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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.177 of 1986

1. Union of India.
2. Divisional Officer, Northern Railway, Lucknow.
3. Loco Foreman, Northern Railway, Varanasi. Appellants.

Vs.

1. Shaligram Pathak
2. Basudeo Lal Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon'ble G.S.Sharma, JM)

This civil appeal (no.194 of 1981) against the judgment and decree dated 17.2.1981 passed by the Munsif City Varanasi decreeing suit no. 444 of 1977 filed by the plaintiff-respondents against the defendant-appellants for injunction with costs has been received by transfer under section 19 of the Administrative Tribunals Act XIII of 1985 from the Court of II Civil Judge, Varanasi.

2. The case of the plaintiff-respondents, as stated in their plaint, is that the plaintiff no.1 was appointed as a Cleaner on 27.11.1958 and the plaintiff no.2 was appointed as such on 2.1.1959 in the pay scale of Rs.30-1-35 by the Northern Railway. The plaintiffs were thereafter

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permitted to officiate as Telephone attendants-cum-booking clerks at Loco Shed Varanasi in the grade of Rs. 105-3-135 in 1970. The plaintiffs were working on this post since then quite satisfactorily without any break and acquired a lien on these posts in the light of the provisions contained in the Railway Board's circular no. E 55 ARG-6-26 dated 21.5.1956 and cannot be reverted from this post without observing the rules contained in the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the D.A.Rules). On 31.12.1972, the Loco Foreman Varanasi threatened the plaintiffs to revert them to inferior post on the taking over charge of II Foreman of Pratapgarh Shed on his promotion as Material Checker. The plaintiffs, therefore, gave a notice under Section 80 Code of Civil Procedure to the appellants on 8.1.1973 against the said threat as a result of which, the appellants could not revert the plaintiff-respondents. The posts of Telephone attendants, Material Chasers, Store Issuers, Material checkers etc., in the grade of Rs.105-135 (revised grade Rs.225-308) were upgraded ~~and~~ giving the grade of Rs.110-180 (revised grade of Rs.260-400) ~~but~~ ignoring the claim of the plaintiffs, persons junior to them were placed in this grade. The suit was according-

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ly filed for a declaration that the plaintiffs are Material Checkers, entitled to be upgraded in the grade of Rs.110-180 (revised grade 260-400) w.e.f. 1.10.1972 and to restrain the defendant-appellants from reverting them from the said post.// The suit was contested by the defendants and in the written statement filed by them, it was pleaded that the promotion to the post of Telephone attendants (grade 105-135) is regulated on the basis of seniority subject to qualifying in the prescribed selection and as the plaintiffs, who were initially appointed as Cleaners, never qualified in the test held for the post of Telephone attendants and due to non-availability of the selected hands, they were put to work as Telephone attendants against the temporary vacancies, and they could be reverted to the substantive post of Cleaner in terms of the Railway Board's letter no.E(D&A)65 RG 6-24 dated 15.1.1966. ^{under} The orders of upgrading issued on 25/27.1.1973 appointing the selected candidates for various designated posts of Material Checkers, Material Chasers, Store Issuers, Telephone attendants working in the grade of Rs.105-135 to officiating grade of Rs.110-180, the plaintiffs could not be upgraded as they were ~~merely~~ ^{and} working on the post of Telephone attendants purely on temporary basis and had no locus-standi in the said grade, ^{and} they were not entitled to the declaration claimed. The plaintiffs have no lien on the post of Material Checkers and they

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have already been reverted to their substantive posts and the orders of reversion have already been implemented. Consequently, the suit for declaration and injunction is not maintainable. Some other legal pleas regarding the maintainability of suit and bar of §80 CPC were also taken.

3. In their replication, the plaintiff-respondents stated that under the relevant rules of the Railway Establishment Manual, ad-hoc officiating arrangement cannot continue for a period of more than 3 months in general and 6 months in special case and as such, the plaintiffs cannot be treated to be ad-hoc or temporary incumbents of the posts of telephone attendants/ material checkers and after working for more than 18 months on their posts, they have acquired lien on their posts and from 1973, they are regularly holding the post of material checkers in the grade of Rs.260-400. No notice of reversion was ever served on them and the plaintiffs are entitled to the reliefs claimed.

