

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

I. Original Application No.21/87.
II. Transferred Application No.276/86.

I. 1. Mrs. Urmila Kashyap.
2. Miss. Rajani Pednekar.
3. Mrs. Shobha Balel.
4. Miss. Pratibha H. Bhatt.
5. Mrs. V.M. Bhagwat.
6. Miss. V.M. Shah.
7. Mrs. Dipika N. Shah.
8. Mrs. S.R. Desai.
9. Mrs. A.S. Naik.
10. Miss V.V. Gurjar.
11. Mrs. Anita Kadvey.
12. Mrs. S.A. Kulkarni.
13. Mrs. Neeta Wagh,
C/o. Shri G.K. Masand,
Advocate, High Court,
24-B, Rajabahadur Compound,
1st floor Rajabahadur Mansion,
Hamam Street, Fort,
Bombay - 400 023. ... Applicants

V/s.

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Bombay.
2. Chief Commercial Superintendent,
Western Railway, Churchgate,
Bombay. 400 020.
3. Smt. J.R. Thakur,
4. Kum. F.N. Chhapra,
5. Kum. Y. Seethakumari,
6. Kum. C.M. Sindhi,
7. Kum. Malini Menon,
C/o. Chief Reservation Inspector,
First Class Reservation Office,
Churchgate, Bombay.

... Respondents

II. 1. Smt. Jyoti Thakur,
ARS, Ist Class
Reservation Office,
Western Railway,
Churchgate, Bombay.400 020.

... Applicant

v/s.

1. Union of India.
2. Limaye, General Manager,
Western Railway,
Head Quarters,
Churchgate,
Bombay.400 020.
3. R.Madhu Sharma,
4. E. D'Souza,
5. Reshma Shah,
C/o. Ist Class Reservation
Office, Churchgate,
Bombay.400 020.

... Respondents.

Coram: Hon'ble Member(A), Shri S.P.Mukerjee,
Hon'ble Member(J), Shri K.B.Mujumdar.

JUDGMENT:

(Per S.P.Mukerjee, Member(A)) Dated: 19.6.87

Since common questions of law and facts
are involved in the aforesaid two cases, they are
being disposed of by a common judgment as follows.

2. Mrs.Urmila Kashyap and 12 other Lady Berth
Reservation Clerks (LBRC) in the first case
(O.A:21/87) have moved this application under

...3.

section 19 of the Administrative Tribunals Act praying that the action of the Respondents Nos.1 and 2 of the Western Railways in giving seniority to Respondent Nos.3 to 7 above the applicants' should be set aside as illegal and the said respondents be directed to correct the seniority list by placing the applicants above Respondents Nos.3 to 7 in the seniority list of LBRCS with all consequential benefits.

3. Smt.Jyoti Thakur who is one of the Respondents in the first case moved the High Court of Judicature at Bombay through a Writ Petition dt. 10th of June, 1985 under article 226 of the Constitution of India praying that the seniority list published by the Respondents on 25.4.1984 and 24.4.1985 may be set aside and she may be placed immediately below Shri L.R.Ratnam with all consequential benefits of promotion etc. The Petition stood transferred to this Tribunal under section 29 of the Administrative Tribunals Act as the second case (Tr. Application No.276/86).

4. The brief facts of the first case (O.A.21/87) can be recounted as follows. The applicants in the first case(O.A.21/87)were appointed as direct recruits to the post of LBRCS through the Railway Service Commission in 1982. The minimum educational qualification for the direct

recruits was that they must be graduates. Pending posting of regular candidates Respondents Nos.3 to 7 were appointed as LBRCs purely on an adhoc basis on different dates between 16.7.1979 and 29.9.1981 by promotion from the grade of Junior Clerk/Typists. In July, 1982 it was decided to regularise these ad hoc employees against the requirement of staff for introduction of double shift. Accordingly, they were subjected to written test and interview and having passed the same they were included in the panel which was approved by the competent authority on 25.11.1983. It appears that as a result of the pressure exerted by the recognised trade union the competent authority decided "as ~~an~~ one time exception to the normal rule to treat them ~~as~~ regular from 29.9.1981 i.e. the date when the juniormost amongst the respondent Nos. 3 to 7 started working on ad hoc basis". As a result of this retrospective regularisation w.e.f. 29.9.1981 they were placed as senior to the applicants who as direct recruits entered service in the grade of LBRC in 1982. According to the applicants these ad hoc promotees were not qualified to be promoted ~~as~~ as LBRC as they were not graduate and having not been recruited through the Railway Service Commission they could not be absorbed as regular LBRCs. Further, according to them as the panel was approved on 25.11.1983

