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NIRANJAN PRASAD SINHA AND ANR.

v.

UNION OF INDIA AND ORS.

MAY 9, 2001

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[G.B. PATTANAIK AND S.N. PHUKAN, JJ.]

Service Law :

C *Railway Board Circular dated 25.6.1985—Clause 5.1—Promotion—Employees due for promotion, eligible for promotion without any written or viva-voce test—Appellants promoted to Fireman Grade A on scrutiny of service records without any written test—Written test held subsequently—Promotees qualified the test and were also promoted as Fireman Grade A—Impugned seniority list placed such promotees higher than appellants—*
D *Tribunal upheld seniority list—On appeal Held, Board took positive decision to promote employees due for promotion on scrutiny of records without any test—Promotion of appellants was legal and proper as it was in accordance with the Circular—Impugned seniority list quashed as appellants were senior to promotees.*

E *Seniority—Seniority in a particular Grade has to be determined on the basis of length of continuous service in that Grade—Appellants were senior to promotees as per the Circular—No rules placed showing that persons qualifying written test for promotion would get seniority over appellants—Fresh seniority list placing appellants above promotees to be drawn.*

F *Appellants were promoted to the post of Fireman Grade C and thereafter to Grade B. They were further promoted to Grade A as per clause 5.1 of a Railway Board circular dated 25.6.1985, which did away with the necessity of holding any written or viva-voce test for such promotions. Respondents later on held a written test and appointed the persons who qualified, to the post of Grade A. However, these promotees were shown higher up than the*
G *appellants in the impugned seniority list, which was upheld by the Tribunal. Hence this appeal.*

H *Appellants contended that they were legally promoted as clause 5.1 of the circular dated 25.6.1985 entitled them to promotion without any written or viva-voce test; and that promotees selected subsequently could never be*

placed above them.

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Respondents contended that the promotees were selected after qualifying in a written test in terms of a previous circular dated 17.12.1982 and on being found more efficient were rightly placed above the appellants.

Allowing the appeal, the Court

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HELD : 1. As per clause 5.1 of the Circular dated 25.6.1985, the Railway Board had taken a positive decision that when an employee is due for promotion to only one grade above the grade of the post held by him, promotion would be only on the basis of scrutiny of service records and without holding any test. [639-F]

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2. Fireman Grade A is one grade above the post of Fireman Grade B. Therefore, in terms of clause 5.1 of the Circular the appellants were entitled to be promoted to the post of Grade A only on scrutiny of their service records and it was so done by the respondents as they promoted them to the post of Fireman Grade A as per the said Circular. The promotion of the appellants was legal and proper. [639-G]

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3. Seniority in a particular Grade has to be determined on the basis of length of continuous service in that Grade. Appellants were legally promoted to Grade A, whereas the promotees were promoted subsequently. It is an admitted position that appellants were senior to them in all the grades of posts of Firemen. Moreover, no rules were placed to show that persons promoted on the basis of written test would get seniority over the persons promoted under the said Circular. The impugned seniority list where the appellants were shown junior to the promotees is contrary to the legal position and is accordingly quashed. Respondent shall draw up a fresh seniority list placing the appellants above the promotees in the post of Fireman Grade A. [640-A-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10912 of 1996.

From the Judgment and Order dated 26.5.95 of the Central Administrative Tribunal at Patna in O.A. No. 502 of 1994.

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P.S. Mishra, Vishnu Sharma, Santosh Mishra, U. Mishra, S.B. Upadhyay and Ramji Prasad for the Appellants.

K.C. Kaushik for Arvind Kumar Sharma and D.S. Mahra for the

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A Respondents.

The Judgment of the Court was delivered by

PHUKAN, J. In this appeal the two appellants have assailed the order dated 26.05.1995 passed by the Central Administrative Tribunal, Patna. **B** Tribunal rejected the prayer of the appellants for quashing the seniority list issued by the Senior Divisional Personnel Officer (Danapur Division) Danapur, Patna.

