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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH  
JODHPUR

Date of decision: Jan. 30, 1989

T.As Nos 705/86 & 714/86

(1) T.A. No. 705/86

Shri Vridhi Chandra Kaushik

...Petitioner.

Shri Rajendra Soni

...Counsel for the  
Petitioner.

Versus

Union of India & ors.

...Respondents.

Shri M.S. Gupta

...Counsel for  
Respondent No.4

Shri R.S. Toshniwal

...Representative of  
Respondents Nos. 1  
to 3.

(2) T.A. No. 714/86

Shri Bhanwar Lal Sharma

...petitioner.

Shri Rajendra Soni

...Counsel for the  
petitioner.

Versus

Union of India & ors.

...Respondents

Shri M.S. Gupta

...Counsel for  
Respondent No. 4 & 5 -

Shri R.S. Toshniwal

...Representative of  
Respondents Nos 1 to

CORAM:

THE HON 'BLE SHRI B.S. SEKHON, VICE CHAIRMAN.

THE HON 'BLE SHRI G.C. SINGHVI, ADM. MEMBER.

G.C. SINGHVI

These S.B. Civil Writ petitions filed in the  
Rajasthan High Court (registered at No. 1632/85 dated  
18.9.1985 and at No. 1857/85 dated 16.10.1985 respectively)

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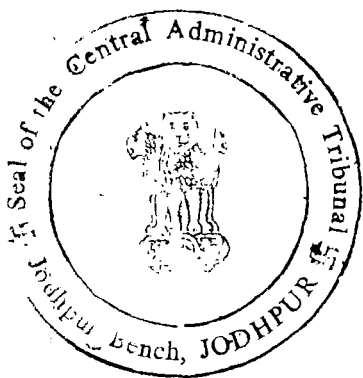
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since transferred to the Tribunal by virtue of operation of section 29(1) of the Administrative Tribunals Act, 1985 and rechristened as Transferred Applications (Nos 705/86 and 714/86 respectively) were heard together and are being disposed of by this common judgment in as much as the substantial questions for decision raised in them are practically the same.

2. In the former transferred application Shri Vridhi Chandra Kaushik is the petitioner and the Union of India through General Manager, Western Railway, Bombay, D.R.M. Western Railway, Jaipur, D.O.S., Western Railway, Jaipur and Shri U.P. Verma are respondents Nos. 1, 2, 3 & 4 respectively. In the latter transferred application Shri Bhanwar Lal Sharma is the petitioner and there are five respondents-the first four being the same as in the former transferred application and the fifth one being Shri Rajendra Singh.

3. A bird's eye view of the factual backdrop necessary to be stated for adjudication of the instant transferred applications is set out in the succeeding paragraphs.

4. To start with, we take up transferred application No. 705/86 for consideration. The petitioner (Shri V.C. Kaushik) was appointed as a Train-s Clerk in Western Railway, in the grade of Rs 110-180 (later on revised as Rs 260-400) on 31.4.1956. On 6.2.1958 he was confirmed in his appointment. On 1.10.1962 he was promoted as Senior Trains Clerk (Rs 330-560). On 3.12.1963 he was



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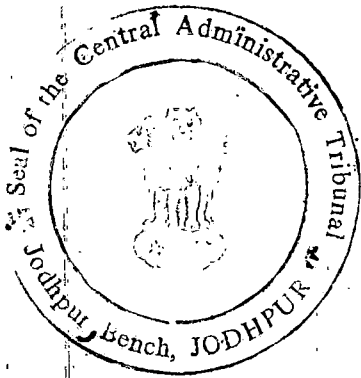
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confirmed in this appointment. In 1964 he appeared and passed the suitability-seniority test for the post of Guard and was sent for undergoing training at Zonal Railway Training School, Udaipur. He successfully underwent this training course. With effect from 8.1.1965 he ~~was~~ was, therefore, appointed as Guard grade 'C' (in the grade of Rs 330-560) and was confirmed in this appointment on 14.8.1970. On 1.6.1981 he was promoted as Guard grade 'B' (Rs 330-560) and has been working as such since then. The petitioner, after narrating all these facts, has added that his service record has been clean and unblemished and that during the course of his service no penalty was awarded to him.

