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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.Nos.1143/92,
440/94 & 571/94.

Dt. of Decision : 16-11-95..

O.A.No.1143/92.

1. P.Amos
2. Charles Domnic
Anthony Glover
3. P.Sailesh
4. Ch.Venkata Sridhar
5. T.Pratap Kumar
6. D.Bansley
7. D.Sreenivasa Rao
8. M.Mohana Sai Kumar
9. P.Venkata Sashaleh
10. D.Paul
11. Shaik Mastan
12. P.Koteswara Rao
13. K.Krishna Murthy
14. Shaik Mahamed Khaja
Valli
15. Abdul Azeez
16. Ch.Venkateswara Rao
17. Shaik Noor Ahmed Jani
18. T.Naga Venkata Soma Sekhar
19. P.Venkata Satyanarayana
20. S.Sitaramam
21. S.Kishore Kumar
22. S.Arun Kumar
23. B.Mario Babu
24. Naidu Arjun Rao
25. P.Babu Rao
26. Y.Nagendra Babu
27. R.Venkateswara Rao
28. G.Suresh Kumar
29. P.Srinivasulu
30. N.Suresh Kumar

.. Applicants.

Vs

1. Union of India, Rep. by
its General Manager,
SCRly, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
SC Rly, Rail Nilayam,
Secunderabad.
3. The Divl. Rly. Manager (Personnel Branch),
SC Rly, Vijayawada.

.. Respondents.

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12. D. Ramakrishna
13. P. Koteswara Rao
14. D. Poul
15. G. Rathnam
16. Sk. Masthan
17. Abdul Aziz
18. TNVS Sekhar
19. G. Mahar Babu
20. P. V. Seshaiah
21. N. Dayakar
22. E. Sambasiva Rao
23. P. Augustian Raju
24. M. Naga Rajan
25. N. V. V. S. G. K. Murthy
26. Abdul Ayub Jani
27. N. Suresh Kumar
28. Ch. V. Sreedhar
29. D. V. Ramana
30. MM Sai Kumar
31. Y. Nagendra Babu
32. Ch. Satyanarayana
33. J. Srinivasulu
34. Ch. Ram Babu
35. B. Vivekananda
36. T. Thurupathi Swamy
37. D. Venugopal
38. G. Prakasa Rao
39. DMD Vali Basha
40. Ch. Srinivasa Rao
41. Md. Mahabees Alam
42. S. Seetharaman
43. R. Venkateswara Rao
44. SSV Prasada Rao
45. K. P. Seryanarayana
46. MVK Mohana Rao
47. Ch. SRC Sekhar Rao
48. N. Soorapa Raju
49. M. Venu
50. N. R. Paramanandam
51. G. Murali Krishna
52. P. V. Satyanarayana
53. G. Gopalakrishna Murthy
54. P. Srinivasa Rao
55. BVB Krishna Reddy
56. S. Venkateswara Rao
57. U. Narasinga Rao
58. S. Kishore Kumar
59. Ch. Satyanarayana
60. K. Nageswara Rao
61. KY Unnikrishnan
62. I. Sudhakar Rao
63. Y. Srinivasa Rao
64. D. Ramesh
65. T. R. Satish
66. Y. Babu Rao
67. Ch. Naga Raju
68. P. Ramesh
69. K. Venkateswara Rao
70. P. Murali Krishna

71. P. Chinnaiah
72. G. Suresh Kumar
73. P. Ramakrishna
74. A. Chittaranjan Babu
75. P. Karimulla Khan
76. B. Mariya Babu
77. N. Arjuna Rao
78. Sk. Noor Ahmad Jani
79. D. Poornachandra Rao
80. P. Srinivasulu
81. Ch. Venkateswarlu
82. Pl. Babu Rao
83. S. Aruna Kumar
84. V. V. L. N. Murthy
85. G. Sunanda Kumar
86. B. Ramakrishna
87. K. Jaya Kumar
88. B. Ananda Rao
89. S. Perumal
90. S. Jakkar Hussain
91. Ch. Pratap Kumar
92. James P. M. Dias
93. J. Durga Prasad.

.. Respondents.

