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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 485 of 1987

Sunder Lal & others Applicants.

Versus

Union of India & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

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In this petition filed under Section 19 of the Administrative Tribunals Act, XIII of 1985 the petitioners, who claimed to have been working regularly as class III employees in the Northern Railway in Skilled and Semi-skilled grades since 1977 and who are going to be reverted to the post of Gangman/Khalasi in class IV post after a period of about 10 years, have challenged the order No.473-W/PNM.Imp/86, dated 3-3-1987 passed by the Divisional Railway Manager, Northern Railway, Allahabad and the order No.28/A, dated 5.5.1987 passed by the Assistant Engineer, Northern Railway, Rae Bareli ³²conveying the impugned orders of reversion. The petitioner no.1 was appointed as a Skilled Welder on 14.9.1977, the petitioner no.2 was appointed as a Skilled Moulder on 13.5.1978, the petitioner no.3 was appointed as a semi-skilled Luter on 14.9.1977, and the petitioner no.4 was appointed as a Hammerman on 14.3.1976. All the petitioners are drawing regular scales of pay in their respective appointments and have even

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earned increments. Their claim is that they have not worked for a single day in a class IV service as a Gangman or Khalasi and there has been no complaint in respect of their work or performance. They have even been awarded prizes for excellent service. They have alleged that they have been given no opportunity and the orders of their reversion are being passed at their back, in pursuance of some agreement which the respondents have made with one of the Labour Unions. They have also sought protection under the 18 months officiation rule saying that there could be no reversion unless Disciplinary and Appeal Rules are followed. They have further submitted that having worked for about 10 years they are entitled to be regularised in service in terms of Railway Board's letter of 8.6.81, the extracts of which are placed as Annexure IV of the paper book. They have, therefore, prayed for quashing of the impugned orders dated 3.3.1987 and 5.5.1987 and for direction to be issued to the respondents not to interfere in the discharge of their duties by the petitioners as Skilled and Semi-skilled Artisans and not to compel them to work in class IV post where they have never worked. They have further prayed for a direction to be issued to the respondents to regularise them in service in accordance with the Board's circular of 8.6.1981.

2. The respondents in their counter reply have challenged the contentions of the petitioners saying that they were appointed on daily rates as Welder, etc. and they are working as Artisans and not as class III employees. A class III employee can only be appointed

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after a due competitive examination which may be conducted by Railway Service Commission. According to respondents prior to 1981 the seniority of all the casual labour whether skilled, semi-skilled or unskilled was maintained on a combined basis. According to this seniority the position of the petitioners commenced from Sl.No.111. Originally only persons upto Sl.No.85 could be engaged. On account of their experience in welding, etc, The petitioners are picked up from Sl.No.111 onwards. This was objected to by one of the Unions and, therefore, it was decided in a meeting of the Permanent Negotiating Machinery to revert them so that they could be at par with their colleagues upto Sl.No.85. However, in 1981 the seniority of Artisans has been separated from the seniority of casual labour/ Khalasi. In regard to the Railway Board's circular of 8.6.1981 the respondents have said that it is applicable only in the case of non-availability of departmental candidates and that too only after the persons to be employed passed requisite Trade Test. In para 15 of their reply the respondents have admitted that it was due to irregularity of the Department that the petitioners were employed as skilled and semi-skilled Artisans and since they have been engaged against the Rules and also ignoring the interest of their senior colleagues the mistake is being corrected and the petitioners, who were given illegal, irregular and unentitled jobs have to be reverted to set right the irregularity.

3. We have heard the learned counsel for the parties and have also perused the paper-book and the replies. It is not in dispute that the petitioners were

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employed as casual workers but in the skilled and semi-skilled Artisans category. They attained temporary status after having worked continuously for the requisite period and were brought on the C.P.C. scales of pay and they have also earned increments in the scales of pay applicable to the skilled and semi-skilled Artisans of their category. The respondents have further admitted that the petitioners were appointed as daily rated Welder, Moulder, etc. They have, however, averred that they worked not as class III employees, at least in the case of the petitioners 1 and 2, who were working as Welder and Moulder and who attained temporary status and thereby came on regular scales of pay, it is evident that they were not class IV casual Khalasi like the others in the list which has been attached by the respondents where petitioner no.3 appears at Sl.No.111 and petitioner no.1 appears at Sl.No.134 and petitioner no.2 appears at Sl.No.144. They were initially appointed as ^{or Casual} skilled and semi-skilled Artisans and not as Casual Labour. The fact that their names were on a wrong seniority list and was corrected by the respondents in 1981 by an order which said that in the list various categories of staff have been listed together, ^{or} The list of casual/CPC scale staff should be categorywise to avoid confusion. It is, therefore, evident that it is not the case of the respondents that the petitioners were picked up from a list of casual labour Khalasis far down below those, who had come on the CPC scales. The petitioners were engaged not as Casual Khalasis but as Casual Skilled and Semi-skilled Artisans. The petitioners,

