

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 205 of 2004

....., this the 5th day of Sept 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

Aslam Khan,
Son of Shri R.M. Khan,
R/o. 828, JDA Colony,
Jhansi.

... Applicant.

(By Advocate Mr. R.K. Nigam)

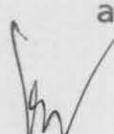
versus

1. Union of India through
The General Manager,
North Central Railway,
Allahabad.
2. Divisional Railway Manager,
North Central Railway,
Jhansi.
3. The Dy. Chief Electrical Engineer (Const.),
North Central Railway, Jhansi. ... Respondents.

(By Advocate Mr. A.V. Srivastava)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The short and simple question involved in this case is whether the
applicant who was in the project wing till 2003 in a group C post, while being



repatriated to the regular side is not entitled to pay protection as in the case of Bhadei Rai vs Union of India (2005) 11 SCC 298 on the ground that he had not qualified in the group C test held in 1992-1997.

2. Brief facts as contained in the OA: Applicant's career started under T.C.I (Microwave) Construction, Central Railway, Jabalpur on 28-08-1979 as casual Motor Driver where he worked upto 18-05-1990. From March, 1981 he was engaged as Casual Labour/Fitter in the Construction Division at Jhansi and thereafter as a Motor mechanic from 01-04-1981 to 31-12-1984. He was conferred temporary status (MRCL) in the grade of 260 – 400 w.e.f. 01.01.1984. The applicant had qualified in the trade test for group C in the construction wing as early as 1992 and there is no requirement for once again qualifying in the trade test for Group C in the open line. This is the admitted position, as in the case earlier filed by the applicant in OA 441/92 (decided on 20-01-2003 vide Annexure A-3) When on the basis of the above said judgment the respondents ought to have allowed the applicant to continue in group C post, not only when he was in construction wing but also when he was brought to the open line, the respondents, while bringing him in the open line had treated him only as Group D which resulted in his filing another OA No. 1364/2003 which was disposed of by order dated 11.11.2003 with a direction to the respondents to dispose of the representation which the applicant was permitted to file. It is in pursuance of this order that the impugned order dated 06-01-2004 came to be passed wherein it was stated

that in accordance with the Railway Board letter dated 04-07-2003 which was issued in the wake of the decision of the Apex Court in the case of Inder Pal Yadav, the applicant is entitled to be accommodated only in Group D post in the open line and not group C. The stand taken by the respondents is that when in 1997 a test was held for regular driver grade II post, the applicant ~~did~~ ^{had} not qualify in the same and as such, he cannot be taken in Group C on his repatriation. The applicant has, therefore prayed for quashing of the above cited order dated 06-01-2004 and for a direction to the respondents to absorb the applicant in Group C post in the open line. In addition, the applicant has challenged the earlier order dated 17-10-2003 whereby he was repatriated from the Project to the open line.

3. The respondents have contested the case. According to them, the decision of the Apex Court in Inder Pal Yadav (1985) 2 SCC 648 and Ram Kumar vs Union of India (1988) 1 SCC 306 clinches the issue that the status of casual labourers ~~granting~~ ^{of} temporary status under the scheme is project casual labourers with temporary status and upon the grant of such status they do not become temporary railway servant as they are not holder of civil post. (Para 5 (I) at page 9 of the counter).

4. Both the parties were permitted to file their written arguments and the same were filed. The parties have taken the respective stand as in the OA and in the C.A.

5. The case has been considered on the basis of pleadings. In fact, it is essential, irrespective of whether the counsel for the parties assist the Court in bringing to the knowledge of the Court any other decision of the higher courts on the subject, to consider such decisions which have a bearing on the subject. In the case of ***All India Judges' Assn. v. Union of India, (1992) 1 SCC 119***, the Apex Court has observed as under:-

Unlike the administrative officer, the judicial officer is obliged to work for long hours at home. When he reserves a judgment he has usually to prepare the same at his residence. For that purpose, he has to read the records as also the judicial precedents cited by counsel for the adversaries. **Even otherwise with a view to keeping himself up to date about the legal position he has to read judgments of his own High Court, other High Courts and of the Supreme Court.** He has also to read legal journals. (emphasis supplied)

6. The legal position has recently been brought out in the case of ***Inder Pal Yadav v. Union of India, (2005) 11 SCC 301***, wherein the Apex Court has held as under:-

"5. 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 petitioners was 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.

6. 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 reposting of the petitioners is based on selection.

7. Additionally, while it is open to the Railway Administration to utilise the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment 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.

8. 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 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 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.

9. 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 leave petitions with the aforesaid observations. (Emphasis supplied)

7. From the above it is clear that the applicant cannot agitate against his being repatriated as the same is within the powers of the Railways. At the same time, the respondents cannot, at the time of fitment of the applicant in the open line lose sight of the fact of the applicant's having qualified in some trade test in 1992, as held in Inder Pal case referred to above. If the applicant had qualified in Group C test in 1992 in the project line, the same should be taken into account in fitment of the applicant in the open line.

