

RESERVED ON 05.03.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **23rd** day of **MARCH 2018**.

PRESENT:

HON'BLE DR. MURTAZA ALI, MEMBER- J

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 1502 of 2010

Devendra Prasad Rai, Son of Late Narendra Prasad Rai, R/o House No. 750J Sarvodaya Nagar, Bicchiya Hanuman Mandir, District Gorakhpur and presently working as Junior Clerk in the office of Chief Administrative Officer (Construction) North East Railway, Gorakhpur.

.....Applicant.

V E R S U S

1. Union of India, through the Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi
 2. The General Manager, North Eastern Railway, Gorakhpur.
 3. The Chief Administrative Officer (Construction), North Eastern Railway, Gorakhpur.
 4. The Senior Personnel Officer, North Eastern Railway, Gorakhpur
-Respondents

Advocate for applicant : Shri A.D. Singh

Advocate for the respondents : Shri P Mathur

O R D E R

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

By way of the present O.A, the applicant has prayed for following

reliefs: -

- (i) *To issue a suitable order or direction in the nature of certiorari quashing the impugned orders dated 07.01.2010 and 22.12.1995 passed by respondent no. 3 and 4 shown as Annexure No. A-1 and A-2 to this O.A. in Compilation No. I.*
- (ii) *To issue a order or direction by way of mandamus directing the respondents to regularize the services of the applicant on the post of Clerk in the cadre of Class III Group (C) posts;*
- (iii) *To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

(iv) award the cost of the application in favour of the applicant from the respondents."

2. The brief facts of the case as stated in the O.A. are that the applicant was initially appointed as Khalasi on casual basis and he joined his duties on 30.10.1971 in the office of the Chief Engineer (Construction) Gorakhpur (in short Chief Engineer). The applicant was regularized on the post of Khalasi (Group 'D') on 16.11.1981 by the Chief Engineer. The applicant was given adhoc promotion on the post of junior clerk vide order dated 12.11.1987 (Annexure No. A-3 to the O.A.) passed by the Chief Engineer and he joined and worked on the said post for a long period of time.

3. It is stated in the O.A. that the Railway Board issued a letter dated 31.12.1991 (Annexure No. A-4 to the O.A.) providing for the regularization of all employees working on adhoc basis either by means of direct appointment or by means of promotion. In pursuance of the letter dated 31.12.1991, the Chief Administrative Officer vide letter dated 28.07.1992 (Annexure No. A-5 to the O.A.) furnished the list of all the adhoc employees as available on that date whose services were to be regularized on Class III and IV post. The said list included the applicant's name. Thereafter, the Chief Administrative Office (Construction) wrote a letter dated 13.11.1992 (Annexure No. A-6 to the O.A.) to the Secretary (Establishment) Railway Board, informing the list of all the eligible candidates claiming regularization on the respective posts in Group 'C' and Group 'D'. Thereafter, the Chief Personnel Officer, North Eastern Railway, Gorakhpur sent a letter dated 23.09.1992 (Annexure No. A-7 to the O.A.) informing the Railway Board total number of employees for regularization of the services of the employees, either appointed on adhoc

basis or given promotion on adhoc basis is 116 including the name of the applicant. The Executive Director (Establishment) Railway Board, New Delhi wrote a letter dated 15.05.1995 (Annexure No. A-11 to the O.A) addressed to the Chief Personnel Officer (Admn,) North Eastern Railway Gorakhpur asking for clear cut information regarding the employees, whose services were to be regularized. He also sought explanation as to how the number of casual employee which was shown to be 116 vide letter dated 23.09.1993 had gone upto 150 as intimated by letter date dated 10.06.1994.

