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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION T.A. NO. 329 of 1987
(Civil Misc. Writ Petition No.4082 of 1979)

Hridaya Narain Upadhyay Petitioner
& 4 others.

Versus

The Union of India & 2 others.....Respondents.

Hon'ble D.S. Misra - AM
Hon'ble G.S.Sharma - JM

(Delivered by Hon. G.S.Sharma- JM)

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This Writ Petition under Article-226 of the Constitution of India has been received under section 29 of the Administrative Tribunals Act no.XIII of 1985 from the High Court of Judicature at Allahabad.

2. Shortly stated the case of the petitioners is that they were working as Mistry Grade- I in the North Eastern Railway Workshop, Izzatnagar and holding independent charge and in accordance with letter dated 24.4.1973 of the General Manager, N.E.Railway (Respondent no.2) were given the grade of Chargemen 'C' in the pay scale of Rs. 205- 280 and the petitioners were posted as Chargemen 'C' in the same workshop w.e.f. 31.10.1975 by the Deputy Chief Mechanical Engineer of the Workshop (Respondent no.3). As a result of the recommendations of 3rd Pay Commission, the posts of Chargemen 'C' were merged with the posts of Chargemen 'B' and the petitioners were upgraded as Chargemen 'B' and

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placed in the grade of Rs. 425-700 under the order dated 26.2.1976 and since then they were working on the said posts and had also passed the Efficiency Bar in the said grade. After their satisfactory working for about 8 years, the petitioners were required to appear in the departmental examination for promotion to the post of Chargemen 'B' commencing on 25.5.1972 to which they did not agree on account of their long officiation on the said posts and they filed this writ petition on 31.5.1979 for a direction to the respondents to treat the petitioners as permanent employees in the grade of Chargemen 'B' and for a mandamus commanding the respondents not to interfere with the functioning of the petitioners as such as well as for a further direction not to revert the petitioners from the post of Chargemen 'B' to the posts of Mistries Grade-I with the allegations that the petitioners could not be reverted to their substantive posts after such a long period and on account of the upgradation of their posts as Chargemen 'B', the respondents could not require the petitioners to appear in any selection test and the petitioners had acquired a legal right to hold the posts of Chargemen 'B'.

3. The Writ Petition has been contested on behalf of the respondents and in the counter affidavits filed on their behalf by the Assistant Personnel Officer, NE-Railway, Izatnagar, it was stated that vide their letter

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dated 6.4.1973, the Railway Board had recommended that the posts of Mistries Grade-I, who supervise the work of Highly Skilled Grade-I Workmen may be upgraded and the petitioners were in the grade of Chargemen 'C' on Ad-hoc basis in terms of the said letter of the Railway Board w.e.f. different dates in 1970 and 1971 and from 1.1.1973, their pay was fixed as Chargemen 'B' on the recommendations of 3rd Pay Commission as the post of Chargemen 'C' was upgraded as Chargemen 'B'. The post of Chargeman 'B' is a Selection post and unless, the petitioners qualified and find place in the panel of Chargemen, they cannot claim the post of Chargeman on regular basis. The crossing of Efficiency Bar by the petitioners in the scale of Rs. 425-700 is not material. The petitioners were called to appear in the Selection for Chargemen 'B' but they did not appear. As a result of Mian Bhoy Award on the basis of combined seniority of Mistry Grade-I and Highly Skilled Grade-I, five Highly Skilled Grade-I, who ranked senior to the petitioners, were promoted ^{as} to the Chargemen 'B' on Ad-hoc basis and the petitioners were reverted to their substantive posts of Mistry Grade-I w.e.f. 28.5.1979 and their working on Ad-hoc basis for a number of years is not sufficient to entitle them for regular absorption against a Selection post without passing the Selection Test. It has been further stated that w.e.f. 28.5.1979, they were again promoted as Chargemen 'B'

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on Ad-hoc basis upto 31.8.1979 and the General Manager was requested to obtain the approval of the competent authority for further continuance of the petitioners on the said posts beyond 31.8.79.

