

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

Original Application No.234/36.

1. Ramkripal M.,
2. B.S.Dharaiya,
3. Shahjahan Patel,
4. D..Pithadia,
5. R.K.Golhani,
6. S.S.Nirgaon.
C/o.Mr.G.K.Masand,
Advocate High Court,
24-B, Rajabahadur
Mansion, 3rd floor,
Rajabahadur Compound,
Hamam Street, Fort,
Bombay-400 023.

... Applicants.

V/s.

1. Union of India, through
General Manager, Western
Railway, Churchgate,
Bombay.
2. Chief Communication Engineer,
Western Railway, Churchgate,
Bombay.
3. Jaginder Singh, working under
Sr.DSTE-BCT.
4. M.M.Bhatnagar, working under
DSTE(MW)C KTT.
5. S.N.Joshi, working under
DSTE(RE)KTT.
6. G.S.Agarwal working under
DSTE(RE)RTM.
7. A.M.Upadhyay working under
DSTE(MW)BRC.
8. S.K.Roy working under
DSTE(M) BCT.
9. O.P.Shahu, working under
DSTE(MW)BRC.
10. V.B.Mule working under ASTE(M)BL.
11. Mukesh Patni working under DSTE(RE)KOTA
12. Arvind Singh working under DSTE(RE)KOTA
13. Thakurdas Khuswah working under
14. N.P.Gupta working under CPM(RE/BRC
15. A.K.Gupta working under DSTE(MW)C-BRC
16. V.K.Agarwal working under ASTE(MW) A'BAD
17. B.B.Joshri, working under DSTE(RE)KOTA
18. Gopal M.Verma, working under DSTE(M) Rattam
19. S.C.Chottopadhyay.
20. H.L.Dethalia, working under DSTE(M) RJT.
21. Prakash Maholika, working under DSTE(M)BRC.

...2.

22. S.Ali Husain Zaidi, working under ASTE(MW) RJT.
23. K.C.Sukla, working under DSTE(M)Ajmer.
24. S.S.L. Gupta, working under DSTE(M) Kota.
25. M.S.Nimesh, working under ASTE(MW) Rajkot.
26. T.S.Pillai, working under DSTE(M)BCT.
27. N.R.Makwana, working under ASTE(MW) BHAVNAGAR.
28. V.M.Patel,
29. N.J.Edlabadkar, working under DSTE(M)Ratlam.
30. S.D.Kulkarni, working under DSTE(M) BCT.
31. V.D.Patel, working under DSTE(M)Rjt.
32. J.K.Taraiya, working under ASTE(MW) RJT.
33. A.K.Shrivastav, working under DSTE(M)BRC.
C/o.General Manager, Western Railway,
Bombay.400 020.

... Respondents.

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

JUDGMENT:

(Per S.P.Mukerjee, Member(A)) Dated: 19-6-87

The short point in this application made under section 19 of the Administrative Tribunals Act is whether the Petitioners should be allowed to reckon their ad hoc and provisional service as Telecommunication Inspectors Gr.III, from their respective dates of appointment ranging from 8.4.1981 to 1.7.1981 for purpose of seniority vis-a-vis the direct recruit who were appointed to the working post of TCI Gr.III later than them. The brief facts are that the posts of TCI Gr.III are filled 50% by direct recruitment, 30% by promotion of departmental staff and 20% by limited competitive examination of departmental staff. In the beginning of 1981 an assessment of vacancies was made as 191 against which the 30% promotion quota was assessed as 58. On 17.9.1982 a panel of 58 ^{names} was prepared (Ex.'F' to the petition) in which all the 6 petitioners were included. It was made clear in the order that the panel will be effective from 18.2.1982. Shortly thereafter

...3.

