

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEW XXXX EXXEX~~O.A. No. 262 of 1991
~~XTAX No.~~DATE OF DECISION 8.10.1991Smt. Jankiben B. Pandya PetitionerShri A.S. Dave Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentSHri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K.J. Raman : Member (A)

The Hon'ble Mr. R.C. Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Smt. Jankiben B. Pandya : Applicant
(Advocate : Shri A.S. Dave)

VS.

Union of India & Ors. : Respondents
(Advocate : Shri N.S. Shevde)

CORAM : Hon'ble Shri K.J. Raman : Member (A)
Hon'ble Shri R.C. Bhatt : Member (J)

O R A L - O R D E R

O.A. No. 262 of 1991

Date : 8.10.1991

Per : Hon'ble Shri K.J. Raman : Member (A)

No one appears on behalf of the applicant today. On the last three occasions also no one represented the applicant. The application is therefore dismissed for default of the applicant.

nehl
(R.C.BHATT)
Member (J)

K.J. RAMAN
(K.J. RAMAN)
Member (A)

*Ani.

Date	Office Report	ORDER
10.9.1991		<p>None present for either party. Adjourned to 8.10.1991.</p> <p><i>Resvd</i> <i>cc:</i> (P C Jain) Member(A)</p> <p>(R C Bhatt) Member(J)</p> <p>*Mogera</p>

Date Office Report

Order

15/06/92

Present :

Mr. R. V. Deshmukh, learned counsel for Mr. A. S. Dave, learned counsel for the applicant.

Mr. N. S. Shevde, learned counsel for the respondents.

Heard learned counsel for the applicant, Mr. Deshmukh for Mr. A. S. Dave and Mr. N. S. Shevde for the respondents 1 and 2. Application for restoration is accepted in light of submission made in MA, OA be restored with its original ~~case~~ number.

B. B. MAHAJAN
(B. B. MAHAJAN)
Member (A)

D. L. MEHTA
(D. L. MEHTA)
Vice Chairman

AIT

4-9-92

Shri A.S.Dave for the Applicant and Shri N.S.Shevde for the respondents. Heard. Applicatns have ~~xxxx~~ prayed for permission to file joint application, the ~~xxxx~~ prayer is allowed.

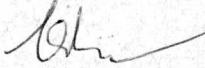
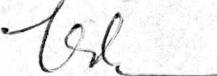
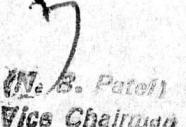
Heard. The application is admitted. Issue notice to all the respondent. Reply in six weeks. Rejoinder if any within 2 weeks List before the registry for completion of pleading. The applicants have also prayed for staying the operations of the order containing ^{as in} Note 3 of the ~~order~~ ^{matter} Annexure A-1 ~~order~~ directing the recovery of the alleged over payments resulting from their promotion. ^{only} While allegedly due in 1989, we have heard the Learned Counsel for the applicant. In ^{arrears and} view of the concerned matter we direct the respondent no. 2. Having heard the learned counsel

10/9/92

Date	Office Report	Order
7/5/92		<p>and heard the concerned wexxx directed the second respondent no to give effect to directions in the Annexure A-note 3 for a period of 14 days till 18th September, on which date further directions will be issued for hearing the respondent no.1 and 2. Issue notice to them in regard to interim relief. The applicants are permitted to serve notice regarding Interim relief on respondent no.2 directly</p> <p>Call on 18/9/92.</p> <p><i>R.C.Bhatt</i> (R.C.Bhatt) Member (J)</p> <p><i>N.V.Krishnan</i> (N.V.Krishnan) Vice-Chairman.</p>

