

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3038 OF 2003

DURBEEN SINGH

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With office report)

Date: 22/02/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. Kishore Kumar Patel, Adv.

Mr. Satya Mitra Garg, Adv.

For Respondent(s) Mr. Harish Chandra, Sr. Adv.

Mr. S. Wasim A. Qadri, Adv.

Mr. B.K. Prasad, Adv.

Mr. V.K. Verma, Adv.

Mrs Anil Katiyar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is disposed of in terms of the signed

order. No order as to costs.

Bhatia)

(K.K. Chawla)

(Radha R.

aster

Court Master

Court M

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CIVIL APPEAL NO.3038 of 2003

DURBEEN SINGH

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

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O R D E R

The Railways have a Division which carries out specific jobs like projects of construction of bridges and so on. Since they find it difficult to recruit employees earmarked for this Division, and since they also find it difficult to obtain local employment for carrying out such work, the Railways send on deputation

employees from other Divisions which are known as "Open Line" Divisions. The Appellant was an employee in the Delhi Division (Open Line) employed as an ad hoc employee. He was sent to work in a construction project in the Jodhpur Division where he worked for sufficiently long time as a Khalasi after which he was regularised as a Khalasi in Group "D" in his parent cadre in Delhi Division, but continued to work as a Receipt Clerk in a Group "C" post in Jodhpur.

The Appellant moved the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") and sought relief of promotion as a clerical employee in a Group "C" post on the strength of the long service he had put in in the Jodhpur Division as a Receipt Clerk. The Tribunal was of the view that a Khalasi working in Group "D" had his own channel of promotion and was not entitled to be promoted directly to a post in Group "C".

Reliance of the Appellant on Rule 188 of the Railway

Board's Rules and paragraphs 188 and 189 of the Indian Railway Establishment Manual Volume 1 did not persuade the Tribunal and the Tribunal dismissed his application.

The Appellant moved the Division Bench of the High Court. The Division Bench pointed out that Paragraph 188 of the Indian Railway Establishment Manual Volume 1 as well as 189 would not apply to an employee who had a regular channel of employment in a Group "D" post. The Division Bench also took the view that a regular employee of Group "D" was not entitled to get promotion by virtue of paragraph 2007 in the said Manual. It was the view of the High Court that in the case of the Appellant there exists a regular promotional avenue and therefore there was no question of permitting him to get promotion out of the regular promotional avenue in the Group "C" post. In this view of the matter, the High Court dismissed the Writ Petition of the Appellant.

The Appellant is before this Court hoping for better fortunes.

The learned counsel for the Appellant and the learned counsel for the Railways have drawn our attention to two Judgments of this Court which have some bearing on the issue.

The first judgment is a Judgment of this Court in *Inder Pal Yadav And Others v. Union of India And Others*, (2005) 11 SCC 301. In a somewhat similar situation, where ad hoc promotees sought an order to interdict reversion to their lower post on the ground that they had been working in the higher post for the long time in the project, this Court held thus in the judgment:

"6. 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 reposting of the petitioners is based on selection.

7. Additionally, while it is open to the Railway Administration to utilise the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of service rendered by the petitioners in the several projects subsequent to their regular appointment."

The next judgment is the judgment in *Badri Prasad And*

Others v. Union of India And Others, (2005) 11 SCC 304.

This was also a situation where Khalasis, who had been

given temporary status in the post and were posted to

work as Storeman in Group "C" carrying a higher scale of

pay post, were reverted to their original cadre as

Khalasis in the Open Line. The observations of this

Court in Inder Pal Yadav's case (supra) were relied upon

by the Railways.

This Court pointed out that the practice of the

Railways taking work from employees in Group "D" post

for long periods on higher Group "C" posts gave rise to

a certain amount of legitimate expectation in the minds

of the employees and therefore some amount of relaxation

with regard to their claims of promotion in their

original cadre should be shown. Although, the Tribunal

and the High Court had dismissed their claims, this

Court disposed of the Appeal by the following

directions:-

"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. 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."

Learned counsel for the Appellant submitted that his client would be satisfied if these directions were also made applicable to the Appellant's case. We think that the prayer is justified. The limited relief which was granted in paragraph 15 of Badri Prasad's case (supra) shall also be made applicable to the present Appellant before us.

The Appeal, therefore, succeeds to the aforesaid extent and is thus disposed of. No order as to costs.

We make it clear that we have decided this case on the peculiar facts of this case in order to give full justice to the single employee before us, without

enunciating any precedent or a principle of law.

.....J.

(B.N. Srikrishna)

.....J.

(Lokeshwar Singh Pant)

New Delhi;

February 22, 2006.