

Yashbir Singh and Others

Vs

Union of India and Others

Writ Petitions Nos. 9222-26 of 1981

(E. S. Venkataramiah, K. N. Singh JJ)

18.08.1987

JUDGMENT

SINGH, J. -

1. By means of these petitions under Article 32 of the Constitution the petitioners claim relief for quashing Railway Board's circular/letter No, E(NG)I/69/PM-1-180 dated July 2, 1970 and No. E(NG)I-80-SR-6-39 dated November 28, 1981. They further claim relief for the issue of writ in the nature of mandamus restraining the respondent, Railway Authorities, from altering or issuing seniority List in pursuance of the Railway Board's circular dated November 28, 1981 and to maintain the previous seniority list issued in 1968 for the purpose of promotions, confirmation and further advancement.

2. In the Indian Railways, initial recruitment of the Train Examiners, used to be made in the entry Grade D in the pay scale of Rs. 100-185. Prior to April 1, 1966 recruitment to Grade D of Train Examiners was made from two sources (1) by promotion of skilled artisans working in the lower grade, (2) by direct recruitment of apprentices having completed prescribed four years' training. Fifty per cent of the vacancies were filled by the apprentices while the remaining 50 per cent of the vacancies used to be filled by promotion of skilled artisans. Promotion from entry Grade D was made to next higher grade C of Train Examiners in the pay scale of Rs. 150-225 and later these grades were revised and the scale of D Grade was raised to Rs. 180-240 and that of C Grade to Rs. 205-280. Promotion to Grade C used to be made on the basis of seniority-cum-suitability without any distinction of promotee or direct recruits. Because there was increase in the workload of Train Examiners the Railway Board took steps to reorganise the cadre of Train Examiners. With that end in view, it issued a notification on October 27, 1965 which directed that vacancies in the entry grade of Train Examiners in the scale of Rs. 120-140 should not be filled from apprentice Train Examiners up to 50 per cent as hitherto, but should exclusively be filled by promotion of skilled artisans. It further provided that vacancies in the next higher Grade C (in the scale of Rs. 205-280) should be filled from amongst the Train examiners working in the grade of Rs. 180-240 to the extent of 20 per cent. The remaining 80 per cent vacancies were to be filled by direct recruitment of apprentice Train Examiners who may have successfully completed prescribed training. Paragraph 2 of the notification provided that the apprentice Train Examiners recruited on or from April 1, 1966 shall be given training for a period of 5 years and from the same date artisans recruited in the lower grade as apprentice Train Examiners shall be given 'in service' training for a period of three years. The circular upgraded 50 per cent of the existing posts of Train Examiners from Grade D to Grade C in the scale of Rs. 205-280 which were earlier earmarked for apprentice Train Examiners. The notification further directed that with effect from April 1, 1966 all the apprentice Train Examiners on successful completion of their training should be straightway brought to the scale Rs. 205-280

instead of being first absorbed in the scale of Rs 180-240 as was being done prior to the issue of the notification. Apprentice Train Examiners who were undergoing training on the date of the issue of notification, were directed to be brought to the working posts before April 1, 1966 and they were allowed stipend in the scale of Rs. 180-240 during the period of their training and their period of training was increased from four years to five years. On the completion of the training they were straightway posted in Grade C in the scale of Rs. 205-280. Those apprentice Train Examiners who had already been or may be absorbed in the scale of Rs. 180-240 up to March 31, 1966 were directed to be accommodated first in the scale of Rs. 205-280 in Grade C against the quota of 80 per cent vacancies reserved for them, and they were not required to undergo before being absorbed in that grade.

