
(1988) 11 DEL CK 0028

In the Delhi High Court

Case No : Letter Patent Appeal No. 105 of 1983

Leela Chopra and Another

APPELLANT

Vs

Surinder Pal Singh and Others

RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

Citation : (1989) 38 DLT 40 : (1989) 59 FLR 249

Hon'ble Judges : Sunanda Bhandare, J; S.S. Chadha, J; Gian Chand Jain, J

Bench : Full Bench

Advocate : G.D. Gupta, M.S. Mann, A.K. Dey and K.K. Laoria, for the Appellant;

Judgement

S.S. Chadha, J.

(1) The challenge in this appeal relates to the cadre of telephone operators and to the cadre of clerks and their seniority on the merger of the two cadres and/or on transfer/absorption from one branch to another branch and turns on the answer to the question whether the transfer is in the interest of administration or the transfer is on request.

(2) The Indian Railways owned and managed by the State employ several lacs of people. Rules issued by the President in exercise of powers conferred on him by the proviso to Article 309 of the Constitution of India governing general conditions of service applicable to Railway servants are contained in the Indian Railways Establishment Code-Volume 1. We are referring to the Rules given in the compilation of .1985. Some of these Rules correspond to the Fundamental Rules and Supplementary Rules applicable to all civil servants (other than Railways servant) under the Indian Union, who are subject to the rule-making powers by the President. For the purpose of these rules, the Railway Services have been classified into Gazetted and non-Gazetted (Rule 106). The Gazetted comprises of Railway Services, Group "A" and Railway Services, Group "B". The non-Gazette comprises of Railway Services, Group "C" Railway Services, Group "D" and workshop Staff (Groups "C" and "D"). Posts have been created from

time to time and added to the existing cadres with scale of pay revised from time to time. They were classified into various categories. depending upon the scale of pay and grouped together into four groups. All Gazetted and non-Gazetted posts created subsequent to April 1, 1976 are to be classified into Group "A" Group "B", Group "C" and Group "D" posts. The establishments and categories falling under the services mentioned in. Rule 106 are shown in Rule 108. There is a sanctioned strength of the various cadres. The cadre of the services and departments included in Railway Services Groups "A" and "B" (other than Medical Department and Specialists) posts in Indian Railways is to be fixed. according to the principles laid down in Rule 111. Separate cadres are required to be maintained for each Indian Railways The posts required for each service or department have first to be determined and the suitably divided, into various special grades. Similarly the number and character of Groups "C" and "D" posts in the Office of the Railways Board and other officers and projects are determined.

(3) The Indian Railways have been divided into different zones and their Headquarter, inter alia, Northern Railways with which we are concerned in the case. Each Railway Zone is further divided for the purposes of administrative functions into different divisions. We are concerned in this case with the : Delhi Division of the Northern Railway. Each Railway Zone is divided at Headquarters and has branches including Operating. Commercial, Civil Engineering, Mechanical Engineering, Finance and Accounts, Personnel, Signal and "Tele-communication. Electrical Engineering, Medical, Stores, Security etc.

(4) Under Rule 123, the Railway Board has been invested with full powers to make rules of general application to Group "C" and Group "D" Railway servants under their control. The General Managers of the Indian Railways have been given full powers to make rules with regard to Railway servants in Groups "C" and "D" under their control provided they are not inconsistent with any rules made by the President or the Ministry of Railways. The Rules for the recruitment, promotions, seniority and other conditions of service of non-Gazetted Railway servants D (Groups "C" and "D" staff) are contained in the Indian Railway Establishment Manual. It embodies all administrative orders on Code Rules and allied matters issued by the Railway Board from time to time. Chapter I contains the rules relating to recruitment, training, confirmation and re-employment. Chapter II contains the rules governing the promotion of the subordinate staff. Chapter III contains the rules regulating seniority of non-Gazetted Railway servants. A cadre strength is provided separately for each Zonal Railway in various branches as well as the Headquarters office of a Railway Zone. Cadre means the strength of a service or a part of service sanctioned as a separate unit. The officials hold a lien to the cadre post in their respective branches to which they are appointed.