4. The trial Court had framed 8 issues in the case and held that on account of their working as Telephone attendants-cum-Booking Clerks for more than 18 months, the plaintiffs are entitled to continue on this post and they are entitled to all the benefits of the said post. It was also held that as the posts of Telephone attendants and equivalent posts of Material checkers,

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Material chasers etc., have been upgraded, the plaintiffs are entitled to get the grade of Rs.260-400. On the basis of these findings, the trial Court decreed the suit directing the appellants to give the plaintiffs the upgraded grade of their respective posts and by including their names in the list of selected candidates, they should be given an opportunity of further promotion.

5. Aggrieved by these findings, the defendants preferred the present appeal and it was contended on their behalf that the plaintiffs were working on the post of Telephone attendants-cum-Booking Clerks merely on the ad-hoc basis and the Railway Board's circular relied upon by the plaintiffs is not applicable to them and the Court below has wrongly decreed the suit in their favour. The appeal has been contested on behalf of the plaintiff-respondents and they supported the findings of the trial Court.

6. After a careful consideration of the entire material on record, in the light of the submissions made on behalf of the parties before us, we feel that there was a lot of confusion in this case before the trial Court. Necessary documents and the circular orders issued by the Railway Board relied upon by the parties in their pleadings were not filed and when we felt the necessity of the same and directed the parties to

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produce the same on the record, they did not extend their cooperation and as such, we were deprived of the said material, which appeared to be necessary to us for a proper decision in this case. We have now to decide this appeal without such additional material, merely on the basis of the material available on the record. The respondents had filed certain documents in appeal after obtaining the leave of the II Civil Judge and we have also gone through them.

7. The main question arising for determination in this case is whether on the date (19.12.1975), the suit giving rise to this appeal was filed by the plaintiffs, The plaintiffs had acquired a right to continue as Material checkers in the revised grade of Rs.260-400 and they could not be reverted on their substantive post, otherwise than in accordance with the provisions of D.A.Rules. It is noteworthy to point out that nowhere in the plaint, the plaintiffs have alleged as to how and when they were appointed as Material checkers. Before filing the suit, the plaintiffs had given a notice under section 80 CPC to the appellants. Exhibit 1 is a copy of the said notice dated 2.1.1973. Even in this notice, the plaintiffs never claimed themselves to be the Material checkers and the declaration sought through this notice was to the effect that the order no.755E/

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1-6 (JC) dated 29.12.1972 and any other order in pursuance thereof passed to revert the plaintiffs from the post of Telephone attendants-cum-Booking Clerks in the grade of Rs.105-135 to any inferior post is illegal, void and inoperative. An injunction was also sought through this notice to restrain the appellants from reverting the plaintiffs from their officiating post in the grade of Rs.105-135. The plaintiffs did not file any document appointing them as Material checkers. It is, however, an admitted case of both the parties that ^{at} the time this notice was given by the plaintiffs, they were working as Telephone attendants-cum-Booking Clerks in the grade of Rs.105-135.

8. Despite a plea in paragraph 22 of their written statement that the plaintiffs have been reverted to their substantive posts and the order of reversion has been implemented, the appellants did not produce any document to support this allegation. Such document was not filed even when a direction to file the same was issued by this Bench. Like a private employer, the Railway administration ^{could} ~~cannot~~ revert the plaintiffs from their officiating post to their substantive post orally. Further, one of the plaintiffs Saligram Pathak has stated as P...1 before the trial Court that since 1970, the plaintiffs were continuously working as Telephone attendants-cum-Booking Clerks

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in the Loco Shed Varanasi without any break and on extending the threat of reversion to them, they had given the notice under Section 80 CPC. But they have not been reverted so far. In the absence of any evidence to the contrary, we, therefore, accept this statement and hold that the plaintiffs were officiating as Telephone-attendants-cum booking clerks in the grade of Rs.105-135 (revised grade Rs.225-308).