86. B. Ramakrishna
87. K. Jayakumar
88. B. Ananda Rao
89. S. Parumal
90. S. Jakeer Hussain
91. Ch. Pratap Kumar
92. James P. M. Dias
93. J. Durga Prasad.

(RR 75 to 93 are working under the control of Traction Foreman, SC Rly, Birtagunta).

.. Respondents.

D.A. 440/94.

1. T. Venkata Reddy
2. G. Narasimha Rao
3. M. Hrudaya Raju
4. L. Adinarayana
5. P. U. Sankar Babu
6. T. Yodha
7. A. Garataiah
8. L. Chandra Rao
9. D. Benjamin
10. NL Dilip Kumar
11. Sk Ismail
12. V. Narsimha Rao
13. B. Seshagiri Rao
14. R. Sankar Reddy
15. Md. Haffizulla
16. Sk. Khader Basha
17. P. Krishna Murthy
18. Sk. Abdul Khader
19. Md. Ali
20. G. Manga Raju
21. V. Ramji Rao
22. V. Venkateswar Rao
23. P. Kateswar Rao
24. G. Sudhakar Rao
25. CC Venkateswarlu
26. K. S. Dorai Raj
27. R. Venkateswarlu
28. Sk. Abdul Razack

29. P. Samuel
30. JSS Sarma
31. Ch. Krishnaiah
32. J. Venkateswar Rao
33. K. Ranga Sai
34. K. Adinarayana
35. T. S. Ramakrishna
36. Ck. Selva Raj
37. G. Nagaiah
38. D. Santha Raj
39. M. Malleswar Rao
40. K. Prasad
41. R. Raja Rao
42. Sk. Khader Sahib
43. K. Venkata Rao
44. Sd. Nazeer Ahmed
45. Sk. Md. Khasim
46. Ch. Venkateswarlu
47. G. Babu Rao
48. T. R. Naidu
49. T. Rama Narayana
50. K. Siva Reddy
51. Sk. Chand Basha
52. N. Kondiah
53. Sk. Mastan Vali
54. P. Ramana
55. T. H. Anandakumar

.. Applicants.

Vs

1. The Divl. Rly, Manager,
SC Rly, Vijayawada.
2. The Sr. Divl. Personnel Officer,
SC Rly, Vijayawada.
3. The Sr. Divl. Electrical Engineer,
SC Rly, Vijayawada.
4. P. Amos
5. Charles D. A. Glewer
6. P. Sailesu
7. Md. Khajavali
8. K. Krishna Murthy
9. D. Srinivasa Rao
10. TEI Stewart
11. D. Srinivas

J U D G E M E N T

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

The three O.As. involve the question of inter-se seniority between the direct recruits for the post of Fireman-A (later designated as First Fireman) and the promotees who were first promoted as adhoc Fireman-A/1st Fireman and later regularised in the said posts. They belong to Vijayawada Division of South Central Railway. All the three OAs can be conveniently disposed of by a common order.

O.A.NO.1143/92

2. The applicants in this OA are the direct recruits to the post of Fireman-A/1st Fireman. They filed this OA praying for a direction to the respondents for declaration that they were deemed to have been promoted to the next higher post of Shunters in the grade of Rs.1200-2040 (RSRP) from 11/14.12.82 from the dates their juniors were promoted to the said post with all consequential benefits including arrears of pay by holding that the impugned orders are illegal, void, and unenforceable.

3. In pursuance of the interim directions in OA 1143/92, the provisional seniority list of 1st Fireman was published as per letter No.B/P-612/II/2/RG/Vol.VII dated 18.6.93 and the same was made final as per letter of even number dated 1.3.94.

OAs 440/94 & 571/94.

4. The applicants in both these OAs were promoted to the post of 1st Fireman on adhoc basis in 1990 and later they were regularised in the said post from the respective dates of adhoc promotion. The seniority list circulated as per list dated 1.3.94 as referred to hereinbefore is assailed in these OAs. The direct recruits, some of whom are applicants in OA 1143/92, are impleaded as Respondents 4 to 93 in these OAs.

contd.....

Counsel for the Applicants

: Mr. G. Ramachandra Rao
in OA. No. 1143/92.

Mr. S. G. Ravinder Reddy
in OA. Nos. 571/94 & 440/94.

