

(14)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 461/2003

New Delhi, this the 12th day of September, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

**Man Mohan Nagi,
S/o Shri Bhag Ramji, aged about 39 years,
Working under the control of
Chief Administrative Officer (Construction),
Head Quarter Office, Kashmiri Gate,
Delhi**

...Applicant

(By Advocate:Shri K.K. Patel)

Versus

Union of India through:

1. **The General Manager,
Northern Railway, Baroda House,
New Delhi – 110001**
2. **Chief Administrative Officer (Construction),
Northern Railway,
Head Quarter Office: Kashmiri Gate,
Delhi – 110006**
3. **Divisional Railway Manager,
Northern Railway, Ambala Division,
Ambala**
4. **Deputy Chief Engineer (Construction-II),
Northern Railway,
Chandigarh**

...Respondents

(By Advocate:Shri R.L. Dhawan)

O R D E R (Oral)

By Mukesh Kumar Gupta, Member (J):

Though vide present OA applicant seeks quashment of communication dated 06.02.2003, rejecting his claim for regularization as MCC or Clerk-cum-Typist & issuing a direction to respondents to regularize him in the said post from the respective dates his juniors

were regularized with all consequential benefits, Shri K.K. Patel, learned counsel, at the outset, made a statement that he would be satisfied if the relief as granted in **Badri Prasad & Ors. v. Union of India & Ors.**, (2005) 11 SCC 304, granting protection of pay even after repatriation to substantive post and giving due weightage to the period spent by him on ad hoc basis in Group 'C' is allowed.

2. The facts as stated are that applicant joined Railways on 05.06.1979 as Khallasi and granted temporary status on 01.01.1984. He was put to work as ad hoc Material Checking Clerk (hereinafter referred as MCC) by Construction Organization w.e.f. 02.01.1993 and was given the benefit in grade of Rs.260-400/-, revised to Rs.950-1500/- w.e.f. 01.06.1985. He was screened by Construction Organization on 18.06.1997 and regularized in Group 'D' post with paper lien in Ambala Division.

3. His grievance had been that as he was granted temporary status w.e.f. 01.01.1984, he should have been regularized in Group 'D' post within two years in terms of Rule 179 of IREM Vol. I. Respondents, in view of the circulars dated 31.12.1990, 11.02.1991 and 13.02.1997 initiated selection for regularization of ad hoc MCCs. He made a representation dated 22.09.1999 for considering him & calling in the written test. Respondents neither replied nor allowed him to appear in the written test. Vide order dated 05.12.2000, Respondent No.1 once again initiated selection process for post of Clerk/MCC and directed 4 employees to appear in said test, including Shri S.P. Singh, who was similarly situated to him and, therefore, discriminatory treatment was accorded. Respondent No.3 had also initiated selection process for



post of Clerk-cum-Typist against 33.33% quota, but he was not considered to appear in the selection. Thus, he was neither regularized in Group 'C' post against promotee quota in his parent Division nor was considered for regularization. In the Permanent Negotiating Machinery meeting held on 06.07.1988, General Manager, Northern Railway had decided that all MCCs, who had been working on ad hoc basis for more than 3 years, should be regularized. As on the one hand, applicant, who had completed about 18 years on ad hoc basis as MCC was not regularized, and on the other hand, respondents issued show cause notice threatening him to repatriate to his parent Division in his substantive post, he preferred OA No. 724/2001 for regularization in the post of Clerk-cum-Typist. The said OA was disposed of vide order dated 19.09.2002 directing respondents to consider his claim & pass a speaking order. In compliance thereof, respondents passed a speaking order dated 06.02.2003 stating that regularization of ad hoc MCCs working in Construction Organization was covered by Head Office letter dated 02.09.1999, according to which only those ad hoc MCCs, who had completed 3 years of service upto 08.05.1987 were to be regularized on the basis of scrutiny of records & viva voce test and those who completed 3 years of service as on 31.12.1991 were permitted to be considered in the regular selection process for promotion from Group 'D' to the cadre of Clerk in Group 'C'. As he was screened and regularized in Group 'D' on 18.06.1997, he did not fall in the aforesaid criteria and, therefore, could not be regularized. No junior to him had been found to be given the benefit in this connection.

