

**A GENERAL MANAGER, SOUTH CENTRAL RAILWAY
SECUNDRABAD AND ANR ETC.**

v.

A.V.R. SIDDHANTI AND ORS. ETC.

January 30, 1974

B [V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

Constitution of India—Art. 14 & 16—Violation of equal treatment and discrimination.

Since common question of law arise in the these appeals, a common judgment was delivered to dispose of these appeals. The facts in C. A. No. 1937/72 are as follows:—

C During the last world war, Indian Railway opened grain shops to supply food-grains at cost priced to its employees throughout the country. Staff for this temporary grainshop complex was drawn from 3 different sources:—(i) Temporary employees selected through the Joint Selection Commission etc; who were initially appointed in the permanent departments but later transferred to grain shop complex (ii) Temporary selected initially for permanent departments but posed straightway in the Grain Shop Department and (iii) Temporary employees recruited from the 'Open Market' for the Grain Shop Department. Respondent no. 1 to 9 belonged to Category III.

D After the emergency was over, Railway authorities decided to wind up the grain shop Department and to absorb its staff in permanent departments of the Railway and accordingly respondent no. 1 to 9 were also absorbed in various departments.

On November 2nd, 1967, the Railway Board in partial modification of its earlier proceeding directed that the seniority of temporary Grain Shop Staff consequent on their absorption in the absorbing departments should be regulated on the basis of their date of actual absorption in those departments and not on the basis as if they had been absorbed in those departments right from the beginning of service.

E On January 13, 1961, the Railway Board issued a 'clarification' that the seniority of the Grain-Shop staff of category III should be fixed from the date of their absorption in a permanent department, irrespective of their length of service in the Grain-Shop Department, with regard to category I, it was laid down that temporary staff who were initially appointed in the permanent department and were then transferred to the Grain Shop department would not have their seniority affected by their transfer to the Grain Shop Department. It was further stated that seniority of category II should be fixed with reference to the date of their joining the Grain Shop Department.

F The validity of the above decision dt. November 2, 1957, and January 13, 1961 of the Board had been questioned on the ground that they discriminate against the employees of category III and, as such, violate the guarantee of equal treatment enshrined in Art. 14 and 16 of the Constitution. The learned single judge of the High Court accepted the contentions of respondents nos. 1 to 9 and struck down the impugned proceedings.

G On appeal, the Division Bench of the High Court affirmed the decision of the trial court and observed that when all the members of the Grain Shop Department are absorbed in different departments of the Railway there cannot be further dividing line between direct recruits and those appointed through selection Board as that would clearly be a denial of equal opportunity to persons similarly situated.

On appeal before this court, the appellants raised two preliminary points—(i) that there were laches on the part of the respondents to file the writ petitions 8 to 11 years after the issue of the impugned decisions (ii) the petitions did not implead about 120 employees who were likely to affect and therefore non-joinder of parties is fatal to the petition.

H Dismissing the appeals,

HELD: (i) Since the appellants did not canvass the point at the lower courts, they cannot be permitted to resurrect before this Court.

(ii) In the present case, the relief is claimed only against the Railways which has been pleaded through its representative. No list of order fixing seniority of the petitioners *vis-a-vis* particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioners' seniority in accordance with the principles laid down in the Boards' decision of October 16, 1952, were at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition. [213A]

Padam Singh Jhina v. Union of India and ors C. A. No. 405/67 decided by Supreme Court on 14-8-1968, discussed and distinguished.

The rule enunciated in *B. Gopalaiah & Ors. v. Government of Andhra Pradesh* A. I. R. 1969 A. P. 204 *J. S. Sachdeva & Ors v. Reserve Bank of India, New Delhi*, I. L. R. (1973) II Delhi 392 and *Mohan Chandra Joshi v. Union of India & Ors.* Civil Writ No. 650 of 1970 decided by Delhi High Court, approved.

(iii) On merits, it was argued that while employees of categories (i) and (ii) had a right as a part of their service conditions to get themselves absorbed and assigned their due seniority, on the abolition of the grain shop department, no such right existed in the case of *ad hoc* recruits belonging to category III.