Date	Office Report	ORDER
Suppl. (3) 18.9.92		<p>Present: None for the applicant. Mr.N.S.Shevde, Adv/Res.</p> <p>There is an interim order which is expired today. In the interest of justice call on 24th September, 1992, till which date the interim order is extended.</p> <p><i>Reu</i> <i>Ver</i> (R.C.Bhatt) (N.V.Krishnan) Member (J) Vice Chairman</p> <p>vtc.</p>
Suppl. (3) 24.9.92	<p>Res. Submitted, reply not filed by respondents.</p> <p><i>C.Bhatt</i> 25.1.93</p>	<p>Present: Mr.R.V.Deshmukh, Adv/Apt. Mr. N.S.Shevde, Adv/Res. Mr.K.S.Shah, Adv/Res.8,11,12 & 14.</p> <p>Interim relief was granted on 4.9.92 in view of Note-3 which is part of the impugned order and which states that earlier payment made to the employees as per office order dated 3.4.85 will be recovered from the concerned employees.</p> <p>Mr.Shevde said states that no recovery/be made on the authority of this Note-3 in Ann. A-1, because in case any recovery is to ^{will} be made a fresh substantive order, be issued. In view of the submission made by the learned counsel for the respondents, there is no need for/interim relief ^{continuing} which is accordingly vacated.</p> <p><i>Reu</i> <i>Ver</i> (R.C.Bhatt) (N.V.Krishnan) Member (J) Vice Chairman</p> <p>vtc.</p>

DATE	OFFICE REPORT	ORDERS
(6) 28.1.93		<p>Mr. K.K. Shah for the some of the respondents request for adjournment. Mr. R.V. Deshmukh for Mr. Dave is present for the applicant. He has not objection if the matter is adjourned. Mr. N.S. Shevde for the respondent 1, 2 & 3 is absent. Hence the matter is adjourned to 16th February, 1993.</p> <p><i>Ab.</i> <i>RS</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>(R.C. Bhatt) Member (J)</p>
16.2.93	<p>21 Subed H^o, Notices Ad 26/2/93 serv'd to all respondents except R-13. R-13 has replied therefore which is on record.</p> <p><i>2/2</i> <i>scd</i></p>	<p>vtc. Shevde Mr. Shah learned advocate for the respondents no. 1, 2, 3 prays for time to file reply on merits. Mr. K.K. Shah, learned advocate for the respondents no. 8, 11, 12, 14, has filed leave note. The respondents no. 1, 2, 3 and 8, 11, 12, 14 are given time to file reply on merits by 16th March, 1993. The office to report that if rest of the respondents are served or not. If they are not served, the notices be issued to them to file reply by 16th March, 1993.</p> <p><i>Ab.</i> <i>RS</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>(R.C. Bhatt) Member (J)</p>
	<p>1) Reply not filed 2) Except No. 13 & 17 not yet served</p> <p><u>Attd</u> <u>13-3-93</u></p>	<p>*K</p>

DATE	OFFICE REPORT	ORDERS.
16.3.1993.		At the request of Mr.N.S.Shevde, the matter is adjourned to 15.4.1993, for filing reply. No further time will be granted for filing reply. The applicant may file rejoinder if any within two weeks after filing of the reply. The office may fix the matter for final hearing on 15.4.1993.
		
		(V. Radhakrishnan) Member (A)
		
		(N.B. Patel) Vice Chairman
	AIT	
15-4-1993		Reply is filed to-day. Rejoinder may be filed within two weeks. Matter be then fixed for final hearing by the Registry.
		
		(V. Radhakrishnan) Member (A)
		
		(N.B. Patel) Vice Chairman
	Rejoinder not filed Answer 9.7.93	*AS.
13.7.93		The applicants and their advocate are not present. However, the matter is adjourned to 19.10.1993, in the interest of justice.
		
		(V. Radhakrishnan) Member (A)
		
		(N.B. Patel) Vice Chairman
19/10/93		other As the learned Member of the Board is not available, the matter is adjourned to.....21.12.1993.....
		
		(N.B. Patel) Vice Chairman

DATE	OFFICE REPORT	ORDERS.
2-12-93		<p>For want of time adjourned to 17-1-1994.</p> <p>12</p> <p>(K. Ramamoorthy) Member (A)</p> <p>(N.B. Patel) Vice Chairman.</p> <p>*AS.</p>

1. Jankiben Batukrai Pandya,
2. Saraswatiben Virsinh Rathod,
3. Rajniben S. Shrivastav,
4. Manohardas Ramkishandas Bairagi,
5. Shamlal Hazarilal Verma,

All C/o. M.R.Bairagi,
Quarter No.275, Char Rasta,
Free land gunj,
Dahod.

