

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2952/2004

This the 26th day of August, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

1. Anurag Saran Malhotra S/O Bal Kishan,
Dy. Chief Controller,
Northern Railway, Control Office,
DRM/New Delhi.
2. Amarjeet Singh S/O Bhola Singh,
Dy. Chief Controller,
Northern Railway, Control Office,
DRM/New Delhi.

... Applicants

(By Shri Khairati Lal, Advocate)

Versus

1. Union of India through
General Manager,
Northern Railway,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents

(By Shri Satpal, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicants are stated to have been working as Deputy Chief Controller in the Control Office, DRM's Office, New Delhi. It is averred that their services were utilized as Chief Controller in grade Rs.7450-11500 from September, 1998 for a period of four years. They had earned increments in that grade during the said period. However, they were reverted w.e.f. 28.10.2002 due to administrative reasons and their pay was not protected. Their representation remained

Wh



unresponded. They had filed OA No.2227/2003, which was allowed to be withdrawn with liberty (Annexure A-2). Applicants have sought direction to respondent No.2 to provide pay protection in grade Rs.6500-10500 w.e.f. 28.10.2002 which applicants had drawn in grade Rs.7450-11500. They have also sought consequential benefits as a result of pay protection.

2. The learned counsel of applicant has relied on PS No.11864 issued vide 20.8.1999. The learned counsel contended that under this PS applicants' pay should be fixed in the lower grade at the stage equal to their pay drawn by them in the higher post subject to the maximum of the lower post not being exceeded. In case there is no stage in the lower grade equal to the pay drawn by them in the higher post, their pay in the lower grade would be fixed at the stage next below the pay being drawn in the higher post and the difference would be paid as personal pay to be absorbed in future increments. The learned counsel further relied upon the decision of the Hon'ble Supreme Court in the case of *Union of India & Anr. v Moti Lal & Ors.*, 1996 (33) ATC 304. The Apex Court in the aforesaid case held as under:

"8. In view of the rival stand of the parties two questions really arise for our consideration:

1. Is it permissible under rules to appoint a person directly as mate in Class III and if not, then whether the factual continuance of the person as a mate for a considerable period entitles him to be regularized as a mate?
2. Conferment of a temporary status as a mate whether ipso facto entitles a person to be regularized as a mate and not as a gangman?

9. So far as the first question is concerned, on examining the relevant provisions of the rules as well as the administrative instructions issued by the Railway authorities we are of the considered opinion that it is not permissible to appoint a person directly as a mate and it is only a promotional post from class (iv) post of gangman and keyman. These gangman and keymen can be promoted to the post of mate in class III subject to their suitability and efficiency being tested through trade test. It is no doubt true that these respondents under certain circumstances had been appointed directly as casual mates and they continued as such and further by virtue of their continuance they acquired temporary status but that by itself does not entitle them to be regularized as mates since that would be contrary to the rules in

W

74

force. In our considered opinion the respondents did not acquire a right for regularisation as mates from mere fact of their continuance as casual mates for a considerable period.

10. So far as the second question is concerned, we are also of the considered opinion that conferment of the temporary status as made ipso facto does not entitle the person concerned to regular absorption as mate. In the case of Ram Kumar Vs. Union of India this Court has held that an employee on daily wage basis under the Railway acquires temporary status on completion of a specified number of days in service and with the acquisition of the said status such employees are entitled to:

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.
- (3) Compensatory and local allowances.
- (4) Medical Attendance.
- (5) Leave rules.
- (6) Provident fund and terminal gratuity.
- (7) Allotment of railway accommodation and recovery of rent.
- (8) Railway passes.
- (9) Advances.
- (10) Any other benefit specifically authorized by the Ministry of Railways.

11. Thus it is apparent that a daily-wage or casual worker against a particular post when acquires temporary status having worked against the said post for specified number of days does not acquire a right to be regularized against the said post. He can be considered for regularisation in accordance with the rules and, therefore, so far as the post of mate under Railways is concerned, the same has to be filled up by a promotion from the post of gangman and keyman in Class IV subject to employees passing the trade test.

12. In this view of the matter the Tribunal was not justified in directing regularisation of the respondents as mates."

This Apex Court ruling was further relied upon by Central Administrative Tribunal (Full Bench, Jaipur) in 1997-2001 (Administrative Tribunal Full Bench Judgments) p.157 – *Aslam Khan v Union of India*. The following question had been raised for decision by the Full Bench:

"Whether the person directly engaged on Group 'C' post (promotional post) as casual basis and subsequently, acquired temporary status, would be entitled to be regularized on Group 'C' post directly or whether such person requires to be regularized in the feeding cadre in Group 'D' post by providing pay protection of Group 'C' post."

h

The reference was answered as follows:

“A person directly engaged on Group-C post (Promotional) on casual basis and has been subsequently granted temporary status would not be entitled to be regularized on Group-C post directly but would be liable to be regularized 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.”

