
(1968) 03 RAJ CK 0005
In the Rajasthan High Court

Anil Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-03-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (1969) 2 LLJ 35 : (1968) RLW 248

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by one Anil Kumar and by it he seeks to question the legality of an order passed by respondent 2, General Manager, Northern Railway, whereby respondent 4 Chain Singh was placed above him in the seniority list of charge-men in the grade of Rs. 280-350 P.S. 335--425 A.8.--vide Ex. 6 on the record. He has prayed for an appropriate writ, order or direction against the respondents.

2. It is common ground between the parties that the petitioner Anil Kumar entered the service of the railway as an apprentice mechanic on 17 August .1948, he completed his training period of five years as an apprentice mechanic in 1953 and was absorbed as chargeman in the grade of Rs. 100--185 per mensem from 17 August 1953; that he was appointed as chargeman in the grade of Rs. 205--280 A.S. from 16 December 1955, that he was confirmed as chargeman in the grade of Rs. 205--280 A.S. on 28 October 1959, that he was promoted as chargeman in the higher grade of Rs. 250--380 A.S. pending selection on 11 August 1959, and that he was promoted as chargeman in the scale of Rs. 335--425 A.S. in officiating capacity with effect from 14 August 1962. Likewise it is common case of the parties that Chain Singh, respondent 4, entered the railway service as an apprentice mechanic on 28 December 1918, that he completed his training on 27 December 1953, that he was absorbed as draftsman in the grade of Rs. 100--185 P.S. from 28 December 1953, that he was appointed as junior instructor (chargeman) from 10 March 1956, that he

was not confirmed as chargeman, that he was promoted in officiating capacity as chargeman in the scale of Rs. 250--380 A.S. on 25 January 1960. The parties are taking different positions on the question of their relative seniority. This has resulted from the fact that the petitioner was allowed to appear before the selection board for promotion to the higher grade in the year 1959 and though in the first attempt the petitioner was not able to pass the test, he passed the second test in the year 1960 and he was then allowed to continue as chargeman in higher grade in officiating capacity. Respondent 4, Chain Singh, on the other hand, was not sent up before the selection board at the time the petitioner was sent, but he was sent up for selection in the year 1964. Chain Singh passed the test in the first attempt in 1964.

3. It is in this context that the railway administration took up the question of fixation of seniority of Chain Singh in the higher grade of chargemen. The railway administration considered the representation of Chain Singh and on 30 September 1964, passed the following order :

The representation of Chain Singh, chargeman, against the recast seniority list of chargemen (L.P.C. & T.S.) A.S. Rs. 250--380 circulated--vide the office letter of even number, dated 29 June 1964 has been examined and it has been decided that he may be placed between Madhukant and Suraj Frakash, items 26 and 27 of that seniority lists.

Consequent upon the above other action in the recast seniority list of chargemen (L.F.C. & T.S.) A.S. Rs. 250-880 the position of Chain Singh in the recast seniority list of chargemen (L.F.C. & T.S.) A.S. Rs. 335- 425 circulated--vide this office letter of even number, dated 26 December 1964, has been changed and he has now been placed between Madhukant and Suraj Frakash, items 25 and 26 of the seniority list of chargemen, Rs. 260-350 P./335-425 A.S. Chain Singh be informed accordingly.

4. The contention of the petitioner is that the name of the petitioner was at serial Rule 11 of the seniority list and that of Chain Singh was below him at serial No. 18A. Chain Singh had been assigned the position above the petitioner in the grade of chargemen (250--380 P.S.). The petitioner thus feels aggrieved on account of his seniority having been changed vis-a-vis Chain Singh without the administration affording him any opportunity of hearing. The petitioner proceeds to say that this change of seniority has prejudicially affected him as thereby Chain Singh would get preferential treatment for selection to the post of assistant foreman. According to the petitioner, he had been called for selection for the post of assistant foreman in the year 1965 and as a result of the selection in that year, six persons, who were also senior to him, were selected against the existing vacancies, but at that time, Chain Singh was not called for interview, as he was junior to him. But, now this change in the relative seniority has very much affected him because in the year 1966, Chain Singh, respondent 4, was called for interview in preference to the petitioner and the petitioner's chances for promotion to the higher post were thereby diminished. In these

circumstances, the petitioner contends that the action taken by respondent to has violated the fundamental right of the petitioner under Articles 14 and 16 of the Constitution. Further, according to him, the order was void as no opportunity was given to him to have his say before his seniority was changed vis-a-vis Chain Singh. The petitioner also asked that the action taken by respondent to in changing the seniority of the petitioner vis-a-vis Chain Singh was animated with mala fides.

