

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 14th day of March 2006.

Original Application No. 888 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Achche Lal, S/o Late Subansi Thakur,
R/o D-24 Subedarganj,
ALLAHABAD.

.....Applicant

By Adv: Sri A.K. Srivastava

V E R S U S

1. Union of India through General Manager,
Northern Central Railways,
Nawab Yusuf Road,
ALLAHABAD.
2. Divisional Railway Manager,
Northern Central Railways,
Allahabad Division,
ALLAHABAD.
3. Senior Divisional Personnel Officer,
North Central Railway,
Allahabad Division,
ALLAHABAD.

.....Respondents

By Adv: Sri A. Sthalekar

O R D E R

By K.B.S. Rajan, Member-J

The claim of the applicant is that he having initially been inducted in the services as early as in 197 in the Railway Electrification Project, where he was afforded promotion as H.S. Fitter, should be made entitled to the same status with seniority when he was repatriated to the Open line in the Northern Railway, Allahabad Division.

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2. The contention of the respondents is that since initially the applicant was initially appointed by Railway Electrification Project, which is an ex cadre post and his permanent appointment was later on made in the Northern Railway, Allahabad Division only in 1985 and was allowed to continue in the R.E. till such time he was rendered surplus and on his being rendered surplus, he was repatriated to the Allahabad Division of the Northern Railway in 1991. He has, therefore, no claim on the basis of his past service in the R.E. Project.

3. Brief facts as per the applicant: The applicant was initially appointed as Fitter with effect from 31.03.1978 in the Railway Electrification, was granted temporary status w.e.f. 2.2.1985 in the grade of Rs. 330/- as H.S. Fitter. He was later on granted Adhoc promotion as H.S. Fitter in the grade of Rs. 330/- vide letter dated 30.04.1986. As a result of screening vide letter dated 23.1.1985 the applicant was brought on panel of Class IV in DRM, N.R., Allahabad. The applicant was repatriated to DRM, NR, Allahabad for further posting vide letter dated 20.4.1991 and was placed to work as Khalasi, which is below the post and grade on which the applicant was working for previous period.

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4. Version of the Respondents: The applicant was appointed as fitter in the Railway Electrification which is an Ex-Cadre Project Organization but the lien of the applicant was fixed as Khalasi in Class IV category in Allahabad Division vide office letter dated 22.12.1987. Any promotion earned by the applicant in the Ex-cadre Project Organization of Railway Electrification did not entitle the applicant to claim appointment in the same scale or category for post in the open line Railway. On being declared surplus from Railway Electrification Project Organization the applicant was repatriated to the Open Line Allahabad Division in 1991 where his lien was already being maintained in the Class IV category of Khalasi and the applicant was posted as Khalasi in Grade of Rs. 196-232.

5. As it was felt that for proper appreciation of the case, the original records should be summoned, the relevant records were called for and perused and it has been found that the applicant's initial appointment was only in R.E. Project till he was from the perusal of the same, the following recording has been found: -

- (a) On being medically fit, Temporary Status in the RE granted w.e.f. 01-01-1984.
- (b) Ad hoc promotion as H.S. Fitter in the grade of erstwhile 196 - 232, later revised to Rs 330-480 w.e.f. 01-01-1985.



- (c) Pay fixed at Rs 1,200/- w.e.f. 01-01-1986 and Rs 1,230/- w.e.f. 01-01-1987.
- (d) Lien fixed in the Allahabad Division as a Khalasi vide order dated 22-12-1987.
- (e) Annual increments granted in the pay scale of H.S. Fitter for the years 1988, 89, 90 and 1991, pay w.e.f. 01-01-1991 being Rs 1,350/-.
- (f) Transferred to DRM, N.R. Allahabad in Dec. 1991 and pay fixed in the scale of Rs 750-940. Pay fixed as on 01-01-1991 was Rs 846.
- (g) After V CPC, pay revised in the scale of Rs 2,650-4,000/- and placed in the stage of Rs 2,975/- as on 01-01-1996 and annual increment attached to this pay scale granted. Latest pay is Rs 3,650/- w.e.f. 01-09-2005

6. The applicant has relied upon the judgment of the Apex Court in the case of **Bhadei Rai v. Union of India, (2005) 11 SCC 298**. The facts in that case are for comparison of the case, the main portion of the judgment is extracted below:

"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 121-150. 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 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*. In the case of *Inder Pal Yadav* 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

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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 case reads thus:

"5. 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."

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 Yadav 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."

7. The above case squarely fits in, when telescoped upon the case of the applicant. In both the employees were originally inducted into the service of Project; in both, they were afforded promotion on ad hoc basis in Group C; in both the cases they were screened and granted lien in the parent department and were repatriated at a later date, after they had worked in the Project for a substantial period.

8. The ratio in the case of Inderpal Yadav as well as the above case of Bhadhei Rai is that when an individual has served in the Project and later on repatriated to the parent department, though in a lower grade he could be fitted, his pay drawn in the Project cannot be reduced and by way of Pay fixation, the individual's pay drawn earlier should be protected.

9. In view of the above, the OA is partly allowed to the extent as in the above case of Bhadhei Rai, i.e. that the applicant's pay which he was last drawing on the date of his repatriation from the post of H.S.

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Fitter to the Group 'D' post, shall be protected. The applicant shall be considered for promotion to higher post in his turn with others, with due regard to the fact of his work and performance for a substantial period as a H.S. Fitter. From the records, the pay last drawn at the time of his repatriation is Rs 1,350/- in the pre revised pay (And he was placed at Rs 846/- in the parent department). His pay shall, therefore, be refixed as on the date of repatriation at Rs 1,350/- and the arrears worked out and paid to him.

10. The Apex Court has not spelt out explicitly in the above case as to what shall be the pay scale. As such, the normal rule for pay protection shall apply. For, had the Apex Court meant that though the individual would have been serving in a lower post his pay should be protected not only with reference to his pay but with reference to the pay scale which he was drawing earlier, the Apex Court would have spelt so, as it has done in the case of *Narendra Kumar Chandla v. State of Haryana, (1994) 4 SCC 460*, is relevant wherein the Apex Court has observed as under:-

"7. Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30

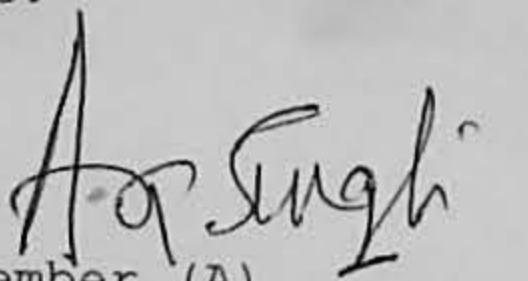
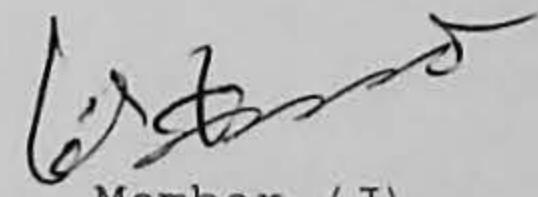
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words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs 1400-2300 and direct to pay all the arrears of salary."

11. In view of the fact that the Apex Court in the case of Bhadhei Rai has not spelt out the pay scale applicable, it is for the respondent to verify from the records as to the decision of the Apex Court in the case of Bhadei Rai and accord an identical treatment to the applicant. This may certainly take some time for the Department and hence, time calendared for compliance of this order both as regards pay protection and payment of arrears arising there from, is ten months from the date of communication of this order. OA stands disposed of.

No cost.

 
Arvind Singh Member (A) Member (J)

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