

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NOS: 270/2004

8 MA NO 132/2004

DATE OF ORDER: 01 - 03 - 2007

Guman Singh:

Applicant

Mr. Kuldeep Mathur

: Advocate for the Petitioner

VERSUS

Union of India and ors.

: Respondents

Mr. N.K. Khandelwal

: Counsel for the Respondents

CORAM:

**Hon'ble Dr. K.B.S.Rajan, Judicial Member
Hon'ble Mr. Tarsem Lal, Administrative Member.**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?



Tarsem Lal
(Tarsem Lal)
Administrative Member

Dr. K.B.S. Rajan
(Dr. K.B.S. Rajan)
Judicial Member

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application Nos. 270/2004

2 M.A. NO 132/2004

Date of decision: 01. 03.2007

Hon'ble Dr. K B.S. Rajan, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Guman Singh, S/o Shri Inder Singh, aged about 43 years, resident of Railway quarter No. 2165, D.S. Colony, Jodhpur. Post. The applicant is presently employed on the post of MCC/Clerk, in the office of Deputy Chief Engineer (Construction -I), North Western Railway, Jodhpur.

: Applicant.

Rep. by Mr. Kuldeep Mathur : Counsel for the applicant.

VERSUS

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Ambala Division, Ambala.
3. The Deputy Chief Engineer (Construction -I), Northern Western Railway, Jodhpur.
4. The Chief Administrative Officer Construction, Northern Railway, Kashmiri Gate, Delhi.
5. The Chief Administrative Officer Construction, North West Railway, Jaipur.

: Respondents.

Rep. by Mr. N K Khandelwal : Counsel for the respondents.

ORDER

Per Dr. K.B.S. Rajan, Judicial Member.



The short but sharp question of law involved in this O.A.

is whether the applicant who claims to have been working as MCC (Group C) is entitled to be declared as qualified in the examination

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for regularization waiving his failure in viva voce. Of course, there is a small doubt that has been cast by the respondents as if the applicant had not at all appeared in the Viva Voce. That is a point of fact, which would also be considered and findings arrived at.

2. A silhouette of the facts of the case with terse sufficiency, culled out from the OA is as under:-

(a) The applicant, who had started his career in the Railways as a casual Gangman on 16-01-1979, after gaining temporary status w.e.f. 01-01-1983 was posted as M.C.C. (Material Checking Clerk) w.e.f. 08-02-1984 as reflected in Annexure A-7 letter dated 29-08-1997. Vide Annexure A-8 order dated 12-12-1992, the fact of the applicant serving as MCC has been acknowledged and pay fixed at Rs 970/- w.e.f. the issue of the order and it has been specified that the said placement "is purely on temporary basis on local arrangement and confined to BG conversion Project, Jodhpur as necessity of works."

(b) Vide Order dated 11/15-02-1991, MCCs working on ad hoc basis for more than 3 years in construction organization would be regularized as such by their respective parent department where they hold their lien and further action in this regard had to be taken accordingly.

(c) Vide Annexure A-10 order read with its enclosure, the above order was affirmed and in pursuance of the same it was held that such regularization would be against the promotion quota vacancies of the post of office clerks.

(d) Vide Annexure A-12 order of the Head Quarters, Kashmir House, New Delhi, for the purpose of participation in the requisite examination, names of various MCCs who had



completed three years of service were indicated and they were asked to participate in the Viva voce test to be held on 27-09-1999 and the name of the applicant was reflected at serial No. 24. It was also indicated therein that those who were not desirous of participating in the viva may submit a decline letter.

(e) On 27-09-1999 and 11-10-99 viva voce tests were held and later on a supplementary was also held on 19-01-2000. According to the applicant, he had appeared in the Viva Voce test and later vide Annexure A-13 order dated 11-10-1999 he was reverted back for his duties along with certain others.

(f) Result of the viva voce was declared on 06-03-2000 in which the name of the applicant did not figure in. As such, the applicant had filed OA No. 59/2001 When it came up for consideration, the counsel for the applicant prayed for permission to withdraw and refile and the same was allowed vide Annexure A-4 order dated 16-02-2004, which also contained in clear terms that "in case the applicant files fresh Original Application within a period of three months, the time taken by the applicant for pursuing the remedy in this Original Application shall be constituted sufficient ground for condonation of delay."

(g) Vide Annexure A-2 order dated 27-02-2001 the applicant was sought to be repatriated to his parent department as Group D , as the services of the applicant were no longer required at the Construction wing.

