

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,

A\_L\_LAHABAD

Dated : Allahabad this the ..13<sup>th</sup> day of ~~October~~ 1995.

CORAM : Hon. Mr. S. Das Gupta, Member-A.  
Hon. Mr. T. L. Verma, Member-J

I. Original Application No. 157 of 1992.

1. Brijendra Singh, son of ~~Ali~~ Babu Lal,
2. Suresh Kumar son of Jugul Kishore.
3. Suresh Kumar Arya, son of Pyare Lal
4. Ramesh Chandra, son of Ram Dayal
5. Rameshwar son of Chhatariya,

All Firemen 'A'/Diesel Assistants,  
Central Railway, Jhansi Division,  
Jhansi. .... Applicants.

(By Advocate Sri W.H.Khan & Sri L.K.Dwivedi)

Versus

1. Union of India, Ministry of Railways,  
New Delhi.
2. The General Manager, Central Railway,  
Bombay V.T.
3. The Divisional Railway Manager, Jhansi.
4. Sri Sharad Rajesh Harris s/o. Sri D.B.Harris
5. Sri Ajai Singh Yadav s/o. Sri Chandan Singh
6. Sri Vinod Kumar Bhat s/o. Mata Prasad.
7. Sri Ujaz Hussain s/o. Sri M.Hasan.
8. Sri R.K.Srivastava, s/o. late V.S.Srivastava.
9. Sri Ali Hassan s/o. Z.M.Jatn.

All are posted as Assistant Driver Electrica-  
tion, the Central Railway Jhansi Division,  
Jhansi.

..... Respondents

(By Advocate Sri Sudhir Agarwal & Sri A.Sthalker).

CONNECTED WITH

III. Original Application No. 657 of 1992.  
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1. Sharad Rajesh Harris  
son of Sri D. S. Harris
2. Sri Ajai Singh Yadav  
son of Sri Chandan Singh
3. Sri Vinod Kumar Bhat  
son of Sri ~~Maxxa~~ Mata Prasad
4. Sri Ejaz Hussain  
son of Sri M. Hasan.
5. Sri R.K.Srivastava,  
son of Sri (late) V.S.Srivastava.
6. Sri Ali Hassan  
son of Sri Z.H.Jafri
7. Sri V.K.Pandey son of Sri  
R. R. Pandey
8. Sri B.K.Upadhyaya son of  
Sri H.N.Upadhyaya
9. Sri Pankaj Agarwal son of  
Sri G.K.Agarwal
10. Sri D.K.Dubey son of  
late B. P. Dubey  
All the applicants are presently posted as  
Assistant Driver (Electrical) Central Railway,  
Jhansi Division, Jhansi.  
....applicants.

## V E R S U S

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Central Railway, Bombay  
V.T. Bombay (Maharashtra).

3. The Divisional Railway Manager, Jhansi  
Division, Central Railway, Jhansi.

4. Sri Halkey Mulley

5. Sri Karan Singh Sujan Singh

6. Sri Sewak Kalloo

7. Sri Nagendra Narain

8. Sri Khem Chand Parmoley

9. Sri Naththo Ram Jundhi

10. Sri Latif Khan Baboo Khan

11. Sri Mohd. Umer Khan

12. Sri Narain Das Bhagwan Dass

13. Sri Munnalal Kachchoo

14. Sri Gulam Kewarie

15. Sri Ram Das Parsadi

16. Sri Inderjit Rahbali

17. Sri Farida Habboo

18. Mohd. Ilyas Noor Mohd.

19. Pragilal Baboo Lal

20. Sri Rameshwar Prasad

21. Sri Ganga Pd. Devi Ram

22. Saiyed Bakir Ali

23. Sri Bhagwan Sing Jainarain

24. Sri Godhan Ban Singh

25. Sri Ramesh Kumar Pannalal

26. Sri Shahjad Khan Sher Khan

27. Sri Josehef Fransis

28. Sri Baboo Lal Gaya Pd.

29. Sri Munna Lal Devi

30. Sri Baboo Lal Lalbahadur

31. Sri Kanhai Kamid

32. Sardan Khan Mohd. Khan

33. Sri Karori Lal Dhundi

34. Sri Babbo Lal Mulloo
35. Sri Kashi Ram Sarai (SC)
36. Sri Halku Sukhlal
37. Sri Ramcharan Kundan (SC)
38. Sri Badri Pd. Chinna
39. Sri Suresh Chand Shyam lal
40. Sri Lala Ram Nankoo
41. Sri Meharvan Singh Devi Singh
42. Sri Dalua Baijnath
43. Sri Shivdayal Bhagwan Dass.
44. Sri Mithan Lal Parsadi (SC)
45. Sri Mani Ram Sharma (SC)
46. Sri Rabhunath Sri Ram (ST)
47. Sri Amar Singh Ram Swaroop (SC)

