

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-2178/2004

New Delhi, this the 19th day of March, 2008

**Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)**

1. Ram Roop
S/o Shri Moti Lal
working as SOM in the
Construction Department
SE, (W) Construction, Anand Vihar
New Delhi.
2. Jasvinder Singh
S/o Shri Harkishan Singh
R/o WZ-953, Rani Bagh
Shakur Basti, New Delhi.

...Applicants

(By Advocate Shri K.K. Patel)

V E R S U S

Union of India through:

1. General Manager
Northern Railway
Baroda House, New Delhi.
2. Divisional Railway Manager
DRM Office, Northern Railway
New Delhi.
3. Chief Administrative Officer (Construction)
Northern Railway, Kashmiri Gate
New Delhi.
4. Deputy Chief Engineer (Construction)
Northern Railway, State Entry Road
New Delhi.

...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

Mrs. Chitra Chopra, Member(A)

The present Original Application had earlier come up before this
Tribunal seeking the following reliefs:-

“(i) to quash and set aside the impugned order No. 942
E/9/R/Const. Dated 16.6.2004.

(ii) to quash and set aside the order dated 18.9.2002 vide which the respondents have rejected the claim of the applicants for regularization as SOM in the Gr. of Rs.4500-7000/-.

(iii) to direct the respondents to grant the applicants the regular pay scale of SOM from the date of his ad-hoc promotion i.e. 1.1.1987.

(iv) to direct the respondents to grant the applicants the pay difference between the scale which they are drawing from the date of their ad-hoc promotion and the regular pay scale of SOM with 18% interest."

2. Tribunal vide its order dated 17.01.2006 partly allowed OA-2178/2004 holding that:-

"In the result, for the foregoing reasons, following the above, OA is partly allowed. The request of applicants for regularization is turned down. However, their pay would be protected whatever they have been drawing as Group 'C' employee on ad hoc basis in the Construction Organization. No costs."

3. Being aggrieved by the non-grant of the pay scale, for which applicants had made a prayer in the OA, they filed RA-30/2007 essentially on the ground that although their claim for grant of equal pay for equal work was found justified but the same was not ordered under the presumption that applicants being holder of group 'C' post must have been getting the pay scale of Group 'C' post. Applicants, therefore, by way of the RA sought clarification of the order dated 17.1.2006 with the following prayer:-

"to modify the order dated 17.1.2006 in OA No. 2178/2004 to the extent giving direction to the respondents to grant the applicant the regular pay scale of SOM from the date of ad hoc promotion i.e. 1.1.1987 with all arrears."

4. After hearing learned counsel for the parties, Tribunal vide its order dated 11.5.2007 allowed the RA with the following observations:

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"In the light of the prayer specifically made, not being considered by us, constitutes a good ground to review the order dated 17.1.2006, which is within the ambit of Section 22 (3) (f) of Administrative Tribunals Act, 1985. Accordingly, RA is allowed and order dated 17.1.2006 is recalled...."

5. In terms of the RA-30/2007 being allowed, we have heard the learned counsel for the parties in OA-2178/2004 and proceed to decide OA-2178/2004 a fresh.

6. Coming to the brief facts, applicants were engaged as Project Casual Labour Khallasis on 27.9.1977 and 28.6.1978 respectively in the Construction Organization of the Railways. They were granted temporary status w.e.f. 1.1.1982 and 1.1.1983 respectively in accordance with the Scheme approved by the Hon'ble Supreme Court in the case of **Inder Pal Yadav v. Union of India & Ors.** SLJ 1985 (2) SC 58. Applicant No.1 was promoted on ad hoc basis as temporary status skilled unqualified SOM in the grade of Rs.260-400 on 19.1.1987. The grievance of the applicant is that neither regular pay scale had been accorded nor they have been regularized as Group 'C' employees in the pay scale of Rs.4500-7000. They had earlier filed OA 38/2004 which, inter alia, was disposed of vide order dated 08.01.2004 with the direction to the respondents to dispose of the representations of applicants. The representations of the applicants were rejected by the respondents vide order dated 16.6.2004 (Annexure A-I). Being aggrieved by the said order, applicants have filed the present O.A. challenging the same.

7. In the present OA also, the same two reliefs, viz. regularization as SOM and grant of regular pay scale has been sought. It is thus clear that the applicants have been pressing their claims for being regularized as well as regular pay scale. Their claim is based on the

ground that they have been working as SOM on ad hoc basis since 1987 after qualifying the trade test, but respondents are not regularising their services as SOM w.e.f. the date of their ad hoc promotion, nor are they giving the regular pay scale of SOM.