4. In the Rejoinder-Affidavit filed on behalf of the petitioners by petitioner no.3, it has been stated that in the meantime, the petitioner nos.2,4 and 5 have retired from service. He denied the allegations of the respondents that the petitioners were working in the grade of Chargemen 'C' on Ad-hoc basis and reiterated that the petitioners were promoted as Chargemen 'C' and thereafter the said grade was merged in the grade of Chargemen 'B' in accordance with the award of Mian Bhoy and they were given the arrears and allowed to cross the Efficiency Bar in the promotion grade w.e.f. 1.1.1970 and after officiating for nine years, the petitioners could not be reverted and nor they could be required to appear in any test.

5. After hearing the learned counsel for the parties, we have come to the conclusion that the controversy arising in this Writ petition has already been set at rest by certain other decisions and it is not necessary for us to enter into a detailed discussion of the facts in dispute.

6. It is not in dispute that the petitioners were formerly holding the posts of Mistry Grade-I in the NE.Railway Workshop, Izatnagar and after the Mian Bhoy-

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Award, they were given the grade of Chargemen 'C' w.e.f. 24.4.73 vide order (Annexure-III) to this Writ Petition on Ad-hoc basis. It is also not in dispute that in accordance with the recommendations of 3rd Pay Commission, the posts of Chargemen 'C' were upgraded and merged in the post of Chargemen 'B' and consequently the petitioners were also appointed as Chargemen 'B'. (Annexure-II) shows that placement of the petitioners as Chargemen 'C' was purely a local and tentative arrangement subject to the senior most and suitable staff. Undisputedly, the post of Chargemen 'B' is a Selection post and the petitioners refused to appear in the Selection for the ^{said} post when required and they have claimed a right to continue on the said post merely on the basis of their officiation for a certain period in the past.

7. Similar matter had cropped up in the High Court of Judicature at Jaipur and 15 Mistries ^{who were} working in the Production Control Organisation of the Western Railway at Kota ^{and} were promoted and upgraded as Chargemen 'C' had filed 15 separate Writ Petitions for treating them as Chargemen 'B' in the grade of Rs. 425-700 from 1.8.1970. The Union of India had contested the Writ petitions on the ground that the post of Chargemen 'C' was a Selection post and unless, the petitioners were selected in accordance with the rules, they could ^{not} hold the said upgraded posts. A single

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Hon'ble Judge who had heard the Writ petitions was pleased to allow them, but on Special Appeals filed by the Union of India (Special Appeal no.457 of 1980 Union of India & others -vs- Shiv Ratan Soni & others), a Division Bench of Rajasthan High Court allowed the appeals and held that the petitioners-respondents had to undergo the process of selection as decided by Railway Board before being permanently promoted on the posts of Chargemen 'C' and the Writ Petitions were accordingly dismissed on 21.7.1983.

8. The Allahabad Bench of the Tribunal to which one of us was a party in Registration TA.NO.1166/86 decided on 14.4.1988, Janardan Singh -vs- Union of India & others, had occasion to consider the aforesaid decision of the Jaipur Bench of Rajasthan High Court and find in agreement with the conclusion arrived at by the High Court. It was further held in the said appeal by Allahabad Bench that upgradation of posts is different than the revision of Pay Scale and on the upgradation of a post, the normal process required for filling up such posts has to be followed and those who were ^{not} qualified to hold the upgraded posts or did not appear in the Selection for upgraded posts, have no right to continue on the said posts.

9. In view of the decisions cited above, we are of the opinion that the case before us is fully covered by the said decisions and the petitioners having failed

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to appear in the selection for the posts of Chargemen 'B', have no right to continue on the said posts merely on the basis of their officiation on Ad-hoc basis in the past. None of the petitioners is, therefore, entitled to any reliefs in this petition.

10. The petition is accordingly dismissed. The parties are, however, directed to bear their own costs.

Member (J).

Member (A).

Dt/ 17 th Oct., 1988/
Shahid.