Respondents 4 to 47 are all working as Firemen Grade-I/Assistant Driver (Electrical) Jhansi Division, Jhansi, and they may be served through the Divisional Railway Manager, Jhansi Division Jhansi. .... Respondents.

(By Advocate Sri ~~SankirxAsarxalx~~ Amit Athalkar and Sri L.K.Dwivedi.)

AND  
CONNECTED ALONG WITH

 III. Original Application No. 864 of 1992.

1. Mihi Lal son of Sri Manohar
2. Vijai Singh son of Sri Yad Ram
3. Abdul Sattar son of Sri Amir Baksh.
4. Bhikam Singh son of Bipti Ram.
5. Yad Ram son of Bihari
6. Loherey son of Panna Lal

7. Manik Chand son of Budda Ram
8. Hari Shanker son of Ram Nath
9. Ibrahim son of Sri Gafoor.
10. Suresh Kumar son of Pyare Lal
11. Ashok Kumar son of Baghmal
12. Revti Prasad son of Devi Ram.
13. Pratap Singh son of Bhawani Singh
14. Bhikki Ram son of Siriyan.
15. Jagdish Prasad son of Dauji Ram
16. Bashir Khan son of Masoom Ali.
17. Ramji Lal Sharma s/o. Narain Pd.
18. Than Singh son of Tunda.
19. Pramod Kumar son of Om Prakash Arya
20. Kalyan Singh son of Jyoti Prasad
21. Shiv Charan son of Sri Sripat.
22. Jagdish son of Sri Bangali Mal
23. Bhagwan Singh son of Mangi Ram
24. Ram Mohan son of Nek Ram
25. Bhagwan Singh son of Bhagvi Singh
26. ~~As~~ Irshad Husain son of Shahzad Husain.
27. Ram Niwas son of
28. ~~Man~~if Khan son of Sri Nanhey
29. Har Govind son of Nawal Kishore
30. Chhitarmal son of Naobhat Ram
31. Iftekharuddin son of Nizamuddin.
32. Radhey ~~Shyam~~ son of Mangoo Ram.
33. Kamal Singh son of Ram Khilari
34. Ajmer Singh son of Mata Prasad.
35. Abdul Sattar son of Nawab Khan
36. Mufeed Khan son of Sri Rasool Khan
37. Itwari son of Gyasi.
38. Rajendra Prasad son of Tikam Chand.

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39. Ram Swaroop son of lala Ram  
All Fireman 'A'/Diesel Assistants,  
Central Railway Jhansi Division,  
Jhansi(Agra Cantt).  
(By Advocate Sri W.H.Khan) ...applicants.

Versus

1. Union of India Ministry of Railway,  
New Delhi.
2. The General Manager, Central Railway,  
Bombay V.T.
3. Divisional Railway Manager, Jhansi
4. Sharad Rajesh Harris, son of D.S.Harris,  
A/C Assistant, Central Railway,  
Jhansi Division, Jhansi. ...Respondents  
(By Advocate Sri Amit Shalker)

and

CONNECTED WITH

IV. Original Application No. 86 of 1993.

1. Arvind Srivastava s/o. Sri Murlidhar Srivastava
2. N.C.Srivastava s/o. Sri S.P.Srivastava
3. Ashok Tewari son of Sri P.D.Tewari,
4. S.K.Saini son of Sri R.S.Saini, Presently  
posted as Assistant Driver C/o. Locl Foreman  
Agra Cantt. ...Applicants.  
(By advocate Sri Sudhir Agarwal)

Versus

1. Union of India through Ministry of Railways, New Delhi.
2. The Divisional Railway Manager, Central Railway,  
Jhansi. ...Respondents.  
(By Advocate Sri )

ORDER

(By Hon. Mr. T.L.Verma, Member-J)



The above cases are being disposed of by this common order as they involve the identical question of law and facts.

