

L. PARMESWARAN

v.

CHIEF PERSONNEL OFFICER & QRS.

(Civil Appeal No. 1325 of 2008)

FEBRUARY 15, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Service Law. – Pay protection – On repatriation to parent department – Employee promoted in the ex-cadre post – Repatriation on lower post in furtherance of a policy decision – Courts below upholding his repatriation – On appeal, held: There is no legal infirmity in repatriation order – However, in the facts of the case that the employee had worked in the ex-cadre department for a long period, his pay is protected, in exercise of jurisdiction u/Article 142 of the Constitution – Constitution of India, 1950 – Article 142.

Appellant was recruited as a casual artisan in the Electrical Division of Railways. A list was prepared for absorption of the electrical khalasis in the regular post. Appellant's name was included in the list. He volunteered for the post of Diesel Mechanic Grade II and was promoted to that post. Thereafter again he was promoted as Diesel Mechanic Grade I. He was asked to pass the trade test in Electrical wing which he refused. Thereafter Railway administration took a policy decision to repatriate ex-cadre employees on completion of a period of four years. In furtherance of the decision, the respondent was repatriated to his parent department i.e. electrical wing stating that his promotion was due as technician Grade III in his parent department. The respondent having been repatriated to a post with lesser pay scale, challenged the order, and approached Administrative Tribunal. Tribunal dismissed his application. The order was further upheld by High Court. Hence the present appeal.

A **Partly allowing the appeal, the Court**

HELD: 1.1 Being in an ex-cadre post, the appellant did not derive any right to continue therein. He could be reverted to his cadre post. He opted for the Mechanical side despite the fact that his parent cadre was Electrical Wing. If the appellant is allowed to continue in the ex-cadre post, he will be depriving some employees who are entitled to be promoted to the said post. Such a deprivation from the right of promotion to a duly qualified employee, therefore, cannot be countenanced. There is no legal infirmity in the order repatriating him to his parent cadre. [Para 13] [1021-F-H]

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Inder Pal Yadav v. Union of India 2005 (11) SCC 301;
Bhadei Rai v. Union of India and Ors. JT 2005 (11) SC 311—
D distinguished.

1.2 The post held by the appellant was an ex-cadre post. He opted for change in this cadre. He did not have any right therefor. He in his own cadre might not have been promoted particularly when he has not passed the requisite trade test. [Para 15] [1022-D]

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1.3 In a case of this nature, a balance has to be struck. In the peculiar facts of the present case, despite the law operating in the field, appellant might have been recruited as a casual employee but the fact that he was brought on the rolls of a regular cadre is not in dispute. The fact that he had passed a trade test is also not in dispute. It furthermore stands admitted that as an ex-cadre employee or otherwise he was promoted twice. He had been holding the said post for a period of more than 12 years. A policy decision was taken by the Railway Administration only on or about 15.10.2001. Prior thereto, there was no requirement to repatriate an employee to his parent cadre after a period of four years. The policy decision, furthermore, was not given immediate effect. Despite the said policy decision, the appellant was

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permitted to work for another two years. Faced with such situation, it is a fit case where this Court should exercise its jurisdiction under Article 142 of the Constitution of India to do complete justice to the parties. While upholding the validity of the impugned order, interest of justice would be met if the pay of the appellant is protected in the scale of pay of Rs. 4500-7500 to be fitted in the post of Technician Grade III for which the scale of pay is Rs. 3050 - 7000. [Paras 17 and 18] [1023-H; 1024-A-F]

Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. 2006 (4) SCC 1 – referred to.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1325 of 2008.

From the Judgment and Order dated 19.05.2005 of the High Court of Kerala at Ernakulam in W.P.(C) No. 37269 of 2003.

Romy Chacko for the Appellant.

B. Dutta, ASG., Asha G. Nair and B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Whether for working for a long time in an ex-cadre post, an employee would be entitled to protection of scale of pay is the question involved in this appeal which arises out of a judgment and order dated 19.05.2005 passed by the High Court of Kerala in W.P. (C) No. 37269 of 2003.

3. Appellant was recruited as an unskilled worker. He was a casual workman. He was, however, posted in Electrical Division. He was promoted from the post of Khalasi Helper in his parent cadre to that of Technician Grade III. He passed a trade test of Technician Grade III, which enabled him to be promoted to the post of Technician Grade-II. On or about 13.02.1989, he was promoted as Diesel Mechanic Grade II.

A He was further promoted as Diesel Mechanic Grade I with effect from 26.04.1991. He served in the said post till 7.04.2003 when by reason of the impugned order he was reverted to the post of Technician Grade III in the Electrical Division of the Railway Department.

B 4. Questioning the validity of the said order, he filed an Original Application before the Central Administrative Tribunal, Ernakulam inter alia contending that he could not have been reverted to the post of Technician Grade III in the Electrical Division on the premise that it was his parent cadre.