(5) Subject to what has been specifically provided in the relevant rules, recruitment on Railways is to the lowest grade of the category concerned. Direct

recruitment on a limited scale to the intermediate grades is also being allowed as and when considered necessary by the Railway Administration in accordance with the rules contained in the Indian Railway Establishment Manual.

(6) The rules regulating seniority of non-Gazetted Railway servants are contained in Chapter Iii of the Indian Railway Establishment Manual. The rules contained in Chapter Iii lay down the general principles that may be followed for determining the seniority of non-Gazetted Railway servants on Railway Administrations. The relevant Rules for our purpose are:-

"302.Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of a promotee and date of joining the working post in the case of a direct recruit, subject to maintenance of inters seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotes being senior to the first direct recruits maintaining inter-se seniority of each group.

306.Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above.

309.Seniority by promotion.-Paragraph 306 above applies equally to seniority in promotion vacancies. due allowance being made for delay, if any in joining the new posts in the exigencies of service.

311.Transfer in the interest of administration-Seniority of railway servants on transfer from one cadre to another in the interest of the administration is regulated regulated by the date of promotion/date of appointment. to the grade as the case may be.

312.T

NOTE-(I)This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

(II)The expression "relevant grade" applies to grades where there is an element of direct recruitment. Transfer on request from railway employees working in such grades may be accepted provided they fulfill the educational qualification laid down for direct recruitment. No such transfer should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grades and there is no element of direct recruitment."

(7) Prior to April 1, 1956 there was a separate cadre for the telephone operators

in the various branches of the divisions of the Northern Railway. Similarly, there was separate cadre for the clerks in the respective branches of various divisions of the Northern Railway. A decision was taken by the Government of India, Ministry of Railways (Railway Board) and communicated in the memorandum dated March 7, 1957 for upgrading of various posts and rationalisation of certain cadres. The Government reviewed the cases of a large number of categories of the Railway servants and made various changes in the distribution of the posts as also the merger of the cadres. It came into effect with effect from April 1, 1956 and directions were issued for re-fixation of the pay in accordance with the rules. It was directed that except in cases where the posting involved selection and no panels were available from which a selected person could be promoted, the seniormost suitable person should be declared to have been allotted the higher grade irrespective of the post in which those men happened to be working, and arrears, as due from April 1, 1956 should be paid expeditiously. Para 12 of the said memorandum provided for telephone operations :-

"12.Telephone Operators.

These staff should hereafter be drawn from the office clerical cadre. Persons who are considered suitable for such work will, while working as telephone operators, draw the rate of pay applicable to them from time to time in whatever clerical scale they may be on in their parent cadre and will in addition, be given a special pay of 10 per cent, subject to a minimum of Rs. 15 per month. The existing telephone operators should be absorbed in the appropriate clerical cadre and should seek further promotion in that cadre."

(8) It is not disputed that there was an amalgamation/merger of the cadre of telephone operators in the clerical cadre with effect from April 1, 1956. In other words, there were two separate cadre of telephone operators and clerks prior to April 1, 1956 but with effect from April 1, 1956 there was left only the clerical cadre.

(9) It had later been represented to the Railway Board that efficiency in the telephone exchange was adversely affected due to transfer of experienced telephone operators, to the higher grade clerical posts on their turn for promotion and that telephone operators after working for a long period in the telephone exchange were, in certain cases, reluctant to take up clerical posts as they were out of touch with the clerical work. Taking all factors into consideration, the Board decided to have a separate cadre of telephone operators with effect from December 1, 1965. This decision was communicated in the Government of India, Ministry of Railways (Railway Board) Memorandum dated September 22, 1965. The scale of pay of telephone operators created were as follows :-

"Designation Scale of pay Spl. Pay T/Opr. 110-180 STO/HTO Gr. Ii 130-300 10 % of the pay sub- Hot Gr. I 210-380 subject to a maximum of Rs. 15".

It was further directed that the telephone operators in the scales of Rs. 110-180

would be drawn from clerks in the same grade who opt for this category on the clear understanding that they would be eligible for promotion up to the grade of Rs. 210-380 in the telephone operators side only. The existing staff in the telephone operating side was given the option to opt either for the clerical side or the telephone operating side and this option was to be exercised before December 1, 1965.