...Applicants.

(Advocate : Mr.A.S.Dave)

Versus

1. Union of India,
To be served through -
General Manager,
Western Railway,
Churchgate, Bombay.
2. District Controller of Stores,
Western Railway,
Dahod.

3. S.L.Jain,
DSK-III,
4. Rambux B., HC
5. H.L.Nagi, HC
6. A.S.Khopkar - DSK-II.
7. G.R.Upadhyaya, DSK-II.
8. Soma Gaja SC
9. Abdul Sattar, SC
10. V.B.Sinh, HC
11. Malabhai H., HC
12. Kalu Gaja, HC
13. P.P.Ban, HC.

14. Jaisingh, HC,
15. H.H.Lokhande, HC
16. A.N.Trivedi, HC
17. S.V.Dessare, SC
18. Ramsingh D.SC.,
19. Sitabai R., HC.,

All C/o.District Controller of
Stores, Western Railway,
Dahod - 389 160 (Gujarat).

(Advocate : Shri N.S.Shevde)

...Respondents.

ORAL ORDER

O.A.NO. 262 OF 1991.

Dated :17/01/1994.

Per : Hon'ble Mr.N.B.Patel : Vice Chairman

The applicants and their advocate are not present. In the past also they had made the fault more than once. Hence dismissed. No order as to costs.

(K.Ramamoorthy)
Member (A)

(N.B.Patel)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DEEPMALA
AHMEDABAD BENCH

O.A No.
XXXXXX

262 of 1991

DATE OF DECISION 17.1.1994.

Smt. Jankiben Batukrai Pandya & Ors. Petitioner

Shri A.S.Dave

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Shri N.S.Shevde & Shri K.K.Shah Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. N.B.Patel

: Vice Chairman

The Hon'ble Mr. K.Ramamoorthy

: Member (A)

JUDGMENT

: 2 :

1. Jankiben Batukrai Pandya,
2. Saraswatiben Virsinh Rathod,
3. Rajniben S. Shrivastav,
4. Manohardas Ramkishandas Bairagi,
5. Shamlal Hazarilal Verma,

All C/o. M.R. Bairagi,
Quarter No. 275, Char Rasta,
Free land gunj.
Dahod.

...Applicants.

(Advocate : Mr.A.S.Dave)

Versus

1. Union of India,
To be served through -
General Manager,
Western Railway,
Churchgate, Bombay.
2. District Controller of Stores,
Western Railway,
Dahod.
3. S.L.Jain,
DSK-III,
4. Rambux B., HC
5. H.L.Nagi, HC
6. A.S.Khopkar - DSK-II.
7. G.R.Upadhyaya, DSK-II.
8. Soma Gaja SC
9. Abdul Sattar, SC
10. V.B.Sinh, HC
11. Malabhai H., HC
12. Kalu Gaja, HC
13. P.P.Ban, HC.,
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15. H.H.Lokhande, HC
16. A.N.Trivedi, HC
17. S.V.Dessare, SC
18. Ramsingh D.S.C.,
19. Satabai R., HC.,

All C/o. District Controller of Stores, Western Railway,
Dahod - 389 160 (Gujarat).

(Advocate : Shri N.S.Shevde)
and Shri K.K. Shah.

...Respondents.

ORAL ORDER

O.A.NO. 262 OF 1991.

Dated : 17/01/1994.

Per : Hon'ble Mr.N.B.Patel : Vice Chairman

The applicants and their advocate are not present. In the past also they had made the ~~fault~~ ^{in due default} more than once. Hence dismissed. No order as to costs.

