
(1969) 07 MAD CK 0036
In the Madras High Court

The General Manager, Southern Railway and Another APPELLANT
Vs
P.K. Venkataraman and Another RESPONDENT

Date of Decision : 30-07-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1970) 2 LLJ 76

Hon'ble Judges : Ramanujam, J; Ramakrishnan, J

Bench : Division Bench

Judgement

Ramakrishnan, J.—These writ appeals have been filed by the General Manager, Southern Railway, Madras, and the Railway Board, New Delhi, against the decision of Venkatadri. J. in W.P. Nos. 3026 of 1965 and 3110 of 1965 respectively. The petitioners in the two writ petitions are P.K. Venkataraman and T.N. Vijayarangam respectively, The main points were considered by the learned Judge in W.P. No. 3110 of 1965, and since the points in controversy were identical he followed the decision in W.P. No. 3110 of 1965 and disposed of W.P. No. 3026 of 1965. For the purpose of these appeals, we will briefly refer to the judgment in W.P. No. 3110 of 1965.

2. The background of the writ petitions is set out in the judgment of the learned Judge (Venkatadri, J.) and therefore, it is not necessary to refer to it at any great length. But succinctly, it is this. During the period of the second World War, it was found extremely difficult to procure essential food-grains. To give relief to the railway employees, at the suggestion of the B.N. Rau Committee, grain-shops, where food-grains could be sold at cost price, were opened in an extensive scale, under the jurisdiction of the Deputy General Managers of the various railways in this country. This grain-shop organization was kept distinct from the other departments of the railways. There was a great demand for staff. The existing facilities for recruitment of staff were found inadequate. It may be mentioned that the pre-existing method of recruitment for the ministerial staff of the railway was done through the Staff Selection Board (S.S.B.) and the Joint Service

Commission (J.S.C.). The grain-shop organization itself being temporary staff was employed by it only on a temporary footing. Since the staff selected by the S.S.B. and J.S.C. and kept in the waiting list and the staff already in temporary service in the other branches of the railways were totally inadequate, the Deputy General Managers in charge of the grain shops were empowered to go into the open market, for making direct recruitment of the staff. It is also to be mentioned that for selection of candidates through the medium of the Staff Selection Board and the Joint Service Commission, there were rules in force in regard to age and minimum educational qualifications. But owing to the large demand for staff, the Deputy General Managers in charge of grain-shop organization appear to have relaxed the rule about age and minimum educational qualifications, and recruited an appreciable number of candidates without these qualifications, on a temporary footing. The different classes of temporary staff which comprised of three categories of clerical staff are the following:

(1) Staff recruited through the Staff Selection Board and the Joint Service Commission and already appointed temporarily in the other departments of the railways but transferred to the grain-shop organization; (2) Staff selected by the S.S.B. and J.S.C. with the requisite age and educational qualifications but kept in the waiting list for want of vacancies in the regular establishments of the railways but posted to the grain-shop organization on temporary footing; and (3) Staff recruited temporarily for the grain-shop organization, who were not borne on the common waiting list and who were recruited from the open market by the Deputy General Managers of the various railways. After some time, it was found that the grain-shop organization was working at a loss, A high-power committee, known as the Santhanam Committee, went into the question and decided upon the closure of the grain-shops. However, a decision was taken that the staff employed in the various grain-shops should be absorbed in the other departments of the railways. For the purpose of such absorption, several policy decisions were taken by the Railway Board, during a period of time which began from 24.8.1948 and ended with 2.11.1957, by the issue of successive orders.

3. We are concerned, in these writ petitions, with a very limited question, viz., how far open market recruits under class (3) above, recruited by the Deputy General Manager in charge of the grain-shop organization, can count their temporary service in the grain shop organization, for the purpose of seniority, after their subsequent absorption in the railway establishment. For dealing with the above question for decision, we will briefly trace the purport of the several orders of the Railway Board issued during the above period, affecting the temporary employees of the grain-shop organization, in the context of their absorption in the permanent regular establishments of the railways.

