

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

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Allahabad this the 30th Nov 1994.

Original Application no. 1232 of 1992.

Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

1. Hari Shanker Lal S/o Late Murlidhar,
Store Khalasi under Permanent Way Inspector,
Northern Railway, Varanasi.
2. Ashok Kumar Gupta, S/o Late Ramjee Gupta,
Store Khalasi under Permanent Way Inspector,
Northern Railway, Varanasi.
3. Arun Kumar, S/o Sri Vindh Bashni Lal,
Store Khalasi under Permanent Way Inspector,
Northern Railway, Varanasi.
4. Shashi Mohan, S/o Sri Somnath Prasad,
Store Khalasi under Permanent Way Inspector,
Northern Railway, Varanasi.
5. Rajender Prasad, S/o Late Sri Ram Nihore,
Store Khalasi under Permanent Way Inspector,
Northern Railway, Varanasi.

..... Applicants.

By Advocate Sri Vipin Sinha.

Versus

1. The Union of India through its
General Manager, Northern Railway,
New Delhi.

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2. The Divisional Railway Manager,
Northern Railway, Lucknow.

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3. The Divisional Superintending Engineer,
Northern Railway,
Lucknow.

4. The Divisional Engineer,
Northern Railway,
Varanasi.

5. The Permanent Way Inspector,
Northern Railway,
Varanasi.

..... Respondents.

By Advocate Sri Prashant Mathur.

(ORDER)

By Hon'ble Mr. K. Muthukumar, A.M.

1. The applicants, while working as Gangman under the Permanent Way Inspector, Northern Railway, Varanasi, are aggrieved that on their having been given the posting of Store Khalasi in the grade Rs 800-1150/-, were reverted by the respondent no. 5 on instructions from the respondent no. 4 to the original post of Gangman by the impugned order dated 13.8.1992 (Annexure-A) to the application. They have approached this Tribunal with a prayer to quash the impugned order which they allege, was issued without any show cause notice and without providing an opportunity of hearing ^{to} the applicants and also ^{to} issue a direction to the

respondents to allow the applicants to continue
to work as Store Khalasi in the higher grade.

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2. The facts of the brief in this case are
as follows:-

a) The applicants while working as Gangman,
were allowed, in response to their applications, to take
the suitability test for the post of Store Khalasi
and
by the notice dt. 31st August 1990 were given the
posting as Store Khalasi w.e.f. 1.1.1990. Subsequently
by the impugned order the respondent no. 5 on instruc-
tions from the respondents nos. 2, 3 and 4 were spared
from the post of Store Khalasi to work as Gangman
i.e, to their parent cadre with immediate effect.

b) The applicants have averred that they continued
working as Khalasi for more than twenty three months
and although their working was found to be satisfactory, they
were reverted to the original cadre without any
justification. They have further contended that
on enquiry it was revealed that their reversion
was based on the communication received from the
Divisional Railway Manager (respondent no. 2) and that
the reversion was ordered on the ground that the prior
approval which was required to be taken by the Appointing
Authority i.e, Assistant Engineer (Permanent Way
Inspector) was not obtained and the applicants allege
that this could not be held against them for reverting

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them to the original post. The applicants further as Store Khalasies contend that they were promoted/against the sanctioned the promotion post and, therefore, was quite regular and, therefore, the reversion merely on the ground that the prior approval was not obtained, would be totally arbitrary and unjustified.

3. The respondents have strongly resisted this contention, they have advanced the following arguments:-

a) The applicants were inadvertently put for the trade test and were ordered to work as Store Khalasi in grade Rs 800-1150/- which was ab initio illegal and against the statutory rules as codified in the Railway Establishment Code. The order posting them as Store Khalasi no. 2 is also not a promotion order which would otherwise mean a change of the cadre, as Gangman and Sore Khalasies are two different categories, when the defective ~~order~~ the order passed by the came to notice, it Assistant Engineer/ was found that such an order had been passed without the approval of the Competant Authority and was, therefore, ab initio illegal and the applicants could not claim any right on the basis of the same. Even the irregular posting of these Gangmans were not against the permanent posts but were against the newly created purely temporarily posts for decasualised labour and the applicants, being on permanent establishment as Gangman could not be put to work in the above decasualised posts without the approval of the Competant Authority which in this case/the Divisional Officer, also the avenues for promotion in the parent posts are

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also different. Besides such a posting would also amount to change of categories of post^s, which is also not within / competent of the Assistant Engineer as in terms of the Railway Board's instructions. The applicants had misconstrued the impugned order while by treating them as reversion order / in fact this was a repatriation order to the parent category where they can claim further promotion in their avenues available to them.