(K.Ramamoorthy)
Member (A)

(N.B.Patel)
Vice Chairman

Date	Office Report	Order
9-2-1994	M.A. 76/94 in O.A. 262/91	M.A. 76/94 in O.A. 262/91
X/994/100	Heard. M.A. allowed. Order disposing of	Heard. M.A. allowed. Order disposing of
	O.A. 262/91 set aside and O.A. restored to	O.A. 262/91 set aside and O.A. restored to
	file. M.A. stands disposed of accordingly.	file. M.A. stands disposed of accordingly.
	<u>O.A. 262/91</u>	
	Adjourned to 25-3-1994.	
		 (K. Ramamoorthy) Member (A)
	*AS.	
25-3-94		Adjourned to 16-6-94, at the request
		of Mr. Dave conveyed through Mr. S. S. Patel.
		 (K. Ramamoorthy) Member (A)
		 (N. B. Patel) Vice Chairman
	AS*	
16.6.1994.		At the request of Mr. P. H. Pathak for
		Mr. A. S. Dave, adjourned to 28.7.1994.
		 (K. Ramamoorthy) Member (A)
		 (N. B. Patel) Vice Chairman
	ait.	

Date	Official Report	Order
28-7-94	10/8/94	<p>At the request of Mr. Kyada for Mr. Shevde, who is sick, adjourned to 7-9-94.</p> <p><i>AB</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p>(N.B.) Patel Vice Chairman</p>
7-9-94	10/8/94	<p>The other Hon'ble Member of the Bench is not available, adjourned to 28-10-94.</p> <p><i>AB</i></p> <p>(V.Radhakrishnan) Member (A)</p>
28.10.94	10/8/94	<p>The applicant is not present. However, adjourned to 23.12.1994.</p> <p><i>R</i></p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.) Patel Vice Chairman</p>
23.12.1994	10/8/94	<p>Adjourned to 18.1.1995, at the joint request of the learned advocates.</p> <p><i>R</i></p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.) Patel Vice Chairman</p> <p>aab</p>

Date	Office report	Order
18/1/95		<p>Time being over, adjourned to 24/2/95.</p> <p>D</p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p>
24-2-95		<p>Sick note filed by Mr.K.K.Shah.</p> <p>Adjourned to 15-3-95.</p> <p>B</p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p>
15-3-95		<p>ssh</p> <p>Time being over, adjourned to 21-4-95.</p> <p>L</p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p>
21-4-95		<p>vtc.</p> <p>Time being over, adjourned to 8-6-95.</p> <p>L</p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p> <p>ssh*</p>

Date	Office report	Order
8-6-95		<p>Leave note filed by Mr.K.K.Shah. Adjourned to 30-8-95.</p> <p><i>RS</i></p> <p>(K.Ramamoorthy) Member (A)</p> <p><i>NP</i></p> <p>(N.B.Patel) Vice Chairman</p>
30-8-95		<p>Leave note filed by Mr.Shah. Adjourned to 28-9-95.</p> <p><i>RS</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p><i>NP</i></p> <p>(N.B.Patel) Vice Chairman</p>
28-9-1995		<p>Leave note filed by Mr. K.K. Shah. Adjourned to 16-11-1995.</p> <p><i>RS</i></p> <p>(V. Radhakrishnaan) Member (A)</p> <p><i>NP</i></p> <p>(N.B. Patel) Vice Chairman.</p>
		<p>*AS.</p>

Office Report

ORDER

16-11-95

Adjourned to 3-1-95, at the request of

Mr.Vakil for Mr.A.S.Dave.

(V.Radhakrishnan)
Member (A)(N.B.Patel)
Vice Chairman

3.1.96

Being a Division Bench matter, adjourned
to 15.02.1996.(V.Radhakrishnan)
Member (A)

npm

15.2.96

Being a Division Bench matter, adjourned
to 27.3.1996.(V.Radhakrishnan)
Member (A)

vtc.

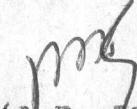
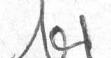
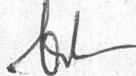
27.3.96

Leave note filed by Mr. K.K.Shah. Adjourned
to 5.4.96.(V.Radhakrishnan)
Member (A)

5.7.96

Sick note filed by Mr. K.K. Shah.
Adjourned to 19.8.1996.(V.Radhakrishnan)
Member (A)

vtc.

