

Central Administrative Tribunal
Calcutta Bench

OA No.567/97

Present : Hon'ble Mr.M.K. Mishra, Member(A)
Hon'ble Mr.K.B.S. Rajan, Member(J)

- 1) Sunil Baran Chakravorty, S/o Late Asit Baran Chakravorty
- 2) Hemanta Kumar Roy, S/o Shri U. Roy
- 3) Bidhan Roy, S/o Late G.C. Roy
- 4) Swapan Bagchi, S/o Shri N.N. Bagchi
- 5) Debabrata Chatterjee, S/o Late B. Chatterjee
- 6) Bipin Behari Ganguly, S/o Late H.C. Ganguly
- 7) Mihir Ghosh, S/o Late P.K. Ghosh
- 8) Sugrib Prasad, S/o Late S. Prasad

-Vs-

- 1) Union of India, service through General Manager, Metro Rly, 33/1, Chowringhee Road, Calcutta – 71
- 2) General Manager, Metro Railway, Chowringhee Road, Calcutta – 71
- 3) Chief Engineer, Metro Rly, Chowringhee Road, Calcutta – 71
- 4) Executive Engineer/South, Metro Rly, -do-

For the applicants : Mr.B.C. Sinha, Counsel

For the respondents : Dr.(Ms) S. Sinha, Counsel

Date of Order : 01-07-05

ORDER

Mr.K.B.S. Rajan, JM

The applicants in this case are aggrieved as according to them they had been functioning as Works Mistry in the scale of Rs1400-2300/- (RPS)/5000-8000/-, whereas by the impugned order dated 24-4-97 they were reverted in the post carrying pay scale of Rs750-940/- (pre-revised pay scale).

2. The brief facts as contained in the OA are as under :

- The applicants are*
a) All ~~of them~~ had been promoted as Works Mistry on a regular basis after having been declared suitable in the suitability test conducted by the duly constituted Selection Board and results had been published by the respondents with the approval of the Competent authority (Annexure A1). The names of the applicants appear in the said office memorandum, reads as follows :

“The result of the suitability test of 49 candidates conducted by the Appropriate Authority on 10/12/84 to 12/12/84 and 26/12/84 for the post of Works Mistry Gr.I in scale Rs380-560/- (RS) Civil engineering Department/Metro Rly, Calcutta has been indicated in the said office memorandum”.

- b) On the basis of the said suitability test necessary posting order dated 22-3-85 has been issued which reads as follows (Annexure A2) :

“The following posting orders on promotion as Works Supervisor Mistry Gr.I are issued with the approval of the appropriate authority w.e.f. 9-1-85”.

Thus from the above it will be seen that promotion orders have been issued as a regular measure and as such necessary permanent posting orders have been issued.



c) All the applicants are holding the said post of Works Mistry right from 9-1-85, without any interruption or break till date. They have thus gained substantive right against the post : Basic pay of most of them is Rs6625/- p.m. in the scale of Rs5000-8000/- (RSRP). The applicants have also passé/crossed the E.B. stage at Rs1800/- in the scale of Rs1400-40-1800-EB-50-2300/- (4th Pay Commission Scale).

d) In terms of rule 214 (c) (iv) of IREM (Vol.I) (Revised Edition 1989) page 59 reads as follows :

“An employee who has passed a suitability test once need not be called for the test again and should be eligible for promotion as and when vacancies arises”.

e) The applicants after passing the suitability test have been promoted on regular basis against the permanent post w.e.f. 9-1-1985, and have been working continuously for 20 years till date without any interruption, without any blemish and without any adverse C.R.

3. The respondents have contested the OA. According to them as per IREM Para 101(43) Vol.I, a casual labourer is not treated as Railway Servant for the purpose of Railway Rules. As the applicants were not diploma holder, according to the respondents they were only casual work Mistries and as such they were rightly reverted to the post carrying scale of pay Rs750-940/-.

4. Arguments were heard; documents perused and written submissions filed by the respective parties have also been taken into account.



5. The counsel for the applicants has taken us through order dated 22-3-85, as per which as many as 41 persons were posted "on promotion as Work Supervisor Mistry Grade-I" issued with the approval of the appropriate authority, w.e.f. 9-1-85 (Annexure A3), a office order dated 18-2-97 whereby the applicants among others were declared fit to cross the Efficiency Bar at the stage of Rs1800/- in the scale of Rs1400-2300/-.

6. Further by order dated 14-10-96 the applicants were treated as having been absorbed in the regular establishment from the date of submission of their options for the purpose of qualifying service and for various others service benefits as admissible to temporary Railway Servants. The counsel for the applicants vehemently argued that ^{when} they have been given the above position including crossing of efficiency bar, when the applicants had been functioning in Rs1400-2300/- right from 1985, there is absolutely no logic or illegality in reverting them as late as in 1997 to a lower posts.

7. The counsel for the respondents at the time of arguing submitted that their functioning in the higher scale was in open line whereas their permanent position is a construction wing and as such there is no illegality in reverting them.

8. We are unable to accept the contention of the respondents as cited by the applicants in terms of Rule 214 (c) (iv) of IREM Vol.I, 1989 Edition, the employees who has passed the suitability test once, need not be called for the test again and should be eligible for promotion as and when vacancy arise. In this case all the applicants apart from having passed suitability test have also been functioning in the higher post for over 20 years. The Counsel for the applicants also referred to the following cases :


a) Dr.A.K. Jain and Ors. V. UOI and Others (1950-1988) SC SLJ Vol.II Page 203.

b) B.S. Rao and Ors v. UOI and Ors (1987 (2) ATJ 503), wherein it has been held that Reversion-Applicant promoted to promotional scale on adhoc basis and



worked satisfactorily for more than 18 months – Order of reversion-Permissibility of- Held reversion from promotional post after 18 months service not permissible – Railway Board circular of 1966 No.P/R/Con D & A /Pt.VII dated 1-7-1966”.

9. A perusal of the records also reflects the seniority list of Works Mistry as has been published vide Annexure A5 page 19.
10. In view of the above, we are clear in our mind that the action on the part of the respondents in reverting the applicants to a lower grade is without any logic and the applicants are entitled to be placed in the same position in the Works Mistry in the pay scale of Rs5000-8000/-. We order accordingly. The impugned order dated 24-4-97 is quashed and set aside. The respondents are directed not to revert the applicants and allow them to continue in the posts.
11. Under the circumstances no order as to costs.


Member(J)


Member(A)