4. The Chief Administrative Officer wrote a letter dated 28.11.1995 (Annexure No. A-13 to the O.A.) to the General Manager (Personnel), North Eastern Railway Gorakhpur stating that there were about 61 adhoc clerks including the applicant's name. Thereafter, the then Senior Personnel Officer (respondent no. 4) passed the impugned order dated 22.12.1995 (Annexure No. A-2 to the O.A.) where by the names of certain categories of persons who were working on Group 'C' post on adhoc basis on promotion were directed to be deleted and the name of the applicant along with similarly situated employees were rejected on the ground that their services have already been regularized already in the Group 'D' posts. Then the Deputy Chief Personnel Officer (Construction) wrote a letter dated 10.01.1996 to the Senior Personnel Officer bringing to his notice that the order dated 22.12.1995 was wrongly passed in view of the facts and circumstances contained in the letter dated 10.1.1996 (Annexure No. A-14 to the O.A.). Thereafter, the Deputy Chief Personnel Officer (Welfare), NER, Gorakhpur wrote a letter dated 12.06.1996 to the Secretary in response to the letter dated 15.05.1995 issued by the Railway Board by which 63 persons in different placement in the cadre of Group 'C' post

were to be promoted and regularized on Group 'C' post. The name of the applicant was excluded from the said list.

5. Being aggrieved by the letter dated 12.06.1996, the applicant along with some other employees filed a representation dated 06.07.1996 (Annexure No. A-16 to the O.A.) before the General Manager (Personnel) North Easter Railway, Gorakhpur. When no action was taken on the representation dated 06.07.1996 filed by the applicant, the applicant filed various representations dated 20.08.1996 (Annexure No. A-18 to the O.A.), 05.12.1996 (Annexure No. A-21 to the O.A.). Finally, the applicant vide order letter dated 24/30.04.1997 (Annexure No. A-24) issued by the Senior Personnel Officer (Construction) came to know that vide order dated 22.12.1995, the names of 38 persons whose services had already been regularized in Group 'D' posts and of 21 retrenched employees were excluded from the list of candidates to be regularized in the cadre of Group 'C' posts. It was further stated in the aforesaid letter that the claim of the applicant cannot be accepted in as much as under the open line employment, promotions are made from Group 'D' to Group 'C' against sanctioned posts. In view of the fact that there are no substantive vacancies in the cadre of Group 'C' post therefore, the names of some employees including that of the applicant were deleted in the order dated 22.12.1995, and they could be regularized in the cadre of Class III Group 'C' post..

6. Thereafter, the applicant along with 26 other employees filed O.A No. 1428 of 1997 before this Tribunal seeking regularization in Group 'C' category and this Tribunal vide order dated 27.05.2009 (Annexure No. A-30 to the O.A.) directed the applicants to individually to file a

comprehensive parawise representation before respondent no. 3 who was directed to decide the representation of the applicant within three months. In compliance of the aforesaid order, the applicant made a comprehensive representation dated 22.07.2009 and 01.04.2010 before respondent no. 3 for regularizing the services of the applicant in Group 'C' category and vide order dated 07.01.2010 (Annexure No. A-1 to the O.A.) the respondent no.3 rejected the representation of the applicant. The applicant has filed the present O.A. challenging the impugned orders dated 07.01.2010 (Annexure A-1 to the O.A.) and 22.12.1995 (Annexure A-2 to the O.A.) mainly on the ground that the applicant had put in substantial number of year working on the post of Junior Clerk on adhoc basis.

7. The respondents have filed counter affidavit by which it has been stated that casual labour who has acquired temporary status will not however, be brought on to the permanent or regular employment or treated as in regular employment on Railways until and unless they are selected through regular selection board for Group-D post in the manner laid down from time to time. This is mandatory provision as laid down in para no. 2005 of Indian Railway Establishment Manual Vol. II. Further, Hon'ble Supreme Court in case of Indra Pal Yadav's case held that absorption of such casual labour be done on the basis of longest service in accordance with such list so prepared. Temporary status casual labour though having longest service in a particular category or post should be called for regular absorption and for screening in initial category i.e. Khalasi, Gangman (Group-D post) by the screening committee constituted for absorption of casual labour by the respective division as per his turn in the so maintained seniority list.