(10) In terms of the recommendations of the Third Pay Commission made in para 70 of Chapter 20 of their Report, the Railway Ministry again considered the question of formation of a separate cadre for telephone operators on Railways, la supersession of the instructions contained in their letter dated September 22, 1965, they decided that an entirely separate cadre for telephone operators would be constituted. This decision was communicated in the Railway Board's letter dated April 13, 1977. The new cadre of telephone operators was to operate from July 1, 1977. The cadre of telephone operators was to be placed under the Signal and Tele-communication Department (for short called S&T). The revised grade structure in the separated telephone operators was provided. The cadre of the telephone operators was to include all post of operators in whatever department that had existed then.

(11) Let us now turn to facts of this case. Ms. Asha Sehgal (Asha Sareen) was appointed with effect from October 23, 1963 as a clerk in the grade of Rs. 110-180 (A.S.) in W&W Branch. She made an application dated October 24, 1963 (Seen from the original file produced by the department) for transfer as telephone operator. By the office order dated December 7, 1963. Ms. Asha Sehgal was posted as telephone operator in S&T Branch. It was made clear in the order that she would "Rank Junior to all the clerks in the both permanent and temporary in the S&T Branch in service on the date of her joining as telephone operator". She joined as telephone operator on December 9, 1963. This establishes the existence of a separate cadre strength of W&W Branch and S&T Branch and determination of seniority in each branch. The seniority on transfer by request is regulated by Rule 312 and that is exactly what is conveyed in the order.

(12) Ms. Leela Chopra (Leela Rani Chawla) was appointed with effect from June 25, 1963 as a clerk in the grade of Rs. 110-180 (A.S.) in the Operating Branch of the Headquarters Office. She made an application dated January 22, 1964 for transfer and posting as telephone operator. She was tested by SSTE(T) and found suitable to work on Exchange Branch Baroda House. By office order dated February 29, 1964, Ms. Leela Chopra was transferred to S&T Branch, Delhi Division and posted as telephone operator and in fact joined on the same date. It was also made clear in the order that she would "rank junior to all the permanent and junior clerks of S&T Branch Delhi Division", and while working as telephone operator she would draw special pay at the rate of 10 per cent subject to the minimum of Rs. 15 per month. This is also in terms of Rule 312 thereby accepting to rank junior to all clerks in the S&T Branch in service on the date of

her joining as telephone operators.

(13) The three contesting respondents, namely, Shri Surinder Pal Singh, Chanchal Singh and R.C. Chawla were appointed as clerks in the grade of Rs. 110-180 (A.S.) on June 14, 1963 and posted in Statistical Branch, Store Branch and Outstanding Branch of the Northern Railways respectively. As per the decision of the Railway Board contained in the said letter dated March 7, 1957, the telephone operators were to be drawn from the clerical staff interested for posting in telephone exchange side. Volunteers were called by the Railway Administration and several clerks including the contesting respondents applied. By order dated July 9, 1964, they along with others were required to undergo one week's training as telephone operators. After training, they were tested and found suitable for the post of telephone operator. By the office order dated July 28, 1964 it was notified that S/Shri Chanchal Singh, Surinder Pal Singh, Ramesh Chander Chawla, clerks in A.S. 110-180 of the Headquarters office have been tested and found suitable for the post of telephone operators. They were posted as telephone operators in the Sat Branch. It was directed that they would continue to draw pay in A.S. 110-180 and they would further draw Rs. 15 as special pay from the date they take over as telephone operators. This was considered as transfer in the administration of service with the result the seniority was governed by Rule 311.

