

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 346 of 2008

Wednesday, this the 1st day of April, 2009

CORAM:

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

K.Chandran,
S/o Late M.Kutty Raman Nair,
(Retired Senior Stenographer, Office of the
Deputy Chief Engineer/Construction/
Southern Railway, Ernakulam Junction),
Residing at : "VEDHAS" No. 66/13,
Ayyanthole, TIRISSUR.

... **Applicant**

(By Advocate Shri TC Govindaswamy)

versus

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai-3.
2. The Chief Administrative Officer,
Construction/Southern Railway,
Egmore, Chennai - 8.
3. Deputy Chief Engineer, Construction,
Southern Railway, Ernakulam Junction,
Ernakulam.
4. P. Chandiran,
Deputy Chief Personnel Officer,
Southern Railway/Construction,
Egmore, Chennai - 8



5. The Senior Divisional Personnel Officer,
 Southern Railway/Trivandrum Division,
 Trivandrum – 14 ... **Respondents**

By Advocate Ms. P.K. Nandini)

The Original Application having been heard on 12.03.09, this Tribunal
 on 1-4-2009 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, who had superannuated on 30th April, 2008 has been aggrieved due to non payment of pensionary benefits keeping in view his status as Sr. Stenographer, which post he has been holding since 1985.

2. Some facts of the case of the applicant are very much essential and the same are as in the succeeding paragraphs.

3. The applicant had earlier filed a few O.As before this Tribunal and brief description and outcome of the same are as under:-

(a) OA No. 196/2005: Applicant's grievance in this OA was that though he had been working as senior Stenographer in the construction wing, his services as such, were not regularized, whereas, juniors in the open line were being regularised from time to time. The said OA was disposed of with a direction to the respondents to conduct suitability test for regularisation as Senior Stenographer in the open line and if found suitable, to regularize the services of the applicant as senior Stenographer. Order dated 13th June 2006 at Annexure R-1 refers.

(b) OA No. 299/2005: When the applicant was working in the construction wing, he was transferred to his parent cadre in the open line which he challenged on the ground that the same is violative of certain related

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instructions. This OA was allowed, vide Annexure A-1 order dated 25th August 2005 and the respondents were directed to allow the applicant to work in the Construction Office till his repatriation is carried out strictly in accordance with the guidelines on the subject.

(c) OA No. 518/07: This is an OA wherein the applicant had challenged the order of repatriation dated 07-08-2007. This again was quashed and the respondents were directed not to disturb the applicant, vide order dated 29th October 2007 at Annexure A-2.

4. The applicant continued to function at Ernakulam in the Construction wing and his salary bill for the month of April, 2008 indicated his basic pay at Rs 7,550/- plus allowances. Annexure A-3 refers.

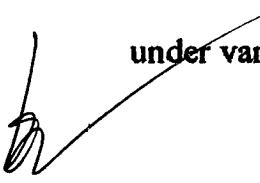
5. Notwithstanding the above, when the respondents had issued orders for continuance of ad hoc promotion to the grade of Senior Stenographer for the period from 01-07-2007 to 30-06-2008, vide Annexure A-6 order dated 06-05-2008, the name of the applicant was conspicuously missing. Of course, by the time the above list was published, the applicant already superannuated. The applicant had vide his letter dated 7th May 2008 requested the General Manager for release of his pension and other retirement benefits, vide Annexure A-7. Yet another communication to the Chief Engineer Construction, Ernakulam (where the applicant was serving till his superannuation) was written by him vide Annexure A-8 ^{letter, ↗} order dated 12th May 2008 requesting for the indulgence of the authority in settling his terminal benefits. Not securing any response, much less a favourable response, the applicant raised the level and now he had requested the Chairman, Railway Board, vide Annexure A-9 letter dated 3rd June 2008. Meanwhile, the Dy. Chief Engineer/Construction,

Ernakulam requested the Dy. CPO, Construction, Madras to arrange to communicate sanction of ad hoc promotion of the applicant and two others as their names were already recommended for such continuance in the posts respectively held by them. Annexure A-10 letter dated 8th May 2008 refers. This communication was followed by another comprehensive letter dated 13th May 2008, vide Annexure A-11, wherein it was confirmed that the applicant continued to function as senior stenographer till 30th April, 2008 and in addition he had shouldered additional responsibilities as Ferro Printer as well. Meanwhile, as regards settlement of pension and other terminal benefits, the Chief Administrative Officer, Construction Wing, Egmore had, vide communication dated 13th May 2008, requested the Chief Engineer, Construction Wing, Ernakulam, to 'arrange to pay the cash Equivalent of Leave salary (CELS) in favour of Sri K. Chandran, Retd. Steno immediately based on his substantive pay.' He was also asked to pay the CGIS to the applicant. Annexure A-12 refers.