4. Reliance has been placed on various judgments of this Tribunal as well as other Courts, viz. **Union of India vs. Brij Mohan** dated **06.09.1999** in DB CWP No. **3140/1999**, **Kalu vs. Union of India & Ors** & other connected matters dated 20.12.2002 in D.B. Civil Writ Petition No.3235/2001 by the Hon'ble High Court of Rajasthan, Order dated 16.02.2002 in OA No. 539/2001 **Shri Rachpal Singh vs. Union of India & Ors** of this Bench, order dated 10.12.2002 in OA 561/2001 **Dharam Pal Singh & Ors vs. Union of India** & order dated 06.11.2001 in OA No.781/2001 **Sulakhan Singh vs. UOI & Ors.** As far as last order dated 06.11.2001 is concerned, it was pointed out that the Writ Petition filed by respondents i.e. C.W. No. 2618/2002 was dismissed by the Hon'ble High Court of Delhi vide order dated 26.04.2002. Lastly, reliance was placed on **Badri Prasad & Ors vs. UOI & Ors, 2005 (11) SCC 304**, which has been followed by this Bench vide order dated 05.05.2006 in OA No.2670/2000, **Atul Kumar vs. Union of India & Ors..**

5. Respondents, on the other hand, resisted the claim laid. Though the prayer for pay protection as granted by Hon'ble Supreme Court in **Badri Prasad** (supra) was not contested, but strong arguments were addressed on the remaining prayer i.e. consideration for promotion. The learned counsel forcefully contended that as applicant was screened as Khallasi in grade of Rs.2550-3200/- on 18.06.1997, there is no rule, which requires unscreened staff having temporary status be promoted to Group 'C' post. Reliance was placed on judgment dated 13.01.2003 in Writ Petition No.548 of 2000, **Inder Pal Yadav & Ors. etc.etc. vs. Union of India & Ors. etc. etc.** of the Hon'ble Supreme



Court to contend that applicant cannot be allowed to seek provisional appointment as permanent or restraining respondents from reverting him back to his substantive cadre. Provisional local promotion in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre. Reliance was also placed on communication dated 13.02.1997 to contend that as applicant had not rendered 3 years of service as ad hoc MCC upto 7/8.05.1987, he was not liable to be regularized. Shri R.L. Dhawan, learned counsel contended that for purpose of promotion, he would have to compete with other eligible candidates in accordance with rules for which reliance was placed on Paras 174 and 189 of IREM Vol. I. Learned counsel also drew our attention to Judgment dated 13.08.2002 passed by the Hon'ble Delhi High Court in Civil Writ Petition No.5057 of 2001, **Union of India vs. Badri Prasad & Ors**, to contend that the direction of this Tribunal in **Badri Prasad & Ors vs. UOI**, directing to regularize them in Class III posts as Clerks was set aside. Our attention was also drawn to order dated 06.03.2002 of this Bench in OA No. 583/2001, **Surinder Kumar vs. UOI & Ors.** to contend that he has no legal right for promotion and his repatriation order cannot be challenged, particularly in view of the findings rendered by the Full Bench of the Tribunal in **Ram Lubhaya & Ors. v. U.O.I** {2001 (1) ATJ 40}. Our attention was also drawn to PS No.11196/1996 dated 17.06.1996 to suggest that all Class IV staff "employed in the Office with 3 years service" were alone eligible for promotion to the post of Clerk-cum-Typist. As he was not posted "in Office", aforesaid Circular would not be applicable and what is applicable is para 174 read with para 189 of IREM Vol.I, according to

[Handwritten signature]

which the post in question is a selection post and one has to pass the trade test.

6. We heard learned counsel for parties and perused the pleadings carefully.

7. At the outset, we may note that reliance placed by respondents on the judgment rendered by Hon'ble Delhi High Court in **UOI vs. Badri Prasad** is not relevant for the simple reason that said judgment has been modified by the Hon'ble Supreme Court in **Badri Prasad vs. UOI** (supra). Similarly, reliance placed on **Surinder Kumar** (supra) is not justified as the issue regarding repatriation to substantive cadre, regularization as MCC in Construction Organization and protection of pay on repatriation stand concluded by the Hon'ble Supreme Court in **Badri Prasad** (supra). It is not in dispute that **Badri Prasad** (supra) has been the latest in the series and noticing the observations made in **Inderpal Yadav** (supra), the appeal filed by **Badri Prasad** was disposed of with following directions:-

"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)

8. It is also not in dispute that aforesaid judgment in **Badri Prasad** (supra) has been followed by this Bench in **Atul Kumar** (supra). On



principle of law, we do not find any justification or reason to differ with the aforesaid law laid down by the Hon'ble Supreme Court, particularly when the facts and circumstances of **Badri Prasad** is identical to the facts of present case. We may note, at the cost of repetition, that applicant is not questioning the respondents' action in repatriating him to Group 'D' from ad hoc Group 'C' post. He only claims pay protection as well as due weightage of period spent by him on ad hoc basis in Group 'C' post for his consideration for promotion to Group 'C' post. We have no hesitation to reiterate that one has to be promoted only in accordance with rules, but while doing so, observations made by the Hon'ble Supreme Court in **Badri Prasad**, as extracted hereinabove, are also required to be kept in view. In these circumstances, we do not find any justification in the contention raised by Respondents.

9. On bestowing our careful consideration to the entire aspect as well as judgment relied upon, viz. **Badri Prasad** (supra), we dispose of the present OA, directing respondents to grant the applicant benefits in terms of para 15 of the said judgment. No costs.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra) 12.9.06
Vice Chairman (A)

/pkr/