The focal point of controversy in all the ~~xxxx~~ Original Applications is seniority list dated 9.1.1992

The applicants of O.A.No.157 of 1992 are departmental

promotees <sup>who</sup> are claiming seniority over respondent Nos. 4 to 9 who have been recruited directly to the post of Fireman Grade 'A'.

2. The applicants of O.A.No.657 of 1992 are direct recruits and are claiming seniority over respondent Nos. 4 to 47 who were promoted from Firemen Grade- 'B' to Fireman Grade 'A' by order dated 21.1.1986 .

The applicants of O. A. No.864 of 1992 are Fireman Grade 'A/Diesel Assistants and are claiming seniority over Sri S. R. Herris who was directly recruited in 1985 as Fireman 'A' pursuant to order dated 22.9.86 after completing one ~~to~~ year's training.

3. For proper appreciation of the cases of three sets of applicants, it is necessary to make a brief reference to the changes that were brought about in the method of recruitment and promotion to different channels in course of time.

4. Admitted case of the parties is that the running staff is entitled to promotion to Fireman Grade 'C' which is class III post and criteria for promotion from Glass IV to Class-III is seniority and medical fitness. While Criteria for promotion from Fireman Grade- 'C' to Fireman Grade 'B' was seniority. 50% of the vacancies of Fireman Grade 'A' were to be filled by promotion of Fireman Grade 'B' ~~who~~ were VIII Class pass and below 45 years through selection and remaining 50% by promotion of Fireman Grade 'B' and Fireman Grade 'C' who were matriculate

and had three years Railway Service through a departmental examination. In case of non-availability of suitable candidates from the above two sources, the vacancies were to be filled by direct recruits through Railway Service Commission.

5. The Government of India, Ministry of Railways (Railway Board) vide R.B.E./S.No.181/85 dated 25.6.85 (Annexure-A-2) issued instructions for cadre review and restructuring of the Group- 'C' and 'D' Staff. As per the above instructions, the promotion to Selection Posts were to be according to the modified procedure. The modified selection procedure provided for selection procedure, provided for selection to Selection Post on the basis of the scrutiny of the service record without subjecting the employee to written or viva-voce test. Promotion without test was available only for one grade **above**. The instructions pertaining to Cadre Review and re-structuring further provide for upgradation of 30% post of Fireman Grade 'C' in Grade Rs.210-270 to Grade Rs. 260-350. Promotion under the modified procedure was to be given notionally with effect from 1.1.1984 and with financial benefits with effect from 1.1.1985. Fireman 'C' in the **higher scale** of Rs. 260-350 were however, to continue to **be** designated as Fireman 'C'.

6. The recommendation of IVth Pay Revision Commission were accepted and given effect to from 1.1.1986. The IVth Pay Revision Commission recommended one single scale of Rs. 950-1500 for the scale Rs. 260-350 and Rs. 260-400 by framing Railway Service (Revised) Rules, 1986. The Railway Board issued instructions vide

letter dated 3.11.1987 regarding mode of filling the post of 1st Class Fireman/Diesel Assistants/Electrical Assistants/Steam Shunters.

7. The grievance of the applicants of O.A.No.157 of 1992 and O.A.No.864 of 1992 is that though numerous vacancies for the post of Firemen Grade 'A', Grade 'B' and Grade 'C' accrued between 1982 to 1985 and eligible candidates were available for promotion to the said posts, the respondents for the reasons best known to them did not make any promotion. The instructions, issued by the Government of India regarding cadre review and restructuring of Group 'C' and 'C' staff were also not complied with in letter and spirit/as a result, the applicants were deprived of their due promotion. It is alleged that the respondents, instead of filling up of vacancies of Firemen Grade 'A', 'B' and 'C' BY REGULAR PROMOTION, issued a promotion list on 21.1.1986 whereby 139 posts of Firemen Grade 'A' were filled by promoting Fireman 'B', 171 posts of Fireman Grade 'B' were filled by promoting Fireman Grade 'C' and 171 vacancies of Fireman Grade 'C' were filled up from Y.K.Khalasi. These promotions, instead of being on regular basis with effect from 1.1.1986 were made on ad-hoc basis and with effect from 21.1.1986.