The main question in the present case is "were the three categories after their transfer of chief recruitment of the Grain Shop Department fused into a single integrated class, having the same conditions of service;"

It is quite clear that after their direct recruitment to the Grain Shop Department, the personnel coming from sources (ii) and (iii) had shed their genetic peculiarities and became members of the same class governed by the same conditions of service. For the purpose of absorption seniority, promotion etc., in regular department, therefore, they were entitled to be treated alike. Therefore, the impugned directions dated Nov. 2, 1957 and January 13, 1961, excepting in so far as they relate to personnel of category I is arbitrary and violative of Art s. 14 and 16 of the Constitutions. [215C]

Roshan Lal Tandon v. Union of India, [1968] 1 S. C. R. 185, referred to.

(iv) In C. A. 1938 of 1972, 2 employees M & B exchanged places by mutual consent on a joint application. The result was that 7 was transferred and posted at Gundur and was given the 445 the place in the order of seniority held by B among the clerks in the Grain Shop Department of Bazwade District. Later on a result of the impugned decisions taken by the Railway Board on November 2, 1957 and January 13, 1961. M. was relegated to a lower position in the Seniority List of Commercial Clerks. He appealed to the Railway List of Commercial Clerks. He appealed to the Railway authorities but did not get any redress. Later, he filed a petition before the High Court. The writ petition was allowed by the High Court and hence the appeal. Following the above decision it was also held that the impugned order where M's seniority was revised and lowered, was invalid and a rule was issued directing the appellant to restore and refix the place on M. in List of seniority as on December 31, 1958. Appeal dismissed.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1937 and 1938 of 1972.

Appeals by Special Leave from the Judgment and order dated 1st September, 1971 of the Andhra Pradesh High Court at Hyderabad in Writ Appeals Nos. 689 of 1970 and 38 of 1971.

G. L. Sanghi and S. P. Nayar, for the appellant.

Mrs. Shyamla Pappu and J. Ramamurthi, for respondent Nos. 1-15 & 17-22 (in C. A. 1937/72) and for the respondent (in C.A. 1938/72)

J. Ramamurthi for the Interveners (in C.A. 1937 of 1972).

The Judgment of the Court was delivered by—

SARKARIA J.—These appeals by special leave are directed against two inter-linked judgments of the High Court of Andhra Pradesh. It will be convenient to dispose them of by this common judgment.

- A Respondents 1 to 9 in Civil Appeal No. 1937 of 1972 made a petition (W. P. 1145 of 1969) under Article 226 of the Constitution in the High Court for the issue of a writ of Mandamus directing the present appellants (the General Manager, South Central Railway and the Secretary, Railway Board) to fix the inter-se seniority of the writ petitioners as per original proceedings, dated October 16, 1952, of the Railway Board, and to further direct them not to give effect to
- B the subsequent proceedings dated November 2, 1957 and January 13, 1961, of the Board issued by way of "modification" and "clarification" of its earlier proceedings of 1952.

- During the last World War, there was acute shortage of foodgrains and other necessities of life. At the suggestion of B. N. Rau Committee, grain shops for the supply of foodgrains at cost price to its
- C employees were opened by the Indian Railways on an extensive scale throughout the country. Staff for this temporary Grain-Shop Complex was drawn from three different sources :

- i) Temporary employees who on being selected through the Joint Selection Commission or Staff Selection Board were initially appointed in the permanent Departments and were thereafter transferred to the Grain Shop Department.
- D
- (ii) Temporary employees selected by the Selection Board or the Selection Commission for permanent Departments but posted straightaway in the Grain Shop Department without being first appointed in the department for which they were originally selected, and
- E
- (iii) Temporary employees directly recruited by the Deputy General Managers to the Grain Shop Department from the open market.

Respondents 1 to 9 in this appeal belong to category (iii).

- F After the emergency was over, on the recommendation of a high-powered committee, it was decided to gradually wind up the Grain Shop Department and to absorb its staff in the permanent Departments of the Railway. For this purpose, the Railway Board took several policy decisions commencing from August 24, 1948. Of these, the first which is relevant as furnishing the background of the decisions in question, is dated February 3, 1949 (Exh. P), whereby the
- G temporary Grain Shop Staff was to be grouped as under :

- (a) those who were recruited prior to and were in service on September 15, 1945, and
- (b) those who were recruited on or after September 15, 1945.

With regard to group (a), it was directed:

- H "No age restrictions will apply in considering such employees for absorption in other departments, but the minimum educational qualification should not be relaxed....

