

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 497 OF 2008

Tuesday, this the 4th day of August, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

N.S. Janaki, Technician (Signal) Grade III,
O/o. Deputy Chief Signal & Telecommunication
Engineer (Project), Southern Railway, Podanur,
Residing at 88 Bajanai Kovil Street, Podanur. ... Applicant

(By Advocate Mr. T.A. Rajan)

versus

1. Union of India represented by the
General Manager, Southern Railway,
Chennai.
2. The Deputy Chief Signal &
Telecommunication Engineer (Project),
Southern Railway, Podanur.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad. ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 04.08.2009, the Tribunal on the same day delivered the following:

ORDER

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

The case of the applicant is as under :-

The applicant, a diploma holder in Civil Engineering, was initially engaged as Tech Mate on 10th June 1973 and she was afforded temporary status w.e.f. 01-01-1984 in the scale of Rs 330 – 480 (revised scale 1200 -2040/4000 – 6000). Based on her continuous service in Group C, though she is entitled to be regularized in Group C post, she was screened for


absorption as Khalasi in the scale of Rs 750 - 940 (2550 - 3000) by order dated 26th March 1997 but retained in the higher post while keeping the lien in the grade of Khalasi. Applicant challenged the decision of the respondents in not considering her against a regular group C post by filing OA 975/1998. This was disposed of by the Tribunal directing the respondents to consider the case of the applicant for regularizing in appropriate Group C post in the light of Railway Board letter dated 8th July 1993 and in the light of ruling of the Apex Court in V.M. Chandra vs Union of India & Others (AIR 1999 SC 1624) vide Annexure A-1 order dated 25th January 2001, While so, the applicant's pay was reduced (after a show cause notice) with retrospective effect from 26-03-1997 reducing the pay from Rs 4800 to Rs 4000 in March 1997 and correspondingly for the subsequent years and from Rs 5300 - to 4,500 from 01-01-2002. Order dated 23rd October 2002 at Annexure A-3 refers. This order on challenge in OA No. 821/2002 was quashed and set aside in Annexure A-4 order dated 16th November 2004. The applicant was thereafter, on qualifying in a promotion test to the post of Technician (signal) was regularly appointed to the post of Technician Signal Grade III and the pay drawn by her as casual labour Mate was also protected on her regular appointment. However, vide Annexure A-5 order dated 11th June 2008, the second respondent had refixed the pay of the applicant w.e.f. 09-06-2006 by reducing the pay from Rs 5700 to Rs 3575/-. The applicant filed representation vide Annexure A-6, which is still under consideration of the respondents without any decision. Hence, this O.A. Seeking the relief of quashing of the impugned Annexure A-5 order and for a direction to the respondent not to reduce the pay of the applicant and consider Annexure A-6 representation.

2. Respondents have contested the O.A. According to them, the applicant was engaged in that capacity till 19th July 1974. Again, she was re-engaged on 14th July 1983 and was retained till 5th November 1984 but immediately again engaged on 6th November 1984. She was granted temporary status w.e.f. 01-01-1984, vide order dated 28th January 1987. On being found suitable for absorption as Khalasi in the scale of Rs 750 – 940 the applicant was so empanelled against the future vacancy in S & T Department in TVC and PGT Divisions vide communication dated 26th March 1997 and retained in the office of the Dy. C.S.T.E/Proj/PTJ as mate in the scale of Rs 1200 – 1800 (purely on ad hoc basis) w.e.f. 26th March 1997 as per order dated 29th April 2007, keeping her lien in S & T Branch of PGT Division as Khalasi in the scale of Rs 750 – 940. The absorption in Group D was challenged by the applicant in OA No.821/2002 and the same was allowed. Accordingly by Annexure R-3 letter dated 24th January 2006, the order of the Tribunal was complied with. The applicant was called for Trade Test for the post of Technician/Signal/Gr. III in the scale of Rs 3050 – 4590 vide Annexure R-4, but she could not qualify in the same, vide Annexure R-5 order dated 10th July 2002. Thus, the applicant continued in the capacity of Casual Labour Mate in the scale of Rs 4000 – 6000 on ad hoc basis in the office of Dy CSTE/Prog/PTJ. Thereafter, the applicant qualified in the trade test conducted for Group D (vide Annexure R-6) and later for Group C under the 50% quota vide Annexure R-8. Thus on her qualifying in the trade test for the post of Technician/Signal/Gr. III, she was posted to work in that capacity vide Annexure R-9. Annexure R-10 is the relieving order in this regard, which clearly shows that the applicant was relieved to join the post carrying the pay scale of Rs 3050 – 4590. Based on the same the pay of the applicant was fixed at Rs 3575/- vide Annexure R 14 and the applicant submitted

representation dated 12th June 2008 vide Annexure R-15, for restoration of her pay prior to Annexure R-14 order.