(h) The applicant has, through this OA claimed that he should be regularized as a clerk in accordance with the extant rules, which inter alia provide that in respect of those who have more than 3 years of service as ad hoc employees, the department should not fail them in Viva Voce. Applicant has, thus, challenged Annexure A-1 order and Annexure A-2 order.



[Signature]

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3. The retort of the respondents is as under:-

- (a) The applicant had been regularized as Group D gangman in the parent department only in 1996. As such, he cannot claim any regularization on the post of Group 'C'.
- (b) He was utilized only as a stop gap arrangement, as MCC
- (c) His engagement is in a Project and as such, there is no vested right available to them for regularization with regular pay scale.
- (d) There is delay in filing the OA as the OA had been filed only in December, 2004, whereas it ought to have been filed before 15-04-2004.
- (e) As a gangman, he had separate career avenues and he cannot seek any regularization in the clerical cadre.
- (f) The applicant has not impleaded those enlisted in the impugned order at Annexure A-1.**
- (g) The applicant has not completed the number of years of service on the date of issue of Annexure A/9 and Annexure A/10 as he was only a temporary status gangman, regularized in September, 1996.
- (h) The decision taken earlier in 1987 was only a one time regularization, not to be quoted as precedent.
- (i) The applicant was utilized purely on pay benefits. However, his name was included wrongly on the basis of service particulars supplied by the Field Unit, at the time of issuance of Annexure A/12. His inclusion was a bona fide mistake and the same was rectified immediately on notice. The applicant was not at all within the consideration zone.

4. Counsel for the applicant submitted during the course of arguments that provision exists that those who have been functioning on ad hoc basis in a particular post, they should not be failed in viva voce. In this regard, he has invited our attention to para 4.7 of the OA which reads as under:-

That the following para 2.2. of record note of a meeting held by the Deputy Minister Railways and the Railway Board on 27.11.1975 is relevant here and an extract of the same is reproduced as under:-

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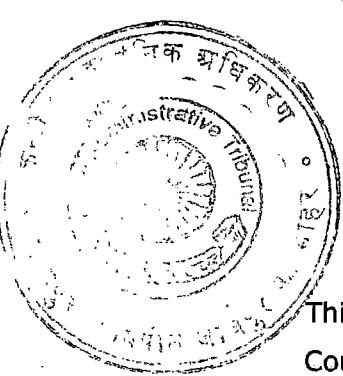
'2.2. Panel should be formed for selection posts in time to avoid adhoc promotion. Care should be taken to see, while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in interview. In particular any employee reaching the file of consideration should be saved from harassment.'

5. The counsel further referred to Annexure A-7 and A-8 to hammer home that the applicant has been functioning in the post of MCC since 1984. Again, it has been submitted by the counsel that identical issue had already been answered in the decision dated 01-01-2002 in OA No. 364/2001 by the Principal Bench, wherein it has been held as under:-

"..... The applicant has placed reliance on circular dated 19.03.1976 of the Railway Board which reads as under:

'Record note of the meeting of the Deputy Minister for Railways and the Railway Board with the Headquarters of the Personnel Department of the Railway Administration held in New Delhi on 27.11.1975.

A Copy of an extract from the Record Note circulated vide Board's letter No. 75-E(SCT)75/4B datyed 9.12.75 as received vide their office letter No. E(NG) 1-75 PMI/264 dated 25th January 1975 is reproduced below:


 '2.2. Panel should be formed for selection posts in time to avoid adhoc promotion. Care should be taken to see, while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in interview. In paarticular any employee reaching the file of consideration should be saved from harassment.'

This circular of the respondents has been upheld by the Hon'ble Supreme Court in the matter of R.C. Srivastava (supra). Whereas it has been established that the applicant had completed three years' service as MCC/Clerk in the scale of Rs. 950-1500 as on 31.12.1991 as required by Annexure P-3 dated 11.02.1991 he could not have been disqualified in the viva voce in terms of Railway Board's instructions. Obviously he had been wrongly denied selection on the basis of marks given to him in the viva voce....."

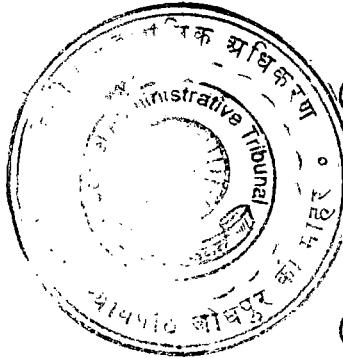
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6. Counsel for the applicant also relied upon the judgment dated 20-12-2002, of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in CWP No. 3235/01 and connected matters, which inter alia deals with the provisions of order dated 11/15-12-1991, 13-02-1997 and 09-04-1997, which have been relied upon by the applicant vide Annexure A-9, A-10 and A-11 respectively. Yet another case relied upon by the counsel for the applicant is that of Union of India and others vs CAT and Anr reported in 2005(4) RDD 961 (Raj) (DB).