C 5. By reason of a judgment and order dated 11.11.2003, the Central Administrative Tribunal dismissed the said original application opining:

D "5. In the face of the fact that the applicant was till his regular appointment by R-1 order dated 29.10.80 as Electrical Khalasi was working as a casual artisan, the case of the applicant that he commenced service in the Railways on 13.11.79 in the post of Diesel Engine Fitter (Diesel Mechanic) Grade III is found to be false and baseless. A-1 order by which the applicant was promoted as Diesel Mechanic Grade II makes it clear that the applicant was an artisan staff of the electrical branch and the posting was to an ex-cadre post. That the post of Diesel Mechanic Grade II to which the applicant was promoted is also an ex-cadre post is not disputed by the applicant. The applicant who belongs basically to the electrical branch holding a substantive post of Helper Grade I can have no legitimate grievance in regard to his promotion as Technician Grade III which is in the direct line of promotion in the hierarchy of service to which he belongs. That as a result of promotion in the parent department and repatriation from the ex-cadre post, there would be a fall in emoluments is only natural and unavoidable consequence which is common when a person is repatriated to the parent cadre from an ex-cadre

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post.”

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6. A writ petition was filed thereagainst before the High Court which has also been dismissed by reason of the impugned judgment stating:

“7. Learned Counsel for the Petitioner submits that the statement in Ext. P6 were incorrect since the Petitioner had not passed the trade test for promotion to the post of Technician Grade II/ Power and he had passed only trade test prescribed for Diesel Mechanics. However, if Ext. P6 specifically states that the Petitioner has passed such tests, we are not prepared to hold that this is a misstatement of fact. Promotion has been awarded to him, taking notice of his achievements as well. Since we find that there was no error in comprehending the issue at the hands of the Tribunal, in spite of the laborious effort made by the Counsel for the Petitioner, it may not be possible for us to come to a different conclusion.”

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7. Mr. Romy Chacko, learned counsel appearing on behalf of the appellant, in support of the appeal, would submit that the appellant having worked in the Mechanical Division as a Diesel Mechanic for about 23 years, the respondents must be held to have acted arbitrarily in reverting him to the Electrical Division. In any view of the matter, it was urged, that the appellant would be entitled to protection of pay and allowance which he had been enjoying as Mechanical Grade I.

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Strong reliance in this behalf has been placed on *Bhadei Rai v. Union of India and Ors.* [JT 2005 (11) SC 311].

8. Mr. B. Dutta, learned Additional Solicitor General appearing on behalf of the respondents, on the other hand, would contend that as the parent cadre of the appellant was the Electrical Wing and as others have since become qualified to be appointed in the Grade I post in the Mechanical Wing of the Railways, no illegality has been committed in passing the order of reversion of the appellant to his parent cadre.

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A 9. Appellant was appointed on 13.11.1979 as a casual
artisan. He was then working under the control of XEN/Bridges
(Netravathi) as Oil Engine Fitter on a scale of pay of Rs. 260-
400/- as a substitute casual artisan under the control of EF(W)/
B OJA. A screening of substitute electrical khalasis was
undertaken in the year 1980. A list of the eligible candidates
who were found suitable for absorption in the regular post for
the period ending 31.12.1980 including anticipated vacancies
was prepared. Appellants name appeared at Serial No. 56 in
C the said list. He volunteered for the post of Diesel Mechanic
Grade II and he was promoted to that post by an order dated
13.02.1989. He was again promoted as Diesel Mechanic Grade
I in the scale of pay of Rs. 4500-7000 (revised). He was asked
to pass the trade test in the Electrical Wing. He refused to do
so stating:

D "With reference to your above letter No. J/P 535/III/TL of
4.3.93, I am hereby state that I am not willing to attend any
of the trade test except my present trade of Diesel
Mechanic."

E 10. The post, therefore, which he had been holding was
an ex-cadre post. The Railway Administration took a policy
decision to repatriate the ex-cadre employees upon completion
of a period of four years to the following effect:

F "During the PNM meeting held with the representatives of
SRMU on 18.6.2001 and 20.6.2001, it was pointed out
that in some cases the incumbents of ex-cadre posts are
not repatriated to their parent unit even after completion of
the tenure period of 4 years and in some cases the
incumbents are switched from ex-cadre to another ex-
G cadre post without being repatriated to parent cadre.

It has been decided that hence forth the tenure will be
strictly enforced with outer limit of 4 years."

