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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: May 02, 2008

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W.P. (C) No. 21926/2005

% Hari Om Dutta

..... Petitioner
Through: Mr. Pradeep Dahiya,
Advocate

Versus

Union of India & Ors.

..... Respondents
Through: Ms. Geetanjali Mohan,
Advocate

(2)

W.P. (C) No. 21242/2005

Tej Narain Kaul

..... Petitioner
Through: Mr. Pradeep Dahiya,
Advocate

Versus

Union of India & Ors.

..... Respondents
Through: Ms. Geetanjali Mohan,
Advocate

(3)

W.P. (C) No. 21244/2005

Deb Kumar Burman

..... Petitioner
Through: Mr. Pradeep Dahiya,
Advocate

Versus

Union of India & Ors.

..... Respondents
Through: Ms. Geetanjali Mohan,
Advocate

CORAM:

HON'BLE MR.JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J.

1. By this judgment, we propose to dispose of writ petitions Nos. 21926/2005, 21242/2005 and 21244/2005 filed against the common order dated 19.8.2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short CAT) in O.A No.2336/99 (preferred by Hari Om Dutta, the petitioner in W.P.(C) No.21926/2005), O.A. No.2337/1999 (preferred by Tej Narain Kaul, the petitioner in W.P.(C) No.21242/2005) and O.A. No. 2338/2005(preferred by Deb Kumar Burman, the petitioner in WP(C) No.21244/2005)

2. By the impugned order, the Tribunal has rejected the petitioners demand for regularization in Group 'C' posts, but with directions to protect the petitioners' pay in Group 'C' which the petitioners had been drawing when taken on the strength of open line, till they qualify for promotion in Group 'C'.

3. To appreciate the controversy, brief relevant factual matrix is necessary.

4. The petitioner Hari Om Dutta was engaged as Wireman (a group 'C' post) on 07.06.1982 on casual basis in the Electrical Branch of Construction Wing of Delhi Division of Northern Railway, and had acquired temporary status. On his showing his willingness, he was screened for appointment on a substantive post in Group 'D' as Electric Khalasi in Open Line of the Northern Railways. He was regularized in Group 'D' as 'Khalasi'.

5. The petitioner Tej Narain Kaul was appointed as casual Wiremen (a group 'C' post) in Electrical Branch of Construction Wing of Delhi Division of Northern Railway on 23.06.1980 and was accorded temporary status with effect from 01.01.1984. He was screened for regularization on the post of Electric Khalasi in Group 'D' on 05.10.1990. The petitioner states that he was regularized in Group 'D' post of Electric Khalasi.

6. The petitioner Deb Kumar Burman was appointed in Construction Organisation as casual Wireman (a group 'C' post) on 23.06.1980 and was accorded temporary status with effect from 01.01.1984. He was transferred to Open Line of Railways as Wireman and on his willingness, after screening in 1990 for the post of Electric Khalasi, a Group 'D' post, he was regularized from 03.06.1994 as Electric Khalasi.

7. The petitioners made various representations against their regularisation in Group 'D' post. The petitioners demanded for regularization in Group 'C' posts as per the policy of the respondents as provided in para 2007 (3) IREM-11 (1990). Since their representations were of no avail, the petitioners moved the aforesaid Original Applications before CAT for seeking regularization in Group 'C' post with all consequential benefits. Following the Supreme Court decision in W.P.(C) No.548/2000 "**Inderpal Yadav & Ors. v. Union of India**", the CAT has rejected the prayer made by the petitioners for regularization in group 'C' posts. However, their pay as was being drawn by them in group 'C' has been protected by the Tribunal. In

these writ petitions we are only concerned with the aspect of rejection of the petitioners prayer for regularization in group 'C', and not in group 'D'.

8. It is submitted by the petitioners that they had been working since 1980s as Wireman, which is a group 'C' post and as per the para 2007 (3) of IREM (Indian Railway Establishment Manual) 1990 Vol.II, the petitioners were required to be absorbed straightway in regular vacancies in skilled grade against the 25% of the vacancies reserved for departmental promotion from the skilled and semi-skilled categories. It is also submitted that the action of respondents in regularizing the services of petitioners in 1994 in Group 'D' so as to require them to earn further promotion in Group 'C' as Wiremen is arbitrary, as persons junior to petitioners have been regularized prior to this date as Khalasi in Delhi Division. It is also pointed out that one Sh. Shardhanand Tyagi, who was similarly appointed as casual Khalasi in 1979 in the same manner as petitioners, has been regularized as group 'C' wireman.

