

PETITIONER:
YASHBIR SINGH & ORS., ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 18/08/1987

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1988 AIR 662 1987 SCR (3) 1018
1987 SCC (4) 345 JT 1987 (3) 399
1987 SCALE (2) 371

ACT:

Service matter--Seniority list challenged--Injunction sought against issue of altered seniority list for the purpose of promotions, confirmations, etc.

HEADNOTE:

The petitioners were railway employees. The Railway Board issued a circular dated July 2, 1970, laying down procedure for filling up posts of train examiners and upgradation of posts. It directed that vacancies arising in Grade C after 1.4.1966 to the extent of 50 per cent would be maintained in that grade and the remaining 50 per cent would be down-graded to be filled by promotion of skilled artisans. It further directed that 50 per cent of the vacancies in Grade C should be filled by direct recruitment of apprentice Train Examiners with five years' training to the extent of 80 per cent thereof and the remaining 20 per cent by promotees from Grade D as laid down in paragraph 1 of the Circular dated 27.10.1965 of the Board. This procedure was directed to be followed till the cadre position was normalised and the excess in the Grade of Rs.205-280 were eliminated. Paragraph 2 of the circular further directed that those promoted to Grade C in the scale of Rs.205280 as on April 1, 1966 would be assigned seniority amongst themselves in the order of their inter se seniority in the Grade of Rs. 180-240 for the purposes of confirmation, etc., in that grade and they would rank senior to those recruited as apprentice train examiners with five years' training and appointed after 1.4.66 in the grade of Rs.205-280. The result of the circular was that all those promotees, who had been appointed to Grade D prior to 1.4.66 stood absorbed in Grade C and they were granted seniority in that grade with retrospective effect, that is, with effect from April 1, 1966.

The Railway Board later took a policy decision to abolish the entry grade D of train examiners in the pay-scale of Rs. 180-240, and in order to implement that decision issued a circular dated October 30, 1972, abolishing the entry Grade D of the train examiners and placing the incumbents of that grade en masse in grade C in the scale of Rs.205280 with effect from 1.11.72. Paragraph 2 of the circular di-

rected that the pay of the staff brought from Grade D (Rs.180-240) to grade C

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(Rs.205-280) would be fixed under Rule 2017 A (III) read with rule 2019 II. As all the incumbents of grade D in the scale of Rs. 180-240 were placed en masse in the higher grade C in the scale of Rs.205-280, a provisional seniority list of grade C Train Examiners working in Delhi Division was prepared on November 16, 1981. In that seniority list, the petitioners were shown senior to some of the respondents as the seniority was not determined in accordance with Rule 302 of the Railway Establishment Manual. This seniority list was not prepared in accordance with the prescribed criteria, as had been done in the other Divisions. The Board issued a circular dated 28.11.81, directing that the Delhi Division should also fall in line with the other Divisions of the Northern Railway, and the seniority of the train examiners appointed between 1.4.66 and 1.11.72 should be prepared in accordance with the existing practice. viz. on the basis of the date of appointment in the particular grade.

In pursuance of that direction, seniority of the train examiners of grade C placed in that grade between 1.4.66 and 1.11.72, was published in 1981 by the authorities of the Delhi Division of the Northern Railway. After inviting objections, the seniority list was finally published in December, 1982. In that seniority list, the petitioners were shown junior to respondents 5 to 10. Aggrieved, the petitioners moved this Court by writ petitions, challenging the validity of the seniority list and for quashing the circulars dated July 2, 1970 and November 28, 1981 of the Railway Board, and restraining the respondent--Railway authorities from altering or issuing the seniority list in pursuance of the circular dated November 28, 1981 of the Railway Board and for maintaining the seniority list issued in 1968.

Dismissing the petitions, the Court,

HELD: The Respondents Nos. 5 to 10, who belonged to the group of apprentice--train examiners were directly placed to working posts in grade C after completion of 5 years' training in accordance with the circular dated July 2, 1970 of the Railway Board, and each one of them had been placed in grade C prior to 1.11.72, while the petitioners were placed in grade C with effect from 1.11.72, in pursuance of the circular dated 30.10.72 of the Railway Board. Since the respondents 5 to 10 were appointed to grade C earlier and the petitioners were placed in that grade later, the petitioners were shown in the seniority list junior to the respondents concerned. No valid objection can be raised against respondents' seniority. [1027H; 1028A-C]

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The petitioners challenged the validity of the Railway Board's circular dated July 12, 1970, in 1981--after 11 years. All the petitioners were in service on the date that circular was issued and they were aware that their colleagues (promotees belonging to grade D) were placed in grade C and they had been granted seniority with retrospective effect, but none of them challenged the validity of the circular. Now, the petitioners cannot be permitted to challenge the validity of that circular after 11 years. The petitioners should have challenged the circular within a reasonable period of time which they did not do. It is wellsettled that anyone, who may feel aggrieved by an administrative order or decision affecting his right, should act with due diligence and promptitude and not sleep over the matter. Taking up old matters after a long time is likely to result in administrative complications and difficulties and

would create insecurity and instability in the service which would affect its efficiency. The petitioners are, therefore, not entitled to challenge the validity of the Railway Board's circular dated July 2, 1970, after 11 years. Even otherwise, on merits, there is no legal and constitutional infirmity in the circular. In order to reorganise the cadre of the train examiners to cope with the increased work load, the Railway Board issued a Notification dated October 27, 1965, reorganising the cadre. The validity of the notification was challenged before this Court in Roshan Lal Tandon's case. The Court struck down only a portion of the notification and the rest of the directions contained in the notification remained unaffected. After the judgment of the Court, the Railway Board reconsidered the matter, and, with a view to implementing the decision of this Court and further carrying out its policy of reorganisation as initiated under its circular dated October 27, 1965, issued the circular dated July 2, 1970 [1029A-H; 1030A-B]

