

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.731 OF 2004

ALONGWITH

ORIGINAL APPLICATION NO.786 OF 2004

ALLAHABAD THIS THE *31st* DAY OF *March* 2008

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J
HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

1. Vijay Narain, aged about 43 years,
S/O Shri Mangal, R/O Village-Kuri mafi,
Post-Somaha, Thana-Waripura,
District Sant Kabir Nagar.
2. Lal Man, aged about 44 years,
S/O Shri Chhabbu, R/O Village & post-Laximpur,
District-Gorakhpur.
3. Chanar Man, aged about 49 years,
S/O Shri Ramai, R/O Village & Post-Ram Nagar,
District-Mahrajganj.

.....Applicants

By Advocate : Sri Rakesh Verma

Versus

1. Union of India
through the General Manager (P),
North Eastern Railway,
Gorakhpur.
2. The General Manager (P),
North Eastern Railway,
Gorakhpur.
3. The Chief Signal & Telecommunication
Engineer (Construction), North Eastern Railway,
Gorakhpur.

.....Respondents

By Advocate : Sri K. P. Singh

ALONGWITH



ORIGINAL APPLICATION NO.786 OF 2004

Ram Preet, aged about 40 years,
 S/O Shri Parmeshwar, R/O Village-
 Bayera, Post-Magahar, District-
 Sant Kabirnagar.

..... .Applicant

By Advocate : Sri Rakesh Verma

Versus

1. Union of India
 through the General Manager (P),
 North Eastern Railway,
 Gorakhpur.
2. The General Manager (P),
 North Eastern Railway,
 Gorakhpur.
3. The Chief Signal & Telecommunication
 Engineer (Construction), North Eastern Railway,
 Gorakhpur.

..... .Respondents

By Advocate : Sri K. P. Singh

O R D E R**HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J**

Both the OAs are heard together, as the reliefs sought for, and the facts of the case are similar in nature and both the OAs are disposed of by this common order.

2. The applicants in both the OAs prayed for the following reliefs:-

"(i) To issue a writ, order or direction in the nature of certiorari quashing impugned order dated 13.05.2004 passed by the respondent no.2 denying pay protection to the applicants in the pay scale of Rs.3050-4590/- wherein the applicants at present have reached at the stage of Rs.4110/- basic per month (Annexure A-I).

(ii) To issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to allow pay protection to the applicants in the pay scale of Rs.3050-4590/-.

(iii) To issue any other suitable writ, order or direction in the facts and circumstances of the case, which this Tribunal may deem fit and proper".

3. The facts of the case as pleaded in 731/04 is that the applicants no.1 and 2 were initially engaged as Casual Labour in the year 1980 whereas the applicant no.3 was initially engaged directly against Group 'C' post of Hammerman in casual capacity with effect from 16.1.1981. Subsequently, the applicant no.1 and 2 were both posted as Casual Hammerman after qualifying trade test with effect from 16.1.1986 and 26.5.1982 respectively. All the applicants got temporary status from 1,1,1984 and have been continuing as Casual Hammerman on adhoc basis in the Construction Organization and remained posted under the control of the Senior Section Engineer (Signal & Telecommunication), North Eastern Railway, Varanasi City. The aforesaid post, which is a Group 'C' post, at the time when the applicants were engaged, carried the pay scale of Rs.950-1500, which has now been revised to that of Rs.3050-4590. It is submitted that the applicants have been allowed to draw the salary in the aforesaid pay scale and at present they have reached the stage of Rs.4110/- per month in the aforesaid pay scale. However, by an order dated 31.12.1997, the services of the applicants were regularized in Group 'D' category in the pay scale of



Rs.750-940/2550-3200 in Construction Department with the stipulation that they shall continue to work in Group 'C' category on adhoc basis till they are regularized in that category. A copy of the aforesaid order wherein the name of the applicants finds place at Sl. No.19, 17 & 15 respectively. By an order dated 14.10.2003, on the approval of the respondent no.2, it was decided to fix lien of staff working in Signal & Telecommunication Department of Construction Organization in open line wherein the name of the applicants finds place at Sl. No.43, 51 & 49 respectively. A bare perusal of the last portion of the aforesaid order would go to show that, that was only with regard to fixation of lien in regular Group 'D' cadre as Khalasi for the purpose of fixation of seniority in Group 'C' post against which the applicants have been continuing from the date of initial engagement. The aforesaid order is in consonance of the letter dated 31.12.1997 by which the applicants were regularized in Group 'D' category in Construction Organization with the stipulation that they shall continue to work in Group 'C' cadre on adhoc basis till they are regularized in Group 'C' post in accordance with the rules. The letter dated 14.10.2003 clearly shows intention for fixing lien against Group 'D' post of the applicants including several others and to facilitate their regularization in Group 'C' post in accordance with the rules. However, the applicants developed apprehension in their mind that while fixing their lien as per the



