
(1982) 05 DEL CK 0056

In the Delhi High Court

Case No : Civil Writ Appeal No. 59 of 1982

Kishan Kapur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Citation : (1983) ILR Delhi 661

Hon'ble Judges : Rajinder Sachar, J; M.L. Jain, J

Bench : Division Bench

Advocate : Kuldip Singh, C.M. Nayar, Ashok Sen, D.P. Wadhawa, S.N. Kumar, T.L. Garg, S.C. Gupta and A.B. Saharia, for the Appellant;

Judgement

Sachar, J.

(1) The dispute in the present batch of petitions being C.W. 5911982, 18411982 & 18311982 which will all be disposed of by common judgment relate to the, impact on seniority and consequently on further promotion of the higher posts in the Railways. This is the result of the order of 4-1-1982 issued by the President of India by which certain modification has been made in the earlier order of 15-2-1960 issued by the President.

(2) The broad question which has been canvassed and has to be decided by us is whether it was permissible for the president to review and modify the decision taken 2 decades back and even if permissible whether there was any provision in law for reviewing the same and reopening the matters which had been settled long time back more especially by the implementation and continuous application of the earlier principles laid down in 15-2-1960 circular.

(3) Before dealing with the matter in detail it will be apt to reproduce the relevant portions of the two circulars : No. E(GR)57ARI-1, New Delhi-2, 15-2-1960. Sub : Pay of Special Class Apprentices on their posting as Assistant Mechanical Engineers in the Working cadre. The President is pleased to decide that the initial pay of the Special Class Apprentices of the following groups (who

completed or will complete the period of their apprenticeship after introduction of the Prescribed scales of pay) should be refixed as indicated below, on the date of their appointment to a working post after satisfactory completion of their 6 years' apprenticeship and their date for increment in the time scale also, regulated accordingly. Special Class Apprentices Initial pay in junior appointed, scale to be fixed at _____ After 1-1-42 and up to Rs. 350 second stage 31-12-42 instead of Rs. 350 first stage. from 1-1-43 to 31-12-59 Rs. 380 first stage instead of Rs. 350 first stage. The pay and allowances due on the basis of refixation in accordance with the above will, however, be drawn only with effect from 1-1-1960 and arrears for and up to 31-12-1959 will not be paid. In case of Special Class Apprentices who did not pass the prescribed A.M.I.M.E. Examination on the date of their being put into a working post after completion of 6 years' apprenticeship, no increment in the time scale would be allowed until the date they pass the examination from the date of passing the examination however, their pay would be fixed at the stage in time-scale which they would otherwise have attained, but no arrears of pay would be given to them. The existing inter se position of seniority of these officers will be preserved amongst themselves. No. E(0)m-90A3I302, New Delhi, dated 4-1-1982. Sub : Pay of Special Class Apprentices on their posting as Assistant Mechanical Engineers in the working cadre. The President had decided vide Order No. E(GR)57ARI-1 of 15-2-1960 relating to Special Class Apprentices that : (i) the initial pay of the Special Class Apprentices of the groups mentioned therein, who completed their apprenticeship after the date of introduction of the prescribed scales of Pay should be refixed at the stage as indicated in the said order with effect from the dates mentioned therein; (ii) their date for increment in the Time Scale also regulated accordingly; (iii) the pay and allowances due on the basis of re-fixation should, however, be drawn only with effect from 1-1-1960 and arrears for and up to 31-12-1959 will not be paid ; and (iv) the existing inter se positions of seniority of these officers will be preserved among themselves. Representations having been received from directly recruited Class I Officers with regard to the said decision, the President has reconsidered the matter. It has now been decided by the President that the said order dated 15-2-1960 shall apply only to the refixation of initial pay of the groups of the Special Class Apprentices referred therein and such refixation of pay shall not change the inter se seniority with officers of other Class I services (including directly recruited Mechanical (Engineers)). Dates for increment in Time Scale should be regulated according

(4) In order to understand the controversy it is necessary to have a background of the various services and their method of recruitment in the Railways. There is what is called the , I (now called Group A service) in the Railways, Salient features of which are as follows :

(5) Initially, there were only a few services in .Superior Revenue Establishment of Indian Railways, e.g. (i) Civil Engineering Department for construction of railway lines and maintenance of track, buildings, etc., (ii) Traffic Transportation

and Commercial Department for production and scale of rail transport and (iii) Mechanical Engineering Department for main tenancy of locomotives, carriages and wagons. With the passage of time, as the railway network expanded and the traffic developed, necessity arose for creation of a number of Class I Services. At present there are eight organized Class I (Group A) Services on the Indian Railways as listed below (excluding the Medical and Security Departments) : (i) Indian Railway Traffic Services (IRTS) (ii) Indian Railway Accounts Service (IRAS) (iii) Indian Railway Personnel Service (IRPS) (iv) Indian Railway Service of Civil Engineers (IRSE) (v) Indian Railway Service of Mechanical Engineers (IRSME) (vi) Indian Railway Service of Signal and Telecommunication Engineers (IRSSE) (vii) Indian Railway Service of Electrical Engineers (IRSEE) (viii) Indian Railway Stores Service (IRSE).

(6) Direct recruitment to the services in items (i), (ii) and (iii) above is made through a Combined Civil Services Examination conducted by the Union Public Service Commission. Direct recruitment to Items (iv) to (viii) is made through a Combined Engineering Services Examination (Class 1) conducted by the Union Public Service Commission. Salient features of Special Class Railway Apprentices (SCRA) Scheme. In the Indian Railway Service of Mechanical Engineers (IRSME) previously designated as Mechanical Engineering and Transportation (Power) Department (METP) of the Superior Revenue Establishment of the Indian Railways, there is a dual system of recruitment: (i) Direct recruitment through Combined Engineering Services Examination as referred to above; and (ii) Through Special Class Railway Apprentice Scheme (referred to as Scra Scheme hereafter), which was introduced, on Indian Railways in 1926 and is still continuing.

(7) The Scra scheme served a historical need of the Railways when trained graduate engineers were not available in the country and the Railways were still in the steam age. Only in 1950 was a decision taken that 50 per cent of the Mechanical Engineers should be recruited from the Engineering Services Examination. Accordingly, direct recruitment of graduate qualified mechanical engineers to Met through the Combined Engineering Services Examination conducted by the Upsc started in 1952. In between, only one ad hoc direct recruitment of qualified engineers was made in 1948.

(8) In the Scra scheme, under-graduate (Cambridge Senior School Certificate "A" or London matriculation Examination/ or Intermediate Examination of a University or Board approved by the Government of India) in the age group of 16 -19 years are taken as Special Class Apprentices. From the records available, it appears that up to 1954, the candidates could be selected on the basis of interview but at the discretion of the Upsc, they could also be subjected to a simple qualifying test before the interview. Reference is invited to Ministry of Railways" Notification No. E54 RR7 dated 27th March, 1954. the relevant portion of which is extracted below :

"PARTII para 17 : The Commission may at their discretion subject all candidates

to a simple qualifying test and interview only those candidates who qualify at this test."

(9) For the first time in 1955, a written examination for selection of candidates for appointment as SCRAs was made compulsory under Ministry of Railways Notification No. E 55RR7 dated 21-1-1955. Of India, ETC.

(10) Candidates selected as SCRAs have to undergo theoretical and practical training during the apprenticeship period before appointment as a probationer.

(11) In 1926 when the system started the apprenticeship was for a period of 7 years. During the period of apprenticeship a stipend at a graded scale was granted.

(12) In 1943 when the petitioner was recruited as an apprentice the apprenticeship was for a period of 6 years. Candidates selected for this apprenticeship were liable to undergo practical and theoretical training for 6 years in the first instance. The practical and theoretical training is given in the Railway Workshop for first four years of their apprenticeship. It is mostly given at Jamalpur and, Therefore, the apprentices are normally known as Jamalpur boys. During 4 years the SCRAs will undergo only practical training and prepare for associate membership of the Institution of Civil or Mechanical Engineers. Then before the completion of 4 years of training the apprentices will be listed in the order of merit on the results of examination held and the reports received during the period of apprenticeship. Apprentices so selected will be sent to U.K. for a further period of training for 2 years. In all cases the apprenticeship before returning to India must qualify for associate membership of the Institution of Civil or Mechanical Engineers. On return to India successful apprentices will be appointed on probation for 3 years on a commencing pay of Rs. 350 per mensem. Rule 7 of 1943 Rules reads as under :

"PAY as probationer will commence from the date of landing in India on return from U.K. after completion of training. Service for increment will also count from the same date."