The scheme of reorganisation of the cadre as contemplated by the circular dated October 27, 1965, was to be operative with effect from April 1, 1966. The Petitioners' submission that the date April 1, 1966, was fixed in an arbitrary manner without any basis, is untenable. The promotees, who were placed in the higher grade C with effect from April 1, 1966, were undoubtedly senior to the petitioners in grade D, and none of the petitioners' rights were affected by their promotions. The Railway Board implemented the reorganisation scheme after the decision of this Court in Roshan Lal Tandon's case. As promotion to grade C had been stayed during the pendency of Tandon's case in this Court, the Railway Board was justified in granting promotion with retrospective effect from April 1, 1966, as initially, the reorganisation was proposed to be implemented from that date, which could not be done on account of stay orders issued by this Court. The petitioners

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cannot claim parity with those who had been promoted to grade C under the Railway Board's circular dated July 2, 1970, as they do not belong to that class. Equality can be claimed amongst equals and not with unequals. The persons, who had acquired the right of promotion under the Railway Board's notification dated October 27, 1965, but could not be promoted on account of litigation, formed a separate class, and the petitioners could not equate themselves with them, as they were not entitled to promotion under the notification dated October 27, 1965. There is no merit in the petitioners' plea of discrimination. [103AF-H]

The validity of the Railway Board's circular dated July 2, 1970, was challenged by a writ petition before the Delhi High Court, which upheld the same. Again, the validity of that circular as well as the circular dated January 28, 1981 of the Railway Board was challenged by a writ petition before the Delhi High Court, which upheld the same. [1032F-H]

By the Circular dated October 30, 1972, of the Railway Board, the entry grade of train examiners in the scale of Rs. 180-240, was abolished and all the train examiners in that grade were placed in the scale of Rs.205-280 with effect from November 1, 1972. The petitioners were included in grade C with effect from November 1, 1972, and, therefore, they are entitled to seniority with effect from that date in Grade C. The petitioners are not entitled to claim seniority in grade C with reference to the date of their appointment in grade D. The respondents 5 to 10 were appointed in grade C earlier than the petitioners and, there-

fore, they are senior to the petitioners. Rule 302 of the Railway Establishment Manual lays down a general rule for determining seniority from the date of appointment in a particular grade when a person is promoted to or placed in a higher grade, his seniority is determined with reference to the date of such promotion or placement unless the relevant rules provide to the contrary. Seniority in lower grade has no meaning for determining seniority in the higher grade except for determining inter se seniority of the promotees. In the absence of any contrary provision in the Rules, the general rule of seniority laid down by Rule 302 must prevail. [1034G-H; 1035A-E]

It appears that in the seniority list prepared in 1968, the names of some of the respondents were shown in grade D on a wrong assumption. The respondents 5 to 10 were apprentices undergoing training, and in accordance with the directions contained in the Railway Board's notification dated October 27, 1965. they were entitled to appointment

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straightaway on completion of their training. They were drawing stipend at a rate which was the scale prescribed for grade D, but they did not belong to grade D and could not be included in the seniority list of grade D. The petitioners cannot draw advantage from the mistake committed in including the names of the respondents in the seniority list of 1968. [1035F-H; 1036A]

The petitioners were placed in higher grade C with effect from November 1, 1972, and they are entitled to seniority with reference to their placement in that grade and they have no legal right to claim seniority in that grade as against those who were appointed to that grade before November 1, 1972. [1036C-D]

Whether the petitioners were promoted to grade C or were placed en masse in that grade, does not make any difference in so far their entry to grade C is concerned; in either case, they entered grade C with effect from November 1, 1972. The petitioners have failed to show that any person junior to them has been made senior to them. Their grievance is without any substance. [1037C-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 9222 to 9226 of 1981.

(Under Article 32 of the Constitution of India).

N.N. Keshwani, R.N. Keshwani and Raj Kumar Gupta for the Petitioners in W.P. Nos. 9222-25 of 1981.

Petitioner-in-person (Inder Mohan Lal Tandon) in W.P. No. 9226 of 1981.

V.C. Mahajan, G.L. Sanghi, C.V.S. Rao, Kitty Kumaramanglam, Randhir Jain and S.K. Bhattacharya for the Respondents.