7. Per Contra, counsel for the respondents submitted as under:-

- (a) The matter is barred by *res-judicata*
- (b) There is a hierarchy in respect of Gangman, such as Sr. Gangman, Keyman etc., as given in IREM 180 and as such, the applicant has no right to sneak into the ministerial cadre.
- (c) All that the applicant is entitled to is pay protection, as has been held by the Apex Court in many cases. And, the applicant's pay has accordingly been protected.
- (d) The applicant has a lien only in Ambala and his position as MCC is purely on ad hoc basis and his posting as MCC was not in accordance with rules.
- (e) As per Rule 220 of IREM, the life of a panel is for two years or till the panel is exhausted whichever is earlier and as such, Annexure A-1 panel cannot be challenged after the said two years.
- (f) The applicant having been in Group D post on regular basis only in September, 1996, it cannot be held that he had fulfilled the condition of three years of service as MCC to qualify for regularization in Group C post.
- (g) The applicant has not at all participated in the viva voce. There is no proof to presume that he had participated.

The following case laws are relevant which support the case of the



respondents:-

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(a) **Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC I**

(b) Surendra Prasad Tiwari vs. U.P. Rajya Krishi Utthan Mandi Parishad & ors. [2006] 7 SCC 684 - para 24 & 25.

(c) Dr. Chanchal Goyal (Mrs.) vs. State of Rajasthan
J (2003) 3 SCC 485- para 5 & 7

(d) ***Mohd Sartaj & Another vs. State of U.P and ors.***
[2006] 2 SCC 315] -para 11 & 21.

(e) ***Bhadei Rai vs. UOI and ors. [AIR 2005/SC 2404]***
para 9,10 & 11.

(f) Mineral Exploration Corporation Employees Union vs. Mineral Exploration Corporation Ltd & Anr./2006
SCC (L&S) 1318- Head Note.

(g) State of M.P. and ors. vs. Yogesh Chandra Dubey & ors. [2006 SCC (L&S) 1797-para 9,11,14

(h) State of UP and ors. vs. Putti Lal [2006 SCC (L&S) 1819]

(ii) Principal Mehra Chand Polytechnic Jallandhar City and ors. vs. Anu Lamba & ors. [AIR 2000 SC 3074] para 34.

(j) Indian Council of Agricultural Research and another vs. Santosh [2007] 1 see (L&S) 394 - Head Note -
There is no scope of presumption in the regularisation.

Arguments were heard and documents perused.



First certain preliminary objections of the respondents have to be met. Though the counsel for the respondents has raised the matter of res-judicata, on the ground that the earlier OA was also between the same parties, with the same relief and the present application is nothing but a replica of the earlier one, we are firm

that doctrine of res judicata has no application in this case. It has been decided by a Constitution Bench of the Apex Court in the case of **Daryao v. State of U.P., (1962) 1 SCR 574**.

If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court.

9. The respondents have raised the plea of limitation as well. The applicant has separately filed an Application for condonation of delay and it is evident that the applicant had been vigilant in respect of his rights right from the beginning and he had been given liberty to move a fresh application, when he sought permission to withdraw the earlier OA, vide Annexure A14 order.

It has been held in the case of **State of Bihar v. Kameshwar Prasad Singh**, (2000) 9 SCC 94, at page 102 :

“11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in *Collector, Land Acquisition v. Katiji* held that the expression Sufficient cause employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2 . Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4 . When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the

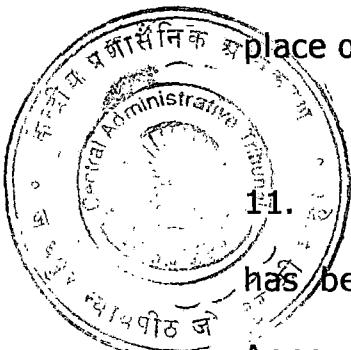


other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

10. We are satisfied that there has been no intentional delay in filing the OA and as such, delay is condoned. In so far as non impleadment of parties (those enlisted in order at Annexure A-1), the contention of the respondents has to be summarily rejected as the claim of the applicant is only inclusion of his name in addition to those available therein and not for substitution of his name in place of any of them.



