

PETITIONER:
RADHANATH GHASI OTHERS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT 20/10/1995

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1995 SCALE (6)129

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.Venkataswami :

Leave granted.

Heard counsel on both sides.

The appellants challenged orders of reversion dated 13.3.1989 issued by the Divisional Personnel Officer, Adra, South Eastern Railway unsuccessfully before the Central Administrative Tribunal, Calcutta Bench.

The circumstances leading to the passing of the impugned reversion orders and challenge thereto may now be noted.

The appellants were working in the South Eastern Railway as Gangmen. Pursuant to a scheme dated 24.8.1969 introduced by the Railway Board for direct Track Maintenance for the purpose of improvement in the maintenance of Tracks, the appellant applied for and were selected after written and viva voce tests and posted on ad hoc basis on 18.10.1985 as D.T.M./Mate. Approximately after a period of 13 months, the appellants were reverted at the end of 1986 to the posts of Gangmen. The appellants did not challenge that reversion.

Subsequently, it is the specific case of the appellants that no suitable candidates were available from regular promotional avenue for promotions and in view of the necessity for appointment to the posts of permanent way Mistry, the Selection Board constituted for the purpose of recommending/empanelling suitable candidates recommended the names of the appellants. Accordingly, the names of the appellants were included in the List issued by the Divisional personnel officer, Adra by Memorandum dated 1.6.1989 for the said posts. While the appellants were working as Permanent Way Mistries, all of a sudden without any opportunity being given to them, the impugned orders of reversion came to be passed.

The appellants challenged the impugned orders of reversion by filing two O.As on various grounds before the Central Administrative Tribunal, Calcutta Bench. The

respondents while admitting the selection and inclusion of the appellants in the panel for the appointment of permanent. Way Mistry supported the orders of reversion by filing a written statement before the Tribunal stating as follows :-

"I totally deny that neither there was a selection, nor there was any selection proceedings therefor, nor was approval of competent authority obtained for so-called empanelment in 1988. Certain officials of the Division mischevously and erroneously have enlisted these persons who were promoted on ad hoc basis in the year 1985 and 1986 against work-charged post for the Direct Track Maintenance as if they were empanelled afresh in 1988 without the approval of the competent authority.

It is admitted that the applicants were erroneously promoted as P.W. Mistry were posted against regular posts. (Emphasis supplied)

As aforesaid the promotion itself was irregular and as a consequence the posting of the applicants against regular posts was irregular by itself.

The regular posting orders as notified 6.7.88, 13.7.88 and 12.10.88 are. Therefore, liable to be cancelled.

.....

I state that the applicants are well aware that they have not appeared for any selection test whatsoever for the formation of a panel of P.W. Mistry in the year 1988 or near about that period. Having taken advantage of the erroneous notification dated 1.6.88 of their alleged empanelment the petitioners are attempting to avail of undue benefit of erroneous promotion."

On the basis of the above averments and counter averments, the Tribunal has dismissed the appellants' applications by holding as follows :

"We are of the view that the applicants have been given the above appointment for D.T.M. scheme after appearing for a proper selection test and after proper (SIG) to allow them to continue working as much as long as the D.T.M. work in the division continues. Therefore, the order of reversion which appears to have been passed in the meantime, is vacated to the above extent. It is, however, made clear that this promotion to the applicant is not in the regular channel of promotion to the post of P.W. Mistry in terms of the relevant promotion rules and the respondents are at liberty to give promotion to other eligible persons to the post of P.W. Mistry in terms of the relevant Recruitment Rules, the present applicants shall continue in their present posts as long as the work for which they have been promoted and appointed continues. If in the future the work is completed and the respondents think it fit to revert the applicants to their original posts then they should be given a proper hearing before taking such a measure."

The Tribunal dismissed the two review application filed by the appellants.

It is under these circumstances these appeals are filed by special leave.

Though counsel for the appellants and respondents argued respectively for allowing and dismissing the appeals, we find that the Tribunal's order suffers from a fundamental error in not appreciating correctly the contentions placed before it. Consequently, the impugned orders of the Tribunal have to be set aside and the matter has to be remanded for fresh disposal in the light of specific rival pleadings, in accordance with law and in the light of the observations made hereinafter.

From the narration of facts as above, it will be noticed that the challenge before the Tribunal was not against the first termination orders of the year 1986. The appellants were aggrieved by the orders of termination issued on 13.3.1989. The Tribunal, however, proceeded as if the appellants were promoted for a fixed period and they can be continued as long as the D.T.M. work in the Adra Division continues. This assumption on the part of the Tribunal is wrong as we have seen earlier that the respondents have admitted that the appellants were promote against the regular vacancies, but their stand was that they were wrongly promoted by mistake committed by the Divisional Personnel Officer, Adra. The respondents went to the extent of stating that 'certain officials of the Division mischevously and erroneously have enlisted these persons who were promoted on adhoc basis in the year 1985 and 1986 against work-charged post for the Direct Track Maintenance as if they were empanelled afresh in 1988 without the approval of the competent authority'.

Whether the respondents have established the said fact or not has not been gone into by the Tribunal. In the circumstances, we are setting aside the orders of the Tribunal under appeal by allowing the appeals and remitting the matters for fresh disposal in the light of specific rival and also in the light of the observations made hereinbefore. Ordered accordingly. However, there will be no order as to costs.