8. According to the aforesaid applicants the Fireman Grade 'B' Fireman Grade 'A'/Diesel Assistant and A.C. Assistants were merged and were re-designated as Fireman Ist in the single scale of pay of Rs.950-1500 with effect from 1.1.1986 in terms of the recommendation of the

IVth Pay Revision Commission and Fireman Grade 'C' were re-designated as Fireman - IIInd. The case of the applicants is that in terms of Pay Revision Commission Recommendation the vacant post of Fireman Grade 'A' should have been filled first by promotion cent percent from Fireman- 2nd and all such Firemen who are having three years experience ~~Foot+Plate~~ and were Fireman 'C', re-designated as Fireman IIInd were to be promoted as Fireman-Ist. The remaining vacancies as were left after making the above promotion were to be filled by direct recruitment (Annexure-A-3). The above promotions, according to the applicants, should have been made and given effect to from 1.1.1986 and that direct recruitment should have been made only if vacancies were still left after departmental promotions. The respondents, according to the applicants of O.A.No.157 of 1992 had prepared seniority list in terms of instructions issued by the Railway Board as well as IVth Pay Revision Commission's recommendation. The said seniority list was, however, subsequently, cancelled by order dated 8.1.1986 and the applicants were reverted to their substantive post of Fireman Grade 'B' and 'C' respectively. They were, however, promoted as Fireman Grade 'A' & 'B' respectively by order dated 22.9.86 (Annexure-IX).

9. The seniority list dated 9.1.1992, according to the applicants of O.A.No.157 of 1992 is contrary to the instructions issued under letter dated 18.1.1990 inasmuch as the names of persons included in seniority list dated 21.1.1986 and 22.9.1986 have illegally been omitted from the said list. It has further been alleged that the names of persons who had already been promoted have also been included in the impugned seniority list. According to the applicants, they are entitled to

promotion as Fireman Grade 'A' with effect from 1.1.1984 notionally, but, they have been promoted with effect from 1.1.1986. The applicants assert that even if 1.1.1986 is taken to be the date of their promotion, they are senior to the respondents 4 to 9, who were recruited directly after 1.1.1986 in view of the instructions contained in letter dated 18.2.1991. The applicants, it is stated, have not only been made junior to the direct recruits, they have also not included in the impugned seniority list. Hence this application for issuing a direction to the respondents to prepare a fresh seniority list according to rules and for a direction to place the applicants above the respondents in the seniority list.

10. The applicants in O.A.657 of 1992 have been directly appointed as Firemen Grade 'A'. Applicant Nos. 1 to 6 joined their working post after one year's training on 2.5.1986, 2.5.1986, 15.10.1986, 15.10.1986, 15.10.1986 and 26.10.1986 respectively and applicant Nos. 7 to 10 joined their working post on 28.4.1987, 21.5.1987 and 19.5.1987 and 24.5.1987 after completing one year's training. Applicant No. 6 Ali Hasan after his initial appointment on 22.8.1985 in Central Railway Bombay was transferred to Jhansi Division on his own request on 22.7.1987. His seniority in Jhansi Division will therefore, shall be reckoned with effect from 22.7.1987. The case of the applicants is that such of the Firemen Grade 'B' who were found suitable for promotion from Firemen Grade 'B' to Grade 'A' according to modified procedure as envisaged in the instructions, issued by Railway Board for cadre review and restructuring of Group 'C' and 'D' staff had been promoted earlier, and that the respondent Nos. 4 to 47, who were not found suitable for