5. The writ petition has been opposed on behalf of respondents 1 to 3. However, Chain Singh himself has not filed any reply to the writ petition nor has he chosen to appear at the time of hearing. The contesting respondents, i.e., union, and the railway administration, denied that any of the rights of the petitioner were violated and it is maintained by them that respondent 2 was entitled to assign seniority to Chain Singh in the higher grade above the petitioner. It is stated that Chain Singh was selected for the post of chargeman in the grade of Rs. 250-380 A.S. as a result of the selection held on 1 April 1964 and as the railway administration had decided to assign his seniority with respective effect from 10 March 1956 in the grade of Rs. 205--280 A.S., it was held that for purposes of seniority, his name be placed at No. 18A. In other words, it was urged that Chain Singh's position was not fixed in the year 1959 or 1960 when petitioner appeared for selection before the selection board in the higher grade, and therefore, Chain Singh could not appear for selection to the higher grade at that time. Since the administration felt that it was on account of the case of Chain Singh's fixation in the grade of chargemen being not decided, he was not sent up for selection in the higher grade earlier. Justice had to be done to him when his case was decided in the year 1962. In these circumstances, it is urged that Chain Singh could be called for interview for selection to the higher grade only in the year 1964 and as he was selected as a result of the test, he had to be in the higher grade of chargemen. The administration also thought that if Chain Singh were allowed to appear in the year 1959, he would have passed the test and this conclusion was reached on the basis of the assessment of his work made in the year 1964. As according to the administration, Chain Singh would have been selected in year 1959 and the petitioner was selected on the second attempt in the year 1960, they placed Chain Singh's name above that of the petitioner. In these circumstances, the stand of the administration is that there was no infringement of Art. 16 or 14 for that matter; nor were the principles of natural justice attracted in a matter relating to fixation of seniority in a case like the present one. It is denied by the respondents that the administration had acted mala fide, in assigning a place to Chain Singh above the petitioner in the gradation list of charge-men in the senior grade,

6. At the time of arguments, the learned Counsel for the railway administration did not dispute the position that in the lower cadre of chargemen in the scale of Rs. 205-280 A.S. the petitioner was senior to Chain Singh. He also did not dispute that the petitioner entered the service of the railway before respondent 4, Chain Singh. The learned Counsel, however, contended that Chain Singh's

seniority in the higher grade of chargemen was not fixed earlier and the same came to be fixed for the first time, after 1962. The learned Counsel thus to explain the omission of the name of Chain Singh in the seniority list Ex. 6, on this ground.

7. The question that arises for my consideration, in these circumstances, is whether the railway administration should have hoard the petitioner before the seniority between the petitioner and the respondent Chain Singh was changed. In this context, it is to be considered whether Article 16 of the Constitution would be attracted Now, there are rules regulating the seniority of the non-gazetted servants and they are reproduced in the Indian Railway Establishment Manual. Rule 2 of Chap. 3 therein provides that unless specifically stated otherwise, the seniority among the incumbents for the post in a grade is governed by the date of his appointment to that grade. I am not called upon to determine the question whether these rules are statutory or non-statutory, because the learned Counsel for the respondents submitted that for the purpose of this case this provision may be assumed to be statutory.

8. Then, there is a circular No. 831/E/25/3 (E.I.V.) dated 16 October 1964, which lays down how hard cases of non-gazetted staff, dad to administrative errors, loss in seniority and pay are to be dealt with. This circular runs as follows:

It has been represented to the board that sometimes due to administrative errors are overlooked for promotion to higher grades. This should either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotions or some other reason. Broadly, loss of seniority due to administrative errors can be of two types:

(a) where a person has not been promoted at all because of administrative error; and

(b) where a person has been promoted but not on the date from which he should have been promoted but for the administrative error.

2. The matter has been considered and the board desire that each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative errors should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. For in the higher grade promotion may be fixed pro forma at the stage which the employee would have reached if ha was promote d at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall he payable, as he did not actually shoulder the duties and responsibilities of the higher grade posts.