8. It has also been stated by the respondents that the casual labourers granted temporary status under the can get benefits like a temporary employee, but after grant of such status, they do not become temporary Railway Servant as they do not hold civil post. As per Clause (I) of para 1501 of Chapter XV of Indian Railway Establishment Manual Vol I, a temporary Railway Servant means a Railway Servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "Casual Labour" including casual labourer with temporary status or or "part time" employee or an apprentice. In the term of Rule 2007 (i) of Indian Railway Establishment Manual Vol. II, a casual labour should not be appointed in skilled category without a trade test. The said rule further provides that a panel should be maintained by the open line to cater to the needs of the casual labour in semi-skilled and skilled category, where no panel of suitable candidate is available, engagement in semi-skilled or skilled category may be done without trade test, but it should be ensured that their suitability for semi-skilled or skilled grade is adjudged well in time before they attained temporary status, Hence, a casual labour can be utilized for higher category only if no regular employee is available for that category provided that said casual labour passes the trade test for the said category.

9. The issue of delay has also been raised in the counter reply. It has been submitted that the applicant has no legal right to challenge the order dated 22.12.1995 and 07.01.2010, before this Tribunal as the previous claim filed by the applicant by way of O.A. No. 1482 of 1997 was itself time barred as the applicant has ignored the contents of letter dated 22.12.1995 and no order was passed for condoning the delay. Now, at this belated stage the applicant cannot be permitted to challenge the orders

passed in pursuance of the directions of this Tribunal. The cause of action, if any had arisen on 12.11.1987, when the applicant was considered for granting adhoc promotion to the post of Junior Clerk, whereas the present O.A. has been filed in the year 2010 on the basis of the order dated 07.01.2010 and 22.12.1995 for which neither any liberty was given nor any delay has been condoned by the Tribunal in the earlier instance.

10. It also been submitted that the impugned order dated 07.01.2010 passed by Chief Administrative Office in pursuance of the order dated 27.05.2009 passed by this Tribunal in O.A. No. 1428 of 1997, passed in respect of the representation of the applicant dated 22.07.2009. The representation was duly considered by the respondent while dismissing the claim of the applicant and other persons on the basis of the relevant instructions issued by Railway Board from time to time which have been confirmed by the Full Benches of this Tribunal and ultimately the Supreme Court.

11. It has been stated that construction organization is a work charged organization and depends upon the periodical sanction for execution of work within time bound manner. The staff working for the organization holds their lien within the division and all regular promotions and regularization and further advancement is being done by their parent department on regular basis. Any order extended benefit of adhoc promotion will not bestow any legal right for claiming regularization of the services of the staff working on the strength of the construction organization. The applicant has already been regularized against Group-D post on 16.11.1981, in the Engineering Department. The necessary

benefits of MACP has also been extended on completion of requisite service after 10 years and 20 years, in pursuance of the instruction issued by the Railway Board on completion of his regular service.

12. It has also been submitted by the respondents that the applicant has misconstrued the instruction dated 31.12.1991 issued by the Railway Board in reference to the fresh faces of casual labour. It has been specifically been ordered that the Railway administration shall refrain from engaging any casual staff in group-C category other than skilled artisan. In pursuance of the said instructions, the necessary steps were taken in respect of artisan staff working at the strength of construction organization, against 40% construction reserved post. Hence, the case of the applicant is entirely different from the cases tracer, chaser, store issuer and work mistri, who were working as casual labour with the construction organization.

