

PETITIONER:
AMALESH CHANDRA CHAKRABORTY & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 10/05/1995

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1996 AIR 612 1995 SCC Supl. (3) 105
1995 SCALE (3) 595

ACT:

HEADNOTE:

JUDGMENT:
THE 10TH DAY OF MAY, 1995

Present:
Hon'ble Mr. Justice J.S. Verma
Hon'ble Mrs. Justice Sujata V. Manohar
Mr. Tapash C. Ray, Sr. Adv. and Mr. H.K. Puri, Adv, with him for
the appellants.
Mr. N.N. Goswami, Sr. Adv. Mr. M.P. Shorawala and Mr. A.K. Sharma,
Ms. Chandan Ramamurthi Adv. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5493 OF 1995

(Arising out of S.L.P.(C) No. 12113 of 1994)
Amalesh Chandra Chakraborty ... Appellants
& Ors.

-v-

Union of India & ors. ... Respondents

J U D G M E N T

Mrs. Sujata V. Manohar, J.
Special leave granted.

The present appeal is from an order of the Central Administrative Tribunal, Calcutta Bench, dated 6.5.1994 by which the appellants' appointments to the post of Guard have been set aside. At the material time the appellants were holding the substantive posts of Trains Clerks in the pay-scale of Rs.1200-2040(RP). They were, however, provisionally promoted to the posts of Assistant Head Train Clerks in the pay-scale of Rs.1400-2300. The Eastern Railway issued a Circular dated 10.9.91 for filling up the 152 posts of Good Guards which included the backlog of previous selection, in the pay-scale of Rs.1200-2040, by departmental promotion from different eligible streams. One of the eligible streams was of Train Clerks in the pay-scale of Rs.1200-2040. Under the Circular dated 10.9.91 the last date for sending

applications was 30.9.91. Since the appellants were holding the substantive post of Train Clerks they applied for their reversion to the substantive post of Train Clerks and applied for the post of Guard as per the Circular dated 10.9.91. The applications were made before 30th of September, 1991. The request of the appellants for reversion to the substantive post of Train Clerks was accepted on 6.12.91. Thereafter, the appellants functioned in the post of Train Clerks from the dates which are set out in the Chart which has been annexed at page 119 of the paper-book. From their respective dates of reversion any payment received by them as Assistant Head Train Clerk has also been recovered/deducted from their salary. The Railway Board had been moved in the meanwhile by the Divisional Railway Manager in connection with, inter alia, the request of the appellants to be allowed to apply for the post of Guards and this permission has been granted by the Railway Board by their letter dated 13.8.92, a copy of which is annexed as R-I to the counter-affidavit of respondents 1 to 3. As per the letter of 13.8.92 in the selection process which had started, Train Clerks who were in the grade of Rs.1400-2300 were allowed to appear for selection to the post of Goods Guard as a last exception.

Pursuant to the applications which were received as aforesaid, selection test were held in March, 1992 by which day the appellants had reverted to the post of Train Clerks. They were allowed to appear for the test and were ultimately selected by Office Order dated 17.11.92 when the selection list was published. The selected persons were sent for 37 days' training and thereafter were given the posting as Goods Guards at different places.

Respondents 4 to 23 challenged the selection of the appellants before the Tribunal on 15th of December, 1992. This challenge has been upheld by the Tribunal.

Looking to the fact that the appellants were only provisionally holding the post of Assistant Head Train Clerks and were holding the substantive post of Train Clerks, the appellants were eligible for selection for the post of Guard. They were also reverted to their substantive post and excess pay was recovered from them in November and December, 1991 prior to their being allowed to appear for selection test. Any doubt on this score is set at rest by the letter of 13.8.1992. The Tribunal was, therefore, not right in setting aside the selection of the appellants and cancelling their appointments to the post of Guard.

The order of the Tribunal is accordingly set aside. The appellants having been duly selected and appointed as Guards are entitled to hold the post. The appeal is accordingly allowed. In the circumstances, there will be no order as to costs.