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therefore, had not worked in class IV post as Khalasis earlier and there is no document to support the averment that it was only due to their experience in welding that they were picked up from Sl.No.111 ^{up} ~~down~~wards. It seems that the position had not been explained to the concerned Labour Union, who were agitating against the out of turn promotion give to the petitioners vis-a-vis their ³¹ ~~seniors~~ seniors in the list of 1981. The decision taken in the Permanent Negotiating Machinery Meeting to bring them at par with their colleagues does not appear to be founded on correct principles. It cannot be accepted that this was done by taking a lenient view ^{only} and that they are/being brought back at par with their colleagues. The respondents have themselves admitted that the initial employment of the petitioners was as daily rated skilled and semi-skilled Artisans.

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4. Leaving aside the fact that the petitioners have been working since 1976 onwards, i.e. from the date of their initial employment as ³¹ ~~Casual~~ Artisans and they have not yet been regularised, it would ³¹ ~~clear~~ seem that a period of 10 years is a long period for continuing staff in Intermediate Promotional Scales specially when the work is not in the nature of a project but in the open line. The fact remains that they have been working as a skilled and semi-skilled Artisans. In H.S.Kaladgi v. State of Maharashtra (A.I.R. 1987 S.C.1627) ³¹ ~~it has been held that~~ a direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. Even in the ratio of the judgment in this ³¹ ~~case~~ ^{it cited} case it would be seen that the action of the respondents in

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reverting the petitioners who were engaged as daily rated skilled and semi-skilled Artisans right from the first date to the post of a Khalasi is unsustainable, there can be no question of their reversion.

5. The petitioners are also not covered by the protection granted under the 18 months officiating³¹ rule as that rule is applicable to only regularly selected persons, who are put to officiate in a higher post after due selection and which provides them protection against reversion after 18 months officiation period unless done under the Disciplinary and Appeal Procedures. This protection is not available to the petitioners as they³¹ are still casual skilled and semi-skilled Artisans and have not been regularised by the respondents yet.

31/ 6. The order dated 3.3.1987 which has been placed as Annexure 'I' in pursuance of the Implementation Committee meeting with URMU held on 3.3.1987 mentions about the irregularity in granting CPC scales of pay to the casual Artisans of P.W.I., Rae Bareilly. It further says that in October, 1986 it was decided that C.P.C. Artisan engaged from C.P.C. unskilled staff are not entitled for Artisan scale. The decision taken in PNM Meeting in 1982 mentions that the existing Artisan staff should be replaced by the regular class IV employees who after trade test are found fit for the job of Artisan. It further says that the released casual Artisan staff may be absorbed against the resultant vacancies of Khalasis. In view of ³¹ this decision taken at PNM Meeting the respondents proposed to revert the petitioners and replace them by permanent

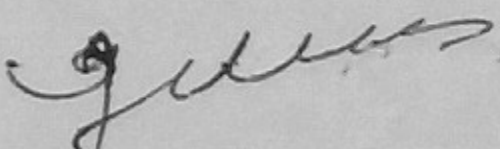
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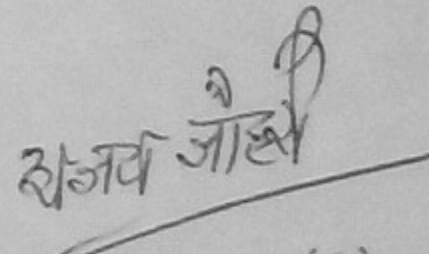
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^{31/}staff. While there is no problem or bar in the respondents replacing the casual CPC Artisan by regular employees, ^{31/}their contention ^{31/}that ^{31/}since they were engaged from CPC unskilled staff is not supported by their own averments. Therefore, on this account their decision that the petitioners were not entitled to the Artisan scale is not correct and is not sustainable. The petitioners have been correctly given the CPC Artisan scale as they were engaged initially right from the day they joined the Railways as daily rated skilled and ~~semi~~-skilled Artisans. There could, therefore, be no case of their reversion.

7. On the above considerations we partly allow the petition quashing the impugned orders dated 3.3.1987 and 5.5.1987. The respondents will, however, be at liberty to continue them in their present appointments or replace them by duly selected regular employees ^{31/ according to law.} The respondents can also offer an employment ^{31/ who are only casual artisan staff} in class IV category to the petitioners, but cannot compel them to work in class IV post against their will. The petition is disposed of accordingly. Parties will bear their own costs.


Vice-Chairman.


Member (A).

Dated: October 27th, 1987.

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