3. The respondents have further submitted that the post held by the applicant in the higher scale of Rs 1200 – 1800/4000 – 6000 was on ad hoc basis in the Construction organization, which is outside the cadre and in terms of para 216 of IREM based on seniority cum suitability such ad hoc promotions/postings are not on par with the ad hoc promotion ordered in the cadre. Promotion or posting in Construction Organization is distinctly different from the ad hoc promotion ordered in the cadre. The former is without following the seniority in the cadre and is intended to give financial benefit only. The service rendered while on such ad hoc promotion or posting is not to be counted for any other purpose in the relevant cadre. Again, fixation of pay on regular appointment to the higher grade by taking into account notional increment at the lower stage is only with reference to the substantive pay in the cadre and service rendered in Construction organization on ad hoc basis will not be reckoned for fixation of pay, as that ad hoc promotion is different from the one ordered in the cadre. And Rule 1313(1)(2)(i) of IREC Vol II provides for reckoning of service rendered earlier on the same time scale on ad hoc basis in the cadre for the purpose of increment at the time of fixation of pay on regular promotion as the ad hoc promotion are ordered in the cadre amongst the senior most eligible staff after following the prescribed procedure.

4. Counsel for the applicant submitted that the impugned order is bad in law as the services rendered in Construction Organization have to be taken into consideration for fixation of pay by protection of pay already drawn. This



was precisely the request in her representation vide Annexure A-6 which has not so far been decided by the respondents.

5. Counsel for the respondents submitted that there is marked difference in ad hoc appointment in the same cadre which is based on seniority in the feeder grade and that in the construction wing which is outside cadre and hence, the applicant's pay cannot be protected. The fact that the representation has not so far been disposed of has been admitted.

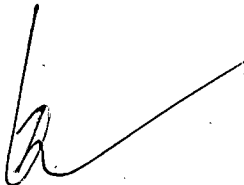
6. Arguments have been heard and documents perused. The applicant had been functioning in the Construction Wing in the higher scale of Rs 1200 – 2040/4000 – 6000 for over fourteen years, vide para 2 of Annexure A-1 order of the is Tribunal. This fact has not been controverted by the respondents. She had qualified in Group C Trade Test also vide Annexure R-8 in June 2006. Till then she was drawing pay of Rs 5700/- This was reduced to Rs 3575/- by the impugned order at Annexure A-5. This fixation of Rs 3575/- is based on the pay that the applicant would have drawn had the applicant been not sent to construction organization but continued in open line.

7. The case is almost identical to another case of **L. Parameswaran v. Chief Personal Officer** wherein the question was "*Whether for working for a long time in an ex-cadre post, an employee would be entitled to protection of scale of pay*" The applicant in that case was recruited as an unskilled worker. He was a casual workman. He was, however, posted in Electrical Division. He was promoted from the post of Khalasi Helper in his parent cadre to that of Technician Grade III. He passed a trade test of Technician Grade III,

which enabled him to be promoted to the post of Technician Grade II. On or about 13-2-1989, he was promoted as Diesel Mechanic Grade II. He was further promoted as Diesel Mechanic Grade I with effect from 26-4-1991. He served in the said post till 7-4-2003 when by reason of the impugned order he was reverted to the post of Technician Grade III in the Electrical Division of the Railway Department. Questioning the validity of the said order, he filed an original application before the Central Administrative Tribunal, Ernakulam inter alia contending that he could not have been reverted to the post of Technician Grade III in the Electrical Division on the premise that it was his parent cadre. By reason of a judgment and order dated 11-11-2003, the Central Administrative Tribunal dismissed the said original application. The applicant filed W.P(C) No. 37269/2003 which was also dismissed. Hence, the matter was taken up by the applicant before the Apex Court. The Apex Court in its judgment reported in 2008(3) SCC 649, has held as under:-

"12. Indisputably, the appellant was put on a scale of pay of Rs.4500-7500. By reason of the impugned order, he was to be posted in a grade, the scale of pay whereof is Rs.3050-7000.