There is, however, no objection to the staff concerned being permitted to apply to the Railway Service Commission for employment in posts advertised by them, in which case, for the purpose of the maximum age limit they can deduct the period of their continuous temporary service in the grainshop department from their present age. No employee should be retrenched unless he refused to accept the alternative employment that is offered to him by the Railway Administration".

As regards (b) it was laid down :

"Although no undertaking has been given about their continued retention in service, it is the Board's desire that these staff also should be absorbed against suitable vacancies on the same lines as the staff recruited before this date, subject to the condition that neither the restrictions required nor the—educational qualifications required nor the restrictions regarding the maximum age limit will be relaxed except in the latter case, to the extent of their continuous temporary service rendered by them of the Railway. Such staff, will, however, be considered for absorption only after the staff referred to in item (a) above have been offered employment."

(e) "In all cases other things being equal due consideration should be given to the length of service of the staff concerned."

This order further provided :

"(6)permanent or temporary staff of other departments on loan to the Grainshop Department should be returned to their parent departments if unfilled posts exist and if this is found to be administratively convenient, so as to reduce the number of grainshop staff who be surplus immediately...."

(7)"

(emphasis supplied)

Next, in importance, is the Railway Board's order No. E. 48. REI/1/3 of October 16, 1952 issued in supersession of its previous orders. This order is the sheet-anchor of the respondents' case. Its material part runs as under :

".....In supersession of the Board's orders contained in item (iii) of their letter No. E. 48. REI/1/3A of 6-7-1949, laying down the method for the absorption and fixation of pay of ex-Grain Shop Staff who were officiating in higher grades but were absorbed in other Departments in lower grades, it has now been decided that the pay of all such staff as well as those appointed in the intermediate grades, irrespective of the fact that they were absorbed either before or after 6-7-1949 should be fixed on their absorption in the regular Departments in accordance with the instructions contained in their letter No. E. 45 RE. 13/3 dated 27-7-46, and the staff concerned paid the arrears due on this account.

2. It has further been decided by the Board that such staff should not get any preferential treatment other than for

- A fixation of pay and obtaining alternative employment i.e. they should not be given seniority for purposes of confirmation by virtue of their pay being fixed at a higher stage in the absorbing Department over unconfirmed men in that Department who had longer service but whose pay was less. They should be given only such seniority which they would have got had they been absorbed in the absorbing Department right from the beginning of service."
- B

- On the representation made by the National Federation of Indian Railwaymen, the Railway Board, reconsidered its decision of October 16, 1952 regarding counting of past temporary service for the purpose of fixing seniority of 'open market' recruits. This reconsidered decision was put in the communication dated November 2, 1957
- C whereby the Railway Board, in partial modification of its proceeding of October 16, 1952, directed "that the seniority of temporary Grain-Shop Staff consequent on their absorption in the absorbing departments should be regulated on the basis of their date of their actual absorption in those departments and not on the basis as if they had been absorbed in those departments in right from the beginning of service".

- D On January 13, 1961, the Board issued a "clarification" that the seniority of the Grain-Shop staff of category (iii) should be fixed from the date of their absorption in a permanent department, irrespective of their length of service in the Grain-Shop department. With regard to category (i), it was laid down that temporary staff who were initially appointed in the permanent departments and were then
- E transferred to the Grain Shop department would not have their seniority affected by their transfer to the Grain Shop department. It was further stated that seniority of category (ii) should be fixed with reference to the date of their joining the Grain Shop Department.

- The validity of the above decisions dated November 2, 1957 and January 13, 1961 of the Board has been questioned on the ground
- F that they discriminate against the employees of category (iii) and, as such, violate the guarantee of equal treatment enshrined in Articles 14 and 16 of the Constitution.

- Mainly relying upon two Single Bench judgments—one of the Madras High Court in W.P. No. 3110 of 1965 and the other of the Bombay High Court in Misc. Petition No. 321 of 1964, decided on
- G March 15, 1967—the learned Single Judge who tried the writ petition, accepted the contentions of Respondents 1 to 9 and struck down the impugned proceedings.