3. The effect of the Railway Board's circular dated October 27, 1965 was that the existing apprentice Train Examiners who had already been absorbed in Grade D by March 31, 1966 were first accommodated in Grade C against 80 per cent of the vacancies reserved for them without undergoing any selection, while 20 per cent of the vacancies reserved for the departmental Train Examiners, were to be filled by artisan promotees by selection and not on the basis of seniority-cum-suitability. Although apprentices as well as artisan promotees constituted one integrated class in Grade D but promotee artisans were treated differently for promotion to Grade C. Roshan Lal Tandon who was promoted from artisan class to Grade D, filed a writ petition in this Court challenging the validity of the notification dated October 27, 1965 on the ground that a part of the notification which gave favorable treatment to apprentice Train Examiners was violative of Articles 14 and 16 of the Constitution. In that writ petition a Constitution Bench of this Court on August 14, 1967 in *Roshan Lal Tandon v. Union of India* ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576) held that artisans and apprentices recruited from two sources to Grade D were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade C. Apprentice Train Examiners who were recruited directly to Grade D as Train Examiners formed one common class with the skilled artisans who were promoted to Grade D as Train Examiners and thereafter no favored treatment could be given to the apprentice Train Examiners merely because they were directly recruited as Train Examiners, no discrimination could be made against the latter merely because they were promotees. The court emphasised that once the direct recruits and promotees are absorbed into one cadre, they formed one class and they could not be discriminated or the purpose of further promotion to higher Grade C. On these findings the court allowed the writ petition and issued a mandamus directing the Railway Board not to give effect to the impugned part of the circular which was as under :

The Apprentice T.X. Rs. who have already been or will be absorbed in scale of Rs. 180-240 up to March 31, 1966 should first be accommodated in scale of Rs. 205-280 against the quota of 80 per cent vacancies reserved for them. Such staff should not be required to undergo a 'Selection' before being absorbed in that grade. The upgraded vacancies in scale of Rs. 205-280 left over after earmarking those for the apprentices under training on April 2, 1966 should be filled by promotion of T.X. Rs. in scale Rs. 180-240 on a selection basis. While computing the number of posts available for promotion of T.X. Rs. in scale of Rs. 180-240 the vacancies likely to occur during the period of apprenticeship of the apprentices under training as on April 1, 1966 should also be taken into account. In other words, it would be necessary to keep in reserve only the number of posts equal to the number of apprentices under training as on April 1, 1966, who cannot be absorbed in the anticipated vacancies which will arise by the time they qualify.

4. The Railway Board with a view to implement the decision of this Court and to remove the anomaly which had been pointed out by this Court issued circular/letter no. N(NG)65 PM-1/86 dated September 13, 1968 Annexures III to the affidavit filed on behalf of respondent Railway Administration. Paragraph 1 of the letter refers to this Court's judgment in Roshan Lal Tandon case ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576) and also to that portion of the Railway board's circular dated October 27, 1965 which had been struck down by the court and the interim orders issued by the court restraining the Railway authorities from implementing the circular dated October 27, 1965 during the pendency of the writ petition. Paragraphs 2 and 3 of the circular dated September 13, 1968 stated that in view of the judgment of the Supreme Court the Board have decided that vacancies in the grade of Rs. 205-280 (after taking into account the upgrading of 50 per cent of posts in the scale of Rs. 180-240 to 205-280 less the number of posts required for absorbing apprentice Train Examiners undergoing the enhanced period of training of five years on April 1, 1966) should be filled by selection from amongst Train Examiners in the scale of Rs. 180-240 as on March 31, 1966 irrespective of whether they were initially recruited as apprentice Train Examiners or were promoted from lower grades. The board desired that Railway Administrations should take immediate steps to ensure that proper selections are held for which all TXRs in scale of Rs. 180-240 are considered. It had come to Board's notice that prior to the issue of the stay order, persons originally recruited as apprentice Train Examiners who were in the scale of Rs. 180-240 have been promoted to the grade Rs. 205-280 in pursuance of Board's letter dated October 27, 1965. The Board decided that in view of the Supreme Court's judgment ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576), such promotions should be treated as null and void and the vacancies should be properly filled as mentioned in para 2 of the circular.