13. Learned counsel for the applicant has filed rejoinder affidavit basically reiterating the facts stated in the O.A.

14. Rejoinder has been filed by the applicant, where he has relied upon the judgment dated 06.09.1990 of Hon.ble Supreme Court in a miscellaneous petition in the case of ***Ram Kumar & Others vs. Union of India & Ors*** (Annexure RA-I to the Rejoinder) to justify his claim for being regularized as junior clerk as he was working in the post since 12.11.1987 on adhoc basis. Following other judgments have also been cited in the Rejoinder:-

- (i) Order dated 10.09.2003 (Annexure No. RA-2) passed by this Tribunal in O.A. No. 1026 of 1995 along with O.A. No. 999 of

1995 wherein this Tribunal had directed for regularization of the adhoc clerk.

- (ii) Order dated 09.11.2000 (Annexure No. RA-3) passed by this Tribunal in O.A. no. 158 of 1992 wherein this Tribunal directed the respondents for regularization of applicant in Group-C post.
- (iii) Order dated 23.01.2003 (Annexure No. RA-6) passed by this Tribunal in O.A. No. 818 of 1998 wherein this Tribunal directed the General Manager to regularize the applicant on Group – C post.

15. Learned counsel for the applicant was heard. He submitted that this is the second round of litigation. Earlier, the applicant along with others, had filed OA No. 1428/1997 which was disposed of vide order dated 27.05.2009 of this Tribunal (Annexure A-30) directing the applicant to file a comprehensive representation to the respondents, who were directed to dispose of the same. Accordingly, the applicant filed a representation before the authorities, which was rejected vide the order dated 7.1.2010 (Annexure A-1). The claim of the applicant was earlier rejected by deleting his name for regularization in Group-C post vide order dated 22.12.1995 (Annexure A-2). Both the orders are impugned in this OA.

16. Learned counsel for the applicant broadly relied on the following grounds to justify his claim:-

- (i) Applicant was regularized in Group-D post although he was working in Group-C post in Construction department for a long time. His claim for being regularized in Group-C post was ignored, although it was allowed in case of other employees who are his juniors in Construction department.

(ii) In a number of cases as cited in the Rejoinder, similar benefits as being claimed by the applicant have already been extended by the respondents. The applicant, being eligible for regularization in Group-D post, as would be seen from the letters cited in the OA, should also be considered for similar benefit, which have been extended to some of his juniors.

(iii) The applicant's pensionary benefits after retirement would be fixed as per Group-D post, although he had more than 23 years of service as junior clerk before retirement. He was also not allowed MACP and other service benefits due to non-regularization in Group-C post.

17. Learned counsel for the respondents reiterated the contentions in the Counter reply and submitted that the claim of the applicant is hit by limitation, since the cause of action arose as per the letter dated 22.12.1995, when his case for regularization in Group-C post was not considered as he was already regularized in Group-D post. He further stated that the reasons for rejecting the claim of the applicant have been explained in the impugned order dated 7.1.2010 (Annexure A-1) as per the direction of this Tribunal. He further stated that the cases cited by the applicant, like the case of Syed Azhar Imam are different from the applicant, as would be seen from the copy of the order enclosed at Annexure RA-6 of the Rejoinder filed by the applicant.

18. We have carefully considered the submissions and the pleadings of the parties. Applicant's case is based mainly on the grounds like (i) the Railway Board letter dated 31.12.91 (Annexure A-4), (ii) inclusion of his name in a number of internal correspondences among railway authorities, (iii) the decision of the authorities to regularize a number of employees in

Group-C post, in spite of allegedly being juniors to the applicant and (iv) the judgments in cases cited in the Rejoinder.

19. But before we go on to examine the matter, the issue of delay as raised by the respondents will be decided first. The respondents have mentioned that the applicant should have challenged the order dated 22.12.1995 within time stipulated under law and the present OA is barred by limitation. The applicant with other employees had filed the OA 1428/1997, which directed the respondents to consider the representation of the applicant. It was clear from the order dated 27.05.2009 (Annexure A-30), this Tribunal did not adjudicate merits of the claim including the question of delay. In response to the direction of this order, the respondent No.3 has passed the impugned order dated 7.1.2010 (Annexure A-1) rejecting the representation of the applicant for different reasons, which do not include the reason of delay in raising the claim. In other words, the respondents have overlooked the issue of delay while considering the representation of the applicant. Hence, passing of the impugned order dated 7.1.2010 gives rise to fresh cause of action, which has been challenged in this OA within the limitation period. Hence, the issue of delay in filing the original claim as raised by the respondents cannot be accepted and the OA is considered to be within limitation taking into account the impugned order dated 7.1.2010 passed by the respondent No.3.

