

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration T.A. No. 248 of 1987
(Writ Petition No. 3486 of 1979)

Sant Raj and others Applicants-
Petitioners.

Versus

Union of India and others Respondents

Connected With

Registration T.A. No. 249 of 1987
(Writ Petition No. 5168 of 1982)

Sri Sobaran Singh and others Applicants-
Petitioners.

Versus

The Divisional Superintendent
Northern Railway and others Respondents

A N D

Registration T.A. No. 250 of 1987
(Writ Petition 10395 of 1978)

Ved Nath and others Petitioners-
Applicants.

Versus

Union of India and others Respondents

A n d

Registration T.A. No. 251 of 1987
(Writ Petition No. 11613 of 1985)

Rajan Kapoor Applicant-
Petitioner.

Versus

Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'bl Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

In all these 4 cases which have been bunched together
in two cases the dispute is regarding seniority between
promotees inter se which was not subject matter of earlier
litigation the third one is also on the same lines though
relief claimed is different and seniority has been claimed

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on the basis of combined seniority list and earlier training but issuance of appointment later than respondents to the said case. The fourth one is by a direct recruit.

In T.A. No. 249 of 1987, (Sobran Singh and others Vs. Union of India and others). The applicants of this application were working as Fireman Grade-B and C and the private respondents were departmentally promoted candidates, selected in the year 1965. These applicants claim to have who received training earlier but posting subsequent to posting of respondents to the case have claimed seniority against 35 respondents on the basis of combined seniority list of firemen Grade-B and C, as would be apparent from paras 14 and 15 of the T.A. No. 249 of 1987. They have also prayed that these private respondents be not promoted to Driver Grade-B in the pay scale of Rs 425-650 on the basis of seniority list of 1980. In T.A. No. 250 of 1987, (Ved Nath and others Vs. Union of India and others), the applicants, 121 in numbers, as well as the respondents 35 in numbers, joined as cleaners in Transporation (power) department on the operation side. They were promoted to the post of Firemen-B and they were working, as such, in the year 1965. The 35 respondents of the said application received the training of Assistant Driver before the applicants. The applicants and these 35 respondents were working as Firemen-B and some were working as Firemen-C when they volunteered and were deputed to the post of Assistant Driver. According to applicants they have to maintain their seniority in the respective grade of firemen-B and C and only the basis of seniority, who were appointed as Assistant Drivers from the post of Firemen Grade-C and then when

their number came on the basis seniority in Grade-C were given promotion and seniority in the Grade-B and from grade-B to the post of shunters. The dispute ~~exists~~ in this case is between promotees interse and direct recruits are not involved in this case. In T.A. 248 of 1979 (Sant Raj and others Vs. Union of India and others). The application was filed by departmentally recruited candidates who have been working as Assistant Drivers since 1965. According to them inspite of the judgments given by this Hon'ble court, the railway administration is maintaining a combined seniority list of firemen Grade-B and C and directed that the applicants who were taken from steam side cannot get promotion in electric side unless they go back to steam side and take training as shunter in steam side and other courses prescribed for promotion in steam side. They have prayed for maintaining the seniority between applicants and respondents as shown in seniority list of 1973. In T.A. No. 251 of 1987 (Rajan Kapoor Vs. Union of India and others). The applicant is a direct recruit and was selected through the Railway Service Commission in the year 1963 and thereafter was given extensive training and the private respondents 7 to 17 were given training for five weeks and they were asked to work temporarily as Assistant Drivers in the Electric Traction, and the applicant after training was given regular charge. According to him, the respondents worked in officiating capacity and when he and others were selected and getting training at Asansol and as such, they can not claim benefit in fixing the seniority, with the applicant and the respondents should be given.

Prior to this electrification promotion to the post of Driver Grade-C from Shunter Grade-A and Shunter Grade-B was in the ratio of 2:1 against 3 vacancies of Driver Grade-C 2 Shunter Grade one and one Shunter Grade-B though the strength of Shunter Grade-A and fireman Grade-A was much less to that of fireman Grade-B and Shunter Grade-B. The Grade of Driver Grade-B was 210-380/AS/245-640/RS and that of Driver Grade-A Rs. 325-425/AS/550-700/AS Driver Grade-B was selection post for Driver Grade-C and thereafter Driver Grade-A which too was selection post. Even after introduction of electric traction the same channel was followed and steam staff brought on electric traction after qualifying in conversion course according to their inter se seniority on the steam side. In cases where vacancies on electric traction became heavy and qualified persons in the channel of promotion in eligible categories were not available qualified persons from lower categories were drafted as exemption to the aforesaid channel of promotion and put as electric Shunters/electric drivers to meet heavy requirement.