5. The Railway Board issued another circular No. E(NG)i/69/PM-1-180 dated July 2, 1970 laying down procedure for filling of posts of Train Examiners and upgradation of posts. It directed that vacancies arising in Grade C after April 1, 1966 to the extent of 50 per cent shall be maintained in that grade and the remaining 50 per cent shall be downgraded to the scale of Rs. 180-240 to be filled by promotion of skilled artisans. It further directed that 50 per cent of the vacancies in Grade C should be filled by direct recruitment of apprentice Train Examiners with five years' training to the extent of 80 per cent thereof and the remaining 20 per cent by promotees from Grade D as laid down in paragraph 1 of the Railway Board's circular dated October 27, 1965. This procedure was directed to be followed till the cadre position was normalised and the excess in the grade of Rs. 205-280 were eliminated. Paragraph 2 of the circular further directed that those promoted to Grade C in the scale of Rs. 205-280 as on April 1, 1966 will be assigned seniority amongst themselves in the order of their inter se seniority in grade of Rs. 180-240 for the purposes of confirmation in that grade and also for further advancement and they will rank senior to those recruited as apprentice Train Examiners with five years training and appointed after April 1, 1966 in the grade of Rs. 205-280. The result of the circular was that all those promotees who had been appointed to Grade D prior to April 1, 1966 stood absorbed in Grade C and they were granted seniority in that grade with retrospective effect viz., with effect from April 1, 1966.

6. Later the Railway Board took a policy decision to abolish the entry Grade D of Train Examiners in the pay scale of Rs. 180-240, and in order to implement that decision it issued circular/letter No. PC-69-PS-5/TR-1, New Delhi dated October 30, 1972, abolishing the entry Grade D of Train Examiners and placing the incumbents of that grade en masse in Grade C in the scale of Rs. 205-280 with effect from November 1, 1972. Paragraph 2 of the circular directed that the pay of the staff brought from Grade D (Rs. 180-240) to Grade C (Rs. 205-280) will be fixed under Rule 2017-A(III) read with Rule 2019-II. As all the incumbents of Grade D in the scale of Rs. 180-240 were placed en masse in the higher Grade C in the scale of Rs. 205-280, a provisional seniority list of Grade C

Train Examiners working in Delhi Division was prepared on November 16, 1981. In that seniority list petitioner were shown (sic) to some of the respondents as the seniority was not determined in accordance with Rule 302 of the Railway Establishment Manual. This seniority list was not prepared in accordance with the prescribed criteria as had been done in other divisions. The Railway Board issued a circular No. E(NG) 1-80-SR-6-39 dated November 28, 1981 directing that Delhi Division should also fall in line with other divisions of Northern Railway and the seniority of the Train Examiners appointed between April 1, 1966 to November 1, 1972 should be prepared in accordance with the existing practice viz. on the basis of the date of appointment in particular grade. In pursuance to that direction seniority of Train Examiners of Grade C placed in that grade between April 1, 1966 to November 1, 1972 was published in 1981 but the authorities of the Delhi Division of Northern Railway. After inviting objections, the seniority list was finally published in December 1982. In that seniority list the petitioners were shown junior to respondents 5 to 10, who were placed above the petitioners. Aggrieved the petitioners have challenged the validity of the seniority list also by raising additional grounds in the writ petitions.

7. Before we consider the submissions made on behalf of the petitioners it would be appropriate to refer to comparative position of petitioners and respondents 5 to 10 with regard to their date of entry in service as Train Examiners in Grade D and Grade C. The relevant position is as under :

| # | Name | Date of entry | Grade D | Grade C | Rs. 180-240 | Rs. 205-280 |
|----|------------------------------|-------------------|---------|---------|-------------|-------------|
| 1. | Yashbir Singh, Petitioner | April 29, 1966 | | | | |
| | I. M. Lal Tandon, Petitioner | June 19, 1966 | | | | |
| | Hira Lal Kapoor, Petitioner | April 29, 1966 | | | | |
| | Harbhajan Singh, Petitioner | August 16, 1966 | | | | |
| | Som Dutt Sharma, Petitioner | April 29, 1966 | | | | |
| | A. K. Sharma, Respondent 5 | September 5, 1967 | | | | |
| | V. K. Chandhok, Respondent 6 | February 26, 1968 | | | | |
| | R. W. Verma, Respondent 7 | August 10, 1968 | | | | |
| | B. D. Maglani, Respondent 8 | April 22, 1969 | | | | |
| | Dev Raj Sharma, Respondent 9 | June 21, 1970 | | | | |
| | K. N. Sharma, Respondent 10 | February 9, 1971 | | | | |