(13) The same conditions broadly were contained in the recruitment of SCRAs under the Mechanical Engineering and Transportation (power) Department of the Superior Revenue Establishment of Indian Railway Recruitment Rules 1951. Rule 7 of Appendix Iv of which a reference will have to be made during the course of the judgment reads as follows : Rule 7 : "The appointment and pay as a probationer will commence from (a) the date of completion of six years of apprenticeship or (b) the actual date of completion of training in the case of apprentices who undergo further training in India/the date of landing in India in the case of apprentices who are sent to the United Kingdom for the further training, whichever is later. Service for increment will count from the date of appointment as probationer."

(14) Particulars of pay as to pay and general conditions to service are to be

found in Appendix VII of 1951 Rules. Relevant paras which were referred to are para 4.7 & 8 and are reproduced hereunder : Para 4 : Pay will commence from the date of joining service as a probationer. Service for increments will also count from the same date. Particulars as to pay are contained in para 8 of this Appendix. Para 7 : The relative seniority of officers recruited under rule 3(1) will ordinarily be determined by the order of merit at the end of their first four years' training, while in the case of those recruited under rule 3(2), the relative seniority will ordinarily be determined by the order of merit in the competitive examination. As between officers recruited under rule 3(1) and those recruited under rule 3(2) who enter working posts in the same year the seniority will be interpolated. The Government of India, however, reserve the right of fixing seniority at their discretion in individual cases. They also reserve the right to assigning to officers appointed under regulation 3(3) and 3(4) positions in the seniority list at their discretion. Para 8 : The following are the rates of pay admissible to officers appointed to Mechanical Engineering and Transportation (Power) Department : Junior Scale : Rs. 350-350-380-380-30-590-EB-30-770-40-850.

(15) It is unnecessary to refer to 1959 Rules because it is common case that they are similar to 1951 Rules. Later on the Rules were substituted by the rules framed by the President under Article 309 of the Constitution, known as Mechanical Engineering and Transportation (power) Department of the Superior Revenue Establishment of Indian Railways Recruitment Rules 1960. By para I of appendix a Special Class apprentice selected for appointment was liable to undergo practical and theoretical training for 4 years in the first instance. Para 3 laid down that successful apprentices will be appointed on probation for 3 years in the Mechanical Engineering and Transportation (Power) Department on Indian Railways. Para 6 provides for passing a test and a departmental examination failure to do may result in termination of service. Para 7 lays down that the appointment and pay as probationer will commence from the date of completion of 4 years of apprenticeship or (b) the actual date of completion of training whichever is later. Service for increment will subject to para 6 count from the date of appointment as a probationer. Para 7 of appendix 1-A of 1960 Rules deals with relative seniority of SCRA's and direct recruits. It provides that "as between officers recruited under Rule 3 (a) and those recruited under 3 (b) seniority will be determined on the basis of entry in the time-scale subject to the inter se seniority of each batch being maintained."

(16) During 1932-1947 the successful candidates for the directly recruited Class I Service were put on probation for a period of 3 years comprising generally of 2 years of practical training on the Railways and one year of working post. They were paid a stipend of Rs. 250 P.M. in the first year and Rs. 275 P.M. in the second year. Thereafter, on entry into a working post, they started on the minimum of the time-scale of Rs. 300- 35-400-450-500 for the non-technical services and Rs. 350-25- 475-500 for the technical services. As against this the Special Class Apprentices on completion of 6 years training started on the

minimum of time-scale ; i.e. from the very first year of their probation, while the directly recruited officers entered the time- scale in the third year of probation. Thus the apprentices on the date of entering into service was equated with a directly recruited officer who had completed 2 years of probationary training, which meant that all apprentices got 2 years advantage in respect of seniority over all directly recruited probationers. Up till 1945 the last 2 years of apprenticeship were also to be spent on Indian Railways Institution, U.K. Before completion of 6th year of apprenticeship the candidates were required to pass Sections A, B & C of the Associate Membership of the Institution or" Civil or Mechanical Engineers, London. As since 1961 the apprenticeship period had been reduced to 4 years they are now expected to qualify for A.M.I.E. in the first 2 or 3 years of probation after appointment to Class I service.

(17) The first Pay-Commission (1947) recommended an integral uniform junior time-scale as under : 1st year Rs. 350 1st stage 2nd year Rs. 350 2nd stage 3rd year Rs. 380 1st stage 4th year Rs. 380 2nd stage. It also recommended the abolition of the system of separate pay for probationers during the training i.e. before joining the working post. These recommendations were accepted by the Ministry and by the Railway Board. The result was that the pay of Class I Engineers/Officers on Indian Railways on joining service on probation was fixed at Rs. 350 first stage. Similarly the pay of Scr apprentices was also fixed at Rs. 350 first stage when they were appointed to first post on completion of six years of training during which they are required to get the requisite qualification of A.M.I.M.E. The SCRA's were vitally affected and they represented that prior to 1948 they used to join as probationers on a working post after completion of 6 years of apprenticeship and they used to be fixed at the minimum of time-scale whereas the direct recruits were given a probationers pay during the first two years of probation and minimum of time- scale from third year when they came on a working post. But after 1948, as no change was made in the case of Jamalpur apprentices, the result was that whereas prior to 1948 there was a difference of 4 years between direct recruit and Special Class Apprentice it lengthened to 6 years after 1948. This gap period had an important consequence because the seniority is to be counted from the date when an officer is brought on the timescale. It will be seen that prior to 1948 the SCRA's joined the time-scale on the very first year of their being put on probation whereas the directly recruited persons entered the time-scale on the third year of probation. But when in 1948 the Time-scale was given to the directly recruited staff on the very first year it meant that the hitherto equation of apprentices on first year of probation with a directly recruited officer in the 3rd year of probation was nullified. Representations followed. Though initially they were not successful but ultimately the President passed the order of 15-2-1960 by which it was directed that the initial pay of. the Sca should be refixed on the date of their appointment to a working post after satisfactory completion of their 6 years apprenticeship and their dates for increment in the time-scale also regulated accordingly. Special Class Apprentices appointed. After 1-1-1942 and up to 31-12-42 from

1-1-43 to 31-12-1950 Initial pay in Junior scale to be fixed at Rs. 350 second stage instead of Rs. 350 first stage. Instead of Rs. 380 first stage Rs. 350 first stage

(18) The immediate effect of this was reflected in the classified list issued in December, 1960 by which entries with regard to petitioner (Kapoor) showed his date of appointment in service as 14-8-1950 and the date for increment on time-scale as 14-8-1948. Similar position was reflected in the other case of petitioner (Malik) whose date for increment on time scale was shown as 1-9-1949 and his date of appointment in service as 1-9-1951. For over two decades the date for increment on time-scale continued to be shown by giving the benefit in term of 15-2-1960 order; namely by showing the Sca entry into the time-scale on the completion of 4 years training. The petitioner (Kapoor) was selected as Sca in 1944. Some effort was made no doubt in between to have this decision changed but to no effect. Ultimately the President has issued the impugned order of 4-1-1982 stating that he had reconsidered the matter and it had been decided that the order of 15-2-1960 shall apply only to refixation of initial pay of the groups of Sca and the refixation of pay shall not change the inter se seniority of officers of other Class I Services (including directly recruited Mechanical Engineers) and that their date of increment on time-scale shall be regulated accordingly. The effect of the impugned order is to reverse the whole process of the seniority which had been accepted and followed by the department for over two decades. The result of this is illustrated in C.M. Malik's petition by showing that in pursuance of imputed order his seniority will be pushed down by 22 steps. The petitioners being Sca characterise the impugned order of 4-1-1982 as invalid and bad. Equally strongly the Railway Board and other private respondents who are directly recruited officers support the validity of the impugned order.

(19) There are junior scale and senior scale officers in each of the service mentioned above. Separate seniority list of each service is prepared on the basis of their date of entry in the time-scale. Above the senior scale there is junior administrative scale/Head of department level-2/Head of department level-1. The seniority of officers who are confirmed in the administrative grades is separately shown in each service after their confirmation in those grades. Promotion to the general cadre posts i.e. Divisional Railway Manager, Chief Planning Officer, Senior Deputy General Manager, Chief Administrative Officer, General Manager, are made from amongst the Administrative Officers of all services and for that purpose a working seniority based on the date of entering into time scale is maintained in the Railways. The seniority in the Railways is maintained at the following 3 levels : (a) seniority in each service up to the level of Junior scale/senior scale, (b) Seniority of Senior Administrative Officers in each service; and (e) Combined seniority of senior Administrative Level-1 Officers for promotion to the post of Chief Administrative Officer/General Manager.