Counsel for the Respondents

: Mr. N. V. Ramana, Addl. CGSC.
in OA. Nos. 1143/92, 571/94 &
440/94.

CORAM:

THE HON'BLE SHRI JUSTICE V. N. ELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

direct recruits is two years. In pursuance of the indents placed for direct recruitment for Fireman-A from Vijayawada Division and other divisions of the South Central Railway, a notification was issued by the Railway Recruitment Board (RRB) for selection to the post of Fireman-A, and on the basis of the performance of the candidates who appeared in the said examination, a panel was prepared on 18.7.86 and from among them 121 were allotted to Vijayawada Division as per the letter dated 3.12.86. Out of them, 99 candidates alone accepted the offer and they were appointed as Apprentice Firemen-A during May-June 1987 and they were sent for training and on successful completion of two years training they were absorbed as First Fireman during May-June 1989. The applicants in OA 1143/92 are some of those direct recruits.

9. The IV Pay Commission recommended the same pay scale for Fireman-B and Fireman-^{A*} and hence both of them were merged with effect from 1.1.86 and designated as ^{First*} Fireman, while the Firemen-^C were designated as ^{Second*} Fireman with effect from 1.1.86.

10. The revised avenue chart of Loco Running Staff of all posts divisionally controlled was ordered as per the Railway Board's letter No.(SC 42/87) E(NG) 86-PM-1-11, dated 12.3.87, vide Annexure-4 in OA 1143/92. It is alleged for the official respondents that pending issue of the instructions regarding filling of the vacancies in the post of First Fireman, it was tentatively decided by the Chief Personnel Officer, South Central Railway, Secunderabad by the letter dated 6.4.87 that the vacancies of First Fireman which occurred upto 31.3.87 should be filled by promote^{ing}es, the Second Fireman, purely on

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4. For the sake of convenience the applicants in OA 1143/92 and those who were selected and appointed alongwith them will be referred as direct recruits, and those who were promoted as Firemen-A/1st Firemen on adhoc basis before the date of appointment of the direct recruits, and the applicants in the other two OAs and those who were promoted as First Fireman in 1990 will be referred to as promotees.

5. Prior to 1-1-86 the running staff of the cadre consisted of Firemen-C, Firemen-B, Firemen-A, Shunters and Drivers in that order and Firemen-C are in the lower echelon. Railway Board's letter No.E(NG)III-75-RC-1/69 dated 24-6-77 (Annexure R.I) lays down that the vacancies of Firemen-A arising from 1-4-77 onwards may be filled by the following procedure:

- a) 50% by the usual selection procedure from Firemen-B who have studied upto 8th class and are below 45 years of age.
- b) 50% by a Departmental examination from ~~all~~ Firemen-B and Firemen-C who are Matriculates and have put in ~~10~~ 3 years of service.
- c) If the Departmental examination fails to produce enough Matriculates for the 50% quota, direct recruitment to be made through Rly. Recruitment Board.

For the sake of convenience, the selections towards 50% in para (a) will be referred to as Para (a) quota, while the selections to 50% as per para (b) will be referred to as Para (b) quota.

6. Sixty six firemen-B were empanelled towards para (a) quota as per panel dated 11-4-84 and 36 were empanelled towards para (b) quota as per panel dated ~~24-8-84~~ ²⁴⁻⁸⁻⁸⁴. Again 57 were empanelled towards para (a) quota ^{as per} in the panel dated 29-7-85 (vide para 4 in the reply statement in OA 440/94).

7. It is urged for official respondents that the requirement was placed as 158 ^{inc} based on the vacancies in Firemen-A and in the higher grades, and also the vacancies that were likely to arise during the next two years, as the period of training for

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adhoc basis from 11/14.12.92 but they were not impleaded as respondents in OA 1143/92.

13. Due to the gradual decrease of steam engines, there was shrinkage in the posts of Fireman in the various grades. But as there was expansion in the cadre of Diesel Assistants and to utilise the services of the surplus Fireman-A, they were being absorbed as Diesel Assistants after they had undergone the Diesel Conversion Training Course. Thus all these direct recruits and promotees were absorbed as Diesel Assistants after they had undergone the diesel conversion training course.