The Judgment of the Court was delivered by

SINGH, J. By means of these petitions under Article 32 of the Constitution the petitioners claim relief for quashing Railway Board's circular/letter No. E (NG) 1/69/PMI- 180 dated 2nd July, 1970 and No. E (NG) I-80-SR6-39 dated 28th November, 1981. They further claim relief for the issue of writ in the nature of mandamus restraining the respondent, Railway Authorities, from altering or issuing seniority list in pursuance of the Railway Board's circular dated 28th November,

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1981 and to maintain the previous seniority list issued in

1968 for the purpose of promotions, confirmation and further advancement.

In the Indian Railways, initial recruitment of Train Examiners, used to be made in the entry Grade D in the pay scale of Rs. 100-185. Prior to 1st April, 1966 recruitment to Grade D of Train Examiners was made from two sources (1) by promotion of skilled artisans working in the lower grade, (2) by direct recruitment of apprentices having completed prescribed four years' training. 50 per cent of the vacancies were filled by apprentices while the remaining 50% of the vacancies used to be filled by promotion of skilled artisans. Promotion from entry Grade D was made to next higher Grade C of Train Examiners in the pay scale of Rs. 150-225 and later these grades were revised and the scale of D grade was raised to Rs. 180-240 and that--of C Grade to Rs.205-280. Promotion to Grade C used to be made on the basis of senioritycum-suitability without any distinction of promotee or direct recruits. Because there was increase in the work load of Train Examiners the Railway Board took steps to re-organise the cadre of Train Examiners. With that end in view, it issued a notification on 27.10.1965 which directed that vacancies in the entry grade of Train Examiners in the scale of Rs. 120-140 should not be filled from apprentice Train Examiners upto 50 per cent as hitherto, but should exclusively be, filled by promotion of skilled artisans. It further provided that vacancies in the next higher grade C (in the scale of Rs.205-280) should be filled from amongst the Train Examiners working in the grade of Rs. 180-240 to the extent of 20%. The remaining 80 per cent vacancies were to be filled by direct recruitment of apprentice Train Examiners who may have successfully completed prescribed training. Paragraph 2 of the notification provided that the apprentice Train Examiners recruited on or from 1.4.1966 shall be given training for a period of 5 years and from the same date artisans recruited in the lower grade as apprentice Train Examiners shall be given 'in service' training for a period of three years. The circular upgraded 50% of the existing posts of Train Examiners from Grade D to Grade C in the scale of Rs.205-280 which were earlier earmarked for Apprentice Train Examiners. The notification further directed that with effect from 1.4.1966 all the apprentice Train Examiners on successful completion of their training should be straightaway brought to the scale Rs.205-280 instead of being first absorbed in the scale of Rs. 180-240 as was being done prior to the issue of the notification. Apprentice Train Examiners who were undergoing training on the date of the issue of notification, were directed to be brought to the working posts before 1.4.1966 and they were allowed stipend in the scale of Rs. 180-240 during the period of their training

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and their period of training was increased from four years to five years. On the completion of the training they were straightaway posted in Grade C in the scale of Rs.205-280. Those apprentice Train Examiners who had already been or may be absorbed in the scale of Rs. 180-240 upto 31.3.1966 were directed to be accommodated first in the scale of Rs.205-280 in Grade C against the quota of 80% vacancies reserved for them, and they were not required to undergo selection before being absorbed in that grade.

The effect of the Railway Board's circular dated October 27, 1965 was that the existing apprentice Train Examiners who had already been absorbed in Grade D by March 31, 1966 were first accommodated in Grade C against 80% of the vacancies reserved for them without undergoing any selection,

while 20% of the vacancies reserved for the departmental Train Examiners, were to be filled by artisan promotees by selection and not on the basis of seniority-cum-suitability. Although apprentices as well as artisan promotees constituted one integrated class in Grade D but promotee artisans, were treated differently for promotion to Grade C. Roshan Lal Tandon who was promoted from artisan class to Grade D, filed a writ petition in this Court challenging the validity of the notification dated 27-10-1965 on the ground that a part of the notification which gave favourable treatment to apprentice Train Examiners was violative of Articles 14 and 16 of the Constitution. In that writ petition a Constitution Bench of this Court on August 14, 1967 in *Roshan Lal Tandon v. Union of India*, [1968] 1 S.C.R. 185 held that artisans and apprentices recruited from two sources to Grade D were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade C. Apprentice Train Examiners who were recruited directly to Grade D as Train Examiners formed one common class with the skilled artisans who were promoted to Grade D as Train Examiners and thereafter no favoured treatment could be given to the apprentice Train Examiners merely because they were directly recruited as Train Examiners, no discrimination could be made against the latter merely because they were promotees. The Court emphasised that once the direct recruits and promotees are absorbed into one cadre, they formed one class and they could not be discriminated for the purpose of further promotion to higher Grade C. On these findings the Court allowed the writ petition and issued a mandamus directing the Railway Board not to give effect to the impugned part of the circular which was as under:-

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"The Apprentice T.X. Rs. who have already been or will be absorbed in scale Rs. 180-240 upto 31.3. 1966 should first be accommodated in scale Rs.205-280 against the quota of 80% vacancies reserved for them. Such staff should not be required to undergo a 'Selection' before being absorbed in that grade. The upgraded vacancies in scale Rs.205-280 left over after earmarking those for the apprentices under training on 2.4.66 should be filled by promotion of T.X. Rs. in scale Rs. 180-240 on a selection basis. While computing the number of posts available for promotion of T.X. Rs. in scale of Rs. 180-240 the vacancies likely to occur during the period of apprenticeship of the apprentices under training as on 1.4.1966 should also be taken into account. In other words, it would be necessary to keep in reserve only the number of posts equal to the number of apprentices under training as on 1.4.1966, who cannot be absorbed in the anticipated vacancies which will arise by the time they qualify."