After the electrification of track and introduction of electric engines Railway administration decided to recruit personnel through the Railway Service Commission and this is how direct entry of Fireman Grade-A was made.

After necessary ^{training} they joined the posts and for all purposes were assigned seniority in Fireman Grade-A (28 persons referred to earlier). As demand was increasing and process of selection was to take time applications were called for from the working Fireman Grades A and B from steam side who fulfilled the requisite qualification and volunteered to go for conversion course. The Fireman Grade-B (Steam Side) who were found suitable for conversion course joined ~~the Posts of~~ Assistant Driver (electric) on ad-hoc basis. There was thus a change of designation for such promotees coming from the category of Fireman Grade-B. These Fireman Grade-B as

per decision of the administration had to retain their interse seniority as Fireman Grade-B for further promotion vis-a-vis other Fireman Grade-B who stayed where they were and did not opt for conversion course. The very same seniority was maintained even though this conversion process was a continuous process. Initially the above mentioned 53 persons (referred to earlier) joined conversion course from steam side to electric side. After the appointment referred to above spate of litigations started between 'promotees' viz those who were already working on other side in the Railway and the direct recruits selected by Railway Service Commission. A suit No. 843 of 1966 (Punnu Lal and others) was filed in the court of Munsif, Allahabad which was decreed and the defendants of suit were restrained from sending back the plaintiff to the steamside as firemen and were directed to pay to the plaintiff the salary, dearness allowance, house ^{rent} allowance, night allowance, city allowance and extra duty allowance payable to the Assistant Drivers (Electric) after deducting the amount already paid to them. Thereafter, a writ petition was filed by one B.B. Ghose (W.P. No. 2960 of 1967). The petitioners to the said writ petition were firemen Grade B and were not selected by selection committee. The petition was dismissed and it was held that the post of Assistant Drivers Electric was a new post and petitioners had no right for selection. The Third writ petition No. 1235 of 1968 was filed by Dakki Lal and others who were the departmentally selected candidates and prayed that they may be treated as Assistant Driver (Electric) and be declared senior to the directly recruited Assistant Drivers (Electrical) selected by Railway Service Commission. The said petition was allowed on 7.5.1969, and the respondents were directed

to treat the petitioners as holding the post of Assistant Drivers (Electrical w.e.f. June, 1965 and to pay them salary and allowances to fix their seniority on that basis. Special appeal against the said judgment was partly allowed by the Division Bench vide judgment dated 10.9.1970, ~~and~~ and only that part of the order of the learned single judge which directed appellants to determine the seniority of respondents on the basis of their appointment in June, 1965 was set aside ~~and~~ rest of the judgment was maintained, W.P. No. 1367 of 1971 was filed by S.K. Sharma and others who were directly recruited Assistant Driver (Electrical). They claimed preference in appointment to the post of Electrical Drivers and promotion as Driver Grade-C directly without undergoing any training of the shunter. Thereafter a writ petition no 4868 of 1971 was filed by Rochhal Das and others praying that they are entitled to be treated as senior to the directly recruited Assistant Drivers Electrical and can not be reverted as Firemen Grade B and C. The petition was allowed on 21.8.1974 and the order of reversion of the applicant was quashed and the respondents (Union of India and others) were directed to treat them as senior. Against this judgment a Special Appeal No. 278 of 1974 was filed by Sri Hoshiyar Singh who was direct recruit but the same was dismissed and the special leave petition filed by the same petitioner was also dismissed in the year 1989. It was thereafter Sri S.K. Bose and others (departmentally selected candidates) also filed a writ petition No. 343 of 1972 which was allowed by the Division Bench on 20.7.1977 in view of the judgment given by the Division Bench in the Rochhal Das case (supra). In this case, the court has held that a new cadre of 72 posts of Assistant Drivers (Electrical) were created in electric side by transferring those posts from steam

side in scale of Rs. 125-155 and that the respondent Nos. 6 to 41 were selected for the post of Assistant Drivers (Electrical) and after training they were appointed as such from June, 1965 and that firemen Grade B and C who were selected and appointed as Assistant Drivers (Electrical) were absorbed in the electric side as Assistant Drivers (Electrical) and that the Assistant Drivers (Electrical) were treated at par with firemen Grade-A, and that the direct recruits selected in 1965-66 were junior to the departmentally selected candidates i.e. respondent Nos. 6 to 41. An S.L.P. against the said judgment was dismissed and the Special Leave Petition which was filed by the direct recruits before the Hon'ble Supreme Court too was dismissed as withdrawn on 17.12.1977.

