

38/10

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JODHPUR BENCH, JODHPUR**

**Original Application No. 38/2007**

**DATE OF ORDER : THIS THE 31<sup>st</sup> DAY OF DECEMBER, 2007.**

**CORAM :**

**HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN**

**HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Lahari Lal S/o Shri Mohan Lal Menaria, by caste Brahmin, aged 45 years, presently working on the post of Loco Pilot (Sr. Shunting) under the Chief Crew Controller, North Western Railway, Udaipur City, resident of Panerion Ki Badari, Near Mangal Vatika, Udaipur (Rajasthan).

**.....Applicant.**

**Mr. A.K.Khatri, Advocate, for applicant.**

**Versus**

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

**.....Respondents**

**Mr. Salil Trivedi, Advocate, for respondents.**

**ORDER**

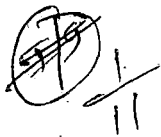
**[PER R.R. BHANDARI, ADMINISTRATIVE MEMBER]**

Shri Lahari Lal, applicant, has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, asking for the following reliefs :-

*"(a) By an appropriate order, writ or direction, the orders dated 25.8.2005 (Annexure A/1) and 8.10.2005 (Annexure A/2) passed by respondent no. 2 qua the applicant may kindly be declared illegal and be quashed and set aside, and*

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(b) After setting aside the above orders, the respondents be directed to pay arrears of salary since 25.8.2005 till date along with interest @ 18% per annum on the amount of arrears, or

(c) In the alternate, the applicant's pay which he was drawing on promotional post be protected and the respondents be directed to pay arrears of salary since 25.08.2005 till date along with interest @ 18% per annum on the amount of arrears."

2. A brief matrix of the case as below :

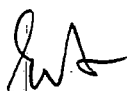
Shri Lahari Lal, was appointed as Loco Cleaner in the year 1980, was promoted to the post of Fireman-I in the year 1988 and thereafter further promoted as Diesel Assistant in the 1993.



The applicant appeared in the selection for the post of Goods Driver. He passed the written test, but could not qualify for the Viva Voce test conducted in the year 1997. However, he was promoted to the post of Goods Driver on ad hoc basis vide order at Annex.A/4 dated 13.11.1997. He was also given paper promotion to the post of Senior Shunter scale of Rs. 5000-8000 vide order at Annex.A/5 dated 5.8.2002. This promotion was extended to him as at that point of time Lahari Lal (applicant) was working on the post of Goods Driver on ad hoc basis.

In August 2003, selection for promotion to the post of Goods Driver was conducted, wherein the applicant also appeared in the written test but he could not qualify.

The applicant was reverted to the post of Loco Pilot (Senior Shunter) from the post of Loco Pilot (Goods) vide impugned order at Annex. A/1 dated 25.8.2005. As a consequence to his not



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qualifying in the written test, he was reverted and his basic salary also got reduced from Rs. 6,050/- to Rs. 5,450/- w.e.f. 25.8.2005. This O.A. is preferred against the order of reversion as well as reduction in the salary.

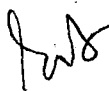
3. The learned counsel for the applicant argued that the applicant passed the written test in 1997 for Goods Driver (now known as Loco Pilot 'Goods'). At that time, Viva Voce test was necessary for selection; he could not clear the Viva Voce and was, therefore, not selected. The learned counsel argued that he should now be considered as selected from the year 1997 onwards, on the plea that, later, Viva Voce test was deleted from the selection procedure for the post in question. Another ground for the relief(s) asked by the learned counsel for the applicant is that applicant's basic pay /salary cannot be reduced from Rs. 6,050/- to Rs. 5,450/-. In support, the learned counsel cited AIR 2005 SC 2531 – **Badri Prasad and another Vs. UOI and Ors.**

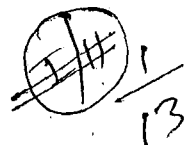
Relevant paras quoted are reproduced below :



"14. The practice adopted by the railways of taking work from employees in group 'D' post on a higher Group 'C' post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the railways is utilizing for long periods the services of employees in group 'D' post for higher post in Group 'C' carrying higher responsibilities benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

15. As held by the High Court – the appellants cannot be granted relief of regularizing their services on the post of Store man/ Clerk merely on the basis of their ad hoc promotion from open line to higher



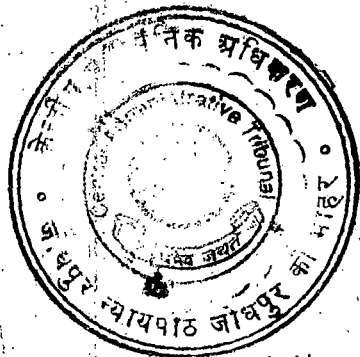


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post in the Project or construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on a higher group 'C' post.