(20) The petitioner as well as the respondents are now all in level I, which is the pool from which further promotions to the general cadre posts like General

Manager etc. are selected. As we have seen there are separate set of rules for each service including how seniority is to be determined therein. There is no combined seniority list of all these services. But as promotion for the post of General Manager and similar posts has to be made from level I which includes officers from all services some principles have to be laid down by the Railways in the matter of selection. It appears that Railway Board maintains a combined seniority list of level I Heads of Departments grade officers of different Railway Services.. In preparing the list apart from other considerations (which are not relevant for our purpose) one of the considerations and relevant for our case that is kept in view is that basic inter departmental seniority of officers belonging to different departments is taken on the basis of date for increment on time scale of individual officers. Thus the petitioner was being shown as having entered the time-scale on 14-8-1948 (in terms of orders of 15-2-1960) and will count his seniority from that date i.e. August, 1948. But by now because of order of 4-1-1982 the petitioner will count the date for increment on time-scale as 14-8-1950. Similarly petitioner (Malik) who would count his date for increment on time scale as 1-9-1949 in terms of the President's order of 15-2-1960 will have to count it from 1-9-1951 in terms of 4-1-1982 order. In short the impact of the order of 4-1-1982 is to put back the seniority of both the petitioners by 2 years. Similar would be the impact on all those Sca who were recruited between 1943 to 1959. Thus not of one or 2 petitioners but whole batches of Sca between 1943 and 1959 whose date for increment was being maintained on a particular basis for all these years will have to lose two years seniority if 4-1-1982 order of the President is upheld.

(21) Initially at first stage there was some little mix up on the side of respondents as to whether the seniority was to be counted from the date of increment on a time scale or not. Later on that position was clarified by Mr. Sen, counsel for Railway Board as well as other counsel appearing for the private respondents, who all accepted that the date for increment on time scale is the date for determining seniority. So there is no dispute on this aspect. The respondents however, seriously challenge the validity of the claim of the petitioners (Kanpur) and (Malik) to claim the date of their entry on time-scale on 14-8-1948 and 1-9-1949 respectively earlier to the date when they entered the service in the first year of probation i.e. from 14-8-1950 and 1-9-1951 respectively.

(22) Before discussing the point whether in terms of 15-2-60 order and other Rules and instructions the petitioners were rightly shown as having entered the time-scale on 14-8-1948 or 1-9-1949, we feel that it is appropriate to determine and find out as to how the Railway Board itself interpreted the order of 15-2-1960. This seems necessary because the contention of the respondents is that the order of 15-2-1960 was never meant to ante-date the entry of the petitioner on time-scale earlier to his. joining the service on probation. This plea is of course contrary to the specific direction issued by the Railway Board by its circular of 16-10-1961 clarifying that the seniority of Special Class Apprentices in

relation to the promotees and officers of other departments shall be reckoned on the basis of their revised dates of entry into the time-scale. Much castigation was hurried at this letter by some of the counsel for the respondents. Some of them even went to the length of suggesting that this was an unauthorised letter written for some collateral and extraneous reasons. Objection is taken that the question of seniority has been unnecessarily brought in by this letter of 16-10-1961 as order of President dated 15-2-1960 did not deal with it. We feel that there is a misapprehension in the question posed. It is true that the order of 15-2-1960 does not deal with the question of seniority the petitioners do not claim it so. Their only case is that by virtue of order of 15-2-1960 the result of the petitioner getting the initial pay of Rs. 3801- first stage is to show his entry into time scale at 14-8-1948 and the question of seniority is only incidental and consequential to the basic fact. So what has to be found is whether Railway treated the order of 15-2-1960 resulting in the petitioner, being treated to have entered the time-scale on 14-8-1948. The petitioners do not claim the letter of 16-10-1961 as anything more than a clarification none called it a source for claim by the petitioners for their date of entry into time-scale or the consequential seniority. That apart we find that the railways had even earlier to the clarification of 16-10-61 proceeded to act on the understanding that the order of 15-2-1960 was meant to give the benefit of ante dating the date of entry into time-scale for all those covered by the order of 15-2-1960. That this benefit was not in any way undue favor to the SCAs only but was also given to the direct recruits to set that there is no disturbance in the inter-se position to anyone's "detriment is clear from the letter dated 10-5-1960 which was passed in continuation of the order of 15-2-1960 and by which the President was pleased to decide that the pay of 19 Assistant Mechanical Engineers of 1948 batch who on completion of probation were appointed to working posts should be refixed at Rs. 380.00 first stage in the time-scale and their date of increment in the time scale should be regulated accordingly. In this communication two of the persons mentioned are E. C. King and H. J. Waz (at items 5 and 13 respectively). These two officers were directly recruited. This order of 10-5-1960 was reflected in the classified list of December, 1960 which shows the date for increment on time-scale of King and Waz as 19-8-1947 whereas their date of appointment to service is shown as 21-8-1949 and 25-8-1948 respectively. It will be seen that both King and Waz were of 1948 batch and yet their date of entry in time scale has been shown in 1947. So nothing undue was done in the case of the petitioners.

(23) The Board had even occasion to consider the representation from the direct recruit with respect to the order of 15-2-1960. The Board however, by its letter of 17-2-1961 informed the representations that it found no new circumstances having arisen and no new factor brought to light which would justify a revision of the Board's decision and, Therefore, the representation was rejected. This is not a case where the alleged evil "of 15-2-1960 was kept concealed although and discovered suddenly in 1982. It is instructive that all the orders ie.of 15-2-1960,

10-5-1960, 17-2.1961 and 16.10.1961 were issued under the signatures of the same officer Mr. M. P. K. Menon, for obvious reason that he was Assistant Commissioner of Establishment of Railway Board. The suggestion, Therefore, that any surreptitious interpolation was done in the letter of 16-10-1961 is merely imaginary and must be rejected.

(24) Rather it needs to be noted that the order of 15-2-1960 was constantly earlier defended by the Railways whenever occasion arose. Thus in 1974 the matter was raised by a Member of Parliament as to how weightage was given to Special Class Apprentices for the purposes of seniority. The matter was considered by the then Railway Minister who sent a note to the Member Parliament defending the action. The note pointer out that prior to 1948 (giving of prescribed scales of pay) Special Class Apprentices were brought on time-scale after six years of completion of their training from their joining, while direct recruits got time scale after two years of joining. Direct recruits were paid a stipend of Rs. 250.00 for the first year and Rs. 275. in the second year. These two years training corresponds to 5th and 6th year of training to special class apprentices. The result was that special class apprentices were rated as equivalent to the direct recruit who had been given two years training. The introduction of the proscribed pay scale meant that direct recruits were put into time-scale from the date of joining the services. It was disadvantageous to SCAs as they lost 2 years service for the purpose of pay and seniority (unlike the position which existed prior to 1948). It was, Therefore, decided that the training for SCAs be reduced to 4 years from 1961 and corresponding weightage in seniority and pay was given to those recruited from 1-1-1942 to 31-12-1959. It is relevant to note that in this note it is mentioned clearly that the seniority of officers in various All India Railway Services is regulated on the basis of "date of increment on time-scale" and his principle is also followed for determining the relevant position of the officers of various departments when considering them for General posts. Change of date for increment on time scale in the case of the petitioner which was reflected in December, 1960 classified list has continued to be the same as is clear from the classified list of January, 1981 which shows the date of increment on time scale of petitioner (Kapur) as 14-8-1948 and petitioner (Malik) as 1-9-1949. This aspect is emphasised by the petitioner's counsel to urge that ever since the passing of the order of 1960 the Railways have always interpreted it to mean that by virtue of the fixation of initial pay at Rs. 3801- the inevitable result was to ante date the date of entry into the time-scale of all those who got the benefit of 1960 order. In this connection we may refer to the allegations which were mentioned in Malik's petition where a specific plea was taken that the date for increment on time-scale of Malik being earlier than the respondents he has always been treated senior to those respondents. It is also alleged that for all promotions of the officers from one post to the other the seniority has been reckoned on the basis of seniority contained in the classified list annually published. It was also alleged that the petitioner has been promoted to various higher posts on the basis of said seniority and which has been

accepted by the respondents 41025. It has also been emphasised that the seniority of the petitioner and other mechanical officers belonging to the Sca was reckoned on the basis of the order of 15-2-1960. Various promotions to the posts of General Manager and Divisional Manager are said to have been made on the basis of said seniority. Many of the Mechanical Engineers named therein belonging to the category of SCAs are said to have been promoted as General Managers after they had been given the benefit of the order of 15-2-1960. Instances were also given of many officers of the petitioners category having been promoted as Divisional Rail Managers by being given the benefit of order of 15-2-1960. It was also alleged that the respondents 4 to 25 who have been shown as junior to the petitioner (Malik) for a.i.l. the period between 1960 to 1982 will now become senior if the order of 4-1-1982 is implemented.