Date	Office Report	ORDER
19.8.96		<p>Adjourned to 3.10.1996.</p> <p> (K. Ramamoorthy) Member (A)</p> <p> (A.P. Gavani) Chairman</p> <p>vtc.</p>
3.10.96		<p>Being a Division Bench matter, adjourned to 4.11.1996.</p> <p> (V. Radhakrishnan) Member (A)</p> <p>vtc.</p>
4.11.96		<p>Being a Division Bench matter, adjourned to 17.12.1996.</p> <p> (V. Radhakrishnan) Member (A)</p> <p>aab</p>
17/12/96		<p>BEING A DIVISION BENCH MATTER ADJOURNED TO 30/11/97</p> <p> (V. Radhakrishnan) Member (A)</p>

Date	Office Report	RECORDED	ORDER
6/7/97			Seniority matter. Place before the Division Bench on 02/9/97.
2.9.97			<p style="text-align: right;">(V.Ramakrishnan)</p> <p style="text-align: right;">Vice Chairman</p>
15-9-97		<p style="text-align: right;">ssh*</p>	
			<p style="text-align: right;">Time being over, adjourned to 15.9.97.</p>
		<p style="text-align: right;">(T.N.Bhat)</p> <p style="text-align: right;">Member (J)</p>	<p style="text-align: right;">(V.Ramakrishnan)</p> <p style="text-align: right;">Vice Chairman</p>
		<p style="text-align: right;">ssh*</p>	
15-9-97			<p style="text-align: right;">Time being over, Adjourned to 1-10-97.</p>
		<p style="text-align: right;">(T.N. BHAT)</p> <p style="text-align: right;">Member (J)</p>	<p style="text-align: right;">(V. RAMAKRISHNAN)</p> <p style="text-align: right;">Vice Chairman</p>

Date	Office Report	ORDER
30-1-97		<p>Time being over, adjourned to 13-3-97.</p> <p><i>h/t</i> (T.N.Bhat)</p> <p>Member (J)</p> <p><i>Ad</i> (V.Radhakrishnan)</p> <p>Member (A)</p> <p>ssh*</p>
13.3.97		<p>Being a Division Bench matter, adjourned to 31.3.97.</p> <p><i>Ad</i> (V.Radhakrishnan)</p> <p>Member (A)</p> <p>ssh*</p>
31.3.97		<p>place before Division Bench on 30.4.97.</p> <p><i>Ad</i> (V.Ramakrishnan)</p> <p>Vice Chairman</p> <p>vtc.</p>
30.4.97		<p>Place before the Division Bench on 8.7.97.</p> <p><i>Ad</i> (V.Ramakrishnan)</p> <p>Vice Chairman</p> <p>ssh*</p>

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Area A7 p68

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pen.

One responded on Schedule 1 line.

Date

Office Report

ORDER

1.10.97

At the request of counsel for the applicant adjourned to 29.10.1997.

hyan
(T.N. Bhat)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

vtc.

29-10-97

As the Hon'ble Bench is not available, adj
to 19-12-97

SG
D.Y. Registrar.

19.12.97

Time being over, adjourned to 20.01.98.

hyan
(T.N. Bhat)
Member (J)

VR
(V. Ramakrishnan)
Vice Chairman

hki

20.01.98

Seen resolution passed by advocates stating that on account of sad demise of Railway Standing Counsel Shri A.S. Kothari, they are abstaining from work today.

Adjourned to 19.02.98.

PK
(P.G. Kannan)
Member (J)

HKT

Date	Office Report	5030	ORDER	Requ' for adjourn
			5030	Adjourn
19.2.98	Mr. K. K. Shan has filed a sick sick note today. Mr. Shevde present. Adjourned to 23.3.98.			23.3.98
	(P.C. Kannan) (J) Member (J)	<i>PN</i>	(V. Ramakrishnan) Vice Chairman	
23.3.98	Heard both the sides. Orders reserved.			
	(P.C. Kannan) Member (J)	<i>PN</i>	(V. Ramakrishnan) Vice Chairman	
398	Judgement pronounced to day in open Court. <i>Shevde</i> 16-3-98 C.O.	pmr		398

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 262/91
T.A.NO.

