

Central Administrative Tribunal, Principal Bench

OA No.582 of 2003

New Delhi this the 3rd day of September, 2004.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

1. Lal Bachan s/o Shri Kumar Ram
2. Badri Prasad s/o Shri Maiku
3. Ganga Ram s/o Shri Satti
4. Kashi Ram s/o Bisai Ram
5. Uttam Singh s/o Gosain Singh
6. Jawahar s/o Jaddu
7. Chander Deo s/o Gopl Ram
8. Mahavir Singh s/o Ram Narain
9. Mahender Singh s/o Gurdass Ram
10. Ram Avadh s/o Ram Bujarat
11. Harbans s/o Dhaneshwar
12. Tej Prata s/o Ram Dular
13. Ismail s/o Bakridan
14. Trilochan s/o Nankoo

(All working as Artisan in Ancillary a
Group "C" categories under Dy. CSTE/
Const/RRIDRM Office, New Delhi and
Delhi Main N.Rly. Through Shri H. P.
Chakravorti, Advocate, CAT Bar Room,
Principal Bench, New Delhi.

...Applicants

(By Advocate: Shri H.P. Chakravorty)

-versus-

1. Union of India through
The Chairman, Railway Board,
The Principal Secretary,
Govt. of India, Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General manager,
Northern Railway,
Baroda House, New Delhi – 110 001.

3. The Divisional Railway Manager,
Northern Railway,
Delhi Division, State-Entry Road,
New Delhi – 110 005

4. The Chief Administrative Officer,
Const. H.Q. Northern Railway,
Kashmiri Gate, Delhi – 110 006. ...Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (ORAL)

By Shri Shunker Raju, Member (J):

Applicants (14 in number) have assailed respondents' orders dated 28.10.2002, 20.11.2002 and also 20.01.2003 whereby, while working on ad hoc basis in Group 'C', they have been repatriated to their parent Division in group 'D' post. Directions have been sought for their regularization in Group 'C' post at par with juniors in open line. Applicants, who have been appointed as Khallasies, were sent to the Construction Organization and continued to work for a number of years in Group 'C' post.

2. Applicants, in their Original Application, have stated that they were promoted in Group 'C' post after trade test and having discharged their duties for more than 10-15 years, they are eligible for being regularized straightaway in regular vacancies in the Skilled grades to the extent of 25% quota in Group 'C' post.

3. The applicants have alleged discrimination vis-à-vis Wiremen, which, according to them, is violative of Articles 14 & 16 of the Constitution of India.

4. Shri R.L. Dhawan, learned counsel for the respondents, relying upon the decision of the Apex Court in W.P. No. 548/2000 in ***Inder Pal Yadav versus Union of India***, contended that in Construction Organization those who have been appointed on ad hoc basis it has been ruled that their regularization cannot be done in Group 'C' post rather they have to come back to their parent department for further promotion. Shri Dhawan further relies upon Full Bench decision of this Tribunal in ***Ram Labhaya & Ors vs. Union of India & Ors***, ATJ 2001(1) CAT 40, to contend that those who are deputed to Construction Organization and promoted on ad hoc basis, they are entitled to regularization in their turn in the parent division strictly in accordance with rules and instructions.

5. In the rejoinder, contentions raised in the original application are reiterated.

6. In additional reply filed by the respondents, it is contended that applicants have to seek their further promotion on the basis of seniority in their parent cadre and provisional local promotion in the Project cannot create a right.

7. Before we deal with the contentions, the Apex Court, while dealing with a similar issue in ***Inder Pal Yadav's*** case (Supra), observed as under:-

"From the documents on record, it is clear that the petitioners have been regularized and continued to hold the substantive posts of Khalasi in group D category in the open line division of the respondents. Their 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 or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. No rules have been pointed out to us to justify this claim on the part of the petitioners. Besides it, this stand of the petitioner were to be accepted it would operate inequitably as far as the regular employees in the open line department are concerned. Furthermore the order of provisional promotion expressly made it clear that the petitioners were in fact provisionally appointed. Therefore, the writ petitioners cannot seek to make such provisional appointment permanent by filing a Writ Petition to restrain the respondents from reverting them back to their appointed cadre.

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 re-posting of the petitioners is based on selection.

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 test 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.

Where a trade test is provided under the relevant rules for the purpose of promotion to group C, we make it clear that it will not be necessary for the petitioners to take the trade tests over-again, if they had already taken any comparable test while they were on duty in the projects. It is stated by the learned counsel appearing on behalf of the Railway authorities that during the pendency of the writ petitions that several of the petitioners had applied for promotion in the open line from Group B to Group C but only some were successful. It is not necessary to go into this question since we proceed on the basis that there was a requirement of passing a qualifying trade test held for the purpose of promotion from Group D to Group C post held in the projects.

However, we make it clear that so far as further promotions are concerned that is from Group C to Group B, the observations of this Court will not serve to grant any benefit to the petitioners. It is open to the respondent authorities to proceed in the matter of further promotion in accordance with the rules. We accordingly dispose of these writ petitions and special leave petitions with the aforesaid observation."

8. If one has regard to the above, ad hoc promotion in Projects would not confer any right for regularization to Group 'C'. Admittedly, applicants have to go back to their parent cadre to earn promotion in their own line. However, it has been observed that the persons, who had worked for longer period in Group 'C', would not be compelled to take the trade test over-again, if already comparable trade test had been undergone by them.

9. Having regard to the aforesaid, the claim of the applicants to be straightaway regularized in Group 'C' post in parent cadre cannot be countenanced. Their further promotion has to be channelized in accordance with their seniority in the parent cadre and also in accordance with rules having regard to the directions of the Apex Court regarding trade test.

10. In the result, the Original Application, being bereft of merit, is dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K.Majotra
3.9.04
(V.K.Majotra)
Vice Chairman (A)

/na/