

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.415 OF 1997

Alongwith

ORIGINAL APPLICATION NO.416 OF 1997

ALLAHABAD THIS THE 16TH DAY OF SEPTEMBER, 2004

COMBINE IAS. MR. RAJENDRA CHATTERJEE, MR. R. J.
COMBINE I.R. S. C. CHAUHAN, MR. R. A.

1. Arun Kumar Dwivedi,
son of Sri D.N. Dwivedi,
Amin/Skilled Driver.
2. Kesho Kumar,
son of Sri Indrajeet,
High Skilled Driver.
3. Arun Kumar Srivastava,
son of Sri Han-in Lal Srivastava,
Amin/Skilled Driver.
4. Sita Ram son of Sri Radhu Nath,
High Skilled Driver,

All employed in the office of the Deputy Chief
Engineer (Construction), Allahabad Division, Northern
Railway, Allahabad.

.....Applicants in
O.A. No. 416/97.

ALONGWITH

O.A. NO. 416 OF 1997

1. Jeth Lal,
son of Sri Ram Chaudhary, Electrician.
2. Sabha Ram,
son of Sri Baba Ram, Blacksmith.
3. Keshav Prasad Shukla, son of Chhutkun,

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Blacksmith.

4. Chandrika Prasad son of Roshan Lal,
Carpenter.
5. Ram Naresh, son of Sri Ram Khelawan,
Mason.

All employed in the office of the Deputy Chief
Engineer (Construction) Allahabad Division, Northern
Railway, Allahabad.

.....Applicants in
O.A. No.416/97

(By Advocate Shri A.K. Srivastava)
Versus

1. Union of India,
through the Chairman Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.
3. The Deputy Chief Engineer (Construction),
Allahabad Division, Northern Railway,
Allahabad.
4. The Divisional Rail Manager, Allahabad Division,
Northern Railway, Allahabad.

.....Respondents

(By Advocate Shri F. Mathur)

O_R_D_E_R

HON'BLE MRS. LEERA CHILLIBER, MEMBER-J

O.A. No.415/97 and 416/97 both these
O.A.s are common in nature, therefore, they are being
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disposed of by a common judgment. For the sake of convenience it is ^{made} clear that there are four applicants in O.A. No.415/97 while five applicants in O.A. No.416/97.

2. In O.A. No.415/97 applicants were initially engaged in Group 'C' as Amin/Skilled Mistry while the applicant's of O.A. No.416/97 were initially engaged in Group 'D' in Construction Organisation. The applicants of O.A. No.416/97 were subsequently promoted as Group 'C' and according to the counsel for the applicant all the applicants have passed trade test before being appointed in Group 'C'. The claim made by all the applicants in both the O.A.'s is that they should be screened and regularised for Group 'C' posts only and they should not be reverted from Group 'C' post to Group 'D' post, therefore, appropriate directions may be issued to the respondents to this effect. During the pendency of the O.A.'s respondents have already screened and regularised the applicants in Group 'D' post and allotted them lien in the Allahabad and Lucknow divisions respectively which is evident from the chart placed on record by the respondents. one thing is common, that all the applicants are regularised w.e.f. 07.08.1997 except Anil Kumar Srivastava who has been regularised from 12/15.12.1997 and after regularisation in Group 'D' post, all the applicants have been allowed to work against Group 'C' posts. It is submitted by

in Construction Organisation.

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the applicant's counsel that since these applicants have been initially engaged on Group 'C' post, therefore, they could not have been regularised in Group 'D' posts. For this purpose he has relied on the judgment given by this court in the case of Vijay Prakash and others Versus U.O.I. and Others decided on 31.08.1992 in O.A. No.555/89 (page 29). This judgment was further upheld by the Hon'ble Supreme Court on 25.10.1996 as Special Leave petition filed by the Union of India was dismissed (Page 25). It is further submitted by the counsel for the applicant that applicant no.2 Shri Kesho Kumar in O.A. No. 415/97 was even transferred to Punjab in Group 'C' as Driver whereas a Group 'D' person cannot be transferred as a Group 'C' employee, therefore, it clearly shows that he was working against a substantive post. Counsel for the applicant further relied on JT 1997(2)S.C. 101 in the case of U.P. State Mineral Development Corporation Ltd. and Anr Versus Vijay Kumar Upadhyay and Anr. to buttress his argument that if one set of employees have been given regularisation the others are also entitled to same benefit. He further relied on Raj Pal Versus State of Haryana and Ors. reported in 1996(1)LD&SR 477 (S.C.) the case wherein it was held that persons similarly situated taken into service and their services regularised except the appellant ~~SM~~ Hon'ble Supreme Court directed the regularisation of service with all consequential benefits except backwages. He, therefore, submitted that since Vijay Prakash also

belongs to this Allahabad division and his services were regularised in Group 'C' therefore, applicants of O.A. No.415/97 are also entitled to be regularised in Group 'C' post only. He has also relied on Railway Board's letter dated 30.04.1997 wherein Casual labour in Group 'C' ~~xxx~~ are presently entitled for absorption as skilled artisans against 25% of the therefore, counsel prayed that applicants promotion quota/may be continued to be considered for absorption as such.