6. The claim of the applicant is that his status as senior stenographer in the grade of Rs 5000 -8000 should be kept intact till his superannuation and his terminal benefits worked out and paid accordingly.

7. Respondents have contested the O.A. According to them, the applicant had already been paid a sum of approximately Rs 7 lakhs towards the terminal benefits under various heads, in addition to the monthly pension of Rs 4,239/-.

As regards



the claim as regular senior stenographer in the grade of Rs 5000 – 8000, the respondents have stated that in pursuance of the order dated 13th June 2006 in OA No. 196/2005, suitability test was conducted on 07-09-2006 but the applicant did not qualify in the said test, vide Annexure R-2. In view of the same, the applicant's ad hoc promotion was discontinued w.e.f. 01-07-2007. Vide Annexure R-3 order dated 15-06-2007, the applicant's ad hoc promotion as Senior Stenographer was only upto 30-06-2007 wherein it has been clearly mentioned that the ad hoc promotion would be deemed to have terminated on the expiry of the above ad hoc date.

8. The applicant has filed his rejoinder, wherein he has reflected the extent of amount of terminal benefits received, which is less by approximately Rs 50,000/- than the amount spelt out in the counter. Further, he has submitted that the respondents had reverted the applicant from an unknown retrospective date without any intimation. It has also been contended that the suitability test conducted was for regular promotion as senior stenographer in the open line, while no suitability test was conducted for continuing as ad hoc senior stenographer. As such, combining the result of suitability test for regular promotion in the open line and continuance on ad hoc basis as senior stenographer in the construction wing is not warranted. Admittedly, till the last day of his service, the applicant did function as senior stenographer. The applicant has also stated that whereas he is entitled to two sets of first class retirement pass, treating him as a stenographer in the scale of

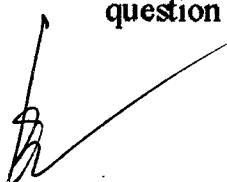
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Rs 4000 – 6000, the respondents have afforded only second class pass, vide Annexure A-16 order dated 03-09-2008.

9. In their additional reply, the respondents have stated that the applicant cannot claim his ad hoc promotion as a matter of right. It is not only the applicant, but certain others were also not given extension of the ad hoc promotion, due to eligibility conditions. The ad hoc promotion of the applicant did not extend beyond 30-06-2007.

10. Counsel for the applicant argued that the ground reality is that the respondents have extracted work of higher responsibility (senior stenographer) from the applicant till the date of his superannuation. As such, their contention that there was an automatic termination of ad hoc promotion as on 30th June 2007 has little meaning. Again, the applicant's non-qualifying in the suitability test for regular promotion in the open line has nothing to do with the ad hoc promotion in the Construction Wing.

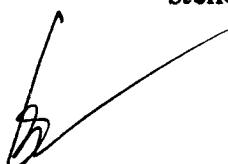
11. Counsel for the respondent submitted that the applicant was clearly informed about the duration of his earlier ad hoc promotion. His ad hoc promotion could not be continued as he had failed in the suitability test. Hence, there is no question of his continuing as Senior Stenographer beyond 30th June 2007 and his

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entitlement to terminal benefits including free post retirement passes, would be as for his substantive pay drawn at the time of superannuation.

12. Arguments were heard and documents perused. The admitted facts include that the applicant was promoted as senior stenographer in August 1995 and was posted to the Construction Wing. Thus, his posting in the construction wing being in his capacity as Senior Stenographer since 1995, if the ad hoc promotion was to be withdrawn, he should have been got repatriated to the open line as he cannot have been reverted to that grade in the Construction Wing in which he never served there. He continued till his superannuation in the construction wing itself. Similarly, it has been admitted by the parties that notwithstanding the fact that after 30th June 2007 the applicant's ad hoc promotion was not extended, the Construction Wing did extract work from the applicant only as senior stenographer. In fact, the correspondence goes to show that the applicant did en-shoulder additional responsibilities as Ferro printer as well. Annexure A 11 refers. With the above situation, alternative possibilities arise:-

- (a) The applicant could be deemed to have been reverted to the open line after the last ad hoc promotion order upto 30th June 2007; or
- (b) The applicant is allowed to continue upto 30th April, 2008 in the construction wing and work extracted from him was as of a senior stenographer.