3. The learned counsel of respondents, on the other hand, stated that to fill up the posts of Chief Controller grade Rs.7450-11500 a selection was held and a panel of eleven candidates was issued vide letter dated 2.9.1998. Since there was a vigilance case pending against one of the members of the selection committee, he was not eligible to participate in the selection. Therefore, Shri Mukesh Kapoor and other candidates whose names were not placed on the panel, filed OA No.741/1999 before the Principal Bench of the Tribunal. The Tribunal vide its orders dated 16.3.2001 quashed and set aside the panel dated 2.9.1998 directing respondents to hold a fresh selection for the post of Chief Controller grade Rs.7450-11500. Accordingly, vide order dated 14.5.2001 candidates including applicants who had been promoted to grade Rs.7450-11500 were reverted to their substantive post of Deputy Chief Controller grade Rs.6500-10500. Against the orders of the Tribunal, the candidates who had been placed on the panel of Chief Controller, filed an appeal by way of CWP No.2506/2001 before the Hon'ble High Court of Delhi, which passed orders as under on 23.4.2001:

“The Learned Counsel for the petitioners however, contended that the petitioners are holding the post for which the selection was made for the past two and a half year. They shall continue to hold the post till a fresh selection is made and will vacate the post in case they are not selected by a selection which is required to be made within a period of 4 months i.e. by 16th July, 2001 by respondents 7 and 8 by framing a fresh selection committee in accordance with the rules/instructions. Respondents 7 & 8 shall made the selection in the period as granted by the Tribunal and the holding of the post by the petitioner will not confer any legal and vested rights on them to continue which will be only subject to the selection made.”

Vb

4. The learned counsel further stated that in accordance with the directions of the Hon'ble High Court, respondents conducted fresh selection for the post of Chief Controller grade Rs.7450-11500; its result was declared on 24.1.2002 and 7.10.2002. Those placed on the panel were promoted as Chief Controller grade Rs.7450-11500 on 1.4.2002 and 28.10.2002. However, applicants could not be placed on the panel, as they were much lower in seniority. They were reverted to the post of Deputy Chief Controller grade Rs.6500-10500 vide order dated 28.10.2002. The learned counsel pointed out that PS 11864 dated 20.8.1999 and the ratio in the cases of *Moti Lal* (supra) and *Aslam Khan* (supra) are not applicable to the facts and circumstances of the present case.

4. We have considered the respective contentions raised from both sides as also the material on record.

5. Respondents have maintained that when the Tribunal quashed and set aside the selection for the post of Chief Controller grade Rs.7450-11500 in which applicants were selected, they were reverted to their substantive posts as Deputy chief Controller grade Rs.6500-10500. It is observed that the Hon'ble High Court had also directed that a fresh selection for the post of Chief Controller be held and applicants would vacate the post in case they were not selected in the fresh selection. It is not disputed that applicants could not be placed on the panel for the post of Chief Controller in the fresh selection. Obviously, they had to be reverted to the substantive post held by them, i.e., Deputy Chief Controller grade Rs.6500-10500. The issue here is whether applicants can be given the benefit of the pay drawn by them while they were discharging the functions of the posts of Chief Controller. We have gone through PS 11864 dated 20.8.1999 relied upon on behalf of applicants. This relates to "Pay protection to staff who joined lower post at his own request". It has been stated in these instructions that in the case of an employee holding a higher post on regular basis who has completed a minimum



27

period of 24 months in that higher post and seeks transfer on his own request to a lower post, fixation of his pay in the lower grade would be done at the stage equal to the pay drawn by him in the higher post subject to a maximum of the lower post not being exceeded. As applicants were not holding the post of Chief Controller on a substantive basis and their selection had been quashed and set aside by court orders, the instructions contained in PA 11864 are not applicable to the instant case. Applicants had been empanelled on 2.9.1998. This panel was set aside by the Tribunal on 16.3.2001. Neither the applicants had held the higher post prior to the orders of the Tribunal for a period of two years nor had the applicants sought transfer on their own request to a lower post. In this backdrop instructions of PS 11864 dated 20.8.1999 are not attracted in the present case at all.

6. The rulings in the cases of *Moti Lal* (supra) and *Aslam Khan* (supra) related to persons engaged on Group 'C' posts on casual basis acquiring temporary status and whether they would be entitled to be regularized on Group 'C' posts directly or in the feeder cadre in Group 'D' posts by pay protection of Group 'C' posts. In the present case, we are not dealing with casual labour acquiring temporary status awaiting regularisation, etc. These rulings too are not applicable herein. While applicants are entitled to the pay and allowances of the higher post for the period they served as such as per the trite law, it was suggested to the respondents whether they would while fixing applicants' pay on reversion allow the benefit of increments to them which they would have earned in the lower grade had they not been promoted to the higher grade, the learned counsel agreed on behalf of respondents that applicants' pay on reversion would be fixed giving them the benefit of increments in the lower grade for the period they had functioned in the higher grade.

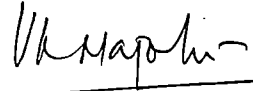
1/1

7. Accordingly, the OA is disposed of directing respondents to give benefit of increments to applicants in the lower grade on reversion for the period they had worked in the higher grade. No costs.



(Meera Chhibber)
Member (J)

/as/



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

26.8.05