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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.441/94

date of decision : 16-12-94

Between:

1. B. Joseph.
2. M. Imlaiah.
4. Shafi Mohad.
5. Khaja Khan.
6. D. Benjamin.
7. G. Sarangapani.
8. B. Venkateswara Rao.
9. A. Lakminarayana.
10. N. Laxminarayana.
11. B. Chinnappa.
12. M. Butchaiah.
13. S. Veeraswamy.
14. N. Surender.
15. C. J. Vaz.
16. S. Ravinder.
17. Md. Eqbal Basha.
18. B. Venkat Swamy.
19. B. Krishna Swamy.
20. A. B. Rasheed.
21. B. Venkataiah.
22. B. Narayana.
23. P. S. Venkateswar Rao.
24. P. Sanjeeva Rao.
25. K. Komariah.

26. D. Parashuram.
27. K. Ram Rushi.
29. M. S. Chaitanyam.
30. D. J. Clerk.
31. P. Ramkrishna.
32. K. Saibaba N.
33. S. Ramaswamy.
34. Eliah.
35. A. Willson D.
36. Namdev. C
37. G. Kumar Swamy.
38. Somla.
39. G. Venkateswar Rao.
40. M. Arokianath.
41. D. Basheer.
42. Narsingh Babu.
43. Tuljaram H. G.

.. Applicants

And:

1. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. Divisional Railway Manager (P) BG,
Secunderabad Division,
South Central Railway,
Secunderabad.

.. Official Respondents.

3. T. Ramakrishna
4. M. Sudhakar
5. C. V. Ramana
6. M. D. S. Prasad
7. S. S. R. K. Prasad
8. B. Ramesh

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① (a)

9. Dominic D' Silva
10. P. Murali Krishna
11. D.G. Fernandez
12. M. Venkateswarlu
13. N. Gavin Jude
14. P.N.M. Sundaram
15. T.N. Prasad
16. R. Ramesh Kumar
17. K.V.N.J. Murali Krishna
18. K. Srinivasulu
19. R. Venkata Chalapathy
20. G. Narayana
21. N. Rammohan Rao
22. K. Narsing Rao
23. N.L. Raj
24. S. Abdul Rasheed
25. K. Narsinga Rao
26. B.B. Laxman
27. K. Pochaiiah
28. Samson Simon
29. M. Narender
30. R. Rajaiiah
31. P. Manyam
32. B. Venkataiah
33. K. Narayana
34. C. Suryapakash
35. Kankaiah
36. K. Durga Swamy
37. T. Krishbaiah
38. M.A. Bari
39. Anwar Shariff
40. Md. Yousuff Ali
41. Khaja Habubuddin
42. V.P. Satyanarayana
43. Ayodhya Chandraiah
44. Bhagwandas
45. R. Pentaiah
46. J.B. Swamy
47. M. Laxman
48. G. Yadagiri
49. P. Mallesh
50. B. Narsimha Rao
51. P.R. Jaya Chander Reddy
52. J. Prakash Narayana

: Private Respondents

Counsel for the applicants

: P. Krishna Reddy,
Advocate

Counsel for the Official respondents: N.V. Ramana, SC for Railwa

Counsel for the R-3 to 19

: G. Ramachandra Rao,
Advocate

Counsel for R-20 to 53

: S. Laxma Reddy, Advocate

CORAM

HON. Mr. Justice V. Neeladri Rao, Vice Chairman

Hon. Mr. R. Rangarajan, Member (Admn.)

O.A. No. 441/94.

JUDGEMENT

(As per Hon'ble Shri Justice V. Neeladri Rao, Vice-Chairman)

This is yet another case in regard to the claims of interse seniority amongst promotees, transferees, and direct recruits to the posts of Diesel Assistants. It will be convenient to refer to the relevant material facts in order to appreciate the rival contentions.

2. Till 1.1.86 there were 3 categories of Fireman - Fireman 'A', Fireman 'B', and Fireman 'C'. Engine Cleaners and some other categories of employees in Railways were eligible for promotion as Fireman 'C', and Fireman C were eligible for promotion as Fireman 'B'. (a) 50% of the vacancies of Fireman 'A' had to be filled from amongst Fireman 'B' who have studied upto 8th class and who are below 45 years of age, on the basis of selection. The said selection was by viva-voce only. (for short para 'a' category). (b) The remaining 50% of the vacancies of Fireman 'A' had to be filled by Fireman 'B' and Fireman 'C' who were matriculates and who had 3 years of service by selection on the basis of departmental examination comprising viva-voce and there may or there may not be a written test. (for short para b category). If there were not sufficient number of candidates for filling up the remaining 50% of the vacancies of Fireman 'A' in para b category, direct recruitment had to be resorted to.

3. Due to gradual introduction of diesel and electrical engines there was gradual reduction of steam engines. While there used to be one Fireman 'A' and one Fireman 'C' for each of the steam engines, only one diesel/electrical assistant was found sufficient for each of diesel/electrical engines. Due to gradual shrinkage of cadre of Fireman, Fireman 'A' were laterally inducted into the posts of

Diesel Assistants after they had undergone Diesel Convention training.