14. While the training course for the direct recruits for appointment as Fireman-A was two years, it was 45 days for the promotees selected towards para (a) quota, and 31 weeks for the promotees selected towards Para (b) quota. The direct recruits and the promotees have to be regularly appointed to the post of Fireman-A, only on successful completion of the training stipulated.

✓ 15. Promotion to the posts of Fireman-A/1st Fireman is by way of selection. They are in Group-C. Para 215(a) IREM lays down that in case of promotion by way of selection, the staff "in the minimum lower grade" with a minimum of two years service in that grade will only be eligible for promotion. Service for this purpose will include service, if any, rendered on adhoc basis followed by regular service without break. The post of Fireman-A/1st Fireman is a safety post. Para 3.4 of Serial circular No.163/86 Circular Lr.No.P(R)605/4, dated 14.11.86

ad hoc basis as a temporary measure, and by the letter dated 15.7.87, the CPO advised the DRM(Personnel), vijayawada that the ad hoc arrangement already made for promotion of Second Fireman ^{as} and First Fireman may be allowed to be continued till the posts are regularly filled after receipt of further instructions from the Railway Board. Accordingly, ^{thus} the Second Fireman ^{was} promoted ^{as First Fireman} on ad hoc basis before 3.11.87.

11. The Railway Board's letter No.E(NG)I-84-PM-75, dated 3.11.87 (Annexure R.II) stipulates that the post of First Fireman in the pay scale of Rs.950-1500 (RSRP) should be filled up by promotion of Second Fireman in the pay scale of Rs.825-1200 (RSRP) by process of selection but without any restriction of age or educational qualification; shortfall, if any, shall be made good by direct recruitment through RRB. But even thereafter the Second Firemen were promoted as First Firemen on ad hoc basis from time to time. The services of all those ad hoc promotees were regularised with retrospective effect by order dated 29.10.92, as the CPO by the letter No.P.605/TR/Divisions, dated 21.2.92 dispensed with the selection as one time measure.

11. The services of 403 promotees were regularised vide proceedings dated 29.10.92 and out of them 249 were placed above the direct recruits, while the remaining were placed below the direct recruits. The applicants in OAs 440/94 and 571/94 are some of those promotees who were placed below the direct recruits.

12. By the date of filling of OA 1143/92, some of the promotees, who were promoted ^{as First Fireman} on ad hoc basis before the appointment of direct recruits were ^{further} promoted as shunters on

C) Shortfall, if any, against (A) and (B) above shall be made good by direct recruitment.

D) 20% of the vacancies from amongst Artisans.

18. It is evident from the various circulars referred that there was no quota for direct recruitment either in the category of Fireman-A/1st Fireman or in the category of Diesel Assistant. Provision was made for direct recruitment to the extent of shortfall as referred to in various circulars.

19. Prior to 1.1.86 the shortfall towards para (b) quota for promotion to the post of Fireman-A could be filled by direct recruitment. The vacancies in para (a) quota could not be filled by direct recruitment.

20. When it was urged for the promotees that as direct recruits were not eligible for appointment subsequent to 3.11.87 unless there is shortfall, and as sufficient number of Second Firemen were available for consideration for promotion as First Firemen, and as the direct recruits were ^{though} actually selected in 1987, ^{was} and appointed only in 1989, they have to be placed below the promotees to the post of First Fireman, it was contended for the direct recruits that it had become necessary for the concerned authority to initiate steps for direct recruitment in 1985 when there was shortfall of eligible Firemen B & C for promotion to the post of Fireman-A, and hence the selection/appointment of direct recruits cannot be held as illegal, and as such they have to be shown above such of the promotees who were promoted subsequent to their appointment, and also above those who were promoted on adhoc basis prior to their

(vide Annexure R-IV to the reply statement in OA 440/95) stipulates that in case of selection to safety posts, persons who have put in a minimum of two years of service in the minimum lower grade only would be considered for selection. But it also states that since selection proceedings take normally some months to finalise, only those employees who have completed 18 months of service on the date of notification should be included in the selection; but the promotion has to be given after completion of two years of service.