(25) It is pertinent to note that there is no denial to the factual position given by the petitioner in this para. The only bold reply is that in case of Scra the date for increment in timescale was retrospectively revised arbitrarily in post 15-2-1960 publication in the classified list. This action was characterised as not only based on no principle administrative much less legal. It is however, important to note that the Railways have not dared to deny that for promotions for all general posts in between the period from 1960 onward up to date the date for increment into the time-scale has been calculated, in terms of the order of 15-2-1960 which in short means that for all those who were given higher initial pay in terms of 15-2-60 order their date of entry into time-scale was ante dated by 2 years. Of course we shall examine hereinafter the legality or otherwise of the 1960 order but we cannot help deprecating the strong language used in the affidavit filed on behalf of the Railways by one Mr. Madhavachari who is at present working as Additional Director Establishment(Gazette)and the choice of the language in describing the earlier order of the President of 15-2-1960 as has been done in the counter affidavit. To describe an order of 15-2-1960 as completely arbitrary and based on no principle of administration by a minor officer of the Railway Board shows a strange unawareness of the continuity and the entity of the Railway Board as such. One can understand a private respondent using harsh language to describe an order by the Railway Board, but it seems to us that the Railway Board which is a permanent body irrespective of who happens to be Chairman or a member of the Railway Board at any particular time must show a greater sense of restraint than is displayed here. We are not saying that it is not open to the Railway Board (if it honestly feels that the earlier order of 15-2-1960 needs to be revised) to so take the stand; if it can satisfy the legality and constitutionality of order of 4-1-1982, it will be upheld. But at least in referring to the earlier order dated 15-2-1960 by the President care is called for in the choice of language.

(26) It is not, Therefore, correct to say that 15-2-1960 order was not implemented in the matter of giving seniority to the petitioner. In fact right through the circular was taken to him and was implemented and understood as ante-dating by two years the date of entry into time-scale. The position that

emerges is that between 1948 and 1960 Special Class Apprentices were considered equivalent to directly recruited officers who had completed two years probation or to put it in other words 5th and 6th year training period of Sca was considered equivalent to 1st and 2nd year of probation of direct recruit. Thus it has to be accepted that for 20 years the position was" that Sca like the the petitioners were really shown as having entered the time- scale when they were in their 5th year of training. Faced with this star reality respondents and surprisingly even the Railway Board chose to urge that in the alternative even if the Railway Board had for over a period of two decades understood and carried out the order of 15-2-1960 in a manner as urged by the petitioners the same was illegal and in the words of Mr. .Sen ding to the counsel all that was done in 1982 was to remove t6e illegality committed in 1960.

(27) That calls for determination of the following questions : (a) Whether the order of 15-2-1960 refining initial pay at Rs. 3801- first stage of the petitioners was in any way contrary to any Rules; (b) If not, is the effect of giving higher initial pay only to equate it to advance increments" as urged by the respondents, or that it will ante date the date of entry into time-scale by 2 years, as urged by the petitioners, and consequently will be given seniority from that date. Re (a).

(28) The counsel for the respondents urged that the grant of initial pay of Rs. 3801- at the first stage was contrary to the Rules and as such could not have been granted at all. In this connection reference was invited to para 8 of appendix Iv which provides for conditions of apprenticeship for Special Class Apprentices selected under Regulation 3(1) and applies to them particularly as to pay and general conditions of service, to be found in appendix VII. Emphasis was placed on Rule 2 of appendix Vii which provides that probationers recruited shall be required to pass a language examination before they can be confirmed or before their pay can be raised from. Rs. 3501- to Rs. 380"- in the time scale during. the period of their probation. Reference was also made to the note under Rule 8 which leys down that Probationary Officers will start on the minimum of the Junior Scale and will count their service for increment from the date of joining and they will also be required to pass a departmental examination before their pay can be raised from Rr. 3501- to Rs. 3801- in the time-scale. In our view the assistance from these rules to spell a prohibition in the employer to give an initial higher pay is not permissible. These rules which sav that the probationer will start on the minimum of junior scale is an enabling rule which means that the probationer cannot demand a higher start than Rs. 3501- p.m. which is the minimum of junior scale, unless he has passed the departmental or language test. But this rule is not meant to nor can it fetter the discretion of the employer, if the circumstances so require to award in any particular case a higher initial pay to an employee. This inherent privilege of the employer can not be said to be non-existent by virtue of these rules. The effort of the respondent"s counsel and especially Mr. Gupta to read a prohibition and a negative covenant against the grant of higher initial pay cannot. Therefore, be accepted. Re (b)

(29) Counsel for the respondents placed heavy reliance on Rule 7 of 1943 Rules which provided that pay as a probationer will commence from the date of landing in India on return from U. K. after completion of training. Service for increment will also count from the same date. Reference to 1951 Rules also was made to emphasise that pay for SCAs will commence from the date of joining service as a probationer and service for increment will also count from the same date. The argument in short is that as the rules provide that service for increment is to commence from the date of probation the petitioner cannot claim that his date of entry in time-scale is 14-8-1948 when admittedly he joined on probation on 14-8-1950. But this argument only projects half the canvas. Such an argument would have had validity if the initial pay of the petitioner had been fixed at Rs. 3501- p.m. In that case the date of joining service as a probationer and the date for service for increment will obviously be the same. But the ^petitioner was given initial pay of Rs. 380.00 first stage instead of Rs. 3501- first stage. Such a situation has certain consequences and the Railway have provided for it. Reference in this connection may be made to the Railway Board's letter of 16-3-1953 which has laid down the principles to determine the relative seniority of officers in the combined seniority list of each of the re-grouped Railway system. In that letter it has been made clear that on account of re-grouping it has become necessary to compile a combined seniority list of officers of the superior service on each re-grouped Railway and after examining the matter they have decided that the principles appended should be applied and a combined list to be prepared. The first objection raised by the counsel for the respondent was that these principles have no relevance because this memorandum was only relevant at the time the Railways were re-grouped. We do not agree. It is true that the occasion for laying down the principles for seniority arose because of the re-grouping of Railways. But that does not mean that the principles laid down for determining the relative seniority had exhausted themselves and were not to operate in future. As a matter of fact respondents did not even claim that there were any other principles for determining seniority which would be applicable to such a case as the present. There is no avoiding the applicability of these principles. Petitioners and respondents were in service at that time and evidently any principles which were laid down for determination of seniority would be applicable to them. Principle (i) as follows : Unless otherwise stated, the date from which an officer began to hold a working post. and commenced to earn increments in the regular scale as an Assistant Officer will generally determine the relative seniority of the officer in the combined list." Principle (ii), strongly relied by the petitioners is as follows In the case of, an officer granted higher initial pay on recruitment, the date referred to in (i) above will be adjusted so as to allow equivalent credit for seniority. Thus A who joined service on 1-1-1930 on the second year pay should count service from 1-1-1929. Similar credit will normally be given for advance increment/increments as this concession was allowed, as a rule or maintain higher seniority".

(30) Again the principle that seniority will be determined on the basis of date for

increment on time-scale was reiterated in the letter of the Railway Board dated 30-11-1976 wherein was stated that the Board had decided to circulate the principles for determining seniority of officers appointed to various Class I Services from different sources."

