

कै.प्र.ट्र. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत विः शुल्क प्रति

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR

OA 285/2009 with MA 201/09

&

OA 283/2009 with MA 199/09

&

OA 284/2009 with MA 200/09

Date when order reserved: 24.2.2012

Date of order: 21.3.2012

CORAM

HON'BLE MR. JUSTICE S.C. SHARMA, JUDICIAL MEMBER  
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

OA 285/2009

Mishri Babu S/o Shri Khem Chand  
R/o Hari Bhawan, Big Jasolai,  
Near Outer Signal, Bikaner, Rajasthan  
Presently working as adhoc TTE in Bikaner  
Division, HQ NW Railways a Bikaner. ....Applicant

(By Advocate Mt. Kuldeep Mathur)

Vs.

1. Union of India, through the General Manager,  
North Western Railway, Headquarter Office,  
Jaipur, Rajasthan.
2. The Divisional Railway Manager,  
North Western Railway, Bikaner, Rajasthan.
3. The Divisional Personnel Officer,  
North Western Railway, Bikaner,  
Rajasthan.
4. Shri Rajendra Kumar S/o Shri Bhanwar Lal  
Presently working as Ticket Collector,  
Bikaner, Rajasthan.
5. Shri Nawal Kishore S/o Shri Hardwari Lal,  
Presently working as Ticket Collector,  
Hanumangarh, Rajasthan (*deleted vide order in MA 76/2011 dated 12.5.2011*)
6. Shri Rajendra Kumar S/o Shri Santu Ram,  
Presently working as Ticket Collector,  
C/o Chief Inspector Ticket (TTE), Ratangarh  
District, Churu, Rajasthan.

7. Shri Roop Chand S/o Shri Daulat Ram,  
Presently working as Ticket Collector,  
Bikaner, Rajasthan (*deleted vide order in MA 76/2011 dated 12.5.2011*)

8. Shri Umed Kumar S/o Shri Puran Mal,  
Presently working as Ticket Collector,  
Churu, Rajasthan.

9. Shri Shyam Lal S/o Shri Nanag Ram,  
Presently working as Ticket Collector,  
C/o Chief Inspector Ticekt (TCR)  
Station Superintendent, Bikaner.

10. Shri Ghisa Ram S/o Shri ram Lal  
Presently working as Ticket Collector,  
C o Station Superintendent (Head TC).Sriganganagar.

11. Shri Younis Ali S/o Shri Abdul Wahid,  
Presently working as Ticket Collector,  
Bikaner, Rajasthan.

....Respondents

(By advocate Mr. Manoj Bhandari for R. 1 to 3)

None for others.

OA/283/2009

Rameshwar Kachhwaha S/o Shri Suraj Mal,  
R/o Mohalla Korian, Near Kasturba School,  
Gajne Road, Bikaner, Rajasthan  
Presently working as adhoc TTE in Bikaner Division,  
HQ, NW Railways, Bikaner.

...Applicant

By Advocate Mr. Kuldeep Mathur)

Vs.

1. Union of India through the General Manager,  
North Western Railway, Headquarter Office,  
Jaipur, Rajasthan.

2. The Divisional Railway Manager,  
North Western Railway, Bikaner, Rajasthan.

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North Western Railway, Bikaner,  
Rajasthan.

4. Shri Rajendra Kumar S/o Shri Bhanwar Lal  
Presently working as Ticket Collector,  
Bikaner, Rajasthan.

5. Shri Nawal Kishore S/o Shri Hardwari Lal,  
Presently working as Ticket Collector,  
Hanumangarh, Rajasthan (*deleted vide order in MA. 74/2011 dated 12.5.2011*)

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6. Shri Rajendra Kumar S/o Shri Santu Ram,  
Presently working as Ticket Collector,  
C/o Chief Inspector Ticket (TTE), Ratangarh  
District, Churu, Rajasthan.

7. Shri Roop Chand S/o Shri Daulat Ram,  
Presently working as Ticket Collector,  
Bikaner, Rajasthan (*deleted vide order in MA 74/2011 dated 12.5.2011*)

8. Shri Umed Kumar S/o Shri Puran Mal,  
Presently working as Ticket Collector,  
Churu, Rajasthan.

9. Shri Shyam Lal S/o Shri Nanag Ram,  
Presently working as Ticket Collector,  
C/o Chief Inspector Ticket (TCR)  
Station Superintendent, Bikaner.

10. Shri Ghisa Ram S/o Shri ram Lal  
Presently working as Ticket Collector,  
C/o Station Superintendent (Head TC), Sriganganagar.

11. Shri Younis Ali S/o Shri Abdul Wahid,  
Presently working as Ticket Collector,  
Bikaner, Rajasthan. ....Respondents

(By Advocate Mr. Manoj Bhandari for R.1 to 3)  
None for others

OA 284/2009

Hari Kishan Sharma S/o Shri Khyali Ram  
R/o Sector 12 L. House No.110.  
Behind Bachni Devi Hospital, Hanumangarh,  
Rajasthan  
Presently working as adhoc TT in Bikaner  
Division: HQ NW Railways at Shri Ganganagar. ....Applicant

(By Advocate Mr. Kuldeep Mathur)

Vs.

1. Union of India, through the General Manager,  
North Western Railway, Headquarter Office,  
Jaipur, Rajasthan.

2. The Divisional Railway Manager,  
North Western Railway, Bikaner, Rajasthan.

3. The Divisional Personnel Officer,  
North Western Railway, Bikaner,  
Rajasthan.

4. Shri Rajendra Kumar S/o Shri Bhanwar Lal  
Presently working as Ticket Collector,  
Bikaner, Rajasthan.

5. Shri Nawal Kishore S/o Shri Hardwari Lal,  
Presently working as Ticket Collector,  
Hanumangarh, Rajasthan (*deleted vide order in MA 75/2011 dated 12.5.2011*)

6. Shri Rajendra Kumar S/o Shri Santu Ram,  
Presently working as Ticket Collector,  
C/o Chief Inspector Ticket (TTE), Ratangarh  
District, Churu, Rajasthan.

7. Shri Roop Chand S/o Shri Daulat Ram,  
Presently working as Ticket Collector,  
Bikaner, Rajasthan (*deleted vide order in MA 75/2011 dated 12.5.2011*)

8. Shri Umed Kumar S/o Shri Puran Mal,  
Presently working as Ticket Collector,  
Churu, Rajasthan.

9. Shri Shyam Lal S/o Shri Nanag Ram,  
Presently working as Ticket Collector,  
C/o Chief Inspector Ticket (TCR)  
Station Superintendent, Bikaner.

10. Shri Ghisa Ram S/o Shri ram Lal  
Presently working as Ticket Collector,  
C/o Station Superintendent (Head TC), Sriganganagar.

11. Shri Younis Ali S/o Shri Abdul Wahid,  
Presently working as Ticket Collector,  
Bikaner, Rajasthan. ....Respondents

(By Advocate Mr. Manoj Bhandari for R.1to3)  
None for others

#### O R D E R

*Per: Hon'ble Mr. Sudhir Kumar, Administrative Member*

These three cases being similar in nature were heard and reserved for orders together, but, for the sake of convenience, since in the case of the applicant of OA 285/2009 Shri Mishri Babu, another one of his OA 32/2009 has separately been decided recently, that case is being taken to be the leading case among these three exactly similar cases. It would be important, however, to describe in brief the cases of the three applicants before us in these OAs.