8. In case for any reason whatsoever, the qualification in the trade test in 1992 would not suffice for necessary fitment in Group C post in the open line and the applicant has to be accommodated in Group D only, in that case, the decision in the case of Bhadei Rai vs Union of India (2005) 11 SCC 298, is applicable, wherein the Apex Court has held as under:-

"3. The appellant started his service in the Railways on daily rate as Khalasi in the year 1979. He was given a temporary status on that post with effect from 1-1-1982. According to the Railways, he was granted promotion on 31-3-1985 purely on ad hoc basis to the post of Rigger in the pay scale of Rs. 121-1500. For a long period between 1985 and 1999 the appellant continued to work on the promoted post of Rigger carrying higher scale of pay. The post of Rigger is Group 'C' post but the appellant was regularised and absorbed in lower Group 'D' post

by order passed on 5-10-1999. Although, he had completed more than twenty years of service on higher Group 'C' post of Rigger, he was repatriated to his parent division in Group 'D' post carrying lower scale of pay.

4. Aggrieved by his repatriation to a lower post he filed a petition in the Central Administrative Tribunal and claimed relief of his regularisation in Group 'C' post in which he had been made to continuously work for a period of twenty years.

5. The Central Administrative Tribunal by order dated 17-11-1999 rejected the appellant's claim of his absorption and continuance on the higher Group 'C' post. It was held by the Tribunal that the appellant's substantive post was of Gangman in Group 'D'. His ad hoc promotion to the higher post of Rigger was on his posting in the project. The work in the project having been completed, he had to be repatriated to his substantive post. The claim of the appellant was turned down by the Tribunal stating that the appellant cannot be regularised in Group 'C' post as that would affect the legitimate chances of others in Group 'C' post. It was observed that the appellant had to await his turn for regular promotion from Group 'D' post to Group 'C' post.

6. The appellant challenged the order of the Tribunal by writ petition under Article 227 of the Constitution in the High Court of Delhi at New Delhi. The High Court by the impugned common order passed in cases of several other railway employees upheld the order of the Tribunal and dismissed the writ petition. The appellant, therefore, has approached this Court in appeal by seeking special leave.

7. Learned counsel appearing for the appellant contends that the appellant having been made to work on the higher post in Group 'C' for a long period of twenty years with higher scale of pay should not be reverted to Group 'D' post with lower scale of pay. It is submitted that the appellant's claim for regularisation in Group 'D' post was justified and relief prayed for by him ought to have been granted by the Central Administrative Tribunal.

8. The learned Standing Counsel appearing for the Railways supported the order of the Tribunal contending *inter alia* that

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the appellant worked on a higher post of Rigger under an order of ad hoc promotion which created no legal right in his favour to claim regular promotion or regularisation, to the detriment of claims of other employees in the Group 'C' post.

9. After hearing learned counsel for the parties we find that claim of the appellant deserves to be partly allowed on the basis of judgments of this Court in a somewhat similar situation in the case of *Inder Pal Yadav v. Union of India*¹. In the case of *Inder Pal Yadav*¹ this Court held that since promotion from Group 'C' to Group 'D' was ad hoc, the order of reversion to the post in the parent department cannot be questioned. This Court, however, held that although the order of reversion from promoted post in project to substantive post in regular line is unquestionable, the appellant, in any case, is entitled to pay protection. The relevant part of the order of this Court in *Inder Pal Yadav* case¹ reads thus: (SCC p. 303, paras 6-7)

"6. 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 reposting of the petitioners is based on selection.

7. Additionally, while it is open to the Railway Administration to utilise the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of

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service rendered by the petitioners in the several projects subsequent to their regular appointment."

10. *In the case of the present appellant, the aforesaid directions squarely apply. The appellant had to undergo a screening test in the year 1995 and in the result declared in 1997, the appellant had qualified. A long period of twenty years has been spent by the appellant on a higher post of Rigger in Group 'C' post. In such circumstances, he is legitimately entitled to the relief of pay protection and consideration of his case for regular appointment to Group 'C' post on the basis of his long service in Group 'C' post.*

11. *Relying, therefore, on the decision of this Court in the case of Inder Pal Yadav¹ the present appeal is partly allowed by modifying the orders of the Central Administrative Tribunal and of the High Court. It is directed that the appellant's pay which he was last drawing on the date of his repatriation from Group 'C' post to Group 'D' post, shall be protected. It is further directed that the appellant shall be considered for promotion to Group 'C' post in his turn with others, with due regard to the fact of his having passed the screening test and his work and performance for long twenty years on the post of Rigger in Group 'C'.*

12. *The appeal, thus, succeeds to the extent indicated above. In the circumstances, the parties shall bear their own costs.*

(1 (1985) 2 SCC 648)

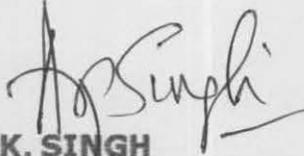
9. Thus, while the respondents may be correct in holding that the applicant is entitled to be accommodated only in a group D post, his pay as drawn while in the project line shall have to be protected, as otherwise, it would be in deviation from the law laid down by the Apex Court in the case of Bhadel Rai (*supra*).

10. The OA therefore, succeeds, to this extent that the respondent shall

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consider accommodating the applicant in Group C post on the basis of his qualifying in the trade test conducted in the Project line in 1992, which the applicant had qualified and which fact has not been specifically denied in the counter, in case such a qualification would suffice and if not, the applicant shall in any event be accommodated in group D post with his pay as of a group C post which the applicant was drawing in the project work, protected. The respondents shall consider accordingly and pass suitable orders and the applicant's pay shall be accordingly fixed and arrears arising therefrom paid to him. This decision shall be implemented within a period of three months from the date of communication of this order.

11. No costs.



A.K. SINGH
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER