

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23919 of 2013

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1. Rajesh Mehtar S/O Late Narju Hari Resident Of Village- Salpur, P.S- Sabour, District- Bhagalpur
 2. Jitendra Kumar S/O Late Ram Das Resident Of Village Dharhara, (Govindpur), P.S- Dharhara, District-Munger
 3. Girija Devi W/O Late Kailash Prasad Nirala Resident Of Village- Rampur Choukra, P.S- Piri Bazar, District- Lakhisarai.
 4. Pramod Paswan S/O Late Laxman Paswan Resident Of Village- Chapra, P.S- Barhat, District- Banka.

.... Petitioner/s

Versus

1. The Union Of India, Through The General Manager, Eastern Railway Fairlee Place, Kolkata.
2. The Chief Personnel Officer, Eastern Railway, Kolkata
3. The CMPE/ Diesel, Eastern Railway, Kolkata.
4. The Sr. Divisional Personnel Officer, Eastern Railway, Malda Division, Malda.
5. The Assistant Personnel Officer, Eastern Railway, Malda.
6. The Sr. DME (Diesel), Eastern Railway, Jamalpur, Under Malda Division, Malda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani, Advocate.
Mr. Manish Kumar, Advocate,
For the Respondent/s : Mr. Anil Singh,

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

3 29-10-2015 Heard learned counsel for the petitioners, learned counsel for the Union of India and also perused the counter affidavit filed on behalf of respondents.

2. Petitioners have assailed the order dated 26.04.2013 passed by Patna Bench of Central Administrative Tribunal in O.A. No. 796/2010 whereunder Tribunal has upheld

the order dated 19.11.2010 (Annexure-23) issued pursuant to order dated 20.09.2010 (Annexure-16) reverting the petitioners on the post of *Safaiwala*.

3. It appears that petitioners were initially appointed on compassionate ground on the post of *Safaiwala* under order dated 14.08.1996, 20.08.1996, 31.08.1996 and 02.09.1996 respectively in the scale of 750-940. Petitioners went through a trade test and having become successful were appointed as Khalasi-helper in the cadre of Artisan in the scale of 2650-4000 under order dated 01.09.1998. Still later while serving as Khalasi-helper they were promoted as Technician Grade-III with effect from 31.07.2001 and thereafter as Technician Grade-II with effect from 01.11.2004. After the petitioners served on the post of Technician Grade-II for a substantial period i.e. for more than four years, they were reverted to the post of *Safaiwala* under Office Order No. 22/08 dated 15.05.2008 (Annexure-7).

4. The reversion order (Annexure-7) was challenged by the petitioners before the Tribunal on the ground that the same has been passed without giving them the opportunity of being heard. The Tribunal having appreciated the submissions set aside the order dated 15.05.2008 asking the authorities to issue notice to the petitioners and after considering the cause shown by them to pass



fresh orders. In the light of direction of the Tribunal, petitioners were given notice to show-cause as to why they be not reverted on the post of *Safaiwala* as they were initially appointed on the post of *Safaiwala* could not have been allowed change of cadre by giving them appointment on the post of Khalasi-helper and subsequent promotions in that cadre on the post of Technician Grade-III and II.

5. In response to the show-cause notice, petitioners submitted before the authorities that true it is that initially, they were appointed as *Safaiwala* in different cadre but having served on the post of *Safaiwala* for about two years, they were given opportunity to appear in a trade test and having become successful in the trade test, fresh appointment was given to them on the post of Khalasi-helper in the cadre of Artisans. Cause shown by the petitioners was not found satisfactory and the authorities passed order dated 20.09.2016 (Annexure-16) and consequential order dated 19.11.2010 (Annexure-23) as assailed before the Tribunal.

6. The Tribunal was of the opinion that petitioners having been initially appointed as *Safaiwala* could not have been allowed subsequent appointment on the post of Khalsi-helper as the said post is in different cadre and *Safaiwala* could not have been appointed on that post as there is no scope for promotion of

Safaiwala to the post of Khalasi-helper.

7. Against the order of the Tribunal, the present writ petition has been filed by the petitioners assailing their reversion under order dated 20.09.2010 (Annexure-16) and 19.11.2010 (Annexure-19) on the ground that petitioners, though, appointed initially as *Safaiwala* and having considered their satisfactory service was allowed to appear in a trade test and then having become successful in the trade test were appointed on the post of Khalasi-helper in the cadre of Artisans on 01.09.1998. The appointment as Khalasi-helper was given to the petitioners earlier not by way of promotion but because they became successful in the trade test and was fresh appointment at the bottom of the Artisan cadre on the post of Khalasi-helper and thereafter petitioners on the basis of satisfactory service as Khalasi-helper, were given promotion on the post of Technician Grade-III and II on 31.07.2001 and 01.11.2004 respectively.

8. From the facts narrated above, it is quite evident that petitioners having become successful in the trade test were given fresh appointment as Khalasi-helper in the cadre of Artisans at its bottom and thereafter their identity as *Safaiwala* got lost and further while serving as Khalasi-helper they were given two promotions on the post of Technician Grade-III and II.

9. In the circumstances, in our opinion, the authorities acted in a highly arbitrary manner violating Articles 14, 16 of the Constitution that they proceeded to revert the petitioners. In the circumstances, we have no option but to set aside the order passed by the Tribunal as also to quash the two impugned orders Annexures-16 and 19.

10. The writ petition is allowed with continuity in service to the petitioners throughout, however, without cost.

(V.N. Sinha, J)

(Aditya Kumar Trivedi, J)

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