5. Shri U.P. Verma, Respondent No. 4 was appointed as L.D.C. in North East Frontier Railway, Gorakhpur in the grade of Rs 260-400 on 26.3.1954. On 24.6.1962 he was promoted as U.D.C. (Rs 330-560) and subsequently he was declared surplus in the N.E.F.R. and opted for and was absorbed in the Western Railway. Later he appeared in the test for Guard grade 'C' and passed the same whereon he was sent to Zonal Railway Training School, Udaipur for undergoing training in 1970. On 18.9.1970 he was appointed as Guard grade 'C' (Rs 330-560).

6. On 9.1.1978 the Railway Administration published a seniority list of Guards grade 'C' wherein the name of ~~the~~ the petitioner Shri V.C. Kaushik was shown at No. 110 and the name of respondent No. 4 Shri U.P. Verma <sup>was</sup> shown at No. 158. Aggrieved with this seniority respondent No. 4 Shri U.V. Verma on 7.11.1978 filed a Civil Suit (343 of

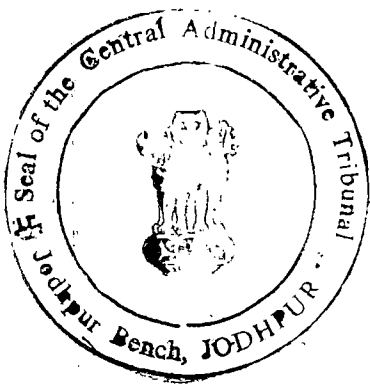
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preference to him(the petitioner) .

10. The petitioner has also contended that according to various circulars of the Railway Board seniority of Guards grade 'C' is to be determined by the date of joining as Guard grade C after successfully undergoing Guard grade C training at Zonal Railway Training School, Udaipur. The petitioner completed his training in April, 1964, where-as, Shri U.P. Verma(respondent No. 4) completed it on July 6, 1970. The petitioner was appointed as a Guard grade C with effect from 8.1.1965 but Shri U.P. Verma was appointed as Guard grade C with effect from 18.9. 1970 As such Shri U.P. Verma cannot be deemed to be senior to the petitioner. The petitioner has laid considerable stress on the fact that action of the respondents Nos. 1 to 3 in promoting Shri U.P. Verma as Guard grade A instead of promoting the petitioner would be arbitrary, illegal and violative of Railway circulars. His prayer therefore, was that he be promoted as Guard grade A treating him senior to respondent No. 4 Shri U.P. Verma.

11. A stay application was also filed in the Rajasthan High Court by the petitioner Shri V.C. Kaushik on 4.10.1985 whereon it was ordered by the High Court that the petitioner "in the meantime" shall not be reverted from his present post.

12. Shri U.P. Verma respondent No. 4 in his counter pointed out that he was promoted as U.D.C. with effect from 19.7.1961 and not from 24.6.1962 as averred by the petitioner. Actually, he was confirmed as U.D.C. with effect from 24.6.1962. He was then posted as a Guard Grade C on completion of training in March 1970 and was



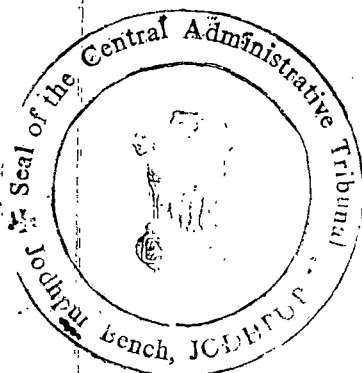
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confirmed as Guard grade C with effect from 1.9.1977. As a rejoinder the petitioner stated that Shri U.P. Verma passed his training at Udaipur on 6.2.1970 but as there was no vacancy of Guard grade C available then, he was posted as Guard grade C on 18.9.1970 when a vacancy occurred. On other points raised by the petitioner his arguments centred round the Civil Court case decided in his favour and which in his view justifies the according of revised (Guard Grade 'C') seniority to him placing him above the petitioner therein.

13. We now, turn to the transferred application No. 714/86. The petitioner Shri Bhanwar Lal was appointed as a Trains Clerk in Western Railway in the grade of Rs 110-180 (later on revised as Rs 260-400) on 31.5.1956. He was confirmed in this appointment with effect from 31.1.1958. In March 1964 he was promoted as a Senior Trains Clerk in the present grade of Rs 330-560. In June 1965, after passing the suitability-seniority test, he was detailed to undergo training at Zonal Railway Training School, Udaipur. On 25.3.1967 he was appointed as Guard grade C (Rs 330-560) and with effect from 27.9.1970 he was confirmed in that appointment. Subsequently he was promoted as Guard grade B and had been continuing on that post since then. Like Shri V.C. Kaushik, the petitioner of the former transferred application, Shri Bhanwarlal, the petitioner of the latter transferred application, has also contended that his service record has been clean and unblemished and no penalty was awarded to him.