(14) A seniority list of telephone operators in the grade of Rs. 110- 180 was drawn by the Division. 11 Office of the Northern, Railway and circulated in the letter dated July .16, 1966 for the information of the staff concerned. Objections/ representations from the staff were invited by August 13, 1966. In the provisional seniority list, the seniority of Surinder Pal Singh is shown at Serial No. 5, that of Chanchal Singh at Serial No. 6, that of Ramesh Chandra at Serial No. 7, that of Ms. Asha Sehgal at Serial No. 8 and that of Ms. Leela Chopra at Serial No. 9. Against the aforesaid first three officials, the remark is that they "joined as telephone operators on transfer from Headquarters on July 28, 1964 in the interest of the Administration". Against Ms. Asha Sehgal, it is mentioned that she "joined as telephone operator on December 9, 1963 at her own request". Against Ms. Leela Chopra, it is also mentioned that she "joined as telephone operator on February 29, 1964, junior from Headquarters of permanent and temporary clerks of S&T Branch". Another seniority list of telephone operators working in Delhi Division of Northern Railway was again circulated with a memorandum dated July, 1971. The seniority of the aforesaid five officials has been shown in the identical manner with identical remarks. Objections were again invited.

(15) Ms. Leela Chopra made a representation regarding fixation of seniority of telephone operators. The representation was considered and rejected by the General Manager and decision communicated in the letter dated October 21, 1975. It was stated that Ms. Leela Chopra was appointed as a clerk on June 25, 1963 and requested for posting as telephone operator and her request was considered and agreed to. She joined as telephone operator on February 29,

1964 and had been assigned seniority from the date of her joining the telephone exchange side on February 29, 1964. As regards S/Shri Raj Kumar, Surinder Pal, Chanchal Singh and R. C. Chawla, it was stated that they were transferred to telephone exchange side to meet with the shortage of telephone operators in the interest of the administration and were allowed their original seniority, Ms. Leela Chopra and Ms. Asha Sehgal again made representations regarding fixation of their seniority. The relevant old record was unearthed to obtain requisite information. The representations were examined in the light of the said Railway Board's Memo dated March 7, 1957, the desire of the 17 existing telephone operators opting for absorption in the clerical cadre and the need for replacement of the existing telephone operators to man the telephone exchange. It was then stated that according to the information available from the records S/Shri Surinder Pal Singh, Chanchal Singh and R. C. Chawla were deputed for training in the duties of telephone operators and absorbed as such after training in the interest of service. Another representation of Ms. Asha Sehgal and Ms. Leela Chopra regarding fixation of their seniority was rejected and the decision communicated for the information of the Railway Board in the letter dated April 7, 1976. It is stated therein that the scrutiny of the records had revealed that volunteers were called by the Administration to work as telephone operators after training to fill existing vacancies and as such, the transfer of the aforesaid three officials was in the interest of service and the question of obtaining their declarations for loss of seniority did not arise.

(16) Yet further representations were made by Ms. Asha Sehgal and Ms. Leela Chopra regarding fixation of their seniority. The impugned decision of the Railway Board is contained in the letter dated July 4, 1976 and communicated in the letter dated August 31, 1976. It noticed the existing seniority position of the affected telephone operators as under:- "The existing seniority position of the affected telephone operators is as under :-

S.	Name	D.	O.	A.	D.	O.	Remarks
No.	Joining	Telephone Operator	cadre	1.	Sh. Raj Kumar	10-11-55	21-8-64 Came on transfer to ----- Northern Rly. 16-10-61 accepting bottom seniority. Absorbed as clerk with effect from 16-10-61.
2.	Sh. Daulat Ram	14-10-55	14-12-61	-----	3.	Sh. S. P. Singh	14-6-63 28-7-64
Transfer of item 1, 3, 4 and 5.	4.	Sh. Chanchal	14-6-63	28-7-64	To exchange side.	5.	Sh. R. C. Chawla
14-6-63	28-7-64	Has been considered on administrative grounds.	6.	Mrs. Asha Sehgal	23-10-63	9-12-63	Items 2, 6 and 7.
7.	Mrs. Locla	25-6-63	29-2-64	Have been assigned Chopra. seniority from the date of joining.			