OA 285/2009:

2. The applicant of this OA Shri Mishri Babu was a Group 'D' employee of the respondent Railways and belongs to SC community. He had joined the services of the railways with effect from 24.6.1973 as an Electric Khalasi and was subsequently posted as ASM Khalasi with effect from 19.9.1978. Thereafter, with effect from 13.10.1983, he was assigned the duties of Ticket Collector (TC for short) on an ad-hoc basis, and while working as such on ad-hoc basis, he was even granted in-charge arrangement as ad-hoc TTE, in the next higher grade, with effect from 24.8.1993. However, all these ad-hoc promotions of the applicant were subject to the condition of his passing the selection test, and his attending the P6 promotion course for substantive promotion on the post of TC. He had applied against the notification dated 26.7.2004 inviting applications from Group 'D' staff for regular selection for the eight posts of TCs against 33 1/3<sup>rd</sup> percent promotion quota of Group 'D', and all the eight posts of that notification were declared to be unreserved, without any reservation for SC/STs. The applicant herein has invoked Para 180 of the Indian Railway Establishment Manual (IREM for short) Vol.I, 1989 Edition, for submitting that the fact of his having ~~been~~ continuously working on ad-hoc basis from 13.10.1983 onwards as TC was not taken into consideration while drawing the impugned panel dated 6.9.2005, in which the name of the applicant did not appear. He had therefore, prayed for reliefs as follows:

"8" (i) The respondents be directed to modify the panel dated 06.09-2005 (A/1) by correcting the mistakes committed in formation of the panel as discussed in this OA. And the name of the applicant be incorporated in the panel at appropriate place:

OR

(i) In alternate the panel dated 6.9.2005 (A/1) be quashed and set aside and the respondents be directed to conduct a fresh selection for the 8 posts of Ticket Collector grade 3050-4590.

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OR

(ii) The respondents be directed to regularize the applicant on his present post keeping in view of his dot less ad hoc service of 24 years in the interest of justice."

(3) In the Miscellaneous Application No.201/2007, the applicant had prayed for delay, if any, to be condoned. Since the applicant had already first submitted his representation on 13.9.2005 before the respondents for seeking information regarding the result, and, therefore, the presentation of this MA along with OA on 09.03.2007 was within the eighteen months' time limit prescribed for filing such OA.

(4) The case filed on 09.03.2007 with diary No.99/2007 was initially dismissed on 6.12.2007, when defects had not been removed for almost nine months after filing his OA, and nobody was appearing for the applicant. Thereafter MA Nos. 195/2009 and 196/2009 were filed on behalf of the applicant, and through ~~an~~ order dated 15.12.2009, the MAs filed for condonation of delay, and filing the restoration petition, were allowed, and the case was thereafter listed as OA 285/2009, and fixed for hearing on 19.1.2010, and the hearing was continued thereafter.

OA 283/2009

5. The applicant of this OA has also made out prayers parallel to the applicant in OA 285/2009. He was appointed as Loco Khalasi with effect from 1.8.1975, subsequently posted as Tele Peon in the year 1978, and was assigned on ad-hoc basis the duties of TC with effect from 13.10.1983. While being such an ad-hoc TC, he was also granted ad-hoc TTE grade with effect from 24.8.1993, and both these ad-hoc promotions were made with the condition of his passing the selection test for TCs and attending the P6 promotion course for his substantive promotion as TC. The applicant of this OA had also applied against the same notification dated 26.7.2004, inviting applications from Group 'D' staff for the selection of eight posts of TCs against 33 1/3 rd promotion quota of Group 'D' staff, in which all the 8 posts were declared as unreserved, without any reservation for SC/ST, and the applicant could not find place in the panel declared on

6.9.2005. He has also tried to take shelter behind Para 180 of the IREM Vol.I 1989 edition and submitted that his past service as Group 'D' staff in the Commercial and Transportation Department was not taken into consideration while forming the panel announced on 6.9.2005.

6. This application was also filed in the year 2007 by Dy.No.97/2007, but when the defects were not removed, and nobody was appearing for the applicant, the unnumbered OA and MA filed had been dismissed for default and defects. Thereafter, MA Nos. 191/2009 and 192/2009 were filed praying for restoration of the case, and through order dated 15.12.2009 passed in these two MAs regarding the case in Dy.No.97/2007, these MAs were allowed subject to removal of defects in the OA, and the OA was restored to its original status, and was ordered to be listed on 19.1.2010. Thereafter, the defects were removed on 21.12.2009, and the case was registered and numbered as OA 283/2009. On the grounds discussed in detail, he has also prayed for the reliefs as in para 2 above.

MA 199/2009 had already been restored following the order dated 15.12.2009, and through this he had prayed for condonation of delay, if any, in the interest of justice, stating that he had also filed his first representation before the respondents on 13.9.2005, and the OA was filed within time on 9.3.2007.

#### OA 284/2009

8. The applicant of this OA also has come before us with exactly same set of facts and prayers as above. He was appointed as Loco Khalasi with effect from 8.8.1976, and was subsequently posted as ASM Khalasi with effect from 3.2.1979, and from the same grade, on 13.10.1983 he was also assigned duties as TC on ad-hoc basis. While working as such ad-hoc TC, he was further assigned duties as ad-hoc TTE with effect from 24.8.1993, and both such ad-hoc appointments were subject to his passing the P6 promotion course, as well as substantive selection for the post of TC. He had also applied in response to the same notification dated 26.7.2004, for vacancies for selection of eight posts of TCs against 33 1/3<sup>rd</sup> promotion quota of Group 'D'. However, all the eight posts were unreserved,

without any reservation for SC/STs. His grievance arose when he was not selected in the panel declared on 6.9.2005, and is before us trying to take shelter behind para 180 of IREM Vol.I, and has submitted that due weightage of his group 'D' length of service in the Commercial and Transportation Department ought to have been considered and given, which the respondents have failed to do. In the result, on the grounds to the discussed later, he had also made the same prayers as in para 2 above:

9. He had also filed an MA which had been dismissed but was later restored, and numbered as MA 200/09, through which he had prayed for condonation of delay, if any, in the interest of justice, since he had also submitted his representation before the respondents on 13.9.2005 and the earlier defective OA had been filed within the prescribed time of 18 months from that date.

10. Heard these cases in detail. We have also called for and perused the other connected records. The applicants of these OA have, however, not come out with the full and complete facts of their cases in these OAs. Actually, the facts have moved on a tangent even along lines as very briefly mentioned by applicants in their present OAs. The facts as brought out during the arguments of the learned counsel for the official Respondents can be summarized as follows: A selection to fill up 24 posts of TCs against promotion quota was conducted in the year 1982-83, and the 19 selected employees therein were placed in the panel of TCs vide letter dated 21.4.1983, and later substantively promoted as TCs, vide letter dated 21.5.1983 issued by the respondents. The three applicants, along with two other similarly placed persons, who could not find their name in that panel, had filed a Writ Petition before the Hon'ble Rajasthan High Court for quashing the entire selection proceedings. The Hon'ble High Court had passed an interim order that if any appointments are going to be made from within the panel dated 21.4.1983, they shall be only on ad-hoc basis, and will be subject to the decision on the Writ Petition. Therefore, an order was issued by the respondents on 21.9.1983, treating the staff already substantively promoted earlier by the order dated 31.5.1983, only to be ad-hoc TCs.

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11. In the Writ Petition filed by Shri Rameshwar Kachhwaha, the applicant in OA 283/2009 before us, the Hon'ble High Court had further passed an interim order that five posts of TCs may be kept vacant till the disposal of the W.P., in order to accommodate the cases of the five petitioners before it, in case they succeed in the court case. Since five posts were thus required to be kept vacant for an uncertain period, and since working hands were required, as has been submitted by the respondents in their reply written statement, it was decided by the administration to fill up these five posts on ad-hoc basis by engaging on ad-hoc basis those 5 writ petitioners themselves, who had approached the Hon'ble High Court, subject to the final disposal of their courts cases. Accordingly, orders were passed that these 3 applicants before us, and two other similarly situated persons, were promoted on purely temporary and ad-hoc basis, pending their passing selection test, and attending the relevant Training Course, and it was mentioned that such ad-hoc arrangement will not confer on them any prescriptive right to claim for such promotion in future. When such an order for their purely temporary and ad-hoc basis promotion was passed on 12.10.1983, these three applicants, and two other similarly situated persons thereafter joined such ad-hoc duties, purely on temporary basis, knowing about all of the conditions attached, and with their eyes open.

