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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 990 of 1986

(Civil Appeal No. 136 of 1985)

Union of India and another Appellants

Vs.

Sunder Lal and 10 others Respondents.

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

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

This civil appeal against the judgment and decree dated 18.10.1985 passed by the V Addl. Munsif Bareilly decreeing suit no. 426 of 1984 has been received by transfer from the Court of VIII Addl. District Judge, Bareilly.

2. The suit giving rise to this appeal was originally filed by the plaintiff-respondents no.1 to 6 against the Union of India and the Divisional Electrical Engineer (W) N.E.Railway Izatnagar, appellants before us, for a declaration that the names of the plaintiffs have been finally included in the seniority list published on 25.4.1982 as Wiremen and were entitled to appear in the trade test in that capacity for upgrading. The respondent nos. 7 to 11, who are employees of the N.E.Railway, were impleaded as defendants during the pendency of the suit on

their own application under the orders of the trial Court. It is alleged that the plaintiff-respondents no.1 to 6 (hereinafter referred to as the plaintiffs) were appointed as Wiremen - cum-Carpenter on 16.12.1968 after their having passed the trade test in the aforesaid department of the N.E.Railway. As there was no joint post of Wireman-cum-Carpenter in the N.E.Railway, the difficulty arose in 1979 to adjust the plaintiffs at the time of upgrading the various posts and the plaintiffs were required to give their option either for the post of Carpenter or for the post of Wireman so that they could be merged in that cadre. All the plaintiffs opted for their appointment on the post of Wireman and group of the plaintiffs was accordingly transferred as Wiremen which was approved by the General Manager, N.E.Railway. Vide letter dated 8.1.1982 of the Chief Personnel Officer and the Chief Electrical Engineer, N.E.Railway, Gorakhpur, the plaintiffs were informed that their option was accepted and they were placed in the aforesaid list of Wiremen in the grade of Rs.260-400 at sl.nos. 8 to 11, 13 and 14. The plaintiffs thus, became entitled to appear in the selection test for their promotion in the line of Wiremen but certain interested persons with the help of Railwaymen's Union tried to reopen the question of merger of the posts of

the plaintiffs and the plaintiffs issued separate notice, under Section 80 of the Code of Civil Procedure for their promotion in accordance with their seniority. To their surprise, the plaintiffs knew from a notice posted on the Notice Board of their workshop that leaving the plaintiffs, all the persons from sl.nos. 1 to 31 of the seniority list were asked to appear in the trade test for their selection in the upgraded grade of Rs.330-480 depriving the plaintiffs from appearing in the said test. They accordingly filed the suit. During the pendency of the suit, the plaintiffs got their plaint amended to plead that without the consent of the plaintiffs and under the pressure of the Unions, the appellants unlawfully changed the grade of the plaintiffs vide their order dated 24.9.1984, which is void and illegal and the plaintiffs are entitled to be included in the seniority list of Wiremen, as done earlier.

3. The suit was contested by the defendants and in the joint written statement filed on behalf of the appellants, it was stated that the plaintiffs were originally appointed as basic Carpenter, and only subsequently, they were promoted as Carpenter-cum-Wireman on different dates in 1969 and 1971. The post of Carpenter-cum-Wireman was abolished by the railway administration and the plaintiffs were asked to give their option and they thereafter worked as Wiremen on

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the basis of the decision of group transfer made by the railway headquarters. N.E.Railway Employees Union, Izatnagar raised the issue of group transfer of the plaintiffs as Wiremen and the matter was referred to General Manager (E) and he, after considering the said representation and the representation of the NER Majdoor Union, the two recognised trade Unions, ordered that the decision about group transfer of the plaintiff Wiremen stands cancelled and the plaintiffs were placed in the category of Carpenters. The said decision having been made with the consent of both the trade Unions, the plaintiffs cannot challenge the same under the law. The plaintiffs are now working as Skilled Carpenters and are not entitled to sit in the trade test for promotion to the post of Highly Skilled Grade II Wiremen. The Head of the Department was fully competent to change the A.V.C. as well as the cadre of an employee on administrative grounds after taking the consent of the recognised Unions and the General Manager, thus, had every right to cancel his previous orders. No employee can claim promotion as of right and the plaintiffs have not suffered any injury whatsoever due to this change in their cadre. Due weightage of service and seniority has been given to the plaintiffs in the cadre of Skilled Carpenters and their suit

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is liable to be dismissed. The legal pleas that the suit is bad for want of notice under Section 80 CPC and due to misjoinder of causes of action, were also taken. The defendant-appellants further stated in their additional written statement that only in 1978, the General Manager vide letter dated 16.12.1968 had created 6 posts of Wiremen cum-Carpenters and the plaintiffs were posted on those posts but at the time of upgrading, when it was found that no channel of promotion was available to them, the said posts were abolished on administrative ground and the plaintiffs were reverted to their original posts of Carpenter, and on the basis of options given by the plaintiffs, their posts were merged in the group of Wiremen and they were also confirmed as such. The plaintiffs are Skilled Wiremen and Carpenters both and the railway administration can put them in any grade according to its requirement. They further denied the fact that the impugned order was passed by the railway administration under the pressure of the trade Unions and maintained that the orders were passed by the competent authority in accordance with the provisions of the Railway Establishment Manual and rules.

