

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

**O.A. NO.2708/2004
MA No.2236/2004**

New Delhi, this the 2nd day of August, 2006

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

1. Amarnath S/o Sh. B.N. Srivastava
2. Moti Lal S/o Sh. Harbhajan Lal
3. Rakesh Malik S/o Sh. Ram Malik
4. Daleep Singh S/o Sh. Kanhaiya Lal
5. Ghanshyam Prasad S/o Sh. Vishwanath Prasad

(All the applicants are working as Group 'D' employees in the O/o the
Chief Personnel Officer, Northern Railway, Baroda House, New Delhi)

... APPLICANTS

(By Advocate: Shri U. Srivastava)

VERSUS

Union of India, through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway, Estate Entry Road,
New Delhi
3. The Chief of Personnel Officer,
Northern Railway, Baroda House,
New Delhi

... RESPONDENTS

(By Advocate:Shri R.L. Dhawan)

O R D E R (Oral)

By Mukesh Kumar Gupta, Member (J):

MA No.2236/2004 under Section 4 (5) of CAT (Procedure) Rules,
1987 seeking permission to join together in a single OA is allowed.

2. The relief claimed in this OA read as under:

*"(a) Declaring the actions of the respondents by which the
respondents have not been considering the case of the
applicants for promotion from Group 'D' to Group 'C'
and instead of considering the same the respondents
have rejected the claim of the applicants on the pretext
that the applicants have been extended the benefits of*

ACP Scheme is as illegal, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, against the mandatory provisions of law and violative of Article 14 & 16 of Constitution of India.

(b) *To quash and setting aside the impugned order dt. 14.11.2002 issued by the respondents in compliance of the orders dt. 14.11.2000 issued by their lordships in O.A. No.2436/1998 by which the respondents have misconceived and rejected the claim of the applicants for considering for promotion to the applicants for next higher grade while implementing the said judgment (supra) on the pretext that the applicants have been granted the benefits of ACP Scheme which is not in real spirit of the directions issued by their lordships in O.A. No.1610/1997 decided on 28.07.1998 as well as in O.A. No.2436/1998 decided on 14.11.2000 and thereafter;*

(c) *To consider the case of the applicants for promotion in accordance with the vide respondents orders dt. 13.06.1997, 03.12.1997 and the judgment dt. 28.07.1998 and 14.11.2000 issued by their lordships in O.A No.1610/1997 followed by in O.A No.2436/1998 respectively.*

(d) *Directing the respondents to place the relevant records pertaining to the present OA before the Tribunal.*

(e) *To allow the OA of the applicant with all other consequential benefits & costs.*

(f) *Any other fit & proper relief may also be granted to the applicant."*

3. Factual matrix of the case is that 12 Group 'D' employees including all 5 applicants herein had earlier filed OA No.2436/1998 seeking direction to Respondents to fill up all 19 posts, which were existing during ban period through promotion method amongst the departmental candidates only. As an interim measure, vide Tribunal's order dated 21.05.1999, applicants were allowed to sit in written test for post of Horticulture Supervisor in supplementary test, which was scheduled to be held on 29.05.1999 or any subsequent dates, subject to their being eligible. It was further directed that the result shall be kept in sealed cover till disposal of O.A. Learned counsel for applicant had relied upon a judgment dated 28.07.1998 in OA No.1610/1997

(Lallu & Ors vs. Union of India & Ors) wherein Respondents were directed to take fresh initiative to create posts in Group 'C' or promotional categories in terms of communication dated 3.12.1997 issued by General Manager and thereafter consider applicants for promotion. Following the said judgment, OA No.2436/1998 was disposed of with following directions:-

"7. So, accordingly we dispose of the OA and direct that the respondents shall declare the results of the examination conducted by the Department for promotion of the persons including the applicants to the post of Horticulture Supervisor and give promotion to those who qualified in the said examination in accordance with rules. This shall be done within a period of two months from the date of receipt of copy of this order.

8. The respondents shall also take initiative to create more posts in Group 'C' or promotional categories for promotion of Group 'D' employees in accordance with their own letter dated 3.12.1997 on the subject, within a period of six months from the date of receipt of a copy of this order.