for promotion as Firemen Grade- 'A', were given adhoc promotion with clear stipulation that they <sup>will</sup> hold the said post on adhoc basis pending regular selection through Railway Service Commission. The adhoc promotions, therefore, according to the applicants, did not confer any right on the respondent Nos. 4 to 47 for regularisation with effect either from 1.4.1985 or from 1.1.1986. The further case of the applicants is that ~~th~~ although Firemen Grade 'A' and Grade 'B' were given the same replacement scale of Rs. 950-1500 by the IV<sup>th</sup> Pay Revision Commission ~~but~~ the order ~~of~~ merging the two posts and redesignating the same as Firemen -I was passed on 12.3.1987. Mere parity in the scale, according to the applicants, did not place the respondent Nos. 4 to 47 who were holding substantive post of Firemen Grade 'B' at par with the applicants who were appointed directly on the post of carrying higher scale. It is stated that a tentative seniority list was circulated vide letter No. P/369/4/IR/239-89 wherein the respondent Nos. 4 to 47 were shown senior to the applicants. The applicants filed representations against the said seniority list, and the same was kept in abeyance by Divisional Railway Manager's letter dated 20.11.1989 (Annexure-A-10). Thereafter another seniority list was issued vide letter dated 25.1.1990/2.2.1990 wherein the respondent Nos. 4 to 47 were shown junior to the applicants vide Annexure-A-11). This seniority list, according to the applicants, was not cancelled. Thereafter another provisional seniority list dated 5.3.1991, in which respondent Nos. 4 to 47 were placed above the applicants was circulated. After circulating the above seniority list, the respondent No.3 circulated another seniority



list dated 30.10.1991. This seniority list was also ordered to be kept in abeyance and finally the seniority list dated 9.1.1992 was issued. The applicants alleged that instructions dated 18.9.1992 issued by the Headquarters and seniority list dated 9.1.1992 are illegal void and contrary to Rules, hence have filed this application for quashing the aforesaid ~~xx~~ orders and to declare the applicants senior to respondent Nos. 4 to 47.

11. In the aforesaid cases seniority of ~~three~~ categories of employees is in dispute. The first category is of the direct recruits appointed as Fireman Grade 'A'. The second is that of Fireman Grade 'B' who were promoted as Fireman Grade 'A' on adh-hoc basis. The third category is that of Fireman Grade 'C' who had been upgraded to the time scale of Fireman Grade 'B' but, remained Fireman Grade 'C'.

12. The Principle for determining the seniority of direct recruits has been provided in Rule 302 of the Indian Railway Establishment Manual Volume-I. Rule 302 of the Indian Railway Establishment Manual is being reproduced for convenience of reference :-

"302. Seniority in initial recruitment grades- Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should, not, as a rule, confer on

.15.

Ali Hasan, V.K.Pandey, B.K.Upadhyaya, Pankaj Agarwal and D.K.Dubey are direct recruits. The training period of all of them was curtailed to one year from two years. The aforesaid applicants joined their working post on 2.5.86, 2.5.86, 15.10.86, 15.10.86, 15.10.86, 26.10.86 28.4.87, 21.5.87, ~~19.5.87~~ 19.5.87 and 24.5.87 respectively after one years curtailed training. According to the note, appended to para 302 of the Indian Railway Establishment Manual, extracted above, they will be deemed to have joined their working post on 2.5.87 2.5.87, 15.10.87, 15.10.87, 15.10.87, 26.10.87, 28.4.88, 21.5.88, 19.5.88 and 25.5.88 respectively, which will be the dates for determining their seniority vis-a-vis the Fireman Grade 'B' promoted as Fireman Grade 'A' in accordance with the Rules. So far as applicant No.6 is concerned, he was initially appointed in Bombay Division as Electrical Driver Assistant and on his request was transferred to Jhansi Division on 22.7.87. His seniority in Jhansi Division therefore, shall be reckoned with effect from 22.7.87, the date of his transfer to Jhansi Division on his request.

14. So far as Fireman Grade 'B' promoted under the restructuring scheme as Fireman 'A' are concerned, the consistent case of the official respondents in all the three O.As. is that there were 77 vacancies of Firemen Grade 'A' available for promotion from Firemen 'B' in terms of the Railway Board's letter dated 25.6.85 but only 11 Firemen 'B' were found suitable for promotion according to modified selection procedure and were promoted as Firemen Grade 'A' with effect from 1.1.1984. The Firemen, who were promoted in terms of letter dated 25.6.1985 under the restructuring scheme, obviously will rank senior to direct recruits who have been selected and appointed

a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruits, subject to maintenance of inter-se -seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se -seniority of each group.

