A3
2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,

SITTING AT JAIPUR

Date of Decision: Jan. 19,1990

(1) T.A. No. 632/86

Sudesh Kumar ...Petitioners.

versus

Union of India & others ...Respondents.

(2) T.A. No. 575/86

Tara Chand ...Petitioner.

versus

Union of India & others ...Respondents.

(3) T.A. No. 630/86

Makhan Lal ...Petitioner.

versus

Union of India & others ...Respondents.

(4) T.A. No. 662/86

Hari Shankar ...Petitioner.

versus

Union of India & others ...Respondents.

(5) T.A. No. 576/86

Roshan Lal ...Petitioner.

versus

Union of India & others ...Respondents.

(6) T.A. No. 574/86

Inder Singh ...Petitioner.

versus

Union of India & others ...Respondents.

(7) T.A. No. 577/86

Mooli Lal ...Petitioner.

versus

Union of India & others ...Respondents.

(8) T.A. No. 631/86

Gajanand H. ...Petitioner

versus

Union of India & others ...Respondents.

AB 3

(9) T.A. No. 634/86

Mangi Lal ...Petitioner.

versus

Union of India & others ...Respondents.

Shri M.R. Calla Counsel for the Petitioners
Shri R.N. Mathur Counsel for the Respondents

CORAM

THE HON'BLE SHRI KAUSHAL KUMAR VICE CHAIRMAN.

THE HON'BLE SHRI S.R. SAGAR JUDL. MEMBER.

S.R. SAGAR

The petitioners Tara Chand-B, Mangi Lal, Inder Singh, Gajanand-H, Hari Shankar, Sudesh Kumar, Makhan Lal, Mooli Lal-G & Roshan Lal-N all railway servants were initially appointed as Cleaners in the Western Railway. The seniority list was prepared in the year 1963. It was based on the merit order assigned to the candidates in the selection held. As a result of a decree of Civil Court the seniority of Harbhajan Singh and Nawal Singh who were similarly placed as petitioners was changed. They were assigned seniority on the basis of their date of appointment. The petitioners individually represented for their seniority on the basis of the date of their appointment in accordance with the mandate of the said decree. The petitioners' request was not accepted by the Railway Authorities. The petitioners, therefore, individually filed writ petitions in the Rajasthan High Court at Jaipur. The Writ Petitions filed by Tara Chand, Mangi Lal, Inder Singh, Gajanand-H, Hari Shanker, Suresh Kumar, Makhan Lal, Mooli Lal-G and Roshan Lal-N were registered as Writ Petitions Nos. 2210/83, 1587/84, 2205/83, 1524/84, 1734/84, 1525/84, 1523/84, 2212/83 and 2211/83 respectively. After establishment of the Bench of the Central Administrative Tribunal at Jodhpur, all the said writs were transferred to this

Tribunal and the same have been registered as T.A. Nos. 575/86,634/86,574/86,631/86,662/86, 632/86, 630/86,577/86 and 576/86 respectively.

2. As the questions of facts and law involved in all these petitions are almost common, all these TAs have been taken up together for disposal by common judgment with the consent of the parties' counsel.

3. Briefly stated the facts are that the petitioners were initially appointed as Cleaners in the Western Railway.They were promoted to officiate on the post of Second Fireman; then to officiate as Fireman Grade B and then on the post of Diesel Assistant on respective dates shown in the Chart given below:

| Sl. No. | Name of the petitioners | Date of appointment on the post of Cleaner. | Date of appointment on the post of Second Fireman | Date of appointment on the post of Fireman Grade-B | Date of appointment on the post of Diesel Assistant |
|---|---|---|---|---|---|
| 1. | Tara Chand-B | 29.1.57 | 8.5.63 | 18.5.74 | 7.3.87 |
| 2. | Mangi Lal | 23.11.57 | 26.11.65 | 30.5.74 | 23.4.79 |
| 3. | Inder Singh | 24.11.57 | Jan., 64 | 18.5.74 | 7.3.78 |
| 4. | Gajanand | 24.11.57 | 24.11.65 | 25.2.76 | July 79 |
| 5. | Hari Shankar | 24.11.57 | 14.10.63 | 28.12.73 | 7.3.78 |
| 6. | Sudesh Kumar | 25.11.57 | 7.8.64 | 15.5.74 | 1.10.78 |
| 7. | Makhan Lal | 19.12.57 | 24.11.62 | 15.5.74 | 23.4.79 |
| 8. | Mooli Lal-B | 4.1.58 | (Date not mentioned in the petition) | 18.5.74 | 7.3.78 |
| 9. | Roshan Lal-M | 22.1.58 | Jan. 64 | 18.5.74 | 7.3.78 |

