

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO.1508 OF 2004.

ALLAHABAD THIS THE 5th DAY OF MARCH 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.

K.K. Tripathi, son of Sri S.P. Tripathi, working as Store Issuer Under Senior Section Engineer (CON), Signal N.E Railway, Gorakhpur.

.....Applicant

(By Advocate: Shri R.C. Pathak/Shri V.K. Goel)

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Administrative Officer (Con), North Eastern Railway, Gorakhpur.
3. Chief Personnel Officer/General Manager (P), Eastern Railway, Gorakhpur.
4. Chief Signal & Telecom Engineer (Con), Eastern Railway, Gorakhpur.
5. Deputy Chief Signal & Telecom Engineer (East) (Con), Eastern Railway, Gorakhpur.

.....Respondents

(By Advocate: Shri K.P. Singh)

ORDER

Applicant has prayed for quashing order dated 22.11.2004 (Annexure A-1) by which respondent no.3 transferred him from Signal and Telecommunication Department of Northern Eastern Railway and posted him to work in the open line on his original post of Khalasi. He has prayed for restraining the respondents from transferring and posting him on any post in Group 'D' and for directing him to allow him to continue in Group 'C'.



2. The applicant was initially engaged as a casual Khalasi w.e.f. 17.3.1981 in Signal and Telecommunication Department of Construction Unit and posted under Senior Section Engineer (Signal) Lucknow. Later-on he was conferred temporary status w.e.f. 1.1.1984 and was subsequently promoted on an adhoc basis to the post of Material Chaser in Group 'C', in pay scale of Rs. 950-1500 vide order dated 29.6.1988. There was a clear stipulation in this adhoc appointment that he shall have not claim for seniority over regular staff or for retention after expiry of term. It was vide order dated 31.12.1997 (Annexure A-2) that his services were regularized in Group 'D' in place of Group 'C', in terms of Railway Board Circular dated 3.9.1996, against newly created post in work charged category in the Construction Unit. He was, however, allowed to continue in Group 'C' as before, on an adhoc basis until he was regularized in Group 'C'. Aggrieved of his non-regularization in group 'C', the applicant filed one O.A., in this Bench and according to the averment made in the O.A., the same is still pending. Cause of action for filing the O.A in hand, arose when the respondent NO. 3 issued order dated 22.11.2004 posting him in Group 'D'. He has contended that in terms of Railway Board's letter dated 9.4.1997 read with letter dated 14.7.1997, he ought to have been regularized in Group 'C' and now after he has put in more than 14 or 15 years in Group 'C', he cannot be asked to work in Group 'D'. He goes on to state that in view of the decision of Apex Court in ***Ram Kumar Vs. Union of India and others, 1996 Vol - I, All India Service Law Journal on page 116***, even if, he has not been regularized in Group 'C', is entitled to protection of his pay on his posting in Group 'D' but respondents have passed no such orders protecting his pay of Group 'C' in Group 'D'.

3. Respondents have filed reply, saying that regularization of the applicant in Group 'C' is a policy matter as there are number of such candidates and so long as the applicant is not regularized in Group 'C', he has no valid claim to continue in Group 'C', in view of

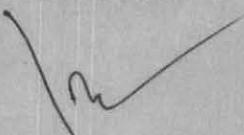
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Full Bench decision of this Tribunal in *Ram Lubhiya and others Vs. U.O.I and others, A.T Full Bench judgment 1997-2001 at page 152* and in *Aslam Khan Vs Union of India and others, A.T. Full Bench judgment 1997-2001 page 157*. They have also contended in paras 11 and 12 of the reply that considering the pending litigation and all other facts and circumstances, the Administration has kept order dated 22.11.2004 in abeyance for the time being and has allowed the applicant to continue on adhoc basis as Store Issuer in Group 'C' in Signal and Telecommunication Unit of Construction Organization.

4. On filing of the said O.A, this Tribunal passed an interim order on 8.12.2004, directing the respondents to maintain status-quo as then existing. The applicant is continuing in Group 'C' in the Signal and Telecommunication Department of Construction Organization.

5. I have heard Shri R.C. Pathak appearing for the applicant and Shri K.P. Singh for the respondents.

6. Shri R.C. Pathak, the learned counsel for the applicant has contended that since the applicant was working in Group 'C' post since 15.8.1988, after his promotion from the post of Casual Khalasi, he ought to have been regularized in Group 'C' and not in Group 'D', as provided in Railway Board's letter dated 9.4.1994 read with letter dated 14.7.1997. He goes on to argue that his regularization in Group 'D' vide order dated 31.12.1997 (Annexure 2) was itself contrary to the scheme provided in the said letters and so the same is being challenged in another O.A. His second contention is that since the applicant has had been continuing in Group 'C' on an adhoc basis since 1988, so he cannot be posted against any post in Group 'D', as has been done by the impugned order. He has cited Apex Court decision in Ram Kumar case (supra) so as to say that since the applicant has worked for more than 5



years in Group 'C' post, so the respondents have to regularize them in Group 'C'.