DATE OF DECISION 16th March 1998

Jankiben Batukrai Pandya & Others **Petitioner**

Mr. A.S. Dave

Advocate for the Petitioner [s]

Versus

Union of India & others

Respondent

Mr. N.S. Shevde & Mr. K.K. Shah

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

- (1) Jankiben Batukrai Pandya
- (2) Saraswatiben Virsinh Rathod
- (3) Rajniben S. Shrivastav
- (4) Manohardas Ramkishandas Bairagi
- (5) Shamlal Hazarilal Verma

All C/o. M.R.Bairagi
Quarter No.275, Char Rasta
Free Land Gunj
Dahod.

Applicants

Advocate: Mr. A.S.Dave

Versus

- (1) Union of India,
To be served through-
General Manager
Western Railway
Churchgate, Bombay.
- (2) District Controller of Stores
Western Railway
Dahod.
- (3) S.L.Jain
DSK- III
- (4) Rambux B.,
HC
- (5) H.L.Nagi, HC
- (6) A.S.Khopkar, DSK- II
- (7) G.R.Upadhyaya, DSK- II
- (8) Soma Gaja, SC
- (9) Abdul Sattar, SC
- (10) ~~Malabhai~~ V.B.Sinh, HC
- (11) Malabhai H., HC
- (12) Kalu Gaja, HC
- (13) P.F.Ban, HC
- (14) Jaising ~~H.~~ HC
- (15) J.H. Lokhande, HC
- (16) A.N.Trivedi, HC
- (17) SV Dessa, SC
- (18) Ramsingh D. SC
- (19) Satabai R., HC

All C/o. District Controller of Stores
Western Railways, Dahod- 389160 (Gujarat)

... Respondents

Advocate: Mr. N.S.Shevde
Mr. K.K.Shah

JUDGEMENT

IN

OA/262/91

Dated 16th March 1998

Per Hon'ble Mr. V.Ramakrishnan, Vice Chairman:

The applicants who are employees in the ministerial cadre in the Stores Department of Dahod under the Western Railways have challenged the seniority list dated 14.5.91 as at Annexure A-1 which shows their names below the private respondents.

2. The applicants and the private respondents are employees working in Western Railway. Till 15.1.83, the ministerial and non-ministerial cadres were combined and there was no separate seniority list. The Railway Board had taken a decision to bifurcate this cadre into non- ministerial and ministerial cadres as per their letter dated 22.8.69 as at Annexure A-2. However, the Western Railway took some time to take further action in terms of the letter and created three cadres in the Stores department by their letter dated 15th Dec.1982 as at Annexure A-3- Ministerial (office staff) Non-Ministerial (Wardkeeping staff) and Establishment staff for the existing incumbents at the level of Senior Clerks. An opportunity was given to the incumbents in the form of an option to be exercised to join any of the three cadres. The option was to be an one-time option and restricted to the district in which the staff would be working

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as on 15.1.1983 as conveyed in para 3.4 of the letter. Para 3.8 of this letter~~s~~ stipulated that:

"For all further options to be exercised by Senior Clerks/SDCs (Rs.330-560(R) the circular issued by Railway Board vide their No.E(NG)165 NP/55 of 22.9.69 as amended by their letter No. E(NG) 170 PNI 284 of 18.1.74 would be applicable".

The applicants as well as the private respondents were in the cadre of Senior Clerks. The private respondents initially opted for non-ministerial cadre but when the applicants who are admittedly junior to them in the cadre of senior clerks prior to the reorganisation were promoted as Head Clerks w.e.f.

1.1.84, the private respondents claimed a second option to go back to the ministerial cadre and when it was not allowed they approached the Civil Court. They obtained interim relief from the Court of Civil Judge, Senior Division Godhra against which the Railway Administration filed an appeal before the District Judge, Panchmahal, Godhra. These proceedings were transferred to this Tribunal and registered as TA No. 800/86, T.A.No.769/86 and T.A.No. 791/86. The main ground urged by the petitioners therein was that they were entitled to a second option in terms of para 3.8 of the Western Railways Circular dated 15th December 1982 as at Annexure A-3. A copy of the Railway Board's letter is dated 18.1.74 is enclosed as Annexure A-7. This letter provides for further option to the senior-most persons when vacancies arise at the higher level.

