

Union of India and Others

Vs

Bigyan Mohapatra and Others

Civil Appeal Nos. 4541-42 of 1990

(L.M. Sharma, S. Mohan, N.Venkatachala JJ)

21.10.1992

JUDGMENT

MOHAN, J. –

1. Leave granted.
2. These appeals are directed against the judgment and order dated December 18, 1990 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack Original Application Nos. 135 and 146 of 1990. The short facts are as under.
3. The second respondent, Janakar Patra, was initially recruited as Khalasi in Group 'D' service in the year 1983. He was promoted as Khalasi Helper in August 1984. On November 21, 1984, he was promoted as ad hoc Junior Clerk against a temporary post created for construction project in the construction wing of Electrical Branch, South Eastern Railway.
4. The first respondent, Bigyan Mohapatra, was initially recruited as a casual Linesman in Group 'D' service in the year 1984. He was absorbed as Khalasi in Electrical Branch in the year 1985. He was promoted to the post of Khalasi Helper in the year 1986. Later on, in 1987 he was promoted as ad hoc Junior Clerk against a temporary post created for construction wing of Electrical Branch, South-Eastern Railway.
5. Both the respondents were promoted purely on ad hoc basis against the temporary posts created for construction work in the construction wing of the Electrical Branch. It was stated in the order promoting them, that no right will accrue to them in the said posts. Further, they could not claim seniority over their seniors in the lower posts.
6. The posts of Junior Clerk were sanctioned up to December 31, 1989. The administration found that there was no necessity for extension to continue the clerical posts in the construction wing. As a result, the staff who were working against these posts were reverted. Accordingly the first respondent was reverted to his substantive post of Khalasi Helper on April 11, 1990 while the second respondent was reverted on April 19, 1990. Challenging their reversion, the respondents moved the Central Administrative Tribunal, Cuttack Branch, Cuttack. Before the Tribunal two points were urged on behalf of the respondents.
 - (1) The order of reversion was bad because the promotion, even though it was on an officiating basis, was after interview and finding them fit for such a promotion. That being the nature of promotion, it was wrong to have reverted them back.

(2) The reversion of the respondents while retaining the juniors was bad. In any event, as per the administrative circulars, if a person had worked in an officiating capacity in a promotional post for more than 5 years, he must be absorbed and he cannot be reverted.

7. The Tribunal without going into the merits of these contentions adopted an easy course. In the rejoinder filed on behalf of the respondents herein it was averred that two posts of Junior Clerks were vacant. That has not been denied by the Union of India. Therefore, these posts should be adjusted against the available posts in the cadre of Junior Clerks. The same was to be finalised within 90 days. Aggrieved by this judgment, special leave petitions have been preferred.

8. It is the contention on behalf of the appellant (Union of India) that where a person is reverted to a substantive post from the officiating promotional post the respondents cannot have any grievance whatever. This is a case where the reversion was necessitated, consequent to the abolition of the posts of Junior Clerks. This aspect of the matter had been lost sight of by the Tribunal. It has merely proceeded as though two posts of Junior Clerks are available and they should be given to the respondents. Even assuming two posts are available they cannot straightaway be accommodated in those posts since there may be other eligible candidates whose rights require to be taken into consideration. Therefore, looked at from any point of view the order of the Tribunal cannot be supported.

9. In opposition to this, learned counsel for the first respondent would urge that his promotion was only after interview and finding him suitable for the post of Junior Clerk. If that be so, the reversion was bad. Instead of setting aside, in view of the availability of post of Junior Clerk, this respondent came to be accommodated. The Tribunal has merely done justice.

10. Learned counsel for respondent 2 urges that while reverting him insofar as his juniors had been retained, the order of reversion cannot be sustained. Even otherwise, as per the circulars of the South Eastern Railway, if a person is officiating in a particular post for more than a period of 5 years, he is entitled to be confirmed and not liable to be reverted. Though these points were urged before the Tribunal, yet they were never considered and the matter may be remitted to the Tribunal for such a consideration.

11. In two identical Original Application Nos. 137 and 138 of 1990 in which also orders of reversion were challenged the Central Administrative Tribunal, Cuttack Bench, Cuttack held that since the administration finds it difficult to continue them without sanctioned posts, the respondents were to be reverted to their substantive posts and there is no ground to interfere with the reversion orders.

12. We have given our careful consideration to the above arguments. This is a case in which, as could be seen from the orders of promotion in both the case, the respondents were promoted purely on ad hoc basis. The promotion was to officiate as Junior Clerks. Where, therefore, from the officiating post of Junior Clerk, consequent to the abolition of the post on December 31, 1989, should the respondents be reverted to their substantive posts, they can have no valid complaints. They cannot claim a right of officiate as Junior Clerk for all time.

13. The Tribunal, unfortunately, instead of dealing with the matter from this angle, merely adopted an easy course on the assumption that two posts of Junior Clerk were available, in which posts these respondents were directed to be accommodated. This approach is wholly wrong. For ought one

know, there may be other claimants who would be entitled to promotion; their claims require to be considered. Therefore, straightaway, these respondents cannot be fitted in. Accordingly, the order of Tribunal is set aside, upholding the order of reversion.

14. However, in the special leave petitions it is urged that on the basis of the circular that, Janakar Patra (respondent 2) having officiated for more than 5 years he will be entitled to be absorbed in the promotional post. We do not think, for this purpose, we have to remit the matter to the Tribunal. Instead, we direct that as and when promotions are made to the post of Junior Clerk in the branch in which respondent 2, Janakar Patra is working, his claim also shall be considered on the basis of the circular, should he be entitled to the benefit of such a circular.

15. In the result, both the civil appeals will stand allowed and the orders under appeals shall stand set aside. However, there shall be no order as to costs.

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