9. The issues raised by the petitioners in these writ petitions are already concluded in view of the decision of the Supreme Court in **Secretary, State of karnatka & Ors. V. Umadevi** (2006) 4 SCC 1. We had occasion to consider an identical argument in WP(C) No.4925/1999 entitled **Union of India & Ors. vs. Shri Ashok Kumar Misra & Ors.** decided on 15.2.2008. In the aforesaid decision we set aside the direction issued by the Tribunal to consider the respondents/railway servants for regularization of their services as

clerks/enquiry clerks (group `C' posts) against the vacancies available in terms of the seniority and fulfillment of other conditions for such promotions. The respondents in that case had been appointed as casual beldars and chowkidars. The Tribunal while issuing the aforesaid direction had observed that the respondents had acquired vested rights for consideration for regularization as clerks because they had been working in that capacity for over a decade. Para 7 of our decision in **Ashok Kumar Misra** (supra) is relevant and the same reads as follows:

“7. Having considered the rival submissions of the parties, we are of the view that the decision of the Tribunal cannot be sustained in the light of the decision of the Supreme Court in Umadevi (supra). It is not disputed that a post of Clerk/Enquiry Clerk is a Group-C post, whereas the post of Beldar/Chowkidar is a Group-D post. It is also not in dispute that the respondents had been engaged as daily wagers initially as Beldars/Chowkidars. Merely because they were performing the duties of Clerks/Enquiry Clerks, assuming that they can be regularized [which itself may not be the case in view of Umadevi (supra)], they certainly could not have been directed to be regularized in the higher post, which would be totally contrary to the recruitment rules. The said direction is in the teeth of the decision of the Supreme Court in Motilal (supra). The decision in Ram Nath Singh (supra) does not constitute a binding precedent for two reasons. Firstly, it is contrary to the Constitutional Bench decision of the Supreme Court in Umadevi (supra) and is, therefore, denuded of its precedent value. Secondly, it is well-settled that a dismissal of a Special Leave Petition in limine does not constitute a binding precedent. Therefore, the decision in Ram Nath Singh (supra) is not useful for our purpose. The reliance placed by the respondents on the OM dated 09.09.1999 also does not advance the respondents' case qua their claim for regularisation as Clerks/Enquiry Clerks. The said OM nowhere deals with the aspect of regularisation. Consequently, we quash the second direction issued by the Tribunal with regard to the consideration of the case of the respondent in regularizing of Clerks/Enquiry Clerks.”

10. In ***Umadevi*** (supra) it has been held that unless the appointment is in terms of the relevant rules and after a proper selection process from amongst qualified persons the same would not confer any right on the appointee to seek regularization of his services. If it is a contractual appointment, the appointment comes to an end at the end of the contractual period and if it were an engagement or appointment on daily wages or casual basis the same would come to an end when it is discontinued. The Supreme Court also held that employees appointed as daily wagers could not be directed by the Courts to be paid wages equal to the salary and allowances that are being paid to regular employees of the cadre performing similar work in Government service from the dates from which they were respectively engaged or appointed. In paragraphs 34 to 36 of the said judgment, the Supreme Court has held that unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons the same would not confer any right on the appointee. Admittedly, the initial appointment of the petitioners was *de horse* the recruitment rules and the same was on purely casual basis. The petitioners did not get appointed in a duly conducted selection process. Such an appointment did not vest any right in them to be considered for regularisation of their services, much less in Group-‘C’ posts.

11. We, therefore, affirm the decision of the Tribunal in so far as it declines the relief of regularization in group ‘C’ post prayed for by the

petitioner and dismiss these writ petitions leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(A.K. SIKRI)
JUDGE

MAY 02, 2008
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Date of decision: May 02, 2008

W.P. (C) No. 21242/2005

Tej Narain Kaul

..... Petitioner
Through: Mr. Pradeep Dahiya,
Advocate

Versus

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Through: Ms. Geetanjali Mohan,
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For detailed orders see W.P.(C) No.21926/2005.

(VIPIN SANGHI)
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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 21244/2005

Deb Kumar Burman

..... Petitioner
Through: Mr. Pradeep Dahiya,
Advocate

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