2. Thus, from these cases it was established that as a result of electrification 72 posts of Assistant Drivers (Electrical) were created in electric side by transferring the posts from steam side in the scale of Rs. 125-155 and that some of the persons working in the steam side were selected for the post of Assistant Drivers (Electrical) and after training they were appointed as such in the month of June, 1965. The firemen Grade-B and C who were selected and appointed as Assistant Driver (Electrical) were absorbed in the electric side as Assistant Driver (Electrical) and the Assistant Driver (Electrical) were treated at par with firemen Grade-A, and the direct recruits who were selected in the year 1965-66 were junior to the departmentally selected candidates.

The directions given in the said judgment were given effect to. According to the Railway Administration it was found that quite a good number of people after passing initial stage conversion course on the electric traction have failed in higher promotional conversion course on the electric traction were therefore sent for higher promotional course on the steam side according to combined seniority. Thus on failure ~~on failure~~ ^{on} on electric side, ~~one~~ ^{he} could have sought his advancement on steam side and vice versa, normally first promotion is allowed on the steam side and this process continues upto highest level of class-III category that is Driver Grade-A special. In view of this promotion policy which was being followed Assistant Driver Grade-C either on steam side or in the electric side after qualifying the prescribed promotional course as Shunter Grade-B with Steam/Electric and thereafter, in his turn of seniority has to qualify for the post of Driver Grade-C (steam-side) and then conversion course in the electric for Grade-C driver post. The grade and allowance of Assistant Driver (Electric) Fireman Grade-A, Shunter (Steam) and Shunter (Electric) Driver-C (Steam/Electric. Driver-B (steam and electric and Diesel) is the same. The Fireman Grade-A required total 5 years 9 months for reaching upto the Driver Grade-C that is 2 years training as Fireman Grade-A, 3 years Foot plate Training as Fireman 'A' and then a months ser-vice as shunter Grade-A while Ass^tamnt Driver (Electrical) required only 3 years training period for reaching upto the stage of Driver 'C'. This may be because of their earlier training and experiance.

6. Some of the persons, who are parties to these applications, were not parties to the litigation mentioned earlier but finality was attached to these judgements not only because S.L.P. against some of them was dismissed or the same were not challenged after decision by Division Bench. Railway Administration being party to these cases, the judgements were binding on the Railway Administration. The judgements were in the nature of 'rem' and not 'personam', and were given for against a particular category and the dispute in all such cases was regarding seniority between classes of direct recruits and promotees. It is no longer open for any party to get it reopened or challenged the same as has been sought to be done in T.A. No. 251 of 1987 Rajan Kapoor Vs. Union of India and others who has rather changed the chain of the judgement. After creation of this category of Assistant Drivers Electric and after electrification, no amendment in the Railway Establishment Manual was made and the post of Assistant Drivers(Electric) does not find place therein. Although, so far as the rules regarding 302, 303 and 304 etc. are concerned, they are intact so far as the seniority is concerned. So far as this category is concerned, no provision in the Railway Establishment Manual by way of amendment was made, may be, that till then it was considered to be a category of drivers not separate from the existing category but carved out of the same and given a little different nomenclature because of the electrification. It appears that as the rules contained in the Railway