12. When this Tribunal was constituted, Hon'ble High Court transferred the cases to this Bench of the Tribunal, and the Tribunal ultimately passed a common order dated 4.8.1992 in TA 128/86, TA 193/86 and TA 12/90, and directed the respondents to conduct the selection afresh. The employees who had in the meanwhile been already selected and, put in the panel dated 21.4.1983, and were subsequently substantively promoted as Ticket Collectors vide letter dated 31.5.1983, felt aggrieved by such an order of this Tribunal, and they filed Civil Appeals with SLPs before the Hon'ble Supreme Court of India. The further facts of the cases can be summarized in brief in the best manner by quoting portions from the orders of the Hon'ble Supreme Court dated 16.12.1997 in Civil Appeal No. 4486 to 88 of 1992 Mangej Singh and Ors. Vs.

UOI & Ors., in which the three applicants herein, and one other similarly situated co-worker were respondents No. 5 to 8, a copy of which judgment of the Hon'ble Apex Court had been filed by the respondents as Annex.R/4 in OA No. 32/2009 filed by Shri Mishri Babu: the present applicant of OA No. 285/2009:-

\*\*\*The Railway Administration by a Circular of 22.7.82 invited applications, inter alia, from Class IV Employees of transportation and commercial Departments for selection as ticket collectors in the Grade of Rs. 260-400. The circular which was issued by Northern Railway, Bikaner Division, set out that all regular non-technical Class IV employees of Transportation and Commercial Department, inter alia, who have completed three years continuous service on 11.8.82 and who can write and read English can apply for the said posts. It further stated that to test the ability of the employees, a written test will be held and those employees who are successful in the test will be required to appear before the selection board for a viva voce.

Accordingly, the applicants and respondents 5 to 8 applied for the post of ticket collector, Respondent No. 5 passed in the written examination but he failed in the viva voce. Respondents 6 to 8 failed in the written test and were not called for interview. The appellants qualified in the written test and were also selected in the viva voce. They were, therefore, selected for regular appointment.

Respondents 5 to 8, however, filed a Writ Petition before the High Court which was subsequently transferred to the Central Administrative Tribunal, Jodhpur Bench, challenging the selection test so held. The Tribunal by its order dated 4.8.92 set aside the selection and directed that fresh selection be made within a period of six months as set out therein. It further gave a direction that Respondents No. 5 to 8 as well as the appellants who were working on the posts of ticket collector on an ad hoc basis at the time of the Tribunal's order shall not be reverted until they are given three opportunities to appear in the written test excluding the impugned test which was being quashed. Hence, the appellants have filed the present appeal.

The Tribunal has set aside the selection test on two grounds. (1) It has held that vacancies arising from 1979 to 1982 were clubbed together and this has caused prejudice to some candidates because, in respect of vacancies which arose in 1979, only those who had completed three years' service in 1979 should have completed and so on for each year upto 1982. There is, however, no factual data on record to show how many vacancies across in 1979 and in each of the subsequent years upto 1982; and whether, and if so, how many of the selected candidates had completed three years of service in 1979 or in any subsequent year up to 1982. In the absence of any factual data we fail to see how the Tribunal could have held that the clubbing of vacancies from 1979-1982 has caused any prejudice to respondents 5 to 8.

The other ground on which the Tribunal has set aside the selection relates to the written test which was held. The Tribunal has quoted the letter of the Railway Board dated 29.11.62..... to the effect that the posts to which Class IV staff to be promoted to Class III posts should be subjected, should be co-related to the standard of proficiency that can reasonably be

..... from employees who are generally non-matriculates. The aim of the examiners should be to assess the general suitability of the Class IV employees offering themselves for promotion to Class III posts from the point of view of knowledge of English and their general standards of intelligence. There is a subsequent letter of the Railway Board of 27.2.80 stating that ordinarily it is not necessary to test the working knowledge of English for such promotions for employees in Hindi speaking areas. There is also an earlier Circular dated 24.12.79 which is issued by the Northern Railways to the same effect. The present circular which is a subsequent circular of the Bikaner Division of the Northern Railways dated 22.7.82 clearly requires ability to write and read English as a qualification for promotion from Class IV to Class III posts. The policy, therefore, in relation to the tests to be administered for promotion from Class IV to Class III has varied from time to time, presumably depending upon the Railway's perception of their requirements. It is for the Railways to decide qualifications relating to promotion from Class IV to Class III. They alone are the judges of their requirements relating to employees who can be considered for such promotions. If the Circular of 22.7.92 requires working knowledge of English for promotion, the Tribunal cannot fault this requirement. Also the Tribunal was wrong in deciding that because an Essay and a Translation were required in the written examination, the test was too difficult. This again is the Tribunal's assessment of the kind of examination which should have been conducted. The Tribunal's assessment cannot be substituted for the assessment of the Railways. Clearly, a large number of applicants belonging to the Class IV category passed this examination and did qualify. If they had a better knowledge of English and better general proficiency then respondents 5 to 8 who failed, the selection of better qualified candidates cannot be failed. The appellants relied upon two judgments of this Court : one in the case of Om Prakash Shukla Vs. Akhilesh Kuamr Shukla (..... (SUPPL.) SCC ..... paragraph ...) and the other in Madan Lal Vs. State of J. & K. (1995 (3) SCC 486 (paragraph 9). They contended that since the respondents had appeared in the examination without protest, they cannot challenge the examination only because they have failed. We need not examine this question because in any view of the matter we do not see any reason for faulting the examination. Respondents 5 to 8 had failed in the examination and were, therefore, not qualified for the selection.

Learned counsel for respondents 5 to 8 has urged that respondents 5 to 8 have been working as ad hoc ticket collectors since 1983 and have been further promoted. If the ad hoc appointment of Respondents 5 to 8 is de-hors the order of the Tribunal, we are not concerned with such appointment. If, however, their appointment is pursuant to the Tribunal's order and is continued under the order of this court of 14<sup>th</sup> of September, 1992, directing status quo to be maintained, then they will have to face the consequences of the outcome of this litigation. In any event, even if they continue in service as ad hoc ticket collectors they cannot get seniority over regularly selected employees such as the appellants. The appeal is, therefore, allowed with costs and the impugned order of the Tribunal is set aside. The Writ Petitions / applications of Respondents 5 to 8 are dismissed."

13. Thereafter, the three applicants before us got reverted to Group 'D', in pursuance of the orders of the Hon'ble Supreme Court. The three applicants here, and one

more of their similarly situated colleague, who were respondents No. 5 to 8 before the Hon'ble Supreme Court in the judgment reproduced above, then participated in the presently impugned selection process, and after they were not included in the panel as declared on 06.09.2005, they gave a representation dated 13.09.2005 through Annex.A/3, of the present OAs. protesting that while preparing the impugned selection panel declared on 06.09.2005, through Annex.A/1 of the present three OAs, their names had been wrongly left-out, by an incorrect appreciation of their Group 'D' seniority. They had claimed that they had been promoted only on ad hoc basis to the posts of Ticket Collectors w.e.f. 13.10.1983, and were further promoted only on ad-hoc basis as TTEs w.e.f. 24.08.1993, and that because of their occupying these two promotional posts only on ad hoc basis, their lien in their Class IV posts had been continued without being disturbed, and that they were entitled to the maintenance of their seniority in Class IV category throughout this period.