The Railway Board with a view to implement the decision of this Court and to remove the anomaly which had been pointed out by this Court issued circular/letter No. N (NG) 65 PMI/86 dated 13.9.1968 annexures III to the affidavit filed on behalf of Respondent Railway Administration. Paragraph 1 of the letter refers to this Court's judgment in *Roshan Lal Tandon's* case and also to that portion of the Railway Board's circular dated October 27, 1965 which had

been struck down by the Court and the interim orders issued by the Court restraining the Railway authorities from implementing the Circular dated October 27, 1965 during the pendency of the writ petition. Paragraph 2 and 3 of the Circular dated September 13, 1968 stated that in view of the judgment of the Supreme Court the Board have decided that vacancies in the grade of Rs.205-280 (after taking into account the upgrading of 50 per cent of posts in the scale of Rs. 180-240- to 205-280 less the number of posts required for absorbing Apprentice Train Examiners undergoing the enhanced period of training of five years on April 1, 1966, should be filled by selection from amongst Train Examiners in the scale Rs. 180-240 as on March 31, 1966 irrespective of whether they were initially recruited as Apprentice Train Examiners or were promoted from lower grades. The Board desired that Railway Administrations should take immediate steps to ensure that proper selections are held for which all TXRs in scale of Rs. 180-240 are considered. It had come to Board's notice that prior to the issue of the stay order, persons originally recruited as Apprentice Train Examiners who were in the

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scale of Rs. 180-240 have been promoted to the grade Rs.205-280 in pursuance of Board's letter dated 27.10. 1965. The Board decided that in view of the Supreme Court's judgment, such promotions should be treated as null and void and the vacancies should be properly filled as mentioned in para 2 of the circular.

The Railway Board issued another circular No. E.(NG)i/69/PMI180 dated 2nd July 1970 laying down procedure for filling of posts of Train Examiners and upgradation of posts. It directed that vacancies arising in Grade C after 1.4.1966 to the extent of 50% shall be maintained in that grade and the remaining 50% shall be down graded to the scale of Rs. 180-240 to be filled by promotion of skilled artisans. It further directed that 50% of the vacancies in Grade C should be filled by direct recruitment of apprentice Train Examiners with five years' training to the extent of 80% thereof and the remaining 20% by promotees from Grade D as laid down in paragraph 1 of the Railway Board's circular dated 27.10.1965. This procedure was directed to be followed till the cadre position was normalised' and the excess in the Grade of Rs.205-280 were eliminated. Paragraph 2 of the circular further directed that those promoted to Grade C in the scale of Rs.205280 as on April 1, 1966 will be assigned seniority amongst themselves in the order of their inter se seniority in Grade of Rs. 180-240 for the purposes of confirmation in that grade and also for further advancement and they will rank senior to those recruited as apprentice Train Examiners with five years training and appointed after 1.4.1966 in the Grade of Rs. 205-280. The result of the circular was that all those promotees who had been appointed to Grade D prior to 1.4. 1966 stood absorbed in Grade C and they were granted seniority in that Grade with retrospective effect viz. with effect from April 1, 1966.

Later the Railway Board took a policy decision to abolish the entry Grade D of Train Examiners in the pay scale of Rs. 180-240, and in order to implement that decision it issued circular/letter No. PC-69-PS-5 TR-1, New Delhi dated 30th October, 1972, abolishing the entry Grade D of Train Examiners and placing the incumbents of that Grade en masse in Grade C in the scale of Rs.205-280 with effect from 1.11.1972. Paragraph 2 of the circular directed that the pay of the staff brought from Grade D (Rs. 180~240) to Grade C (205-280) will be fixed under Rule 2017 A(III) read with

Rule 2019 II. As all the incumbents of Grade D in the scale of Rs. 180-240 were placed en masse in the higher grade C in the scale of Rs.205-280, a provisional seniority list of Grade C Train Examiners working in Delhi Division was prepared on 16th November 1981. In that seniority list petitioners

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were shown senior to some of the respondents as the seniority was not determined in accordance with Rule 302 of the Railway Establishment Manual. This seniority list was not prepared in accordance with the prescribed criteria as had been done in other divisions. The Railway Board issued a circular No. E(NG) 1-80-SR6-39 dated 28.11. 1981 directing that Delhi Division should also fall in line with other divisions of Northern Railway and the seniority of the Train Examiners appointed between 1.4.1966 to 1.11.1972 should be prepared in accordance with the existing practice viz. on the basis of the date of appointment in particular grade. In pursuance to that direction seniority of Train Examiners of Grade C placed in that Grade between 1.4. 1966 to 1.11. 1972 was published in 1981 by the authorities of the Delhi Division of Northern Railway. After inviting objections, the seniority list was finally published in December, 1982. In that seniority list the petitioners were shown junior to Respondents Nos. 5 to 10, who were placed above the petitioners. Aggrieved the petitioners have challenged the validity of the seniority list also by raising additional grounds in the writ petitions.