(31) Principle (iii), also relied upon by the petitioners is as follows: "In the case of officers, recruited otherwise than through the regular competitive examination and who may be granted higher initial pay on recruitment, the date for increment on time scale for the purpose of seniority, shall be so adjusted as to allow suitable credit in assigning seniority." One of the respondent's counsel, Mr. Saharya sought to make much out of the fact that as in title letter of 30-11-1976 it was mentioned that because of the deletion of para 8 of Appendix of 5 services mentioned therein the principles were being laid down; this meant that this has no relevancy for determining the seniority vis-a-vis the petitioners who are in the Mechanical Engineering and Transportation (Power) department as against the officers of the Indian Traffic Service whom Mr. Saharya represented. There is a misapprehension in this argument. The reason why these principles were laid down by the Government, as explained by the counsel for the petitioner Mr. Ray and Mr. Kuldip Singh and not disputed by the counsel for the Railways is that as Allahabad High Court. In *K. K. Gupta v. Union of India & Ors.* (Civil Misc. Writ No. 96411969 decided on 11th of September, 1970) (1) had struck down's Rule which was common to all these services and which reserved the right to Government of India for fixing the seniority as their discretion in individual cases, it became necessary to frame fresh principles for determining seniority. The letter specifically says that the principles are for all class I services from different sources. Moreover, mechanical engineering service is specifically included in it and the petitioners would be included as they belong to that service. Another objection raised was that the principle (iii) laid down in the letter of 30th November 1976 was not applicable because this deals with the case of the officers recruited otherwise than through regular competitive examination and Principle (ii) is applicable which applies to officers appointed to the Indian Railway Service appointed on the basis of competitive examination held by the UPSC. In our view the principle of giving higher seniority on the basis of getting higher initial pay was laid down as far back as 1953; 1976 Principles only supplement it. We however, are also of "the view that Principle (iii) of 1976 is applicable to S.C.A.S. like the petitioner's. Rule : (I) of 1951 Rules lays down that the service shall be recruited by (1) appointment of candidates as special class apprentices on the result of selection to be made in accordance with part II of the Rules, (2) by competitive examination held in accordance with part III. Part II lays down the method of selection of special class apprentices only. Rule 14 lays down that the Commission shall ordinarily interview all the candidates but may at their discretion subject all candidates to a simple qualifying test. Part III on the other hand deals with the recruitment by competition examination and it is the direct recruit who is governed by the principle (ii) laid down circular of 1976. Principle III being the residuary principle applicable to all those who are recruited

otherwise than through the competitive examination and will include SCA. Reference Rule 130 of Indian Riy. Est. Code Vol. I shows that recruit to Class I Service in the various departments of the Railways shall be from" (a) competitive examination held in India by the Union Public Service Commission. in the case of Transportation (Power) and Mechanical Engineering Department, by appointment of candidates as special-class Apprentices. which would show that the latter is not a method of appoint it by competitive examination. Mr. Sen suggested that the principle iii applies only to those who may because of their special qualification and equipment be recruited and given higher initial pay. Those cases will certainly be so included, but that is no reason to exclude special class apprentices who are also recruited otherwise than through competitive examination.

(32) Another argument was that the order of refixing higher initial" pay was given by the order of 15-2-1960 and as this order was later than in 1950 i.e. at the time of appointment Principle of 1953 and (iii) of 1976 could not be invoked. We do not agree. .The applicability of these principles is dependent on the grant of higher initial pay on recruitment It may be that at the time of recruitment itself an order is passed giving higher initial pay. But an order may be made subsequently as was done on 15-2-1960. But once such an order grants higher initial pay from the time of recruitment Principles of 1953 and Principle (iii) of 1976 would become applicable. The requisite condition is whether a higher initial pay from the. date of recruitment has been granted. Once that test is satisfied, as in the present case it makes no difference that order was passed on 15-2-1960 when the order unmistakably grants the higher initial Pay to the petitioners from the date of their recruitment We would Therefore hold that Principles for determining seniority laid down in the letters of 16-3-1953 and, 30-11-1976. Now a reference to 1953 principle (ii) and the illustration mentioned therein says that "if (A) who joined service on 1-1-1930 on the second year pay should count service from 1-1-1929." In the present case the order of 15-2-1960 directed that the initial pay of S.C.A, like the petitioners should be refixed at Rs. 380 first stage. As a matter of fact even the impugned, order of 4-1-1982 has not taken away from the petitioner the re-fixation of his initial pay at Rs. 380 in the first stage. Now the Pay Commission Rule is under :- 1st year Rs. 350 1st stage. 2nd year Rs. 350 2nd stage. 3rd year Rs. 380 1st stage. Once the initial pay of the petitioner is refixed at Rs. 380 first stage, the inevitable consequence must lie that the date for increment in time-scale of all these Sca including the petitioners had to be antedated by 2 years in relation to their date of appointment to service. Thus petitioner's (Kapur and Malik) date of entry into time-scale had correctly and necessarily to be antedated to 14-8-1949 and 1-9-1949 as was regularly shown in the classified list. .

(33) As a matter of fact the respondent Railway Board had also understood that the re-fixation of the higher initial pay would result in antedating the entry into time-scale of the persona concerned. In this connection reference to the order of 15-2-1960 will show that the batch of Sca of 1-1-1942 to 31-12-1942 had their

initial pay fixed in the junior scale at Rs. 350 second stage. Later on in order to equate that batch with subsequent batch the pay was re-fixed at Rs. 380 first stage as per letter of the railway board dated 6-12-1962. In para 3 of, the letter It was specifically stated that-in any general comparison of the seniority 1941 batch of special class apprentices will be equated to direct recruit appointed in 1945 and 1942 batch will be equated to direct recruits appointed in 1946 This was obviously on the basis of treating the Sca concerned as having entered the time-scale in the 5th year of their apprenticeship, which position flowed from the logic of the order of 15-2-1960. .-

(34) Mr. Sen, the learned counsel for the Railway next urged that notwithstanding the principles for seniority laid down and notwithstanding the practice it was impossible to support such a practice which recognised that a person should be shown to have entered the time-scale at a date earlier than even having joined the service on probation. He urged that it was against the service jurisprudence that any period earlier to joining service should, be counted for the purpose of seniority. He emphasised that Rules specifically provide that the service for increment will count from the date of appointment as a probationer and there can Therefore be no date earlier than that date which can be the starting point for entering into a time-scale. The suggestion was that a person who is an" apprentice and a person who enters the service are two totally different things and no period prior to the date of joining on probation can ever be counted for any purpose, least of all for determining title entry into time-scale. We do not agree that the provision is in any way so unusual for service Rules. It is quite a common practice to give back date seniority even from a date earlier to the period of joining service. even the present Chairman, Mr. Gujrol's date of entry into time-scale is said to be from a date earlier than the date of joining the Railways. This benefit of antedating the entry into time-scale was also applied in the case of .persons like King and Was who were shown as having entered time-scale from 19-8-1947 though their date of appointment to the service is shown in August, 1948 and 1949. But there is a sounder reason why this argument of Mr. Sen has to be rejected. This argument treats the petitioners as usual kind of apprentices with no stake in service as if they were casual appointees, which is not correct. Rather Special Class Apprentices are recognised as a class which are recruited to man Class I service. Recruitment to Sca is governed by statutory Rules. 1951 Rules show that educational qualifications are laid down requiring the candidate to have passed in first or second division intermediate examination of a University or Board approved by Government of India or he must have passed the pre- engineering examination of Delhi Polytechnic. A candidate has to satisfy the Use that he is suitable for appointment as a SCA. Vacancies shall be filled in strict order of merit from the list prepared by the Commission. It is thereafter that those apprentices are put through practical and theoretical training for 6 years and prepare to the examination where they also had to pass the A.M.I.E. (Associate Membership of the Institute of Civil or Mechanical Engineers), which is equivalent to an

engineering graduate. In the last two years they are given training in England and in some other institutions in the country. The apprentices after completion of 6 years when they join service are put on probation from the first year and are shown as having entered into time scale from the first year. On the other hand the direct recruits prior to 1948 were put on probationary training for the first two years and only entered timescale in the third year. The SCAs thus were given entry in the time-scale in 5th year of their training while the direct recruits were given entry in the service in the 3rd year of probation prior to 1948. This balance was upset when Pay Commission scale were made applicable to the direct recruits from the first year from 1948 onwards. Evidently it was not noticed that the Railway Rules and provisions provided for giving various service benefits to SCAs from their 5th year of training i.e. even when they were special class apprentices and had not yet entered service on probation; notwithstanding that various rules show that 5th and 6th year training of Special Class Apprentices who are absorbed in service are equated with the 1st and 2nd year of service on probation of a direct recruit. Rules consistently show equation of 5th year of training of Special Apprentices as equivalent to 1st year of probation of a direct recruit, in Class I Service. Mention may be made of the following : (a) Rule 2003 , Indian Railway Establishment Code, Volume 11 (Fundamental Rule 9) (6) (a) (i) dealing with definition of "Duty" lead;; :

" DOTY includes (i) Service as a probationer or Apprentice provided that such service is followed by confirmation."

(b) Rule 1302 (10) Indian Railway Establishment Code Volume I covering Service for the purpose of Special Contribution admissible under rule 1314 states the following : "Service for the purpose of Special contribution admissible under rule 1314 means continuous service during which a subscriber holds a lien or a suspended lien on a permanent non-pensionable post paid monthly from Railway Revenues but includes the period (i) Officiating or temporary services or service as a paid apprentice or probationer if followed without break by permanent service.