14. The three applicants herein and their friends also got the All India Equality Forum (Regd) to file a representation on their behalf on 16.01.2006 through Annex.A/4, and on 23.01.2006 through Annex.A/5, and another Union, the North Western Railway Employees Union, also to take-up their case through Annex.A/6 dated 16.01.2006. As mentioned earlier also, the three applicants before us have relied in filing their cases upon Para 180 of the I.R.E.M., Vol. I 1989 Edn. applicable to the group 'D' Staff of the lowest grade in the Commercial and Transportation Departments, in order to stake their claim that seniority for consideration for promotion to Group 'C' from Group 'D' post has to be reckoned on the basis of the length of continuous service in the Group 'D' grade, which states as follows:-

"180. Transportation (Traffic) and Commercial Deptt.- All Railway servants in the lowest grade should be eligible for consideration for promotion to higher grades in both the Transportation and Commercial branches. Applications should be invited from amongst categories eligible for promotion from both the branches. All Railway servants who apply will be considered. An ad-hoc seniority list will be prepared on the basis of length of continuous service in the grade and suitable men selected and placed on a panel for training.

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Systematic and adequate training and examinations or tests must precede actual promotions."

15. The three applicants have also tried to take shelter behind the Railway Board Circular dated 06.05.2005 produced by them in their OAs at Annexure A/7, to state that such of the Scheduled Caste / Scheduled Tribe employees, who are promoted against non-selection posts, in their case, the concept of merit shall not be applicable, and in the case of promotions by non-selection, when promotions are made on the basis of seniority-cum-fitness, and the concept of merit is not involved in such promotions, the instructions contained in the Board's letter dated 07.08.2002 and 20.06.2003 shall not apply to the promotions made by the non-selection method.

16. The applicants herein have further sought shelter behind the Northern Railway Headquarters Office Circular Sl.No. 1924 dated 19.1.1963, which has been produced by them as Annexure A/11 of the present OAs. They have also attached a part of the Seniority List of ASM/Khalasi/Gateman/Coach Attendant as Annexure A/2.

17. In their reply written statement, the respondents have further submitted that the panel of TCs impugned in the present OAs had been prepared maintaining the inter-se seniority as per para 320 of the IREM Volume I. It was explained that as per the said para, the relative seniority of respondents in intermediate grade shall be assigned as the per the total length of continuous service in the same or equivalent grade held by the employees, and only the non-fortuitous ~~not~~ service shall be taken into account for this purpose, which means that only the service rendered after the date of regular promotion, i.e., after due process of selection and promotion, shall be taken into account for the purpose of determining the seniority. It was also submitted that the AVC/Channel of promotion of Ticket Checking Staff prescribed through Annexure R/3 dated 31.5.1988 shows that when in any selection in question, the staff working in the grades Rs. 2750-4540, 2650-4000, 2610-3540 and 2550-3200 had appeared, the staff working in the higher grade will rank senior to those working in the lower grade, in terms of Para 320 of the IREM. It was further submitted that the Para 180 of the IREM is not applicable in this case for assigning

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seniority. It was also submitted that as per the Railway Board's instructions under RBE 165/2003, the impugned selection process was to be held as per Paragraph No. 189 of the IREM Vol.I 1989 edition, so the paragraph No. 180 of the IREM Vol.I 1989 Edition is not at all applicable for this selection, and in saying this a copy of the RBE Circular No.165/03 has been produced as Annexure R/4 by the respondents.

18. It was further submitted that the applicants herein had appeared at the written test without questioning this procedure, and have now approached this Tribunal only after having been declared unsuccessful at the process of the selection, and therefore the process of selection cannot be assailed by them on the ground of acquiescence, as laid down by the Hon'ble Supreme Court in a number of cases. It was further submitted that relative seniority lists of employees in intermediate grade belonging to different seniority units, who are eligible for appearing for selection/non-selection posts in higher grade, displayed the total length of continuous service in the same or equivalent grade, and is the determining factor for assigning inter-se seniority for the selected non-gazetted staff in terms of Para 320 of the IREM. Since in the impugned process of selection, employees of different categories were eligible to appear in the selection, the combined seniority list was prepared, and in this list, as per Para 320 of the IREM, employees working in higher grade will rank senior to those working in the lower grade at the time of selection.

19. The official respondents had thereafter tried to explain the case as to why the cases of the private respondents R. 4 to 11 had been considered, and not those of the three applicants herein. It was further submitted that there has been no violation of Art. 14 of the Constitution of India. It was further submitted that as per judgment of the Hon'ble Apex Court in M.Nagaraj Vs. Union of India and others: 2006(8) SCC 212, reservation in promotion has been upheld, and while SC/ST candidates have been included in the panel, only the applicant Mishri Babu could not be selected, while some other of the private respondents coming from reserved quota could get selected. It was submitted that the respondents 9 & 10 were senior to the applicant Shri Mishri Babu, on the basis of the pay scale in the combined seniority list of Group "D" which had been prepared before such

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selection, and all the private respondents who have been empanelled were senior to the three applicants before us, and had been working in a higher grade at the time of selection. The respondents, therefore, prayed that the O.A. be rejected, by raising similar contentions in all the three reply written statements.

20. The applicants thereafter filed rejoinder in all these cases making similar submissions. It was submitted that Para 180 of the IREM is a Special Rule, while Para 320 is a general rule, and it is established legal position that the general rule cannot prevail over the special rule, and hence they were entitled to protection of Para 180 of the IREM. It was further denied that the applicants had not qualified in the selection in the panel, the result regarding which had been declared through the impugned Annexure A/1 dated 6.9.2005. It was submitted that the applicants were selected and had qualified in the written test, but their names were not placed in the panel due to a wrong determination of seniority, and other illegalities committed in the process of selection. The applicants submitted that they have since obtained the marks in the written tests, which go to show that Shri Mishri Babu had obtained 83.5 marks, Shri Rameshwar Kachhwaha 64.5 marks and H.K Sharma 60.5 marks, and, therefore, they were eligible, but were not placed in the panel only because of a wrong appreciation of their level of seniority. One more point is that all the three applicants in these 3 OAs had relied upon the Northern Railway Headquarters order dated 19.6.2003 (Annexure A/8), in which it had been prescribed that for the purpose of combined seniority being prepared for the purpose of selection from Group 'D' to Group 'C' for reckoning the date of entry into the recruitment grade, those in the grade Rs. 2610-3540 and those in the grade Rs. 2550-3200, will be treated as equivalent /at par, while those who were in the grade Rs. 2750-4000 will be placed above in the seniority than those who may be in the grade Rs. 2550-3200 or grade Rs. 2610-3540 or grade Rs. 2650-4000.

21. In the reply written statement, the respondents have taken a strange stand in para 25 that the above cited instruction is applicable only to the Ambala Cantt Division, and ~~is~~ not a general rule, and Annexure A.8 is not applicable in this selection. The JK

applicants, have however, placed reliance on this clarification dated 19.6.2003 in their OA, as well as in the rejoinder. The applicants have pointed out that the respondents No.1 Shri Yunus Ali had joined Railway Services as Control Khalasi in scale Rs. 2550-3200 with effect from 6.10.1999. On being declared surplus there, he was re-employed as a Gatekeeper in grade Rs. 2610-3540, treating the grade Rs. 2550-3200 and Rs. 2610-3540 as equal grades, because re-deployment in higher grade is not permissible. Instead of granting his seniority as per the length of his service first in the grade in Rs. 2550-3200 in which his first recruitment had been made, and then afterwards in the higher grade of Rs. 2610-3540, the whole of his length of service has been treated to be in the higher grade Rs. 2610-3540, and on the basis of which he has been empanelled, which is illegal and void, if the contention of the respondents that the pay scale Rs. 2610-3540 is different and higher than Rs. 2550-3200 pay scale is accepted.