4. On 24.8.1948, the Railway Board sent a communication to all the railways on the subject of absorption of temporary grain-shop staff in permanent vacancies. The communication referred to the aforesaid three classifications of temporary staff in the grain-shops. In regard to the open market recruits this

communication stated:

Staff who were recruited temporarily for the grain-shops department, i.e., who were not borne on a common waiting list maintained for the grain-shops and other departments may be permitted to apply for the temporary or permanent posts that exist at present on railways or that are likely to be created as a result of the Adjudicator's Award. They should fulfil the minimum educational qualifications prescribed for the posts in question but will be allowed to deduct the period of their railway service from the actual age for purposes of the maximum age limit. On selection for appointment in other departments, however, such staff may be permitted to continue in the grain-hops department to avoid dislocation of work, although retaining their right to be confirmed against vacancies in the department for which they are selected.

The point to note is that this communication stated nothing about the counting of temporary service in grain-shop establishment, for the purpose of seniority. It also stated nothing about fixation of their salary on absorption in the permanent establishments. But, however, it made a stipulation that before they could be absorbed, they should possess the minimum educational qualification and the minimum age qualification. They were, however, permitted to take into account the period of service in the temporary establishment and deduct it from their age, for purposes of the age qualification.

5. On 21.10.1948, the Deputy General Manager of the Southern Railway, Madras, made representations pleading for certain favorable treatment on behalf of the open market recruits. In this communication, the open market recruits are divided into four classes as below:

4. Staff appointed (not covered by items 1 to 3) who possess the requisite qualification and are within the age-limit.

5. Staff appointed directly possessing the requisite education qualification but over-aged;

6. Staff appointed directly who are within the age limit but not possessing the minimum educational qualification; and

7. Staff appointed directly who do not come under categories 5 and 6 above, i.e., staff possessing neither the requisite educational qualification nor within the age-limit.

In regard to item 4 above, the Deputy General Manager urged on their behalf that they were recruited at a time when the S.S.B. and J.S.C. were not functioning, that if those recruiting agencies were functioning, they would have been surely selected, that for all practical purposes they were similar to the staff selected by the S.S.B. and the J.S.C. and therefore, for such persons equal treatment with the staff recruited by the S.S.B. or the J.S.C. should be given, in the matter of absorption in the other departments of the railways. In regard to items 5, 6 and 7 they were persons among the direct recruits who either did not

possess the age qualification or the minimum educational qualification. The Deputy General Manager conceded that due to war time exigencies, there were several recruits within those categories, and he, therefore, pressed for equal treatment for them also urging that the age qualification should be relaxed, and that, further, in view of their experience, the minimum educational qualification should also be relaxed. In the case of men who did not possess the minimum age qualification as well as the minimum educational qualification, he urged that, in any event, they might be fitted in the lower scale of pay applicable to non-matriculants.

6. The Railway Board, thereafter, on 3.2.1949 issued what purported to be an amplification of its earlier order dated 24.8.1948. The open market candidates were divided into two classes, viz, (I) those who were recruited prior to 15.9.1945 and who were in service on that date, and (2) those who were recruited on or after 15th September, 1945. In regard to the first group, this communication waived the age restriction but insisted on their possessing the minimum educational qualification, before they could be absorbed in the other departments. For such persons, the Railway Administrations themselves should make offer of appointments directly. In regard to the second group, that is, those recruited on or after 15.9.1945, it was stated that the minimum educational qualification and the minimum age qualification would not be relaxed in their case except to the extent that the period of continuous temporary service would be excluded for the computation of age.

7. The next important stage in the policy decision regarding absorption of these employees is contained in the communication dated 16.10.1952 by the Railway Board. It dealt with, for the first time, the question of fixation of pay and counting of temporary service in the grain-shop establishment organization for the purpose of seniority. It stated:

It has further been decided by the Board that such staff should not get any preferential treatment other than for fixation of pay and obtaining alternative employment, i.e., they should not be given seniority for purpose of confirmation by virtue of their pay being fixed at a higher stage in the absorbing department over unconfirmed men in that department who, had longer service but whose pay was less. They should be given only such seniority which they would have got had they been absorbed in the absorbing department right from the beginning of service.

