the State.

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5. On the other hand, the learned counsel for the respondents placed reliance on order dated 30.10.2000 in OA No.57/1996 : Aslam Khan v. Union of India; order dated 4.12.2000 in OA No.103/1997 and other connected cases : Ram Lubhaya & Ors. v. Union of India; and order dated 31.8.2001 passed by the Jodhpur High Court in CWP No.2697/2001 : Durbeen Singh v. Union of India.

6. In the case of Aslam Khan (supra), a Full Bench of the Tribunal has held that a person directly engaged on Group 'C' post (promotional post) on casual basis and has been subsequently granted temporary status would not be entitled to be regularised on Group 'C' post directly but would be liable to be regularised in the feeder cadre in Group 'D' post only. His pay which he drew in the Group 'C' post, will, however, be liable to be protected. In the case of Ram Lubhaya (supra), again, the Full Bench answered a reference as under :

"(a) Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to Construction Organisation and there having promoted on a higher post on ad hoc basis and continue to function on that post on ad hoc basis for a very long time would not be entitled to regularisation on that post in their parent division/office. They are entitled to regularisation in their turn, in the parent division/office strictly in accordance with the rules and instructions on the subject."

Another reference in this case was as follows :

"(b) Whether such person should be regularised in Construction Division from the date of continuously working on adhoc basis, treating the post on which he is working as a regular post since the post continues to exist for about 15 years, notwithstanding the

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contention of the respondents that the Construction Organisation is a temporary organisation and persons are appointed against work charged posts."

This was answered in the negative.

In the matter of Durbeen Singh (supra), it was held as follows :

"...The petitioner is a substantive employee in Group-D. In his classification, he has chances of promotion and in view of the provisions contained in Indian Railway Employees Manual, he is to be considered for confirmation in his own parent cadre. On the deputation post, he has no right to be considered either for promotion or absorption. The petitioner is not entitled to take benefit of Paragraph 188, 189 and 2007 because they do not relate to the category to which the petitioner belongs. The petitioner is not a casual employee of Group-D therefore Para 2007 will not be applicable. He is an employee having lien in Group-D and there are avenues of promotion available to him in his own Group, therefore Para 188 and 189 will not govern his case. Therefore on the strength of these Paragraphs, nothing turns out in favour of the petitioner. There is no force in the writ petition. The same is therefore dismissed."

7. In the matter of Hem Raj (supra) it has been stated that if the appointees had continued for a long time in appropriate cases, it is open for the government to regularise their services. In the case of Babu Ram (supra), reliance was placed on B.Rajan v. Union of India, 1995 (1) ATJ 67, wherein the Hon'ble Supreme Court had held that the petitioners who had been working as MCCs/clerks in the Ferozpur Division of Northern Railways were entitled for regularisation. However, in the present case, it is not a question of an employee continuing in his parent organisation on a promotional

post on ad hoc basis for a very long time. The applicant had been lent to the construction organisation which is a temporary organisation, where as per the exigencies of work, he had been promoted to the post of MCC on ad hoc basis and has continued as such. By the impugned notice, it is sought to repatriate the applicant to his parent organisation, on the plea that work in the construction division is tapering off and is almost complete. The ratios of Aslam Khan (supra), Durbeen Singh (supra) and Ram Lubhaya (supra) are squarely applicable to the facts and circumstances of the present case. The applicant holds lien in his parent cadre under a division of the Railways. He had been deputed to construction organisation where he has been promoted on ad hoc basis on a higher post and has continued as such for a long time. It has been held in the above cases that it does not entitle employees for regularisation on the higher posts in the parent division/office. They are entitled to regularisation in their turn only in their parent division/office, strictly in accordance with rules and instructions on the subject. The applicant has not developed any right to continue in the construction division which is a temporary division and when there is a paucity of work in that division, the employees sent on loan to the construction organisation have to be repatriated to their parent divisions and on such repatriation, they have to be put in place in terms of their seniority and substantive posts. Another reference in the matter of Ram Lubhaya is relating to the advisability of regularisation in construction division from the date of continuously working on ad hoc basis on

the ground that the applicants therein had been working continuously for a long period of 15 years. The reference has been answered in the negative. If work were available in the construction division, the applicant could have been continued there and on the basis of his seniority in that organisation he could have been awarded even further promotions. However, when the work is dwindling in the construction division, it is imperative that he has to be repatriated and on such repatriation he has to wait in the queue in terms of his seniority in the substantive post for further promotions. No exception can be made to such repatriation on the requirements of the parent organisation.

8. Having regard to the reasons recorded and discussion made above, we do not find any merit in the OA, which is dismissed accordingly. No costs.

V.K.Majotra
(V.K.Majotra)

Member(A)

Ashok Agarwal
(Ashok Agarwal)
Chairman

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