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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

O.A.No. 8/2008

Reserved on: 18.7.2012

Date of decision: 20.07.2012.

CORAM:

HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER

Kishanlal Rajpurohit son of Shri Biharilal
Resident of 11/49, MP Nagar, Bikaner,
At present working as Junior Clerk, Deputy
Chief Engineer, North Western Railway
HQ at Bhilwara.

.....Applicant

(By Advocate Mr. Nitin Trivedi)

Vs.

1. Union of India through the General Manager,
North Western Railway, Headquarter Building,
Jaipur.

2. The Divisional Railway Manager,
North Western Railway, DRM's Office,
Bikaner.

3. The Chief Personnel Officer,
North Western Railway, Headquarter Building,
Jaipur.

4. Deputy Chief Engineer (C)
North Western Railway, Ajmer.

...Respondents


(By Advocate Mr. Manoj Bhandari with Adv.Mr.Govind Suthar (R1to3)
Advocate Mr. Kamal Dave for R.4)

ORDER


Per:Dr. KBS Rajan, Judicial Member

The applicant joined the Railways as Khalasi w.e.f. 01-09-1972





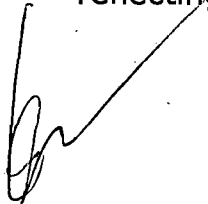
and was granted temporary status w.e.f. 17-06-1973 as Khalasi in the Bikaner Division. Subsequently his services were regularised and confirmed as a Gangman w.e.f. 18.06.1981. He was thereafter promoted to the post of Mason in the pay scale of Rs 950 -1500 by order dated 09-06-1992. Annexure A-2 refers. According to the applicant, since 1989 he had been performing the duties of a clerk at each and every place of his posting though his designation had been Mason. Annexures A-3 and A-4 are documentary evidences in this regard. By Annexure A-5 order, the applicant was transferred to the Construction Wing of the Western Railways which was at the request of the applicant. And, according to the applicant, he had requested the authorities to change his category from Mason to Clerk. He was posted as a Mason, but was also informed that his case for change of category from Mason to Clerk/typist would be considered on resumption of his duties to the concerned Railways. Annexure A-6 refers. The Deputy Chief Engineer construction Western Railways had posted the applicant as Junior Clerk in the scale of pay of 950 - 1500 vide Annexure A-7 order dated 30th of April 1996. It has also been reflected therein that he would not be entitled to claim any seniority etc., on these grounds. The applicant was thereafter promoted to the post of Senior Clerk vide order dated 1 April 1999 at Annexure A-11. Here again the very same rider that the applicant would not be entitled to seniority etc. was imposed. By an order dated 16 October 2000, vide Annexure A-12, the Deputy Chief Engineer (Construction), Western Railway transferred the applicant as Mason grade III under PWI © GIM in his own cadre and substantial scale. This order at



Annexure A-12 was challenged by the applicant before the Ahmedabad Bench of the Tribunal in OA No. 543 of 2000. The Tribunal in its order dated 16 October 2002 had held as under: -

"..... remit the matter back to the authorities by making it clear that if any person Junior to the applicant is retrained in construction as a clerk, he should also be allowed to work till such time otherwise they should pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. They should also explain which seniority is being referred to on page 10. Even though it is only an internal note and much reliance cannot be placed on the same, but unless its contents are fully explained, we cannot overlook it as respondents have not even explained that document. We do not know whether any separate seniority list is being maintained in construction for those who are drawn from divisions or which seniority is being referred to on page 10 in the note; therefore, all these aspects need to be examined by the respondents. It is made clear that till such time the speaking orders are passed, the status quo with regard to applicant should be maintained as directed by the tribunal."