The above seniority has been upheld by the Delhi High Court in the writ petition filed by Shri Daulat Ram, Telephone Operator, Shri Daulat Ram has filed an Lpa against the judgment which is still pending in the High Court. In case the orders containing in Railway Board's letter No. E. (REP)III/75/ REB/13-48 dated 4-7-76 are implemented on the basis of criteria of date of joining as Telephone Operator, the seniority of Mrs. Asha Sehgal and Mrs. Leela Chopra will be fixed as under:-

S. No. Name Date of joining as Telephone Operator 1. Sh. Daulat Ram 14-12-1961 2. Mrs. Asha Sehgal 9-12-1963 3. Mrs. Leela Chopra 29-2-1964 4. Sh. S. P. Singh 28-7-1964 5. Sh. Chanchal Singh 28-7-1964 6. Sh. R. C. Chawla 28-7-1964 .7. Sh. Raj Kumar 21-8-1964"

The seniority of Ms. Asha Sehgal and Ms. Leela Chopra was re-fixed above S/Shri S.P. Singh, Chanchal Singh and R.C. Chawla from the date of joining as telephone operator and this gave rise to the filing of the writ petition out of which the present appeal has arisen.

(17) The learned Single Judge felt that the case was covered by the decision of the Letters Patent Bench in "Daulat Ram v. Ms. Gujral and others". Shri Daulat Ram was appointed as a clerk in the Personnel Branch of the Divisional Superintendent, Delhi, Northern Railway on October 14, 1955. He was transferred as a clerk in the Loco Shed, Ghaziabad and remained posted there till December 13, 1961. He was selected for training as a Telephone Operator and after successful completion he was posted as Telephone Operator in the scale of Rs. 110-180 on December 14, 1961 in S&T Branch of Divisional Superintendent of the Northern Railway. He was thereafter promoted as Senior Telephone Operator in the scale of Rs. 130-300 with effect from April 13, 1967 and was further promoted in the next higher grade of Head Telephone Operator in the scale of Rs. 210-380 with effect from September 1, 1970. One Shri M. G. Mehta was posted in place of Shri Daulat Ram as officiating Head Telephone Operator by an order dated October 19, 1970 and by the same order Shri Daulat Ram was directed to be reverted as Senior Telephone Operator. That order was challenged in C.W.P. 1183 of 1970. on the ground that the order of transfer of Shri M. G. Mehta who was then officiating as, Welfare Assistant, in Allahabad Division, with seniority as Telephone Operator with effect from June 14, 1961 was bad in law. Shri Mehta who was appointed as Telephone Operator in Allahabad Division on September 21, 1955 was transferred to Delhi Division on his own request with loss of seniority with effect from June 14, 1961. Shortly afterwards on October 11, 1961 he was transferred to Allahabad Division as Welfare Assistant. With the merger of the cadre of telephone operators in the clerical cadre in pursuance of the Railway Board's said letter dated March 7, 1957 and not having exercised his option in terms of the Railway Board's letter dated September 22, 1965. Shri Mehta remained in the clerical cadre and did not acquire any lien on a post of telephone operator. The impugned order including the reversion of Shri Daulat Ram was quashed by Jagjit Singh, J. on May 5, 1971. A Letters Patent Appeal was dismissed in limine. The seniority list of Telephone Operators was issued on October 20, 1971 and later modified on March 23, 1973. One Raj Kumar who was working as Telephone Operator in Western Railway, Bombay made a request for his transfer to Delhi and joined as clerk in Headquarters Office on October 16, 1961. He was transferred as Telephone Operator in S&T Branch of Delhi Division with effect from August 21, 1964. One Shri D. S. Gupta was appointed on December 21, 1955 as a Telephone Operator in the office of General Manager, Northern Railways. He was promoted to the grade of Senior Telephone Operator

with effect from April 13, 1967 and again promoted to the grade of Head Telephone Operator with effect from August 13, 1968. Shri Daulat Ram challenged the fixation of the seniority of Shri Raj Kumar and Shri D. S. Gupta above him. The learned Single Judge (Prakash Narain, J.) dismissed the writ petition. The Letters Patent Appeal (L.P.A. 79/75) was partly allowed by a Division Bench of this Court on April 28, 1980. The seniority of Shri D. S. Gupta, Head Telephone Operator in the grade of 210-380 over Shri Daulat Ram was upheld. It was found that Daulat Ram was appointed as Telephone Operator on administrative grounds rather than at his own request and by virtue of Rule 311 would carry his seniority:-

" THUS, the position boils down to this that whereas Shri Daulat Ram, who was working as a clerk with effect from 14-10-1955 and was appointed as a Telephone Operator with effect from 14-12-1961, would carry his seniority with him as a clerk since there was no separate cadre of Telephone Operators till then and similarly Shri Raj Kumar, who was appointed as a Telephone Operator with effect from 28-8-1964, would all the same carry his seniority with effect from the date he was transferred to Northern Railways and joined as a clerk, namely, 14-10-1961."