22. The following paragraphs from the judgment and order in OA 32/09 – Mishri Babu Vs. Union of India & others pronounced on 29.12.2012 may be pertinent to be re-produced here:

(17) It was reiterated by the applicant that in terms of the Apex Court findings in the Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra (supra) and Dr. Chandra Prakash Vs. State of Uttar Pradesh (supra), Para 320 of I.R.E.M. is not applicable in the case of those employees who are first promoted on ad hoc basis, and then subsequently regularized, and the period of ad hoc / temporary period of such ad hoc employment has to be counted for the purpose of seniority, and that Para 320 and 302 of the I.R.E.M. are not applicable to the facts of this case. It was submitted that in view of the law as laid down by the Apex Court, limitation cannot come in the way of the applicant, and his ad-hoc service is required to be counted for the purpose of seniority, after his having been substantively appointed to his present grade.”

“(18) In the written arguments submitted on behalf of the applicant, the learned counsel for the applicant himself had framed the legal question before us for determination in the instant case as follows:-

“Whether in the cases where appointment made on ad-hoc basis has continued for fairly long time, the seniority should be counted from the date of initial appointment, or from the date of regularization of services?”

“(19) In support of his case, apart from the two cases cited above. Direct Recruit Class II Engineering Officers' Association case (supra) and Dr. Chandra Prakash case (supra), the case of Baleshwar Das and Ors. Vs. State of U.P. & Ors: AIR 1981 SC 41: (1980) 4 SCC 226: 1981(1) SCR 449, and the case of Sunil Kumar Singh Vs. Union of India and Ors in OA No.194/2008 decided by this Bench of the Tribunal on 30.06.2011 were also cited. It was submitted that in all the above-mentioned cases it has been held that once an incumbent has been appointed to a post according to the rules his seniority has to be counted from the date of his initial appointment, and not according to the date of his confirmation, and that the principle for deciding the inter-se seniority has to conform to the principles of equality spelt out by the Articles 14 and 16 of the Constitution of India, and, as a corollary, when the initial appointment is only ad-hoc, the services rendered as such (initial ad hoc appointment) also must be counted for giving seniority.”

“(20) It was further submitted that in the present case, after his initial appointment as ad hoc TC / TTE, the applicant has un-interruptedly worked as TC / TTE for more than twenty five years, and therefore there is no reason for denying him the benefit of seniority from the date of his initial ad-hoc appointment as TC, irrespective of the date of his subsequent regularization on the post of TC. It was, therefore, reiterated that the respondents may be directed to give seniority to the applicant on the post of TC from the date of his ad hoc appointment, i.e. 13.10.1983, as otherwise the more than 25 years of service rendered by him uninterruptedly as ad-hoc TC/TTE would be of no consequence to him.”

“(21) In his reply written statement, oral submissions, as well as the written arguments submitted thereafter, the learned counsel for the official respondents relied upon the following cases :-

1-State of Utaranchal and Anr. Vs. Dinesh Kumar Sharma (2007) 1 SCC 683.

2-Uttaranchal Forest Rangers Association (Direct Recruit) and Ors. Vs. State of U.P. and Ors. (2006) 10 SCC 346.

3-Jagdish Ch. Patnaik and Ors. Vs. State of Orissa and Ors.  
(1998) 4 SCC 456.

4-State of Bihar and Ors. Vs. Akhouri Sachindra Nath and Ors.  
1991 Supp (1) SCC 334.

5-Swapan Kumar Pal and Ors. Vs. Samitabhar Chakraborty and  
Ors. (2001) 5 SCC 581.

6-Maghraj Calla Vs. Kajodi Mal AIR 1994 Rajasthan 11

7-Prabodh Verma and Ors. Vs. State of U.P. and Ors. AIR 1985  
SC 167: (1984) 4 SCC 251.

8-Board of Trustees of the Port of Bombay Vs. Jai Hind Oil  
Mills Col and Ors. AIR 1987 SC 622.

9-Ramrao and Ors. Vs. All India Backward Class Bank  
Employees Welfare Association and Ors. (2004) 2 SCC 76: AIR 2004 SC  
1459.

(22) On the basis of the first five above cited cases, in State of Utaranchal and Anr (supra), Utaranchal Forest Rangers Association (Direct Recruit) and Ors. (supra), Jagdish Ch. Patnaik and Ors (supra), State of Bihar and Ors. (supra), Swapan Kumar Pal and Ors. (supra), it was pleaded by the learned counsel for official respondents that seniority and other benefits could only be considered for the applicant from the date of his selection for substantive appointment in the case of a selection post, and not prior to that. It was pointed out that promotion in substantive capacity as TC from Group D could only be by way of selection, and the applicant was finally selected only in the panel of year 2007-08, as declared on 23.01.2008, and was appointed thereafter in substantive capacity as TC for the first time through letter dated 14.05.2008. Therefore, it was submitted that he was entitled to be considered for seniority only as from that date and not prior to that. It was submitted that ad hoc promotion is not a appointment as such, and this is only an arrangement for utilization of the services of a candidate on ad hoc basis.

(23) It was submitted that the applicant was first continued on ad hoc basis as TC only till the regularly selected candidates for the post of TCs were not available, and as soon as they were available, in compliance of the orders of the Hon'ble Supreme Court upholding the panel of selected candidates, the applicant stood reverted along with 3

other similarly situated persons, all of whom were party respondents before the Hon'ble Supreme Court.

¶(24) It was further submitted that as per Para 302 of the I.R.E.M., seniority has to be reckoned from the date of passing of the selection test, and not prior to that, and even though he had been working against the post of TC on ad hoc basis, the applicant had failed earlier in the selection for the post on 2 occasions, and therefore he cannot claim seniority for the period of ad hoc service as TC rendered by him, without passing the selection test prescribed as a pre-condition for substantive promotion.

¶(25) It was further submitted that since the applicant's other pending OA No. 285/2009 has challenged the panel of 2005, with an intention to claim ante-dated seniority and promotion and other benefits by reckoning the ad hoc service rendered by him, the present OA is barred by the principles of constructive res judicata, in accordance with the judgment of the Hon'ble Apex Court in M.R. Calla Vs. Kajodi Mal (supra)

¶(26) It was further submitted that if in the present O.A. any relief is granted to the applicant, the seniority as TC of many other persons would be affected, which are not parties before the Tribunal in the present O.A., though some of them are parties in the applicant's other OA No. 285/2009, and, therefore, without impleading the persons likely to be affected as party respondents in this OA, relief as prayed for cannot be granted to the applicant, and in this regard reliance was placed on the judgments of the Hon'ble Apex Court in the cases of Prabodh Verma (Supra) Board of Trustees of the Port of Bombay (supra) and Ramrao and others (supra).

¶(27) We have given our anxious consideration to the facts of this case. This particular OA appears to have been filed by the applicant for seeking a determination only of the legal questions which concern the applicant's selection to the panel dated 23.01.2008 issued through Annex.A/15 of this O.A., and relief is not sought here in respect of the earlier panel dated 06.09.2005 (Annex.A/3), which is the subject matter of dispute in OA No. 285/2009. Since the two issues had been combined in the OA No. 20/2009, that was withdrawn by the applicant on 27.01.2009 with opportunity to file fresh OAs, which was allowed subject to the point of limitation, which has led to the filing of these two OAs No. 32/2009 and 285/2009.

¶(28) Therefore, in this case we have to restrict ourselves only to findings on the legal position and nothing else. The legal issues as identified by us have been mentioned above in paragraphs (13) and (14) above, and the

third issue posed by the learned counsel for the applicant has been mentioned above in Para (18).