14. The petitioner has repeated the same facts about the respondent No. 4 Shri U.P. Verma which had

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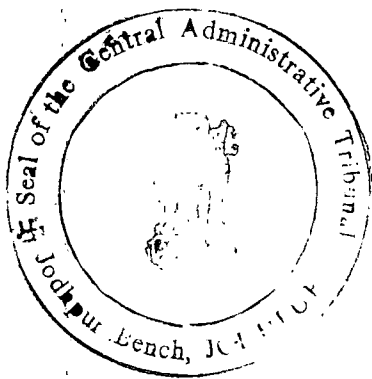
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been narrated in the former transferred application. In addition for respondent No. 5 Shri Rajendra Singh, he has stated that he was appointed as L.D.C. on 18.7.1956 and was promoted as U.D.C. with effect from 1.1.1966. In 1970, after passing the suitability-seniority test, Shri Rajendra Singh was also detailed to undergo training at the Zonal Railway Training School Udaipur. After successfully completing the training he was appointed as Guard grade C on 5.4.1970.

15. Shri Rajendra Singh, respondent No. 5 like Shri U.P. Verma, respondent No. 4 had also filed a Civil suit and was assigned seniority in the grade of Guard grade C with effect from the date of promotion on the post of U.D.C. namely 1.1.1966 by the first appellate court. Like in the former transferred application a S.B. Civil Second appeal (No. 68 of 1984- Union of India vs. Rajendra Singh) was filed by the Railway Administration in the Hon'ble High Court of Rajasthan which was dismissed by Hon'ble Shri D.L. Mehta, J. on Feb. 2, 1985.

16. The petitioner Shri Bhanwarlal has laid considerable stress on the fact that like Shri V.C. Kaushik, the petitioner of the former transferred application, he too had not been a party to the Civil Suit and as such his rights cannot be taken away as a consequence of the decision in that Civil Suit. Had the petitioner been afforded an opportunity of being heard by the Civil Court, he would have opposed the Civil Suits filed by the respondents Nos. 4 and 5 and the judgments and decrees of the Civil courts and the appellate courts and the High Court which had been recorded in favour of the respondents Nos. 4 and 5 (and which were not binding on the



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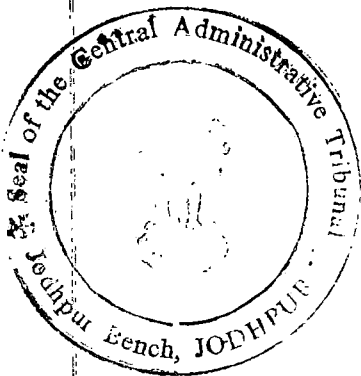
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petitioner) might have been announced in favour of the petitioner and against the respondents Nos. 4 & 5. In sum, the judgment and decree of the Civil Court are not binding on the petitioner and the rights of the petitioner cannot be put in jeopardy on the basis of the judgment of the Civil Court and the appellate court in the case in which he was not a party. Any action, the petitioner, has added, taken by the respondents Nos. 1 to 3 in pursuance of the judgment of the Civil Courts wherein both the petitioners S/Shri V.C.Kaushik and Bhanwar Lal were not parties, would be blantly arbitrary and violative of principles of natural justice.

17. The petitioner Shri Bhanwarlal's apprehension also, like the apprehension of the other petitioner Shri V.C.Kaushik, was that respondents Nos. 4 and 5 after being assigned higher seniority as per Civil Court judgment would get promoted earlier in preference to him. He too therefore, prayed that respondents Nos. 1 to 3 may be directed to treat the petitioner as Senior to respondents Nos. 4 and 5.

18. In his counter to the Transferred Application, the respondent No. 5 has endeavoured to controvert the averments made by the petitioner on the plea of Civil Court case having been decided in his favour and which in his view justifies the according of the revised (Guard grade C) seniority to him placing him above the petitioner

19. We have given our careful consideration to the pleadings of the parties, documents on record as also the

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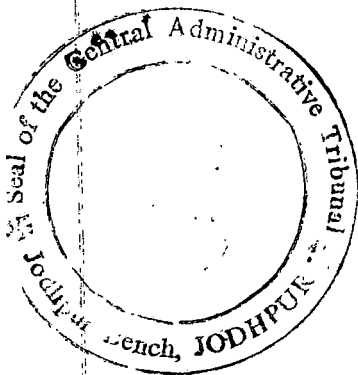
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contentions advanced by the learned counsel for the parties.

