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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 2427 OF 2003

New Delhi, this the 17th day of November, 2004

**HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Ashok Kumar Gautam
S/o Shri Harpal Singh,
MCC/Clerk, Waiting for posting
Under D.R.M.N. Railway,
Firozpur (Punjab).

...Applicant

(By Advocate: Shri G.S. Ojha)

-versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
 2. Divisional Railway Manager,
Northern Railway,
Firozpur Division,
Firozpur (Punjab).
 3. Chief administrative Officer (C-1)
Northern Railway,
Kashmiri Gate,
Delhi - 110 006.
- ...Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (ORAL)

By Shri Shanker Raju, Member (J):

By virtue of the present Original Application, applicant impugns respondents' order dated 17.07.2003 (received on 13.08.2003) posting him to the substantive post of Fitter Khalasi i.e. Group 'D' post. Directions have been sought to absorb the applicant in Group 'C' post.

2. Applicant joined as Substitute Fitter Khalasi in Group 'D' post in Northern Railway. On passing the screening test, he was transferred to Construction Organization on 23.10.1986 as Khalasi where he was elevated as Store-man on 22.02.1991 and promoted on ad hoc basis as Material Checking Clerk (hereinafter referred to as "MCC").

3. Parent cadre of the applicant i.e. Steam Loco Shed was closed in March, 1994. The applicant preferred for absorption in Group 'C' and ultimately filed OA No. 146/1999 before the Jodupur Bench of this Tribunal seeking regularisation as MCC in Group 'C' which was dismissed on 19.01.2001. Applicant was transferred to Firozpur in a substantive post of Fitter Khalasi, which was assailed by him in OA No. 450/2001 before the Principal Bench of this Tribunal. By an order dated 18.03.2002, the contention of the application to be repatriated to parent organization in group 'C' post was turned down but it was left open to the Firozpur Division to post him against a vacancy in Group 'C'. As the applicant was still to be asked to join in Group 'C' post, the present OA has been filed.

4. Heard the learned counsel for the parties and have perused the material available on record.

5. Learned counsel for the applicant vehemently contended that the directions given by the Tribunal in OA No. 450/2001 have not been complied with and the Cadre Controlling Authority has not posted him in Group 'C' category.

6. Learned counsel states that posting to a Group 'D' is a punishment and as the respondents have failed to seek option on closure of Steam Loco Shed, applicant's case for promotion to Group 'C' has not been considered.

7. Shri R.L. Dhawan, learned counsel for the respondents, vehemently opposed the contentions and stated that in the light of a decision of the Jodhpur Bench of this Tribunal, the present Original Application is barred by res judicata. It is further stated that in the light of Full Bench's decision in **Ram Lubhaya vs. Union of India**, 1997-2001 AT Full Bench Judgments, 152, a person retaining lien in open line, even if promoted on ad hoc basis in Construction Organization, has to be reverted back to his substantive post of Group 'D' and has to earn promotion in his own cadre and channel of promotion. It is further stated that recently the Apex Court in **Union of India vs. Inderpal Yadav** decided in 2003 has reiterated the aforesaid view.

8. On careful consideration of the rival contentions, we find the ratio of the Full Bench in **Ram Lubhaya's** case (supra) squarely covers the present controversy. The applicant has been working in Construction Organization, which has no permanent cadre of its own, therefore, his promotion on ad hoc basis in Group 'C' would not confer upon him any right of regularization on repatriation to the open line. He has to come back in his substantive post of Group 'D' and thereafter to earn promotion. The decision in the case of **Inderpal Yadav** has attained finality to the issue, which has no more res integra. However, after the arguments were heard, learned counsel produced before us a copy of the order dated 27.08.2004 whereby the applicant has

been shown to have been promoted in Group 'C' w.e.f. 01.11.1003.

9. Having regard to the above and taking into consideration the letter passed by the respondents promoting the applicant as Group 'C' post, the Original Application stands disposed of leaving the parties to bear their own costs.

S. Raju
(Shanker Raju)
Member (J)

/na/

V.K. Majotra
(V.K. Majotra)
vice Chairman (A)

17.11.04

NOTE

See order dt. 4/1/2006 passed in MA No. 594/2005 and 595/2005 allowing substituting of expression of Group 'D' in place of Group 'C' in the last sentence of paragraphs 8 and 9 of the judgement dt. 17/11/2004.

S. Raju
Dy. Registrar
17.11.2006