8. The above chart shows that respondents 5 to 10 who belong to group of apprentice Train Examiners were directly placed to working posts in Grade C after completion of five years training in accordance with the Railway Board's circular dated July 2, 1970, on the respective dates shown in column 3, which indicates that each one of them had been placed in Grade C prior to November 1, 1972, while the petitioners were placed in Grade C with effect from November 1, 1972, in pursuance of the Railway Board's circular dated October 30, 1972. Since the respondents 5 to 10 were appointed to Grade C earlier in time and as the petitioners were placed in Grade C later, they were shown junior to the respondents in the seniority list. No valid objection can be raised against respondent's seniority. Further in the seniority list all those promotees who had been placed in Grade C with effect from April 1, 1966 under the Railway Board's circular dated July 2, 1970 were shown senior to the petitioners. Since the petitioners were not granted seniority with retrospective effect in Grade C as was done in the case of those who were promoted under the circular dated July 2, 1970 they have assailed the constitutional validity of Railway Board's circular dated July 2, 1970.

9. Learned counsel for the petitioners contended that the Railway Board's circular dated July 2, 1970 was illegal and unconstitutional for a variety of reasons. Firstly, the Railway Board had no authority in law to grant seniority with retrospective effect to all those promotees who had been placed in Grade C with effect from April 1, 1966 in pursuance of the circular dated July 2, 1970. Secondly,

the Railway Board practiced discrimination between the promotees forming the same class of Grade D with regard to seniority in Grade C. He contended that under the circular dated July 2, 1970 promotees belonging to Grade D (like the petitioners) were granted seniority in Grade C on their promotion to that grade with retrospective effect from the date of their appointment in Grade D and not from the date of their appointment or placement in Grade C whereas the petitioners who from the same class have not been granted the same benefit, instead their seniority has been determined with effect from the date of their entry in Grade C. The petitioners and all those who had been appointed in Grade D prior to April 1, 1966 and promoted to Grade C formed the same class and yet they have been treated differently without any rational basis. The petitioners were also recruited in 1966 and they all had completed service of more than 4 years approximately as Train Examiners in Grade D on November 30, 1972 when the circular was issued but they have not been given seniority in Grade C with retrospective effect as was done under the circular dated July 2, 1970.

10. We have given our anxious consideration to these submission but we do not find any merit in the same. The petitioners have challenged validity of the Railway Board's circular dated July 2, 1970 in 1981 after 11 years. All the petitioners were in service on the date that circular was issued and they were aware that their colleagues (promotees belonging to Grade D) were placed in Grade C and they had been granted seniority with retrospective effect but none of them challenged the validity of the circular. Now petitioners cannot be permitted to challenge the validity of that circular after 11 years. If the petitioners were aggrieved by the Railway Board's circular dated July 2, 1970 they should have challenged the same within a reasonable period of time which they did not do. It is well settled that anyone who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleep over the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulties and it would create insecurity and instability in the service which would affect its efficiency. The petitioners are therefore not entitled to challenge the validity of the Railway Board's circular dated July 2, 1970 after 11 years and their challenge is bound to fail on this ground alone.