20. Coming to the grounds taken in para 4 of the OA, the Railway Board letter dated 31.12.91, cited by the applicant in the OA states as under:-

“3. It, is accordingly, advised that Railway Administration shall refrain from engaging any casual staff in group ‘C’ categories (other than skilled artisans) with immediate effect. Suitable instructions in this regard may be issued to all concerned, directing that no Unit

shall resort to casual engagement against Group 'C' categories (other than in skilled artisan cadre). A very serious view is being taken by the Board in all such cases of irregularity and the staff responsibility is being insisted upon.

4. Details of casual engagements already made in Group 'C' in category (other than in skilled artisan cadre) interalia indicating the name of the individual engaged, date of engagement, date of birth, educational qualification, whether already surplus or the likely date of surplus, the circumstances under which the person concerned was engaged may also be collected for the Railway as a whole (including construction departments) on priority basis and sent to Railway Board within one month of the receipt of this letter i.e., latest by 31st Jan, 1992."

From above, it is seen that engagement of casual employees in Group-C posts (except for skilled artisans) was prohibited and a list of such persons (other than skilled artisan cadre) engaged on casual basis in Group-C post was called for from the field offices. The said letter does not specify any rule relating to regularization of casual employees in Group-C posts. In pursuance to this letter, the respondents have prepared different lists as cited in the OA in Annexure A-5, A-7 and A-8 etc. where the applicant's name was included for such regularization. But subsequently, vide the impugned letter dated 22.12.1995 (Annexure A-2), the name of the applicant and others have been taken out from the list as they were already regularized against Group-C posts. Hence, inclusion of the applicant's name in the letters as cited in the O.A. cannot justify the claim of regularization.

21. It is a fact that the respondents have decided to regularize some employees directly in Group-C posts as would be clear from the copy of the order dated 04.09.1995 (Annexure A-28) and orders enclosed at Annexure RA-5, RA-11, RA-14, RA-15, RA-17, RA-18, RA-19, RA-20 etc. This was done in spite of the Railway Board letter dated 31.12.91, which did not say anything about regularization in Group-C. On the other hand the case of the applicant was not considered. The respondents have not

furnished the rules/instructions of the Railway Board under which regularization of employees directly in Group-C posts was done in a number of cases as cited by the applicant. The respondents have simply stated that their cases are different from the applicant. All these decisions appear to be incorrect from the materials available before us. But such apparently wrong decisions would not justify claim of the applicant in view of the principle that there is no protection of the Article 14 of the Constitution for such matters as per the decision of ***Hon'ble Apex Court in the case of State of Bihar Vs Kameshwar Prasad (2000) 9 SCC 94.***

Wherein the Hon'ble Supreme Court observed as under:-

"..The appeal filed against this judgment was dismissed on the ground of delay and without consideration of the pleas raised on facts. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: "Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors. [1997 (1) SCC 35] this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: "Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was

clearly in error in directing the appellants to allot the land to the respondents."

Hence, the applicant cannot be allowed similar benefit as wrongly given to some other employees.