4. It was found that there were 94 vacancies of Fireman 'A', and 28 vacancies of Diesel Assistants in Secunderabad Division as on 31.12.84. When volunteers were called from amongst the existing Fireman 'B' and Fireman 'C' for filling up para (b) vacancies as on 31.12.84, 12 Fireman 'B' and 28 Fireman 'C' who fulfilled the conditions volunteered.

5. It is stated for the respondents 1 and 2 that the anticipated vacancies from 1985 to 1990 were found to be as under:-

<u>Year.</u>	<u>Vacancies.</u>
1985.	20
1986.	31
1987.	28
1988.	36
1989.	41
1990.	28
Total anticipated vacancies	184

6. As 40 volunteered for consideration for para (b) vacancies in 1984 and even if all of them would be successful, there would have been still ~~282~~ vacancies as on 1.1.85, and as there were 184 anticipated vacancies for the 6 years, indent was placed with the Railway Recruitment Board by letter dt. 25.2.85 for direct recruitment of 125 posts of Fireman 'A'. 100 were selected for the posts of Fireman 'A' in 1987 in pursuance of the indent placed by letter dt. 25.2.85.

7. The scales for Fireman 'B' and Fireman 'C' were merged in pursuance of the recommendations of the IV Pay Commission, and those revised scales came into effect from 1.1.86. Then the recruitment rule in regard to

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Diesel Assistants was amended on 3.11.87 and it is as under:-

- (a) 40% of the vacancies shall be filled by lateral induction from among First Fireman who are at least 8th class pass and are below 45 years of age. In case of shortfall, promotion by usual selection process from among Second Fireman who are at least 8th class pass and are below 45 years of age. (for short para (A) category).
- (b) Balance 40% vacancies shall be filled by lateral induction of matriculate First Fireman with minimum 3 years of continuous service; shortfall, if any, by promotion of matriculate Second Fireman through departmental examination (for short para (B) category).
- (c) Shortfall, if any, against (a) and (b) above, shall be made good by direct recruitment.
- (d) 20% of vacancies from amongst Artisans.

8. After the posts of Fireman 'B' and 'C' were merged, they were all called as Second Fireman. After the amendment had come into effect from 3.11.87, all the eligible Second Fireman in Secunderabad Division were sent for Diesel Conversion training and such of those who were successful in the training were promoted as Diesel Assistants on adhoc basis in 1988. As there were still vacancies in the posts of Diesel Assistants in Secunderabad Division, Second Fireman from Hyderabad Division were deputed to Secunderabad Division and as by the date of their deputation they had already undergone Diesel Conversion training, their services were utilised as Diesel Assistants in Secunderabad Division. The said deputation to Hyderabad Division was on 16.8.89.

9. The direct recruits selected as First Fireman in 1987 were given 2 years training as per the rules, and then they were regularly appointed as First Fireman in Feb./April/Jund 1989. By order dt. 21.1.92 the selection in regard to adhoc promotees was dispensed with and their services were regularised w.e.f. 4.3.91.

10. The seniority list of Diesel Assistants/First Fireman as on 30.8.91 was published on 31.1.92, wherein the adhoc promotees were shown above the direct recruits and the transferees of Hyderabad Division were shown below the direct recruits. On the basis of the representations from the direct recruits, revised provisional seniority list dt. 15/16.9.93 was published. The applicants herein vide O.A.No. 1227/93 assailed the same. The O.A. was dismissed by order dt. 13.10.93 by observing that it is for the concerned authority to consider the objections of the applicants and others, if any, before finalising the seniority list and if ultimately the applicants are going to be aggrieved on the basis of final seniority, they are free to move this Tribunal, if so advised. The applicants were informed by Respondent No.2 vide letter dt. 25.3.94 that the revised provisional seniority list dt.15/16.9.93 was made final. Feeling aggrieved, this O.A. was filed praying for a direction to the respondents to maintain the seniority of the applicants in the grade of Diesel Assistants as per seniority list published on 31.1.92.

11. It has to be noted at the outset that prior to 3.11.87 the date on which the amended rule had come into effect, or even as per amended rule, there was no quota for direct recruits in regard to the vacancies in the category of Fireman 'A'/Diesel Assistants. The rule made it clear that

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in case of shortfall in para (b) category vacancies only, direct recruitment had to be resorted to. There was no provision for filling up shortfall vacancies in para (a) category of Fireman 'A' prior to 3.11.87. Further, while the period of training for direct recruits to the post of Fireman is 2 years, the periods of training for promotees as per para (a), and para (b) are 45 days and 31 weeks respectively. Both the direct recruits and promotees have to be absorbed in the posts of Fireman 'A' on completion of training only, and till the completion of training the direct recruits are treated as trainees.