11. We have considered the merit of the submission also but we find no legal or constitutional infirmity in the circular dated July 2, 1970. There was increase in the work of carriage and wagons examination, as more complicated type of rolling stock was available with the Indian Railways. In order to reorganise the cadre of Train Examiners and to cope with the increased workload the Railway Board by its notification dated October 27, 1965 reorganised the cadre. It directed that vacancies in Grade D were to be exclusively filled by promotion from amongst skilled artisans and direct recruits were to be appointed straightway to Grade C after completion of training of five years. Validity of the notification was challenged before this Court in Roshan Lal Tandon case ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576) and the implementation of the circular was stayed. This Court struck down only a portion of the notification which has been extracted in the earlier part of this judgment but the rest of the directions contained in the notification remained unaffected, including the direction that with effect from April 1, 1966 all the Train Examiners on successful completion of their training should be straightway brought on to the scale of Rs. 205-280 instead of being first absorbed in Grade D. Similarly further direction that those apprentices who were undergoing training on April 1, 1966 shall undergo five years' training instead of four years and during their training they would receive stipend in the scale of Rs. 180-210 and after completion of their training they will straightway be appointed to Grade C. After the judgment of this Court, the Railway Board reconsidered the matter and with a view to implement the decision of this Court and to further carry out its policy of reorganisation as initiated under its circular dated October 27, 1965 it issued directions under its circular dated July 2, 1970, which is as under :

Government of India Ministry of Railways (Railway Board)No. E(NG)I/69/PM-1-180 New Delhi Dated July 2, 1970The GMsAll Indian Railways Sub : Procedure for filling up posts of TXRs upgradation of###

Ref Rly. Boards letter No. E(80)-165-PM-1-86 dated October 27, 1965 and September 13, 1968. The Board have been receiving representations from the staff working in the category of TXRs in scale of Rs. 180-240 (AS) against the procedure prescribed for filling vacancies arising out of upgradation of 50 per cent of posts in scale Rs. 180-240 (AS) to Rs. 205-280 w.e.f. April 1, 1966. It has been decided in modification of previous orders that all the TXRs working in grade Rs. 180-240 consisting of both App. TXRs. of 4 years Trg. and promotees from ranks as on April 1, 1966 should be promoted en masse to the grade Rs. 205-280 irrespective of the quota of vacancies reserved for promotees, the excess to the permissible reorganised cadre strength in the grade Rs. 205-280 being worked off gradually by wastage such as retirement etc. in grade Rs. 205-280 (AS).

After April 1, 1966 50 per cent of the vacancies arising in grade Rs. 205-280 should be maintained in that grade and the remaining 50 per cent will be downgraded to the scale of Rs. 190-240 to be filled by promotion of skilled artisans. The 50 per cent of the vacancies in grade Rs. 205-280 (AS) should be filled by direct recruitment of App. TXRs with 5 years training to the extent of 80 per cent thereof and the remaining 20 per cent by promotees from grade Rs. 180-240 as laid down in paragraph 1(ii)(a) of Board's letter No. E(NG)-165-PM-1-86 dated October 27, 1965. This procedure will continue to be followed till the cadre position is normalised and the excess in the grade of Rs. 205-280 eliminated.

(2) The staff promoted to the grade Rs. 205-280 as on April 1, 1966 will be assigned seniority amongst themselves in the order of their inter se seniority in the grade Rs. 180-240 for the purpose of confirmation in that grade and also for further advancement. They will all rank senior to those recruited as App. TXRs with 5 years Trg. and appointed after April 1, 1966 to the grade Rs. 205-280.

(3) The above instructions may please be implemented immediately and a report submitted to the Board in due course.

Pl. ack. receipt

Sd/- (O. D. Sharma) Asstt. Director (E) Rly. Board##

The circular issued three directions, firstly, it directed that all the Train Examiners working in grade Rs. 180-240 consisting of both apprentice Train Examiners and promotees from rank as on April 1, 1966 should be promoted en masse to Grade C irrespective of quota reserved for promotees. Secondly, it directed that after April 1, 1966 vacancies in Grade C to the extent of 50 per cent should be maintained in that grade while the remaining 50 per cent should be downgraded to Grade D to be exclusively filled by promotion of skilled artisans; it further directed that 50 per cent of the vacancies in Grade C should be filled up by direct recruitment of apprentices with five years training to the extent of 80 per cent thereof and remaining 20 per cent of vacancies from Grade D. Thirdly, it issued direction with regard to assigning seniority to the staff promoted to Grade C on April 1, 1966. They were to carry their inter se seniority in Grade D for the confirmation and also for further advancement. It further directed that the promotees will rank senior to the direct recruits in Grade C appointed after April 1, 1966.