11. Now on merits of the case: The applicant claims that he has been serving as MCC since 1984 and this is evident from Annexure A-7, the pay fixation which relates to the period back from 1984. Respondents have, on the other hand, contended that the applicant having, even according to his own version vide para 4. 4 of the OA, been regularized in Group D post in his parent unit only in September, 1996 cannot claim that he had put in 3 years of service on ad hoc basis as MCC. And it has been contended by the counsel for the respondents that the post held by the applicant as MCC is for pay benefits only! Contention of the Counsel for the respondents that the applicant was given only the pay benefit of MCC post is totally unconvincing. For, no department would have paid the higher pay for performing work of a lower post. It is

evident from Annexure A-7 that the applicant had been paid pay and allowances as for a Group C post for functioning as MCC. Annexure A-7 clearly reflects his designation as MCC, vide para 1 of the same. And vide Annexure A-7, it has been clearly stated that the applicant was functioning as M.C.C. Under AEN(C) PPR. As such, there is no modicum of doubt that the applicant had been functioning as MCC for a very long time and by 1999 he had certainly completed the requisite 3 years service as MCC. It therefore, is to be seen whether the applicant is entitled to the benefit of instructions of the Railways as contained in para 4.7 of the O.A. read with the Apex Court decision in R.C. Srivastava.

12. The High Court in the judgment dated 20-12-2002 relied upon by the applicant had held in that case as under:-

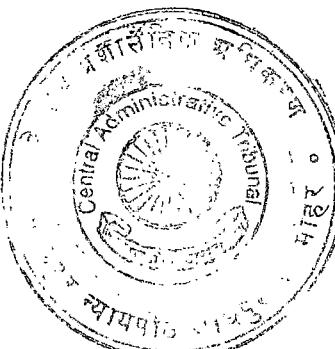
It is held that as per the circulars dated 11/15.2.1991, 13.2.1997 and 9.4.97, the petitioners are entitled to be considered for regularization of their services in Group 'C' posts.

13. The other case relied upon by the applicant's counsel, i.e. Union of India and others vs CAT and Anr reported in 2005(4) RDD 961 (Raj) (DB) has held as under:-

"This court was in pain to observe that the Railway is not following its own circulars issued from time to time. There is a reference to Circulars dated 11/15 February, 1991, 13.02.1997 and 09.04.1997. In view of the said circulars the workmen concerned were found to be considered for regularization of their services in Group C post.

On careful consideration of entire material, we are of the view that the instant case is squarely covered by the decision of this Court in Kalu's case (Supra). It is expected of the petitioners to at least follow their own circulars. ..."

14. Yet another case relied upon by the applicant's counsel is the decision by this Tribunal in Nathoo Ram vs G.M.North West Railway, Jaipur and others in OA No. 46/2003 decided on 03-08-



2004. This case refers to the decision of the Apex Court in the case of Ram Kumar, Moti Lal, etc., and the decision of the Hon'ble High Court of Rajasthan in the case of Kalu (*supra*). This case also supports the case of the applicant.

15. The case of the applicant is covered by the above mentioned decisions of this Tribunal and the High Court of this State. As such, it is clear that the applicant has made out a cast iron case.

16. Now what is to be seen is whether the contentions on merit and decisions cited by the respondents' counsel as itemized above, dilute the case of the applicant.

17. The respondents have contended that since the applicant was regularized in Group D only in September, 1996, he could not have the requisite experience of three years to appear before the Viva and hence he is not entitled to any relief. This submission lacks merit. For, there is no link between regularization in Group D and regularization as MCC. For, the instruction dated 13-02-1997 (Annexure A-10) talks of "Group D staff working as MCC on ad hoc basis" which, as such, does not differentiate between regular Group D and other Group D. And, Annexure A-9 order dated 11/15-12-1991 does not even refer to Group D and all that it states is, "MCCs who are working on ad hoc basis for more than 3 years." Again, vide the decision of the High Court in the case of Kalu (*supra*) it has been specifically held, "*It is further made clear that any order of regularization of the petitioner's services on lower post, i.e. In Group "D" if passed after issuance of above referred circulars by the Railway Administration, will not come in way of the petitioners for consideration of their cases for regularization in accordance with the circulars referred above.*" In view of this, the respondent's contention cannot be accepted.