(35) Thus it will be seen that the total six years training period of Special Class Apprentice is counted for Special Contribution to Provident Fund. Vide Rule 1305(I)(ii) of Indian Railway Establishment Code, Volume 1. Unlike other Apprentices, Special Class Apprentices on confirmation are permitted to subscribe to the Provident Fund with retrospective effect from the date of their engagement as Special Class Apprentices. In terms of Indian Railway Establishment Manual Rule 2409, Special Class Apprentices are entitled to free medical attendance and treatment at Railway Hospitals and Dispensaries on the same scale as applicable to railway servants in the category for which they are apprentices, namely, Class 1 Officers. As per the Government of India Manual of Pension Rules, vide Rule " 308 (i) of "Explanation", Special Class Apprentice is deemed to be an apprentice for only the first four years of his Apprenticeship. The last two years of Apprenticeship being treated as a period of probation."

Relevant extract of the Rule is as under :-

" CASES in which pensionary benefits are not earned at all. When the whole period of employment of an employee is in one or more of the following capacities, no claim to pensionary benefits is admitted."

Explanation -for the purpose of these rules (1) A Special Class Apprentice is deemed to be an apprentice for only the first four years of his apprenticeship . the last two years of apprenticeship will be treated as a period of probation. (2) All the posts on the Railways will be deemed to have been pensionable from the beginning.". Again under rule 407 of Government of Indian Pension Manual, dealing with rules for reckoning service it has been stated vide sub-para (i) that, Special Class Apprentice is deemed to be an apprentice for only first 4 years of their Apprenticeship : the last two years of apprenticeship being treated as a period of Probation.

(36) Now if the last two years of the apprenticeship are treated as probationer for the purpose of confirmation, for the purpose of duty, for the purpose of pension there is hardly any justification for respondent to urge that 5th and 6th year of training of Sca cannot be counted for the date of entry into time-scale on the argument that this period is outside service. Rules provide for the last two years of apprenticeship being treated as a period of probation. Thus when the President by his order of 15-2-1960 refixed initial pay at Rs. 380 first stage of the petitioner, the inevitable result was to ante date his entry into time scale from the 5th year of his training i.e. from 14-8-1948. It must be remembered that every time a higher initial pay is granted to a person who Joins service in Railway his entry into the time-scale is from a date earlier to his actually joining the service.

(37) Thus in Railways in case of officers promoted from Class II to Class I after they hold charge of "working posts" of Assistant Mechanical Engineers for several years before permanent appointment to posts in Class I posts (Jr. Scale) of M.E.T. (P) Department seniority is fixed after giving certain weightage not exceeding; 5 years. The officers whose date of entry into time-scale was ante dated by 5 years earlier than "the date of. appointment to service includes not only Assistant Mechanical Engineers, but also officers of signal and Telecommunication Engineers, and Electrical Engineers, and also of stores, that is to various services of Indian Railways (Reference may be made to the Classified List of Gazetted Establishment of Indian Railways, 1963 at pages 274, 279, 282 and 285). This principle of giving the weightage of 5 years has been held to be reasonable in K. K. Gupta v. Union of India 1979 (3) SLR 400. Similarly even in the case of Shri M. S. Gujral, respondent No. 2, it will be seen that he was appointed as a probationer on 8-6-1948 and took over a working post after two years training and he was confirmed on 8-6-1951 in Junior Scale. However, his date of appointment to service and date turn increment on time-scale was ante-dated to 1-2-1947 i.e. for a period when he had not been recruited to the railway service. Another example is that of one Shri P. N. Khanna who was appointed as

probationer on Railways on 11-9-1948 but by ante-dating his date of increment and seniority was fixed as on 19-8-1942, (entry of P. N. Khanna is to be found at page 36 of Classified List of Gazetted Establishment of Indian Railways (1953).

(38) Having realised that injustice done to Sca had to be removed the only manner of doing it was to equate their 4 years training period as equal to the first year of probation of a direct recruit as it used to be before 1948. But 1943 59 batch had already done a 6 years training. So the only manner of removing this anomaly was to refix the initial pay of officers like the petitioner at Rs. 380 p.m. 1st stage which would automatically result in ante-dating the date for entry in time-scale by two years. This was what was done by President's order of 15-2-1960, and this made the petitioner's date of entry into time scale as 14-8-1948. This was fully in accordance with the Rules and equity. That the Railway meant to correct this anomaly so as not to leave any scope for mischief was indicated by Railways in no uncertain terms when the President acting under Article 309 of the Constitution framed on 10th December 1960 Rules called Mechanical Engineering and Transportation (Power) Department of the Superior P.venue Establishment of Indian Railways Recruitment Rules. Rule 2 now provides that the practical and theoretical training will be given for four years of their apprenticeship. Rule 7 now provides that the appointment and pay as a probationer will commence from (a) the date of completion of four years of apprenticeship or (b) the actual date of completion of training whichever is later. The result is that from post 1961 batch an apprentice will enter the time-scale on probation after 4 years of training. Thus the first year of the direct recruit as probationer will be equivalent to a Sca who would have completed four years of training. Thus a direct recruit will be entering the time-scale in the same year as Sca with 4 years training. This is exactly what had been done by the order of 15-2-1960 by giving higher initial pay. 1960 Rules were in fact giving statutory shape to the decision of President dated 15-2-1960. Thus take the instance of the petitioner who was of 1944 batch apprentice, he completed four years training in 1948 and joined as probationer in 1950 and from that year entered the time-scale. If the pay commission Rule had not been applied in 1948 to the direct recruit he would have in 1948 , Probationer's training getting only a stipend for the first two years and would only have entered the time-scale in 1950. the same year as 1944 Sca, of the petitioner. It will be readily seen that if the impugned order of 4-1-1982 was to hold the field (meaning that 15-2-1960 which ante-dated the entry into time-scale would no longer be in the field) serious and discriminatory consequences will accrue. To illustrate a 1938 batch of apprentices would have joined after 6 years training in 1944 into the time-scale; a direct recruit of 1942 batch after 2 years of probationary training would have entered the time-scale only in 1944. Thus Sca, of the petitioner .It will be readily seen. that if the impugn with direct recruit who joined in 1942, meaning two years of probationer training being equated with two years training of Sca in the 5th and 6th years. It is this serious injury which was done to the batch of 1942 59 batch which was corrected by the President by his order of 15-2-1960. In

order that there should not be further problem in future 1960 recruitment rules were framed and the period of training was reduced to four years. Now, Therefore, direct recruit enters the time-scale in the same year as a Sca but with a four years training. It is clear that 1960 rules are prospective and are only applicable to post 1960 batch. The result will be that an Sca selected in 1959 would have to undergo 6 years training and would join service on probation in 1965. If the Order of 15-2-1960 was to operate he would be shown to enter the time scale in 1963. An apprentice selected in pursuance of 1960 Rules would join in 1964 and he would get his working post from the same year. This would be rational and equitable because the earlier batch of 1959 would remain senior to Sca of 1960 batch. But if the argument of the respondent were to be accepted and the President's order of 4-1-1982 was to be upheld the result would be that there would be no ante-dating of entry into the time-scale of the 1959 batch: Most inequitable and arbitrary result will follow namely that 1959 batch of apprentice will become junior to 1960 batch of SCA; a situation so patently illegal and indefensible as not to stand even a moment's scrutiny. As a matter of fact the petitioners have given an instance of the enormity of the situation by mentioning that because of the impugned order of 4-1-1982, Sca of 1960 batch will become junior to Sca of 1961. This position is accepted by the respondent Railway and all that is stated is that the anomaly pointed out by the petitioner has arisen from the change in the Recruitment Rules for batches subsequent to the year 1960 according to which the period of apprenticeship was reduced from six years to four years. The Ministry of Railways intend to make necessary adjustments so that the SCARs of later batches whose period of apprenticeship have been reduced from six years to four years since 1961 do not become senior to those of earlier batches. This is a meaningless assurance. Such a bald statement can hardly conceal the total absence and no application of mind by the respondents when passing order of 4-1-1982. Even though this point was urged in the petition in the first instance and even though the matter was heard by us a couple of months later the Railway Board did not enlighten us as to what steps it had taken to remove this anomaly of pre- 1960 batch becoming junior to post 1960 batch if the order of 4-1-1982 is to operate. The reason why we suspect that nothing has been told to us is that we feel that nothing can be done without committing another illegality so long as the order of 4-1-1982 stands. The reason is that 1960 batch recruited under the Statutory Rules framed under Article 309 have a right to join the working post after a period of 4 years training and in law are entitled to count their date of entry into the time-scale after a period of 4 years of selection as SCA. Any order which seeks to direct that though the date of entry of 1960 batch has to be 1964 under the Rules but he would rank junior to the person of 1959 batch who would be deemed to be entering the time-scale in 1955 (if the order of 4-1-1982 is to operate) would be per se illegal and unsustainable. The Railways have obviously tied themselves in a knot and that has been done because no mind was applied when considering this aspect. Of course if, as we intend to do, quash the order of 4-1-1982 no problem would arise because the batch of 1943-59 would have entered the time

scale after 4 years training with the result that he will remain senior to the batch who joined after 1960 rules. This illustration would show the patent illegality and arbitrariness of the order passed on 4-1-1982. The only way to uphold the constitutionality of 1960 Rules is to remove the impugned order of 4-1-1982 which has brought a situation of discrimination and arbitrariness. We feel that the President's order of 15-2-1960 was not only pre-eminently just but had been acted upon for 2 decades without creating any anomaly. We are not overwhelmed by the haunting specter of the working of 15-2-1960 order conjured by Mr. Sen and castigating the principles laid down therein as something unknown in service jurisprudence. On the contrary we find nothing illegal or impermissible in granting the higher initial pay to the petitioner as was done by President's order of 15-2-1960 and which resulted into making the petitioner's entry into the time-scale from 14-8-1943.