12. These directions were issued with the object and purpose of achieving the reorganisation which had been initiated by Railway Board under the circular dated October 27, 1965. The scheme of reorganisation of cadre as contemplated by the circular dated October 27, 1965 was to be carried out with effect from April 1, 1966 and that date was followed by the Railway Board in its circular dated January (sic July) 2, 1970. The petitioners' submission that the date April 1, 1966 was fixed in arbitrary manner without any basis is untenable. The promotees who were placed in the higher Grade C with effect from April 1, 1966 were undoubtedly senior to the petitioners in Grade D, none of the petitioners' rights were affected by their promotion. The reorganisation of the cadre of Train Examiners and the promotion to Grade C could not be completed on account of the pendency of Roshan Lal Tandon case ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 Lab LJ 576) in this Court and the stay orders issued therein. After the decision of this Court the Railway Board implemented the scheme and it made promotion with retrospective effect. As the promotion to Grade C had been stayed, during the pendency of the writ petition in this Court the Railway Board was justified in granting promotion with effect from April 1, 1966 as initial reorganisation was proposed to be implemented with effect from that date as is clear from Railway Board's notification dated October 27, 1965. The Railway Board promoted the staff with retrospective effect because on account of stay orders issued by the court those entitled to be promoted with effect from April 1, 1966 could not be promoted. The petitioners cannot claim parity with those who had been promoted to Grade C under the Railway Board's circular dated July 2, 1970 as they do not belong to that class. Equality can be claimed among equals and not with unequals. Those persons who had acquired rights of promotion under the Railway Board's notification dated October 27, 1965 could not be promoted on account of litigation, they formed a distinct class and the petitioners cannot equate themselves with them as they were not entitled to promotion under notification dated October 27, 1965. The petitioners have no right in law to claim similar treatment. There is therefore no merit in the petitioners' plea of discrimination. Validity of the Railway Board's circular dated July 2, 1970 on the ground of it being discriminatory was raised before the Delhi High Court in Chaman Lal v. Union of India (Writ Petition No. 1147 of 1971, decided on May 20, 1980 (Del HC) (DB)) decided on May 20, 1980. A Division Bench of that Court upheld its validity. In another Writ Petition Kewal Krishan v. Union of India (Writ Petition No. 2834 of 1981, decided on December 15, 1981 (Del HC) (DB)) again the validity of Railway Board's circular dated July 2, 1970 as well as the validity of Railway Board's circular dated January 28, 1981 was upheld by a Division Bench of the Delhi High Court on December 15, 1981.

13. Learned counsel for the petitioner challenged the validity of the Railway Board's circular dated November 1, 1981 which directed the Delhi Division to fall in line with other divisions of Northern Railways for determining the seniority of Train Examiners. It appears that seniority of Train Examiners in Grade C working in other divisions of Northern Railway was determined, from the date of appointment in that grade, in accordance with Rule 302 of the Railway Establishment Manual but in Delhi Division that practice was not followed. The Railway Board directed the Delhi Division to fall in line with other divisions in determining the seniority of Train Examiners. Learned counsel for the petitioners urged that since under the Railway Board's circular dated October 30, 1972 the petitioners were placed en masse in Grade C in the scale of Rs. 205-280 they are entitled to seniority with effect from the date of their appointment in Grade D and if that be so, they would rank senior to respondents 5 to 10 who were appointed later in time. At time stage it would be profitable to have a glance at Railway Board's circular dated October 30, 1972 which is as under :