Note :- In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

13. Para 131 of the Indian Railway Establishment Manual, 1968, Edition provides that period of training of direct recruits shall be two years. The period of training, however, may be reduced by the authorities in the exigency of service. According to the note appended to para 302 of Indian Railway Establishment Manual extracted above, where the period of training of direct recruits is curtailed, the date of joining on the working post in case of such ~~xxx~~ direct recruits shall be the date on which they would have normally come to a working post after completion of the prescribed period of training. In the instant case, Sarv Sri S.R.Herris, Ajay Singh, V. K.Bhat, Aizaj Hasan, R. K. Srivastava,

after 1.1.1984. Since 11 Firemen Grade 'B' promoted under the restructuring scheme, are not party to any of the Original Application and their seniority is not in dispute further discussions on that question is not necessary. Firemen Grade 'B' who were not found suitable for promotion to Firemen Grade 'A' under the restructuring scheme, were, however, given adhoc promotion by order dated 26.1.1986. The case of the contesting respondents in O.A. No.157 of 1992 and Applicants in O.A. No.657 of 1992 is that such of the Firemen Grade 'B' who were given adhoc promotion remained Firemen 'B' substantively and as such the period of their adhoc officiation as Firemen 'A' will not count for determining their seniority vis-a-vis direct appointees. We find no merit in this contention. The date on which they were finally classified as Firemen 1st shall be the date for reckoning their seniority.

15. The third category is of Fireman 'C' who, were promoted as Fireman 'B' on adhoc basis, remained Fireman 'C' substantively. These Firemen, therefore, have no case for being equated with Fireman Grade 'A' who were directly recruited. Even after giving the benefit of IVth pay Revision Commission to them, they continued to be Firemen Grade II. They could have been promoted as Fireman 'A' only on being regularly selected.

16. Before we advert to respective cases of applicants of different Original Applications, we deem it appropriate to refer to the different decisions relied by the learned counsel for the applicant of O.A. No.657 of 1992. The argument of the learned

counsel for the applicant was that though Fireman 'B' had been given adhoc promotion as Fireman 'A' and were enjoying the same scale of pay, as is prescribed for the Fireman 'A' they can not be placed at par with the applicants who were appointed on superior post. It was submitted that Rules of promotion from Fireman 'C' to Fireman 'B' and Fireman 'B' to Fireman 'A' remained unchanged until instructions dated 12.3.1987 regarding classification of non-gazetted post as Selection or Non-Selection were issued. Those who were working on a lower post in a lower pay scale can not be brought at par with those who were on higher post with higher pay scale with retrospective effect consequent to the revision of pay as recommended by the IVth Pay Revision Commission. In support of the above contention, the learned counsel for the applicant had relied on the following decisions :-



- (a) State of Gujrat & others vs. Ram Lal Keshav Lal Soni reported in A.I.R.1984 S.C. Page 161.
- (b) Sheetal Prasad Shukla Vs. State of U.P. & others reported in A.I.R.1986 S.C. Page 1859
- (c) T.R. Kapoor Vs. State of Haryana reported in A.I.R.1987 S.C. Page 415.
- (d) P.D. Agarwal Vs. State of U.P. reported in A.I.R.1987 S.C. Page 1976
- (e) State of Bihar vs. Sri Okaori Sachindra Nath reported in A.I.R. 1991 S.C. Page 1244.
- (f) K. Narain & others Vs. State of Karnataka reported in Labour & I.C. page 2259.
- (g) Union of India & ors Vs. Tushar Ranjan Mohant Judgments Today 1994(4) S.C. Page 396.

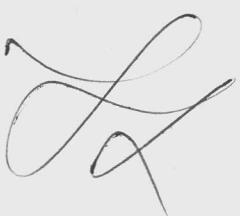
17. In State of Gujrat Vs. Ram Lal Kesav Lal Soni of the Gujrat High Court, the constitutional validity of the Amendment Act was in question. The Gujrat Panchayat Raj Act, 1961 was substantially amended in 1978 in an attempt to circumvent the judgment. The Supreme Court while declaring the provisions of the offending provisions of the Amendment as unconstitutional held that :-

"The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to does and don't of the Constitution, neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. A Legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable, and a negation of history. Part virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws."