Establishment Manual were silent in certain respect. The General Manager has issued a letter dated 6.1.1971 which has also been challenged in some of these applications on the ground that the rules contained in the Railway Establishment Manual being statutory and the General Manager has no power to issue any order, may be under the authority of the Railway Board, which may result in changing the rules itself or the channel of promotion provided in the Railway Establishment Manual. In the said letter dated 6.1.1971, in reference to the Railway Board's letter dated 19.4.1980 finds place. The Railway Board in this letter has directed that the seniority of steam side and electric side will be maintained separately but in the General Manager's letter, it has been stated that for some time, seniority list will be combined. It seems that although each side was to maintain its seniority list but for transitory period, the seniority of the three sides was to remain combined. Their future promotion was to be governed by the normal rules and in the normal channel for promotion presented by General Manager/Manager Railway w.e.f. Delhi letter No. 755-E (Electric) dated 17.12.1970, the seniority is to be reckoned according to the substantive position and not on the basis of passing the promotional test provided that the examination is being passed within 3 years of the date of the first four years. The staff passing the promotional test after the limit of three years will be liable to be absorbed to the junior most staff who have already passed the course. Subsequently, it was found that during the period of dieselisation and electrification, the senior staff was to be absorbed first w.e.f. dated 17.12.1972.

No. 755-E (Elect) provided that the seniority of Steam, Diesel, Electric Loco running staff will remain combined as already decided by office letter dated 15.11.1965 and 18.4.1966. Their confirmation shall also be made against available permanent vacancies on the basis of their combined seniority provided they are eligible for the same. Vide letter dated 13.10.1970 No. 803-E/2307 (Elect) by which chart was prepared and entitled as 'Standardisation of Practice of 35 KV Electric Traction' the matter of determining seniority which was thereafter decided on that basis was provided.

Para-5 of the said letter reads as follows;

"The method of determining seniority of directly recruited driver, Assistant (Electric) vis-a-vis other driver Assistant (Electric) who were earlier firemen under examination and you would be advised in about 3 months time. In the meantime, such of the Driver Assistant (Electric) who have been working as such from a period earlier than the completion of the training by the directly recruited driver should be sent for promotional course no P.E.L. for Electric Shunter.

In the General Manager's letter of the year 1971, it has been stated that for some time seniority list will remain combined. The General Manager's letter of the year 1971 only supplemented the rules by filling in the gap and did not run contra to the provisions of contained in the manual. It was in the nature of ~~executive instruction~~ for transitory period. The executive instructions can always be supplemented though not supplemented the statutory rules. In the instant case as provisions for transitory period was to be made, these rules were supplemented in order to carry out the purpose of electrification and the purposes for which the posts were created.

7. The main question that arises for consideration in this case is as to whether after this electrification and creation of the posts of Assistant Drivers (Electric), a new cadre of Assistant Drivers came into existence or the cadre was the same till it was not made the separate cadre in view of the fact that a combined seniority was maintained. Fundamental Rule-0(4) defines the word 'cadre' to mean strength of a service or part of a service sanctioned as a separate unit (emphasis supplied). This indicates that sanctioning of a separate unit is a must for creation of a separate cadre. In Chakradhar Paswan Vs. State of Bihar, AIR 1988 SC, page 989, the Hon'ble Supreme Court relied on the same definition and held in service jurisprudence the term 'Cadre' has a definite legal connotation. In the case of Janki Singh and others Vs. Union of India and others, decided on 20.7.1979 by the Division Bench of the Allahabad High Court in which a prayer was made to the effect that the Railway authorities were directed to consider the petitioners who were employed as Assistant Drivers (Diesel) Eastern Railway for promotion to the post of Shunter and Driver Grade-C in the diesel side, which was allowed. In that case, the Eastern Railway took the plea that the promotion on the side of electric traction was separate and independent from 2 units of the steam and diesel side which have a combined cadre for the purposes of seniority. The court in the absence of terms and conditions on which the petitioners to the said petition were selected and taking the view that rules provide after 18 months working a person shall be deemed to have been confirmed. So the petitioners were confirmed as driver Assistant in the diesel side and that they were absorbed on that side rejecting the plea of Railway Administration

to the contrary in the absence of terms and conditions of the appointment.