12. It is clear from the facts narrated that only few Fireman 'B' and Fireman 'C' were available as on 31.12.84, eventhough the number of vacancies in Fireman 'A' which existed and which were anticipated were more than ^{stated} 300. It is ^{become} ~~is/for~~ railways that it had hence ~~necessary~~ to resort to direct recruitment in 1985 for filling up the vacancies in the category of Fireman 'A'. It is contended for the direct recruits that as promotees were not eligible by the date the vacancies existed for which the direct recruits were selected, and as the promotees are not subjected to selection even till today, Respondent No.2 rightly showed the direct recruits as seniors to promotees as per the revised seniority list. As the promotees were eligible for consideration for promotion on or after 3.11.87 the date on which the amendment had come into effect, and as they had also undergone the requisite training and as the process of selection was dispensed with in regard to them, their seniority has to be reckoned from the dates of their adhoc promotion in 1988, and as the direct recruits were absorbed in 1989 on completion of training, the promotees

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were rightly shown as seniors to the direct recruits as per the original provisional seniority list published on 31-1-92 and there was no justification for revising ~~the list~~ ^{the learned counsel} for the applicants. It was urged for the transferees from Hyderabad Division that the promotees in Secunderabad Division joined service long after the transferees joined the railway service, and as they had undergone the diesel conversion training even before they were deputed to Secunderabad Division, their ~~seniority~~ ^{seniority} in Hyderabad Division and as they were regularised in Hyderabad Division in 1990 while the promotees were regularised only in 1991, the transferees were rightly shown as seniors to the promotees as per the revised provisional seniority list dt. 15/16-9-93 which was made final.

13. The promotion from Fireman-B to Fireman-A either in regard to para(a) or para(b) vacancies prior to 3-11-87 was by selection. Even promotion of Fireman-C to the post of Fireman-A for para (b) category of vacancies was also by selection. Applicants 1,2,3,19,29 & 30 and 22 others who were Firemen-C by then volunteered for consideration for para (b) vacancies in regard to the posts of Fireman-A in 1984 and the above six applicants failed in the examination which was held for the same in 1985.

It is stated for the respondents that the Chief Personnel Officer, South Central Railway, Secunderabad informed Hyderabad Division by lr.No.P.531/TP/DSL.Assts. dt.1-12-89 that the selection in regard to promotion to the posts of First Fireman Gr.A/Diesel Assistants may be dispensed with, and basing on the said letter it was

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decided on 4.3.91 to dispense with the selection in regard to promotees to Diesel Assistants/Fireman 'A' in Secunderabad Division also, and hence their services as Diesel Assistants were regularised w.e.f. 4.3.91 by letter dt. 21.1.1992.

The two fold contentions for direct recruits in regard to the same are that there cannot be any relaxation in the recruitment rule, and even if it can be relaxed, the Chief Personnel Officer is not competent to issue an order in regard to the same. It is contended for the promotees that they cannot be found fault with if selection process was not adopted in 1988 when they were promoted on adhoc basis, and even if they are going to be subjected to selection now, their adhoc service also has to be reckoned for purpose of seniority as they are continuing in service without interruption and they will continue to hold the same posts till they are going to be selected. Conclusion B referred to in the case of the Direct Recruit Class II Engineering Officer's Association & Ors. Vs. State of Maharashtra & Ors. 1990 (2) SLR 769 is relied upon in support of the said contention. It is further stated for the promotees that when the selection can be on the basis of viva-voce only, and as they are satisfactorily discharging their duties as Diesel Assistants from the last 6 years, it will be an exercise in futility, if they are going to be subjected to selection now.

15. The contention for the transferees is that if the seniority of the promotees in Secunderabad Division is going to be reckoned from the dates of their adhoc promotion, the seniority of the transferees also has to be reckoned

from the respective dates of their deputation to Secunderabad Division, eventhough it was held by a Bench of this Tribunal in R.P.No.42/93 in O.A.No.532/92 that their seniority in Secunderabad Division has to be reckoned from the dates of their regularisation in

16. If there was a quota for direct recruits, then there would not have been much difficulty for it is held by the Supreme Court that if the recruitment is from seniority has to be reckoned from the date of temporary/ adhoc promotion/ appointment to the extent they are within the quota and those who are in excess of the quota have to be pushed down. But the recruitment rule for Fireman 'A' prior to 3.11.87 lays down that 50% of the vacancies i.e., para (a) vacancies have to be filled from amongst Fireman 'B' having at least 8th standard as educational qualification and who were within 45 years of age. There was no provision for filling up the shortfall in regard to para (a) vacancies, by way of direct recruitment. Even the remaining 50% of the vacancies i.e., para (b) vacancies in the category of Fireman 'A' prior to 3.11.87 had to be filled up from amongst Fireman 'B' and 'C' with at least matric as educational qualification and who completed 3 years of service. Direct recruitment can be resorted to only in regard to the shortfall in para (b) vacancies. Thus, the posts of Fireman 'A' have to be mainly filled by way of promotion, and the direct recruitment can be resorted to in regard to the shortfall in para (b) vacancies only. It is thus clear that there was no quota for direct recruits.

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17. As already observed, the payscales of Fireman-B and Fireman-C were merged with effect from 1-1-1986. But the relevant recruitment rules of ~~Diesel~~ Assistants were amended with effect from 3-11-1987. Then only Firemen-II were eligible for promotion to the post of Diesel Assistants. The Firemen-II comprises the earlier designations of Fireman-B and Fireman-C. Thus, after the firemen-C had become Firemen-II, they were sent for Diesel Conversion Training and such or those who had become successful in the said training were promoted as Diesel Assistants in 1988 on adhoc basis in Secunderabad Division. When the recruitment rules for Diesel Assistants envisages that the promotions from Firemen-II is by way of selection and when selection contemplates both written and viva voce or viva voce only, no selection was conducted after 3-11-87 the date on which the amendment had come into effect for promotion of Firemen-II to the post of Diesel Assistant. Thus their promotions were referred to as adhoc promotions.