9. The other question which arises for determination in this appeal is as to what was the nature and character of the service of the plaintiffs at the time this suit was filed. On the basis of the circular no. E 55 ARG-6-26 dated 21.5.1956, it has been claimed by the plaintiffs that they having put in more than 18 months service on the posts of Telephone attendants, they cannot be reverted from the said posts and should be deemed to be the permanent holders of these posts. A copy of the said circular is Ex.A-9 but it does not lay down this principle. A perusal of recent circular no.E(D&A) 85 RG 6-9 dated 20.4.1985 issued by the Railway Board laid down that the advantage of officiation on the higher post for more than 18 months ^{can be claimed by} an incumbent only

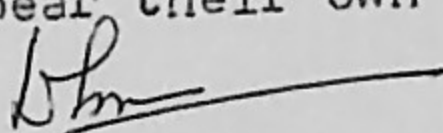
if he had passed the relevant trade or selection test and his name was empanelled for the promotion post. In the instant case, the plaintiffs did not pass any trade or selection test for the post of Telephone attendants-cum-Booking Clerks or Material Checkers. The plaintiff Saligram clearly stated as P.W.1 in his cross-examination that there has been no selection for the post of grade 105-135. On the basis of such circular letters of the Railway Board, the plaintiffs, in the absence of their having passed the selection or trade test, cannot claim this post as of right merely on the basis of their officiation on such post for a few years. The view taken by the learned Munsif to the contrary is not correct and his findings in this connection, is set aside.

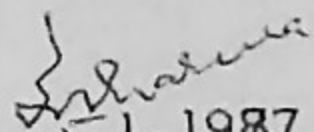
10. It appears to us that there was no real threat to the service of the plaintiffs as no order of reversion was issued by any railway authority. The order no.755E/1-6(JC) dated 29.12.1972, a mention whereof was made in the notice Ex.1 of the plaintiffs, has also not been placed on the record and it appears from the order dated 21.3.1984 issued by the Divisional Railway Manager, Lucknow, a copy whereof was filed by the appellants in this appeal, that both the plaintiffs were given revised grade of Rs.260-400 w.e.f.1.7.1982 during the pendency of the appeal and their pay was raised to Rs.314 per month. This is what the plaintiffs wanted, though from an earlier

date. The earlier promotion orders of the plaintiffs are not before us though such orders were issued as admitted by Saligram, P.W.1. We are, therefore, not in a position to decide whether the pay of the plaintiffs was rightly upgraded w.e.f. 1.7.1982 or they were entitled to the revised grade from an earlier date.

11. In view of the above considerations, we have come to the conclusion that the plaintiffs were directed to officiate on the post of Telephone attendants w.e.f. 15.4.1970 and 10.10.1970 respectively and in the meantime, their grades have been revised and they have been allowed the upgraded grade from 1.7.1982 and as such, no other relief can be granted to them. The railway administration was desirous of giving an opportunity to the plaintiffs to appear in the selection ^{test} for the post held by them vide order dated 7.4.1982 issued by the Divisional Railway Manager, Lucknow as appears from paper no.18-C filed by the plaintiffs in appeal, but the plaintiffs did not avail that opportunity and claimed a protection under the decree passed in their favour by the trial Court. In our view, without passing the trade or selection test for the officiating post held by them, the plaintiffs cannot claim themselves to be the lien holders of these posts and the injunction granted by the trial Court to the contrary, is not correct.

12. We accordingly allow the appeal in part and modify the decree passed by the Court below. The suit of the plaintiff-respondents shall now stand decreed for a declaration that on the date of the suit, the plaintiffs were officiating on the post of Telephone attendants-cum-Booking Clerks in the grade of Rs.105-135 (revised grade Rs.225-308) from 15.4.1070 and 10.10.1970 respectively and during the pendency of the appeal, they have been placed in the upgraded grade of Rs.110-180 (revised grade Rs.260-400) and they havenot been reverted to the lower ranks since then. They shall not be reduced in rank otherwise than ^{by} due process of law, ~~as they are not liable to be~~ ~~reverted to their substantive posts.~~ The parties shall bear their own costs throughout.


5.1.1987
Member (A)


5.1.1987
Member (J)

Dated 5.1.1987
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