5. We have heard the counsel for the parties and perused the record.

6. From the impugned order it is clear that this order is not purported to be a promotion order. Besides, it is admitted that the authority which issued this order had apparently acted without obtaining the approval of the Competent Authority and, therefore, had exceeded his jurisdiction and powers. It is clear from the facts that the posts of Store Khalasies ~~now known as~~ to a different category and is not in a line of promotion / Gangman. Therefore, the posting of a person from the post of Gangman to another post of Store Khalasi involving a change of categories of posts / beyond the powers of the Assistant Engineer as provided in the Railway Board's circular no. 847/E/38-II (EIVi4) dt. 9.9.1969. Even the provisions of Rule 2011-R2 Railway Establishment Manual gives the power to the Assistant Engineer

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to transfer a person from one post to another post in the same department/category. Therefore, the contention of the respondents that the initial order passed by the Assistant Engineer which is / impugned order under attack in this case is irregular and without jurisdiction ab initio and, therefore, does not confer any vested right to the applicant under the statutory is in order. rules/. No doubt, the respondents have not acted with circumspection a sufficient ~~circumstances~~ and alacrity in rectifying the initial irregularity in the initial posting order of the Assistant Engineer, changing the category of the applicants after conducting the test. Infact the eligibility of the applicants to apply for such trade test against such decasualised post should have been initially scrutinised by the respondents before permitting the applicants to take such trade test.

7. However, it is seen from the record that the ^{ed} Divisional Officer ~~concern~~ had noticed that as many as 16 persons were working without approval of the Divisional Officer for the particular categories and on the basis of this order rectificatory action was taken by the respondents and the applicants had, therefore, to be repatriated / ~~relocated~~ to their parent categories. Since, the applicant had no vested right in the different category posts of Store Khalasi, their repatriation to their parent cadre can not be held to be incorrect or illegal. Besides, the posting of the applicant as Khalasi was not made under the Recruitment rules and they were not notified as having been promoted to the said post. In any case such a thing would not be have been possible also in view of the respondents' averments that this line

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of the promotion to the categories of Store Khalasi is not available to the Gangmen and they have different avenues of promotion.

8. The counsel for the applicants cited the following decision in support of his contention:-

i) In the decided case K.B. Jagannathan Versus U.O.I. ATR 1987 (2) CAT 67, the question was whether the order of reversion from the post of Typist to the original post of Khalasi after passing the departmental examination was legal or not. In this case it was held to be illegal on the ground that the respondents were estopped from going behind their own conduct for the post of Typist and appointing them on regular basis had after they/qualified in the departmental examination.

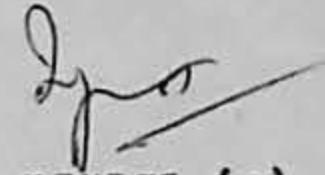
In this case we find that the appointment was on a regular basis under the recruitment rules and through the process of passing the departmental examination and the question of jurisdiction of persons who ordered promotion was not in dispute and, therefore, the applicant in this case / can not seek any relief on the basis of this decision.

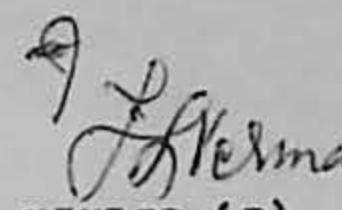
ii) In the second case cited by the counsel for the applicant namely Arjun Singh Versus U.O.I ATR 1987 (2) CAT 43, the reversion of the applicant having taken place after a period of 18 months was held to be contrary to the instructions of the Railways and was held to be bad in law. In this case the facts were that the applicant was promoted as a Junior Clerk on the basis of the regular selection and was subsequently promoted to the next higher grade of Senior Clerk and after

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earning an increment he continued work in their capacity but was reverted to the post of junior clerk after 18 months without following any procedure for such reversion, on the grounds of unsatisfactory performance. It was, therefore, held that the such reversion on the basis of the alleged unsatisfactory performance, without following the procedure laid down in the Discipline and Appeal Rules was held to be bad in law. The facts in the case of the present parimateria case, however, are not ~~similarly~~ with the facts in the above case and, therefore, the decision is of no assistance to the applicant.

9. In the light of the above discussions, we find that the application is devoid of merit and is dismissed accordingly. No order as to costs.


MEMBER (A)


J. K. Kelma
MEMBER (J)

ALLAHABAD: DATED 30.11.94

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