that is much after the appointment of the applicants, there is no reason why they should be rendered senior ~~than~~ to the applicants. It is also contended by the applicants that the respondent Nos. 3 to 7 have been placed above the applicants in the seniority list unilaterally by the Railways without giving them an opportunity to defend their seniority. In accordance with the Respondent Nos. 1 and 2 the Railway Board vide their letter on 30th June, 1978 had decided that the post of reservation clerks in the Metropolitan reservation office should be manned by women by calling volunteers from serving ~~max~~ women staff of all categories and the unfilled vacancies to be filled by direct recruits. The respondents 3 to 7 had volunteered their services and were appointed as reservation clerk on ad hoc basis and having been put through test and interview included in the panel on 25.11.1983. Their services were regularised w.e.f. 29.9.1981. The Respondents 1 and 2 have denied that minimum qualification of graduation is prescribed for departmental employees but admitted that the aforesaid selection of respondents was initiated on 20.7.1982 and finalised on 8.12.1983. They have stated that posts are filled partly by direct recruitment through the Railway ^{Service Commission} ~~Recruitment Board~~ and partly by promotion. The Respondent Nos. 3 to 7 in their reply have conceded that they had been appointed on ad hoc basis but the vacancies were non-fortuitous and therefore their services could be regularised through tests and selection process. They have further conceded that for a

direct recruit it is necessary to be a graduate but there is no such minimum qualification prescribed for departmental promotees. They have also argued that there was delay in holding the Selection tests for departmental candidates and that should not debar them for counting their ad hoc services for seniority and that as a matter of fact in the second case Respondent No.3 as a petitioner has challenged the notional date of regularisation i.e. 29.9.1981 and has claimed seniority from the date of her ad hoc appointment i.e. 16.7.1979 as LERC.

5. In so far as the second case (Tr.276 of 1986) is concerned the Petitioner Smt.Jyoti Thakar claims that as she was appointed as L.B.R.C. with effect from 16th July, 1979 against a non-~~occupied~~^{vacant} clear vacancy and as she was duly regularised through a written test and interview in 1983 and successfully passed the same, she should be given seniority ~~over~~ over all other L.B.R.C's who were promoted or appointed to that grade subsequent to her appointment. She further states that in June, 1984 she appeared in the suitability test for promotion as Reservation Supervisor in the Higher scale of Rs.455-700 and was interviewed on 27th August, 1984. Respondent No.3 in her Petition was subsequently interviewed and decided and declared as passed. But the Petitioner who was senior to Respondents 3 to 5 was not given similar treatment, but could be promoted on ad hoc basis as a Reservation Supervisor for a short period during October, November, 1984. Since the Petitioner's name did not appear in the panel for promotion as Reservation Supervisor she represented in February, 1985 and her case was taken up through ...7.

the Union also. The Union was informed in May, 1985 that her seniority had been correctly fixed. According to the Respondent No.1 and 2 the Petitioner was appointed as LBRC purely on ~~an~~ ad hoc basis w.e.f. 16.7.1979, pending recruitment of regular staff through ^{the} Railway Service Commission. It was made clear in the promotion order that the ad hoc appointment will not confer on her any claim for regular promotion. Subsequently, the Respondents Nos. 3, 4 and 5 who were selected by the Railway Service Commission joined as regular LBRC's on 6.2.1981, 9.7.1980 and 27.7.1981 respectively. The Petitioner, ^{and} another ad hoc LBRC however continued ^{as such} as there were further vacancies. When in July, 1982 double shifts were proposed to be introduced in the Reservation Office, it was decided to regularise the appointment of the Petitioner and other ad hoc LBRCs by holding regular selection through written test and ^{test-} viva voce ~~before~~. However, ^{the} results could be declared and the panel ^{was} approved by the competent authority on 25.11.1983. The recognised Trade Unions ~~Members~~ pressed that they should be deemed to have been regularised from the date they were initially posted on an ad hoc basis. Accordingly as one time dispensation the Petitioner and 4 other ad hoc LBRCs were regularised w.e.f. 29.9.1981 i.e. the date the juniormost amongst the ad hoc appointees started working as such. The Respondents have argued that in accordance with Rule.302 of the Indian Railway Establishment Manual seniority has to be counted from the date of regular appointment and since the