18. The direct recruits who were selected in 1987 in pursuance of recruitment that had taken place in pursuance of the indent placed in 1985 completed their training in batches in 1989 and on completion of training they were regularly appointed as Diesel Assistants in February/April/June 1989.

19. The Firemen-II of Hyderabad Division who had undergone diesel conversion training were deputed to Secunderabad Division in August 1989 and their services were utilised as diesel assistants from the date of their deputation. They were regularly promoted as diesel assistants in Hyderabad Division in 1990. ~~These~~ It was held ~~these assistants were~~ in R.P. 42/93 in O.A. 532/92

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of transferees
that the dates of regularisation/as diesel assistants
in Hyderabad Division could be treated as the dates of
~~regularisation~~ their absorption in Secunderabad
Division. As the promotees in Secunderabad Division
started functioning as diesel assistants, though on
ad hoc basis, even from a date earlier to the dates of
appointment of the direct recruits as diesel assistants,
and also the date of deputation of the transferees
from Hyderabad Division, the promotees in Secunderabad
Division were placed above the direct recruits, and
the transferees were placed below the direct recruits
in the seniority list that was published on 31-1-1992.
But after the consideration of the ~~objections~~
of the direct recruits, the transferees were continued
to be shown below the direct recruits and the promotees
were placed below the transferees as per the impugned
seniority list published on 15/16-9-93. It is stated
for the official respondents that as the promotees
were regularised with effect from 4-3-91 only, and as
the direct recruits were regularly appointed even
in 1989 and as the services of the transferees were
regularised even earlier to 4-3-91, the promotees were
shown below the transferees as per the impugned
seniority list.

20. While it is the contention for the promotees
that the seniority should be reckoned from the date from
~~on~~ which they are discharging the duties as diesel
assistants, it is urged for the direct recruits that
the seniority list ^{to be} has prepared only in regard to
the members of the cadre i.e. diesel assistants and
as promotees were not even selected they could not be

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treated as members of the cadre and hence they cannot claim seniority over the direct recruits. It is urged for the transferees that as the seniority of the transferees was reckoned from the dates of their regularisation the seniority of the promotees ~~has~~ also has to be reckoned from the date of their regularisation.

21. No selection was conducted in regard to the Firemen-II --- their promotions to the post of diesel assistant. No eligibility period of service as Fireman-II was prescribed for consideration for promotion for shortfall vacancies of Para-A category of diesel assistants. Thus the Firemen-II of Secunderabad division were eligible for consideration for promotion to the post of diesel assistant subsequent to 3-11-87. They had also undergone the diesel conversion training by their adhoc promotion in 1988.

22. The problem of seniority would not have arisen in this case if the recruitment from each of these sources was done in a systematic way. As only six Firemen-C were available prior to 3-11-87 who were eligible for consideration for promotion as Fireman-A for para(b) vacancies and as they failed in the examinations which were held in 1985 and as steps were taken for direct recruitment of diesel assistants, the concerned authority might not have initiated in the later years i.e. 1986 and 1987 steps for conducting selection/for the six firemen-C available for promotion for para(b) vacancies of Fireman-A. But when in view of the amendment of

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all the firemen-C who had become Firemen-II had become eligible for promotion for para-A vacancies of diesel assistants and when the number of vacancies in the said para were available, firemen-II were sent for diesel conversion training and they were promoted on adhoc basis, as diesel assistants. It is not clear as to whether the test to be conducted for selection for para A vacancies of Diesel Assistants is only by viva voce or by written empowered to conduct the selection only on the basis of viva voce as they were xxxxxxx only, as I.R.E.M. empowers

the authority to consider selection by way of viva voce only even if rule lays down that it is both by written test and viva voce ~~only~~. It is not known as to why the concerned authority

had not felt the necessity of conducting viva voce in 1988 itself, while so many promotees were available for consideration for promotion as diesel assistants and when direct recruitment can be resorted to only in case of shortfall. But probably the concerned authority might ~~not~~ have felt that the problem of ^{would arise} inter-se seniority between the direct recruits who were undergoing the training and the promotees who were eligible only in view of the amendment which ^{and} had come into effect on 3-11-87 hence necessary steps might not have been taken for conducting selection for promotees. But when after the direct recruits were regularly appointed and the promotees were also working though on adhoc basis from about three years and when it was felt necessary to prepare the seniority list of diesel assistants, the concerned authority dispensed with the selection in regard to the promotees by order dated 4-3-91 and then the seniority list was published, after regularising the services of promotees

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with effect from 4-3-91. The question had arisen as to whether the period of adhoc service of the promotees had to be taken into consideration for reckoning seniority and in the first instance it was felt that the said period should also be taken into consideration, But after considering the objections from direct recruits, it was thought that the seniority for all of them i.e. the direct recruits, transferees and promotees has to be reckoned from the date of regular appointment/absorption/promotion and on that basis the impugned seniority list was prepared.