Positionof the petitioners in seniority list of 1963

| Sl. No. | Name of the Petitioner. | Position | Position which should have been on the basis of date of appointment. |
|---|---|---|---|
| 1. | Tara Chand-B | 318 | between 129(Kailash Chand 13.1.57 and 130(Daulat Ram 6.5.57) |
| 2. | Mangi Lal | 551 | between 401 (Kailash Chand 13.1.57) and 130(Daulat Ram 6.5.57) |

A3
5

| | | |
|---|---|---|
| 3. Inder Singh | 507 | Between 401 (Gopal Singh 16.11.57) and 402 (Nand Lal-M 12.12.57) |
| 4. Gajanand | 570 | ---do--- |
| 5. Hari Shankar | 488 | ---do--- |
| 6. Sudesh Kumar | 526 | ---do--- |
| 7. Makhan Lal | 556 | Between 402 (Nand Lal-M 12.12.57) and 403 (Mahendra Singh 15.2.58) |
| 8. Mool Lal-B | 563 | - -do--- |
| 9. Roshan Lal-M | 512 | ---do--- |

Details regarding positionof the employees mentioned in third column of the above Chart.

| Sl. No. | Name of the employee mentioned in the third column of the preceding chart | Date of appointment | Position assigned in the seniority list of 1963 |
|---|---|---|---|
| 1. | Kailash Chand | 13.1.57 | 129 |
| 2. | Daulat Ram | 6.5.57 | 130 |
| 3. | Gopal Singh | 16.11.57 | 401 |
| 4. | Nand Lal | 12.12.57 | 402 |
| 5. | Mahendra Singh | 15.2.58 | 403 |



3. It has been alleged that in the selection which was held in the year 1973 for the post of Fireman Grade-A, Sarva Shri Gurdayal Singh and Trilok Nath, persons junior to the petitioners, were selected. They were shown at positions 407 and 422 respectively, as against higher position claimed by the petitioners. The details about both Shri Gurdayal Singh as well as Shri Trilok Nath are given below:

1. On 5.10.1968 they became Fireman-B in the grade 100-130 and in the promotion order their names appear at serial No. 57 and 67 respectively(Annexure -2).
2. On 2.12.1975 they became Shunter -A in grade 290-400.
3. On 27.9.1978 they became Driver Grade C in grade 330-560.

4. It has next been alleged that in the Divisional Seniority List of Fireman-C as on 1.7.1966 and Divisional Seniority List of Fireman-Grade-B as on 2.11.1977, Sarva Shri Gurdayal Singh and Trilok Nath, though juniors, were always shown higher in the seniority list, as a result of original error. Had the correct seniority been assigned to the petitioners, they would have been promoted in preference to the said Shri Gurdayal Singh and Shri Trilok Nath. The date of appointment of Shri Gurdayal Singh is 25.1.1958 and his name appears at Sl. No. 407 and that date of appointment of Shri Trilok Nath is 31.1.1958 and his name appears at Sl. No. 421. Had the petitioners been promoted to the post of Fireman Grade-B in preference to the said Gurdayal Singh and Trilok Nath, they would have been selected as Fireman Grade-A in the year 1973 and could have been Shunter -A in 1975 and Driver Grade-C in 1978. It has further been alleged that Harbhajan Singh, Diesel Assistant and Nawal Singh, Diesel Assistant, contested for their seniority according to the dates of their appointments as Cleaners in a civil suit in the court of Civil Judge Class I Guna M.P. and obtained a decree in accordance therewith.