(29) The observations of the Hon'ble Supreme Court specifically addressed to the case of the applicant, and three others, who were respondents No. 5 to 8 in the Civil Appeal No. 4486 – 4488 of 1992, in its judgment dated 16.12.1997, have already been reproduced above in Para (3)/ante. The Hon'ble Supreme Court had said that if the ad hoc appointment of the respondents 5 to 8 before it, including the applicant, is de hors the order of the Tribunal, then the Apex Court was not concerned with such appointment. If however their ad hoc appointment, including that of the applicant, was pursuant to the Tribunal's order (dated 4.8.1992 in TA No. 128/86, 193/1986 and 12/90), and was continued under the interim orders of the Hon'ble Supreme Court dated 14.09.1992 directing the status quo to be maintained, then the respondents 5 to 8 before the Hon'ble Apex Court, including the applicant herein, will have to face the consequences of the outcome of the litigation before the Apex Court. But the Hon'ble Supreme Court went a step still further, and stated that in any event, even if the respondents 5 to 8 before it, including the present applicant, had continued in service as ad hoc T.Cs., they cannot get seniority over regularly selected employees such as the appellants (of those Civil Appeals 4486-4488 of 1992). Thereafter only those civil appeals were allowed with costs, and the impugned order of this Tribunal (dated 04.08.1992 in the above cited three TAs) was set aside, and even the Writ Petitions and applications of the present applicant of this O.A. and his other three colleagues, who were respondents No. 5 to 8 before the Hon'ble Supreme Court, were dismissed."

(30) One thing that clearly emerges from a simple reading of this order of Hon'ble the Supreme Court is that the applicant herein can in no event get seniority over Mangej Singh and Ors. who were applicants in Civil Appeal No. 4486-4488 of 1992 decided by the Hon'ble Supreme Court on 16.12.1997. This being a specific order of the Hon'ble Apex Court in the case of the present applicant himself, it will have to prevail on any other case law cited by the learned counsel of the applicant, laying down any general principle of law, even when we try to answer the legal questions raised by us and the learned counsel of applicant as cited in Para 13, 14 & 18/ante. Even in deciding the OA No. 285/2009, those specific findings by the Hon'ble Supreme Court of the applicant's individual case, arrived at on 16.12.1997, will have to be taken into account by the Bench which decides that O.A.

“(31) In the instant case, the applicant and his three co-petitioners who were respondents 5 to 8 before the Hon’ble Apex Court were then reverted to their substantive Group ‘D’ posts of ASM/KH in their pay scales of Rs. 2550-3200 and Rs. 2750-4400 by the orders dated 25.5.1998, issued through Annex.R/2 of this O.A.. in obedience of the orders of the Hon’ble Supreme Court dated 16.12.1997, as was mentioned in Para 4 above also.”

“(32) However, the subsequent events intervened, and the applicant and others had immediately filed another fresh O.A. No. 140/1998 against their orders of reversion, which was disposed of by the Tribunal on 12.06.1998 in view of the clear-cut directions of the Hon’ble Apex Court. The applicant (and his other three friends) then went to the Hon’ble Rajasthan High Court, Jodhpur, in a Writ Petition, and somehow, in-spite of the Hon’ble Apex Court’s clear cut judgment by an interim order passed in the Writ Petition on 19.06.1998, the Hon’ble High Court stayed the operation of the order of reversion dated 25.05.1998 Annexure R/2, “subject to the condition that petitioners shall continue to work as ad hoc basis till duly selected candidates are available, and the rights and interest of the selected panel of the candidates for the year 1982-83 shall not be adversely affected”, (as cited in Annexure.R/3). In compliance of this interim order of the Hon’ble High Court, once again the respondents issued orders on 05.08.1998 to utilize the services of the applicant (and his three friends) as ad hoc TCs in Grade Rs. 3050-4590, till selected hands were available.”

“(33) From a combined reading of Annex.R/2 dated 25.05.1998, and Annex.R/3, in which reference has been made to the above sequence of events, it is clear that atleast for a period of about 2 ½ months from 25.05.1998 to 04.08.1998, prior to the issuance of the orders dated 05.08.1998 in obedience of the interim orders of the Hon’ble High Court, the applicant (and his three friends) were working in their substantive Group ‘D’ posts of ASM/KH, and were not working even as ad hoc TC / TTE.”

“(34) Thus there is a clear cut break even in the period of ad hoc appointment of the applicant as TC in the Grade 3050-4590. Aggrieved even by this order dated 05.08.1998, the applicant (and his three other similarly situated friends) filed a Contempt Petition No. 238/98 before the Hon’ble High Court of Rajasthan, against the order dated 05.08.1998. However, the Hon’ble High Court of Rajasthan at Jodhpur, vide its order dated 17.08.2001, finally disposed of the Writ Petition No. 1970/1998, in which the interim orders dated

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19.06.1998 had been passed, and also the Contempt Petition No. 238/1998, with the directions that

“We make it clear that the petitioners are allowed to continue in service on ad hoc TTE Grade 4000-6000 with salary of Rs. 4300/- each, till selected empanelled candidates on the post of TTE Grade Rs. 4000-6000 are available”.

“(35) This was done by the Hon’ble High Court perhaps only because in the meanwhile, the case of the applicant and other three persons, had been referred to the Headquarters Office, and the Northern Railway Headquarters had, through their letter dated 06.12.2000, directed as follows :-

“The adhoc TC’s should first be placed as TTE gr. 4000-6000 as per the HC judgment in CW petition no. 1970/98. They should be utilized as such, till empanelled candidates for the post are available. On the posting of empanelled candidates the adhoc TTE’s should be reverted to their original group ‘D’ post.”

“(36) Thereafter the respondent authorities decided to implement the orders of the Hon’ble High Court of Rajasthan at Jodhpur dated 17.08.2001 in toto, and through Annex.R/3 dated 21.12.2001, the applicant (along with his three other similarly situated colleagues) was again directed to be reverted to his substantive Group ‘D’ post of ASM/KH in the grade of Rs. 2550-3200. Therefore, another break in the ad hoc appointment of the applicant as TC was brought about w.e.f. 21.12.2001, in obedience of the orders of the Hon’ble High Court of Rajasthan this time.”

“(37) However, the applicant and the three others took-up this matter this time through their staff organizations and Unions, and the respondents buckled under this pressure, and through Northern Railway H.Q. letter dated 8.1.2002, it was directed that the orders of reversion issued through Annex. R/3 dated 21.12.2001, in obedience of the orders of Hon’ble Rajasthan High Court, may be held in abeyance till the issue is finally decided in the next PNM Meeting of N.R.M.U. at General Manager’s level. Accordingly, their reversion orders issued in obedience of the orders of Hon’ble Rajasthan High Court were kept in abeyance by an office order of the D.R.M. Office, Bikaner Division dated 23.01.2002.”

“(38) However, there was a break in the ad hoc appointment of the applicant (and the three other persons) as TC/TTE w.e.f. 21.12.2001 for one month and two days, till the issuance of the letter keeping the reversion orders in abeyance. This was the second break in the continuity of the ad hoc appointment of the applicant as a TC, both the breaks being under the orders

of the Hon'ble Supreme Court, and the Hon'ble Rajasthan High Court, respectively."

"(39) Thereafter, the case of the applicant was considered at the next meeting of the PNM, and the Northern Railway Headquarters Office informed through their letter dated 4.7.2002 as follows :-

"The case of adhoc TC's was discussed in the PNM vide item No.33/01 with NRMU held on 23/29.5.2002, it was agreed that keeping in view their long years of working as adhoc TC they may be allowed to appear (if eligible) in the next selection of TC which should be arranged as early as possible, Depending upon the final outcome of this selection of TC, they may be allowed to continue as TC (if they happen to be placed on the panel) else they may be reverted as Group 'D' forth-with no further time what so ever being given to them to further continue as adhoc TC.

"(40) Accordingly, through Annex.R/4 dated 13.7.2002, the applicant who was working as ad hoc TTE, was reverted for the third time, and this time he was posted as TC on ad hoc basis, through orders dated 13.07.2002 till the final outcome of the process of selection. Thereafter, as we have already noted above, the applicant yet again failed in the selection of the year 2005, in respect of which OA No. 285/2009 has been filed by the applicant separately, and then he was subsequently selected and substantively appointed only against the panel of 2007 – 2008, through the panel declared on 23.01.2008, following which he was appointed in substantive capacity as TC through letter dated 14.05.2008."