Aggrieved by that judgment, the Railway carried an appeal under Clause 15 of the letters Patent to the Division Bench of the High Court, which dismissed the same with these observations :

- H "What has been held by their Lordships in *Roshanlal's case* applies with equal force to the case on hand. Here also there was already an integrated service namely the Grain Shop

Department service and all the members of this Service were absorbed in different Departments, and after absorption, there cannot be a further dividing line between direct recruits drawn from open market and those appointed through selection Boards as that would clearly be a denial of equal opportunity to persons similarly situated in the matter of further promotion on the basis of their seniority, among other grounds. Since the absorption of direct recruits and others is from the integrated Grain Shop Department, no discrimination can be shown on the ground of differences that existed between various sources prior to the recruitment to the Grain Shop Department for the purpose of fixing seniority."

It is against this judgment that Civil Appeal No. 1937 of 1972 has been preferred.

Mr. G. L. Sanghi, learned Counsel for the appellants, has raised two preliminary objections. The first is that the writ petition was filed 8 to 11 years after the issue of the impugned decisions, and as such, was liable to be dismissed on the score of laches alone.

The second is that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in this case. Those employees, proceeds the argument, were necessary parties and their non-joinder is fatal to the petition. In support of this contention, Counsel has cited *Padam Singh Jhina v. Union of India and ors* (1).

Neither of these objections appears to be tenable.

Though the plea of laches was taken in the counter-affidavit filed on behalf of the Railway before the High Court, yet it appears that the point was not canvassed at the time of arguments either before the learned Single Judge or the Division Bench in the Letters Patent appeal. The appellants therefore cannot be permitted to resurrect in this Court the same objection which they had apparently abandoned in the High Court.

As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or

(1) C.A. No.405 of 1967 decided by Supreme Court on 14-8-1967.

- A order fixing seniority of the petitioners *vis-a-vis* particular individuals pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition.

B

- The ratio of this Court's decision in *Padam Singh Jhina's case* (supra) is not applicable to the facts of the instant case. Jhina's contention was that he had been *mala fide* reduced in the list of seniority, from the 5th to the 7th place and that one Prem Sagar had been placed above him in contravention of the Rules. The validity or vires of the Rules was not in question. All the persons whose placement in the seniority list was controverted were not impleaded, and as such, had no opportunity of replying to the case set up by Jhina, and, in the absence of persons directly affected, it was not possible for the Court to adjudicate the matter. The ratio of Jhina's case does not help the appellant. The cases relevant for our purpose are *B. Gopalaiah and Ors. v. Government of Andhra Pradesh*; (1) *J. S. Sachdev and Ors. v. Reserve Bank of India, New Delhi* (2) and *Mohan Chandra Joshi v. Union of India and Ors* (3). We approve of the rule enunciated on this point in those cases.

D

- On merits, Mr. Sanghi has, by and large, adopted the reasoning of the Division Bench of the Madras High Court in *General Manager, Southern Railway v. Venkataraman* (4), which had, in Letters Patent Appeal reversed the judgment of the Single Judge, relied upon in the instant case by the Andhra Pradesh High Court.

E

- It is contended that the standards, qualifications for eligibility and the conditions governing the employees recruited through the Staff Selection Board or Joint Service Commission from sources (i) and (ii) were different from those of 'open-market' recruits. According to the learned Counsel, the personnel drawn from source (iii) were temporarily engaged as an *ad hoc* measure, without regard for age and educational qualifications, to meet the emergency and could not therefore be compared and equated with the employees of requisite qualifications belonging to categories (i) and (ii) recruited or selected in the normal way through Selection Boards for regular departments. The point pressed into argument is that while employees of categories (i) and (ii) had the assurances or right as a part of their service conditions that on the abolition of the Grain Shop Department, they would be absorbed and assigned their due seniority, in the permanent department in or for which they were initially appointed or selected, no such right or assurance existed in the case of *ad hoc* recruits belonging to category (iii) who were given the benefit of their services in the

H

(1) A. I. R. 1969 A. P. 204. (2) ILR(1973) II Delhi 322.
 (3) Civil Writ No. 650 of 1970 decided by Delhi High Court.
 (4) [1970] II Labour Law Journal 76.

Grain Shop Department, only as a matter of grace, subsequently on absorption in permanent departments.