Petitioner was regularised w.e.f. 29.9.1981 she is has to be kept junior to Respondents 3, 4 and 5 who were regularly appointed between 9.7.1980 and 27.7.1981 i.e. earlier than the date of regularisation of the Petitioner. As regards, Petitioner's claim to be promoted as Reservation Supervisor (Rs.455-700) the Respondents have clarified that the promotion being by selection 25 employees including the Petitioner were called for written and viva voce tests. A panel of 9 employees was notified on 23.2.1985, but the Petitioner could not find a place in the panel as she was low in seniority. As regards Respondent No.3 Smt. Machu Sharma she was later called for interview and included in the panel as she could not appear in the regular interview because of the death of her husband. The Respondents have stated that the Petitioner's appointment as Reservation Supervisor on an ad hoc basis does not entitle her to regular appointment. Respondent No.5 Miss. Reshma Shah has argued further that in accordance with the Recruitment Rules 100, appointments of LBRCs are required to be made by direct recruitment of Graduates and the Petitioner was not entitled to regular appointment as an LBRC as she was not a Graduate. Her ad hoc appointment as such was with specific and clear understanding that it will not confer any claim of regular appointment as LBRC. She has further argued that the concession given to the Petitioner and other non-graduate ad hoc appointees through the process of regularisation should not be at the expense of seniority of directly recruited regular LBRCs. She has claimed

that in the panel for promotion as Reservation Supervisor she had been shown above the Petitioner in the list of candidates required to take the test, but even then she was not included in the panel of promotion notified on 23.2.1985 and therefore the Petitioner has lesser claim to be included in the panel than hers.

6. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. Both the cases turn on the question whether the seniority of the ad hoc LBRCs who are Respondents 3 to 7 in the first case and the Petitioner in the second case should be fixed by giving them any credit for their ad hoc service as LBRCs prior to 25.11.1983 when their names were approved by the competent authority for regularisation. The next question to be decided is whether in case ad hoc service has to count for seniority prior to regularisation, that service should be reckoned from 29.9.1981 i.e. the date from which the juniormost ad hoc LBRC started to work as LBRC or from the respective dates of commencement of ad hoc service in each case.

7. The learned Counsel for the applicants in the first case (O.A. 21 of 1987) has argued that since the ad hoc appointments were made as a stop gap arrangement and it was made clear that it will not confer on them any claim of regular appointment, the ad hoc appointees cannot count their ad hoc service for seniority vis a vis the regular Graduate appointees directly recruited by the Railway Service Commission. The learned Counsel

has quoted the decision of the Himachal Pradesh High Court in Prakash Chand v. State of Himachal Pradesh, 1985 Labour and Industrial Cases, 904, in which it was observed as follows:

"The principle of continuous officiation for the purpose of fixing seniority would apply only if and when the appointment could be regarded as having been made regularly even though on ad hoc basis. When the appointment is made in the public interest in relaxation of the extant eligibility qualifications to make immediate arrangements for the performance of duties of a vacant post on a purely ad hoc basis till such time as recruitment according to rules is made and the appointment is expressly subject to the condition that it will not confer any right to claim continuance or seniority in the cadre, the claim for counting the service rendered in such capacity for seniority on the basis of the principle of continuous officiation cannot be entertained. In the instant case the petitioner's plea to tag on the service rendered by him on ad hoc basis prior to the date of the regularisation of his service cannot be entertained".

8. The learned Counsel also cited the ruling of the Supreme Court in Ashok Gulati & Others v. B.S.Jain & Others, A.I.R. 1981 S.C. 424 in which the Supreme Court refused to consider ad hoc service of temporary engineers for the purposes of qualifying service and seniority in the equivalent grade of Assistant Engineer. They observed that "it is well settled ^{that} with an ad hoc or

fortuitous appointment on a temporary or stop gap basis cannot be taken into account for the purposes of seniority even after the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence." The learned Counsel ~~also~~ cited the judgment of the Madras Bench of the Tribunal in S.Rajagopalan and others v. Union of India, A.T.R. 1987 (1), 12 CAT ¹² in support of his contention that ad hoc service could not count for seniority.

9. It was admitted by the Petitioner in the second case Smt. Thakur who is also Respondent No.3 in the first case, that when she was appointed as an ad hoc LBRC in response to a general invitation to the female employees to apply for the post, she was not subjected to any process of test.