18. The counsel for the respondents has contended that the applicant has not produced any evidence to show that he had participated in the viva voce. According to the counsel, the

applicant has not appeared at all in the viva and inclusion of his name in the list dated 9-9-99 (Annexure A-13) is by inadvertence. The counsel for the applicant was emphatic that the applicant did participate in the viva whereas the counsel for the respondents stated that the applicant did not appear in the viva voce. For this purpose, reference was invited to ground No. 5 (C) of the OA wherein the applicant has stated that the respondent ought not have failed the applicant in the Viva Voce. Reply to this specific contention was not found in the counter, though there was a bald denial. Again, had the applicant not appeared for viva, in one sentence the respondents would have attacked challenge to the impugned Annexure A-1 order stating that the question of inclusion of the name of the name of the applicant does not arise when he had not participated in the viva. This is not so. In fact other documentary evidences (Annexure A-12 and A-13 confirm the fact of the applicant having been called for viva and his having attended the same. That the inclusion was by mistake is far from proximity to facts.

19. *The citations referred to by the counsel for the respondents, many in number, may be seen to find out whether those are exactly applicable to the facts of this case. The counsel referred to the Constitution Judgment of the Apex Court in the case of **Seey., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1**, and invited our attention to paragraphs 12, 15, 17, 45 and 53 and emphasised the law laid down by the Apex Court in para 45 thereof. It has been held therein as under:-*

While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargaing not at arms length she might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be

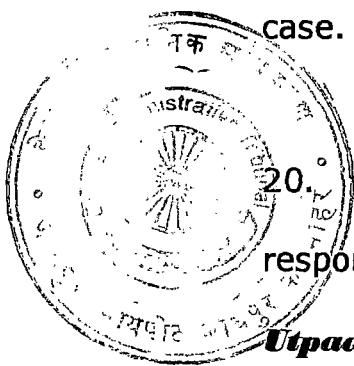


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appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee.

In the case in hand, the claim of the applicant is only in accordance with the circulars of the Railways which have been upheld by the High Courts as held in the case of Kalu *supra*. Thus, the case of Umadevi (*supra*) is not applicable to the facts of this case.



20. The next case cited and relied upon by the counsel for respondents is ***Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad, (2006) 7 SCC 684***, (especially para 24 and 25) wherein it has been held:

24. *In the instant case, the appellant has continued in service for 14 years because of the interim order granted by the High Court on 15-9-1992. In the aforesaid case, the Constitution Bench has observed that merely because an employee had continued under cover of an order of the court, which the court described as litigious employment he would not be entitled to any right to be absorbed or made permanent in the service.*

(Paragraph 25 is the extract of para 45 of 'Umadevi' as extracted in the previous paragraph above)

This too is not of any avail to the respondents as the applicant's continuance as ad hoc MCC for years together is not on account of any court's order.

21. *Next is the decision in the case of ***Chanchal Goyal (Dr) v. State of Rajasthan, (2003) 3 SCC 485*** . and reliance was upon para 5 and 7. While para 5 extracts the provisions of*

Temporary or officiating appointments (applicable to the service of the appellant therein), para 7 states as under:-

7. The decisions relied upon by the learned counsel for the appellant were rendered in different factual background. A decision is an authority for what it decides and not for what could be inferred from the conclusion.

The above dictum is applicable, but not in support of the respondents but against them as the authority relied upon by the respondents are in a different context.

22. Paragraphs 5 and 7 in the case of **Mohd. Sartaj v. State of U.P., (2006) 2 SCC 315**, are next relied upon by the counsel for respondents, wherein the Apex Court has held as under:

5. Regarding the statutory force of Rule 8, the Court observed that it could not be modified either by the Government or by the advertisement as per this Court ruling in State of Haryana v. Shamsher Jang Bahadur and, therefore, the advertisement for the posts was in violation of the Service Rules.

7. By order dated 3-2-2004, the Single Judge dismissed the petition and directed the State Government to readvertise the post as early as possible and make such fresh recruitment in accordance with rule. The Court further pointed out that the State Government could amend the existing rule and consider the petitioners case by relaxing their age while making fresh recruitment. It was also pointed out that the State Government, if desired, could provide appropriate provision in rule to consider the petitioners case for recruitment on a par with other candidates.

The above case is not at all applicable to the facts of the case.

23. **Bhadei Rai v. Union of India, (2005) 11 SCC 298**, is the next case cited by the counsel. This perhaps has been cited to state that the applicant being entitled to protection of pay in the event of reversion from group C to Group D, the same has been

complied with. Para 9 to 11 of that case, relied upon reads as under:-

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 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* case 1 reads thus:

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."