In Sheetal Prasad Shukla's case, the appellant, who was working as Lecturer in Hindi in a college did not possess the requisite qualification and was therefore, not entitled to be appointed in lecturer's grade as Lecturer in Hindi. The

appellant was given exemption as envisaged under Section 16-E of the U. P. Intermediate Education Act, 1921 by order dated 23rd July, 1957. The appellant claimed that he should be deemed to have been exempted from November, 4th 1960, the date on which the application for exemption was made as such he ranked senior to respondent Nos. 5 and 6 who were appointed on 19.12.1962, and 1.7.1963 respectively. The High Court confirmed the decision of the District Inspector of Schools and dismissed the writ petition. The Supreme Court while confirming the judgment and order rendered by the High Court has held that the appellant was absorbed as lecturer with effect from the date on which the appellant has actually secured the exemption.

18. In P. D. Agarwal's case the respondents were directly recruited as Assistant Civil Engineers in the Building and Roads Branch after consultation with the Public Service Commission. These temporary Assistant Engineers, who were working continuously since the date of their appointment in cadre as Assistant Engineer questioned the seniority list of Assistant Engineers, made by the Government in 1980 pursuant to the memorandum dated December 7th, 1961 and U. P. Engineering Services (Amendment) Rules, 1964 and 1971 on the grounds that they are arbitrary and discriminatory being violative of Articles 14 and 16 of the Constitution of India. The Supreme Court in the said case has held that :-



"Undoubtedly the Government has got the power under Proviso to Art. 309 of the Constitution to make rules and amend the rules giving retrospective effect. Nevertheless, such retrospective amendments can not take away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory violating Arts. 14 and 16 of the Constitution. The Assistant Engineers who have already become members of the service on being appointed substantively against temporary posts have already acquired the benefit of 1936 Rule of having their seniority computed from the date of their becoming member of the Service. 1969 and 1971 amended Rules take away this right of those temporary Assistant Engineers by expressly providing that those Assistant Engineers who are selected and appointed in permanent vacancies against 50% quota provided by R.6 of the amended 1969 Rules will only be considered for the purpose of computation of seniority from the date of their appointment against permanent vacancies. Therefore, the temporary Assistant Engineers are not only deprived of the right that accrued to them in the matter of determination of their seniority but they are driven in a very peculiar position inasmuch as they are to wait ~~until~~ until they are selected and appointed against permanent vacancies in the quota set up for this purpose by the amended R.6. Therefore, the amended rules more particularly Rr. 3(c), 5 and 6 of 1969 Rules as well as R.23 of 1971 amended Rules are wholly arbitrary and discriminatory and so they are violative of Arts. 14 and 16 of the Constitution. The benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service Rules to have their seniority reckoned in accordance with the provision of R.23 as it was before amendment in 1971, i.e. from the

date of their becoming member of the service cannot be taken away by giving retrospective effect to the Rules of 1969 and 1971, as it is arbitrary, irrational and not reasonable."

19. The ratio of the other decisions of the Supreme Court referred to above, also in substance is that vested right of a Government employee can not be taken away by retrospective operation of Rules. These decisions, therefore, need no discussion in detail. The principle of law laid down by ~~the~~ ~~the~~ Supreme Court in the above decisions is not in dispute. The question for determination, however, is whether the direct recruits have acquired a right ~~on~~ to seniority on the date the Fireman 'B', who were promoted on adhoc basis, were finally merged as First Firemen. The principle is that an employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly employed, ~~employed~~ does not have to contend with those who never belonged to that stream, ~~employed~~ ~~employed~~. In this context, it would be relevant to refer to the counter-affidavit, filed on behalf of the official respondents and the instructions issued by the respondents on 18.9.1991. In para 5 of the instructions, it has been mentioned that 77 vacancies of Fireman 'A' were available as on 31.12.1983. The vacancies had to be filled by promotion of Fireman 'B' as Fireman 'A' by modified selection under the restructuring scheme on the basis of seniority

