

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) Nos. 1256-1258 of 2006

% Reserved on : May 19, 2008
Pronounced on : July 11, 2008

Union of India & Ors. . . . Petitioners

through : Ms. Geetanjali Mohan, Advocate

VERSUS

Girwar Singh . . . Respondent

through : Mr. K.K. Patel, Advocate

CORAM :-

**THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The respondent herein was promoted on *ad hoc* basis as a High Skilled Manson in the year 1988 and was given pay scale of Rs.1200-1800. Before his promotion on *ad hoc* basis, he was working as Manson, which is an ex-cadre post. On the verge of his retirement, the petitioner served a show-cause notice upon the respondent, *inter alia*, stating that the pay scale of Rs.1200-1800 given to him on his promotion as a High Skilled Manson was erroneously given, as this pay scale should have been given with reference to the pay scale of cadre post in the feeder cadre and not the ex-cadre post. The pay was thus revised downwards after refixation of the respondent's pay

in a lower pay scale and recovery was sought to be made by passing orders after the retirement of the respondent. Thereafter, the respondent challenged the said order before the Central Administrative Tribunal (in short, 'the Tribunal'), which vide impugned judgment dated 26.7.2005 the learned Tribunal has allowed the application of the respondent whereby settling aside the order of downgrading and recovery. Aggrieved by the same, the Railways has preferred the present writ petition impugning the order of the Tribunal.

2. The minimal facts which require to be stated are thus: The respondent belongs to the Reserved Category and joined the services as a regular Gangman on 27.3.1970. He was promoted, on *ad hoc* basis, as Manson in the grade of Rs.260-400 on 12.8.1970. While working in the Construction Organization and retaining his lien in open line, the respondent was also promoted on *ad hoc* basis as a High Skilled Manson in the grade of Rs.1200-1800 on 14.6.1988. However, in his parent cadre at New Delhi division the respondent was regularized as Manson in the grade of Rs.950-1500 on 27.6.1990. When he was given regular promotion as Manson in his parent division, he made a representation to include his name in the seniority list of artisan staff of Delhi division. Instead of doing so, show-cause notice dated 30.1.2002 was issued to him to fix his pay as per Railway Board's instructions dated 17.8.1998 alleging therein that while being promoted on *ad hoc* basis in ex-cadre of Construction Organization, his pay was erroneously fixed in the ex-

cadre lower grade whereas the same should have been fixed as per PS 9824. The respondent replied to the said show-cause notice and also made a representation to the petitioner herein submitting that as his junior in the parent cadre had been promoted in the grade of Rs.1200-1800, his pay should not be reduced. No action was taken immediately and the respondent retired on superannuation from the Construction Organization as *ad hoc* Manson on 31.8.2003 in the revised scale of Rs.4000-6000 (pre-revised Rs.1200-1800). After his retirement, however, order dated 12.11.2003 was issued fixing his pay in the pay scale of Rs.950-1500 with a direction that excess payment made during all these years be recovered from him.

Aggrieved by this order of refixation of pay and recovery from his retiral benefits retrospectively and also not giving him the benefit of the higher grade, which was given to his juniors in the construction division, the respondent filed an application under Section 19 of the Administrative Tribunal Act, 1985 before the Tribunal. This application has been allowed by the Tribunal vide judgment dated 26.7.2005 against which the present petition is preferred, as mentioned above.

3. It is clear from the facts narrated above that though the parent cadre of the petitioner was New Delhi division, he was made to work in the Construction Organization for most of his service period. In the Construction Organization, he was also given an *ad hoc* promotion as highly skilled Manson in the grade of Rs.1200-1800 way back in 14.6.1988. This pay scale was revised with effect from 1.1.1996

whereby his pay was fixed in the replacing pay scale of Rs.4000-6000. Thus, the respondent continued to enjoy the pay in the said pay scale right from the date of his promotion in the year 1988 till his retirement on 31.8.2003. No doubt, sometime before his retirement he was issued a show-cause notice, but no orders were passed thereupon till his retirement. In any case, even the said show-cause notice was issued more than 14 years after fixation of his pay.

We also do not find it to be a mistaken case. Since the respondent was working in the Construction Organization throughout, he was given promotion there in the higher pay scale and his promotion was also not withdrawn at any point of time. Even presuming it to be a case of mistake, it cannot be said that such a mistake is attributable to the respondent. Therefore, in the light of the decision of the Apex Court in *Shyam Babu Verma v. Union of India*, 1994 (27) ATC (SC) 121 and *Sahib Ram v. State of Haryana*, 1995 SCC (L&S) 248, the Tribunal rightly concluded that the petitioner could not make any recovery in respect of the alleged excess salary paid to him, that too after his retirement and from his retiral benefits.

4. The petitioners have themselves issued a circular in the year 1998 as per which the Construction Organization and project are reckoned as extension of the cadre of the post in the Railway/Division. If that is the position clarified by the petitioners themselves, how could a different yardstick be applied for the purpose of fixation of pay is the moot question. The answer for this has to be against the petitioner.

We may also note that the Tribunal relied upon the judgment of the Supreme Court in *Badri Prashad v. Union of India*, 2005 (4) Scale 725, wherein the Supreme Court held that in case of *ad hoc* promotion in Construction Organization, pay of the concerned employee has to be protected in Group 'C' with all benefits of pay protection, counting of service towards higher post, etc. Following discussion contained in the said judgment is worth a quote :-

“19. Moreover, in *Badri Prasad* (supra) while dealing with regularization persons working on higher post in Group 'C' in Construction division, the following observations have been made :-

“12. Reliance is placed on the decision on this Court in the case of *Inder Pal Yadav vs. Union of India* in Writ Petition No. 548 of 2000 decided on 13.1.2003. In that case, similarly placed railway employees, who were substantively holding Group 'D' post were made to work for long period on a higher group 'C' were granted partial relief by making the following directions :

“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 length of service rendered by the petitioners in the several projects subsequent to their regular appointment.”

13. The practice adopted by the railways of taking work from employees in group 'D' post on a higher Group 'C' post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the railway is utilizing for long periods the services of employees in group 'D' post for higher post in Group 'C' carrying higher responsibilities benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

14. As held by the High Court – the appellants cannot be granted relief of regularizing their services on the post of Store man/Clerk merely on the basis of their ad hoc promotion from open line to higher post in the Project of construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on a higher group 'C' post.

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 shall be given due weightage and counted towards length of requisite, 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."

5. We, therefore, are of the opinion that the Tribunal rightly set aside the impugned order of the petitioner for recovery of pay and withholding of his retiral benefits. We do not find any infirmity therein and dismiss this writ petition as devoid of any merits.

No costs.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

July 11, 2008

nsk

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