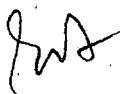
16. Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. The pay last drawn by them in group 'C' post shall be protected even after their repatriation to group 'D' post in their parent department. They shall be 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.

17. With the above modifications in the directions of the Tribunal and the High Court, the appeal partly succeeds. In the circumstances the parties shall bear their own costs."



The learned counsel for applicant pleaded that even after the selections of 2005, few vacancies were available and the applicant could be continued on the post of Loco Pilot even on ad hoc basis. And that as cited in the case above, his salary should be protected even after his reversion.

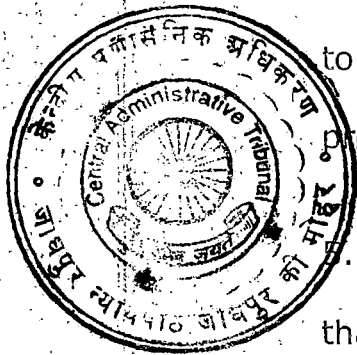
4. The respondents on their part agreed to the various important dates and events mentioned in the O.A. They have stated in the reply that in 1997 selection would mean qualifying both the written test as well as the viva voce test and applicant was declared failed as per those rules. The applicant was promoted on ad hoc basis as per the practice in vogue. It was brought out that in the selections of 2003, he failed in the written test and, therefore, he could not have been continued on the same post. Thus, his reversion to the post of Loco Pilot



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(Senior Shunter) was in order. The learned counsel for respondents averred that the rule position is very clear that if a person is reverted, he is not entitled for pay protection and that applicant's pay has been rightly fixed in his substantive grade as per order Annex. A/2 and that there is no infirmity in the orders issued by the respondent-department. The learned counsel for respondents further clarified that since 2005, applicant is working as Senior Shunter and by continuing him as Senior Shunter, they have not breached any of the rules. The learned counsel further brought out that since the rules do not provide promotions in these cases, this Tribunal has no jurisdiction either to direct the respondents' for promoting the applicant or for protection of his pay.



The learned counsel Mr. Trivedi, for respondents, averred that as per Article 142 of the Constitution of India, only the Hon'ble Supreme Court can pass such decrees and other Courts or Tribunal's have no authority to deliver such orders promoting an individual even after being unsuccessful in the selection or protecting his salary when the issue is not covered by the extant rules.

6. We have gone through the documents on record and the averments made by the learned counsel for the applicant as well as the respondents. We find that rules for ad hoc promotions / reversion in the event of failure in the written test, has been followed by the respondents. We also feel that we need not

*[Signature]*

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intervene in the administrative procedure of selection, promotions, reversions, etc. unless, proven mala fide.

7. From the averments, we notice that the applicant was working on ad hoc basis as Goods Driver (or Loco Pilot 'Goods') from 1997 to 2005 i.e. for almost eight years. This period could be considered as long. He was reverted in 2005, as he could not qualify in the written test. As mentioned in the previous para, we do not want to intervene in the administrative procedure of selections, promotions and reversions. However, keeping Apex Courts' guidelines in the case of Badri Prasad and Another Vs. Union of India and Others (supra), we feel that the applicant is entitled for protection of the basic pay last drawn at the time of his reversion in view of having worked for long period on ad hoc basis. We order accordingly.

8. This O.A. is allowed to the extent mentioned above.

9. No orders as to costs.



*R.R. Bhandari*

(R.R. Bhandari)

Admv. Member

*N.D. Raghavan*

(N.D. Raghavan)

Vice Chairman

jrm

Received copy of order  
dated 31.12.07  
D. Hunter  
3.1.08

R/C

T. J. H.  
2/1/08  
(for scrip/for redi)