This circular undoubtedly embodies administrative instruction and it is nobody's case that it has a statutory force. For justilying the action of the respondents Sri Bhansali argued that the staff who had lost promotion on account of

administrative errors, has to be assigned correct seniority vis-a-vis their juniors already promoted irrespective of the date of promotion. Re argued that the words "to be assigned correct seniority vis-a-vis their juniors already promoted" mean that in a hard case, the administration will be entitled to put even a senior person junior to the person whose case is being dealt with on account of hardship. I have considered the question carefully and have no hesitation in saying that the interpretation suggested by the learned Counsel for the respondents is completely devoid of any substance. For dealing with the hard cases what this circular contemplates is that the person whose case is taken to be a hard one, is to be aligned a correct seniority vis-a-vis his juniors already promoted. It does not mean that if a senior person is already promoted, this circular contemplates the supersession of such a senior while dealing with a hard case. The seniority is a matter which is determined on the basis of length of service of a person in a particular cadre. Rule 2 of Chap. 3 of the Indian Railway Establishment Manual itself embodies that principle. There is no gainsaying the fact that the petitioner was senior to respondent 4 in the lower grade of chageman. It is also not disputed that he started officiating in the senior scale prior to respondent 4, In these circumstances, the circular dated 10 October 1964, on which reliance was placed, can hardly afford any Justification to the administration to assign seniority to respondent for above the petitioner. The only other reason that appears from the order passed by the General Manager is that as Chain Singh passed the test in the year 1964 in the first attempt and the petitioner passed the test in the year .1960, in the second attempt respondent for should rank senior to the petitioner. Exhibit A.11 also shows that in the year 1964, there was assessment of Chain Singh. Having given the matter my earnest consideration, I am not satisfied that this is supported either by Rule 2 of Chap. 3 of the Indian Railway Establishment Manual or the circular, of which I have made a reference earlier. The contention of the petitioner is that he has been allowed to be superseded by respondent for who was junior to him at all material times and this has affected his future prospects for the selection for the higher grade of assistant foreman. It is in this context that the question falls to be determined whether respondent to could have passed an order prejudicial to the petitioner behind his back. There is no gainsaying the fact that the question relating to the determination of seniority lies in the administrative sphere. There is also no manner of doubt that the mere change in the relative position of two persons in the same cadre would not result in violation of Article 311 of the Constitution. But the pointed question is whether this would not affect the service conditions of an employee, and whether Article 16 of the Constitution would be attracted to such a case. As has been held by their lordships of the Supreme Court in *The General Manager, Southern Railway Vs. Rangachari*, , Article 16 is not only attracted in the case of initial employment or appointment, but also applies to other matters relating" to employment including promotion and conditions of service pertaining to the office which one is holding. Their lordships interpreted the words "matter relating to employment or appointment" occurring in Article 16 of the Constitution in wider context.

9. Now, if (seniority were not to do anything with the future promotion of an individual in service, even a prejudicial order by itself regarding the change in seniority of the incumbent may not attract Article 16, but where seniority has to play an important part in the matter of promotion to higher cadre, the seniority cannot be lightly changed to the prejudice of an individual. For changing the seniority of an individual vis-a-vis another, some rational basis has to be shown, and where this is completely lacking, Articles 14 and 16 may very well be attracted in such a case. Arbitrary action on the part of the authorities is not contemplated by the Constitution. As I have already observed, the matter lies in the administrative sphere but even so, the administrative authorities are expected to bear in mind the provisions relating to the fundamental rights including Article 16 of the Constitution in dealing with even administrative matter.