The learned Single Judge in the judgment under appeal here found that there was one cadre of clerks and telephone operators right from April 1, 1956 to December 1, 1965 and the Court was concerned with the period of 1963/1964 when there was an amalgamated cadre. The letter of the General Manager, Northern Railway dated December 17, 1968 was relied upon by the appellant containing the decision that the "seniority of the clerks who joined the telephone side should be reckoned from the date of joining as telephone operators irrespective of the date of appointment" and thus the date of initial appointment to the service should be disregarded. The Letter Patent Bench in Daulat Ram's case held that this letter of the General Manager goes against Rule 302 and the learned Single Judge also observed that the letter is not valid because it cannot abrogate the Railway Board's decision that there shall be a combined cadre. The learned Single Judge, however, opined that there was no differentiation between clerks and telephone operators in the grade to which these men and women joined in 1963/1964 and they belonged to one cadre and grade where the seniority is governed by the date of appointment to the grade within the meaning of Rule 302. The writ petition was allowed and seniority re-fixed based on the length of service with consequential benefits of promotion as Senior Telephone Operators/Chief Telephone Operators.

(18) Mr. G. D. Gupta, the learned counsel for the appellant is right in his submission that the real point for determination before the learned Single Judge was whether the transfer of the contesting respondents herein was in the interest of administration and their seniority is protected under the above quoted Rule 311. We may recall the material on the record. The first letter is dated July 9, 1964 (P-103) from Headquarters, Northern Railway, asking different branches to

spare clerks whose names were mentioned therein (including the contesting respondents) as they were required to undergo one week's training as Telephone Operators. It was emphasised that it should be given a top priority and the staff spared without fail. The next document is the office order dated July 28, 1964 (P-181) notifying that S/Shri Chanchal Singh, S. P. Singh and R. S. Chawla, clerks had been tested and found suitable for the post of Telephone Operators and posted as Telephone Operators relieving three named officials. The next is a D.O. letter dated August 4, 1964 of D.P.O., D. S. Office (P-341) mentioned the office order dated July 28, 1964 and enquiring whether the three officials have given their option for S&T Branch on loss of seniority. It was answered in the D.O. letter dated September 17, 1964 (page 129) reiterating that the clerks were deputed for training in the duties of Telephone Operators and absorption as such after training were transferred in the interest of service and the question of obtaining their declaration for loss of seniority did not arise. The seniority list of Telephone Operators as Rs. 110-180 issued on July 16, 1966 also mentions in the remarks column that the contesting respondents joined S&T Branch as Telephone Operators on transfer from Headquarters on July 28, 1964 in the interest of administration. A decision was taken in case of Shri Raj Kumar who came on transfer from Western Railway, Bombay, at his own request and later transferred as Telephone Operator with effect from August 21, 1964 while working as clerk that he should be assigned seniority with effect from October 16, 1961, the date of transfer from Western Railway. A query was raised in the letter dated March 18, 1971 (Page 58) whether the three contesting respondents who joined the exchange side while working as clerks, in the administrative interest be assigned seniority from the date of appointment as clerks. Another letter dated May 15, 1971 is addressed by D.S. Office (Page 63) to Headquarters Office relating to the seniority of Telephone Operators giving factual information in case of Shri Raj Kumar and contesting respondents. These two letters seem to have been answered in the D.O. letter dated June 3, 1971 (Page 130) from S.P.O., Headquarters on the question of seniority of Telephone Operators and it is stated that since S/Shri S. P. Singh, Chanchal Singh and R. C. Chawla were transferred to exchange side in the interest of service, they are assigned seniority from the date of their appointments in the clerical cadre. Consequently, the seniority lists of Telephone Operators, Delhi Division is drawn and circulated with the letter dated July, 1971 (Page 113). The seniority of the contesting respondents with identical remarks is again shown above the appellant. The copy filed in L.P.A. is not correct. (The copy filed by the contesting respondents and Government records contain the remarks that the transfer of the contesting respondents is in the interest of the Administration). Then there is a detailed note dated August 20, 1964 (Pages 127-128) in which it is again recorded (referring to the decision of the Railway Board dated March 7, 1957 that the Telephone Operators were to be drawn from the clerical cadre interested for posting in the Telephone Exchange) "that those who qualify in the training course should be posted in the Telephone Exchange side considering their transfers in the interest of the Administration". When representations were filed by Ms. Leela