16. Thus in view of Para 215(a) IREM and Para 3.4 of Serial Circular dated 14.11.86, the promotions to the Second Fireman cannot be given unless they completed two years of service in the grade of Second Fireman.

17. The recruitment rule in regard to Diesel Assistants was amended on 3.11.87 and it is as under:

A) 40% of the vacancies have to be filled either by lateral induction of Firemen-A/1st Firemen who are atleast 8th class pass and are below 45 years of age.

B) 40% of the vacancies shall be filled by lateral induction of Matriculate First Fireman with minimum three years of continuous service; short fall, if any, by promotion by usual selection procedure from amongst Second Fireman, who are atleast 8th class pass and are below 45 years of age.

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filled towards para (b) quota, and as only 36 were filled towards para (b) quota, the shortfall towards para (b) quota was arrived at 30.

For 1985

II. No. of persons filled towards para (a) quota 57 vide panel dt.29-7-85

No. of persons filled towards para (b) quota Nil

Hence the shortfall towards para (b) quota in 1985 is 57.

Thus the total shortfall towards para (b) quota for 1984 and 1985 is 87 (30 + 57).

The total number of vacancies due to retirement in Fireman-A/1st Fireman from 1986 to 1990 are stated as under:

| <u>year</u> | <u>No.of vacancies</u> |
|-------------|------------------------|
| 1986 | 60 |
| 1987 | 59 |
| 1. 1. 1988 | 43 |
| 1989 | 40 |
| 1990 | 63 |

23. From 3-11-87, all the posts of 1st Fireman have to be filled by promotion of Second Firemen and the shortfall if any have to be filled by direct recruitment. But one cannot be promoted to the post of First Fireman unless he completes two years of service in the lower category, that is Second Fireman in this case. As they had become Second Firemen only with effect from 1-1-86, they can be regularly promoted to the said post with effect from 1-1-88 only. Thus the direct recruits were eligible for filling up the vacancies of 1986 and 1987 in the category of First Fireman.

24. It may be noted that ultimately only 99 were selected as First Firemen by way of direct recruitment and they commenced training in April/May 1987. 87 vacancies were available for

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appointment as they were not subjected to selection for promotion as contemplated under the rules.

21. Similar question had come up for consideration between the direct recruits and promotees in Secunderabad Division in OA. 441/94. There also steps were initiated for direct recruitment to the posts of Fireman-A in 1985. After considering all the relevant Railway Board letters and Paras 302 and 306 IREM, we held that as these are safety posts and as they cannot be left unfilled for long and as direct recruits will be available for appointment only on completion of two years training and as it will generally take one year if not more for completion of recruitment process, it is just and proper to select direct recruits for the existing shortfall vacancies and also for the anticipated shortfall vacancies for two years thereafter. Thus in order to consider whether there was justification for taking steps for direct recruitment in 1985 or whether there was excess selection by way of direct recruitment, we required the official respondents to furnish particulars in regard to the vacancies in the posts of Fireman-A which existed by the date of the indent^{was} placed in 1985 and the shortfall vacancies in the later two years.

17. The particulars furnished disclosed that there were 87 shortfall vacancies towards para (b) quota by the time the indent was placed and the said figure was arrived as under:

For 1984

| | |
|--|-----------------------------|
| I. No. of persons empanelled towards para (a) quota. | 66 (vide panel dt. 11-4-85) |
| No. of persons empanelled towards Para (b) quota. | 36 (vide panel dt. 24-8-86) |
| Thus the shortfall in 1984 towards para (b) quota is 30 (66 minus 36). | |

Note: As the ratio towards para (a) and (b) quotas is 1:1, and as 66 were filled towards para (a) quota, 66 had to be

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of IREM

Manager as per Rule 114/ to relax the recruitment rules. If in exercise of the powers under the said para, the selection was dispensed with as one time measure in regard to those who were promoted as First Firemen on adhoc basis prior to 14-10-92, their regularisation with effect from the date of adhoc promotion will be valid if there were vacancies for such promotees and if they could be regularly promoted from the respective dates of their adhoc promotion as per the rules. But as already observed they had become the Second Firemen only on 1-1-86 and hence they could not be regularly promoted from a date earlier to 1-1-88 as two years service in the lower category is essential for promotion to the post of First Fireman. Hence they could be regularly promoted only on or after 1-1-88 subject to availability of vacancies for them.