8. In the counter-affidavit filed on behalf of respondents, learned counsel Sh. R.L. Dhawan has submitted that the claim of the applicants has been strongly opposed by the respondents. Admittedly applicants had been appointed as Class-IV Project Khallasis in the Construction Organization of the Railways and that they had been regularized as Works Khallasis in Group 'D' in Delhi Division. They were promoted on *ad hoc* basis as temporary status skilled unqualified SOM in the grade of Rs.260-400 and their promotion was confined to the Construction Organization only and it was very clear that they would not acquire any right for further promotion/seniority over their seniors in the regular post held by them. It is further submitted that the post of SOM was subsequently re-designated as Supervisor/Works in the grade of Rs.4500-7000. The channel of promotion for the post of SOM was prescribed by GMP, New Delhi vide letter dated 12.5.1988 (Annexure R/1). The post of SOM has since been re-designated as JE-II (Works) Grade Rs.5000-8000 and method of recruitment has been prescribed vide Railway Board's letter dated 28.6.2006 (Annexure R/2). The applicants are working on *ad hoc* basis as temporary status skilled unqualified SOM grade Rs.3050-4590 and they are not eligible for grant of regular pay scale of SOM as claimed by them in the OA. Hon'ble Supreme Court has laid down the law in the case of **M.P. Rural Agricultural Extension Officers v. State of M.P.** (SLJ 2005 (1) SC 12) stating that "State can grant different pay scale for the same cadre" and the case of **Mewa**

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Ram Kanojia v. AIIMS (SLJ1990 (1) SC 161) and **V. Markendey v. State of Andhra Pradesh** (SCC 1989 (3) 191).

9. It is further submitted that applicant No.1 who has lien as Works Khallasi in Group 'D' in Delhi Division has to seek further promotion as per the channel of promotion cited above. It is explained that the essential qualification for recruitment as SOM is 3 years' diploma in Civil Engineering which the applicant does not possess. He was promoted on *ad hoc* basis as temporary skilled unqualified SOM in the grade of Rs.260-400 on 19.1.1987 in the Construction Organization only with the stipulation that he would not acquire any right for further promotion/seniority over the seniors in the regular post held by him. The qualification acquired by applicant No.2 from the Institute of Permanent Way Engineers India does not constitute the essential qualification for the post of SOM and is treated as additional qualification. In the light of these facts, applicants' claim for grant of regular pay scale is totally unjustified as they were neither eligible for promotion to the post of SOM, nor was the post of SOM in their regular channel of promotion.

10. We have heard learned counsel for both the parties and perused the pleadings.

11. Learned counsel for the applicant Shri K.K. Patel strenuously argued that applicants are entitled to get pay scale of SOM from the date of *ad hoc* promotion. Shri Patel further submitted that applicants have been put to hardships and prejudice vis-à-vis their juniors. The list of names of junior employees promoted to higher post was pointed out by him, which is placed at page No. 224-C.
CL However, no designations of these employees nor any indication of the posts held by them have been indicated. Shri Patel also drew our

attention to seniority list filed at Annexure A/24. However, we find that this is a seniority list of Carpenter Engineer Grade-III. As the applicants are not in the cadre of Carpenter nor is it their channel of promotion, we do not find the said seniority list of any relevance.

12. As far as question of entitlement to scale of SOM is concerned, Shri R.L. Dhawan has invited our attention to the channel of promotion referred to in the supplementary counter affidavit (page 226), which is as follows:-

Khallasi (Workside)
Gr. Rs.750-940



Helper Khallasi
Gr. Rs.800-1150



Mate (Works Side)
Gr. Rs.800-1150



Skilled Grade III
Gr. Rs.950-1500



Highly Skilled Gr.II
Gr. Rs.1200-1800



Highly Skilled Gr.I
Gr. Rs.1320-2040



S.O.M.
Gr. Rs. 1320-2040

13. Looking to this channel which was prescribed in 1988, applicants have first to get promoted to other levels before they can come anywhere near SOM. Shri Dhawan also drew our attention to

the orders dated 19.1.1987 (Annexure A/7) in terms of which applicant was promoted. This order reads as follows: -

"In terms of Dy. Chief Engineer/Const/N. Rly., S.E. Road, New Delhi letter No.220-E/1/Temp/C dt. /12/86, Shri Ram Roop S/o Shri Moti Lal Temporary Status Despature Grade Rs.225-308 (RS) is hereby promoted with Temporary Status Skilled **Unqualified** SOM Grade Rs.260-400 (RS) on ad hoc basis after passing Trade Test.

