

Open Court**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 12th DAY OF January 2010)***Hon'ble Mr. A.K. Gaur, Member (J)******Hon'ble Mrs. Manjulika Gautam, Member (A).*****Original Application No. 1616 of 2005**

(U/S 19, Administrative Tribunal Act, 1985)

Yusuf Khan aged about 47 years, son of late Chhotte Khan, Resident of
Inside Saiyer Gate, Jhansi...... **Applicant**

Versus

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Deputy Signal and Telecommunication Engineer (S), North Central Railway, Jhansi.

..... **Respondents**

Present for Applicant : *Shri S.M Ali*
 Shri R.K. Shukla

Present for Respondents : *Shri S.S Agnihotri*

ORDER**(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)**

We have heard Sri R.K. Shukla, learned counsel for the applicant and Shri S.S. Agnihotri, learned counsel for the respondents.

2. Learned counsel for the applicant stated that he was appointed as Casual Carpenter in Group 'C' post under C.T.I Jhansi. According to the applicant, he was declared fit in the screening test while working as Carpenter Group 'C' post and worked up to 1993. Grievance of the applicant is that on 6.3.1997,

✓

his services have been regularized in Group 'D' post (Annexure A-7).

He has claimed following main relief (s):-

- "(i) to issue a writ order or direction in the nature of mandamus thereby commanding the respondents to give him the benefit of pay protection from the date of 19.3.2003 regularization in Group D posts as well as stepping up of pay at par with their junior counter parts which they are consequential benefits of arrears for which a time bound direction is fervently prayed.**
- (ii) To issue any other suitable order in favour of the humble petitioner as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case".**

3. Learned counsel for the applicant stated that he has already annexed several judgments, in support of his contention he submits that his case for pay protection must be considered by the respondents and his pay should be protected in view of decision rendered by Hon'ble Supreme Court reported in **2006 (1) A.T.J. 538-Bhadai Rai Vs. Union of India and Ors.** Paras 10 and 11 of the said judgment is quoted hereinunder:-

"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 (supra) the present appeal is partly allowed by modifying the orders of the Central Administrative Tribunal and of the High Court. It is directed that 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'".

4. Learned counsel for the applicant has also placed reliance on the decision of Hon'ble Supreme Court reported in **2006 (1) A.T.J.**

✓

543- Badri Prasad and Ors. Vs. Union of India and others. The pith and substance of the order passed by the Hon'ble Supreme Court is that the pay last drawn by the applicant in Group 'C' post shall be protected, even after his repatriation to Group 'D' post in his parent department. The applicant shall be considered for promotion on his turn to Group 'C' post. The period of service spent by the applicant on adhoc basis in Group 'C' post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in Group 'C'. If there is any bar of age that shall be relaxed in the case of the applicant.

5. Lastly reliance has been placed on the decision of the Tribunal rendered in **O.A. No. 229 of 1998- Salim Khan Vs. Union of India and another.**

6. By filing counter reply, respondents have denied the facts contained in the O.A. In para 6 of the counter reply, respondents have stated that the applicant was found suitable in screening for regular appointments for the post of Khalasi but the applicant did not agree to resume his duty as Khalasi. Applicant was already informed by letters dated 11.4.1997 and 6.6.1997 to the effect that he should join immediately on his regular posting as Khalasi. Letters have been filed as Annexure CA-3 and CA-4.

7. By filing rejoinder reply, applicant denied the averment contained in counter reply and nothing new has been enumerated in the rejoinder reply.

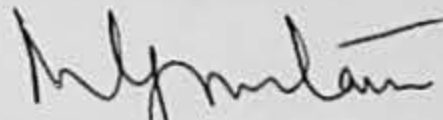
8. It is seen from the record that the applicant has already been regularized on Group 'D' post on 19.3.2005. The only question, which is to be determined in the O.A. is whether the applicant is

W

entitled to get his pay protected. A careful analysis of the decision rendered by the Hon'ble Supreme Court *in Bhadei Rai Vs. Union of India and Ors. and Badri Prasad Vs. Union of India and Ors.(supra)*. There is no doubt in the argument advanced by the learned counsel for the applicant that pay last drawn by the applicant in Group 'C' post is required to be protected even after his repatriation to Group 'D' post in his parent department.

9. Having given our thoughtful consideration to the pleas advanced by the learned counsel for the parties, we are satisfied that the applicant is entitled for the pay protection in Group 'D' post. The applicant shall be considered on his turn for promotion to Group 'C' post. The period of service spent by the applicant on adhoc basis in Group 'C' post shall be given due weightage and counted towards length of requisite service, if any prescribed for higher post in Group 'C' while considering the case of the applicant in Group 'C' posts age relaxation, if any, may also be granted to him.

10. With the aforesaid observations, O.A. is allowed with all consequential benefits. The exercise of pay protection be completed within a period of 3 months from the date of receipt of a copy of this order. No costs.


Member (A)


Member (J)

Manish /-