it was felt that the assessment of vacancies was inflated and the expected ^{number}~~principle~~ would be 100 instead of 191 and accordingly the 30% quota was reduced from 58 to 30. Accordingly, in the order dt. 25.10.1982 (Ex. H to the petition) posting orders of the ⁵⁷~~empanelled~~ Officers were issued indicating ad hoc and provisional appointment of the first 30 Officers, but the remaining 27 Officers in the panel though promoted on an ad hoc and provisional basis were held to be promoted against vacancies in the direct recruitment and the 20% quota²⁷. The petitioners were included amongst the remaining ²⁷persons whose appointment was notified in excess of the 30% quota. It was also indicated that they will be adjusted against the future vacancies against 30% quota, but if, regular appointees against the direct recruitment or 20% quota are available they will be reverted. However, they were never reverted, as additional posts became available. The petitioners thus continued to officiate as TCI Gr.III right from the dates of their original appointment in 1981. The trouble started when the General Manager issued the ⁶~~impugned~~ letter dt. 24th September, 1984 (Ex. 'I') indicating that these promotees will be junior to those direct recruits who were under training in 1982, but entered working posts before 25.10.1982. Thus the petitioners in spite of their continuous officiation since 1981 have been rendered junior to the direct recruits who ^{the working posts &} joined as TCI Gr.III in 1982. The petitioners case is that since they have been included in the panel prepared in accordance with the rules and have been continuously officiating without break since 1981 their entire service from 1981 as TCI Gr.III should count for seniority. The Respondents including the direct recruits ~~have~~

have argued that since the petitioners have been holding posts on an ad hoc basis in excess of the 30% promotion quota and have been always under threat of reversion, their ad hoc service cannot be taken into account for the purpose of seniority.

2. Having heard the arguments of the learned Counsel for both the parties and gone through the documents carefully, we find that it will be unfair to deny the petitioners the benefit of their continuous officiation as TCI Gr.III followed by their inclusion in the panel in accordance with prescribed procedure, merely because they have been holding the post in excess of the promotion quota. In accordance with the Respondents' own Circular of 18th October, 1965 (Ex.'A' to the rejoinder dated 12th November, 1986) "a ranker promoted in excess of the quota for ~~rank~~^{ranked} will be given seniority on the basis of his date of promotion even when a direct recruit becomes available subsequently, provided in the meantime other vacancies have arisen in which the ranker can be accommodated. If no such vacancy is available and the ranker~~s~~ have to revert to make way for the direct recruit he will not be entitled to reckon his seniority with reference to his original date of promotion". Since in the instant case the petitioners have been holding the higher posts in excess of their quota but have not yet been reverted, by virtue of the above order they cannot be deprived of their right of reckoning their entire period of officiation for seniority. We are fully fortified in our finding by the various rulings of the Supreme Court about counting of ad hoc officiation for purposes of seniority. These rulings have developed during the last decade starting from Shri S.B.Patwardhan V/s. State of Maharashtra, SLR 1977(2) 235, through Shri M.K.Chavan^h V/s. State of Gujarat(1977)1 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
and a three Member Division Bench judgment in G.K.Dudamir vs S.D.Sharma
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 whether temporary or
permanent, whether within or in excess of promotion
quota, 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
has been holding the higher post to which the direct
recruits were appointed later from a date when the
direct recruits only school or college 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).

3. The learned Counsel for the Respondents argued that since the petitioners have not been regularly absorbed as TCI grade.III the question of determining their seniority is premature^d. We have to repel^e this argument in view of the General Manager's letter of 24th September, 1984 (Ex.'I') in which the Petitioners and others like them ^{have} ~~ought~~ to be treated as having been regularly absorbed after the directly recruited TCI joined the post. Since the directly recruited TCI have already joined and even after that the petitioners have not been reverted till to-day, they will have to be treated as good as regularly absorbed for the purposes of determination of their seniority.

4. Shri Walia, learned Counsel for Respondents further argued that the petitioners were not reverted for the limited purpose of saving them from further test for promotion. This does not appear to us as the ^{very convincing & exemption} ~~examination~~ ^{from} ~~for~~ test could have been given by the authorities even after they had been reverted. The representatives of the Railways clarified that the petitioners were not reverted because of the additional work involved and posts created and therefore, we have to accept that the petitioners promotion as T.C.I. Gr.III continued in the public interest. In the result we allow the application, set aside the General Manager's letters of 24th September, 1984 and ^{of} 25.6.1986 and direct that the applicants

should count their entire continuous service as TCI Grade.III from the dates of their original appointment as such in 1981, for the purpose of seniority. There will be no order as to costs.

S.P. 19.6.87
(S.P.MUKERJEE)
MEMBER(A)

M.B. 19-6-87
(M.B.MUJUMDAR)
MEMBER(J).