He may be informed that his promotion is confined to this organization and will not confer upon him any right to claim promotion Seniority over his senior in future. He will draw Rs.950/- P.M. plus allowances in New Scale of Rs.950-1500 (RS) with immediate effect."

From the above order it is clear that though applicant was promoted as SOM on ad hoc basis but he was unqualified therefore it cannot be said to be a regular promotion by any stretch of imagination.

14. We now come to the impugned order dated 16.6.2004 vide which the applicant's representation was rejected. At the outset, we would like to observe that the said order is detailed, reasoned and a speaking one and has been passed after considering all aspects of the case. Para 1 of the said order details the relief sought by the applicants in the earlier OA No.38/2004:-

"(i) To quash and set aside the orders dated 18.9.2002 vide which the Respondents have rejected the claim for regularisation as SOM in Gr. Rs.4500-7000.

(ii) To direct the Respondents to grant the applicants the regular pay scale of SOM from the date of his ad-hoc promotion i.e. 1.1.87.

(iii) To direct the Respondents to grant the applicants the pay difference between the scale which they are drawing from the date of their ad-hoc promotion and the regular pay scale of SOM with 18% interest."

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15. In the present OA also, the same two reliefs, viz. regularization as SOM and grant of regular pay scale has been sought. It is thus clear that the applicants have been pressing their claims for being regularized as well as regular pay scale, both of which have been found to be not permissible under the Rules but applicants have been repeatedly resorting to litigation on the same grounds.

16. Para 6 of the impugned order dated 16.6.2004 brought out a new dimension of the ad hoc promotion of the applicants and is reproduced hereunder: -

"ad hoc officiation as unqualified Sub-Overseer-Mistry confined to const. deptt. is absolutely violative of the rules of promotion laid down for Work-Khallasi of Civil Engg. Deptt. As such, responsible staff and officer whosoever violated the rules identified and dealt with under D&A Rules forthwith. Dy. CPO (Const) will monitor personally."

17. It transpires from the above that in fact the ad hoc promotion of applicants to the post of SOM was itself ab initio in violation of the rules of promotion laid down for Works Khallasis and it was decided to take action against the concerned officers, who were responsible for allowing such ad hoc promotion. It is further clarified in the order that the applicants have their lien in Delhi Division in substantive capacity of Work Khallasi and their further promotion is to the Artisan category based on seniority. Para 7 of the impugned order reads as under: -

Shri Ram Roop & Shri Jasvinder Singh have acquired no right or lien to the post of SOM Gr. Rs.1400-2300/4500-7000 for further consideration as claimed by merely working as unqualified SOM, a terminology not known to the departmental rules. Both the employees are having their lien in DLI Divn. in the substantive capacity of Works Khallasi and their further promotion as per Avenue of Channel issued vide notice No.220E/100-X/E.IIBI dated 12.5.88 is towards Artisan Category based on seniority. In view of the AVC they cannot be regularized as SOM as only Artisan Gr.I grade Rs.1320-2040/4000-6000 were eligible for

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promotion to the post of SOM on the basis of seniority cum suitability. The post of SOM was subsequently redesignated as Supervisor/Works in Grade Rs.4500-7000. This post is a supervisory post and Rs.100/- as Special allowance is given to them in terms of the instructions contained in P.S.11466/94/PC-V.

18. The order further goes on to clarify that all posts of Supervisors having been upgraded to the post of JE Gr. II in the pay scale of Rs.5000-8000, these employees can apply and compete for the vacancies whenever advertised by the RRB for the post of JE-II Gr.II provided they are otherwise eligible for the same. It has further been clarified that the applicants do not possess the requisite qualification for the post of SOM viz. diploma in Civil Engineering.

19. Finally, finding the claim of the applicants as not tenable, their representations were rejected with the following observations: -

"DRM/Delhi was right while deciding their representations vide order dated 16.9.2002 that they cannot be promoted directly from Works Khallasi to SOM as per AVC as discussed above. The division is directed to consider the case of promotion of these employees under the provisions of Para 2007 (3) of IREM-II if they are otherwise found eligible along with others. Simultaneously, they should be considered for further promotion from the post of Works Khallasi as per normal avenue of promotion if the juniors have been promoted.

In view of the position as explained above the claim of said employees is not tenable as claimed and hence rejected."