It is in these circumstances without dealing with the question of cadre,

the Bench held that they are to be promoted on diesel side and not to

the post of Shunter in the steam side. In the case of Rama Kant

Chaturvedi Vs. Divisional Superintendent, Northern Railway, A.I.R., 1971

SC357 it was observed that dieselation of the Railway Transport, the

matriculate Firemen Grade-C on steam side after completion that any one

appointed as Assistant Driver (Diesel side) on officiating basis,

subsequently long after the said appointment on relaxation on minimum

education qualification non-matriculate fireman-A and B were also so

appointed that fireman grade-C were reverted back to the steam side in

order to benefitted the fireman A and B. It was further observed

that the fireman-C who were drafted in diesel unit earlier would not

lose the benefit of fireman-B while serving in diesel side merely

because others were senior to them on the steam side. Thus, they

could not be reverted while their juniors in the diesel side were

seniors in the steam side, and retained the seniority on the steam

side, because they were appointed on the diesel side on different

dates. Further the diesel side running staff were constituted a separate

unit distict from the electric side and the recruitment and avenues

of promotions are also different. The said decision was passed

on the General Manager's letter 25/8/1965 which provided, that

"as a result of communication seniority there may be cases of some persons subsequently

juniors to others may be officiating in higher grades, such junior persons will not be reverted to the group of persons senior to them. The senior persons will be considered for promotion in higher grade against future vacancies subject to their fulfilling any of the condition that might have been or might be laid down. The Railway Establishment Manual which has got statutory force is silent so far as the seniority of the driver of the Electrical Side is concerned. The General Manager's letter of 1971 only supplemented the rule by filling in gaps and did not run contra to Railway circular. It was in the nature of Executive Instruction for transitory period ~~in~~ ~~for~~ giving effect to a particular scheme. The Executive Instructions supplement though not supplant the statutory rules and in this case, the General Manager's letter only supplement the rules and do not supplant it in as much as it only provided for the transitory period what is not ~~invited~~ in the said rules. The said letter of the General Manager was taken note of in some of the writ petitions referred to above but it appears that its applicability or validity was rather ~~in~~ accepted position as the same was not disputed.

8. In the Writ Petition filed by S.K. Sharma and others (W.P. No.1367 of 1971) decided on 12.4.1974 referred to earlier which was decided by Justice C.S.P. Singh. In which it was held that no separate cadre for the Electric side was created. It was observed, " The mere fact that the Railway the Trade notice invited application for the appointment to the post of Assistant Driver (Elect) was not sufficient to create the categorisation contended for. The fact that duties on the Electric side are different from

those employed on the diesel and steam side also does not create a separate cadre of employees on the electric side. A particular cadre in a service of an employee can be created only by special contract or statutory enactment or orders. It is further undisputed that the Railway had been conducting training courses for employees on the steam side in order that they might become conversant with working on the electrical side, and this was being done much before the petitioners were recruited. This conduct on the part of respondents gives a clear indication of the fact that respondents were treating all employees whether on the steam, diesel or electric side constituting one unit." The said judgment was affirmed by the Division Bench but for minor variation on different point and thereby attained finality. It may be noted here that some of these persons were not party to the earlier petitions. But as observed earlier, the judgment which were given in those petitions in respect of the particular questions raised were rather judgment in 'rem' and not in 'personam'.

The stand of the Railway Administration in this behalf is not very clear and consistent. In T.A. No. 248 of 1987 (Sant Raj and others) apart from pleading that seniority of steam and electric traction persons right from top to bottom in Class-III and IV categories will be on a combined basis. It was specifically pleaded that there was and there is no separate cadre on electric side. In T.A. No. 249 of 1987 (Shobram Singh and others) practically the same pleas were taken. But in T.A. No. 250 of 1987 (Ved Nath and others) it was pleaded that even prior to 1973 there were three different cadres of Shunters viz Shunters Grade-A, B and C respectively. The Assistant

Drivers (Electric) 28 in numbers whose promotional channel was different belonged to a separate cadre and were not required to undergo any further training. After completion of training, they severed all their relations with Fireman Grade-A, B and C on steam side and were declared senior to directly recruited Assistant Drivers in 1966. They were promoted as Electric Shunter from 1968 and Driver Grade-C from 1973. There were thus, two different cadres one on the steam side and the other on the Electric Side. In T.A. No. 251 of 1987 (Rajan Kapoor) it was been specifically pleaded by Railway Administration in its reply dated 20.4.1988, ^{that} No separate cadre of electric running staff was constituted. These directly recruited Assistant Electric Drivers were not to be promoted to the post of Driver Grade-C. Their future promotion was to be governed by the normal rules and in the normal channel of promotion prescribed by General Manager, Railway Board New Delhi letter dated 17.12.1980 i.e. on the basis of combined seniority of Steam/Diesel /Electric running staff. As has been observed earlier that in view of the observations made in these cases, referred to above it has stood decided that there was one cadre till then. May be during this transitional period, and as such, during the relevant period, there was one cadre and not the electric cadre was a separate cadre.