Before we consider the submissions made on behalf of petitioners it would be appropriate to refer to comparative position of petitioners and the respondents Nos. 5 to 10 with regard to their date of entry in service as Train Examiners in Grade D and Grade C. The relevant position is as under:

Name	Date of entry	
	Grade D	Grade C
	Rs. 180-240	Rs.205-280
1. Yashbir Singh,	Petitioner.	29.4.1986
2. I.M. Lal Tandon,	Petitioner.	19.6.1966
3. Hira Lal Kapoor,	Petitioner.	29.4.1966
4. Harbhaj an Singh,	Petitioner.	16.8.1966
5. Som Dutt Sharma,	Petitioner.	29.4.1966
6. A.K. Sharma,	Respondent 5,	--
7. V.K. Chandhok,	Respondent 6,	--
8. R.N. Verma,	Respondent 7,	--
9. B .D. Maglani,	Respondent 8,	--
10. Dev Raj Sharma,	Respondent 9,	--
11. K.N.Sharma,	Respondent 10,	--

The above chart shows that Respondents Nos. 5 to 10 who be-

long to group of apprentice Train Examiners were directly placed to working posts in Grade C after completion of five years training in accordance with the Railway Board's circular dated 2nd July, 1970, on the respective dates shown in Column 3, which indicates that each one of them had been placed in Grade C prior to 1.11. 1972, while the petitioners were placed in Grade C with effect from 1.11. 1972, in pursuance of the Railway Board's circular dated 30.10. 1972. Since the Respondents Nos. 5 to 10 were appointed to Grade C earlier in time and as the petitioners were placed in Grade C later, they. were shown junior to the Respondents in the seniority list. No valid objection can be raised against respondents' seniority. Further in the seniority list all those promotees who had been placed in Grade C with effect from April 1, 1966 under the Railway Board's circular dated

July 2, 1970 were shown senior to the petitioners. Since the petitioners were not granted seniority with retrospective effect in Grade C as was done in the case of those who were promoted under the Circular dated July 2, 1970 they have assailed the Constitutional validity of Railway Board's circular dated July 2, 1970.

Learned counsel for the petitioners contended that the Railway Board's circular dated July 2, 1970 was illegal and unconstitutional for variety of reasons. Firstly, the Railway Board had no authority in law to grant seniority with retrospective effect to all those promotees who had been placed in Grade C with effect from April 1, 1966 in pursuance of the circular dated July 2, 1970. Secondly, the Railway Board practised discrimination between the promotees forming the same class of Grade D with regard to seniority in Grade C. He contended that under the circular dated July 2, 1970 promotees belonging to Grade D (like the petitioners) were granted seniority in Grade C on their promotion to that grade with retrospective effect from the date of their appointment in Grade D and not from the date of their appointment or placement in Grade C whereas the petitioners who form the same class have not been granted the same benefit, instead their seniority has been determined with effect from the date of their entry in Grade C. The petitioners and all those who had been appointed in Grade D prior to April 1, 1966 and promoted to Grade C formed the same class and yet they have been treated differently without any rational basis. The petitioners were also recruited in 1966 and they all had completed service of more than 4 years approximately as Train Examiners in Grade D on November 30, 1972 when the circular was issued but they have not been given seniority in Grade C with retrospective effect as was done under the circular dated July 2, 1970.

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We have given our anxious consideration to these submissions but we do not find any merit in the same. The petitioners have challenged validity of the Railway Board's circular dated July 2, 1970 in 1981 after 11 years. All the petitioners were in service on the date that circular was issued and they were aware that their colleagues (promotees belonging to Grade D) were placed in Grade C and they had been granted seniority with retrospective effect but none of them challenged the validity of the circular. Now petitioners cannot be permitted to challenge the validity of that circular after 11 years. If the petitioners were aggrieved by the Railway Board's circular dated July 2, 1970 they should have challenged the same within a reasonable period of time which they did not do so. It is well settled that anyone who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleep over the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulties and it would create insecurity and instability in the service which would affect its efficiency. The petitioners are therefore not entitled to challenge the validity of the Railway Board's circular dated July 2, 1970 after 11 years and their challenge is bound to fail on this ground alone.