aforesaid letter, their pay which should be protected, shall be reduced refixing it in the pay scale of Rs.2550-3200 and as such, they filed an OA No.1570/2003-Vijay Narain & others Vs. Union of India & Others before this Tribunal challenging the aforesaid order, which was, after making observation that the aforesaid order does not stipulate reduction of pay to Group 'D' pay scale, finally disposed off at the admission stage giving liberty to the applicants to file a representation before the respondent no.2 with a direction to the respondent no.2 to decide the representation by a reasoned order. A copy of the order dated 24.12.2003 is produced herewith as Annexure A-IV. The applicants in pursuance of the aforesaid order of this Tribunal preferred a representation dated 20.01.2004 to the respondent no.2. The aforesaid representation has been rejected by means of the impugned order dated 13.05.2004 passed by the respondent no.2.

4. The facts of the case as pleaded in OA No.786/04 is that the applicant was directly engaged as Casual Labour after due selection against Group 'C' post of Black Smith with effect fro 12.02.1985 and was posted under the control of the Senior Section Engineer (Signal and Telecommunication) (Construction), North Eastern Railway, Varanasi City and has been continuing as such till now after attaining the temporary status with effect from 12.02.1986. The applicant in the aforesaid capacity i.e. adhoc capacity, performed his



duties to the full satisfaction of his superior officers. The aforesaid post, which is Group 'C' pos, at the time when the applicant was engaged, carried the pay scale of Rs.950-1500, which has now been revised to that of Rs.3050-4590. It is submitted that the applicant has been allowed to draw the salary in the aforesaid pay scale and at present he has reached at the stage of Rs.4110/- per month in the aforesaid pay scale. However, by an order dated 31.12.1997 the services of the applicant were regularized in Group 'D' category in the pay scale of Rs.750-940/2550-3200 in Construction Department with the stipulation that he shall continue to work in Group 'C' category on adhoc basis till he is regularized in that category. A copy of the aforesaid order wherein the name of the applicant finds place at Sl. No.7 is produced as Annexure A-II. By an order dated 14.10.2003 on the approval of the respondent no.2 it was decided to fix lien of staff working in Signal & Telecommunication Department of Construction Organization in open line wherein the name of the applicant finds place at Sl. No.41. A bare perusal of the last portion of the aforesaid order would go to show that, that was only with regard to fixation of lien in regular Group 'D' cadre as Khalasi for the purpose of fixation of seniority in Group 'D' post against which the applicant has been continuing from the date of initial engagement. The aforesaid order is in consonance of the letter dated 31.12.1997 by which the applicant was regularized in Group 'D' category in Construction



Organization with the stipulation that he shall continue to work in Group 'C' cadre on adhoc basis till he is regularized in Group 'C' post in accordance with the rules. The letter dated 14.10.2003 clearly shows intention for fixing lien against Group 'D' post of the applicant including several others and to facilitate their regularization in Group 'C' post in accordance with the rules. However, the applicant developed apprehension in his mind that while fixing his lien as per the aforesaid letter, his pay which should be protected, shall be reduced refixing it in the pay scale of Rs.2550-3200 and as such, he filed an OA No.1568/2003, Ram Preet Vs. Union of India & Others before this Tribunal challenging the aforesaid order, which was after making observation that the aforesaid order does not stipulate reduction of pay to Group 'D' pay scale, finally disposed off at the admission stage giving liberty to the applicant to file a representation before the respondent no.2 with a direction to the respondent no.2 to decide the representation by a reasoned order. A copy of the aforesaid order dated 24.12.2003 is produced as Annexure A-IV. The applicant in pursuance of the aforesaid order of this Tribunal preferred a representation dated 20.1.2004 to the respondent no.2 a copy of which is produced as Annexure A-V. The aforesaid representation has now been rejected by means of the impugned order dated 13.05.2004 passed by the respondent no.2 a copy of which has already been produced as Annexure A-I to compilation No.1.