5. When this decree of Civil Judge came up in execution appeal before the Additional District Judge, Guna(M.P.), it was held by that court that Shri Harbhajan Singh was entitled to the assignment of seniority between the names of Shri Nand Lal appearing at Sl. No. 402 and Shri Mahendra Singh appearing at Sl. No. 403 on the basis of Shri Harbhajan Singh's date of appointment as 22.1.1958 because the date of appointment of Shri Nand Lal was 12.12.1957 and that of Shri Mahendra Singh was 15.1.1958. Similarly Shri Nawal Singh was ordered to be shown between the names of Shri Man Singh at Sl. No. 582 and Shri Kalji Bhai at Sl. No. 583 on the basis of Nawal Singh's date of appointment as 14.11.1958 because Shri Mahendra Singh's date of appointment was 31.10.1958 and that of Shri Kalji Bhai was 21.6.1959. Thus there was specific direction to assign higher seniority to Shri Harbhajan Singh and Nawal Singh on the basis of their dates of appointment.

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH: JODHPUR

6. On the basis of the aforesaid decision of the Civil Court the petitioners gave a registered notice through their counsel to the General Manager, Western Railway,Divisional Railway Manager,Western Railway, Kota and Senior Divisional Mechanical Engineer,Western Railway, Kota requesting them to assign the correct seniority to the petitioners and promote them with retrospective effect from the date, their juniors were promoted alongwith all consequential benefits. The said authority did not reply to the notice.

7. Aggrieved from the inaction of the said authorities who are now respondents, the petitioners preferred the afore mentioned writ petitions in the High Court for seniority on the basis of the date of appointment with all consequential benefits including promotions with retrospective effect.

8. In T.A. No. 575/86( Writ Petition No. 2210/83) filed by the petitioner Tara Chand, T.A. No. 632/86(Writ Petition No. 1525/84) filed by the petitioner Sudesh Kumar and T.A. No. 630/86 (Writ petition No. 1523/84) filed by the petitioner Makhan Lal, written statements have been filed by the respondents. No written statement has been filed in the remaining TAs.

9. Admitting the fact that the petitioner Tara Chand was initially appointed as a temporary Cleaner by order dated 24.1.1957,they have mainly contended that though he was promoted to officiate on the post of Second Fireman in 1963, he was medically declared unfit for that post in the year 1966 and was accordingly given the alternate post of Marker. Subsequently the petitioner vide his application dated 25.2.1972 requested that he might be re-absorbed as Second Fireman and he was willing to accept seniority under the extant Rules. Accordingly the petitioner was re-absorbed as Second Fireman by order dated 12.4.1974 and given seniority between Nathu Lal-M and Mohammad Hanib-A, below all confirmed Second Firemen on that date under the extant rules. According to rules, he was given due seniority after his re-absorption a

A3/3

Secohd Fireman in 1974 and ~~thxtx~~ he was promoted as Fireman Grade-B by order dated 18.5.1974.

10. Except as indicated above, identical defence has been taken by the respondents in all the said three TAs Nos.575/86, 630/86 and 632/86. The respondents have contended that the seniority list, referred to by the petitioners was published in the year 1963 i.e. more than two decades back and was circulated to all concerned affording the opportunity to submit representation if any, against the said seniority list within one month. The petitioners did not avail of that opportunity and therefore, they are estopped from assailing the aforesaid seniority list at such a late stage. However, the seniority issued is based on the merit order in terms of the Note-2 below para -604 (D) of the Establishment Manual. The allegations of the petitioners that they were seniors and the persons junior to them had been assigned higher position in the seniority list was wrong. It has further been contended that the decision of the court of the Civil Judge, Guna, is not a precedent and that the petitioners have no right to claim any benefit of seniority on the basis of the said judgment. The petitions are, therefore, liable to be dismissed.

11. We have heard the arguments of learned counsel for the parties and have gone through the record.

12. Although no specific plea regarding non-joinder of necessary parties has been taken by the respondents, the learned counsel for the respondents has argued that the reliefs prayed for by the petitioners, if granted, will directly affect Gurdayal Singh, Trilok Nath, Kailash Chand and others. They have not been impleaded. The TAs (Writ Petitions) are not, therefore, maintainable for non-joinder of necessary parties.