13. Being in an ex-cadre post, the appellant did not derive any right to continue therein. He could be reverted to his cadre post. He opted for the mechanical side despite the fact that his parent cadre was Electrical Wing. If the appellant is allowed to continue in the ex-cadre post, he will be depriving some employees who are entitled to be promoted to the said post. Such a deprivation from the right of promotion to a duly qualified employee, in our opinion, therefore, cannot be countenanced. We do not, therefore, think that there is any legal infirmity in




the said order dated 7-4-2003.

14. However, in Bhadei Rail this Court noticed a scheme framed by the Railway Administration pursuant to the direction of this Court in Inder Pal Yadav v. Union of India². This Court in view of the said scheme and following the principles laid down therein opined that an employee who had been continued to function in a higher post and drawing a higher salary could not have been reverted and in any event would be entitled to the protection of pay and allowance. Inder Pal Yadav² was concerned with a regularisation scheme. It was in terms of the said scheme, certain provisions had been made. The direction issued by this Court in Inder Pal Yadav² was, therefore, in terms of the said scheme. However, the principle laid down therein will have no application to the fact of the present case.

15. The post held by the appellant was an ex-cadre post. He opted for change in his cadre. He did not have any right therefor. He in his own cadre might not have been promoted particularly when he has not passed the requisite trade test.

16. Furthermore, the question in regard to right of a person to be regularised in services so as to enable him to draw salary as if he is recruited on a regular cadre came up for consideration before a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi (3)³ wherein while laying down the necessity for adherence to the rule of equality in public employment as a basic feature of the Constitution, it was opined that no order should be passed which would amount to



violation of Article 14 of the Constitution of India or overlooking of the need to comply with the requirements thereof.

This Court, however, furthermore opined:

"44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision⁴ the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an

illegality."

17. Keeping in view the aforementioned two principles in mind, we are of the opinion that in a case of this nature, a balance has to be struck. In the peculiar fact of the present case, despite the law operating in the field as noticed supra, the appellant might have been recruited as a casual employee but the fact that he was brought on the rolls of a regular cadre is not in dispute. The fact that he had passed a trade test is also not in dispute. It furthermore stands admitted that as an ex-cadre employee or otherwise he was promoted twice. He had been holding the said post for a period of more than 12 years. A policy decision was taken by the Railway Administration only on or about 15-10-2001. Prior thereto, there was no requirement to repatriate an employee to his parent cadre after a period of four years. The policy decision, furthermore, was not given immediate effect. Despite the said policy decision, the appellant was permitted to work for another two years.

18. Faced with the situation, the learned Additional Solicitor General submitted that the question in regard to protection of pay of the appellant would be considered by an appropriate authority if a representation is filed in that behalf. (emphasis supplied)"

8. In the above case, ultimately, due to long lapse of time, the Apex court had invoked its powers under Art. 142 of the Constitution and protected the pay of the applicant.

9. As the applicant's case is also identical to the above case, in that he too had been in an ex cadre post (Construction Organization) for a substantial period and had qualified in the trade test conducted in his parent cadre, as committed by the Learned Additional Solicitor General before the Apex Court in the above case, this case should be duly considered by the Railway Authorities keeping in view the decisions of the Apex Court in Inder Pal Yadav, Bhadei Rai and the above decision. As the representation of the

applicant is still pending before the CSTE, the same be referred to the G.M. Southern Railway for due consideration and arrive at a policy decision as such a case is not an isolated one but one of many. The General Manager may if so desired, refer the matter to the Railway Board for uniform policy in respect of all the Zonal Railways. Till such a decision is made, Annexure A-5 order shall be kept pending. However, an undertaking may be obtained from the applicant to the effect that should the decision of the authority be adverse to her claim, she would refund the excess amount paid to her for the period from 11th June 2008 (the date of issue of Annexure A-5 order) onwards.

10. The application is disposed of on the above terms. No cost.

Dated, the 4th August, 2009.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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