27. The contentions for the applicants in OAs 440/94 and 571/94 ie. promotees, is as under:-

The Railway Board letter dated 3.11.87 makes it clear that the vacancies in the cadre of 1st Fireman have to be filled by way of promotion of the 2nd Fireman and in case of shortfall only, they have to be filled by direct recruitment. As 2nd Firemen were available by 3.11.87, no direct recruit should have been appointed subsequent to 3.11.87 as 1st Fireman unless there is a shortfall. As such the promotees who were promoted from the 2nd Fireman who were eligible for promotion by April 1989, the date on which direct recruits were appointed have to be shown as seniors to the direct recruits. Though the direct recruits were selected in April/May 1987 ie. even prior to 3.11.87, the date of the Railway Board circular, they cannot claim appointment unless vacancies existed for them by the date they completed the

them even by the date the indent was placed in 1985 with the RRB for direct recruitment for the posts of First Fireman. Thus the remaining 12 could be absorbed towards the 30 shortfall vacancies in 1986. (Out of 60 vacancies in 1986, half have to be filled towards Para (b) quota and they can be filled by direct recruitment, as there were no eligible Fireman-B and C/2nd Fireman). For the reasons stated in the order in OA 441/94 we have to hold that there was justification for initiating the steps for direct recruitment in 1985 for the then vacancies in Fireman-A and also even for the anticipated vacancies towards shortfall for para (b) quota for the years 1986 and 1987 also. Though the indent was placed for 158 vacancies for Vijayawada Division, only 121 candidates were allotted for this Division and out of them only 99 accepted the offer and they were appointed.

25. The seniority list of First Firemen/Diesel Assistants/Electric Loco Assistants in the scale of Rs.950-1500 as on 1-5-93 was enclosed as Annexure-R.6 in OA 440/94. The date of entry in the First Fireman is noted at Col.9. The direct recruits who were selected in 1987 and appointed in 1989 as First Firemen are shown from Sl.No.328. The adhoc promotees to the post of First Fireman on or after 1-1-86 were shown from Sl.No.70. A question arises as to whether the promotees who are from Sl.No.70 to 327 who were promoted on adhoc basis as First Firemen between 1-1-86 and 30-5-89 have to be placed above the direct recruits when their promotions were regularised with effect from the respective dates of their adhoc promotion.

26. Admittedly the promotion to the post of First Fireman from that of Second Fireman is by way of selection. They were not subjected to selection. But it is open to the General

appointments though made after 3.11.87, ~~they~~ cannot be held as irregular as they are in regard to the vacancies prior to 3.11.87. While the regular appointments of direct recruits were in April/May 1989, even the adhoc promotions of the applicants in OA 440/94 and 571/94 and the other promotees who were placed below the direct recruits as per the seniority list dated 1.3.94, were in 1990. As the date of entry is the general rule, the promotees whose adhoc promotions were subsequent to the date of the regular appointment of the direct recruits, cannot claim seniority over the direct recruits. As such, there is no need to consider for the purpose of disposal of the OAs 440/94 and 571/94 as to whether their regularisation on the basis of the dispensation of the selection procedure as a one time measure need not be considered and the same will be considered with reference to OA 1143/92.

29. It may be noted that Para 103(iv) IREM states that there is no guarantee of appointment of trainees/apprentices. The direct recruits on their selection were appointed as Trainee 1st Fireman. But if the anticipated vacancies for which direct recruitment was made do not materialise the direct recruits even if they were sent for training may not be offered appointment. There may be such situation and hence it is stipulated in Para 103(iv) IREM that there is no guarantee of appointment of the trainees/apprentices. Thereby it cannot be stated that they need not be appointed even if the vacancies existed for them. The vacancies existed for the direct recruits by the time of their appointment as the direct recruits were eligible for the shortfall vacancies in Para (b) quota by 3.11.87. Thus the appointments of all the direct

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training for para 103(iv) envisages that no guarantee of appointment is given to an apprentice or a trainee. Para 103(iv) IREM is as under:-

"An "apprentice or a "trainee" means a person undergoing training with a view to employment in railway service, who draws pay, leave salary, subsistence allowance or stipend during such training but is not employed in or against a substantive vacancy in the cadre of a branch of department. On satisfactory completion of his training he is eligible for appointment on probation in substantive vacancy but no guarantee of such appointment is given".