5. On notice the respondents have appeared and filed their counter affidavit. The relevant portion of the counter affidavit is that the applicant was initially engaged Casual Khalasi. As per Rules initially engaged Casual Khalasis are to be regularized in the feeder category by three members Screening Committee duly constituted by the competent Authority. On regularization in the feeder category they become entitled for posting on regular post in Feeder Category. Since all the applicants were initially engaged as Casual Khalasi hence they were rightly regularized as Khalasi in the feeder category of Group 'D'. Further promotion is done within Group 'D' and thereafter from Group 'D' to Group 'C' as per A.V.C. at their place of lien according to seniority. It has also been clarified that by the Full Bench of Tribunal in the case of **Ram Lubhya & Others Vs. U.O.I. & Others** that no employees can be appointed directly on the promotional post in Group 'C'. This was also accepted by Hon'ble Supreme Court in the case of **Motilal Versus Union of India & Others 1996 SCC, (L&S), Page 613.** The photocopy of the order of the Ram Lubhaya Versus U.O.I. and Others and Motilal Versus U.O.I. & Others are produced as Annexure A-I & II to the counter. However it is submitted that Hon'ble Supreme Court in their recent Judgment in Writ Petition (Civil) No.548 of 2000 in the case of **Inder Pal Yadav Versus U.O.I.** have clearly ordered that provisional local promotion of employees in project cannot be taken as having



vested right either to continue or to resist reversion back to the cadre or enjoy a higher promotion merely on the basis of provisional promotion granted to them in the project. The photocopy of the Hon'ble Supreme Court's order circulated by Railway Board vide letter dated 04.07.2003 is produced as Annexure-III to the counter affidavit. It is submitted that in Project/Construction, all the posts are of Work Charged Establishment and no engagement is done against permanent establishment in Project/Construction Organization. The applicant were engaged on casual basis and as per rules got temporary status after completion of 360 days continuous service in Construction Organization. As such the applicant was rightly regularized in Khalasi being the feeder category of Group 'D'. Since the applicant is working on ad-hoc Black Smith by local arrangement in Construction Organization against Work Charged Establishment hence the benefit of local promotion cannot give them right for the same benefit against the post of permanent establishment at their place of lien in Open Line. That all the applicants were initially engaged as Casual Khalasi against Work charged Establishment in the Construction Organization and the post of Hammer Man in the pay scale of Rs.3050-4590/- is promotional post. No direct engagement can be made on promotional post as the same is filled by promotion as per procedure given in AVC through Trade Test, Suitability and Selection, from employees below the rank of Hammer Man having

lien against permanent establishment and as per the seniority. However, suitable replies have already been stated that the local ad-hoc promotion given on the Work Charged Establishment in Construction Organization cannot give them right to the same benefit against the post of permanent establishment at their place of lien in Open line.

6. We have heard the learned counsel for the parties, perused the pleadings and the materials on record. The controversy in these applications and the reliefs sought for by the applicants can be granted or not, under the undisputed facts between the parties can be decided based on the principle of law laid down by the Hon'ble Supreme Court in Writ Petition No.548/2000 Inder Pal Yadav & Ors. Vs. U.O.I. & Others, produced by the respondents along with the counter affidavit. The relevant para of the said order is as follows:-

"It is not in dispute that subsequent to the orders of this court, the petitioners were regularized as Khalasis in Group 'D' in the open line. However, they have been permitted to continue to serve in various projects of the Railway Administration. While they were serving in such projects, they have been granted provisional promotion in a particular corresponding scale of pay on the basis of supplementary trade test held in the project itself. However, the order by which such petitioners were granted local provisional or adhoc promotion made it clear that they would not claim over their seniors in other units. The reason for the filling of these petitions before us by the petitioners is the preparation of lists of surplus staff in the projects. It is the petitioner's case that these surplus lists have been prepared with a view to bring the petitioners back to the open line cadre at the scale of pay applicable to group 'D' employees overloading that the petitioners had in the meanwhile been promoted to grade 'C' and were enjoying much higher scale of pay.



From the documents on record, it is clear that the petitioners have been regularized 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 were to be accepted it would inequitably as far as the regular employees in the open line department are concerned. Further mere 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.

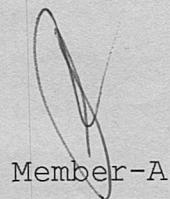
However, while the petitioners cannot be granted the relief as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reasons of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre of 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 re-posting of the petitioners is based on selection".

7. It is clear from the above order of the Hon'ble Supreme Court that the relief sought for by the applicant in the case on hand, and the reliefs sought for by the appellants before the Hon'ble Supreme Court are one and the same, as the Hon'ble Supreme Court has



not granted the relief prayed in the petition by the appellants for the aforesaid reasons.

8. In view of the facts and circumstances of the case on hand and the reliefs sought for by the applicants cannot be granted, having regard to the decision of the Hon'ble Supreme Court, stated earlier. Accordingly, these OAs are dismissed with no order as to costs.



Member-A



Member-J

/ns/