It is not correct to say that all the employees of category (iii) were sub-standard in educational qualifications. Several persons in that category satisfied the educational norms. For instance, Sidhanti Respondent was F.A., while the minimum educational qualification requisite for the post of a Commercial Clerk was Matriculation or equivalent examination. Though sufficient data has not been brought on the record on the basis of which a firm finding can be given, yet three copies of notices (uncertified) have been filed by the Respondents which indicate that at some stage educational qualifications had been relaxed to meet the extraordinary demand for personnel to man the posts of Ticket collectors and Guards etc. Regarding education, all that was required of the candidates was a "working knowledge of English". It was quite possible, that in categories (ii) and (iii), also, there were some whose qualifications were not in accord with the prescribed norms. Educational qualifications being less than the requisite minimum was therefore not a feature, peculiar to category (iii), only. Indeed, it is not the case of the appellants that the classification of the grain-shop staff envisaged in the impugned proceedings, for the purpose of absorption and seniority in permanent departments, has been made on the basis of educational qualifications.

The fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike. "The Constitutional Code of Equality and Equal Opportunity", observed this court in *State of Jammu and Kashmir v. Triloki Nath Khosla and others*⁽¹⁾. "is a charter for equals". So long as employees similarly circumstanced in the same class of service are treated alike,—the question of hostile discrimination does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a 'classless' and undiscerning 'equality' where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible. That is to say, reasonable classification according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities

(1) Civil Appeal No. 2134 of 1972 decided on 26-9-1973.

- A is allowed, but not miniclassification which creates inequality among the similarly circumstanced members of the same class or group.

In the light of the above principles it will be seen that the pivotal question in the present controversy is: Were the three categories after their transfer or direct recruitments, as the case may be, to the Grain Shop Department fused into a single integrated class having the same conditions of service? Or, did they continue dissimilarly—as they started—in three separate compartments?

B

While there is ground to hold that category (i) never lost its distinctive birth-marks, no material has been placed before us on the basis of which it could be said that categories (ii) and (iii), after their direct recruitment, had not completely lost their genetic peculiarities in the common unified stream of Grain-Shop service.

C

The special feature of personnel of category (i), was that they had been initially appointed against substantive vacancies in permanent departments of the Railway. They did not come to the temporary Grain Shop Department of their own volition or option, but by transfer or on loan under peremptory orders of their superior officers. They could not be placed in a worse position or treated differently in the matter of tenure than their colleagues who fortuitously continued in the permanent Departments. It was but fair and reasonable that, on the abolition of the Grain Shop Department, they should be sent back to the permanent Departments, whence they came, and given credit of their initial service in those Departments for the purpose of permanent absorption and seniority. Even from the deficient material placed before us, it is clear that personnel from source (i) have always been treated as a distinct unit having a status akin to that of persons on loan or transfers for a period from a permanent Department to a temporary Department. Consequent upon their decision to gradually wind up the Grain Shop Department, the first step taken by the Railway Board as per para 6 of their communication dated February 3, 1949 (reproduced in a foregoing part of this judgment), was to return all temporary or permanent staff that had come on loan to the Grain Shops, to their parent departments.

D

E

F

It is note-worthy that the directions in para 6 of the communication, dated February 3, 1949, were not superseded by the proceedings, dated October 16, 1952, which are the foundation of the Respondent's claim. Clause (1) (i) of the impugned communication, dated January 13, 1961, is no more than a reiteration, in an amplified form, of the direction in Para 6, of the communication of February 3, 1949. The direction of October, 16, 1952 regarding fixation of pay and seniority of the ex Grain Shop staff on their absorption in regular departments, were obscure and vague on two points. Firstly, it was not clear whether the ex Grain Shop staff governed by those directions included the temporary staff who had been initially appointed in permanent departments and were there-after transferred for some period to the Grain-Shop department. Secondly, "the beginning of the service" in the last sentence of those directions was susceptible of two constructions. In the restricted sense, it could mean beginning

G

H

of the service in the Grain-Shop Department. In the wider sense, it would include in the case of transferees to the Grain-Shop, the beginning of their service in the permanent department whence they came. Clause (1) (i) of the communication of January 13, 1961 clarified those aspects. The differential treatment of the personnel belonging to category (i), for the purpose of fixing seniority envisaged in clause (1) (i) of the communication of January 13, 1961, thus, rests on a sound rational basis and does not offend Articles 14 and 16 of the Constitution.

To this extent, for reasons stated above, we endorse the view taken by the Division Bench of the Madras High Court in *General Manager Southern Railway, Madras v. T. K. Venkataraman*(supra).