23. Rule 217 empowers the General Manager to relax the recruitment rule whereby the selection can be dispensed with if the relevant recruitment rule prescribes selection as the mode for consideration for promotion. But no order was passed by the General Manager, S.C.Railway for dispensing with selection in regard to promotion to the category of diesel assistants in Secunderabad Division even in 1988 or in any year later. By letter dated 1-12-89, the Chief Personnel Officer informed the recruiting authority of Hyderabad Division that the selection can be dispensed with for promotion to the posts of diesel assistants. It does not indicate that the said relaxation was in regard to promotion of diesel assistants in all divisions. Hence there is force in the contention for the direct recruits that no order was passed by the competent authority i.e. the General Manager or the C.P.O., if he is delegated with that power, dispensing with the selection for promotion to the post of diesel assistant in Secunderabad Division.

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24. But the fact remains that in view of the recruitment rule for diesel assistants which had come into effect from 3-11-87, para-A vacancies have to be filled ~~up~~ by ~~xxxx~~ lateral induction of Firemen-A, and in case of shortfall, by selection of Firemen-II having minimum educational qualification of 8th class, if they are within 45 years of age, and in case of shortfall in regard to the same also, direct recruits have to be appointed. No Fireman-A was available by 3-11-87. The direct recruits who were selected as Firemen-A prior to 3-11-87 were then undergoing the training. The Firemen-II with 8th standard and above as educational qualification under the age of 45 years ~~xxx~~ were available. ~~then. But it was not conducted even till today. Further they were working as diesel assistants on promotion on adhoc basis from 1988. Can it be stated that they should suffer for no fault of theirs, and when the direct recruits can be considered only when vacancies were available and when the selection for them was not conducted for consideration for promotion as diesel assistants. The answer can be in the negative. The Supreme Court held in 1990(2) SLR 769* that if the adhoc promotee comes within the ambit of conclusion-B referred to therein, his seniority had to be reckoned from the date of adhoc promotion. These promotees were eligible for consideration for promotion to Para-A vacancies of diesel assistants subsequent to 3-11-87 and thus by the dates of their adhoc promotion they were eligible for consideration for those promotions. They had also undergone the diesel conversion training by then. Even if selection is going to be conducted now for consideration of their cases ~~xxx~~ promotion as diesel assistants and~~

*The Direct Recruit Class II Eng. Off. Assn. contd...
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if they are selected, their seniority has to be reckoned from the dates of their adhoc promotions as they come within the purview of conclusion-B referred to in 1990(2) SLR 769. The next question that arises is as to whether it ~~was not~~ ^{will not be} an exercise in futility if they are going to be subjected to selection now ~~xx~~ when they are discharging the duties of diesel assistants from the last six years. The selection, as already ~~even~~ observed, can be by way of viva voce only. The question while they are working in the promotional post of diesel assistant from the last six years. Then when it is open to the General Manager to dispense with the selection for promotion, whether it will not be a case for dispensing with the selection for promotion of these promotees as diesel assistants, is a matter for consideration by General Manager.

25. Thus when it has to be held that the seniority of the promotees has to be reckoned from the dates of their adhoc promotion, either in the case in which they become successful if selection is going to be held or if it is dispensed with, and as their adhoc promotions were earlier to the date of regular appointment of the direct recruits, it is necessary to consider as to how the inter-se seniority between the direct recruits and the promotees and incidentally of the transferees has to be fixed for disposal of this O.A.

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26. As direct recruits have to be initially posted ^{have} as trainees only and as they ~~has~~ to undergo two years training for being absorbed as Fireman-A and as it would take one year, if not more, for the purpose of selection, there would be justification for resorting to direct recruitment to the extent of shortfall in para(b) vacancies in Fireman-A which existed on the date of initiation for direct recruitment and also for anticipated para-b vacancies within three years from the date of initiation. If direct recruitment is resorted to in regard to the anticipated ^{in Fireman-A} shortfall para-b vacancies even beyond three years, a problem may arise if there is amendment whereby those who were not eligible by the date of initiation of ~~-----~~ for the promotion and then while the promotees claim that they have to be preferred as the posts are mainly intended for promotees, the direct recruits may contend that as they were already selected they should be preferred to the promotees. Of course, such a situation would arise even if there is such an amendment within three years from the date of initiation. But when the establishment requires trained candidates for manning the posts especially the safety posts and when direct recruits cannot be directly appointed unless they undergo training for two years, it is necessary to estimate the shortfall vacancies three years in advance so that the trained candidates will be available by the date the vacancies arise. Hence we feel that there was justification in 1985, the date by which an indent was placed for direct recruitment, ^{in Fireman-A} only in regard to the shortfall para-b vacancies existed and anticipated within three years from that date for which direct recruitment can be resorted to as per the extant rules.