13. We have given considerable thought to the arguments of the learned counsel for the respondents. The question as to who are necessary party or parties will depend on the

A3/9

nature of the case and the nature of the relief claimed. In this connection A.I.R. 1963 S.C. 786, Udit Narain Singh vs. Board of Revenue may be referred.The Supreme Court observed:

> "The necessary party is one without whom no order can be made effectively, the proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings."

14. According to the principle of law as laid down by the Supreme Court in the case of Udit Narain Singh impleadment of a party is necessary only if no order can be made effectively in his absence.

15. The question as to who are necessary parties was considered and decided by the Ernakulam Bench of the Tribunal in T.S. Gopi and others vs. Deputy Collector of Customs and others. (full Bench judgment of Central Administrative Tribunal 1986-1989 page 341). The full Bench of the Tribunal observed as under:

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH JODHPUR

> "It must be borne in mind that the ultimate or original employer (U.O.I) is a necessary party where the impugned order has been passed by a servant of the Union of India in pursuance of a general instruction or direction issued by any Ministry or Department of the Government of India and the validity of the instruction is questioned. The same would be the position where the order impugned has a wide repercussion e.g. on the other employees in the same department, cadre, etc, but working in other units, regions where other functionaries also enjoy the delegated powers of employer like the General Manager of regional Railways. An order fixing seniority in one region/cadre may have effect not merely on the applicant but also on many other persons within and outside the region/cadre. If the order is quashed or modified on certain principles or interpretation, others in the section, cadre or department may also be affected directly or constructively, some favourably and some unfavourably. It is the interest of the latter that has to be kept in mind in a case of fixation of seniority. In effect, where the final order of the Tribunal is likely to affect persons other than the applicant or applicants, the impleadment of the ultimate/original employer will be necessary."

16. In the case before us the petitioners have claimed seniority on the basis of the date of their appointment whereas the respondents have contended that the seniority issued in 1963 was strictly based on the merit order assigned to the candidates. The question is whether the railway authorities should adopt the policy to assign seniority to the petitioners on the basis of the dates of their appointment or they should assign seniority to them on the merit order The question substantially relates to general policy in accordance with law. In view of this, though the parties referred to by the learned counsel for the respondents might be affected by change of seniority of the petitioners, they are not necessary parties.

17. In this connection A.I.R. 1974 Supreme Court 1755 the General Manager, Southern Central Railway vs. AV.R. Siddhanti may be referred. The Supreme Court observed as under:

> "Where the validity of policy decisions of the Railwy Board regulating seniority of Railway Staff was challenged on the ground of their being violative of Arts 14 and 16 of the Constitution, and the relief is claimed only against the Railway, it is sufficient if the Railway was impleaded and non-joinder of the employees likely to be affected by the decision in the case is not fatal to the Writ Petition.Those employees were at the most proper parties but not necessary parties."

In view of the above the other employees whose seniority might be affected by change of seniority of the petitioners could be proper parties. Their non-impleadment can-not be fatal.

18. Now, we turn to the question of delay and laches on the part of the petitioners in filing writ petitions before the High Court of Rajasthan. It may be stated that no limitation period is prescribed for filing writ petitions in the High Court for redressal of grievances. However, the same should be done within reasonable time.

19. While dealing with the question of long un-explained

A3

delay in filing petitions in the dispute about interse seniority in G.P. Daval vs. Chief Secretary, Government of U.P. ( AIR 1984 S.C. 1527) the Supreme Court held as under:

> "A grievance was made that the petitioners have moved this Court after a long unexplained delay and the Court should not grant any relief to them. It was pointed out that the provisional seniority list was drawn up on March 22nd, 1971 and the petitions have been filed in the year 1983. The respondents therefore, submitted that the court should throw out the petitions on the ground of delay, laches and acquiescence. It was said that promotions granted on the basis of impugned seniority list were not questioned by the petitioners and they have acquiesced into it. We are not disposed to accede tothis request because respondents 1 to 3 have not finalised the seniority list for a period of more than 12 years and are operating the same for further promotion to the utter disadvantage of the petitioners. petitioners went on making representations after representations which did not yield any response, reply or relief. Coupled with this is the fact that the petitioners belong to the lower echelons of service and it is not difficult to visualise that they may find it extremely difficult to rush to the Court Therefore, the contention must be rejected."

