

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.10970/2009**

% **Date of Decision: 21.04.2010**

Union of India & Ors Petitioners
Through Mr.Amit Dubey, Advocate.

Versus

Shri Palley Ram Respondent
Through Mr.Manjeet Singh Reen, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioners, Union of India, through General Manager Northern Railways and Ors have impugned the order dated 17th April, 2009 passed by the Central Administrative Tribunal, Principal Bench in O.A No.1107/2008 in M.A No.887/2008 titled as Sh.Palley Ram v. Union of India and Ors directing the petitioners to protect the last drawn pay of the respondent at the post of Hammer Man (Group C) even though he had been reverted to the post of Safaiwala (Group D) and also directed the petitioners to pay arrears of pay after refixing his pay as per rules.

The Tribunal while allowing the petition relied on *Badri Prasad v. Union of India & Ors*, (2005) 11 SCC 304 deprecating the practice adopted by Railways of taking work from employees of Group D post on a higher Group C post for unduly long period and holding that in such circumstances, Group D employees working on higher Group C post acquire legitimate hopes and claims for higher post. The Supreme Court had further held that such employees even after repatriation to Group D post in the parent department will be entitled for protection of their pay in Group C and they shall also be considered in their term for promotion to Group C post. Even the period spent by such employees on adhoc post in Group C post becomes entitled for due weightage and to be counted towards the length of requisite service. The Supreme Court had held as under:-

“14. 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 railways 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.

15. As held by the High Court-the appellants cannot be granted relief of regularizing 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 or 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.

16. 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. The period of service spent by them on ad hoc basis in group 'C' post shall be given due weightage and counted towards length of requisite service, 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.

17. With the above modifications in the directions of the Tribunal and the High Court, the appeal partly succeeds. In the circumstances the parties shall bear their own costs. Order accordingly."

The respondent was initially appointed as Gangman on 15th July, 1997 in the Delhi Division, Northern Railway in Construction Department and was granted temporary status in 1982 and he was paid regular pay scale of Gangman. He was promoted to the post of Hammer Man (Group C) post with effect from 1st January, 1985. The petitioner worked as Hammer Man from 1985 till 1997 and according to him he also passed the trade test. He was, however, declared surplus in March, 1997 and was sent to Carriage and Wagon Department and posted as Safaiwala in the lower pay scale of Rs.750-940/-. Aggrieved by the decision not to protect his pay of Grade C as Hammer Man he filed the original application being O.A No.2205/1997 which was disposed of by the order dated 7th September, 2000. The Tribunal while disposing of the earlier petition filed by the respondent had given direction to absorb the respondent towards the vacancies.

The respondent furnished the necessary information by representation dated 28th October, 2000 and requested for promotion which was rejected by order dated 23rd April, 1991 on the ground that he was not eligible for promotion under 25% departmental quota as he did not matriculate and did not possess ITI/NCVT qualification. The petitioner, therefore, made various representations for protection of his pay and his absorption in Group C post in the light of the judgment of Supreme Court in Badri Prasad (Supra).

The petition was contested by the petitioners on the ground that the respondent was working as an office hammer against the work charge post and not on permanent post from 1st January, 1984 and not from 1982 and he was absorbed as C&W Cleaner in the grade of Rs.750-940/- in Delhi Division. Regarding absorption to Group C post, it was contended that he did not fulfill the eligibility condition. The plea for pay protection was also contested on the ground that it was barred by the principles of constructive res-judicata.

The Tribunal after considering the pleas and contentions and relying on Badri Prasad (Supra) had repelled the pleas raised by the petitioners. The plea of constructive res judicata was also repelled by the Tribunal as at the time of earlier petition this relief was not sought and granted by the Tribunal nor was available to the respondent at that time.

The learned counsel for the petitioners before this Court has reiterated the plea that pay of the respondent in Group C, where he worked on work charge basis, could not be protected. The Learned counsel, however, has not been able to explain as to how the plea is sustainable in view of the specific determination by the Supreme Court in case of Badri Prasad & Ors (Supra) where the practice of the Railways to take work on a higher post from an employee of the lower post for unduly long period was also deprecated.

The learned counsel for the respondent has also relied on a judgment dated 23rd September, 2009 in W.P(C) No.11495/2009 titled as Union of India v. Ishwar Singh, where the employee Ishwar Singh was appointed as a casual labourer who was granted temporary status of a Gangman and later he was put on the post of Blacksmith, Group C post on adhoc basis where he worked up to 1995 whereafter, he was declared surplus but was absorbed in the parent division as Khalasi, Group D post. Relying on Badri Prasad (Supra), the said employee had filed an original application before the Tribunal which was allowed and the writ petition filed by the petitioner was dismissed holding that Ishwar Singh was also entitled for pay protection of Group C post on which he worked from 1984 till 1985.

In the facts and circumstances, the petitioners have failed to make out any cogent ground for this Court to interfere with the decision

of the Tribunal directing the petitioner to protect the last pay drawn by the respondent in the post of Hammer Man (Group C) and to pay arrears of pay after re-fixing his pay as per rules. This Court does not find any such perversity, illegality or irregularity in the order which shall necessitate any interference by this Court. The writ petition is without any merit and it is therefore dismissed.

ANIL KUMAR, J.

APRIL 21, 2010

MOOL CHAND GARG, J.

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