9. The OA is disposed of with the above directions. No costs."

4. A review application No.278/2001 filed by Respondents was dismissed vide order dated 17.09.2001. Immediately thereafter, a CP No.567/2001 was also preferred alleging non-compliance of directions issued by this Tribunal vide order dated 14.11.2000 in OA No.2436/1998. Since, in the meantime, Respondents filed Civil Writ Petition No.7406 of 2001 challenging aforesaid order, which had been stayed, it was observed that no action could be taken in C.P. at that stage and as such leave was granted vide Order dated 11.12.2001 to withdraw the Contempt Petition with liberty. Later, vide order and judgment dated 15.4.2002, aforesaid Writ Petition was dismissed with following observations:-

"This Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not concerned

with a subsequent even or purported inability of the respondent to create more posts on one ground or the other as was submitted by the Mr. Singh. Having regard to the fact that the impugned judgment has been passed as per the concessions of the petitioner, if any subsequent developments have taken place and/or if according to the petitioner the order of the learned Tribunal has been complied with and/or the order CP in Lallu's case (supra) is of any help to the petitioner, in our opinion, it could raise the said contention only before the appropriate form as and when any proceeding is initiated against it. But having regard to the limited power of judicial review that this Court possess we are of the opinion that no case has been made out for interference with the impugned judgment."

5. Immediately thereafter, applicants once again preferred CCP No. 616/2002 before the Hon'ble Delhi High Court, which was allowed to be withdrawn vide order dated 10.03.2003 with liberty to file Contempt before this Tribunal. Accordingly, they preferred CP No.301/2003 alleging that Tribunal's directions in order dated 14.11.2000 passed in OA 2436/1998 remained un-complied with. Said CP was found to be not maintainable and accordingly dropped vide order dated 16.02.2004 recording therein, in specific, that creation of vacancies was a policy matter and the Tribunal had simply directed Respondents vide aforesaid order to consider "if feasible to create more posts" but the court cannot give a definite direction to create a particular post as similar issue had been raised in CP No.219/1999 in OA 1610/1997.

6. Pursuant to directions issued by this Tribunal, as upheld by Hon'ble Delhi High Court vide order and judgment dated 15.04.2002, Respondents passed a speaking and detailed order dated 14.11.2002 (A/1) and observed that directions issued by the Tribunal vide order dated 14.11.2000 can be divided into two parts, firstly, declaring result of the examination conducted for the post of Horticulture Supervisor and secondly, taking initiative for creating more posts in

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Group 'C' or promotional avenues. As far as first ambit of direction is concerned, the same had already been complied with "by declaring the results of examination conducted for the post of Horticulture Supervisor and promoted the qualified personnel in accordance with rules." For second part of direction, it was stated that the matter was considered by Respondents earlier in compliance of order dated 14.11.2000, which followed order in OA No.1610 of 1997 (**Shri Lallu and Others Vs. Union of India and Ors**) wherein similar directions to Respondents for taking initiative for creating more posts in Group 'C' or promotional categories in accordance with letter dated 3.12.1997 were issued. Respondents have already considered the issue in its entirety in terms of earlier directions given vide order dated 14.11.2002 and observed that :

- i) There were no instructions in letter dated 03.12.1997 for creating new posts in Group 'C' as relied upon in order dated 14.11.2000;
- ii) Government of India has since issued a new Scheme, namely "Assured Career Progression Scheme" under which employees are entitled to two financial up-gradations;
- iii) The cadre to which applicants belong, there already exists a channel of promotion and some of the incumbents have already been promoted to higher promotional posts;
- iv) It was stated that second ambit of direction in OA was paramateria to direction issued earlier in OA No.1610/1997 and "the matter was reconsidered again and it was found that there had been no material change either in the facts or circumstances of the case and further since after the implementation of the ACP Scheme adequate promotional



avenues have been created to remove stagnation in service, it would not be desirable to create any further promotional posts apart from the ones already existing in the cadre".