20. In Arun Kumar Chatterjee vs. South Eastern Railways (AIR 1985 S.C. 481) the petition was dismissed by the High Court on the ground of inordinate delay. The Supreme Court held that there was no justification in depriving the petitioner of his legitimate rights...."

21. In Ram Chandra Shankar Deodhar and others vs. The State of Maharashtra and others (AIR 1974 SC 259) the Supreme Court observed:

> "The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case."

22. In the case before us, it has been alleged that the date of appointment of one Shri Harbhajan Singh on the post of Cleaner was 22.1.1958 and the date of appointment of Shri Naval Singh on that post was 14.11.1958.Both obtained a decree dated 3.12.1977 from the Civil Court for assigning them seniority according to their date of appointment as Cleaner

A3/12

Accordingly, Shri Harbhajan Singh was assigned seniority between the names of Shri Nand Lal appearing at serial No. 402 and Shri Mahendra Singh appearing at serial No. 403, because the date of appointment of Shri Nand Lal was 12.12.57 and that of Shri Mahendra Singh was 15.1.1958. Shri Naval Sing was assigned seniority between the names of Shri Man Singh at serial No. 582 and Shri Kalji Bhai at serial No. 583 on the basis of Naval Singh's date of appointment as 14.11.1958 because Shri Man Singh's date of appointment was 31.10.1958 and that of Shri Kalji Bhai's date of appointment was 21.6.59.

23. We have considered the said allegations of the petitioners. The above facts clearly indicate that Shri Harbhajan Singh and Shri Naval Singh had been assigned seniority in compliance with the said decree dated 3.12.1977

24. It has next been alleged on behalf of the petitioners that when the petitioners came to know about the said decree passed by a Civil Court in favour of Shri Harbhajan Singh and Shri Naval Singh and that in compliance of that decree both of them were assigned seniority on the basis of date of their appointment, they served a demand notice on the respondents in October, 1983 whereby they requested the respondents to accord similar treatment to the petitioners as had been given by them to Shri Harbhajan Singh by assigning seniority to them according to their respective initial dates of appointments with all consequential benefits with regard to further promotions etc. The petitioners did not receive any reply from the respondents. They therefore, filed the aforesaid writ petitions in the Rajasthan High Court in the year 1983-1984.

25. The above will show that the cause of action for rectification of error, if any, in the seniority list first arose in 1963 and thereafter in 1977 or 1978 when Shri Harbhajan Singh and Nawal Singh were assigned seniority on

AB/13

the basis of their dates of appointment and lastly when the demand notice of the petitioners was not replied ~~xx~~ by the respondents. The Writ petitions appear to have been filed within one year of the said demand notice of the petitioners. In view of these successive facts and circumstances, the Writ Petitions cannot be said to have been filed in the Rajasthan High Court with inordinate delay. The above makes it quite clear that there is no such delay or laches on the part of thepetitioners so as to refuse to consider their petitions and deprive them of their legitimate rights. The TAs cannot therefore be thrown out on the ground of delay or any laches.

26. Now, we examine the case of the petitioners on merits. We will first deal with writ petition No. 2210/1983 received in the Tribunal by transfer and registered as T.A. No. 575/86

27. According to the allegations of the petitioner, he was initially appointed as Cleaner in Kala Loco of Western Railway with effect from 29.1.1957. The respondents have, however, disclosed the date of appointment as 24.1.1957 as temporary cleaner. The petitioner has alleged that he was promoted to officiate on the post of Second Fireman in May, 1963 and then as Fireman Grade B in May 1974 and then as Diesel Assistant in March 1978.According to him he should have been assigned seniority between serial Nos. 129 and 130 on the basis of his date of appointment. This position has been challenged by the respondents. They have contended that the petitioner was medically declared unfit for the post of Second Fireman in the year 1966 and he was accordingly given the alternate post of Marker. Subsequently, the petitioner, vide his application dated 25.2.1972(Annexure R-1) requested that he may be re-absorbed as Second Fireman and he was willing to accept seniority under the extant rules. Accordingly, the petitioner was re-absorbed as Second Fireman b