Government of India Ministry of Railways (Railway Board) No. PC-69/PS-5/TR-1
New Delhi, Dated October 30, 1972 The General Managers, All Indian Railways. Sub
: Upgrading of the initial scale of pay of Train Examiners on Railways Ref : Board's

letter No. (1) E(NG)-65-PM-1/86 dated October 27, 1965 (ii) No. E(NG)-1/65/PM-1/86 dated September 13, 1968 (iii) No. E(NG) 1-69/PM-1/130 dated July 2, 1970##

The Board have considered the communications received from the National Federation of Indian Railwaymen and the All India Railwaymen's Federation regarding the procedure prescribed for filling and maintenance of vacancies in the Train Examiners' cadre as envisaged in the above mentioned letters and more particularly their demand for abolition of the grade of Rs. 180-240. It has now been decided in modification of existing orders that the initial grade of TXRs, viz. Rs. 180-240 should be abolished and all the TXRs working in that grade should be placed en masse in the grade Rs. 205-280 w.e.f. November 1, 1972. It has been decided that vacancies in grade Rs. 205-280 should hereafter be filled in the following manner :

- (i) 40 per cent of vacancies to be filled by promotion of artisans;
 - (ii) 20 per cent of vacancies to be reserved for existing artisans going as apprentice TXRs, with age relaxation to 35 years; and
 - (iii) 40 per cent of vacancies to be filled by direct recruitment of apprentice TXRs from the open market through Railway Service Commissions.
2. Pay of the staff brought on from grade Rs. 180-240 (AS) to grade Rs 205-280 (AS) will be fixed under Rule 2017(a)(ii) read with Rule 2019 P-II.
 3. This has the approval of the President.

Sd/- (R. S. Bharal) Dy Director, Establishment (P and A) Railway Board.No. PC-69/PS-5/TP-1 New Delhi, Dated October 30, 1972Copy of the FA and CAOS, and Chief Auditors of All Indian Railways. Sd/- (R. S. Bharal) DY Director, Establishment (P and A) Railway Board.##

14. By the aforesaid circular the entry grade of Train Examiners in the scale of Rs. 180-240 was abolished and all the Train Examiners working in that grade were placed in the scale of Rs. 205-280 with effect from November 1, 1972. In pursuance of that decision, petitioners were included in Grade C with effect from November 1, 1972 and therefore they are entitled to seniority with effect from that date in Grade C. In the absence of any statutory rule or directions petitioners are not entitled to claim seniority in Grade C with reference to the date of their appointment in Grade D. The chart indicating respective dates of entry of petitioners and the respondents 5 to 10 in Grade C as extracted in the earlier part of the judgment would show that respondents 5 to 10 were appointed in Grade C earlier in time than the petitioners, therefore they are entitled to be senior to the petitioners. It is not disputed that Rule 302 of the Railway Establishment Manual lays down a general rule for determining seniority from the date of appointment in a particular grade and the petitioners have not placed any rule or instruction before us to support their case. Seniority ordinarily reflects length of service in a particular cadre or grade. It is generally regulated by service rules or in the absence of rules by executive instructions. By and large, such rules provide for determining seniority with reference to the date of appointment but there are instances where rules provide for determining seniority with reference to date of confirmation. Normally, when a person is promoted or placed in a higher grade his seniority is determined with reference to the date of such promotion or placement unless the relevant rules provide to the contrary. Seniority in the lower grade has no meaning for determining seniority in the higher grade except for determining inter se

seniority of promotees. Rule 302 contains a general rule and there is no exception to it. In the absence of any contrary provision in the Rules, the general rule of seniority as laid down by Rule 302 must prevail.

15. Learned counsel then urged that the seniority list of Grade D had been prepared in 1968 and in that seniority list petitioners were shown senior to some of the respondents and that seniority could not legally be disturbed. It appears that in the seniority list prepared in 1968 the names of some of the respondents was shown in Grade D on the assumption that they held posts of Train Examiners in that grade. It was done on a wrong assumption. Admittedly, the respondents 5 to 10 were apprentices who were undergoing training, and in accordance with the directions contained in the Railway Board notification dated October 27, 1965 they were entitled to appointment in Grade C straightway on completion of their training. They were no doubt drawing stipend at the rate of Rs. 180-240 which was the scale prescribed for Grade D but nonetheless they did not belong to Grade D as they were not appointed to any of the posts in that grade. Their names therefore could not be included in the seniority list of Grade D. Petitioners cannot draw any advantage from the mistake committed in including the respondents' names in the seniority list of 1968.