10. Even according to the principles underlying Rule 2 of Chap. 3 of the Indian Railway Establishment Manual, the seniority of an incumbent in a grade is governed by the date of his appointment in the grade barring exceptional circumstances when it may have been ordered otherwise. The circular dated 16 October 1964 does not, in my view, contemplate the supersession of a senior person by a junior person. But it is by keeping the erstwhile junior still a junior to the person whose case is to be taken as a hard one that Justice is sought to be done to him under the given state of circumstances. The reason given for changing the seniority in the order, Ex. 8, is that the petitioner passed the test in the year 1960 in the second attempt but respondent 4 passed the test in the year 1964 in the first attempt and, therefore, respondent 4 should rank senior to the petitioner. The criterion of passing a test in the first attempt or in the second attempt may have something to weigh in relation to one's merits, but for seniority the criterion is length of service in the cadre. There is no manner of doubt that the petitioner was senior to respondent 4 in the lower cadre or grade from which both were eventually promoted to the higher cadre. The action of respondent 2, under these circumstances, strikes me as wholly arbitrary and it does in my view, affect a matter relating to service within the meaning of Article 16 of the Constitution. As I have indicated above, in a certain contingency, the change of seniority may not affect the future prospects of an individual. But in a case, where future prospects of an incumbent are bound to be affected in relation to his promotion to the higher grade, the question of seniority has a bearing for seeing whether Article 16 is or is not attracted in the given case. In the present case, the petitioner was called for selection for the post of assistant foreman in the year 1965 along with 23 others and six persons senior to the petitioner were selected as against the existing vacancies, and for that selection, respondent 4 who was according to the petitioner junior to him was not called. However, in the year 1966, in the month of April, when another opportunity arose for selection to the higher cadre of assistant foreman, respondent 4 was called in preference to the petitioner. In these circumstances, therefore, there is no manner of doubt that the change in seniority of the petitioner vis-a-vis respondent 4 did actually result in diminishing his prospects for selection to the

higher (sic)dro of assistant foreman. If a person who is affected by an order of changing the seniority were to keep quiet when such an order for changing seniority is passed, he would be faced with difficulty at the time of selection and if at that stage, a person who has been made senior is taken in preference to him, he may have very little to urge against the selection. It is just like putting a black dot on the forehead of a person at one stage and then at the subsequent stage of actual selection telling him that the person marked with a black spot on his forehead would not be taken, being a junior. Such a state of things cannot be countenanced and this will be a matter which will have to be looked into for seeing the applicability of Article 16 of the Constitution. When the authorities are going to pass an order of the kind which may diminish the prospects of an individual for promotion to higher grade in the very near future, as has happened in the present case, then, in my view, It cannot be urged with cogency that the matter being purely administrative, the person concerned was not even required to be heard by the authorities before an order prejudicial to him was being passed. I am not prepared to accept such a contention for a moment. In the present case, as I have already observed, the order changing the seniority of respondent 4 vis-a-vis the petitioner not only violated Rule 2 of Chap. 3 of the Indian Railway Establishment Manual, but even the circular dated 16 October 1964 is not helpful. In such a contingency, therefore, the minimum that was expected from the authorities was to have given an opportunity to the petitioner to have his say in the matter before passing the order. In an administrative matter relating to fixation of age, I had held in Ganesh Datta Vs. State of Rajasthan, that it is open to the Government to correct the age of Government servants if they are so satisfied about its incorrectness, but if the Government were to change the age to the prejudice of a Government servant, they will have to follow the principles of natural justice and the Government servant concerned will have to be afforded an opportunity to have his say against the proposed alteration in the age so recorded. In a case of the present nature also though accepting that the question of determination of seniority is of administrative character, it has to be laid down that if by the change of relative seniority of two incumbents their prospects of future promotion to the higher cadre are going to be affected in the near future, then before passing any order relating to seniority to the prejudice of a Government servant principles of natural justice will have to be followed and the Government servant will have to be told as to what is the basis for assigning him a lower seniority in relation to the rival incumbent. Giving of such an opportunity will ensure a fair deal to everybody and will eliminate arbitrariness on the part of the executive authorities.

11. The learned Counsel for the respondents vehemently contended

(1) that the seniority of the petitioner was not affected vis-a-vis respondent 4, as the seniority of respondent 4 was being fixed up for the first time in the higher cadre of chageman,

(2) that the principles of natural justice were not attracted to such a case, as no

right of the petitioner was thereby infringed.

The learned Counsel has cited a plethora of cases before me. He referred to S.G. Jaisinghani Vs. Union of India (UOI) and Others, ; Shitla Sahai Srivastava Vs. General Manager, North Eastern Railway, Divisional Personnel Officer, Southern Railway Vs. S. Raghavendrachar, The High Court, Calcutta Vs. Amal Kumar Roy, Vidya Sagar Vs. Board of Revenue, ; State of Uttar Pradesh v. Sudershan Deo AIR 1963 All. 356 ; N. Devasahayam Vs. The State of Madras and Others, ; A. Sambandhan Vs. Regional Traffic Superintendent Southern Rly. Tiruchirapalli and Others, N. Devashayam v. State of Madras AIR 1958 Mad. 53; M. Kamalamma v. State of Mysore AIR 1959 Mys. 255 ; Arun Kumar Bhattacharjee and Others Vs. State of West Bengal and Others, Harinder Mohan Dass v. General Manager, Northern Railway, New Delhi and Anr. AIR 1967 Del 79 and Ranjitsingh v. Commandant AIR 1963 P&H 7.