(39) The result of all this discussion is that the President's order of 15-2-1960 was legal and just and unless it can be shown that there was something so abhorrent and shocking to one's conscience, the justification for reviewing the same by the impugned order of 4-1-1982 would be lacking; resulting in the impugned order of 4-1-1982 being struck down as unauthorised in law.

(40) We need not examine the extreme contention (which to be fair to the petitioners, was not urged) that it was not permissible for the President in 1982 to review his earlier order of 1960. In theory, Therefore, we may proceed on the assumption, that as the impugned order of 4-1-1982 is an administrative order there was no total lack of competence in the President to review the earlier order of 15-2-1960 which also was administrative. But it would be wrong to jump to the conclusion that simply because the order is administrative it can be reviewed any time for no reason and at the sole whim of the reviewing authority. Such an untrammelled and arbitrary power is impermissible even in reviewing an error which may be totally administrative. Though the power of review may be conceded yet it can be exercised only within defined limits and on established principles and only to undo an injustice. If cannot be resorted to merely as an exercise of the power -to review the justification for review, when prima facie challenged must be established by the concerned authority. Benefits being denied under an order to-be reviewed, the time lag when review is sought, the purpose of review, and above all the justness and the desirability of the review must all be established. In the present case as we have seen order of 15-2-1960 was passed on a consideration to the various aspects of the matter. This order was meant to remove the injustice and anomaly which had been done to the SCAs by delaying their entry into the time-scale by 2 years which they were enjoying from 1933 to 1947. The respondent/ Railway had since 1960 acted on the order of 15-2-60. Over two decades have passed when the decision was taken in favor of the petitioners which was now being sought to be reviewed by reconsideration. This is. impermissible in law. That an order passed after such a long period would be nullity as observed in AIR 1937 27 (Privy Council) wherein the court observed as follows :

" IN these circumstances the case becomes a case in which after Government officials duly competent and duly authorised in that behalf have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision."

(41) That the courts are most reluctant to upset a well established practice in administrative services is well settled. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants which it would be if the orders passed as far back as 2 decades were to be reviewed for no valid or understandable reason except for the bald assertion that the concerned authority is inclined to take a different view of the matter. Security of service and avoidance of vagaries of administrative action are the hall-marks of the contented service. Reference in this connection may be made to *Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others*, wherein it was observed : Although security of service cannot be used as a shield against administrative action for lapse of a public servant by and large one of the essentials requiring of contentment and efficiency in public services a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reined after lapse"" of many years at the instance of a party who has during the intervening period chosen keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties It would, Therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time". loners had enjoyed benefits of the order of 15-2-1960 for over two decades and were rightly looking forward to have it in future. The impugned order of 4-1-1982 completely dashes their prospects in service and of ever getting the general level post to which they could legitimately aspire by virtue of the order of 15-2-1960. The inequity is writ large in the impugned order of 4-1-1982.

(42) That equity and public policy must govern the competence of the authorities to review even administrative decisions was highlighted by Professor S. A. De Smith in his "Judicial Review of Administrative Action"" 3rd edition wherein he observed at page 94 :

" THE interests of fairness to individual whose interests will otherwise be directly and prejudicially affected may lead the courts to attribute binding effect to administrative acts and decisions which the competent authority wishes to repudiate or rescind, Indeed, it would seem that the legal competence of administrative bodies to rescind their decisions depends atleast as much on considerations of equity and public policy as on conceptual classification."

It is a recognised rule that previous decision of the authority cannot normally be altered or withdrawn where the act has conferred a benefit on the person concerned. (See " Jurisdiction & Illegality" by Dr. Rubinsten at page 30) wherein

he has pointed out: -

" THIS rule is applicable only where the act has conferred a benefit on the person concerned. Where a decision has been detrimental to the person concerned as in cases of a refusal to grant a license" or a decision to revoke it, it can be assumed that decision would be readily implied."

It is well to remember that conceding theoretical power to review does not permit a power to review any and every order. "In the interpretation of statutory powers and duties there is a rule that, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion required. But this gives a highly misleading view of the law where the power is a power to decide questions affecting legal rights. In those cases the courts are strongly inclined to hold that the decision, once validly made, is an irrevocable " legal set and cannot be recalled or revised." (See "Administrative Law by H. W. R. Wade 4th Ed. at page 214".)

(43) In the present case the petitioner has undoubtedly obtained benefit and is expecting to enjoy it in terms of the order of 15-2-1960. On that ground, Therefore, it could even be said that this order to 1960 fell in that exclusive category which could not be altered or rescinded. But that apart even if the order of 1960 was reviewable we must find some justification or a semblance of rationality into the reason as to why it was considered necessary to review this order. Inspire of our delving into the record we can find none. In this connection it is to be noted that the fact that the SCAs like the petitioners were appointed to Class I services after a training of. 4 years was accepted even by the Second Pay Commission which noted in Chapter 16 (dealing with Engineering Staff, para 5) that the Railways recruit persons with intermediate in Science as Special Apprentices who after training of 4 years provided by the department are appointed to Class I Service of the Mechanical Engineering to the department. No objection was found by the Second Pay Commission to this procedure. The structure of training has been the same right from 1927 onwards up to date continuously except the teaching and training curriculum according to the development of technology. It is nobody's case that the training which was given to after 1960 batch is in a way materially of different quality from the one which was being given earlier up to 1959 batch. It is legitimate deduction that the reason why 1960 rules were amended to reduce training period to 4 years instead of 6 was to give the decision of 15-2-60 a statutory sanction.

(44) Mr. Wadhwa had fairly produced before us the proceedings leading up to the passing of the impugned order of 4-1-82. The file and the record discloses that the Minister of State for Railways had noted that he had received some representations from the Engineering Officers who were directly recruited, that their promotion prospects were adversely affected by the decision taken in case of SCA's; he had in his note of 6-5-1981 described this order of 1960 as inequitable and unjust and calling for immediate review. The Minister examined this matter on 25-8-1981 and opined that direct recruits were objecting to such

an order, and noted that he had discussed this matter with the Chairman, Railway Board who confirmed that there is force in the representations made by the direct recruits. The Minister thought this order to be unjust and directed that this order be rescinded and also further directed that for the interim period no cognizance of the effect of order of 1960 on inter se seniority should be taken. He specifically directed that the Board should not be associated with it and the Chairman should consult the Chairman Upsc and put up a note. In pursuance of this a note was put up which resulted in the impugned order being passed. The file unmistakably shows that the decision was taken with a closed mind. Though the order was passed on 4-1-1982 apparently after examining the matter, surprisingly and significantly, the Minister even before consultation with the Upsc had already given a direction to review the order of 1960. The subsequent exercises to consult Upsc and other departments were empty formality and a meaningless ritual. The ipse dixit that order was working injustice was repeated without examining its validity. None of the points noted by us in justification of the order of 1960 were even referred to. There was a total non-application of mind to the relevant facts without reference to which the impugned order of 4-1-1982 must suffer short shrift as being arbitrary and inequitable. In this connection non-consultation with the Railway Board and especially with Member Establishment and Transportation assumes special significance. The petitioner has alleged that the whole decision was taken in great haste because after July, 1981 five posts of the rank of General Managers were to fall vacant and on the basis of the existing seniority it just happened that the majority of them might have to be filled from the category of SCAs. The haste was said to have been motivated because the present Chairman who is a direct recruit did not look favorably to the seniority of the SCA. Further assertion was made that neither the Member (staff) who is concerned with the establishment nor the Member (Mechanical) controlling the category of mechanical officers was taken into confidence and the decision was taken by the Chairman of course with the approval of the Minister. In the counter affidavit there is of course a firm denial that the Chairman was in any way hostile to the petitioner or that he had any other motive but efficient working of the department. However, it is not disputed that the Chairman atleast shares the views of the direct recruits that the decision of 15-2-1960 needed to be rescinded. The reason why other members of the board were not consulted is stated to be the order of the Minister who had directed that the matter be not referred to the Board for review and the matter could be re-examined by the Chairman of the Railway Board in consultation with the Chairman of the UPSC. It seems to us that no associating the other members of the Board with such a vital decision was ill-advised and could not be supported in law.