This communication, in effect, meant that the open market recruits absorbed in the railways will be entitled to count their service in the grain-shop organization for the purpose of seniority. The communication dated 28.6.1956 shows that the Railway Board obtained express sanction of the President approving the earlier orders of the Board regarding fixation of pay and absorption:

In 1957, it would appear that at a meeting between National Federation of Indian Railway men and the Railway Board, the Federation pressed for reconsideration

of the decision regarding counting of past temporary service for purposes of seniority in the case of open market recruits for the grain stops. The decision of the Railway Board taken at this meeting was this:

The Federation pressed that the seniority of the staff recruited for the grain-shops and absorbed in alternative posts should be regulated on the basis of their joining the alternative posts on the Central and Southern Railways, also as had been done in the case of other railways. It was explained that this would be undesirable but at the instance of the Federation it was accepted.

8. The Railway Board implemented its decision by p communication dated 2.11.1957 which is the principal order impugned by the petitioners in the writ petition. The order states:

In partial modification of para 2 of their letter No. E48REI/1/3 dated 16.10.1952, the Board have decided that the seniority of temporary grain-shop staff consequent on their absorption in the absorbing departments should be regulated on the basis of the date of their actual absorption in those departments and not on the basis as if they had been absorbed in those departments right from the beginning of service.

9. The subsequent communications of the Railway Board issued from time to time would appear to have relaxed the rigor of the above decision by giving special protection to those employees who in the interregnum prior to the decision taken on 2.11.1957 to reverse the earlier policy decision, had been confirmed or promoted to higher posts in the railways which absorbed them. Thus it was decided that the staff already confirmed on the basis of the previously determined seniority should not be de-confirmed and that in the cases of those who have been confirmed in higher posts their confirmation will not be rescinded; but in the case of others there was a direction for revising their seniority in accordance with the new policy decision taken on 2.11.1957. after the Railway Federation made representations in the matter.

10. The main contention of the petitioners in the writ petitions was that they had already obtained the benefit of absorption followed by seniority in service, by reason of the earlier orders of the Railway Board, which were also approved by the President of India, and that the Railway Board, thereafter, had no authority to rescind the earlier decision in their communication dated 2.11.1957, depriving them of the benefit of counting their temporary service in the grain shop organization for the purpose of seniority. They urged that the direction was discriminatory and volatile of Article 14 and Article 16 of the Constitution. They also urged that the change in the policy was brought about by pressure of the National Federation of Indian Railwaymen.

11. Venkatadri, J., in his judgment, up held the contentions raised by the petitioners and quashed the order of the Railway Board dated 2.11.1957.

12. The General Manager of the Southern Railway and the Railway Board have

appealed against the decision under the Letters Patent.

13. Before we discuss the main points stated above, we will refer to the fact that Venkataraman, the petitioner in W.P. No. 3026 of 1965, according to the affidavit filed by him, was a direct recruit from the open market who was appointed temporarily in the grain-shop department on 10.7.1944 as a clerk, and he has passed the Secondary School Leaving Certificate examination. Vijayarangan, the petitioner in W.P. No. 3110 of 1965, was appointed on 7.9.1944 as a clerk in the grain-shop department directly and he has passed the Secondary School Leaving Certificate examination. It is urged by learned counsel Sri Dolia appearing for the writ petitioners, in support of the learned Judge's order, that for the purpose of employment as clerk in the railway, which is the relevant nexus so far as the petitioners are concerned, the two petitioners possessed the same qualifications as candidates previously selected by the S.S.B. or the J.S.C. were kept in the waiting list, and were appointed in temporary capacity in the grain-shop establishment, but the latter group of clerks had been given the benefit of counting their temporary service for seniority whereas this benefit though given originally to the petitioners?recruits from the open market?was subsequently withdrawn in the impugned order of the Railway Board dated 2.11.1957. According to learned Counsel and also according to the finding of the learned Judge, this amounted to unfair discrimination in the case of the petitioners. This is what the learned Judge observed:

