

(2010) 04 DEL CK 0172

In the Delhi High Court

Case No : Writ Petition (C.) No. 3226 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Navrang Lal

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 DEL CK 0172

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Satpal Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners/Union of India through the General Manager, Northern Railway & Ors. have impugned the order dated 1st August, 2006 passed by the Central Administrative Tribunal, Principal Bench in OA 1821/2005 titled as Navrang Lal v. Union of India and Ors., allowing the application of the respondent for protection of his last drawn pay in the construction division before he was repatriated to his parent division with Northern Railways, Bikaner, Rajasthan.

2. Brief facts to comprehend the disputes are that the respondent was appointed as daily rated casual mate w.e.f. 11th January, 1977 in the scale of Rs. 210-270. Temporary status in the grade of 225-308 was granted to him and thereafter he was regularized as Gangman in Group-"D" post on 31st March, 1997.

3. The respondent continued to work as a mate in Construction Division till he was repatriated to his substantial post in the parent division on 23rd June, 2001. After repatriation to the parent division, petitioner No. 3 sought protection of his pay on the basis of an order passed by the Tribunal in the matter of Liakat Ali v. Union of India and Ors. being OA 1917/2000 decided on 29th November, 2001 which order was confirmed by the High Court in WP(C) No. 7417/2001 titled as

Liakat Ali v. Union of India and Ors. by order dated 19th August, 2003. On the basis of the said decision of the Tribunal, which was confirmed by the High Court, the respondent claimed from the petitioner that in the Construction Division, he had a pay scale of Rs. 3050-4590 while on repatriation he was downgraded to the scale of Rs. 2550-3600. On failure of the petitioners to protect his pay of Rs. 3050-4590, the respondent filed an original application being OA No. 1821/2005. Before the Tribunal, the reliance was placed on behalf of the respondent to Badri Prasad and Others Vs. Union of India (UOI) and Others, holding that though an employee who is repatriated may not be entitled for regularization on higher group post, however, such an employee is entitled to relief of pay protection.

4. The application before the Tribunal was contested by the petitioners on the ground that the original application was barred under the principal of res judicata as the respondent had earlier filed an original application being OA No. 1583/2001 assailing the order dated 26th March, 2001 whereby the respondent was repatriated as ad hoc mate in Construction Division to his parent division in a substantive post and the said OA was dismissed by order dated 23rd May, 2002. The petitioners had contended that pay protection ought to have been sought while challenging the order dated 26th March, 2001. The plea of the original application of the respondent being barred by principal of res judicata was repelled on the ground that in OA No. 1583/2001, pay protection was not sought by the respondent and what was sought was his repatriation as ad hoc mate in the Construction Division to his parent division and the plea that the respondent is entitled to be regularized as mate in the Construction Division. The Tribunal also held that had the original application No. 1583/2001 been allowed, the question of protection of pay would not have arisen and only after adjudication of the prayer against the repatriation from mate in the Construction Division to his substantive post, the question of pay protection has arisen. In the circumstances, it was held that the issue of protection of pay after repatriation had arisen only after the prayer against the repatriation was finally decided. Since, the question of pay protection was not raised in the earlier petition which was filed against the repatriation and the said plea was not available to the respondent at that time nor the Tribunal had adjudicated about the pay protection in its order dated 23rd May, 2002, the subsequent original Application filed by the respondent for pay protection was not barred by the principal of res judicata. Since the pay protection was the subsequent cause of action, which could not be taken at the time of repatriation as it was challenged, the same is not even barred by the principal of constructive res judicata.

5. The Tribunal relied on judgment of the Supreme Court in Bhadei Rai (supra) and Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, and distinguished the decision cited by the petitioners, 1996 (1) ATJ 625 (SC) Union of India and Anr. v. Moti Lal and Ors. and has held that respondent's pay which he last drew on the date when he was repatriated from Group-"C" post to Group "D" post would be protected. The learned Counsel for the petitioner has assailed the order of the Tribunal primarily contending that since the respondent is

working in the Group-D post and so he is not entitled for the emolument of Group-"C" post.

6. The learned Counsel for the petitioner, is however, unable to distinguish the decision of the Supreme Court in the case of Inder Pal Yadav (supra) and Bhadei Rai (supra). In Inder Pal Yadav (supra), the Apex Court had held that while the employees cannot be granted the relief that they should not be reverted to a lower post or if they have been promoted by reason having worked in the projects then they are entitled to continue in such projects, nevertheless, if such employees are directed to join their parent cadre or other project in future, while posted to their parent cadre or on such other projects they shall be entitled to the same pay as that of their contemporaries unless the posts held by such contemporary employees at the time of such reposting of such employees is based on selection. The Supreme Court had further held that it would be open to Railway Administration to utilize the services of such employees in the open line and they could for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by such employees as well as the length of service rendered by such employees in the different projects subsequent to their regular appointment.

7. In Bhadei Rai (supra), the employee had started his services in the Railways at daily rate working as khallasi and he was conferred temporary status later on. That employee was also granted promotion on ad hoc basis to the post of rigger in the pay scale of 121-1500 and he continued to work for a long period between 1985 to 1999 on the promoted post of rigger carrying a higher scale of pay, which was also a Group "C" post. The said employee was however, regularized and absorbed in lower Group "D" Post in 1999 although he had completed more than 20 years of service on higher Group "C" post of rigger. On his repatriation, he claimed absorption and regularization on the higher Group "C" post where he had worked on ad hoc basis for 20 years which claim was rejected and rejection of claim was up held by the Supreme Court. The Apex Court, however, protected the pay which he had last drawn before his repatriation from Group "C" post to Group "D" Post relying on the ratio of judgment in Inder Pal Yadav (supra).

8. In case of respondent also, he worked as a mate in the Construction division for a long time before he was repatriated on 23rd June, 2001 to his substantive post in the parent division, petitioner No. 3. Applying the ratio of Inder Pal Yadav (supra) and Bhadei (supra), the respondent shall be entitled for protection of his pay which he had been drawing in Construction Division in the grade of Rs. 3050-4590 though on repatriation, he was given the scale of Rs. 2550-3600. In the circumstances, the plea of the learned Counsel for the petitioner that though the respondent is working in Group "D" post and he will not be entitled for the pay scale of Group "C" post on which he had worked for a long time, cannot be accepted and the decision of the Tribunal on this ground cannot be faulted on the ground as has been raised by the learned Counsel for the petitioners.

9. In the circumstances, learned Counsel has failed to make out any such

illegality, irregularity or such perversity in the order of the Central Administrative Tribunal, Principal Bench which has been impugned before us which shall necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

10. The writ petition, in the facts and circumstances is, therefore, without any merit and it is dismissed.