22. The fact remains that there is no rule or policy decision cited by the applicant to justify his claim for regularization in Group-C post as junior clerk in Construction wing of the Railways for a long period of time. Hon'ble Apex Court in the case of Ram Kumar & Ors. vs. Union of India & Ors. referred by the applicant as per the copy of judgment dated 6.9.1990 in Annexure RA-1 of the Rejoinder, is the order on the Misc. Petition No. 31378 of 1988 in the original case has observed as under:-

".....They seem to be skilled workers at present working in Class III posts. Since regularization on the basis of our orders have to be only in Class IV posts, Mr. Sibal, on instructions states that the arrangement in respect of them is that though they are regularized in Class IV posts, they would carry the present pay they are drawing in Class III posts by protection until they are regularized in Class III posts following the Rules and instructions....."

It is clear from above, that the principle decided in Ram Kumar (supra) is regularization of casual labour in Class IV posts, not in Class III posts. It is noted that a similar case was decided by Hon'ble Allahabad High Court in **Writ A- No. 19656 of 2005 in the case of Anant Lal And Others vs. State Of Up Thru' Secy G.M. Personnel N.E. Railway & Others**, vide judgment dated 14.09.2016, where it was held as under:-

"2. Petitioners have filed this writ petition under Article 226 of the Constitution of India challenging order dated 31.12.1997 passed by Chief Administrative Officer (Construction), North Eastern Railway, Gorakhpur and against judgment and order dated 7.12.2004 whereby Original Application No. 1421 of 1998 filed by petitioners has been dismissed.

.....
6. Despite repeated query, learned counsel for petitioners could not show any provision or rule under which a person could have been regularized in Group-C posts in Railway where all posts are liable to be filled in by promotion. For this purpose Tribunal has

relied on a Full Bench Decision in *Ram Kumar and others Vs. Union of India and others in Writ Petition (Civil) No. 15863 of 1984* wherein it was held that a Group-C post being a promotional post, a person even directly engaged on casual basis, cannot be regularized on such post but would be liable to be regularized in feeder cadre i.e against posts in Group D, as Group C post is an only promotional post and hence regularization of directly engaged persons is not permissible. No law otherwise has been shown to us so as to entitle petitioners for being regularized on a Group-C post directly.

7. Learned counsel for petitioners sought to rely on an order of Supreme Court dated 6.9.1990, passed in Civil Misc. Petition No. 31378 of 1988, *Ram Kumar and others Vs. Union of India and others*, (1987) SCALE (2) 1192, but from a perusal thereof, we find that statement was made by counsel for Railways in that matter, relying on Board's instructions dated 20th January, 1985, that those people who were working for more than five years may be regularized in Class III post and on that statement, miscellaneous application was disposed of.

8..... Paras 3, 4 and 5 of the judgment in *General Manager Northern Railway and others Vs. Jageshwar (supra)* are reproduced as under :-

"3. *Motilal (supra)* has no application. In that case, respondents were directly appointed as casual mates in Class III, though the post of made was an exclusive promotion post. They were regularized in a lower post. The Tribunal directed that they should be regularized as 'mates'. This Court held that respondents were not entitled to be regularized in Group III posts. But having regard to their long service of 22 to 25 years, this Court in exercise of powers under Article 142 left their regularization as mates undisturbed making it clear that the direction should not be treated as precedent.

4. This Court in *Motilal case (supra)* did not lay down any proposition that when an employee is absorbed in a different organization, his previous pay should be protected. Absorption in Railways was not in pursuance of any legal right. To avoid hardship to the employees of the construction organization on humanitarian grounds, the Railways chose to consider the surplus labour of that organization for absorption after screening them. When being so screened and absorbed, an employee cannot counted that he should be absorbed in a post equivalent to a post he was holding in the previous organization nor could the Tribunal or High Court direct that his pay should be protected.

5. In view of the above, the appeal is allowed, the orders of the High Court and Tribunal are set aside and as a consequence the original application is dismissed."

9. In the present case, the matter is covered by Railway Board's Circular dated 3.9.1996 which permits regularization only in Group D posts. Even otherwise when a post is liable to be filled

in by way of promotion, persons engaged directly on casual basis can neither claim regularization nor can be so regularized against such posts which are to be filled in by promotion.