The applicants in the T.A. claimed that they were seniors and as there was a provision for them to

exercise a second option when the vacancy in the higher grade was to be filled up they sought to return to the ministerial cadre where vacancies of Head Clerks became available claiming that they had a right to do so. The Tribunal disposed of these T.A.s by its orders dated 5.4.89 (Annexure A-9) where it observed that the respondents had misconstrued the applicability of second option in terms of once for all option. The Tribunal directed the Railway Administration to pass fresh orders as to whether the applicants (the present private respondents) could claim a second option in terms of para 3.8 of the circular and if so they shall allow a second option or a further option to them and if they are not so covered a speaking order should be passed listing out the **reasons**. In compliance with these orders, the D.C.O.'s office in Dahod issued a provisional order dated 5.6.89 stating that the second option was not available (Annexure A-10). However, this order which is in the nature of a suggestion from the Headquarters is a provisional order **subjected** to the approval of the competent authority and this was not agreed to. The competent authority by its letter dated 23.1.91 as at Annexure A-11 called for the second and final option from all the senior-most Senior Clerks as on 15.1.83 as per list attached. It also brought out that the seniority of such staff in the grade of Head Clerks will be regulated by taking into account their seniority in the grade of Senior Clerks.

As the private respondents were senior to the

applicants, their second option was called for and they exercised the revised option to go back to the Ministerial cadre. Accordingly, the seniority list ~~as on~~ dated 14.5.81 as at Annexure A-1 was prepared which shows them as senior to the present applicants in the Ministerial cadre. This seniority list is challenged in the present O.A.

3. We have heard Mr. S.A.S.Dave for the applicants and Mr. N.S.Shevde for the Railway Administration and Mr. K.K.Shah for the private respondents.

4. Mr. Dave referred to the orders issued by the Railway Board in 1969 and followed by the Western Railway by its letter dated 15.12.82 as at Annexure A-3. It provided for only one time option as is evident from para 3.4 of the circular dated 15.12.82. Obviously the promotion prospects will differ in various cadres and the private respondents had consciously opted to go out of the Ministerial cadre. They cannot now return to the Ministerial cadre by taking advantage of the Railway Board Circular of 18.1.74 which according to him does not apply to the present case where additional vacancies have arisen on account of restructuring of cadres w.e.f. 1.1.84.

5. Mr. Shevde for the Railway Administration and Mr. K.K.Shah for the private respondents contend that para 3.8 of the circular refers to the Railway Board's letter dated 18.1.74 which clearly provides for a second option to the senior most employees when a vacancy arises and the private respondents had a right-ful claim to exercise a second option and that it has:

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been given to them by the order of the competent authority dated 20.3.91. The impugned seniority list follows only such a decision taken by the competent authority in compliance with the orders of the Tribunal and there is nothing wrong with such a list.

6. We have carefully considered the submissions of the learned counsel.

7. As has been brought out earlier, there was a direction to the Railway Administration to pass fresh orders as to whether the private respondents are entitled to a second option. Such an order has been passed by the competent authority by memo dated 20.3.91 (Annexure A-11). This order makes it clear that the private respondents are entitled to a second and final option as they are the senior-most Senior Clerks. The impugned seniority-list follows only such a decision and shows the private respondents as senior to the applicants in the Ministerial cadre. The applicants have not challenged the orders of the competent authority dated 20.3.91 but has only challenged the seniority list circulated on 14.5.91 as at Annexure A-1. Once the second option is given to the senior employees who are private respondents their seniority in the earlier level of Senior Clerk is to be restored and they have a right to be promoted as Head Clerks earlier than the applicants who are admittedly juniors at the level of senior Clerks.