But what has been said above in regard to category (i) does not hold good in the case of the other two categories. Excepting that they were recruited by two different methods, in all other respects, these two categories were similarly situated. The mere fact that the names of persons in category (ii) were borne on a list of candidates prepared by the Selection Board for recruitment to regular Departments, did not give them a right to preferential treatment *qua* those in category (iii) in the matter of absorption and seniority in such departments. We have perused Paras 302, 303 and 304 of the Indian Railway Establishment Manual, Chapter III, 2nd Edition, relied upon by Mr. Sanghi. These are not statutory provisions. Even so, there is nothing in them to show that a person selected for a permanent department, by the Selection Board or Commission, gets a right to be appointed merely because of such selection and placement of his name on the select-list. He gets only a *spes* i.e. bare chance of appointment and that too if the appointing authority so desires and a vacancy is available for him. All that the said provisions say, in substance, is that *after their appointment*, their *inter se* seniority will be fixed with reference to their positions in the merit list prepared by the Selection Board.

Despite repeated queries, the appellants have not placed any document or material nor referred to any rule, policy decision or other official record to support their contentions that even after their recruitment to Grain-Shop Department, categories (ii) and (iii), continued as distinct entities having different conditions of service. Appellants' failure to furnish such material is sought to be justified on the ground that the burden of proving that the impugned proceedings suffer from the vice of discrimination, was on the respondents.

True, that the initial onus of showing that the proceeding of 1957 and 1961, in question, were discriminatory and as such, violative of Articles 14 and 16 of the Constitution, was on the respondents; but in the peculiar circumstances of the case, such onus had been *prima facie* discharged by them. Their claim to relief is founded on the Railway Board's own decision of October 16, 1952, which proceeds on an in-built postulate and implied admission that all the personnel recruited to the Grain-Shop department were members of the same class or unit of service, and as such entitled alike to the fixation of their

A seniority with reference to "the beginning of their service". It was then the turn of the Board to show that the inference arising from its admission, or treatment of all persons directly recruited, as members of one unified service of the Grain Shop Department was wrong.

B Conscious of the necessity of resolving the problem in a just, practical manner, avoiding a doctrinaire approach, we wanted to have some idea of the nature and magnitude of the impact which the decision of this case might indirectly or incidentally have on the employees who, during the interregnum, got promoted or confirmed on the basis of the impugned directions. We, therefore, indicated at the outset that as a matter of concession, we would be disposed to allow the appellants to produce even at that stage, after due notice to the other side, documentary evidence or material, if any, in their possession or control, which would help substantiate their contention. The opportunity was not availed of by the appellants. There is, therefore, no escape from the conclusion that after their direct recruitment to the Grain Shop Department the personnel coming from sources (ii) and (iii) had shed their genetic peculiarities and become members of the same class or unit governed by the same conditions of service. For the purposes of absorption, seniority, promotion etc. in regular departments, therefore, they were entitled to be treated alike.

E The impugned directions of 1957 and 1961, in so far as they pertain to categories (ii) and (iii), are hit by the rule in *Roshan Lal Tandon v. Union of India* (1) according to which once the persons coming or recruited to the service, from two different sources—in that case promotees and direct recruits—are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original source, for the purposes of further promotion to the higher grade. What was said about further promotion in *Roshan Lal Tandon's case* (supra) is equally applicable to absorption and seniority in the instant case.

G For the foregoing reasons, we would hold that the discrimination envisaged in the impugned directions dated November 2, 1957 and January 13, 1961, excepting in so far as they pertain to personnel of category (i) is arbitrary and violative of Articles 14 and 16 of the Constitution.

H In the result we dismiss the appeal with costs throughout and affirm the decision of the High Court except to the extent indicated above.

(1) [1968] 1 S. C. R. 185.