(45) It is relevant to note that under the Railways Act, 1905 the Railway Board is a body corporate. There cannot be any major decision of the Board without there being, a meeting of the Board in which the matter is placed before the full Board and it being discussed there. The powers of the Central Government under

the Railways Act have been invested to the Railways Board. By an office order No. 51 '80 the Minister of Railway? has distributed the duties of the Railway Board amongst the Chairman and Members of the Railway Board. The Railway Board now consists of three members each in charge of Engineering, Staff and Transportation. One of the members is a Chairman of the Board and in that capacity functions ex officio as Secretary to the Government of India in the Ministry of Railways. The Chairman is responsible for intra-Board Co-ordination. The Financial Commissioner for Railways, the Secretary of Ministry of Transport are also members of the Board ex-officio Each of the members is responsible for dealing with all technical aspects of the subject or subjects of which he is in charge and where a question impinges on the functions of another -Member, the latter's concurrence is necessary before orders are issued. Thus the Chairman was incompetent to take the decision on his own without atleast discussing, if not the concurrence of the Member (Staff) because the subject matter of the impugned order falls within the jurisdiction of the Member (Staff). Thus even in law to exclude the other members of the Board is going against the functions of the Railway Board and the allocation of business amongst the various members. The only reason suggested in not consulting the other members of the Board that Member (Staff) was of the category of Sca and may have a particular bias could also be attributed with equal relevance to the Chairman who was in the category of the direct recruit. We however, feel that it is unfair to attribute any motives to the Chairman or other members of the Board, who we have every reason to expect to bring up biased and impartial approach to the consideration of the problems concerning such senior officers. We feel that if an objective and reasoned consideration was to be done it was necessary that the matter should have been discussed by the Railway Board in all its depth and then decision taken after getting the views of all concerned. Though we do not go so far as to attribute any motive but we do feel that the hurry and haste with which the matter was decided by excluding other members of the Board was to say the least unfortunates .We are not suggesting that it is not open to the Central Government to have overruled the decision of the Board. We appreciate that in the scheme of administrative set up the Board's decision could at the most be recommendatory, and the final decision must be of the political wing, that is the Ministry. But in order to establish that there was justifiable ground for review, a consideration and views of the Railway Board having been obtained prior to the decision, would have been a reinforcing factor. But to have kept The Board out of the picture shows that the decision making was done with a closed mind and pre-conceived notion. This action shows the total lack of any justification for review of order of 15-2-1960.

(46) This hush hush manner in disposing of the matter has also led .to the strange situation where .according to the Chairman of the Railway Board the Minister's decision of 4-1-1982 has the approval of the Upsc and this fact was emphasised by the counsel for the respondent to urge that an impartial body like the Upsc is also of the view that the decision of 1960 should have been reviewed

as has been done by 4-1-1982 order. The stand of the Upsc as disclosed from the records is otherwise. From the file we find that the Chairman of the Railway Board wrote a letter dated 20-1-1982 pointing out to the Chairman of the Upsc that the matter was discussed with him and the Deputy Minister on 5-12-1981 and that he had broadly agreed that there was a merit in the representation received by the Railway Minister for reviewing the order of 1960. The Chairman, Upsc however, by his letter of 22-1-1982 did not accept these conclusions. Though it was admitted that the matter was discussed in the Chairman's room on 8-12-1981 but the Chairman, Upsc emphasised that after the discussion no agreed memorandum of conclusion was drawn up nor the Railway Ministry made any formal reference to the Commission in the matter. It was stressed that such personal discussions are mainly intended to eliminate unnecessary and dilatory correspondence and these cannot be substitutes for the formal reference to the Commission. It was categorically stated In view of the above the Commission considers that the orders dated 4-1-1982 issued by the Ministry of Railway cannot be deemed to have been issued in consultation with them," The Ministry of Railway", was, Therefore, asked to make official reference for advice to the Commission if considered necessary. There the matter rests so far as the record available shows. This incident would highlight the rough and ready manner of taking the decision of 4-1-1982. Thus invoking the consent of the Upsc in support of the justification of the order of 4-1-1982 is not available to "the respondents.

(47) We thus do not find any material on record that any injustice or illegality had crept in the wake of the order of 15-2-1960, which needed to be corrected by the order of 4-1-1982. Rather we find indifference and disregard of the consideration of the most important objection to the impugned order of 4-1-1982 namely that this order is taking away the rights and benefits which have been enjoyed and vested in large number of officers for as long as period of over two decades.

(48) We are, Therefore, satisfied that no circumstances existed which permitted the review of the two decade old order of the President dated 15-2-1960 as has been done by the impugned order of 4-1-1982. We would, Therefore, hold that the impugned order of 4-1-1982 is impermissible in law. The result will be that we issue a writ of certiorari, quash the impugned order of 4-1-1982 and also issue mandamus to the respondents 1 to 3 not to take any action in pursuance of 4-1-1982 order.

(49) These three petitions were argued for a number of days by different counsel representing each petitioner. In these circumstances we feel that each of the petitioners is entitled to a separate set of fee which we assess at Rs. 1000 in each case to be paid by the Railways Board and the Union of India. We find that though the petitions were in individual name, they were more in a representative capacity. We feel that in such a case the petitioners would not be averse to permitting some of the costs being awarded to them to be given to legal aid

Council which fights legal battles for those who cannot find resources of their own. We would, Therefore, direct that half of the fee i.e. Rs. 500 in each case would go to the Indian Council of Legal Aid and Advice of which Miss Bagga is the Chairman. In this direction we are following the precedent set by the Supreme Court reported in *Private Vart Priya Wart B. K. Dubaldhan and Others v. State of Haryana and Others*, (1982) 2 SCC 142 .

(50) The petitions are allowed as above.

(51) M. L. Jain J. 1 agree that the impugned order of 4-1-1982 be quashed because all the parties including the Railway Board arc agreed that the date of entry into the time-scale should determine the seniority. But that prompts me to add something.

(52) With great respect, I cannot in view of Articles 14 and 36 of the Constitution subscribe to the wide proposition that weightage can be given to any Government servant so as to give him a seniority in any given cadre from the day when he had not even entered service, or could not even have acquired the requisite qualification. Rules apart, even an enactment of the appropriate legislature will not be allowed to do so because it ex facie breeds inequality of opportunity and resultant discrimination amongst the public servants similarly situated. It has no rational nexus with the object if it is one to maintain contentment and desired level of independence in public services. The only object of such weightage is to benefit some class or lucky individuals. Such weightage and ante-dating of seniority causes great anguish and its effect on the morale of services is far more disastrous. Fortunately, for the petitioners there is no such situation in their case because their period of apprenticeship counts as service for almost all purposes and their seniority will, Therefore, never go back to a date earlier than the date on which they entered service.

(53) The question of inter se seniority amongst the officers belonging to different services on the basis of entry into timescale was not raised before us. The problem has arisen because the senior administrative posts which are outside the cadre strength of any of the several Railway services, are manned out of the level one officers of these services on the basis of seniority-selection. There are no rules for such selection. There are also no rules for determination of combined seniority. Yet the Railway keeps a rough and ready combined seniority of level one officers for consideration of appointment to senior administrative jobs. But such combined seniority of level one officers is not capable of determination on the basis of their first entry into the time-scale. The rule of entry into time-scale breaks down as soon as a person reaches, on account of selection based on merit or seniority-cum-merit, a higher job earlier than those "who had entered the time-scale with him or even before him. Some, if not many, of the level one officers must belong to such a category and to relegate their position to their first entry info time-scale is to deprive them of the reward of merit and earlier promotion. This vintage rule, if the Railways are so fond of retaining it, must be interpreted to mean the date of entry into the time-scale of level one job. It may

happen that in some services promotions to level one may have .been quicker than in others, but these are exigencies of service such as someone may enter higher scale quicker than his colleagues in the same service. If the Railways will not adopt a sensible solution, they "will have to change strategies time and again. Already they are suffering from the malaise of reverse discrimination and one may only hope that they will refuse , add to any discontentment in the services which needless to say are so essential and vital. History or past practice cannot be allowed to fly into the face of justice after 26th day of January, 1950 and by this day when the .constitutional safeguards have unfolded the vista of equality far vast and far just.