Chopra and Railway Board asked for comments of Headquarters Office, Baroda House, it was reiterated in the General Manager(P)'s letter dated October 21, 1975 (P-104) that as regards. "S/Shri Raj Kumar, S. P. Singh, Chanchal Singh and R. C. Chawla, it is stated that they. were transferred to telephone exchange side to meet with shortage of Telephone Operators in the interest of Administration and were allowed their original seniority". Again on the representation of Ms. Asha Sehgal, the General Manager(P) of Headquarters Office in the letter dated March, 1976 (P-106) wrote to the Railway Board that the contesting respondents were deputed for training in the duties of Telephone Operators and absorbed as such in the interest of service. Again in the General Manager(P)'s letter dated April 7, 1976 (P-109) it is stated that a scrutiny of the records have revealed that volunteers were called by the administration to work as Telephone Operators after training to fill existing vacancies and as such the transfer of the contesting respondents was in the interest of service and the question of obtaining their declaration for loss of seniority did not arise. It is further stated that "in view of this position they were assigned original seniority from the date of appointment". It appears that the Railway Board took a decision and communicated in the letter dated July 4, 1976 to the Northern Railway that the criteria for fixing the seniority should be the date of joining as Telephone Operator. The General Manager(P), Headquarters, Northern Railway in the letter dated August 31, 1976 (Pages 123-125) protested that the transfer of the contesting respondents and Raj Kumar from the category of clerks to that of Telephone Operators was done in the interest of service and, Therefore, they cannot be denied the benefit of seniority from the date of their appointment as clerk, which would imply that Ms. Asha Sehgal and Ms. Leela Chopra cannot be assigned seniority above the four employees.

(19) The inference from the above documents and the official records is inescapable that the contesting respondents were transferred to the Telephone Exchange side to work as Telephone Operators in S&T Branch in the interest of Administration to meet with the shortage over there and as such in terms of the above-said Rule 311, they are entitled to the weightage of seniority as clerks and their seniority is to be regulated by the date of their original appointment as clerks in the clerical cadre with effect from June 14, 1963. The appellants joined on their own requests as Telephone Operators in S&T Branch and in terms of above-quoted Rule 312. though not necessary, they were told that they would rank junior to all the clerks in both the permanent and temporary in She S&T Branch in service on the date of their joining as Telephone Operators. The appellants could not get the benefit of the length of their officiating service on transfer on their own request,

(20) The original files of the Railway Administration were. produced during the hearing. Great emphasis is laid by Mr. G. D. Gupta on the said circular dated December 6/17, 1968 that it was issued by the Government on behalf of the President of India and laid down the principles for determining the seniority thus:-

"As desired by the , Board, the cadre of Telephone Operator was amalgamated with Clerks w.e.f. 1-4-56 and their lines fixed in different branches. With the transfer of senior persons from the exchange, the resultant vacancies were filled up by those who volunteered for transfer to the exchange side. It has, Therefore, been decided that seniority of clerks who joined the Telephone side should be reckoned from the date of their joining as telephone operators irrespective of the date of appointment in. service. The staff may, however, be given an option to continue in the exchange on the revised seniority position or to go back to their parent cadre in their original seniority."