"(41) Therefore, there having been two breaks even in the continuity of the applicant's ad hoc promotion as TC, firstly due to orders of the Hon'ble Supreme Court, and secondly due to the orders of the Hon'ble Rajasthan High Court, the only date from which the continuity of his ad hoc appointment as TC/TTE can be discerned and elucidated from the records is from the date of 23.01.2002, the date when his second reversion order was kept in abeyance, in accordance with the directions of the Headquarters Office of Northern Railway, New Delhi issued on 08.01.2002."

23. It was further noted in that order as follows:-

"(43) In the case cited by the learned counsel for the applicant, it is seen that in the case of Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra and Ors. (supra) the Hon'ble Supreme Court has stated in Para 13 and Para 47 of the judgment as follows:

"13. .... The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16.

“If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. ....”

“47. (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that “where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority”.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

- (C)
- (D)
- (E)
- (F)
- (G)
- (H)
- (I)
- (J)
- (K) “

“(44) Learned counsel for the applicant tried to emphasize on paragraph 47 (B) of the judgment, while we see that in the instant case, the initial appointment of the applicant was only on an adhoc basis, and not according to rules, and was made only as a stop gap arrangement, and therefore the directions of the Hon’ble Supreme court in Para 47 (A) of the judgment are more applicable to the instant case, and it is apparent that any such officiation on ad-hoc basis cannot be taken into account for considering the seniority.”

“45. In the case of Dr. Chandra Prakash (supra) the issue of seniority of doctors selected as per rules in the year 1972, or in 1977, or 1978 or 1979, was in issue, even though they had not been issued with any formal orders of appointment. Since the petitioners in that case had been initially appointed temporarily

against substantive vacancies, they possessed the requisite qualification for being substantively appointed, and were continuing to serve uninterruptedly, and were enjoying all benefits of regular service, it was ordered by the Hon'ble Apex Court that computation of the seniority from the date of initial appointment was not illegal; and that the petitioners cannot be treated as adhoc appointees, to be regularized later by an appointment letter, after selection, and completion of the period of probation. In the instant case, the applicant has come to possess the requisite qualification for his promotion by passing the selection test only in the year 2008, and he was not granted substantive appointment against any vacant lien all through the period of his intermittent adhoc appointment, and he was not enjoying benefits of regular service. Therefore, the benefit of this judgment of the Hon'ble Apex Court cannot be made applicable to the applicant of the present OA."

"46. In the case of Baleshwar Das and others (supra) it is seen that it was held that when Engineers are appointed to temporary posts, but after they fulfill all the tests for regular appointment, and consultation with the Public Service Commission is held, they may then be held to have been appointed in substantive capacity. It was held by the Hon'ble Apex Court that merely because the person is in a temporary appointment, it cannot necessarily be said that he is not substantively appointed, if he already fulfils the necessary conditions for regular appointment, and has completed his probation in consultation with the Public Service Commission etc. It was, therefore, further held that the point from which the service has to be counted is the date of commencement of the officiating service, though such appointees might not have secured permanent appointment in the beginning, and in that sense may still be considered to be temporary, but who, for all other purposes, have been regularized and are fit to be absorbed into permanent posts as and when such permanent posts are vacant. In the instant OA, it is quite clear that the applicant had only been appointed on adhoc basis by way of stop gap arrangement, and did not possess the requisite qualification for substantive promotion by passing the departmental examination till the year 2008, and, therefore, the benefit of this judgment also cannot be made available to the applicant, as prayed for by the learned counsel for the applicant."

24. It was further considered in that case as follows:

"(48) In reply, during his arguments, the learned counsel for the respondents had relied upon the aforesaid nine cases. It is seen that in the case of State of Uttaranchal Vs. Dinesh Kumar Sharma (supra) the Hon'ble Supreme

Court was considering a case of seniority, and the date of substantive appointment in a post. It was held by the Hon'ble Supreme Court that seniority cannot be reckoned from the date of occurrence of vacancy in the past, even if the candidate was eligible for promotion when the promotional post had fallen vacant at an earlier date. It was held that for the sake of starting the clock of seniority, the seniority can be reckoned only from the date of substantive appointment against the said vacant post under the relevant rules, and cannot be deemed to operate retrospectively from the date of occurrence of the vacancy. It was further held that the right to constitute selection committee for selection against the vacancies which had arisen vested in the Government, which had, after adopting due procedure for selection, substantively appointed the said Dinesh Kumar Sharma to the promotional post on a later date. He was then held to be having no right to claim promotion and seniority from an earlier date when the vacancy had arisen, just because the Government had not constituted the selection committee for some time. It was further held that substantive appointment is one which is made upon selection as per rules or executive instructions.

"(49) In the instant case, it is seen that the applicant herein has been substantively appointed to the post of a TC for the first time in the year 2008, through Annex.A/15 dated 23.01.2008, after he had passed the written test held on 11.08.2007 for selection to the post of TC Grade Rs. 3050-4590, against the 16 and 2/3<sup>rd</sup> promotee quota in the commercial department. Therefore, it appears that prior to his substantive appointment as TC, following the panel declared on 23.01.2008 Annex A/15, any service rendered by the applicant in the past as TC appointed only on ad hoc basis, cannot be counted towards his seniority whatsoever."

"(50) In the case of Utranchal Forest Rangers Association (Direct Recruits) and Ors. (Supra), again the Hon'ble Supreme Court had held that even when considering determination of seniority in between direct recruits and promotees, seniority has to be given only from the date of substantive appointment. In that case, when direct recruitments were made, the promotees were not borne on the cadre, and therefore they could not have been placed senior to the direct recruits in the combined seniority list. It was further held by the Hon'ble Supreme Court that when promotions in excess of quota are given on an ad hoc basis, seniority cannot be given to promotees on the basis of such ad hoc promotions. Therefore, it appears that the claim of the present applicant

in respect of his ad hoc service prior to his substantive appointment as T.C. cannot give rise to any claim of seniority in his case.”

“51. In the case of Jagdish Chand Patnaik Vs. State of Orissa (supra), the Hon’ble Supreme Court had laid down the law in regard to seniority of officers in between those recruited by promotion, and those who had joined by the direct recruitment during the same year, and it was held that recruitment takes place only when the formal order of appointment is issued and not when the recruitment process is initiated. In the instant case the applicant has been put in the panel through Annex.A/15 on 23.01.2008, and the final order for his promotion in substantive capacity has been issued subsequently, though the written test had been held on 11.08.2007. Therefore, the applicant’s claim for seniority on the basis of his substantive appointment can arise only from the date when he was empanelled on 23.01.2008 through Annex.A/15.”

52. In State of Bihar and Ors. Vs. Akhouri Sachindra Nath and Ors. (supra), a particular case relating to inter-se seniority between direct recruits and promotees, it was held by the Hon’ble Supreme Court that seniority has to be reckoned only on the basis of length of service in the substantive capacity. Any orders giving promotion with retrospective effect were termed to be arbitrary, illegal and violative of the law. The facts of this case are not directly applicable to the case of the present applicant, except to the extent that no retrospective effect going behind the date of substantive promotion can be given effect to in his case also.”

“53. In the case of Swapan Kumar Pal and Ors. Vs. Samitabhar Chakraborty and Ors. (supra), it was a case of interse seniority among promotees in between those who had come through the limited competitive departmental examination, and those who had been promoted on the basis of seniority-cum-merit. It was held by the Hon’ble Supreme Court that in terms of Para 302 of the IREM Vol. I 1989 Edition, the seniority can be fixed only from the date of regular promotion, after regular selection by due process, and any period of ad hoc promotion preceding that date would not count towards seniority. In this particular case, the present applicant has been empanelled after regular selection by due process, after his having passed the written test held on 11.08.2007, only by Annex.A/15 on 23.01.2008. Therefore, his entitlement for seniority would date only from the date of his empanelment, and the period of his ad hoc promotion preceding that would not count towards his seniority.”