Hence in view of the amended rule which had come into effect on 3.11.87 the direct recruits though selected and were undergoing training by 3.11.87, they cannot be preferred to the promotees as the amended rule dated 3.11.87 states that the vacancies in the grade of 1st Fireman had to be filled by promotees and the direct recruits have to be considered only to the extent of shortfall.

28. But it is well established that the vacancies prior to the date of the amendment of the recruitment rules have to be filled in accordance with the pre-amended rule. We already observed that more than 99 shortfall vacancies in the cadre of Fireman-A/1st Fireman existed by 3.11.87. Hence their

negatived.

32. It is manifest from the Railway Board letter dated 3.11.87 that the promotion of the 2nd Fireman to the post of 1st Fireman (Category-C) is by way of selection. The selection has to be made in accordance with Para 215, 217 to 219 IREM. No selection was made for promotion to the post of Fireman-A/1st Fireman in Vijayawada Division subsequent to the selection held in 1984. It is stated that there was no selection for promotion under Para (b) quota of Fireman-A in 1985 as no eligible candidates were available. Neither side pleaded as to why there was no selection for promotion to the Para (b) quota post in Fireman-A/1st Fireman in 1986. But in view of the tentative decision that was taken in April 1987, adhoc promotions were made to the post of 1st Fireman before 3.11.87, after the scales of Fireman-~~Grade~~ ^{was revised*} C ~~was revised~~ and after they were designated as Second Fireman w.e.f. 1.1.86. Some adhoc promotions in the post of 1st Fireman were made even after 1-1-86 and before 12-4-87. Even though the amended provision as per the Railway Board letter dated 3.11.87 makes it clear that the promotion to the post of 1st Fireman shall be by way of selection ad hoc promotions to the post of 1st Fireman were made even after 3-11-87. Be that as it may, it is urged for the direct recruits that as the promotees were not regularly promoted before the date of their regular appointment in April/May 1989, the promotees cannot be treated as part of the cadre of Fireman-A/1st Fireman and hence the direct recruits have to be placed above those promotees. But it was urged for the official respondents that as the selection process in regard to those promotees was dispensed with as one time measure by the letter dated 21.2.92 issued by

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er dt.
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recruits in this case have to be held as valid. Thus when their appointments are valid and when they were regularly appointed even long before the adhoc appointments of the applicants in OAs 440/94 and 571/94 and others who were appointed along with them, the direct recruits have to be placed above them.

30. The 2nd Firemen on completion of two years of service in that grade are eligible for promotion as 1st Fireman. But it does not mean thereby that they have to be considered for selection for promotion on completion of two years eligibility period, for the question of promotion does not arise unless vacancies existed. It is stated in Para-6 of the reply statement of the official respondents in OA 440/94 that the applicants 1 to 14 in OA 440/94 had become Fireman-C on 18.6.86 only and the applicants 15 to 55 therein were Loco Khalasis only. (By proceedings **No.E(NG)I-86-PMI-II** dated 12-3-1987 Firemen-B and -C had become 2nd Firemen w.e.f. 1-1-86). But it is not their case that more than 99 vacancies which were intended for the direct recruits were available by 18.6.88 and they were not considered for selection for promotion as 1st Fireman (the applicants 1 to 14 in OA 440/94). Thus, those who were placed below direct recruits as per the seniority list dated 1.3.94 cannot claim seniority over the direct recruits.

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31. We already observed that those who were promoted as Shunters by 29.12.92, the date on which OA 1143/92 was filed, were not impleaded as parties to the said OA. Thus for non joinder of the necessary parties, the claim of the applicants in OA 1143/92 that the promotions of those who were promoted as Shunters by 29.12.92 have to be held as illegal, has to be

promoted as 2nd Fireman before 1.1.88. Further the selection takes some time and such promotees have to undergo 31 weeks of pre-promotional training. The regular promotion to the promotees can be on successful completion of pre-promotional training. As such the promotees could have got promotion only by middle of 1988 even if timely steps were taken for selection in accordance with the Railway Board letter dated 3.11.87.