We have considered the merit of the submission also but we find no legal or constitutional infirmity in the Circular dated July 2, 1970. There was increase in the work of carriage and wagons examination, as more complicated type of rolling stock was available with the Indian Railways. In order to reorganise the cadre of Train Examiners and to cope with the increased work load the Railway Board by its noti-

fication dated 27th October, 1965 reorganised the cadre. It directed that vacancies in Grade D were to be exclusively filled by promotion from amongst skilled artisans and direct recruits were to be appointed straightaway to Grade C after completion of training of five years. Validity of the notification was challenged before this Court in Roshan Lal Tandon's case and the implementation of the circular was stayed. This Court struck down only a portion of the notification which has been extracted in the earlier part of this judgment but the rest of the directions contained in the notification remained unaffected, including the direction that with effect from April 1, 1966 all the Train Examiners on successful completion of their training should be straightaway brought on to the scale of Rs.205-280 instead of being first absorbed in Grade D. Similarly further direction that those apprentices who were undergoing training on April 1, 1966 shall undergo five years' training instead of four years and during their training they would receive

1030 stipend in the scale of Rs. 180-210 and after completion of their training they will straightaway be appointed to Grade C. After the judgment of this Court, the Railway Board reconsidered the matter and with a view to implement the decision of this Court and to further carry out its policy of reorganisation as initiated under its circular dated October 27, 1965 it issued directions under its circular dated July 2, 1970, which is as under:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAY
(RAILWAY BOARD)

No. E(NG) i/69/PMI- 180

New Delhi
Dated 2nd July 1970

The GMs.

All India Railways.

Sub: Procedure for filling up posts of TXRs upgradation of.

Ref. Rly. Boards letter No. E (NG) 165 PMI-86 dated 27.10.1965 and 13.9.1968. The Board have been receiving representations from the staff working in the category of TXRs in scale Rs. 180-240 (AS) against the procedure prescribed for filling vacancies arising out of upgradation of 50% of posts in scale Rs. 180-240 (AS) to Rs.205280 w.e.f. 1.4.1966. It has been decided in modification of previous orders that all the TXRs working in Grade 180240 consisting of both App. TXRs. of 4 years Trg. and promotees from ranks as on 1.4.1966 should be promoted en masse to the grade Rs.205-280 irrespective of the quota of vacancies reserved for promotees, the excess to the permissible re-organised cadre strength in the grade Rs.205-280 being worked off gradually by wastage such as retirement etc. in grade Rs.205-280 (AS).

After 1.4.1966 50% of the vacancies arising in grade Rs.205-280 should be maintained in that grade and the remaining 50% will be down graded to the scale of Rs. 190240 to be filled by promotion of skilled artisans. The 50% of the vacancies in grade Rs.205-280 (AS) should be filled by direct recruitment of App. TXRs with 5 years training to the extent of 80% thereof and the remaining 20% by pro-

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motees from grade Rs. 180-240 as laid down in paragraph 1 (ii)(a) of Board's letter No. E(NG) 165 PMI-86 dated 27.10.1965. This procedure will continue to be followed till the cadre position is normalised and the excess in the grade of Rs. 205-280 eliminated.

(2) The staff promoted to the grade Rs.205-280 as on 1.4.1966 will be assigned seniority amongst themselves in the order of their inter-se-seniority in the grade Rs. 180-240 for the purpose of confirmation in that grade and also for further advancement. They will all rank senior to those recruited as App. TXRs with 5 years Trg. and appointed after 1.4.1966 to the grade Rs.205-280.

(3) The above instructions may please be implemented immediately and a report submitted to the Board in due course.

Pl. ack. receipt

Sd

(O.D.S

harma)

Asstt.

Director(E) Rly Board"

The circular issued three directions, firstly, it directed that all the Train Examiners working in Grade 180-240 consisting of both apprentice Train Examiners and promotees from rank as on April 1, 1966 should be promoted en masse to Grade C irrespective of quota reserved for promotees. Secondly, it directed that after April 1, 1966 vacancies in Grade C to the extent of 50 per cent should be maintained in that Grade while the remaining 50 per cent should be down graded to Grade D to be exclusively filled by promotion of skilled artisans, it further directed that 50 per cent of the vacancies in Grade C should be filled up by direct recruitment of apprentices with five years training to the extent of 80 per cent thereof and remaining 20 per cent of vacancies from Grade D. Thirdly, it issued direction with regard to assigning seniority to the staff promoted to Grade C on April 1, 1966. They were to carry their inter se seniority in Grade D for the confirmation and also for further advancement. It further directed that the promotees will rank senior to the direct recruits in Grade C appointed after April 1, 1966.

These directions were issued with the object and purpose of achieving the reorganisation which had been initiated by Railway

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Board under its circular dated October 27, 1965. The scheme of reorganisation of cadre as contemplated by the circular dated October 27, 1965 was to be carried out with effect from April 1, 1966 and that date was followed by the Railway Board in its circular dated January 2, 1970. The petitioners' submission that the date April 1, 1966 was fixed in arbitrary manner without any basis is untenable. The promotees who were placed in the higher Grade C with effect from April 1, 1966 were undoubtedly senior to the petitioners in Grade D, none of the petitioners' rights were affected by their promotion. The reorganisation of the cadre of Train Examiners and the promotion to Grade C could not be completed on account of the pendency of Roshan Lal Tandon's case in this Court and the stay orders issued therein. After the decision of this Court the Railway Board implemented the scheme and it made promotion with retrospective effect. As