12. These rulings according to the learned Counsel show that the change of some places in the list of seniority gives no right to Government servants to come to the High Court under Article 226 of the Constitution.

13. Then he cited Benurkar Mahata Vs. State of West Bengal and Others, and Labh Singh Waryam Singh Vs. Union of India, for showing that mistakes can be corrected by the authorities.

14. Lachman Dass Vs. Shiveshwarkar and Others, and Srinivasa Reghavachar (V.T.) Vs. State of Mysore and Others, for showing that transfer of an incumbent from one cadre to another cannot be challenged, and lastly, he referred to N. Devasahayam Vs. The State of Madras and Others, and Putia Gowda v. State of Mysore AIR 1980 Mys. 244 for showing that the loss of seniority would not attract the principles of natural justice. The first group of cases relates to the question whether change of seniority in a cadre means reduction in rank of a Government servant within the meaning of Article 311 of the Constitution. I have already observed that there is no question of reduction in rank of the petitioner in the present case. His whole case rests on two foundations:

(1) That the petitioner was prejudicially affected as a result of the arbitrary action of the authorities in changing his seniority which thus violated Arts. 14 and 16 of the Constitution.

(2) His second ground is that before the prejudicial order was passed against him disturbing his seniority vis-a-vis respondent 4 he was not given an opportunity to have his say in the matter.

These large number of cases do not, in my view, afford sufficient guidance on the question that I am called upon to determine.

15. The second group of cases contemplates rectification of mistakes. Nobody has disputed before me that mistakes cannot be corrected by administrative authorities in administrative matters, but where the question is one of supersession of one incumbent by another who was junior to him in the next

below cadre from which the two came to be promoted in the higher cadre and that too according to the order of their seniority in the lower cadre, then should seniority be disturbed without hearing the affected candidate Secondly, whether this would not, in given circumstances, result in denial of equality before the law. There were no matters that came to be directly dealt with in the cited cases.

16. In the third group of cases, the question was about the transfer of an incumbent from one cadre to another. It is enough to say that the petitioner has not questioned the transfer of the respondent to the cadre to which the petitioner has been appointed and those cases too are not of any help.

17. Turning now to the last group of cases cited before me, I am clearly of opinion that in a case where change in seniority of two or more persons affects their prospects for promotion in the near future, the authorities must give an opportunity of hearing to the affected candidate without which there would be every likelihood of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution being infringed. The authorities must guard against trenching upon these fundamental rights. Therefore, in a case where the change in seniority is bound to result in diminishing the prospects of a person for promotion to the higher cadre in near future, the authorities will be expected to follow the principles of natural justice, and I prefer to follow my own view taken in *Ganesh Datta Vs. State of Rajasthan*, though it was a case relating to the age of a Government servant.

18. I am unable to see how a person would not be affected by change in seniority in relation to another incumbent who was junior to him in the next below cadre when this is done particularly at a time when opportunity for promotion arises. It is said that the higher one goes, difficult becomes the climb. The number of posts in higher cadres, by and large, in relation to those in the lower cadre are comparatively smaller and if the authorities could, without good reasons, change anybody's seniority, at or about the time, one is due for promotion, then this is bound to affect "matter relating to service" within the meaning of Article 16 of the Constitution.

To summarize, I hold--

(1) That the petitioner entered the service of the railway for the first time before respondent 4 entered that service.

(2) That he was appointed as charge-man prior to the appointment of respondent 4. This position has been fairly conceded before me by the learned Counsel for the respondents.

(3) That in the higher cadre of charge-man, the petitioner came to be promoted before respondent 4 came to be promoted.

(4) That the order for changing the seniority of the petitioner vis-a-vis respondent 4 violated Rule 2 of Chap. 3 of the Indian Railway Establishment Manual, which rule has been accepted to be statutory for the purposes of this

case.

(5) That the order passed has not been shown to be in keeping even with the circular dated 16 October 1964.

(6) That the reason for ordering the change in seniority, viz., on the ground of respondent 4's allegedly passing- the test in the first attempt in the year 1964 and the petitioner passing such a test as a result of the second attempt in the year 1960, is devoid of quality of reason. Seniority is determined on the basis of length of service on equivalent posts. This is recognized even by Rule 2 of Chap. 3 of the manual. Passing of an examination in the first attempt or more than one attempts in an appropriate case may have a bearing on the merits of an individual, but it has no relevance whatsoever in dealing with the question of seniority. Thus the order passed by respondent 2 betrays arbitrariness.