In Civil Appeal 1938 of 1972, arising out of Writ Petition No. 952 of 1966, Respondent Manickyam was originally employed as a Commercial Clerk on December 4, 1944 in the Southern Railway and was posted at Rayapuram. One Balasubramaniam, was then a clerk in the Grain Shop Department in Bezwada District and posted at Gudur. In 1950, Manickyam and Balasubramaniam made joint application for mutual transfer. This application was allowed and, in consequence, Manickyam and Balasubramaniam exchanged places. Manickyam was therefore transferred and posted on August 10, 1950 at Gudur and was given the 445th place in the order of seniority among the clerks in the Grain Shop Department of Bezwada District. This was the rank and position in the seniority formerly held by Balasubramaniam. Subsequently, as a result of the impugned decisions taken by the Railway Board on November 2, 1957 and January 13, 1961, Manickyam was relegated to a lower position in the seniority list of Commercial Clerks. He appealed against this fixation of seniority to the Railway Authorities who dismissed the same. Manickyam then moved the High Court under Article 226 of the Constitution for bringing up and quashing the order dated May 24, 1966 of the Divisional Commercial Superintendent, Southern Railway, Vijawada, in so far as it related to the promotion of Respondents 2 to 8 to the senior time scale of Rs. 205-280 and directing Respondent No. 1 (Divisional Superintendent, Southern Railway, Vijayawada) to promote the petitioner to the said scale giving him a place in the seniority immediately above Respondents 2 to 8 and to pass such further order as may be necessary.

In the counter-affidavit filed by the appellant, it was averred that Manickyam and Balasubramaniam were mutually transferred to Bezwada District and Rayapuram District and assigned each other's places *i.e.* 445th and 601st places in the seniority among the Commercial Clerks in Bezwada District and Rayapuram District, respectively, on the basis of an agreement between them. It was further stated that on July 18, 1955 Manickyam made an application requesting that he should be given all those benefits which had been made available to ex Grain Shop clerks. This application was declined because the petitioner had himself accepted his transfer to Bezwada on the condition of getting 445th place in the seniority. It was, however, admitted that in pursuance of the Railway Board's orders dated November 2, 1957, the seniority of all Grain-Shop clerks working as Commercial Clerks was revised in 1965, and on such revision Manickyam's seniority was also revised as he had come to Vijayawada District in mutual exchange with Grain Shop Employee. It was

- A added that he was given what he really deserved under the rules and agreement.

From the pleadings and the contentions canvassed, it was clear that Manickyam's grievance was against the validity of the Railway Board's Orders dated November 2, 1957 and January 13, 1961 on the basis of which his seniority was, in fact, revised and downgraded. The learned single Judge who tried the writ petition found that since the classification envisaged in the Railway Board's Orders dated November 2, 1957 and January 13, 1961 were discriminatory, arbitrary and unconstitutional, the impugned orders, also, whereby Manickyam's seniority was revised down were invalid. In the result, the Writ Petition was allowed and a writ of *Mandamus* directing the appellant to give Manickyam 92nd place immediately above Pothuraju, No. 93, and to the then Respondents 2 to 8 from 96th to 195th places in the list of seniority published as on December 31, 1958, was issued. It was further directed: "If as a result of the restoration of the petitioner's seniority as per the above order, he is entitled to any promotion to a higher scale of pay, I direct that the first respondent should give him the benefit of such promotion." The Letters Patent Appeal preferred by the Divisional Superintendent of the Railway (the Respondent) was dismissed by the Division Bench of the High Court. Hence this appeal by the Railway.

E Learned Counsel for the appellant raised the same preliminary objections and canvassed the same contentions which were advanced in Civil Appeal 1937 of 1972. For reasons given in that appeal, we would overrule the objections, negative the contentions and hold that since the questioned directions of November 2, 1957 and January 13, 1961, in so far as they related to the employees of ex-Grain Shop recruited from sources (ii) and (iii) were violative of Article 16 of the Constitution, the impugned order whereby Manickyam's seniority was revised and lowered, in pursuance of those directions, was also invalid.

G A *Mandamus* shall therefore, issue directing the appellant to restore and refix the place of Manickyam in the list of seniority as on December 31, 1958, in accordance with the Railway Board's directions of October 16, 1952 and taking into account other relevant considerations, but ignoring the directions contained in the Board's communication of November 2, 1957 and January 13, 1961 to the extent they have been held to be unconstitutional and invalid. If as a result of the refixation of his seniority as directed, Manickyam becomes entitled to be promoted or to be considered for promotion,

he shall be so promoted or considered for promotion on an actual or notional basis, with effect from the date on which such promotion or consideration for promotion, as the case may be, falls due.

A

With the slight modification, indicated above, we dismiss this appeal. Appellant shall pay the costs of Respondent Manickyam, in this Court.

B

S.C.

Appeals dismissed.