the promotion to Grade C had been stayed, during the pendency of the writ petition in this Court the Railway Board was justified in granting promotion with effect from April 1, 1966 as initially reorganisation was proposed to be implemented with effect from that date as is clear from Railway Board's notification dated October 27, 1965. The Railway Board promoted the staff with retrospective effect because on account of stay orders issued by the Court those entitled to be promoted with effect from April 1, 1966 could not be promoted. The petitioners cannot claim parity with those who had been promoted to Grade C under the Railway Board's circular dated July 2, 1970 as they do not belong to that class. Equality can be claimed among equals and not with unequals. Those persons who had acquired right of promotion under the Railway Board's notification dated October 27, 1965 could not be promoted on account of litigation, they formed a distinct class and the petitioners cannot equate themselves with them as they were not entitled to promotion under the notification dated October 27, 1965. The petitioners have no right in law to claim similar treatment. There is therefore no merit in the petitioners' plea of discrimination. Validity of the Railway Board's circular dated July 2, 1970 on the ground of it being discriminatory was raised before the Delhi High Court in writ petition No. 1147 of 1971, Chaman Lal and others v. Union of India and others decided on May 20, 1980. A Division Bench of that Court upheld its validity. In another writ petition No. 2834 of 1981 Kewal Krishan v. Union of India and others again the validity of Railway Board's circular dated July 2, 1970 as well as the validity of Railway Board's circular dated January 28, 1981 was upheld by a Division Bench of the Delhi High Court on December 15, 1981. Learned counsel for the petitioners challenged the validity of the

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Railway Board's circular dated November 1, 1981 which directed the Delhi Division to fall in line with other divisions of Northern Railways for determining the seniority of Train Examiners. It appears that seniority of Train Examiners in Grade C working in other Divisions of Northern Railway was determined, from the date of appointment in that Grade, in accordance with Rule 302 of the Railway Establishment Manual but in Delhi Division that practice was not followed. The Railway Board directed the Delhi Division to fall in line with other divisions in determining the seniority of Train Examiners. Learned counsel for the petitioners urged that since under the Railway Board's circular dated October 30, 1972 the petitioners were placed en masse in Grade C in the scale of Rs.205-280 they are entitled to seniority with effect from the date of their appointment in Grade D and if that be so, they would rank senior to Respondents Nos. 5 to 10 who were appointed later in time. At this stage it would be profitable to have a glance at Railway Board's circular dated October 30, 1972 which is as under:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. PC-69/PS-5/TR- 1 New Delhi dated 30.10. 1972

The General Managers,
All India Railways.

Sub: Upgrading of the initial scale of pay of Train Examiners on Railways.

Ref: Board's letters No. (1) E(NG) 65 PMI '86 dated 27.10. 1965.

(ii) No. E (NG) 165 PMI 86 dated 13.9. 1968.

(iii) No. E(NG) 1-69 .PM/-1/130 dated 2.7. 1970.

The Board have considered the communications received from the National Federation of Indian Railwaymen and the All India Railwaymen's Federation regarding the procedure prescribed for filling and maintenance of vacancies in the Train Examiners' cadre as envisaged in the above mentioned letters and more particularly their demand for abolition of the grade of Rs. 180-240. It has now been decided in modification of existing orders that the

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initial grade of TXRs, viz. Rs. 180-240 should be abolished and all the TXRs working in that grade should be placed en masse in the grade Rs.205-280 w.e.f. 1.11. 1972. It has been decided that vacancies in grade Rs.205-280 should hereafter be filled in the following manner:-

(i) 40% of vacancies to be filled by promotion or Artisans;

(ii) 20% of vacancies to be reserved for existing Artisans going as Apprentice TXRs, with age relaxation upto 35 years; and

(iii) 40% of vacancies to be filled by direct recruitment of Apprentices TXRs from the open market through Railway Service Commissions.

2. Pay of the staff brought on from grade Rs. 180-240 (AS) to Grade Rs.205-280(AS) will be fixed under Rule 2017(a)(ii) read with rule 2019 PII.

3. This has the approval of the President.

Sd/-

(R.S. Bharal) Dy. Director, Establishment (P & A)
Railway Board

No. PC-69/PS 5/TP-1 New Delhi dated 30.10.72

Copy of the FA & CAOS, and Chief Auditors of All Indian Railways.

Sd/-

(R.S. Bharal) Dy. Director,
Establishment (P & A)
Railway Board."

By the aforesaid circular the entry grade of Train Examiners in the scale of Rs. 180-240 was abolished and all the Train Examiners working in that Grade were placed in the scale of Rs.205-280 with effect from November 1, 1972. In pursuance to that decision, petitioners were included in Grade C with effect from November 1, 1972 and

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therefore they are entitled to seniority with effect from that date in Grade C. In the absence of any statutory rule or directions petitioners are, not entitled to claim seniority in Grade C with reference to the date of their appointment in Grade D. The chart indicating respective dates of entry of petitioners and the Respondents 5 to 10 in Grade C. as extracted in the earlier part of the judgment would show that Respondents Nos. 5 to 10 were appointed in Grade C earlier in time than the petitioners, therefore they are entitled to be senior to the petitioners. It is not disputed that Rule 302 of the Railway Establishment Manual lays down a general rule for determining seniority from the date of appointment in a particular grade and the petitioners have not placed any rule or instruction before us to support

their case. Seniority ordinarily reflects length of service in a particular cadre or grade. It is generally regulated by service rules or in the absence of Rules by executive instructions. By and large, such rules provide for determining seniority with reference to the date of appointment but there are instances where rules provide for determining seniority with reference to date of confirmation. Normally, when a person is promoted or placed in a higher grade his seniority is determined with reference to the date of such promotion or placement unless the relevant rules provide to the contrary. Seniority in the lower grade has no meaning for determining seniority in the higher grade except for determining inter se seniority of promotees. Rule 302 contains a general Rule and there is no exception to it. In the absence of any contrary provision in the Rules, the general rule of seniority as laid down by Rule 302 must prevail.