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/suitability. The respondents, however, have not filed any document to show that the Fireman 'B' who were ~~xxiv~~ given adhoc promotion were in fact, promoted as Fireman 'A' in accordance with the modified procedure. It has, rather, been mentioned in the counter-affidavit filed in all the three Original Applications that only 11 Fireman 'B' were found to be suitable for promotion as Fireman 'A' under the modified procedure. In absence of order passed by the competent authority, promoting the applicant of O.A.Nos. 157 of 1994 and 864 of 1992 and respondent Nos. 4 to 47 of O.A.No.657 of 1992 and having regard to the averments made in the counter-affidavit we have no option, but, to hold that Fireman 'B' who were given adhoc promotion substantially remained Fireman 'B'. The 4th Pay Revision Commission submitted its recommendation some time in 1986. Railway Service (Revised Pay) Rules 1986 were framed to give effect to the recommendation of the IVth Pay Revision Commission. The revised rules were notified vide C.S.R. No.1099(E) in Gazette of India on 19.9.1986. The revised Railway Service <sup>Pay</sup> Rules placed the scale of Fireman 'B' and Fireman 'A' in single <sup>hierarchical</sup> scale of Rs. 950-1500 but, the distinction between two grades remained ~~the same~~. The final instructions, regarding revised classification in respect of running staff, were issued under letter No. E(NG) 1-86-PNI-II dated 12.3.1987. In terms of revised classification Fireman 'C' were classified as IIInd Fireman and Fireman 'B' were classified as Ist Fireman. The Railway Board issued further instructions under letter No. B(NO) 1-34-PH-7-56 dated 3.11.1987 regarding mode of filling the post of Ist Fireman/Diesel Assistant/

Electrical Assistant/Steam Shunters. From the instructions dated 12.3.1987 and 3.11.1987, it would appear that the Fireman Ist is a selection post and only such of the Fireman IIInd can be promoted as Fireman Ist, who fulfil the eligibility criteria.

20. We have already noticed above that direct recruits would be deemed to have joined their working post~~s~~ <sup>as per instructions dated 12.3.1987</sup> ~~to have joined their working~~ ~~post~~ on 2.5.87, 2.5.87, 15.10.87, 15.10.87, 15.10.87, 22.7.1987, 28.4.1988, 21.5.88, 19.5.88 and 24.5.88 respectively. The applicant No.1 of O.A.No.157 of 1992 Sri Brijendra Singh, though promoted on adhoc basis on 22.9.86 as Fireman 'A', remained substantially as Fireman 'B' in between before being classified as Fireman Ist ~~as per instructions dated 12.3.1987~~ <sup>Nos 4 to 47</sup> in terms of instructions dated 12.3.1987. Similarly respondents of O.A. No.657 of 1992 who were also promoted on adhoc basis, as Fireman 'A' on 21.1.1986 continued to be Fireman 'B' substantially. They will also be deemed to have been classified as Fireman Ist on, instructions dated 12.3.1987, being issued. The applicants of O.A.No. 657 of 1992 and private respondents of O.A.No.157 of 1992, as is evident from the facts mentioned above, have joined their working post **of** Fireman 'A' after the applicant No.1 of O.A.No.157 of 1992 and respondents No. 4 to 47 of O.A.No. 657 of 1992 were classified as Fireman Ist. The direct recruits thus can not claim seniority over them. The claim of applicant Nos. 2 to 5 of O.A.No.157 of 1992 and applicants of O.A.No.864 of 1992 who were basically Fireman 'C' have no claim.

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21. In view of the discussions made above, we allow O.A.No.157 of 1992 in part and direct the respondents to place applicant No.1 Sri Brijendra Singh above respondent Nos. 4 to 9 in the seniority list. O.A.No. 657 of 1992 and O.A.No.864 of 1992 are dismissed as being without merit. There will be no orders as to costs.

22. O.A.No.86 of 1993 was filed by some of the direct recruits as Fireman Grade 'A'/Diesel Assistants seeking the relief of direction to the respondent No.2 to declare the panel of Goods Driver in pursuance of the examination held under the notification dated 19.6.1992 and to make appointment on the post of Goods Driver, if the applicants are found successful in the said examination.

23. The principles governing seniority of the Direct recruits /vis-a-vis promotees has already been indicated in the foregoing. The seniority of the applicants in this O.A. will have to be fixed according to the same principles. Selection test already conducted by the respondents shall abide by decision given by us with regard to the seniority of the direct recruits and the promotees.

*Sharma*  
Member (J)

*WT*  
Member (A)