8. It is not in dispute that the private respondents had been senior to the applicants at the level of Senior Clerks in the Stores Department. They had initially opted for a cadre other than the Ministerial cadre but subsequently sought the second option. The applicant, take the stand that once the private respondents had exercised an option in terms of the circular dated 15th December 1982 which is a one time option, it should be taken as final. They refer in this connection to para 3.4. In this para, no doubt, it is stated that this option is a one time option. However in para 3.8 it is brought out that for further option to be exercised by the Senior Clerks the circular issued by the Railway Board vide their letter dated 22.9.69 as amended by their letter dated 18.1.74 would be applicable. The Railway Board in its circular dated 22.9.69- in para 2.2 had stated that the option will be exercised on the specific understanding that "options once exercised would be final and there would be no changes permitted afterwards". This however was amended by the Railway Board circular letter dated 18.1.74 as at Annexure A-7. We may extract para 2 of this circular:-

"2. It was represented by the staff side in the Departmental Council under the J.C.M. Scheme that normally it takes about 15 years for a Clerk grade Rs.130-300 (A) to get promoted to scale Rs.210-380. It is difficult for a person to visualise what would be his position after 10 to 15 years and after junior persons who have opted for another line get promoted

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leaving seniors out. After discussion on the meeting of the Departmental council held on 8/9-11-73, the following decision has been taken:

The option to be taken normally within one year of non fortutious promotion to the grade of 130-300 (A) should not be treated as a final one and a further opportunity should be given to the senior-most person at the time the vacancy in the higher grade has to be filled. Rlys. which have no special problems on each Rly. and detailed. ~~Rlyxxxxxx~~ Rlys. which have no special and detailed decisions on AVC and seniority units, some Rlys. have already settled them/consultation with the recognised unions those which have not done so, should do so now and come up to the Board only if issues cannot be settled locally in consultation with recognised unions".

In other words, an option has to be given to the senior-most employees at the time the vacancy in the higher post arises. This circular has been specifically referred to by the Western Railways in their letter dated 15th December 1982 in para 3.8. The Railway Board's decision of 18.1.74 is to safe guard the interests of the senior-most persons by giving them a second option when a vacancy in the higher grade has to be filled up. Such vacancies may arise either on account of retirement etc. or on account of creation of **further** posts as in the case of restructuring. We, therefore, reject the contention that the second option is not to be given at the time of restructuring.

9. We also notice that in compliance with the orders dated 5.4.89 of the Tribunal the D.C.C. Dahod had taken a view by his orders dated 5.6.89 that para 3.8 of the Western Railways Circular of December 1982 is applicable only to those who are appointed or promoted after 15.1.83. This order further states that this is purely provisional and subject to the approval of the competent authority. As stated earlier, the Competent Authority had not agreed with this contention and allowed the second option to the private respondents who were admittedly senior-most and senior to the applicants at the level of senior Clerks who had earlier been promoted as Head Clerks against the available vacancies. The vacancies apparently arose on account of the restructuring exercise which took effect from 1.1.84 and by order dated 3.4.85. In terms of the Railway Board's circular of 17.1.84 referred to earlier, the senior-most persons like private respondents are entitled to exercise a second option when the vacancies arose and as such when these vacancies were created in May 1995 retrospectively from 1.1.84, the private respondents sought the second option and on being denied, they approached the Court which came to be finally disposed of by the Tribunal. The circular of Railway Board does not restrict the benefit of second option to those employees who are appointed on or after 15.1.83. It will be quite anomalous to extend the second option only to those employees who are appointed on

or after 15.1.83 as it would affect adversely their seniors who are appointed prior to 15.1.83. This restriction was rightfully not agreed to by the competent authority in its order of 20.3.91 as at Annexure A-10. We do not see anything illegal in the orders of the competent authority dated 20.3.91 and uphold the same.

In the ~~impugned~~ seniority list, the private respondents who are senior to the applicants at the level of the Senior Clerks have rightly been shown as seniors to the applicants.

10. The Note below the list states that the promotions are provisional. We presume that any objections received to the list have been disposed of by the Railways in accordance with law. However, the action of the Railways in promoting the private respondents who are senior against available vacancies and showing them as senior to the applicants is in order.

11. In the light of the foregoing discussion, we hold that the present O.A. is devoid of merit and dismiss the same with no order as to costs.

Dhanay
(P.C. Kannan)
Member (J)

V.Ramakrishnan
16/3/1991
(V. Ramakrishnan)
Vice Chairman