4. The defendant nos. 7 to 11 filed their separate joint written statement stating that the plaintiffs were never appointed as Wiremen-cum-Carpenters on 16.12.1968 but were appointed as

basic Carpenters. The plaintiffs never worked as Wiremen and are now exclusively working as Carpenters and they were also awarded by the railway administration as Carpenters. The plaintiffs got their names placed in the group of Wiremen in the list dated 25.4.1982 by misrepresentation and the General Manager (P), therefore, rightly superseded the previous decision of absorbing the plaintiffs in the cadre of Wiremen by passing the order dated 24.9.1984 and the plaintiffs have no right to challenge the validity of the said order.

5. The learned trial Court framed 9 issues in this case and held that the reversion of the plaintiffs from the post of Wiremen to the post of Carpenters was in contravention of Para 2011 of the Indian Railway Establishment Code and the General Manager was not competent to do so. The findings on other issues are not material and as such, require no mention here. The trial Court accordingly decreed the suit and holding the order dated 24.9.1984 of the General Manager null and void, declared that the inclusion of the plaintiffs in the seniority list dated 25.4.1982 of the Wiremen was final and they were further declared to be Wiremen for appearing in the trade test for the purpose of upgrading. Aggrieved by the findings against them, defendant nos. 1 and 2 preferred this appeal and it was contended on their behalf before us that the view taken by the trial Court is not correct and the General Manager had rightly exercised his discretion in reverting the plaintiffs from the cadre of Wiremen to their original

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cadre of carpenters. The appeal has been contested on behalf of the plaintiff-respondent nos. 1 to 6. The defendant-respondent nos. 7 to 11 have supported the appeal.

6. We have carefully considered the point of reversion involved in this case in the light of the submissions made before us and the pleadings of the parties. We find that there is no dispute in this case on the point that all the plaintiffs, who are initially appointed in the service of the N.E. Railway as basic Carpenters, on their passing the trade test, were appointed as Wireman-cum-carpenters w.e.f. 16.12.1968. It is also not in dispute that the plaintiffs had passed the trade test for both the posts-Wireman and Carpenter. It is further not in dispute that as there was no sanctioned cadre of Wireman-Cum Carpenter in the N.E. Railway, the difficulty arose when the further promotion of the plaintiffs was to be considered in 1979 and options were invited from them. As all the plaintiffs opted for the cadre of Wireman and the same having been accepted, the only question is whether the railway administration can review its decision so as to revert the plaintiffs again to their parent cadre of carpenters.

7. The appellants have placed their reliance on Para 2011 of the Indian Railway Establishment Code Volume II in support of their contention, which

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runs as follows :-

" 2011 (F.R.15) Transfer of Railway Servants- (a) A competent authority may transfer a railway servant from one post to another ; provided that except-

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a railway servant shall not be transferred substantively to, or, except in a case covered by Rule 2038 (F.R.49), appointed to officiate in a post carrying less pay than the pay of permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 2008 (F.R.14).

(b) Nothing contained in clause (a) of this Rule or in clause (14) of Rule 2003 (F.R.9(13)) shall operate to prevent the re-transfer of a railway servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 2008 (F.R.14).

8. In our opinion, this rule confers wide powers on the competent authority to transfer a railway servant from one post to another. The only limitation for exercising the powers under this rule is that if the transfer is not on account of inefficiency or misbehaviour or on own request, the railway servant shall not be transferred substantively to a post carrying less pay than the pay of the permanent post on which he holds a lien. It is not alleged by the plaintiffs that their reversion from the post, of Wiremen to the post, of Carpenter will cause reduction in their emoluments. They have, therefore, no reason to complain against the said

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order. We are further of the view that the plaintiffs had joined the railway service as Carpenters and they have been reverted to their parent cadre and on this ground as well, they should not have any grudge against their reversion.

9. The question whether the decision of reverting the plaintiffs from the post, of Wiremen to the post, of Carpenter, was taken by the railway administration on the representation of the trade union or otherwise, is immaterial. The defendant- respondent nos. 7 to 11, who were initially appointed in the cadre of Wiremen, have opposed the inclusion of the plaintiffs in the cadre of Wiremen as this will affect their seniority and future prospects. Had it been a mere matter of discretion with the railway administration, we could think of interfering in the matter but as it affects the prospects of other railway employees for their no fault, we are of the view that the impugned order of reversion of the plaintiffs to the cadre of Carpenters is perfectly in accordance with law and the learned Munsif did not correctly appreciate the Para 2011 of the Indian Railway Establishment Code. We are, therefore, unable to sustain the decree passed by the trial Court.

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10. The appeal is accordingly allowed and the judgment and decree passed by the trial Court ^{are} set aside and the suit of the plaintiffs is dismissed. The parties are, however, directed to bear their own costs throughout.

[Signature]

10.2.1987
Member (A)

[Signature]

10.2.1987
Member (B)

Dated 10.2.1987
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