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13. If the case falls under (a) above, then, the case has to be dealt with in a particular fashion and if the case falls under (b) above, then the case would have to be treated in a different fashion. The same are discussed as hereunder:-

(i) Proposition (a): If the applicant is deemed to have been repatriated from Construction wing to the Open line wing then his position would be that he was working in the higher scale of Rs 5000 – 8000 till he continued in the construction wing and had to be brought back to open line where his scale of pay was Rs 4000 – 6000. If so, the ratio in the decision of the Apex Court in the case of *Bhadei Rai v. Union of India, (2005) 11 SCC 298* would spring into play and the same is as under:-

"3. The appellant started his service in the Railways on daily rate as Khalasi in the year 1979. He was given a temporary status on that post with effect from 1-1-1982. According to the Railways, he was granted promotion on 31-3-1985 purely on ad hoc basis to the post of Rigger in the pay scale of Rs. 121-1500. 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.

4. Aggrieved by his repatriation to a lower post he filed a petition in the Central Administrative Tribunal and claimed relief of his regularisation in Group 'C' post in which he had been made to continuously work for a period of twenty years.

5. 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 regularised 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.

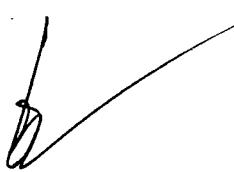
6. The appellant challenged the order of the Tribunal by writ petition under Article 227 of the Constitution in the High Court of Delhi at New Delhi. The High Court by the impugned common order passed in cases of several other railway employees upheld the order of the Tribunal and dismissed the writ petition. The appellant, therefore, has approached this Court in appeal by seeking special leave.

7. Learned counsel appearing for the appellant contends that the appellant having been made to work on the higher post in Group 'C' for a long period of twenty years with higher scale of pay should not be reverted to Group 'D' post with lower scale of pay. It is submitted that the appellant's claim for regularisation in Group 'D' post was justified and relief prayed for by him ought to have been granted by the Central Administrative Tribunal.

8. The learned Standing Counsel appearing for the Railways supported the order of the Tribunal contending inter alia that the appellant worked on a higher post of Rigger under an order of ad hoc promotion which created no legal right in his favour to claim regular promotion or regularisation, to the detriment of claims of other employees in the Group 'C' post.

9. 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 India¹. 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 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. 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 utilise 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 Yadav 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 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'. (Emphasis supplied)*

12. *The appeal, thus, succeeds to the extent indicated above. In the circumstances, the parties shall bear their own costs.*

(ii) **Proposition (b):** If proposition (b) above is applied, then the case has to follow the ratio as in the following decisions of the Apex Court:-

(a) *Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291*,
wherein the Apex Court has held as under:-

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs. 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

(b) *Jeet Singh v. M.C.D.*, 1986 Supp SCC 560 : In this case, the Apex Court has held as under:-

"We understand that the services of the petitioners have been regularised recently. Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of



their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly."

(c) *Jaswant Singh v. Punjab Poultry Field Staff Assn., (2002) 1 SCC*

261: Here again, the Apex Court has held as under:-

".. Therefore, while the appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

12. We accordingly allow the appeal in part. While upholding the order of the High Court, setting aside the order of the appellant's promotion, we direct the respondent Authorities to pay the appellant for the period he rendered service as a Chick Sexer at the scales of pay together with all allowances to which Chick Sexers were entitled at the relevant time. However, this relief is limited to the period commencing from three years prior to the filing of the suit by the appellant up to the time he continued to discharge duties as a Chick Sexer. All dues in terms of this order must be paid to the appellant within a period of six months from the date of this judgment after adjustment of payments already made to the appellant by the respondent Authorities. The appeal is disposed of accordingly without any order as to costs."

14. Thus, under either of the proposition, the applicant would become entitled to higher pay and allowance as of Senior Stenographer till the date of his superannuation.

15. In view of the above, the O.A. is allowed to the extent that the respondents shall maintain the pay scale of the applicant at Rs 5000 – 8000 (pre-revised) till

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the date of his superannuation or protect his pay ~~in~~ drawn ⁱⁿ the above scale and fix his pension in accordance with the rules of pension. Time calendared for compliance of this order is two months from the date of communication of this order.

16. Under the circumstances, there shall be no orders as to costs.

(Dated, the 1st April, 2009)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.