9. There is no denial of the fact that no statutory amendment or any order by the competent authority till then was made for making the Assistant Drivers (Elect) a separate cadre and that it has not been stated anywhere that the same was sanctioned as a separate unit, and even if some of the Asstt. Driver (Electrical) were appointed directly but the maintaining of a combined list and the interchangibility also even if the same was not done and the absence of another ^{the} for creating a separate unit clearly indicates that ~~the~~ cadre continued to be one.

It will be appropriate to take all these 4 cases separately.

10. The applicants to T.A. No. 248 of 1987 (Sant Raj and others Vs. Union of India and others). The applicants, 28 in numbers who have not impleaded any private respondents have claimed promotion as Electric Driver Grade-C from a date anterior to the promotion of direct recruits appointed in 1966 and that they may be paid wages, allowances etc available to the post of Assistant Electric Driver, Electric Shunter and Electric Driver Grade-C. These applicants are firemen Firemen Grade-B and C in Electric Locomotives. They along with others offered their candidature in pursuance of Railway Board's circular and were selected and appointed in May/June 1965 as Assistant Electric Driver and sent for training to Asansol. vide Railway Board's letter dated 13.10.1970 after 3 years of foot plate working. Assistant Drivers is to be promoted as Electric Shunter before which he has to pass P 2 training course, who is promoted as Electric Driver Grade-C after 3 years foot place experience of Electric Locos. From fireman's side before promotion to shunter of steam side as indicated earlier are has to pass a course known as P17 for handling Setam Locomotives at Chandausi. After promotion to the post of steam shunter grade-B, promotion to Driver Grade-C is made and so on. These applicants were sent to Chandausi for training but were not allowed to join by principal on the ground that they are to take training on electrical side at Kanpur. The entire premige of claim is that there were three cadres having separate seniority which we have also rejected. Their reliance is on justice Singh's decision(Supra) which we have already considered. It was a case under Eastern Railway, the circulars issued by it have not been placed on the record. It appears that in that case

there was a combined cadre of two sides and those who were on diesel side had already been observed as has been observed in the said judgment. It is not known as promotion on electric side was separate that is why a separate cadre was created or accepted and ingredients which make a unit a separate 'cadre' including declaration had been made. In ~~1960~~ Northern Railway till then there was no separation and there was a combined seniority list of all the three sides and the same was being acted upon. The reason for it, as explained by Railway was with a view to accomodate surplus staff from steam traction, ensure promotion of unsuccessful persons both on steam and electric traction on either of the tractions and to keep parity in the matter of promotion of both the traction of running staff. The respondents have pointed out that the applicants but applicant Nos. 26 and 24 have also been promoted to the post of Driver Grade-C. These 2 persons have not been promoted as they have not prescribed qualified their promotional course. Applicants have been assigned seniority as firemen because channel of promotion for Steam and Electric traction is a combined and they have to qualify in both the traction for higher grade post and first have to qualify in steam traction and thereafter to electric traction by flying in the conversion course i.e. F17 after PE-2 c. The view regarding common seniority list having been taken by they could be required to side only like those who side as Assistant Drivers junior to them. The responsibility on passing these qualifications

to higher grade they shall be considered for assignment of their seniority vis-avis directly recruited driver Assistants in the light of judgment of the Hon'ble High Court. The applicants have thus failed to make out any case for interference and the application is dismissed.

11. In Rajan Kappor's case (T.A. No. 251 of 1987), the applicant is a direct recruit having been selected in pursuance of Railway Service Commission advertisement in which prospects of promotion were mentioned as C.B. and A grade driver, (It did not say that the prospects for promotion to Driver Grade-C will be without being promoted to the prescribed promotional post of Shunter which is followed by the next promotional post of viz Driver Grade-C). He along with others was sent for training for 1 year's being new entrants. The respondents 7 to 17 with whom he has claimed seniority questioning the seniority list dated 1.10.1984 (two of whom viz respondent S.K. Bose and respondent Sant Raj are applicants in T.A. No. 248 of 1987) had all other kinds of experience and qualifications on foot plate working ~~were~~ except operating of electric locos who were amongst the fireman grade-B and C were given five months training and were appointed as Assistant Driver Electric in 1965 before applicant and others after completion of training could be appointed as temporary post in term of employment were promoted as a regular measure w.e.f.