20. Coming to the first claim of regularization of the applicants, the position stands settled on the basis of decision of Apex Court in **Inder Pal Yadav's case (supra)** which has been followed by this Tribunal in **OA-582/2003**, which, *inter alia*, was decided with the following observations:-

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"10. On careful consideration of the rival contentions of the parties, the decision of the Apex Court in **Inder Pal Yadav's case (supra)** has been followed by this

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Tribunal, with the following observations in OA-582/2003 (supra):

"From the documents on record, it is clear that the petitioners have been regularized and continued to hold the substantive posts of Khalasi in group D category in the open line division of the respondents. Their provisional local promotion in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. No rules have been pointed out to us to justify this claim on the part of the petitioners. Besides if, this stand of the petitioner were to be accepted it would operate inequitably as far as the regular employees in the open line department are concerned. Furthermore the order of provisional promotion expressly made it clear that the petitioners were in fact provisionally appointed. Therefore, the writ petitioners cannot seek to make such provisional appointment permanent by filing a Writ Petition to restrain the respondents from reverting them back to their appointed cadre.

"However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such re-posting of the petitioners is based on selection.

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Additionally, while it is open to the Railway Administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade test which may have been passed by the petitioners as well as length of service rendered by the petitioners in the several projects subsequent to their regular appointment.

Where a trade test is provided under the relevant rules for the purpose of promotion to group C, we make it clear that it will not be necessary for the petitioners to take the trade tests overagain, if they had already taken any comparable test while they were on duty in the projects. It is stated by the learned counsel appearing on behalf of the Railway authorities that during the pendency of the writ petitions that several of the petitioners had applied for promotion in the open line from Group B to Group C but only some were successful. It is not necessary to go into this question since we proceed on the basis that there was a requirement of passing a qualifying trade test held for the purpose of promotion from Group D to Group C post held in the projects.

However, we make it clear that so far as further promotions are concerned that is from Group C to Group B, the observations of this Court will not serve to grant any benefit to the petitioners. It is open to the respondent authorities to proceed in the matter of further promotion in accordance with the rules. We accordingly dispose of these writ petitions and special petitions with the aforesaid observations.

8. If one has regard to the above, ad hoc promotion in Projects would not confer any right for regularization to Group 'C'. Admittedly, applicants have to go back to their parent cadre to earn promotion in their own line. However, it has been observed that the persons, who had worked for longer period in Group 'C', would not be compelled to take the trade test over again, if already comparable trade test had been undergone by them."

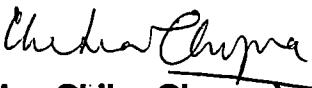
11. If one has regard to the above, applicants have no claim for regularization against Group 'C' posts as they maintain their lien in Group 'D' posts and have to earn their promotion in the channel meant for promotion in open line. However, as regards protection of their pay, the Full Bench decision of this Tribunal in **Aslam Khan v. Union of India**, ATFBJ (1997-2001) 157, as a reference has decided that a person directly engaged in Group 'C' post in the Construction Organization would be liable to be regularized in the feeder cadre in Group 'D' post and only his pay which he drew in Group 'C' post would, however, be protected."

In the same order applicants were allowed protection of pay, which they had drawn in the Group-C post.

21. From the factual position, it clearly emerges that as applicants were not given any regular promotion to Group-C posts, the question of their regularization does not arise. Coming to the second relief, viz. pay scale, it is admitted position that applicants had not been regularly appointed on the post of SOM, and hence their claim for regular pay scale on that post also cannot hold good. The only relief which applicant can get in view of the Full Bench decision in **Aslam Khan's** case is protection of the pay, which the applicant was drawing as unqualified SOM. In this context, it would be important to observe that it is not the applicants' case that they were at all regularly recruited or regularly appointed on the Group-C post as SOM. In fact it is relevant to note that even at the time of their ad hoc promotion, it was clearly observed in the order that they were promoted as "Temporary Status Skilled Unqualified SOM in the grade of Rs. 260-400 on ad hoc basis...." Therefore, by no stretch of imagination, this order can be taken to confer any right on the applicants for promotion on regular basis or grant of regular pay scale. We need hardly reiterate

that an employee can claim regular pay scale only after being regularly appointed on such post. It is settled law that ad hoc promotion does not confer any right on an employee for either regularization or grant of regular pay scale attached to redesignated post.

22. In the light of above discussion, applicants' claim both for regularization as well as for grant of regular pay scale cannot be allowed. However, whatever pay applicants are drawing that shall be protected. O.A. is accordingly disposed off. There will be no order as to costs.


(Mrs. Chitra Chopra)
Member (A)


(Mrs. Meera Chhibber)
Member (J)

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