3. Counsel for the respondents on the other hand submitted that applicants of O.A. No.416/97 were initially engaged in Group 'D' post and at the time when they were promoted in Group 'C', it was made clear that these promotions are purely on ad-hoc basis confined to the Construction organisation only and will not confer any right on the persons to claim promotion/seniority over their seniors in future (Annexure CA-II). He has thus submitted that they were rightly screened on 07.08.1997 and regularised in Group 'D' by putting their lien in Allahabad Division. They are however, working still in the construction organisation against Group 'C' posts. As far applicants of O.A. No.415/97 are concerned, it is submitted by the respondent's counsel that as per the rules, all the Casual Labours ~~xxx~~ have to be regularised only in Group 'D' and

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their lien has to be maintained in the division where their seniority is maintained. However, since working in the construction organisation is still available, therefore, even after regularising the applicants they are still being allowed to work in construction organisation where they are getting the same pay which they were getting earlier, therefore, applicants can have no grievance. Counsel for the respondents further submitted that no) Hon'ble Supreme Court has decided the matter finally in the case of Inder Pal Yadav and Others Vs Union of India and Others in writ petition No.548/00. Counsel for the respondents also relied on the Full Bench judgment given by the Tribunal in ^{Ram} Aslam Khan's case as well as Lubhaya Vs Union of India and Others. They have also relied on the judgment dated 20.04.2004 given in O.A. No.1530/99 alongwith number of other O.A.'s.

4. We have heard both the counsel and perused the pleadings as well.

5. In AIR 1967 SC 864 it was held by Hon'ble Supreme Court in the case of State of Assam Vs Kank Chandra that Casual Labour is not a holder of

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Civil post ~~not~~, therefore, no lien is created to any post against engagement of a casual labour for any work undertaken by him unless he is screened and absorbed by an appointment in Group 'D' post under the rules contained in Indian Railway Establishment Manual Vol-II.

It was further held by Full Bench of Tribunal in the case of Ram Lubhaya Vs. Union of India and Ors. reported in 2001 (1) ATJ 40 that Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to constructions organisation, and there having/promoted on a higher post on ad-hoc basis if they continued to function on that post on ad-hoc basis even for a very long time, ^{it} would not entitle ^{them} to regularisation on that post. ~~xx xxxx xxxx xxxx xxxx~~.

They are entitled to regularisation in their turn, in the parent division/ office strictly in accordance with the rules and instructions on the subject. In the Full Bench given in the case of Aslam Khan reported in 2001(2) ATJ 1 the question posed was "Whether the person directly engaged on group 'C' post (Promotional Post) as Casual basis and subsequently, acquired temporary status, would be entitled to be regularised on Group 'C' post directly or whether such person requires to

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be regularised in the feeding cadre in group 'D' post by providing pay protection of Group 'C' post." It was held as under:

"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."

6. Not only this, thereafter Indrapal Yadav ~~Va. M.R.R. & Ors.~~ once again filed writ petition in the Hon'ble Supreme Court wherein the exact issue ~~was~~ raised before Hon'ble Supreme Court was, whether the persons who had been working in Group 'C' post, on being declared surplus could be sent back to open line cadre in Group 'D' post, when — they were enjoying much higher scale of pay. After discussing everything, Hon'ble Supreme Court held as under:-

"From the documents on record, it is clear that the petitioners have been regularised and continue 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 ~~in~~ inequitable as far as the regular employees in the open line department are concerned. Further more, 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 back to their appointed cadre.

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However, while the petitioners cannot be granted the relief 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 projects, 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.

Additionally, while it is open to the Railway administration to utilise the services of the petitioners in the open line, they must, for the purposes of determining efficiency and fitness take into account the trade tests which may have been passed by the petitioners as well as the 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 over again, 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 'D' to Group 'C' but only some were successful. It is not necessary ~~basis that there was a requirement of passing a~~ to go into this question since we proceed on the qualifying trade test held for the purposes of promotion from Group 'D' to Group 'C' post held in the project.

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

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in the matter of further promotion in accordance with the rules. We accordingly dispose of these writ petitions and special leave petitions with the aforesaid observations."

In view of the above judgment the matter is no longer res-integra.

7. In the instant case, it is an admitted fact by both the parties that all the applicanta in both the C.A.'s had already passed the trade test for Group 'C' post, therefore, applicants would be entitled to same relief which has been granted by the Hon'ble Supreme Court in the case of Indrapal Yadav. Since all the applicants had admittedly passed the trade test, therefore, if petitioners are directed to/posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by ~~xxx~~ such contemporary employees at the time of such re-posting of the petitioners is based on selection.

8. It would be open to the Railway Administration to utilise the services of the petitioner in the open line. But for the purpose of promotion/ take into account the trade test which may have been passed by the petitioner, as well as, the long period of service rendered by the petitioners in the several projects subsequent to their regular appointment. If trade test for the purpose of promotion to Group 'C' is concerned not to Group 'C' it will be necessary for the petitioner to take the trade test over again if they had already taken a comparable test while they were

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Construction Organisation.

in / . It is however, clarified that as far as further promotions are concerned i.e. from Group 'C' to Group 'B' no benefit will be given to the petitioners, as further promotions shall be made in accordance with the rules. It is further made clear that 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.

9. Since the matter is already concluded by the **latest Judgment of Hon'ble Supreme Court**, there is no need to refer to the earlier judgments relied upon by the council for the applicant passed by either this Tribunal or Hon'ble Supreme Court.

10. With the above directions both these C.A.'s are disposed off with no order as to costs.