28.6.1968. According to the applicants, the earlier appointment was stop gap ^{their} assertions ^{are} refuted by Railway Administration and private respondents and was concluded in earlier litigations referred to above which the applicant has challenged. The position appears to be that there being combined seniority list on transfer of steam services to electric traction

from time to time . Some of the Fireman Grade-B became surplus as such junior most were reverted to Fireman Grade-C on account of vacancies on the Steam side . These fireman Grade-B and C were repromoted in order of seniority on the steam side and not that they are reverted to accommodate the persons of the applicants category . In view of G.M. (P)'s letter No. 803/E/2307 (elect) dated 19.1.1971, the date of appointment of applicant and similarly placed other persons was the date of actual appointment and not the date on which they were sent for training . It is to be noted that the question with reference to above letter has already been decided by the High Court in its earlier decision referred to above and being judgment in rem is binding on the applicant even if he was not party to those cases, though other persons similarly placed were parties to some of the cases . This question of seniority with reference to nature of appointment and dating back of appointment was held in Dakhi Lal and others' case (W.P. No. 1235 of 1968 and appeared in Special Appeal), then in W.P. filed by Rochal Das and others (W.P. No. 4863 of 1971 and in special appeal against this judgment viz Hoshiar Singh and others. (Special appeal No. 278 of 1974) followed in W.P. No. 343 of 1972 S.K. Bose and others Vs. Union of India and others, The Hon'ble Supreme Court in S.L.P. filed by Hoshiar Singh and others (Civil Appeal No. 1421 of 1975) observed ;" Since we indicated clearly that the position of law held by the High Court is correct , caused for the appellant sought leave to withdraw this appeal since his only grievance was that there was some error of fact which obviously in this court we are not disposed of to investigate or interfere". After this observation also,

it is no longer open for the applicants to challenge the said judgment in which correct legal position was laid down. In view of what has been said above, the application is dismissed.

12. In T.A. No. 248 of 1987 (Sobran Singh and others) filed by 88 Drivers Grade-C on the Electric Locomotive Side while T.A. No. 250 (Ved Nath and others) filed by 121 Shunters in the grade of Rs. 290-400, a grade which came into existence after merger of all the 3 grades of Shunters in 1973 and who like respondents 3 to 38 of T.A. No. 248 of 1987 viz 6 to 41 of T.A. No. 250 of 1987 (some of whom are applicants in T.A. No. 248 of 1987, Sant Raj and others) started service as cleaners in Transportation (power) department in the grade of Rs. 70-85, the dispute is regarding seniority between promotees inter se which was not subject matter of dispute in any of cases decided by High Court and Supreme Court referred to above all of which raised the question of seniority between the promotees and direct recruits. In the seniority list of 1980, the private respondents have been shown as senior to applicant which was not the position in earlier list prepared before the judgment of the High Court referred to above. The applicants in T.A. No. 248 of 1987 stated working as drivers in 1962 but were not found qualified for training in 1965 and it appears that as a result of relaxation of qualification, they were considered qualified and were selected as trained as Assistant Drivers Electric and diesel and were promoted in Drivers Grade C in 1974-75. They continued to be fireman Grade-A, B, and C according to their seniority. The respondent

Nos. 3 to 38 of the said T.A. (6 to 41 of T.A. No. 250 of 1987) were selected and appointed as Assistant Driver Electric in the year 1965 and were given scale of fireman Grade-A as was done in the case of others after their selection. They were first trained as Drivers Grade-C on the Steam side at Chandausi and thereafter were trained as Drivers on Electrical side at Kanpur in 1978-79. They were given 5 weeks training in the year 1965 when they were appointed in 1965. Till 1965 they too were working as Fireman Grade-B and C at the steam locomotive side. But, whatever training was received by ^{them} ~~me~~ as Assistant Drivers, the same was before the applicants to the said case and were also working as Fireman Grade-B and C when they too volunteered for the post of Assistant Drivers. They maintained their seniority with respondents while working as Assistant Drivers and were given promotion and seniority in grade-B and from Grade-B to the post of Shunters. In the seniority list of 1976, applicants (except two) of T.A. No. 250 of 1987 were shown higher in the seniority list of Shunters than respondents 6 to 28. In the said list, applicants No. 95 to 121 and respondents 32, 33, 35, 36, 38, 40 and 41 do not find place. They having been promoted as Shunters in the year 1977-78 while respondents 29, 30, 31 and 39 were still continuing as fireman Grade-B. Thus, all these persons were appointed as Shunters as and when vacancies occurred in shunters cadre according to their seniority in which their seniority position was the same as in the seniority list of Fireman Grade-B. In the meantime, respondents 6, 7, 11, 14 to 29 and 32 to 40 who were fireman grade-B and C prior to being deputed to the post of Assistant Drivers filed the writ petition No. 343 of 1972 decided on 20.7.1977, referred to above, (S.K. Bose and others) to.

