

SUPREME COURT OF INDIA

Bhadei Rai

Vs.

Union of India

C.A.No.3154 of 2005

(Ashok Bhan and D.M.Dharmadhikari JJ.)

06.05.2005

JUDGMENT

D. M. Dharmadhikari, J.

1. Leave, prayed for, is granted.
2. Learned counsel for the appellant and learned Standing Counsel for the Union of India representing the Railways are heard at length.
3. The appellant started his service in the Railways on daily-rated 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 Riggor 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 Riggor carrying higher scale of pay. The post of Riggor is Group 'C' post but the appellant was regularized 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 Riggor, 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 regularization 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 a Gangman in Group 'D'. His ad hoc promotion to the higher post of Riggor 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 regularized 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 of India 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 regularization 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 regularization, 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 Indra Pal Yadav vs. Union of India (Writ Petition No.548 of 2000) decided on 13.1.2003. In the case of Inder Pal Yadav (supra) this Court held that since promotion from Group 'C' to Group 'D' was ad hoc, the order of reversion to the post in 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's case reads thus:

"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, 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 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 Riggor 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 (*supra*) 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 he protected. It is further directed that 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 Riggor in Group 'C'.

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