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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

Original Application No. 24 of 2006

Date of decision: 25-01- 2007.

CORAM :

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Chanan Ram S/o Shri Bhoora Ram aged about 42 years, working as Khallasi under Inspector of Works, North Western Railway, Lalgarh, Bikaner, Resident of L 17 A-B, Old Railway Colony, Lalgarh, Bikaner.

.....Applicant.

By Mr. Y.K. Sharma, counsel for the applicant.

Versus

1. The Union of India through the General Manager
North Western Railway, Jaipur.
The Divisional Personnel Officer,
North Western Railway, Bikaner.

.....Respondents.

By Mr. Manoj Bhandari, counsel for the respondents.

O R D E R

[BY J. K. KAUSHIK, JUDICIAL MEMBER]

Shri Chanan Ram, has filed this O.A. seeking a mandate to the respondents to protect the last pay drawn by him on the post of Carpenter, a Group 'C' post in Construction Organisation at the time when he was absorbed in Group 'D' post and the impugned order at Annex. A/8 may be declared illegal with a further direction to the respondents to refund the amount deducted from his salary after repatriation to his parent department, with interest at the rate of 12% per annum.

2

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2. We have heard learned counsel for both the parties at a considerable length and have carefully perused the pleadings as well records of this case. The material facts necessary to resolve the controversy involved in this case are that the applicant was engaged as a Casual Mason w.e.f. 8.10.1984. In the year 1985, his category was changed from Mason to Carpenter and temporary status was conferred on him w.e.f. 31.12.1986. He was also transferred in the year 1983 from Suratgarh to Bhatinda. He earned his due increments regularly and his basic pay was fixed at Rs. 4,090/- in the scale of Rs. 950-1500 when he was screened and absorbed against Group 'D' regular establishment as Mali- Khalasi, vide order dated 12.6.1998. His pay in the grade of Carpenter was in the scale of Rs. 260-400/950-1500 in Group 'C' category. Thereafter, his pay was reduced and fixed at Rs. 2,750 in the scale of Rs. 2550-3200. On one occasion, he moved to a co-ordinate Bench of this Tribunal at Chandigarh claiming regularization on Group- 'C' post, but the same was rejected. On this, he made a representation to the respondents for protecting his pay which was rejected. Hence, this O.A which has been filed on numerous grounds mentioned in Para 5 and its Sub-Paras and shall be dealt with in later part of this order.

3. The respondents have resisted the Application and have mentioned that no one is entitled for protection of his pay drawn on a higher post. The representation of the applicant is of no consequence and the grounds raised in the O.A., have been generally denied.

4. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant as noticed above. He has submitted that the issue regarding grant of protection

JY/10

to Group 'C' employees who have been working in Construction Organisation and subsequently came to be absorbed on the lower post of Group 'D', has been under constant litigation right from the case of **Ram Kumar and Others** reported in AIR 1990 390 till recently and the last case which has been brought to our notice is of **Badri Prashad and Others Vs. Union of India and Ors.**, reported in 2006

(1) ATJ 543. Now the issue has been set at rest by holding that pay protection is to be granted in such cases. Per contra, the learned counsel for the respondents has strongly contorted the contention and has submitted that there is an exception to this proposition of law and one is required to pass a trade test for higher posts in technical categories for getting the pay protection and in support of his contention he has invited our attention to the case of **Inder Pal**

Yadav and Others Vs. Union of India and Others reported in 2005

(11) SCC 301. He has referred to certain portion from the Head Notes and submitted that it was incumbent upon the applicant to have passed the trade test and then only pay protection could have been permitted. In the instant case, the applicant was working on the post of Carpenter, which admittedly falls in technical category and passing of the trade test is essential for getting the pay protection.

