

## **Badri Prasad And Ors. vs Union Of India (Uoi) And Ors. on 6 May, 2005**

**Equivalent citations:** AIR2005SC2531, 120(2005)DLT55(SC), 2005(3)ESC418, [2005(3)JCR241(SC)], JT2005(11)SC304, (2005)IIILLJ1SC, 2005(II)OLR(SC)80, (2005)11SCC304, (2005) 3 LABLJ 1, AIR 2005 SUPREME COURT 2531, 2005 AIR SCW 2717, 2005 LAB. I. C. 2084, (2005) 3 ALLMR 718 (SC), (2005) 3 JCR 241 (SC), (2005) 3 LAB LN 19, 2005 (3) ALL MR 718, 2005 (4) SCALE 725, 2005 (11) SCC 304, 2005 (4) SLT 289, (2005) 32 ALLINDCAS 650 (SC), (2005) 105 FACLR 1023, (2005) 2 ORISSA LR 80, (2005) 3 SCT 454, (2005) 3 SCJ 667, (2005) 5 SERVLR 62, (2005) 4 SUPREME 591, (2005) 4 SCALE 725, (2005) 3 ESC 418, (2005) 120 DLT 55

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**Bench:** Ashok Bhan, D.M. Dharmadhikari

### JUDGMENT

D.M. Dharmadhikari, J.

1. Leave to appeal, as prayed for, is granted.
2. Learned counsel for the appellant and the learned Standing Counsel for the Union of India representing Railways and its authorities are heard.
3. The appellants started their service in the Railways as daily-rated employees on different posts of Khalasi, Gangman, Chowkidar between the years January 1981 to June 1982. They were given temporary status on the post in which they were working.  
  
They were posted on different dates in the year 1984 to work as store man which is a higher post in the Group 'C' carrying a higher scale of pay. They continuously worked on the post of Store man for long periods during the years 1984, 1985, 1988 and 1990 till they were reverted by the impugned order passed on 29.7.1999 from Group 'C' post of Store man to Group 'D' post of Khalasi in the open line.
4. The appellants approached the Central Administrative Tribunal with their grievance and prayer that they having been made to work on the post of Store man and sometimes as Clerk for a long period of more than ten years they are entitled to be regularized and absorbed on the Group 'C' post.

5. The Central Administrative Tribunal partly allowed the claim of the appellants by directing consideration of their cases for regularization after ascertaining the minimum eligibility criteria for the post and subjecting them to qualifying tests. The tribunal placed reliance on the order of this Court passed in SLP No. 12947 of 1993 decided on 25.10.1996 in the case of Union of India v. Vijay Prakash. The short order passed in the case of Vijay Prakash reads thus:

"Delay condoned.

In the facts and circumstances of the case including the fact that the concerned employees have all worked in that capacity for over a decade, the direction given by the tribunal, for regularization of those suitable found fit after screening, is just and does not call for any interference under Article 136 of the Constitution. The question of law raised in the Special Leave Petition is not required to be considered on these facts and is, therefore, left open for decision in an appropriate case.

The special leave petition is dismissed."

6. Relying on the above quoted order of this Court in the case of Vijay Prakash (supra) in partly allowing the petition of the appellants, the tribunal made the following directions:

"In view of the above discussion and keeping in view the ratio laid down by the Apex Court in Vijay Prakash's case we set aside the order dated 16.8.1999 and direct the respondents to regularize the applicants in Class III posts as Clerks after ascertaining the minimum eligibility criteria for the said posts and also subjecting them to qualifying test etc. The applicants, if found fit, would also be entitled for the consequential benefits from the date their services have been utilized as Clerks. No costs. The OA is allowed on the above terms."

7. The Union of India challenged the order made by the tribunal in granting the above partial relief to the appellants by way of a Writ Petition under Article 227 of the Constitution of India in the High Court of Delhi at New Delhi. The High Court allowed the petition filed by the Union of India and set aside the order of the tribunal. The High Court, however, made in its concluding part the observation as under:

"However, keeping in view the peculiar facts and circumstances of this case, the cases of the respondents may be considered for regular appointment along with other eligible candidates in terms of the recruitment rules after giving them the benefit of relaxation of age keeping in view of the fact that they had worked for such a long time."

8. In this appeal preferred after seeking leave, learned counsel for the appellant contends that the high Court erred in upsetting the directions of the Tribunal which were made keeping in view the extraordinary circumstances and facts of the case of the appellants that they were made to work for a very long period as Store man-cum-Clerk on a promotional post. In such circumstances,

repatriating them after more than a decade of service from Group 'C' post to lower post of Group 'D' was wholly unjustified. The tribunal rightly granted them partial relief on the basis of the order made by this Court in the case of Vijay Prakash (supra)

9. The learned Standing Counsel appearing for the Railways has triad to justify the action of the Railways and supported the order of the High Court. It is submitted that post of Store man is a promotional post. It cannot be filled by regularization or direct recruitment. It is also not a post in the ministerial cadre. The post being a promotional post in Group 'C', an employee substantively holding Group 'D' post cannot be regularized on a promotional post. It is submitted that the appellants have only right to be considered for rsgularization on a Group 'D' post.

10. Learned counsel for the Railways also argued that in Vijay Prakash's case Special Leave Petition was summarily dismissed leaving the question of law raised by the railways open.

11. It is not disputed that the appellants were made to work on the post, of Store man-cum-Clerk which is a higher post carrying higher scale of pay. They were made to work on that higher post not for a short period as a Stopgap arrangement but for a long period of more than ten years. It is on these facts that the appellants have raised their claim for being allowed to continue on the higher post and questioned drop of their emoluments.

12. Reliance is placed on the decision on this Court in the case of Inder Pal Yadav v. Union of India in Writ Petition No. 548 of 2000 decided on 13.1.2003. In that case, similarly placed railway employees, who were substantively holding Group 'D' post but were made to work for long period on a higher group 'C' were granted partial relief by making the following directions:

"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 re-posting of the petitioners is based on selection.

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

13. 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.

14. As held by the High Court - the appellants cannot be granted relief of regularizing their 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.

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.

16. 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.