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 1* the present appeal is partly

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allowed by modifying the orders of the Central Administrative Tribunal and of the High Court. It is directed that the appellants 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.

24. **Bhadei** is a case where there was a simple reversion whereas in the instant case the claim of the applicant is that he should not have been failed in Viva in accordance with the Railway Board Circulars. In so far as the action taken by the respondents in protecting the pay of the applicant is concerned, the same cannot be avoided but the applicant is entitled to more than the same, i.e. once he has faced viva on the basis of his not having qualified in the said test, he cannot be reverted. Thus, this case is also of not of much avail to the respondents.

25. The next case, heavily relied upon (Head notes, especially) is that of **Employees' Union v. Mineral Exploration Corp. Ltd., (2006) 6 SCC 310**, wherein, in fact, the matter was remitted back to the Tribunal (labour) to consider the case of the appellant before the Apex Court in the light of 'Umadevi' with further direction as contained in para 38 of the said judgment, which reads as under:-

38. It shall be proper to regularise the services of the workmen who have worked for several years. However, the workmen in order to succeed will have to substantiate their claim as per the established principles of law. We feel it just and proper to issue the following directions to the Tribunal which is directed to consider the following directions and pass appropriate orders after affording opportunities to both the parties:

1. The Tribunal is directed to again scrutinise all the records already placed by the appellant Union and also the records placed by the management

and discuss and deliberate with all the parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularisation. This exercise shall be done within nine months from the date of receipt of this judgment.

2 . Subject to the outcome of the fresh enquiry of the award, the respondent Corporation should absorb them permanently and regularise their services, the persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis.

3 . The respondent Corporation may absorb on permanent basis only such of those workmen who have not completed the age of superannuation.

4 . The respondent Corporation is not required to absorb on permanent basis such of the workmen who are found medically unfit for such employment.

5 . The absorption of the eligible workmen on a regular and permanent basis by the Corporation does not disable the Corporation from utilising their services for any other manual work for the Corporation upon its needs.

6 . In the matter of absorption, the persons who have worked for longer period as contingent/ad hoc/temporary workmen shall be preferred to those who have to be in shorter period of work.

7 . The workman should have worked for more than 240 days in a year. The conduct and behaviour of the workman should be good.

39. We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union.

26. Next case relied upon is that of *State of M.P. v. Yogesh*

***Chandra Dubey, (2006) 8 SCC 67* wherein it has been held :**

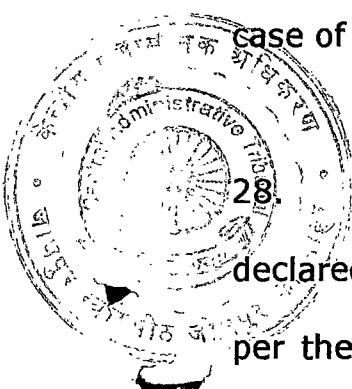
Regularisation is not a mode of appointment. If any recruitment is made by way of regularisation, the same would mean a back door appointment, which does not have any legal sanction.

D28

D31

This again is of no avail to the respondents, since, what the applicant claims is invoking of the provisions of circulars issued by the respondents, and is not something, which is contrary to rules.

27. Other cases relied are also nowhere near the facts of the case of the applicant herein.



28. In view of the above the O.A. fully succeeds. It is declared that the applicant is entitled to the benefits available as per the provisions of circulars dated 11/15-12-1991, 13-02-1997 and 09-04-1997, which have been relied upon by the applicant vide Annexure A-9, A-10 and A-11 respectively. He ought to have been included in the Annexure A-1 list of MCCs who have qualified in the viva on the basis of the above circulars. Consequently, Annexure A-2, whereby the applicant was sought to be reverted to his parent unit is to be quashed and set aside as the applicant is entitled to be conferred regular status as a group C clerk in the construction wing as others. His seniority in the grade of Group C clerk would be at the bottom of the last person in the Annexure A-1 list. Respondents are directed to take necessary action in this regard and pass suitable orders, in regard to the regularization and seniority of the applicant in the grade of Group 'C' MCC in the construction wing. Applicant is also entitled to consequential benefits, if any, flowing from the above fixation of seniority. This order shall be complied with, within a period of three months from the date of communication of this order.

Costs easy.

Tarsem Lal

(Tarsem Lal)



Administrative Member


(Dr. K.B.S. Rajan)

Judicial Member.

JSV

R/C
N/A
1/3/07
ELC
③
1/31/07