(7) That this order was passed without giving an opportunity the petitioner to have his say in the matter.

In my view, such a course will be necessary when seniority is being- changed at a time when one has dear prospects for being selected in the superior grade. The change of seniority may not attract Article 16 of the Constitution in a case where the prospects for promotion are not materially affected in the near future.

(8) The principles of natural justice would attracted in my view in a case where Act, 16 is likely to be infringed by the authorities by a certain order. In this connexion, I adhere to the view already taken by Even in an administrative matter, where a person's rights in matter relating to service are going to be affected prejudicially, hearing is necessary.

19. The learned Counsel for the respondents also argued that the writ petition was filed after a delay of ten months and, therefore, it should have been thrown away on the could of delay alone. He cited a number of cases and I do not consider it necessary to refer to them because so far as this Court is concerned, it has been held in *Rao Manohar Singh v. State of Rajasthan* 1952 R.L.W. 81 that if delay is explained, the Court can entertain the writ petition. There was delay of almost two years in the filing of the writ petition in that case. Even so that delay of about two years was not deemed a sufficient ground for refusing the writ, when the applicant was, during that period, strenuously trying to get the wrong remedied from the Government by making representations.

20. In the present case also, as soon as the petitioner came to know that the order, prejudicial to him, had been passed, he made a representation. This representation was disposed of by the authorities by their order, dated 10 March 1966--vide Ex. 8. The writ petition was presented in this Court on 19 May 1966, i.e., about two months after the disposal of the representation filed by the petitioner. There is, thus, no such delay as to merit the dismissal of the writ petition off hand on that score. The case was admitted by a Division Bench of which I was a member on 4 July 1966 and (sic) at all considered to be of any

significance. It will, therefore, be highly unjust to throw away the writ petition now after an elaborate argument. This observation has to be made in deference to the desire expressed by the learned Counsel for the respondent.

21. The learned Counsel for the respondents also referred me to Exs. A 8 and A. 11. Exhibit 8 is an order dated 21 June 1965. It is mentioned therein that since Chain Singh had been assigned seniority with retrospective effect from 10 March 1956 as assistant chargeman, it has been decided that for the purpose of seniority his name may be incorporated between Madhukant and Suraj Prakasb. It also mention a that a supplementary selection for the post of assistant foreman may be arranged in continuation of the selection held for this post in 1964. Exhibit A. 11 shows the marks allotted to chain Singh. However, it is noteworthy that in Ex. A. 11 there is not a word that any credit was given to Chain Singh for his having passed the test in the first attempt. This again confirms that the passing of the test either in the first attempt or in the second attempt, was not considered to be of any significance for the purposes of determination of seniority. It seems to be only an argument of necessity for some reason had to be shown for placing respondent 4 above the petitioner who was undoubtedly senior to respondent 4 in the next below cadre from which the two came to be promoted. Further, the petitioner was first to be appointed in the higher cadre.

22. I asked the learned Counsel for the railway administration to let me know whether seniority is fixed even in officiating appointments because everywhere also the position 1B that one who is senior in the below cadre from which one is appointed in the officiating capacity will remain senior till the date of confirmation in the higher cadre determines seniority in the higher cadre. However, after consulting some railway official who was present in Court, learned Counsel submitted that so far as railway administration is concerned, they fix seniority even for officiating appointments. They may do so and I have nothing to say about it. But the fact remains that even in an officiating capacity, the petitioner came to be promoted before respondent 4, From whatever angle the matter might be viewed, it is a clear case in which respondent 2 had passed an order superseding a senior person by a junior person and that cannot be allowed to stand, specially when that has resulted in diminishing the prospects of the petitioner for promotion to the higher grade.

23. As I have already observed above, in the year 1965, the petitioner was called for interview for the post of assistant foreman when respondent 4 was not so called, and it is only on account of charge in seniority that respondent 4 has acquired a better position above the petitioner.

24. In the result, I allow this writ petition with costs and order that the order, Exs. 6 and 8, shall not be given effect to by the respondents so far as the petitioner is concerned. If any consequential order has been passed, then that consequential order too shall not be given effect to as against the petitioner.