2. The applicant continued in the Western Railway (Construction) and at his request he was sought to be transferred back to his parent Railways (Bikaner Division) vide Annexure A-15. According to the applicant, in his parent department as well, he had been entrusted with the clerical functions. On 6 September 2007, the office of the Deputy Chief Engineer (C) issued a show cause notice to the applicant that the earlier order passed in 1996 changing the category of the applicant from Mason to Clerk was without the approval of the competent authority and hence being a wrong order the same was sought to be rectified by cancellation of the said order. The applicant was asked to explain as to why the Department should not nullify the earlier order. The applicant had filed his reply therefor, reflecting therein the admitted fact of his having been in the clerical



wing almost ever since he was appointed as a Mason. However, rejecting his plea, the respondents have issued the impugned order dated 29th of November 2007 posting the applicant back to his parent cadre of Mason. The applicant has now come up against the said order through this OA seeking the following reliefs:-

(a) That by an order or direction in the appropriate nature, the order dated 29.11.2007 (Annexur.eA/1) passed by the respondent No.4 may kindly be quashed and set aside and accordingly the applicant may kindly be directed to work as Junior Clerk. Further, the respondents may be directed to regularise the services of the applicant as Junior Clerk with effect from 16.4.96 the date on which he was posted as Junior Clerk on adhoc basis.

(b) That any other order or direction which this Hon'ble Tribunal deem fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(c) That the costs of the Original Application may kindly be awarded in favour of the applicant.

3. Respondents have contested the OA. According to them the applicant cannot claim any benefit of his services in the construction wing for change of category. They have also submitted that the Deputy Chief engineer was no authority to order change of category of the applicant from the cadre of Mason to the cadre of Clerk. The speaking order passed by the respondents is in pursuance of the order of the Ahmedabad Bench of the Tribunal after issue of show cause notice to the applicant and on consideration of his representation against the show cause notice.

4. Counsel for the applicant argued that the respondents are estopped from cancelling the change of category already made at this distance of time. He has also submitted that the applicants having not got any exposure to the functions of a Mason, would be facing lot of

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inconveniences in the performance of his official duties as Mason. Again, he has submitted that at least two of his juniors had got their promotions to the higher scales in the cadre of Mason, while such a promotion has not been considered in his case.

5. Counsel for the respondents submitted that the applicants would be treated as if he had not gone on deputation to the construction wing and if any promotion had been given to his juniors, on the basis of the seniority during the period the applicant was away in the Construction Wing, the case of the applicant would also be accordingly considered. In addition, the counsel submitted that it had been mandated by the Apex Court that persons, on being reverted back from temporary establishments wherein they had functioned for pretty long time, should have their pay protected in the parent the Department. As such, the counsel submitted that the pay of the applicant stands protected.

6. Arguments were heard and documents perused. The following legal issues are to be addressed: -

(a) whether there is any provision for change of category and if so who is the competent authority to approve the same with reference to the applicant. If the competent authority is different than the one who had issued the order dated 30 April 1996 (Annexure A-7) whether the said order can be held to be held ex facie illegal or could be ratified by the competent authority as sufficient time has elapsed.



(b) in case, such a change in the category is not possible, whether the applicant is entitled to promotion in his parent cadre at par with his juniors, if the promotion afforded to the juniors was purely on the basis of seniority cum fitness/merit (i.e. promotion not being the one on account of passing any limited departmental Competitive examination).

7. Arguments were heard and documents perused. In so far as group C and D employees are concerned it is the General Manager of the Railways who is the competent authority to pass any order relating to their service conditions. As such, under the provisions of paragraph 226 of the Indian Railway Establishment Code, in regard to Group C and Group D railway servants, the powers of the President under the rule in respect of transfer~~s~~, within India, may be exercised by the General Manager or by a lower authority to whom the power may be delegated. Thus, it is the General Manager or a delegated authority, who has the power to consider change in category of the applicant. This power in so far as some of the categories are concerned are normally delegated to the DRM/HOD. Where the posts are purely technical in nature (say Mason and another technical cadre, Carpenter etc.,) obviously the HOD of that faculty could consider the change in category, as it is the Head of the Department which controls such faculties. Where, however, one category belongs to one HOD and another to another HOD, and if the two posts are controlled at the Division level, it is the DRM who would be the competent authority. As these are only delegated powers, if the case