10. The learned Counsel for the applicants in the first case pertinently referred to the judgment delivered by the Madras Bench of the Tribunal in S.Rajagopalan & Others v. General Manager, Southern Railway & Others, A.T.R. 1987(1) CAT 12 in which the Tribunal rejected the retrospective regularisation of ad hoc promotion as Inspectors of Works of the Railways from Works Maistries on the ground that Rules. 306 and 314 of the Indian Railway Establishment Manual prescribes higher seniority to those who were selected earlier even though those who have been selected later had been officiating on an

ad hoc basis in the higher post, a similar decision was taken, according to the learned Counsel for the applicants, in the first case, by even the Bombay Bench of the Tribunal in Transferred Application No.261/86 Shri Mohamad Abbas Ansari and others v/s. Union of India and others, in which ad hoc officiation as Electrical Chargeman was not taken into account for seniority of those who had been Electrical Fitters ^{and who} had been promoted on a regular basis at a later date. We have gone through ~~these~~ judgments carefully and find that the ~~ratio decidendi~~ in these two cases cannot entirely be applicable to the instant cases before us. In the case decided by the Madras Bench, ^{the} celebrated rulings of the Supreme Court in regard to counting of period of ad hoc officiation for the purposes of seniority have not been touched at all. These rulings have developed during the last decade starting from Shri S.B.Patwardhan V/s. State of Maharashtra, SLR 1977 (2) 235, Shri M.K.Chavan V/s. State of Gujarat (1977) I S.C.R. 1073, Shri A.Janardhan V/s. Union of India A.I.R. 1983 S.C. 769, Shri P.S.Mahal V/s. Union of India A.I.R. 1984 S.C. 1291, Shri O.P.Singla V/s. Union of India A.I.R. 1984 S.C. 1595, Shri G.S.Lamba and others V/s. Union of India 1985(1) SLJ 676 and culminating ⁱⁿ Shri Narendra Chadha V/s. Union of India A.I.R. 1986 S.C. 638. In these rulings it has consistently been emphasised that where normal seniority rules lose their significance either as a result of the collapse of quota rota system of

appointment by direct recruitment and promotion or there were no recruitment rules and Officers had to be promoted for carrying on the work and continue as such for umpteen years followed by their regular promotion, their service in the higher post ~~were within~~ ^{whether} temporary or permanent, ~~were~~ ^{whether} within or in excess of promotion quota, ~~were~~ ^{whether} in consultation or otherwise with the U.P.S.C. should count for seniority vis-a-vis the direct recruits. The Supreme Court pointed out the inequity of the direct recruits being rendered senior to the promoted Officers in a situation where the latter had been holding the higher post to which the direct recruits were appointed later from a date when the direct recruits were only ~~a~~ ^{or college} school going students. In Narendra Chadha and Others V/s. Union of India and Others cited above the Supreme Court observed that:

"It is true that the petitioners were not promoted by following the actual procedure prescribed under rule 8(1)(a)(ii) but the fact remains that they have been working in posts included in Grade IV from the date on which they were appointed to these posts. The appointments are made in the name of the President by the competent authority. They have been continuously holding these posts. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment. The orders of promotion issued in cases show that they are

promoted in the direct line of their promotion. It is expressly admitted that the petitioners have been allowed to hold posts included in Grade IV of the aforesaid services, though on an ad hoc basis. (See para 21 of the counter-affidavit filed by Shri P.G.Lele, Deputy Secretary, Department of Personnel and Administrative Reforms. It is, therefore, idle to contend that the petitioners are not holding the posts in Grade IV of the two Services in question. It is significant that neither the Government has issued order of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV."

In the aforesaid case after discussing the various rulings of the Supreme Court including the ones cited above the Court held as follows:

"Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under rule 8(1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to dates of their selection shall be ignored. The

direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or post as provided in clause (a) of Rule 9-C of the Rules." (emphasis supplied).

11. The learned Counsel for the applicants strongly argued that the ruling of the Supreme Court in the case of Shri Narendra Chadha has to be ignored in view of a more ^{recent} ~~reasoned~~ ruling of that Court in Ashok Gulati & Others v/s. B.S.Jain & Others, A.I.R. 1987 S.C.425 in which ad hoc service as Temporary Engineers followed by regular service as Assistant Engineer, had been ignored for the purpose of seniority, as also for computing qualifying service for promotion as Executive Engineers. We have gone through this judgment with great care and find that the Supreme Court had distinguished Shri Ashok Gulati's case on facts from that of Narendra Chadha. Also in Ashok Gulati's case the Supreme Court had rejected ad hoc service as "Temporary Engineers" for the purposes of seniority in the grade of "Assistant Engineers". The Supreme Court had not rejected ad hoc service as "Assistant Engineers" for the purposes of seniority in the cadre of Assistant Engineers. Since the cadre of Temporary Engineers is distinguishable from that of Assistant Engineers the ruling in Ashok Gulati's case cannot strictly be invoked for writing off ad hoc service as LBRC in the instant cases for the purposes of seniority