25. It was further observed in that case in case of Shri Mishri Babu, which is the case of the other two applicants also, that though they had all been reverted twice,

from their ad-hoc promotions, once upon orders of the Hon'ble Supreme Court, and the second time upon the orders of the Hon'ble Rajasthan High Court, they had a continuity of appointment in Group "D". and noting that, it was observed in that case as follows:

"(57). In this context, it is seen that in the instant case, the regularization of the applicant against the post of TC was after two breaks in the continuity of his ad-hoc appointment as TC, one after the orders of the Hon'ble Supreme Court, and another after the orders of the Hon'ble High Court, as already discussed above also. But, in the case of Chief of Naval Staff and Anr. Vs. G. Gopal Krishna Pillai and Ors. : (1996) 1 SCC 521 it was held by the Hon'ble Supreme Court that ad hoc appointment without selection by a regularly constituted selection body, even though it may have been un-interruptedly followed by regularization in the same post, would not count towards seniority. The law as laid down by the Hon'ble Supreme Court in this case would squarely affect the case of the applicant, even though his ad hoc appointment as TC was not uninterrupted, and there were two breaks in such ad-hoc appointment till his selection for regularization in the same post by Annex.A/15 dated 23.01.2008.

"(58). Lastly, in the case of Sate of Bihar and Ors. Vs. Bateshwar Sharma : (1997) 4 SCC 424, the Hon'ble Supreme Court had held that when an employee is initially declared unfit for regular promotion, but he is granted promotion subsequently, the seniority has to be determined with reference to the date of regular promotion, and not from the date of his ad hoc promotion earlier. The facts of this case would hit the case of the applicant squarely, because in the instant case also the applicant had failed twice in the selection earlier, and had succeeded only in the selection held in 2007-2008, and was empanelled through Annex.A/15 dated 23.01.2008, and therefore, even then, in the absence of his having or gaining any legal or prescriptive right earlier, the benefit of seniority can be provided to him only with reference to the date of his regular promotion after his empanelment on 23.01.2008, and not from the date of his ad hoc promotion earlier, even if such ad hoc promotion may have been continuous for a long time period, which was not so in the applicant's case, where there were at least two breaks in the period of his earlier ad-hoc appointment as TC.

"(59). In the result, in response to the legal issue framed by us in paragraph 13 ante, it is apparent that the ad-hoc promotion granted earlier to the applicant without his passing the selection as per rules was only by way of

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stop gap arrangement, and by applying the case law as laid down by the Hon'ble Supreme Court in the above discussed cases, it is held that no benefit of past service of such adhoc stop gap appointment of the applicant can be made admissible to him.

"(60). Further, the applicant had raised a legal issue that Para 180 of the IREM, which is a special rule for the promotion of Group 'D' staff to Group 'C' category, should prevail over the general rule for seniority being determined, as laid down in Para 320 of the IREM, as a general rule cannot prevail over a special rule. However, in this case, the benefit of Para 180 of the IREM also cannot be made available to the applicant, as Para 180 applies to the proper procedure for selection for promotion of Group 'D' officials to group 'C' posts, and the applicant herein has been able to cross the hurdle of passing the departmental examination only in the year 2008. Therefore, the benefit of Para 180 of IREM would be available to the applicant only in the year 2008, and as on that date, as has been clarified above, he had been in continuous and uninterrupted adhoc employment as TC only from the period from 23.1.2002 onwards, when, after having been reverted twice earlier, due to the pressure of Unions, he was once again appointed in adhoc capacity as TC, and continued thereafter as such till the date of his passing the departmental examination in 2008.

26. In the instant cases, it is seen that some of the opposite party private respondents were held to be senior to the three applicants herein in the impugned selection panel notified on 6.9.2005 only on the basis that they were holding higher posts in higher pay scale in their substantive Group 'D' appointments than the three applicants before us. The respondents have dismissed the issue of applicability of the clarification issued by them to DRM Northern Railway, Ambala Cantt., through Annexure.A8 dated 19.6.2003, by stating that the clarification given therein that Group D' in grade Rs. 2610-3540 for Gatemen and Group 'D' for Callmen Rs. 2550-3200 will be treated as equivalent/at par, was applicable only for the purpose of Ambala Division, and not for other places. But, it is seen that in this Division also, the Respondents have applied/utilized such equivalence in the case of Younis Ali. Also it is seen in the present O.As that the applicant of OA 285/2009 Shri Mishri Babu had joined in substantive capacity as Group 'D' Electric

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Khalasi with effect from 24.6.1977 in the pay scale Rs. 2550/3200, Shri Rameshwar Kachhwaha, the applicant of OA 283/2009, had joined Railway services as Group 'D' Loco Khalasi in grade Rs. 2550 – 3200 with effect from 1.8.75, and Shri H.K.Sharma, the applicant of OA 284/2009, had joined as Group 'D' Loco Khalasi in the pay scale of Rs. 2550-3200 with effect from 8.8.76.

27. As has been clarified by this Bench already in paragraph No.60 of the judgment in OA 32/2009, as reproduced above, Para 180 of IREM applies as a special rule for the promotions of Group 'D' to Group 'C' category whenever the proper procedure for selection for promotion of Group 'D' officials to Group C posts is being followed. Therefore, the benefit of para 180 of IREM would have to be made applicable to the three applicants of these OAs. Also, if their cases had been considered to be covered by the clarification dated 19.6.2003 in Annexure A/8, as issued to the DRM, Ambala Cantt. by the Northern Railway, Headquarters, New Delhi, and as applied in this Division also earlier in the case of Younis Ali, if any of the private respondents R4 to R.11 were in the pay scale of Rs. 2610-3540 applicable for Gatemen which has been held to be equivalent to their substantive pay scale of Rs. 2550-3200, and, as has been stated above, since the three applicants before us had entered equivalent/at par pay scale of Rs. 2550-3200 from the dates as indicated above against their name i.e., with effect from 24.6.73 in case of Mishri Babu, and with effect from 1.8.75 in case of Rameshwar Kachhwaha, and with effect from 8.8.76 in the case of Hari Kishan Sharma, the benefit of their continuous substantive appointment in that pay scale of Group 'D' equivalent/at par with the pay scale of Rs. 2610-3540 ought to have been granted to them by the respondents, since the selection notified through Annexure A/2 dated 26.7.2004 was regular selection from Group 'D' to Group 'C', for which Para 180 of IREM was applicable.

28. Therefore, the above three OAs are allowed in part, and the first of the three alternative prayers, made in exactly similar words by the three applicants, is allowed in respect of three applicants before us, and the respondents are directed to modify the impugned panel announced through Annexure A/1 dated 6.9.2005, after taking into

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account the substantive capacity Group 'D appointments' of the applicants in the pay scale Rs. 2550-3200 to be equal to that of substantive appointment of any of the private respondents in the equivalent/at par pay scale of Rs. 2610-3540, as we refuse to accept the argument advanced by the respondents that what was a good instruction for DRM, Ambala Cantt, is not a good instruction for DRM, Bikaner.

27. Respondents shall examine the candidature of these three applicants as against the candidature of all the eight private Respondents included in the impugned panel dated 6.9.2005, and pass a reasoned and speaking order, giving due weightage to the absolute equivalence of the applicants vis-a-vis the private respondents in the pay scales of Rs. 2550-3200 and the equivalent/at par pay scale of Rs. 2610/3540. All the O.A.s are allowed to the extent as above, with no order as to costs.

~~COMPARED~~ &  
~~CHECKED~~

Dated this the 21st day of March, 2012

SD  
SUDHIR KUMAR  
ADMINISTRATIVE MEMBER

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JUSTICE S.C. SHARMA  
JUDICIAL MEMBER

CERTIFIED TRUE COPY  
Dated 28.3.2012

*SD*  
चुनाव विभाग  
Section Officer (Judl.)  
संघीय नियमित विभाग  
Central Election Commission  
विधायक विभाग  
नियमित विभाग