Reference is made to the nothings by some of the officers on the files of the department supporting the stand of the appellants that the seniority is to be determined according to the length of the service in the grade on transfer to S&T Branch. We have referred to in detail to the policy of the Railway Administration for drafting clerical staff to man the posts on the telephone operating side after the merger of the cadre of telephone operators with the clerical cadre with effect from April 1, 1956. The separate cadre of telephone operators was again created with effect from December 1, 1965. The appellants and the contesting respondents were appointed as clerks and they were also posted as telephone operators during this period when there was only one cadre of clerks. They were, however, transferred from various other branches of the Delhi Division of the Northern Railway and posted in S&T Branch which maintains a separate cadre of clerks. The seniority on transfer in the interest of administration is governed by the above-said Rule 311 and is regulated by the date of initial appointment to the grade. Rule 311 is still operative and has not and could not be amended by the said circular dated December 17, 1968. We have not been shown any decision of the Government or the Railway Board amending Rule 311. The decision contained in the circular dated December 17, 1968, in the first instance, refers to the decision of the Government's letter (dated March 7, 1957) amalgamating the cadre of telephone operators with the clerical cadre with effect from April 1, 1956 and the fixation of lien of telephone operators in the cadre of clerks in various branches. So far as the appellants and the contesting respondents are concerned, they were appointed to the merged cadre of clerks in various branches. Their seniority in each respective branch is governed by the date of appointment to the grade. Seniority on transfer in the interest of administration is regulated by said Rule 311 and that on request is regulated by Rule 312.

(21) The decision to have a separate cadre of telephone operators with effect from December 1, 1965 is contained in the Government's Memorandum dated September 22, 1965. In that letter, it was made clear that the telephone operators would be drawn from clerks in the same grade who opt for this category. The second part of the said letter dated December 6/17, 1968 obviously refers to the clerks who had volunteered for transfer to the exchange side after the issue of the memo dated September 22, 1965 and could have no reference to the clerks appointed in the merged cadre of clerks and telephone

operators prior to December 1, 1965. The seniority of the contesting respondents was governed by the said Rule 311 as their transfer was in the interest of administration, "It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Makashi and Others Vs. I.M. Menon and Others, : (1) Wing Commander J. Kumar Vs. Union of India (UOI) and Others, . (See K. Madhavan and Another Vs. Union of India (UOI) and Others,

(22) The seniority of the appellants and the contesting respondents as telephone operators was determined in accordance with the rules and circulated in the said letter dated July 16, 1966 and again in the memorandum dated July, 1971. Seniority is a valuable right of railway servants. The contesting respondents could not be deprived of the right that had accrued to them in the matter of determination of the seniority. The said circular dated December 6/17, 1968 is issued only by the General Manager(P) of Northern Railway and could not, in our opinion, amend, override or supersede the Rules made by the Railway Board under the said Rule 123. The rule-making power of the General Manager is restricted and those could not be inconsistent with the Rules made by the Ministry of Railways or Railway Board.

(23) The last part of the said circular dated December 6/17, 1968 envisages the calling of the options and in pursuance of which the contesting respondents had given their options for the telephone operating side and the acceptance of the seniority from the date of joining as telephone operators. The appellants as well as the contesting respondents were already drafted in S&T Branch in the merged cadre of clerks and working as telephone operators. With the creation of the separate cadre of telephone operators with effect from December 1, 1965, they became its members with the length of original seniority. Calling of the options from the contesting respondents was wholly unfair and unreasonable and the Court will not enforce it.

(24) The appellants and the contesting respondents were appointed as clerks and they were posted as telephone operators during the period when there was only one cadre of clerks. The seniority on transfer in the interest of administration is governed by the above-said Rule 311 and is regulated by the date of initial appointment to the grade. Even if the transfer of the appellants is taken in the interest of administration as the contesting respondents, even then it will make no material difference in the seniority as the three contesting respondents were

appointed as clerks on June 14, 1963 and Miss Asha Sehgal was appointed on October 23, 1963 and Ms. Leela Chopra on June 25, 1963.

(25) For the above reasons the appeal fails and is hereby dismissed with no order as to costs.