H 11. Indisputably, pursuant to or in furtherance of the said
policy decision, the impugned order was passed by the Railway

Administration on 7.04.2003 directing:

“1. The promotion will take effect from the date of their assuming higher responsibilities. A

2. They should advise their willingness or otherwise to this office within 15 days from the date of receipt of this office order failure to do so i.e. if they are not willing to carry out the promotional transfer, the same will be treated as refusal of promotion and consequently they will not be eligible to be considered for promotion before the expiry of one year and that they will lose their place of seniority to all their juniors who are promoted in the meanwhile. B C

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5. Shri L. Parameswaran, Helper Gr. I and Shri C. Rajendran, Helper Gr. I are continuing on ex-cadre posts. They are due for promotion as Tech. Gr. III in their parent cadre. Therefore, they have no locus standi or right to continue in the present post. They stand repatriated on promotion...” D E

12. Indisputably, the appellant was put on a scale of pay of Rs. 4500-7500. By reason of the impugned order, he was to be posted in a grade, the scale of pay whereof is Rs. 3050-7000.

13. Being in an ex-cadre post, the appellant did not derive any right to continue therein. He could be reverted to his cadre post. He opted for the Mechanical side despite the fact that his parent cadre was Electrical Wing. If the appellant is allowed to continue in the ex-cadre post, he will be depriving some employees who are entitled to be promoted to the said post. Such a deprivation from the right of promotion to a duly qualified employee, in our opinion, therefore, cannot be countenanced. F G

We do not, therefore, think that there is any legal infirmity in the said order dated 7.04.2003. H

A 14. However, in *Bhadei Rai (supra)*, this Court noticed a
scheme framed by the Railway Administration pursuant to the
direction of this Court in *Inder Pal Yadav v. Union of India*
[(2005) 11 SCC 301]. This Court in view of the said Scheme
and following the principles laid down therein opined that an
B employee who had been continued to function in a higher post
and drawing a higher salary could not have been reverted and
in any event would be entitled to the protection of pay and
allowance.

C *Inder Pal Yadav (supra)* was concerned with a
regularization scheme. It was in terms of the said scheme,
certain provisions had been made. The direction issued by this
Court in *Inder Pal Yadav (supra)* was, therefore, in terms of the
said scheme. However, the principle laid down therein will have
no application to the fact of the present case.

D 15. The post held by the appellant was an ex-cadre post.
He opted for change in this cadre. He did not have any right
therefor. He in his own cadre might not have been promoted
particularly when he has not passed the requisite trade test.

E 16. Furthermore, the question in regard to right of a person
to be regularized in services so as to enable him to draw salary
as if he is recruited on a regular cadre came up for consideration
before a Constitution Bench of this Court in *Secretary, State of*
Karnataka and Others v. Uma Devi (3) and Others [(2006) 4
F SCC 1] wherein while laying down the necessity for adherence
to the rule of equality in public employment as a basic feature of
the Constitution, it was opined that no order should be passed
which would amount to violation of Article 14 of the Constitution
of India or overlooking of the need to comply with the
G requirements thereof. This court, however, furthermore opined:

H "44. The concept of □equal pay for equal work□ is different
from the concept of conferring permanency on those who
have been appointed on ad hoc basis, temporary basis,
or based on no process of selection as envisaged by the
rules. This Court has in various decisions applied the

principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after Dharwad decision the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."

17. Keeping in view the aforementioned two principles in mind, we are of the opinion that in a case of this nature, a balance has to be struck. In the peculiar fact of the present case,

A despite the law operating in the field as noticed supra, appellant might have been recruited as a casual employee but the fact that he was brought on the rolls of a regular cadre is not in dispute. The fact that he had passed a trade test is also not in dispute. It furthermore stands admitted that as an ex-cadre employee or otherwise he was promoted twice. He had been holding the said post for a period of more than 12 years. A policy decision was taken by the Railway Administration only on or about 15.10.2001. Prior thereto, there was no requirement to repatriate an employee to his parent cadre after a period of four years. The policy decision, furthermore, was not given immediate effect. Despite the said policy decision, the appellant was permitted to work for another two years.

+ 18. Faced with the situation, the learned Additional Solicitor General submitted that the question in regard to protection of pay of the appellant would be considered by an appropriate authority if a representation is filed in that behalf. Keeping in view the lapse of time, we are of the opinion that in this case we should ourselves make an endeavour to strike a balance. In our opinion, it is a fit case where this Court should exercise its jurisdiction under Article 142 of the Constitution of India to do complete justice to the parties. We think that, while upholding the validity of the order dated 7.04.2003, interest of justice would be met if the pay of the appellant is protected in the scale of pay of Rs. 4500-7500 to be fitted in the post of Technician Grade III for which the scale of pay is Rs. 3050 - 7000. By doing so, we would not be violating any law or perpetrating any illegality.

19. This appeal is allowed to the aforementioned extent. However, in the facts and circumstances of this case, there shall be no order as to costs.

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Appeal partly allowed.