

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application.No.463/2009
Dated the 13th day of November, 2009**

CORAM :

**HON'BLE Dr K B S RAJAN, JUDICIAL MEMBER
HON'BLE Ms K NOORJEHAN, ADMINISTRATIVE MEMBER**

K Sasi,
Staff Car Driver Grade-I,
Office of the Executive Engineer,
Doubling, Southern Railway,
Kayamkulam residing at
Deepavilasam, Thinikkadavu,
Kariyara, P.O. Punalur. ... Applicant

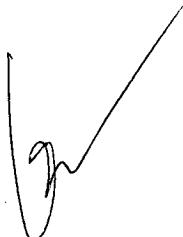
By Advocate Mr C Rajendran

V/s

- 1 The General Manager,
Southern Railway, Chennai, Thamilnadu.
- 2 The Chief Administrative Officer,
Construction, Southern Railway,
Chennai Egmore, Tamilnadu.
- 3 The Deputy Chief Engineer,
Construction, Southern Railway, Ernakulam.
- 4 The Executive Engineer, Doubling,
Southern Railway, Peringala, Kayamkulam.
- 5 The Senior Divisional Personal Officer,
Southern Railway, Madhurai. ... Respondents.

By Advocate Mr Thomas Mathew Nellimoottil

This application having been heard on 13th November, 2009, the Tribunal
on the same day delivered the following



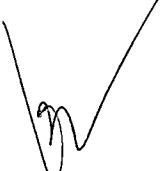
(ORDER)

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

The applicant, now working as a Staff Car Driver Grade I under the Executive Engineer, Doubling, Southern Railway, Peringala, Kayamkulam (Respondent NO. 4) initially joined the Railways as Lorry Attendant under the Executive Engineer Conversion, Southern Railway, Quilon, vide order dated 22nd May 1975 (Annexure A-2). He was then promoted as Driver on 01-04-1988, vide Annexure A-3, followed by another promotion to Grade II vide Annexure A-4. The applicant could not attend the duties for a considerable time during 2005 – 2007 and the said period was not properly regularized. Meanwhile, the applicant was transferred to his parent Division, i.e. Madurai Division vide Annexure A-1. The factum of his unauthorized absence for the period from 16-10-2007 to 20-06-2007 was also reflected in the said Annexure A-1 order. However, when the applicant had filed this OA, an interim order was passed to the extent that before the applicant is sent back to his parent cadre, his leave account has to be settled by the borrowing department. And, till then, his order of repatriation has been kept in abeyance.

2 Respondents have confirmed that the period of absence has been regularized by treating the same as unauthorized absence. Thus, the applicant could easily move to Madurai Division.

3 Counsel for the applicant submitted that the applicant has hardly two months to complete sixty years and at this juncture his repatriation would not be appropriate.

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4 Counsel for the respondents submitted that the applicant's repatriation is inevitable, as his parent department is only Madurai Division and in order to enable him to claim for pension (if any), his move to the parent department is a must.

5 Counsel for the applicant has added to the fact that if the applicant is shifted at this juncture, and if it results heavy depletion in his emoluments, the same would be resulting in irreparable loss to him. For, in the parent department he might have been in a grade which is lower than the applicant's grade in which event, his pay may not be protected.

The Apex Court has in the case of *Bhadei Rai v. Union of India*, (2005) 11 SCC 298, dealt with a case of identical nature. In that case, The appellant started his service in the Railways on daily rate as Khalasi in the year 1979; given a temporary status with effect from 1-1-1982. He was granted promotion on 31-3-1985 purely on ad hoc basis to the post of Rigger. For a long period between 1985 and 1999 the appellant continued to work on the promoted post of Rigger carrying higher scale of pay. The post of Rigger is Group 'C' post but the appellant was regularised and absorbed in lower Group 'D' post by order passed on 5-10-1999. Although, he had completed more than twenty years of service on higher Group 'C' post of Rigger, he was repatriated to his parent division in Group 'D' post carrying lower scale of pay. Aggrieved by his repatriation to a lower post he filed a petition in the Central Administrative Tribunal and claimed relief of his regularization in Group 'C' post in which he had been made to continuously work for a period of twenty years. The Central Administrative Tribunal by order dated 17-11-1999 rejected the appellant's claim of his absorption and continuance on the higher Group 'C' post. It was held by the Tribunal that the appellant's substantive post was of Gangman in Group 'D'. His ad hoc promotion to the higher post of Rigger was on his posting in the project. The work in the project having been completed, he had to be repatriated to his substantive post. The claim of the appellant was turned down by the Tribunal stating that the appellant cannot be regularized in Group 'C' post as that would affect the legitimate chances of others in Group 'C' post. It was observed that the appellant had to await his turn for regular promotion from Group 'D' post to Group 'C' post. The appellant challenged the order of the Tribunal by writ petition under Article 227 of the Constitution in the High Court of Delhi at New Delhi. The High Court by the

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impugned common order passed in cases of several other railway employees upheld the order of the Tribunal and dismissed the writ petition. The appellant, therefore, has approached the Apex Court in appeal by seeking special leave.

The Apex Court in that case held as under:-

" 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*¹. In the case of *Inder Pal Yadav* this Court held that since promotion from Group 'C' to Group 'D' was *ad hoc*, the order of reversion to the post in ~~the~~ 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 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.

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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 utilize 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 Yadav¹ the present appeal is partly allowed by modifying the orders of the Central Administrative Tribunal and of the High Court. It is directed that the appellant's pay which he

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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'."

6 The above judgment squarely applies in this case. The applicant has to necessarily join his duties at Madurai Division and has to perform the duties he is allotted there on par with his colleagues but his pay shall be protected to the extent he was drawing in the Construction wing. It is accordingly ordered. The applicant may be relieved on any date after two weeks from today. The O.A. is disposed of accordingly.

No cost.


K NOORJEHAN
ADMINISTRATIVE MEMBER


K B S RAJAN
JUDICIAL MEMBER

abp