in the grade of LBRC itself. Therefore, we find that the ruling in Ashok Gulati's case does not wash away the rulings of the Supreme Court in the catena of cases culminating in the rulings in the case of Narender Chadha. Even otherwise, the rulings of a two Member Bench of the Supreme Court in Ashok Gulati's case cannot prevail over the ruling of the three member Bench of that Court in G.K.Dudani V/s. S.D.Sharma and Others, A.T.R. 1986(2) S.C. 305, in which length of service even in temporary and ex cadre posts has been recognised for seniority. The rulings of Ashok Gulati's case has further been breached by a more ~~recent~~ ^{recent} ruling of the Supreme Court in A.N.Patak V/s. Secretary, Ministry of Defence and others, A.I.R. 1987 S.C. 716, in which the ruling in Narender Chadha's case has been reaffirmed. Thus the judgments and rulings cited by the learned Counsel for the applicants in the first case, cannot be taken to be determinant in the instant two cases.

12. In the case decided by the Bombay Bench, the circumstances are clearly distinguishable from the instant cases before us. In that case (T.A.261/86) the ad hoc appointees had failed to pass the selection test held on 19.7.1981, but later passed this test in 1983. Therefore there was justification in not counting of their ad hoc services prior to 1983 for regularisation and seniority. In the instant cases the promoted LBRCs did not have the opportunity of appearing in the regularisation test which took place only ~~in~~

in 1983 and the Respondents in the first case and the ~~junior~~ ^{junior} ~~appointees~~ in the second case passed these tests in the very first chance. Accordingly, in their cases the question of rejecting their ad hoc service as LBRC before 1983 does not arise.

13. Accordingly, we find that in the instant cases the ad hoc service as LBRC followed by regularisation as a result of passing of tests in 1983, qualifies for seniority in the grade of LBRC.

14. The next question is whether the Respondents are justified in giving retrospective regularisation of ad hoc service with effect from 29.9.1981 i.e. the date from which the juniormost of these ad hoc appointees commenced officiating as LBRC. We feel that fixing such a date for all the promotees irrespective of their dates of promotion is arbitrary. Further, by assigning this date ^{even} to those who have been officiating from an earlier date, the Respondents have treated unequal as equals and have thus violated the provisions of articles 14 and 16 of the Constitution of India. Once ~~the~~ ^{the} ad hoc service followed by regularisation is reckoned for the purpose of seniority the entirety of such services has to be taken into account and no date-line can be drawn arbitrarily as a compromise to assuage the feelings of recalcitrant elements.

15. In the aforesaid discussions whereby we have come to the conclusion that the entire ad hoc service followed by regularisation has to be taken into account for seniority, we are not only fortified, but obligated to come to this conclusion in view of the decision of the

Bombay High Court in Writ Petition No.413 to 416 of 1980 (Arun Pandharinath Shivmani etc. v/s. Union of India and others). In these case, in their common judgment dt. 24th January, 1984 the High Court directed that under identical circumstances as in the instant cases the male LBRCs should count their entire ad hoc service as such for the purpose of seniority and that service should be regularised from the dates of their respective appointments. Any departure from this dispensation in respect of Lady promoted LBRCs before us will create an indefensible discrimination on grounds of sex.

16. In the result, we reject the application (O.A.21/87) and allow the Petition (Tr.276/86) with the direction to Respondents 1 and 2 in both the cases that Respondents Nos. 3 to 7 in the first case (O.A.21/87) and the Petitioner in the second case (Tr.276/86) should count their entire ad hoc service as LBRCs for the purpose of seniority. We also direct the Respondents 1 and 2 in the second case to re-arrange the position of the Petitioner in that case in the panel for promotion as Reservation Supervisor on the results of the examination and interview held in June, 1984 and promote her as Reservation Supervisor with effect from the earliest of the dates on which her junior in the panel was so promoted, with all consequential benefits of arrears of pay and seniority. Orders should be passed on the lines of this order in both the cases within 3 months of

the communication of this order. In the circumstances,
there will be no order as to costs. A copy of this
order should be placed ~~in~~ both the files.