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27. It is stated in the note dated 23-11-94 filed for the respondents 1 and 2 at the time of arguments that out of 94 vacancies which existed on 31-12-84, 12 vacancies in para-A category and 16 vacancies in ^{in Fireman-A} para-b category were filled by promotion in 1985, and hence no vacancies ~~existed~~ in 1985. the date on which the indent was placed. But it also shows that three vacancies out of diesel assistants and firemen-A were operated at the level of firemen-B. But as in fact they were vacancies in the category of diesel assistants/firemen-A, the said three vacancies should also be added ~~to the~~ in Fireman-A category. Thus, the total vacancies by the relevant date were 69. The vacancies in para-a and para-b have to be filled in the ratio of 1:1. The 2nd respondent was not able to furnish the vacancies remaining unfilled in para-a category or para-b category by the date the indent was placed in 1985. So we have to proceed on the basis of number of vacancies existed in each of those categories. Before the promotion of 28 in 1985, the total vacancies were $94 + 3 = 97$. Out of them, para-a vacancies could be assumed as 48 while para-b vacancies could be assumed as 49. As 12 were promoted with regard to para-a vacancies, the remaining 36 vacancies existed in regard to para-a ^{of Fireman-A} category. As 16 were promoted in 1985 with regard to para-b vacancies, the balance of the vacancies ^{of Fireman-A as on 1-1-85} for the said category ~~in 1985~~ had come to 33 (49-16).

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28. The vacancies which had arisen in 1985, 1986 and 1987 had come to 79 (20+31+28). Forty of those vacancies can be held as ~~wxxx~~ for para-a category while the remaining 39 vacancies can be held as ~~wxxx~~ in Fireman-A as ratio was 1:1 ~~wxxx~~ for para-b category. Direct recruitment could be resorted to only in regard to para-b vacancies and existing as we held that there was justification for vacancies and anticipated vacancies for only three years, the direct recruitment could have been resorted to for 72 vacancies only. (33 vacancies existed for this category as on 1-1-1985 and 39 vacancies which had arisen in regard to this category 1985 1986 and 1987).

29. Though the actual initiation for direct recruitment had taken place in 1985, the selection was finalised in January 1987 and they completed their training in batches in 1989. Thus there was a delay in completion of the process of selection for direct recruits. If the selection was completed within reasonable time, they could have completed the training by the middle of 1988 ^{if not by the end of 1987.} It is stated that ~~six~~ of the promotees were eligible for consideration for promotion to para-b category vacancies even by 3-11-87 the date of amendment and as no ^{in 1986 and 1987,} steps were taken for selection/ those promotees ~~now~~ ^{and they would have been promoted} even before the completion of training by direct recruits if selection for promotion was held.

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If the appointment/promotion is from more than one source, there will be quota and in some cases there will be rota also. The Supreme Court held that in case quota fails, rota also fails and then the date of entry into the service has to be taken as the basis for determination of seniority and if there is any recruitment from any source in excess of the quota, the source have to be pushed down.

30. But there is no quota for direct recruits and promotees in regard to the promotion to the post of Fireman-A prior to 3-11-87 or in regard to the promotion to diesel assistant subsequent to 3-11-87. But there is quota for the two modes of promotion. The recruitment rule for Firemen-A prior to 3-11-87, and the recruitment rule for diesel assistants which had come into effect from 3-11-87 envisages direct recruitment, to the extent of shortfall. But the question of inter-se seniority had arisen in this case as direct recruits who were recruited for the vacancies which had arisen and which were anticipated before the amendment had come into force on 3-11-87 completed the training long after the promotees who had become eligible for promotion as diesel assistants ~~only~~ by virtue of amendment on 3-11-87 only, had become available. When it is a case of delay in selection of the direct recruits and when steps were not taken for promotees for conducting selection for consideration of their promotion, the question of fixation of inter-se seniority of direct recruits and promotees had become complicated.

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31. Para 302 of Indian Railway Establishment Manual (IREM) is as under;

"302. Seniority in initial recruitment grades: Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits. maintaining inter-se seniority."

Note: In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training.

(No.E(NG) 1-78-SR-6-42 dt.7-4-1982 ACS. 132)."

There is no quota between direct recruits and promotees for the posts of Fireman-A or Diesel Assistant. They have to be filled up by promotion. Shortfall to the extent referred to has to be filled by resorting to direct recruitment. But, para 302 has reference to recruitment by way of promotion and direct recruitment if there is quota for direct recruitment and promotion to initial grade. As the promotion to Fireman-A/Diesel Assistant is not in regard to initial grade, and as there is no quota between promotees and direct recruits, we held by order dated 14-11-94 in O.A. 77/91 that the above para is not applicable for fixation of inter-se seniority of promotees and direct recruits, if any and for the reasons stated therein we held that para 302 is not applicable for fixation of inter-se seniority of direct recruits and Firemen-A/Diesel Assistants.

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32. Para 306 of IREM reads as under:

"306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by ~~para~~ paragraph 305 above."