16. Learned counsel then urged that Hira Lal Kapoor, one of the petitioners was promoted on June 23, 1981 on the basis of his seniority in Grade D, therefore, other petitioners are also entitled to their seniority with effect from the date of their appointment in Grade D. In the written submission filed on behalf of respondents it is stated that the Deputy Regional Manager of Delhi had granted promotion to H. L. Kapoor on June 2, 1981 on ad hoc and temporary basis. On receipt of representations and protests from respondent 5 Ashok Kumar Sharma and the General Secretary, Northern Railwaymen's Union, order of promotion issued in favour of H. L. Kapoor was canceled and Sh. A. K. Sharma, respondent 5 was promoted. Since the petitioners were placed in higher Grade C with effect from November 1, 1972 they are entitled to seniority with reference to date of their placement in that grade and they have no legal right to claim seniority in that grade against those who were appointed to that grade before November 1, 1972.

17. Learned counsel for the petitioners referred to Lok Sabha questions asked by Sh. Suraj Bhan, M.P. and the answers given to those questions with regard to seniority of direct recruits and promotees (Annexure K of the petition. The petitioners have asserted that in reply to the Lok Sabha questions, it was clearly stated by the Railway Administration that direct recruit Train Examiners posted on working posts before November 1, 1972, in Grade C in the scale of Rs. 205-280 will not be treated senior to the Train Examiners promoted en masse with effect from November 1, 1972. In the counter-affidavit filed by the respondents it is stated that the reply to the Lok Sabha questions as contained in Annexure K to the petition is of no relevance as the said questions were not admitted at all and no reply was given by the Railway Board. It appears that the General Manager had prepared a draft reply to the Lok Sabha questions but the reply had not been finalized by the Railway Board which is the competent authority. The Railway Board could have modified the draft of the reply as prepared by the General Manager but since the question was not admitted no reply was sent to the Lok Sabha. The petitioner can therefore draw no support from Annexure K to the petition.

18. Learned counsel for the petitioners then urged that the petitioners were not promoted to Grade C, instead they were placed en masse in Grade C on the abolition of Grade D; therefore the date of their seniority should not be determined from the date of their placement in Grade C, instead they are entitled to their seniority with reference to the date of their appointment in Grade D. He placed reliance on the directions, contained in paragraph 2 of the Railway Board's circular dated October 30, 1972 that the petitioners' salary in Grade C shall be fixed in accordance with Rule 2017 (R-II)

read with Rule 2019-II. He urged that if the petitioners were treated to have been promoted to Grade C with effect from November 1, 1972 in that case their salary could have been fixed in accordance with Rule 2018(R-II) (PR-22/C). It is true that the petitioners were not promoted from Grade D to Grade C instead Grade D was abolished and the petitioners and all other incumbents holding posts in Grade D were placed en masse in Grade C and the Railway Board issued directions that their salary shall be fixed in accordance with the Rule 2017 read with Rule 2018(R-II) (PR 22/C). Whether petitioners were promoted to Grade C or whether they were placed en masse in that grade does not make any difference so far as their entry to Grade C is concerned; in either case, they entered Grade C with effect from November 1, 1972. Reference to a particular rule for determining their pay in the higher grade cannot change the criteria for determining seniority. The Railway Board had never issued any direction for determining the petitioners' seniority with reference to their date of appointment in the initial entry grade. The petitioners have failed to show that any person junior to them has been made senior to them. Their grievance is without any substance.

19. In view of the above discussion we find no merit in the petitions. We accordingly dismiss the same with costs. All interim orders stand discharged.

</html