10. We, therefore, find no infirmity or illegality in the approach of Tribunal and finding recorded by it cannot be said to be perverse or illegal so as to warrant interference by this Court in writ jurisdiction under Article 226 of the Constitution of India."

Thus, Hon'ble High Court did not accept similar claim of an employee of Construction department of Railways for regularization in Group-C post. The finding was also reiterated by Hon'ble Allahabad High Court in the case of ***Union of India & another vs. Salim Khan in Writ-A-No. 18170 of 2002*** against the order dated 13.10.98 in OA No. 229 of 1998 by this Bench, which directed the Railway authorities for protection of pay of Salim Khan in Group-C while being regularized in Group-D. Hon'ble Allahabad High Court held in this Writ as under:-

"4. When confronted, Sri Ali Hasan, learned counsel appearing for respondent, could not dispute this fact and also could not show anything from judgment in Ram Kumar (supra) that said judgment was applicable in the case in hand. In these facts and circumstances, direction of Tribunal to petitioners to protect pay of respondent in pay scale of Group-C till he gets promotion in Group-C cannot be sustained and to this extent impugned judgment dated 13.10.1998 is hereby set aside.

5. However, we are informed that during pendency of this writ petition respondent-Salim Khan having already confirmed in Group-D, has also retired in 2013.

6. In these facts and circumstances and looking to peculiar facts, we hold that whatever amount which has already been paid to respondent-Salim Khan, since it was not on account of any fraud or misrepresentation on his part, the same shall not be recovered from him but for the purpose of pension, petitioners shall be at liberty to re-compute amount and give effect to such re-computation, if any, prospectively, i.e., from the date such re-computation is made."

23. Among other judgments cited by in the Rejoinder, learned counsel for the applicant, at the time of hearing this case, had stressed the judgment of this Tribunal in the case of Syed Azhar Imam vs. Union of India & Others (copy at Annexure RA-6), which was implemented by the Railways. It is seen from the order at Annexure RA-6 that Syed Azhar

Imam was promoted to semi-skilled grade on 16.4.1981 and then to skilled grade on 5.6.1986 and to the post of Senior Chaser w.e.f 28.8.1999. Hence, he was a highly skilled artisan and belonged to different category compared to the applicant. In this case, Syed Azhar Imam was allowed to give a representation to Railways for consideration and such representation was considered by the respondents. In case of the applicant, the representation as per similar order of the Tribunal in OA No. 1428 of 1997 has been rejected by the Railways vide order dated 7.1.2010 (Annexure A-1)., where it is stated that in case of Syed Azhar Imam's promotion and regularization, the matter is under inquiry and final decision has been deferred. Hence, the cited case of this Tribunal will not be helpful for the applicant.

24. We find that in the impugned order dated 7.1.2010, the reasons furnished for considering the cases of some other employees where regularization in Group-C was allowed by respondents, are not convincing at all. It would appear that such regularization has been done in many cases as cited by the applicant and as discussed in some of the cases in the order dated 7.1.2010. There appears to be a possibility of wrong doing at some level, which is corroborated from the inquiry that was initiated in the case of Syed Azhar Imam as stated in para 5 of the order dated 7.1.2010. It is obvious that in the matter of casual labour recruitment and regularization, there appears to be gaps in the rules or instructions of the respondents which are being exploited by some persons/officials as appears to be the case in this O.A. Before parting with this case, we would like to strongly suggest to the respondent No. 1 and respondent No. 2 to review the entire matter of regularization as brought out in this case to see if there has been any arbitrariness and/or violation of the rules in any decision regarding regularization of some of the construction wing

employees directly in Group-C posts, as cited by the applicant in this O.A. to take necessary corrective action as would be deemed appropriate.

25. As would be evident from the discussions above, we do not find adequate justifications to consider the reliefs as prayed for by the applicant in the O.A. Accordingly, the O.A. is dismissed with the observations in paragraph 23 of this order. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Arun...