It is not clear from the said para as to whether it is applicable only in regard to panels prepared in regard to same source, if the recruitment is from more than one source or whether it is equally applicable even in a case where the recruitment is from more than one source. We already observed that ^{while} the period of training for direct recruits was two years. the periods of training for para(a) and para (b) ~~Firemen~~ ^{Are} 45 days and 31 weeks respectively. Further the promotion/ appointment to the post of Fireman-A/Diesel Assistant is on completion of requisite training. As such there is a possibility of promotee being appointed earlier in regard to para(a) vacancies of Fireman-A ^{of} later year before the date of appointment of direct recruit selected in regard to para (b) vacancies of Fireman-A of earlier year. Hence we expressed a doubt while disposing ~~of~~ O.A. 77/91 by order dated 14-11-94 as to whether para 306 is ~~not~~ applicable when the ~~of~~ recruitment is from more than one source, and the appointments are on completion of training which are of varying periods, ~~A~~ for the direct appointees/promotees from various sources. Anyhow ~~XXXXXXXXXXXXXXXXXXXX~~ this case ~~is~~ has to be considered by keeping in view about the delay in ^{that} selection for direct recruits and ~~the~~ amendment had come into existence long after the initiation of direct recruitment, and the promotees, though eligible, were not ~~not~~ subjected to selection in time though ^{So} they were given adhoc promotions, ~~the~~ matter has to be

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dealt with in the lines indicated below. Hence even for disposal of this O.A. we are not deciding in regard to scope of para 306 of IREM.

33. As neither the direct recruits can be faulted at for the delay in selection nor the promotees can be found fault, when the selection was not conducted the date of entry into service as the criterion for fixation of inter-se seniority will be inequitable. So we feel that the inter-se seniority of the direct recruits and the promotees has to be fixed on the following lines. Incidentally the case of fixation of inter-se seniority of the transferees has to be considered.

34. After considering all the aspects we feel that the fixation of seniority as referred to below is equitable. If there was no delay in regard to the selection of direct recruits there was a possibility of the direct recruits completing the training by the end of 1987. The Firemen-II excepting the six referred to, were eligible for consideration for promotion for para (A) vacancies of diesel assistants, only on 3-11-87. Thus if there was no delay the direct recruits would have been appointed as firemen-A even by 3-11-87 and hence they could have been taken as diesel assistants by way of lateral induction towards para (A) vacancies of diesel assistants. So we feel that it

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is just and proper to hold that the direct recruits to the extent to which we held there was justification for direct recruitment in 1985 were deemed to have been taken as lateral induction towards para. (A) vacancies of diesel assistants existed by 31-12-87 other than the six vacancies for which the six applicants who were eligible for consideration for promotion as Firemen-A even in 1984, have to be absorbed. We feel that the six vacancies out of para(A) vacancies of diesel assistants have to be set apart for those six applicants as there is nothing to indicate that they would have failed even in 1986 or 1987 if selection was held for promotion to para (b) vacancies of Fireman-A.

35. Then a question arises as to how the inter-se seniority of the six applicants and the direct recruits to the extent to which there was justification has to be fixed. Both the direct recruits and the Firemen-C were eligible for only para (b) vacancies of Fireman-A prior to 3-11-87. So in the circumstances, we feel that it is just and proper to arrange the seniority of direct recruits to the extent there was justification for direct recruitment and those six applicants by placing them on rotation basis in the ratio of 1:1 from both the sources and the first vacancy has to be filled by direct recruit and second vacancy has to be filled by the promotee and so on till the six applicants are absorbed. The inter-se seniority i.e. applicants 1, 2, 3, 19, 29 and 30 of these six applicants has to be fixed by taking the date of their entry as Fireman-C as basis.

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Pr. J. A.

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36. As we held that there were only 72 vacancies in para (b) category of Fireman-A by the end of 1987 and as six of ~~xxx~~ them would go to the six applicants referred to, the 66 direct recruits on the basis of their ranking have to be placed in the seniority list as referred to above.

37. It may be noted that no eligibility period is prescribed for consideration for promotion of Fireman-II to para (A) vacancies of diesel assistants while three years of service was prescribed for consideration of their promotion to para (B) vacancies of diesel assistants. As they were given the designation of Fireman-II with retrospective effect from 1-1-86, they completed the three years period by 1-1-89 only. As such they were not eligible for consideration for promotion for para (A) vacancies of diesel assistants till 1-1-89. As such the direct recruits were eligible for consideration for para (B) vacancies of 1988 and 1989 also.

38. The para (A) vacancies of diesel assistants for Diesel Assistants as on 1-1-88 were 76. The total vacancies in 1988 and 1989 were 36 and 41 $\frac{1}{2}$ the total of the same comes to 77, out of which 38 can be held as para (A) vacancies, and the remaining 39 can be held as para (B) vacancies. (It may be noted that the period of training for para (B) promotees is 31 weeks. Hence even if selection was held shortly after 1-1-89 the date on which the Firemen-II who were eligible for para (B) vacancies of diesel assistants, ^{they} would have completed the training by the end of 1989, and hence the 1989 vacancies are also taken into consideration.

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Dr. J. S.

