

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.2670/2000

New Delhi, this the 5th day of May, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri Atul Kumar,
S/o Shri Shankar Dayal,
Working under the Control of
Chief Administrative Officer (Construction),
Kashmere Gate, Delhi-6

... APPLICANT

(By Advocate : Shri K.K. Patel

VERSUS

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Chief Administrative Officer (Consts.),
Kashmere Gate,
Delhi
3. The Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad

... RESPONDENTS

(By Advocate: Sh. J.K.Singh)

ORDER

By Mukesh Kumar Gupta:

In this OA though applicant sought direction to Respondents to regularize him in Class-III post as Amonio Printing Machine Operator or in any other relevant Group-C post after he qualified the trade test in pay scale of Rs. 3050-4500/- as well as quash and set aside order dated 20.11.2000 vide which he has been reverted to substantive grade and post of Sr. Khalasi in scale of

Rs.2650-4000/- with consequential benefits, during the course of hearing, learned counsel for applicant stated that he would be satisfied if the relief as granted in (2005) 11 SCC 304 **Badri Prasad & Ors. vs. Union of India & Ors**, wherein protection of pay was granted even after repatriation to substantive post, is allowed to him.

2. Admitted facts are that applicant initially joined as casual labour on 2.6.1976 under Inspector of Works (Bikaner), awarded CPC Scale on 30.10.1976 in grade of Rs.196-232, was given temporary status on 16.3.1979. He worked in Bikaner Division till 11.7.1985 as Khalasi. As per AEN/BKN's Notice dated 11.7.1985, he had been transferred and joined under SEN/C/BKN in same grade. He was promoted as Ronio Operator in pay scale of Rs.225-308/-, revised to Rs.260-350/- in terms of PS No.6026(6) dated 25.1.1974. He worked in same designation and grade under SEN/C/BKN till 26.5.1988. Thereafter, he joined as Ronia Operator at his own request under Sr. Engineer (C) Moradabad on 27.5.1988. He was screened as Khalasi on 26.6.1989 in grade of Rs.750-940 against 40% constructions reserve post and his lien had been fixed under AEN/HQ/MB in Moradabad Division. He was re-designated as Amonia Printing Machine Operator in grade of Rs.950-1500/- vide Notice No.9-E/Dy.CE/C/MB dated 21.12.1994 and has been continuing in same grade and capacity. Since he had not been regularized in Class-III post despite representation dated 6.8.1997, he preferred OA No. 2478 of 1999, which was disposed of vide order

dated 24.11.2000 directing Respondents to dispose of aforesaid representation. However, during its pendency, Respondents passed order dated 20.11.2000 reverting him to Group-D post. Therefore, he preferred CWP No.7525 of 2000 before Delhi High Court, which was disposed of vide order dated 14.12.2000 giving him liberty to approach this Tribunal. Hence the present OA.

3. It is contended that applicant is entitled to be regularized in Class-III post as he had worked for more than five years in the said capacity particularly in terms of para 2007, IREM Vol.II, which deals with employment of casual labourer in skilled categories. Reliance was also placed on various Railway Board's circulars to contend that after 18 months of officiating service, one should not be reverted without complying the prescribed rules. Reliance was placed on **Ram Kumar & Others vs. Union of India & Ors**, 1996 (1) SLJ 116 (SC). Further reliance was placed on the observations made in **V.M. Chandra vs. Union of India & Ors**, 1999 (4) SCC 62. Strong reliance was placed on 2005 (11) SCC 304 **Badri Prasad & Others vs. Union of India & Ors**. wherein Khalasis, who had been given temporary status in the post and were posted to work as Storemen in Group-C carrying a higher pay scale of pay post, were reverted to their original cadre as Khalasis in the Open Line. Noticing observation made by it in **Inderpal Yadav & Ors vs. UOI & Others** 2005 (11) SCC 301, the Hon'ble Court pointed out that the practice of the Railways taking work from employees in Group-D posts for long periods on higher Group-C posts gave rise to a certain

amount of legitimate expectation in the minds of employees and, therefore, some amount of relaxation with regard to their claims for promotion in their original cadre should be shown. Although, the Tribunal and the Hon'ble High Court had dismissed their claims, the appeal was disposed of by the following directions:-

"15. Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. The pay last drawn by them in Group 'C' post shall be protected even after their repatriation to Group 'D' post in their parent department. They shall be considered in their turn for promotion to Group 'C' post. The period of service spent by them on ad hoc basis in Group 'C' post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in Group 'C'. If there is any bar of age that shall be relaxed in the case of the appellants." (emphasis supplied)

4. Shri K.K. Patel, learned counsel contended that the aforesaid observation aptly apply in the facts of present case and present OA be disposed of on the same lines.

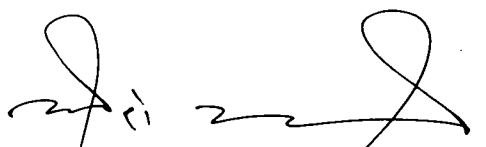
5. The Respondents in their counter affidavit contended that applicant who had been screened as Khalasis under AEN(HQ), Moradabad Division would be considered for further promotion in his channel of advancement on his turn as per extant rules. The post of Amonia Printing Machine Operator is in the grade of Rs.950-1500, to be filled by considering eligible Group-D officers like Khalasis, Office Peon, Peon Jamadar, Daftary etc. on the basis of seniority-cum-suitability. Since applicant holds lien as Khalasis, he would be eligible for promotion as helper Khalasis and skilled Artesian as per extant rules. He never challenged his screening as Works Khalasis, which had been done on 26.6.1989.

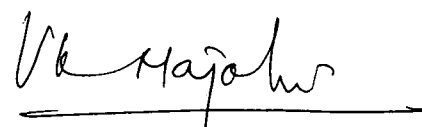
Ram Kumar's judgment is not applicable in the facts and circumstance of present case. Respondents filed additional affidavit and reiterated their submissions, besides written argument wherein strong reliance was placed on **Inderpal Yadav** (supra)

6. Applicant by filing his rejoinder as well as additional affidavit reiterated his plea for regularization.

7. We have heard Shri K.K. Patel, learned counsel for applicant and perused the pleadings filed by Respondents carefully including written arguments.

8. On bestowing our careful consideration to entire aspect as well as the Judgment relied upon, namely, **Badri Prasad & Others** (supra), we find that the ratio laid down therein is squarely applicable in the facts and circumstances of present case as all aspects, of facts and law, are similar and identical. We are of the view that the reliance placed by the respondents on Inder Pal Yadav, is not justified as the said judgment had been noticed, discussed & followed in Badri Prasad (supra). Therefore, though we do not find any illegality or arbitrariness in the reversion order, but dispose of present application holding that applicant would be entitled to relief as allowed by Hon'ble Supreme Court vide para 15 in **Badri Prasad's** case (supra), as noted hereinabove. OA is accordingly disposed of. No costs.


(Mukesh Kumar Gupta)
Member (J)
/PKR/


(V.K. Majotra) 5.5.08
Vice Chairman (A)