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which applicants were not parties. The said petition was disposed of by a small judgment on the basis of earlier judgment holding promotees appointed in 1965 on adhoc basis to be senior to direct recruits. It appears that in order to give effect to the judgment and in view of contempt application, the Railway Administration fixed their seniority over the direct recruits in Fireman Grade-A with back date and giving them higher promotions also as has been admitted by them in their statement. It is to be noticed that a person can be appointed as Fireman if he has passed through the entrance examination conducted by the Railway Service Commission. The respondents, though given the pay scale of fireman-A as was given to other Assistant Drivers (Electric) never appeared before Public Service Commission or passed any examination. 25% vacancies for Fireman Grade-A were filled from Fireman-B and 75% vacancies for Fireman Grade-A were filled up through Railway Service Commission. The result of the appointment of respondents as Fireman Grade-A was from Respondent Nos. 6, 7, 9, 10, 11, 12 to 17 who were appointed as Fireman Grade-C over and above the applicant Nos. 1 to 9, 10 to 19, 20 to 26, 27 to 31 32 to 35, 36 to 38 and 39 to 41 who claimed seniority over them. The notification which has been under challenge, stated that the respondents 6 to 41 were assigned seniority in the category of Fireman Grade-A and they were directed to officiate as Driver Grade-C. Vide Circular dated 7.9.1978, issued by the Divisional Superintendent Officer, Allahabad whereby the names of respondents Nos. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 34 have been approved for training to the post of Drivers Grade-C and they were already undergoing the said training at Zonal Railway Training School Chandausi.

The respondent Nos. 29, 30, 31, 37 and 38 are not Shunters but still they have been directed to attend the Training course on the basis of the seniority awarded to them in Fireman Grade-A. In the judgment referred to above, the promotees were held senior to the Direct Recruits and in view of the fact that there was only one cadre as has been held by us and those who were working in the three lines were ~~followed~~ a part of the same cadre and their seniority could not be changed taking them as members of different cadre, even then their promotions were made from different lines and their pay scale were changed. This fact has already been observed in T.A. No. 248 of 1987 (Sant Raj and others vs. Union of India and others). The date of appointment to the post of Assistant Driver (Electric)/ Diesel can not be taken for seniority in the Shunter Grade because the seniority in that grade can only be on the basis of seniority on the grade of Fireman B and C.

13. Accordingly, if not but some of the applicants in these applications were senior to the respondents and on the basis of their seniority in combined cadre, accordingly, these applications are allowed and the seniority list of the year 1980 which was thus prepared against the rules or against the factual position deserves to be quashed, and the respondents are directed to prepare a fresh seniority list of the applicants and the respondents in both the cases within a period of 2 months from the date of communication of this order and give the applicants, if not actual, but notional seniority w.e.f. the date their juniors were promoted and in view of their fresh seniority position, they will also be entitled to their promotions and seniority etc. These two applications are

allowed in the above terms. No order as to costs. T.A. No. 248 of 1987 (Sant Raj and others vs. Union of India and others) and T.A. No. 251 of 1987 (Rajan Kapoor vs. Union of India and others) are dismissed and T.A. No. 249 (Shobaram Singh and others vs. Union of India and others) and T.A. No. 250 of 1987 (Ved Nath and others vs. Union of India and others) are allowed. This judgment will be applicable to all these four cases and a copy of this judgment will be placed to each case.

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Member (A)

Vice-Chairman

Dated: 30th July, 1992
(n.u.)