A3/14

by order dated 12.4.1974 and given the seniority below all confirmed Second Firemen on that date under the extant rules. Intimation to this effect was also communicated to the petitioner vide office order dated 17.6.1974(Annexure R-2)

28. The petitioner does not appear to have repelled the above contention by filing any rejoinder. It is manifestly clear from the above facts and the documentary evidence that the petitioner accepted that position at his own accord.

29. In this connection, attention may be drawn to rule 312 of the Railway Establishment Manual, which provides that "seniority of railway servants transferred at their own request from one railway toanother should be allotted below that of the existing confirmed and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating service of the transferred railway servants."

30. As the petitioner Shri Tara Chand was re-absorbed as Second Fireman on his own request, and willingness to accept seniority under the extant rules, he was given seniority below all confirmed Second Firemen on that date. This was done in accordance with rules and with the consent of the petitioner. He accepted a post on his own volition and now cannot turn back so as to claim higher rank or seniority.



31. The position of Tara Chand is therefore, different from the position of S/Shri Harbhajan Singh and Naval Singh aforesaid. He cannot be equated with them in respect of assignment of seniority on the basis of his date of appointment. T.A.No. 575/86 is therefore liable to he dismissed.

32. As regards the remaining petitions, it is an admitted fact between the parties that Shri Harbhajan Singh who was also appointed as Cleaner, was assigned seniority on the basis of

AB/15

his date of appointment in pursuance of declaration by Civil Court. Similarly Shri Naval Singh who was also appointed initially as a Cleaner, was assigned seniority on the basis of his date of appointment in compliance with the decree of the Civil Court. It will appear from the seniority list of 1963 that the name of Shri Harbhajan Singh has been shown in Annexure -1 of paper book of T.A. No. 630/86 at serial No. 566. He was assigned seniority between serial No. 402 and 403 on the basis of his date of appointment as 22.1.1958. On the same analogy the petitioners have claimed seniority over Shri Gurdayal Singh and Trilok Nath, who were juniors to the petitioners and were shown at higher places in the seniority list prepared in 1963. The serial numbers at which the petitioners have been placed in the seniority list of 1963, have been given in the chart given heretofore.

33. The respondents have denied the claim of the petitioners contending that the decision of the court of Civil Judge, Guna is neither a precedent, nor is binding upon this court and the petitioners have no right to claim any benefit of seniority on the basis of the aforesaid judgment.

34. In this connection an unreported decision dated 16.1.1979 of the Rajasthan High Court in Ranjit Singh vs. State of Rajasthan may be referred. While following the decision of the Hon'ble Supreme Court in K.I. Shepherd vs. Union of India (AIR 1988 S.C. 686) the High Court observed as under:

> "The Supreme Court has in clear terms emphasised that all the persons who are similarly situate should be given the benefit of the orders of the court and the same principle should apply to decide their cases irrespective of the fact whether they have approached the court or not. There is no justification to penalise them for not having litigated. If they are similarly situate, they are also entitled to the same benefits as others, who had agitated the matters in the courts."

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH JODHPUR

AB/16

35. It is amply clear that the petitioners andother persons named as Gurdayal Singh, Trilok Nath, Harbhajan Singh and Nawal Singh were initially appointed as Cleaners. The seniority list of those who were initially appointed as Cleaners, was drawn up in 1963. Since the said Harbhajan Singh and Naval Singh were assigned seniority on the basis of their appointments as a result of Civil Court decree, the petitioners, who are similarly situated, should be given the benefit of the orders of the Civil court and the same principle should apply to decide their seniority irrespective of the fact whether they have approached the court or not.

In this connection 1975(1) SLR Amrit Lal vs.Collector of Central Excise, Delhi (S.C.) 153, may be referred. The Supreme Court observed:

> "When a citizen aggrieved by the action of Government Department has approached the court and obtained a declaration of law in his favour, others in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to accept that they will be given thebenefit of this declaration without the need to take their grievance to court."