Learned counsel then urged that the seniority list of Grade D had been prepared in 1968 and in that seniority list petitioners were shown senior to some of the respondents and that seniority could not legally be disturbed. It appears that in the seniority list prepared in 1968 the names of some of the respondents was shown in Grade D on the assumption that they held posts of Train Examiners in that Grade. It was done on a wrong assumption. Admittedly, the Respondents Nos. 5 to 10 were apprentices who were undergoing training, and in accordance with the directions contained in the Railway Board notification dated October 27, 1965 they were entitled to appointment in Grade C straightaway on completion of their training. They were no doubt drawing stipend at the rate of Rs. 180-240 which was the scale prescribed for Grade D but nonetheless they did not belong to Grade D as they were not appointed to any of the posts in that Grade. Their names therefore could not be included in the seniority list of Grade D. Petitioners cannot draw any advantage from the mistake committed in

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including the Respondents name in the seniority list of 1968.

Learned counsel then urged that Hira Lal Kapoor, one of the petitioners was promoted on June 23, 1981 on the basis of his seniority in Grade D, therefore, other petitioners are also entitled to their seniority with effect from the date of their appointment in Grade D. In the written submission filed on behalf of Respondents it is stated that the Deputy Regional Manager of Delhi had granted promotion to H.L. Kapoor on June 2, 1981 on ad-hoc and temporary basis. On receipt of representations and protests from Respondent No. 5 Ashok Kumar Sharma and the General Secretary, Northern Railway Men's Union, order of promotion issued in favour of H.L. Kapoor was cancelled and Sh. A.K. Sharma, Respondent No. 5 was promoted. Since the petitioners were placed in higher Grade C with effect from November 1, 1972 they are entitled to seniority with reference to date of their placement in that Grade and they have no legal right to claim seniority in that Grade against those who were appointed to that Grade before November 1, 1972.

Learned counsel for the petitioners referred to Lok Sabha questions asked by Sh. Suraj Bhan, M.P. and the answers given to those questions with regard to seniority of direct recruits and promotees, (Annexures K of the petition). The petitioners have asserted that in reply to the Lok Sabha questions, it was clearly stated by the Railway Administration that direct recruit Train Examiners posted on working posts before November 1, 1972 in Grade C in the scale of Rs.205-280 will not be treated senior to the

Train Examiners promoted en masse with effect from November 1, 1972. In the counter affidavit filed by the respondents it is stated that the reply to the Lok Sabha questions as contained in Annexure K to the petition is of no relevance as the said questions were not admitted at all and no reply was given by the Railway Board. It appears that the General Manager had prepared a draft reply to the Lok Sabha questions but the reply had not been finalised by the Railway Board which is the competent authority. The Railway Board could have modified the draft of the reply as prepared by the General Manager but since the question was not admitted no reply was sent to the Lok Sabha. The petitioner can therefore draw no support from Annexure K to the petition.

Learned counsel for the petitioners then urged that the petitioners were not promoted to Grade C instead they were placed en masse in Grade C on the abolition of Grade D therefore the date of their seniority should not be determined from the date of their placement in

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Grade C instead they are entitled to their seniority with reference to the date of their appointment in Grade D. He placed reliance on the directions, contained in paragraph 2 of the Railway Board's circular dated October 30, 1972 that the petitioners' salary in Grade C shall be fixed in accordance with Rule 2017 R-II read with rule 2019-II. He urged that if the petitioners were treated to have been promoted to Grade C with effect from November 1, 1972 in that case their salary could have been fixed in accordance with Rule 2018 (R-II) (PR-22/C). It is true that the petitioners were not promoted from Grade D to Grade C instead Grade D was abolished and the petitioners and all other incumbents holding posts in Grade D were placed en masse in Grade C and the Railway Board issued directions that their salary shall be fixed in accordance with the Rule 2017 read with Rule 2018 (R-II) (PR-22/C). Whether petitioners were promoted to Grade C or whether they were placed en masse in that Grade does not make any difference so far as their entry to Grade C is concerned, in either case, they entered Grade C with effect from November 1, 1972. Reference to a particular rule for determining their pay in the higher grade cannot change the criteria for determining seniority. The Railway Board had never issued any direction for determining the petitioners seniority with reference to their date of appointment in the initial entry grade. The petitioners have failed to show that any person junior to them has been made senior to them. Their grievance is without any substance.

In view of the above discussion we find no merit in the petitions. We accordingly dismiss the same with costs. All interim orders stand discharged.

S.L.
dismissed.

Petitions

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