36. If there was no delay in regard to the offer of appointment for the direct recruits they also could have completed training by about that time, for the panel was prepared by RRB on 18.7.86 itself. When similar case had arisen in regard to the Secunderabad Division in OA 441/94, we held after adverting to the relevant Railway Board letter and Paras 302 and 306 IREM that the relaxation by the General Manager in regard to the selection process for promotees with retrospective effect will be prejudicial if their promotion is regularised from a date earlier to the date of the appointment of the direct recruits to the extent to which they were appointed in regard to the shortfall vacancies in Para (b) quota which existed by 3.11.87. For the reasons stated therein, we have to hold that even if the General Manager is going to relax the selection process in regard to the promotees, their regularisation shall not be from a date earlier to the date of appointment of the last of the direct recruits.

37. But we observed that as such of those promotees who were promoted as Shunters by 29.12.92, the date of this OA, were not impleaded as respondents in this OA, the direct recruits cannot challenge their promotions as Shunters and it follows

(86)

CPO, S.C. Railway and as vacancies were available for those promotees before the date of appointment of the direct recruits, their services were regularised w.e.f. the date of the respective adhoc promotion and hence they are shown above the direct recruits.

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33. It is true that Para-114 empowers the General Manager to dispense with the selection by relaxing the rule and the promotions to the posts to which promotions have to be made on the basis of the selection can be ordered to be made on the basis of suitability, but the letter dated 21.2.92 is to the effect that it was done with the approval of CPO. No material is placed to show that the power of relaxation of the rules was delegated to the CPO. Hence it cannot be stated that there is no force in the contention for the direct recruits that the promotion of the promotees is not regular.

34. It is now even open to the General Manager, South Central Railway to consider as to whether the selection in regard to the promotion to the post of 1st Fireman may be dispensed with as one time measure in regard to the ad hoc promotions to the cadre of 1st Fireman in pursuance of the letter dated 6.4.87 issued by CPO. It is held by the Apex Court in Maharashtra Engineers' case that the services of promotees can be regularised w.e.f. the date of adhoc promotion or from such subsequent date if they could have been regularly promoted from the said date in case the selection was held by them.

35. It is clear that the post of 2nd Fireman had come into existence only on 1.1.86 and the 2nd Fireman would be given promotion only on completion of two years in the grade of 2nd Fireman. Thus they could not have been regularly appointed or

* JT 1990(2) SC 264 (Direct Recruit Class II Engineering Officers' Assn. Vs. State of Maharashtra)

promotees who were promoted as Shunters by 29.12.92 have to be placed above the direct recruits and the remaining promotees have to be placed below the direct recruits. But if the General Manager is going to decide that the selection has to be held for the promotees referred to above, then such of the promotees who were promoted as Shunters by 29.12.92, if passed at first attempt, have to be placed above the direct recruits and the remaining promotees who will pass at first attempt have to be placed below the direct recruits and the promotees, if any, failed have to be subjected to selection again in accordance with rules and they have to be necessarily placed below such of those promotees who passed at the first attempt.

No.costs. //

ORDER TO BE TRUE COPY
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

vsn
To

1. The General Manager, S.C.Rly,
Railnilayam, Union of India, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly,
Railnilayam, Secunderabad.
3. The Divisional Railway Manager(Personnel Branch)
SC Rly, Vijayawada.
4. The Senior Divisional Personnel Officer,
S.C.Rly. Vijayawada.
5. The Sr.Divisional Mechanical Engineer,
SC Rly, Vijayawada.
6. The Sr.Divisional Electrical Engineer,
SC Rly, Vijayawada.
7. One copy to Mr. G.Ramachandra Rao, Advocate, CAT.Hyd.
8. One copy to Mr.B.G.Ravinder Reddy, Advocate, CAT.Hyd.
9. One copy to Mr.N.V.Ramana, A SC for Rlys, CAT.Hyd.
10. One copy to Library, CAT.Hyd.
11. One spare copy.

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Case No. CA 1143/92
Date 16.11.95
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J. J. J.