5. We have considered the rival submissions put-forth on behalf of both the parties as well as gone through the judgments, which have been cited in support of their contentions. As far as the case of **Inder Pal Yadav** (supra) cited by the learned counsel for the respondents is concerned, it has been provided therein that whenever Railway Administration intends to utilise petitioners services, the Administration must take into account the trade test passed by them and length of service rendered by them in projects subsequent to their



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regular appointment and requirement of taking a trade test for promotion to Group 'C' is to be dispensed with if the petitioners had already taken any comparable test while on duty in the projects. A bare reading of the portion of the said judgement, does not suggest that there is any requirement of passing a trade test for getting the pay protection while one is sent from Group 'C' post to a Group 'D' post. It only provides that whenever one is to be promoted and if he has already passed the trade test on an earlier occasion, he need not pass the trade test again. This is also supported by the provision made in the rules that once suitable is always suitable and once a person has passed the trade test in Construction Organisation, RE or in another sister Organisation, he is not required to pass such trade test while coming into consideration zone for promotion in the Artisan category as per his turn. There is a specific provision to this effect between para 224 and 225 of IREM Vol-I which reads as under:

"Exemption in Suitability/Trade Tests in the Open Line on the basis of Trade/Suitability Tests passed while in Railway Electrification Project or Construction Projects.

Staff who have already qualified in the Suitability/Trade Test for non-selection post while in Construction Railway Electrification Projects need not be subjected to such tests on the open line and they may be promoted on the basis of their seniority as and when due in turn. This concession is applicable in comparable trades only in which the lien of the individual is kept on the open line and is applicable to only one grade higher than the one in which the lien is kept. (E(NG)I-75/PM 1-266 dt. 21-2-76, 4-7-76 & 29.11.77)."

A decision is an authority on the point raised, examined and decided and admittedly in the aforesaid decision the issue relating to the requirement of passing the trade test for grant of pay protection on reversion from group C to D category on absorption against regular establishment was not there and the question of decision on the same, therefore, does not arise. Therefore, the authority is of no help to the respondents. In this view of the matter, we are not at all impressed



with the stand of the respondents in denying the pay protection to the applicant.

6. Now, we advert to the judgement in case of **Badri Prasad and Others Vs. Union of India and Others** (supra). We have waded through the same and find that the issue involved in the instant case, is similar and the judgement covers the controversy involved in the instant case on all fours. There is no distinction between the technical or non technical posts. Even the post of Storeman is a selection post whereas the Carpenter is a non selection post and on a non selection post, a trade test is required when one is to be promoted. The ratio laid down is if one is posted from Group 'C' category to a Group 'D' category post on regular basis, where his lien is maintained, their Lordships of Hon'ble the Supreme Court have categorically held therein

the following terms :

"16. Without disturbing, therefore, orders of the Tribunal and the High Court, the appellants are held entitled to the following additional reliefs. The pay last drawn by them in Group 'C' post shall be protected even after their repatriation to Group 'D' post in their parent department. They shall be considered in their turn for promotion to Group 'C' post. The period of service spent by them on ad hoc 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 appellants."

7. We are looking the matter from yet another angle. We are little surprised to find the logic advanced by respondents. When a person is utilized on the Group 'C' Artisan post, there is a requirement that he must be suitable for a Group 'C' post and now if a person is going to be put on a Group 'D' post; what is the logic by putting such person to a trade test for protection of pay, in case he is going to work against a Group 'D' post. Passing of a trade test of course would be required when he is promoted subsequently and for that, all norms of

2/12
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promotion shall have to be adhered to. On this count also, we do not find any force in the defence version. Therefore, there is substance in this O.A. and the contentions raised on behalf of the applicant deserve our concurrence.

8. In the premises, the O.A. has ample force and the same is hereby allowed. It is directed that the last pay drawn by the applicant in Group 'C' post, shall be protected after repatriation to the Group 'D' post in his parent department i.e. from 14.12.2001. He shall be entitled to all consequential benefits including actual difference of pay, as per the judgement of the Apex Court in **Badri Prasad's** (supra) ^{No order as} case. However, there shall be no costs.



R.Bhandari
(R.R.BHANDARI)
ADMINISTRATIVE MEMBER

jrm

J.K.Kaushik
(J.K.KAUSHIK)
JUDICIAL MEMBER

56 bands
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Ring claim
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for St. Mary's Branch

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Box II and III destroyed
in my presence on 2/6/14
under the supervision of
Section Leader II
order # 26/3114
Second Lieutenant