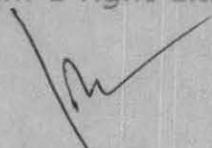
7. On the other hand, Shri K.P. Singh, learned counsel for the respondents has contended that as the applicant was working in Group 'C' on an adhoc basis, so his regularization in Group 'D' was fully justified in view of law laid down by Full Bench of this Tribunal in Ram Lubhiya (supra) and Aslam Khan (supra) and since his continuance in Group 'C', after his regularization in Group 'D', in 1997, was purely on an adhoc basis and since he has lien in Group 'D' in open line only so he has no a valid claim for continuance in Group 'C' or for regularization in Group 'C'. Learned counsel for the respondents has also referred to Ram Pal Yadav's case in Writ Petition no. 548/2000 connected with Writ petition (Civil) NO. 658, 659 and SLP (C) No. 4159-60/2001, 14048/2001. Copy of which has been annexed to the reply.

8. I have considered the respective submissions. Whether the applicant ought to have been regularized in Group 'D' or in Group 'C', is the subject matter of another O.A., which according to the applicant is pending before this Tribunal. It would not be appropriate for me to express any opinion in regard to the merits or de-merits of the claim of the applicant, which he has put in another O.A. The fact is that after his regularization in Group 'D' against Work-Charged post in construction Division vide order of December 1997, he was allowed to continue in Group 'C' as usual, in the Construction Unit but on an adhoc basis till he was so regularized in Group 'C'. This order stands as on today. In other words, he has not been regularized in Group 'C' so as to say that he cannot be asked to work in Group 'D'. Letters dated 9.4.1997 and 14.7.1997 of the Railway Board as referred to in para 4 (11) of the O.A. do not provide for any automatic regularization in Group 'C'. While the Circular dated 9.4.1997 says that all Casual Labourers/Substitute in Group 'C' scale, may be given a chance to appear in examinations



to be conducted by RRB or Railways for posts as per their suitability and qualification without any age bar. It also says that notwithstanding; above all such casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective units. Letter dated 14.7.2007 addressed to General Manager (P), Northern Eastern Railway, Gorakhpur states that instructions were issued by the Railway Board on 3.4.1997 lying down policy regarding regularization of casual labour working in Group 'C' scale. Letter of 3.4.1997 has, however not been placed before me. So we do not know as to what is contained therein. In any way, the above Circulars/letters stated in para 4 (2) of the O.A. as mentioned above do not help the applicant in saying that he has right to hold the post in Group 'C', on the basis of his adhoc working since 1988 or since 1997. Ram Kumar's case (supra) also cannot be cited as a precedent for saying that such casual workers in Group 'C' who have put in more than 5 years have to be regularized. There the persons concerned were skilled workers working in Group 'C' and learned counsel for Railways stated before the Court that in view of Board instructions dated 20.1.1985, the petitioners (there) had become entitled for regularization as they had put in more than 5 years. It was on the basis of this statement of learned counsel for Railway that the Hon'ble Court directed the respondents to give effect to the instruction of the Board. So the decision was confined to facts of that case. But the Hon'ble Court clearly observed that regularization of the petitioners therein in Group 'D' post was pursuant to the orders of the Hon'ble Court.

9. In Indra Pal Yadav is case (supra), the Hon'ble Apex Court observed "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



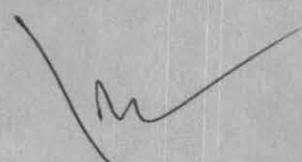
continue in the project or to resist reversion back to the cadre, or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. No rules have been pointed out to us to justify this claim on the part of the petitioners....."

10. The facts in Ram Lubhaya and Ors case (supra) were some what similar to the facts of the case in hand. There certain persons holding lien against Group 'D' post as Khalasis/Gangmen in Civil Engineering Department or the respective Division in the Railways were promoted to Group 'C' post of Mate or Issuer in construction unit. Those persons had staked the claim to retain their position in Group 'C'. The Bench ruled, that, working in Group 'C', on an adhoc basis, did not enable to claim regularization.

11. In the case of Aslam Khan (supra); the Full Bench ruled that a person directly engaged on Group 'C' post, on casual basis even if granted temporary status, is not entitled to be regularized in Group 'C' but he has to be first regularized in Group 'D'. The reason was that Group 'C' posts were promotional posts.

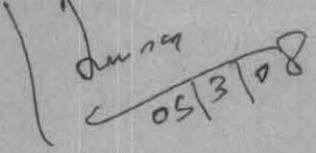
12. This much is not in dispute that the applicant was asked to continue in Group 'C' in Construction Unit, his lien in open line is against the post of Khalasi. His continuance in Group 'C' is only on an adhoc basis. I do not think he can successfully object to his posting on any post in Group 'D' Adhoc employee has no right to retain the post, unless he is regularized in that post.

13. Shri Pathak has argued that the applicant is entitled to protection of his pay, which he is getting in Group 'C'. This argument appears to be acceptable one, in view of the observations made by the Apex Court in Indra Pal Yadav's case.

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14. The respondents have come with a case that they have kept the impugned order dated 22.11.2004 in abeyance and have allowed the applicant to continue in Group 'C' in Signal and Telecommunication Unit of Construction Organization. The applicant is not disputing this position. This ^{is} also in consonance with our interim order. It may be made clear that the respondents have kept those orders in abeyance not only because of interim order of this Tribunal but because of several such pending cases in different Court. I think they will abide by the decisions to be given in those pending matters.

15. Thus no case for quashing of order dated 22.11.2004, for the restraining the respondents from asking the applicant in Group 'D', is made out but it is hoped that ^{they} ^{to work} will abide by the decision to be given in pending O.As. With these observations, this O.A. stands disposed of. The interim order dated 8.12.2004, is vacated. No order as to costs.


Vice-Chairman

Manish/-