36. The principle of law as laid down by theHon'ble Supreme Court in the aforesaid cases leaves no doubt in our minds as to the entitlement of the petitioners for the same benefits which have been given to Harbhajan Singh and Naval Singh in pursuance of Civil Court decree.

37. The learned counsel for the respondents has vehemently argued that the seniority of the petitioners was drawn in accordance with the extant rules and therefore, their seniority cannot be changed. He has placed reliance on rule 303 of the Indian Railway Establishment Manual which is reproduced below:

"(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted again working posts."

(b) Candidates who do not have to undergo any training the seniority should be determined on the basis of the merit order assigned by the Railway Service Commission or other recruiting authority."

A perusal of the rule will show that it is applicable to those employees who are recruited at one time for one and the same grade or cadre. It does not say anything about the panels drawn at different points of time. A perusal of the seniority list of 1963 (Annexure 1) of T.A. No. 630/86 will show that the seniority had been drawn for the panels formed from 1.8.1956 onwards. This seniority list was prepared in October, 1963. It follows from this that the seniority was drawn for various panels formed at different point of times from 1.8.1956 to October 1963. It is also clear from the said seniority list (Annexure 1) that the candidates of lower panels absorbed against the post of higher panel were placed below all candidates of that panel maintaining their interse order of merit on the panel they were originally placed. The respondents have not been able to point out any rules under which seniority of the appointees on one and the same post or cadre at different points of time and from different panels would be determined. In the absence of any specific rules, principle of length of service and continuous officiation should normally be followed.

38. In this connection decision of the Principal Bench of this Tribunal inthe case of K.N. Mishra andothers. vs. Union of India and others(1986 ATJ Volume I, page 473) may be referred. It was held that seniority in a cadre, grade or service would have to be determined on the basis of continuous officiation."

43/18

39. In N.K. Chauhan vs. State of Gujarat (AIR 1977 S.C. 251) the Supreme Coutt held,"....seniority normally is measured by length of contiuous officiating service- actually, is easily accepted as the legal."

40. In G.S. Lamba vs. Union of India AIR 1985 S.C. 1019), the Supreme Court further observed as under:

> "....in the absence of any other valid principle of seniority, it is well established that the continuous officiation in the cadre, grade or service, will provide a valid principle of seniority. The seniority lists having not been prepared on this principle are liable to be quashed and set aside."

41. In O.P. Singla vs. Union of India (AIR 1984 S.C 1595) the Supreme Court observed:

> "....It is, however, difficult to appreciate how in the matter of seniority, any distinction can be made between direct recruits who are appointed to substantive vacancies in the service."

42. It is amply clear that in the absence of any other valid service rule the continuous officiation in the cadre, grade orservice will provide a valid principle of seniority. Continuous officiation has to be counted from the date of appointment in the case of the direct appointees and from the date of promotion in the case of the promotees. The petitioners are direct appointees and the question of interse seniority should therefore be fixed on the basis of the dates of their appointment.

43. We, therefore, direct that the petitioners shall be assigned inter-se seniority on the basis of the dates of their appointments. They shall be entitled to consideration for promotion to higher posts from the dates their juniors were promoted in accordance with the Rules on the basis of the revised seniority list. Their cases shall be reviewed

by Review DPCs.However,the juniors who have been officiating in higher posts for long periods, shall not be reverted to lower posts. They shall be absorbed against future vacancies or supernumerary posts created to accommodate them. But they shall be considered for future promotions on the basis of their revised seniority.

44. The above directions shall be implemented within a period of three months of the date of receipt of a copy of this judgment by the Respondents.

45. The TAs are disposed of accordingly except for T.A. No. 575/86 which is dismissed for reasons indicated in para 31 above. No order as to costs. Let a copy of this judgment be kept in each of the TAs for record.

19.1.90

(S.R. SAGAR)
JUDL.MEMBER

19.1.90

(KAUSHAL KUMAR)
VICE CHAIRMAN.