20. Both the petitions/TAS centre round the question of seniority and that also of four employees. the two petitioners, namely S/Shri V.C.Kaushik and Bhanwarlal and the two respondents namely S/Shri U.P. Verma and Rajendra Singh and the dispute is about the inter-se seniority. The petitioner Shri V.C.Kaushik claims to be senior to Shri U.P. Verma and the petitioner Shri Bhanwarlal claims to be senior to S/Shri Rajendra Singh and U.P. Verma both. Accordingly, to start with, we will have a look at their respective seniorities as published on different dates by the Railway Administration:

Name of position per Seniority lists dated				
Employee	22.11.71	9.1.78	4.2.83	24.9.85
V.C. Kaushik	141 A	110	80	--
Bhanwarlal	160	129	100	--
Rajendra Singh	190	157	126	94 A
U.P. Verma	191	158	127	52 A

By way of a note it may be added that seniority 141 A was accorded to Shri V.C. Kaushik vide order dated 27.8.1974 and consequently this limited amendment was made to the seniority list of 22.11.1971. The seniority list dated 24.9.1985 was issued for giving effect to the judgment and decree of the Civil Courts and the first Appellate Courts. That is why the name of Shri U.P. Verma was inserted at 52 A (between Shri P.S.Khatra 52 and Shri R.K. Malhotra 53) and the name of Shri Rajendra Singh was inserted at 94 A (between Shri M. Gupta 94 and Shri Madan Lal Goyal 95). And this is the seniority list which



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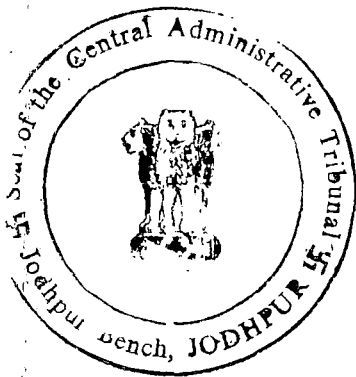


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has, in effect, been challenged by the petitioners on the plea that this change was brought about in the seniority as a result of the decisions of the Civil Courts and the first appellate courts in which the petitioners were not the parties.

21. A perusal of the seniority lists dated 22.11.1971, 9.1.1978 and 4.2.1983 as excerpted in the preceding paragraph goes to show that these seniority lists were prepared on the principle that the date of promotion in case of rankers and date of appointment in the case of direct recruits subject to maintenance of inter-se seniority of their relevant branch are the determinants and it draws sustenance from Railway Board's letter dated 16.11.1961 addressed to the General Managers All India Railways and copy to others on the subject, "Determination of seniority of non-gazetted staff-Direct recruits vis-a-vis Departmental promotees". First para of this directive which is relevant for the purpose of deciding these applications is reproduced hereinbelow:

"The Board have had under consideration the question of laying down a uniform basis for determining relative seniority of non-gazetted staff in posts which are partially filled by direct recruitment and partially by promotion of staff from different categories e.g. Guards grade 'C' and similar other categories in initial recruitment or intermediate grades. It has been decided that the criterion, for determination of seniority should be date of promotion in the case of a promotee and the date of joining the working posts in the case of the direct recruit



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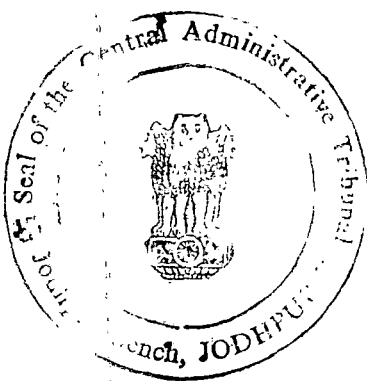
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subject to the condition that inter-se-seniority of promotees and direct recruits respectively is not disturbed. In cases where the promotees and direct recruits happen to join the working posts on one and the same date the promotees and direct recruits should be put in alternate positions subject to the condition that the inter-se-seniority of the two categories already assigned is not disturbed."