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39. Thus while 114 (76 vacancies existed as on 1-1-86 plus 38 vacancies available in 1988 and 1989) vacancies in para (A) category of diesel assistants were available for promotees, 39 vacancies were available for direct recruits towards para (B) category of diesel assistants by the end of 1989. The remaining direct recruits were only 34 while 39 vacancies were available for para (B) category. So we feel that in this case also the rotation principle should be followed in the ratio of to be placed alternatively till the list of direct recruits from Sl.No.67 is exhausted; ~~and~~

40. Then the question arises with regard to the inter-se seniority of transferees and the promotees. It is true that in RP 47/93 in OA 532/92 a Bench of CAT, Hyderabad held that the seniority of the transferees had to be fixed by reckoning it from the date of their regularisation in the Hyderabad Division. It may be noted that the promotees or the direct recruits herein were not parties to either OA 532/92 or RP 42/93 and the question of fixation of inter-se seniority of direct recruits, promotees and transferees in the cadre of diesel assistants in Secunderabad Division had not arisen for consideration either in OA 532/92 or RP 42/93 therein. Hence the contention for the promotees that the transferees are estopped from contending that their seniority has to be reckoned from the date of deputation when the said contention was negatived in RP 42/93, cannot be acceded to either on the principle of law or on equity.

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41. While the promotees are contending that their seniority has to be reckoned from the date of their adhoc promotion, it will be a case of approbation and reprobation if the promotees contend that so far as transferees are concerned the period of service from their absorption in Secunderabad Division and not the period of service from the date of deputation from which their services were utilised as diesel assistant has to be taken for determination of their seniority, while their (promotees) seniority has to be reckoned from the date of adhoc promotion. When it is a case of fixation of inter-se seniority of promotees and transferees, either the date of regular promotion/absorption, or the date of adhoc promotion/deputation has to be taken as the basis and it is not proper to hold that the date of adhoc promotion should be the criterion for promotees while it should be the date of regular absorption in regard to the

transferees. Hence the date of regular absorption has to be taken as basis for fixing the inter-se seniority of the promotees in Secunderabad Division and the transferees from Hyderabad Division. After fixing their inter-se seniority all of them have to be considered as promotees and their inter-se seniority alongwith the direct recruits has to be fixed as referred to in the earlier paras.

42. In the light of the observations in this O.A., the General Manager, S.C.Rly. has to take a decision as to whether it is a case where the selection for promotion of these applicants and others as diesel assistants has to be dispensed with or not.

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43. If the General Manager is going to take a decision that the selection can be dispensed with then provisional seniority list of Diesel Assistants has to be prepared as follows:

The direct recruits at Sl.Nos.1 to 6 have to be listed alternatively with the applicants 1 to 3, 19, 29 and 30 by placing them alternatively starting with direct recruits. (The inter-se seniority of applicants 1,2,3,19,29 & 30 has to be fixed on the basis of entry as Fireman-C). Then the direct recruits from the Sl.Nos.7 to 66 have to be placed below the above 12.

Integrated seniority of promotees in Secunderabad Division who had become eligible for consideration in view of the amendment on 3-11-87 and the transferees from Hyderabad Division has to be fixed by taking the date of adhoc promotion as Diesel Assistant in regard to the promotees in Secunderabad Division, and the date of deputation to Secunderabad Division in regard to the transferees as basis. Both the promotees in Secunderabad Division and the transferees from Hyderabad Division have to be treated as promotees for fixation of integrated seniority of the direct recruits from Sl.No.67 and the promotees and transferees on the following basis:

The direct recruits from Sl.No.67 and the promotees have to be placed alternatively till the direct recruits are exhausted, by starting with the promotee (as per the integrated seniority of promotees in Secunderabad Division and the transferees from Hyderabad Division). Later the remaining promotees as per integrated seniority of promotees and transferees have to be placed.

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1. The General Manager, S.C.Rlys,
Railnilayam, Secunderabad.
2. The Divisional Railway Manager(P)BG
3. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
5. One copy to Mr. N.V.Ramana, SC for Rlys, CAT.Hyd.
6. One copy to Mr.S.Lakshma Reddy, Advocate, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.


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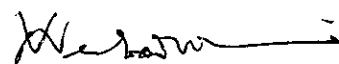
By G. A. Reddy
30/11/64

44. If ultimately the General Manager is going to ~~xaxa~~ decide that it is not just and proper ~~to~~ order relaxation then the selection has to be conducted in accordance with the rules in regard to the promotees and the transferees and the integrated seniority ~~list~~ of the successful promotees/transferees has to be prepared by taking the date of adhoc promotion or the date of deputation as the case may be as the basis. Thereafter the provisional seniority list has to be prepared as referred to above.

45. After consideration of the objections of the aggrieved, if any, the final seniority of Diesel Assistants/Firemen-A has to be prepared and it is needless to say that the aggrieved are free to move ~~this Tribunal under Section 19 of Administrative~~ Tribunals Act, if they still feel aggrieved. in the meanwhile, If it is necessary to send the diesel assistants from Secunderabad Division for promotional training or if promotions have to be made to the next higher post, the tentative seniority list has to be prepared in the manner referred to in this O.A. as if the selection for promotion was dispensed with.

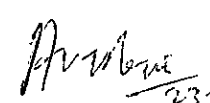
46. The O.A. is ordered accordingly. No costs. /


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated: the 17th day of December, 1994.

mhb/-


23/12/94
Deputy Registrar (S) CC

29/12/94

TYPED BY
COMPARED BY

CHECKED
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE JUSTICE V. NEELADRI
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMIN)

DATED: 16-12-1994

ORDER/JUDGEMENT:

M.A./R.A/C.A.No.

in

O.A.No.

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

Dvm