7. The grievance of applicants is that Respondents rejected their claim vide impugned order dated 14.11.2002, which is contrary to the provisions of ACP Scheme and as they have rendered 28 years of satisfactory service with Respondents without any promotion and, therefore, Respondents be directed to create adequate promotional avenues as held by Hon'ble Supreme Court in the cases of **Raghunath Prasad Singh vs. Secretary Home (Police Department), Govt. of Bihar & Ors**, AIR 1988 SC 1033 and **Dr. (Ms.) O.Z. Hussain vs. Union of India & Ors**, AIR 1990 SC 313 and **C.S.I.R. vs. K.G.S. Bhatt**, AIR 1989 SC 1972. It is further contended that impugned order is unjust, illegal, arbitrary and violative of principles of natural justice as well as Articles 14 & 16 of Constitution of India.

8. Respondents resisted applicants' claim and also raised preliminary objection regarding res judicata. On merits, it was stated that there are prescribed promotional avenues for applicants as a "Mali Khallasi" in grade of Rs.2550-3200 is entitled for promotion to next higher post of "Mali" in grade of Rs. 2650-4000/-, who is next entitled to promotion to "Field Man" in grade of Rs.3050-4590/-, further entitled to promotion to post of "Horticulture Supervisor" in pay scale of Rs.4500-7000/- and thereafter "Horticulture Inspector" and "Chief Horticulture Inspector". Applicant No.1 has already been given two financial upgradations in his cadre in grades of Rs.2650-4000/ and Rs.3050-4590/-. Applicants 2 to 5 have also been promoted to the grade of Rs.2650-4000/- in terms of above channel of promotions.



9. We have heard learned counsel for parties at length and perused pleadings and material placed on record.

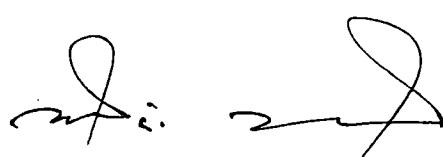
10. On bestowing our careful consideration to entire aspect of the case, admitted fact is that at present applicant No.1 is working in grade of Rs.3050-4590/- and applicants 2 to 5 are working in grade of Rs.2650-4000/-, which is admitted vide para-3 of the rejoinder. In our considered view, twin directions issued by this Tribunal vide order and judgment dated 14.11.2000 in OA 2436/1998, as upheld by Hon'ble Delhi High Court vide Civil Writ Petition No.7406/2001 decided on 15.4.2002, has thus been fully complied with vide order dated 14.11.2002. On our pointed query raised as to how said impugned order is illegal and arbitrary, no material or documents were brought to our notice to justify said contention. On perusal of material on record, we are satisfied that Northern Railway vide Communication dated 03.12.1997 did not issue any direction to create more posts in Group 'C' or to create adequate promotional avenues for Group 'D' employees, which have been the main plank of applicants. The said letter was issued for obtaining informations from field Units/Divisions of Northern Railways since such details were required by Central Government for identifying posts in which there is/was stagnation and no promotional avenues were available. As far as applicants' cadre is concerned, as noticed hereinabove, plenty of promotional avenues are available, but there appears to have stagnation, for which applicants have already been compensated by grant of financial up-gradations under ACP scheme. Similarly, we do not find much substance and justification in the contention that Northern Railway vide communication dated 13.06.1991, wrongly mentioned as 31.06.1997



vide relief clause 8(c), had directed for creation of higher posts, as projected.

11. We do not find any justification in the contention raised by Respondents that present O.A. is barred under the principle of res judicata as projected, particularly for reason that there had been no challenge made in the earlier proceedings to order dated 14.11.2002. In these circumstances, we are satisfied that there is no illegality or arbitrariness in order dated 14.11.2002. To claim promotion, one has to establish that he fulfills the eligibility conditions prescribed under Recruitment Rules, he is senior enough to fall within zone of consideration and there exists a vacancy against which he should be promoted. No such details have been provided in the pleadings filed by applicants. In absence of such materials, we do not find any justification in the contentions raised. Further, there is no substance in the contention raised by applicants that respondents have rejected their claim for promotion on the pretext that applicants have been granted benefit of ACP Scheme. Para 4 of ACP Scheme, in no uncertain terms, provides that "introduction of ACP should, however, in no case affect the normal(regular) promotional avenues available on the basis of vacancies". Except for making bald allegation, no such details have been provided in the pleadings filed by applicants to substantiate the allegation that they were denied promotion.

12. In view of discussion made hereinabove, we find no merit in the present OA and accordingly same is dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra) 21/8/06
Vice Chairman (A)