It is thus evident that seniority lists of 1971, 1978 and 1983 were drawn in accordance with the above instructions of the Railway Board. We have therefore, to look at the date when each one of these four employees was appointed as Guard grade C because that date would be the crucial factor for determining their seniority and interalia inter-se-seniority as well. The dates when these persons were appointed as Guard grade C are:

V.C. Kaushik	8.1.1965
Bhanwarlal	25.3.1967
Rajendra Singh	5.4.1970
U.P. Verma	18.9.1970

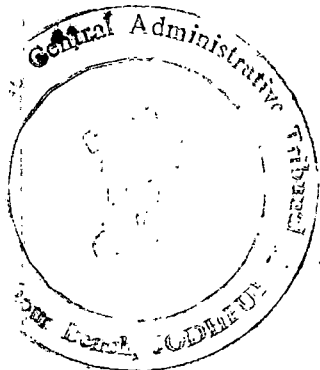
These dates, it may pertinently be added, go very well with the seniority accorded to these four employees vide the above seniority lists of 1971, 1978 and 1983 and disturbing these on the basis of the decisions of the Civil Courts and the first appellate courts in cases in which two out of these four persons namely S/Shri V.C. Kaushik and Bhanwarlal-the petitioners were not parties, is not at all sustainable.



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22. The Respondents Nos 4 and 5 have also failed to cite any rule or circular for according of weightage to previous service while determining seniority as Guard grade C. The petitioners have certainly cited a Railway Board letter dated 26.11.1970 which lays down that weightage of previous service in the new post should not be accorded for the purpose of determining seniority but this circular applies to the seniority of the running staff(both surplus and non-surplus) on their appointment to the posts of Trains Clerks, Ticket Collectors and commercial Clerks and not to Guards grade C. Finally the Railway Board directions of 15.4.1966 which have repeatedly been referred to by the petitioners are not proposed to be taken into consideration because they had duly been considered by the Hon'ble Shri D.L. Mehta J. in S.B. Civil second appeal 68/84-Union of India vs. Rajendra Singh wherein it was stated that that circular dated 15.4.1966 only relates to the project staff of the Railways. The last two sentences in the judgment order read: "In the facts and circumstances of the case ; especially when there is no evidence to show that the appellant was the project employee, I do not find force in the second appeal. The appeal is therefore, rejected". It may pertinently be added at this juncture that the S.B. Civil second appeal No. 69/84-Union of India & others vs. Shri U.P. Verma was dismissed by Hon'ble Shri S.N. Bhargava, J on the ground that ~~the~~ <sup>that</sup> the case was fully covered by <sup>the</sup> decision of the court in case S.B. Civil Second Appeal No. 68/84- Union of India vs. Rajendra Singh.

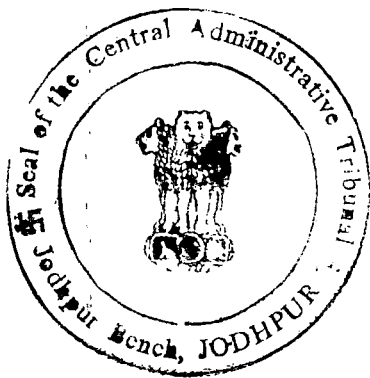


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23. The upshot of the aforesaid discussion is that both the transferred applications merit acceptance in that Shri V.C. Kaushik has to be adjudged senior to Sarva Shri Bhanwarlal, Rajendra Singh and U.P. Verma and Shri Bhanwar Lal Sharma has to be adjudged senior to Sarva Shri Rajendra Singh and U.P. Verma. In other words, the inter-se-seniority of all these four employees will be in the following descending order-V.C. Kaushik, Bhanwarlal, Rajendra Singh and U.P. Verma-in conformity with the seniority declared vide the lists of 22.11.1971, 9.1.1978 and 4.2.1983. Amendments made to the seniority list of 4.2.1983 vide order dated 24.9.1985 consequent upon Civil Courts' decisions whereby Shri U.P. Verma was placed at No. 52 A in the seniority list and as such above Shri V.C. Kaushik and Shri Rajendra Singh was placed at No. 94 A in the seniority list and as such above Shri Bhanwar Lal are hereby set aside. Petitioners shall be entitled to and be accorded consequential benefits resulting from this judgment by the respondents No. 1 to 3 within a period of three months hereof. The stay order issued on 4.10.1985 is hereby vacated.



24. Both the transferred applications are disposed of accordingly, leaving the parties to bear their own costs.

*(Signature)*  
(G.C. SINGHVI)  
ADM. MEMBER.  
30-1-89

*(Signature)*  
(B.S. SEKHON)  
VICE CHAIRMAN.  
30-1-89

Copy of Decision Sent to the -  
left (Shri V.C. Kaushik, Jodhpur)  
Reg. No. 1 (Shri M. A. Rly., Charingate, Bombay)  
Reg. No. 4 (Shri U.P. Verma, Ahudera)  
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