Initially the appellants were appointed as Cleaners in Eastern Railway (Danapur Division) Danapur and thereafter promoted to post of Fireman Grade C. On 11.10.1985 they were promoted to the post of Fireman Grade B. **C** The Railway Administration decided to restructure the posts of Fireman and accordingly on 25.06.1985, the Railway Board issued a circular and as a result of such restructuring the appellants became Fireman Grade A with effect from 1.1.1986. This restructuring was done as a sequel to the report of the Pay **D** Revision Commission. After the appellants were so posted as Fireman Grade A, the respondents held written examinations on different dates. On the basis of the results of the said examinations, 31 persons were promoted from Grade B to Grade A on 6.8.1985 and thereafter 23 and 31 more persons were so promoted on 7.2.1986 and on 8.7.1986. The appellants have alleged that as they were promoted as Fireman Grade A prior to the promotions of the above **E** persons after written examination, the promotees could not have been shown senior to the appellants in the seniority list as has been done by the impugned list. It is not disputed that all along the appellants were senior to the promotees in all Grades and in fact in the earlier seniority list for Fireman Grade A, the appellants were shown senior to the above promotees. However, this seniority **F** list was changed by the impugned seniority list by placing the appellants below the promotees which was challenged before the Tribunal. The Tribunal upheld the impugned seniority list. Hence, the present appeal.

The stand of the respondent was that by the circular of the Railway Board dated 25.06.1985 for restructuring of the above posts, the Board only **G** conveyed a general decision but keeping in view fast technological changes, the respondents in order to find out more efficient persons for promotion conducted written examinations on the basis of the earlier circular of the Railway Board dated 17.12.1982 and as the promotees qualified through written test, they were placed senior to the appellants.

H The learned senior counsel appearing for the appellants, Mr. Mishra has

contended that in view of Clause 5 of the circular of the Railway Board dated 26.05.1985, as the next higher post for promotion of the appellants was Fireman Grade A, they were entitled to be promoted to that grade only on scrutiny of 'service records without holding any written and/or viva-voce test' and therefore they were legally promoted. It has been urged that the promotees who were promoted subsequently, though selected through written tests, could not have been placed above the appellants in the seniority list. In reply Mr. Kaushik, learned counsel for the respondent has urged that as the promotees were selected after written tests in terms of the circular of the Railway Board dated 17.12.1982 and being found efficient they were rightly shown senior to the appellants.

The relevant Clause 5.1 of the circular of the Railway Board dated 25.06.1985 is quoted below:

"5.1 -However, for the purpose of implementation of these order if an individual railway servant becomes due for promotion to only one grade above the grade of the post held by him is classified as a 'Selection Post', the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on *scrutiny of service records without holding any written and/or viva-voce test*. Under this procedure, the categorisation 'Outstanding' will not exist."

(emphasis ours)

We have perused the circular and in view of the clear language of Clause 5.1, the contention put forward on behalf of the respondents is not sustainable. By the above circular, the Board has taken a positive decision that an employee due for promotion to only one grade above the grade of the post held by him, promotion would be only on the basis of scrutiny of service records and without holding any test.

There is no dispute that Fireman Grade A is one grade above the post of Fireman Grade B, therefore, in terms of the above clause the appellants were entitled to be promoted to the post of Grade A only on scrutiny of their service records and it was so done by the respondents as they promoted the appellants to the post of Fireman Grade A on 1.1.1986, the date on which restructuring was done as per the above circular. We are, therefore, of the view that the promotion of the appellants was legal and proper.

It is well settled that in absence of any rule, seniority in a particular

- A Grade has to be determined on the basis of length of continuous service in that Grade. The appellants were legally promoted Fireman Grade A whereas the promotees were promoted subsequently. It is an admitted position that appellants were senior to the promotees in all the grades of posts of Fireman. No rules have been placed before us to show that persons promoted on the basis of written test would get seniority over the persons promoted under Clause 5.1. We, therefore, hold that the impugned seniority list where the appellants were shown junior to the promotees is contrary to the legal position and accordingly it is quashed.
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- C We find merit in the present appeal and it is allowed with the direction to the respondents to draw up a fresh seniority list placing the appellants above the promotees in the post of Fireman Grade A. The revised seniority list shall be published within a period of 3 months. Considering the facts and circumstances of the case we direct the parties to bear their own cost of this appeal.

D A.Q.

Appeal allowed.