is referred to the GM, it is for the GM to consider the same and arrive at a decision. In the instant case, one of the posts is a technical post and the other, a clerical post as such, it could have been dealt with by the D.R.M. Nevertheless, the General Manager has considered and rejected the case of the applicant. This has been brought out clearly in paragraph 5 of the impugned order. Once the General Manager has rejected the case of the applicant for change in the category and the earlier order dated 30th of April 1996 not having been passed by a competent authority, the applicant cannot stake his claim for change in the category, either by way of any rule position or by Doctrine of Estoppel. Thus, answer to question (a) above is answered against the applicant.

8. The applicant's position in the construction wing has been only as of deputation. His earning ad hoc promotions as senior clerk etc., would on his repatriation terminate there itself. He cannot claim anything except pay protection and promotion etc., in his parent department in his turn. In this regard, the following decisions lend support to this view:-

(a) Bhadei Rai v. Union of India, (2005) 11 SCC 298 - The Apex Court has, in this case, held as under:-

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'.

(b) In a symphonic tone, the Apex Court had in the case of **Badri**

Prasad v. Union of India, (2005) 11 SCC 304, has held as under:

11. It is not disputed that the appellants were made to work on the post of Storeman cum-Clerk which is a higher post carrying higher scale of pay. They were made to work on that higher post not for a short period as a stopgap arrangement but for a long period of more than ten years. It is on these facts that the appellants have raised their claim for being allowed to continue on the higher post and questioned drop of their emoluments.

12. Reliance is placed on the decision of this Court in the case of *Inder Pal Yadav v. Union of India*. In that case, similarly placed railway employees, who were substantively holding Group 'D' post but were made to work for long period on higher Group 'C' were granted partial relief by making the following directions: (SCC p. 303, paras 6-7)

.....

13. The practice adopted by the Railways of taking work from employees in Group 'D' post on 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 utilising 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 jcounting 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.

14. As held by the High Court the appellants cannot be granted relief of regularizing their services on the post of Storeman/Clerk merely on the basis of their ad hoc promotion from open line to higher 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 higher Group 'C' post

15. 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. (Emphasis supplied)**

(ii) The above decision in Bhadei Rai's case was followed in the case of **L. Parameswaran v. Chief Personal Officer, (2008) 3 SCC 649** in so far as protection of pay is concerned. In that case, as regards retention in the ex cadre post the Apex Court negated the claim.

9. Thus, answer to issue at (b) above is that the applicant would have to be placed in that position (with designation and post as well), at par with his juniors. In other words, the position that the applicant would have gained had he not on deputation to the Construction wing at all should be made available to him. In fact, the counsel for the respondents has been fair enough to submit that the respondents would ensure protection of pay of the applicant and his position at par with the juniors in the cadre of Mason would also be verified and if any promotion afforded to the juniors is on the basis of seniority cum fitness and not on account of their qualifying in the limited departmental competitive examination etc., the applicant too would be considered for such promotion.

10. In view of the above discussions, the OA is thus, disposed of with the direction to the respondents -

(a) to ensure that the pay of the applicant as last drawn in the Construction wing is protected in the parent cadre.


(b) to consider the case of the applicant for promotion to the higher post at par with his juniors, and from the date the juniors were promoted subject to the condition that

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such a promotion to the juniors is not based on their qualifying in any competitive examinations, but were purely on the basis of seniority cum fitness/merit.

11. This order shall be complied with, within a period of two months in respect of (a) above and four months in respect of (b) above.

12. No costs.



(B K SINHA)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

pps

Handwritten notes including a signature and date: "C. W. J. 25/2/12".

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Mohamed

(Mohamed)
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R.L.C.
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