Similarly, persons recruited by the Staff Selection Board and the Joint Service Commission and kept in the waiting list were also posted to grain-shop department. The grain-shop department was filled with temporary personnel drawn from three channels. But as said all were temporary personnel. In such a case, it is not proper to dissect and divide the temporary staff into various categories as has been done by the Railway Board in the impugned orders. The personnel might have come from different channels. But one should not miss the fact that all were temporary personnel in the grain-shop establishment and were classified as such. When the Santhanam Committee recommended the abolition of the grain-shops in stages, the railway administration was faced with the problem of finding suitable alternative employment for these personnel. The administration wanted to absorb these personnel in the other departments of the railway administration. The Rail way Board, therefore, decided to lay down a policy by which these temporary staff recruited directly could get such seniority which they would have got had they been absorbed in the absorbing department right from the beginning of service. It is a well-thought out policy, a policy enunciated by men of integrity and mature experience. The policy had the sanction of the President. The General Managers of the Indian Railways carried out the policy, and made even promotions and confirmations. The policy of the Board was working smoothly. But the policy of the Board underwent a drastic change, when the National Federation of the Railwaymen intervened in the matter. In fact, the Railway Board explained that the resolution of the Federation namely that the seniority of the staff who were directly recruited for the grain-

shops and absorbed in alternative posts should be regulated on the basis of their joining the alternative posts, would have an undesirable effect. But the Board yielded to pressure and accepted the resolution and even directed its implementation. The union was interested only in the welfare of a section of the railway employees. It would be a dangerous policy if the members of the Railway Board allowed themselves to be influenced by pressure tactics of a Railway Union which is not interested in the general welfare of the employees. In the interest of the country and the railway administration, the Board should evolve a policy which would provide for a smooth and harmonious working of the railway personnel. It was only with this object the Railway Board took the humane view that all the personnel of the grain-shop department should be absorbed in the other departments of the railways and it was provided that the temporary grain-shop staff could reckon their period of service in the grain-shop department at the time of absorption in the other departments "right from the beginning of service." But yielding to pressure, the Railway Board deviated from their original policy and directed that the staff directly recruited by the head of the grain-shop organization could not take on their period of service in the grain-shop department at the time of their absorption in other departments, whereas those temporary persons appointed to other departments and transferred to the grain-shop department and those recruited by the Selection Board and kept in the waiting list but subsequently posted to grain-shop establishment could take on their service in the grain-shop department at the time of their absorption in other departments. This is certainly an artificial differentiation in classification.

As I said, the classification made in the impugned orders has introduced only an artificial classification between one group of temporary personnel and another group of temporary personnel, both selected by the railway administration in general. The weeding out of temporary personnel directly recruited by the head of the grain-shop organization from the temporary personnel selected by the Staff Selection Board or the Joint Service Commission and the temporary personnel transferred from the other departments of the Railways and classifying the former as another separate class is only to deny to that class of persons what had been originally laid down as a policy by the Railway Board. This is certainly arbitrary and unreasonable. Such a classification does not rest on any rational basis having regard to the object which the Railway Board had in view.

14. The learned Advocate-General appearing for the appellants urged that there is room to differentiate on the facts of this case between candidates already selected by the Staff Selection Board and the Joint Service Commission for regular appointments in the railways and kept in the waiting list of the one band and those selected from the open market by the Deputy General Manager on the other. He urged that under the relevant rules for such recruitment, the candidates recruited by the S.S.B. and the J.S.C. had right to take their seniority from the date when their names found a place in the waiting list. It is this principle that is referred to in the communication of the Deputy General Manager dated 21.10.1948.

As these men will be accorded their seniority from the date of their appointment by the S.S.B. or J.S.C....

15. Thus it was a benefit which was available to these people in accordance with the conditions of their recruitment by the Staff Selection Board or the Joint Service Commission, But the recruits from the open market by the recruitment made by the Deputy General Manager to meet an abnormal situation created by exigencies of circumstances had no such assurance at the time of their recruitment. These recruits had a miscellaneous complexion; some were over-aged; some were unqualified with reference to the S.S.B. or J.S.C. standards and some others might have the qualification according to the S.S.B. or the J.S.C. standard. But they answered at the time of their recruitment to the description of a class of direct recruits from the open market who did not possess a homogenous character in regard to age and educational qualifications whereas those selected by the S.S.B. or the J.S.C. possessed those qualifications. It is well-known the minimum age qualification and the minimum educational qualification are among the essential" requisites for appointment to clerical staff under Government and railways. Since direct recruits from the open market admittedly included many that did not possess these qualifications, the Deputy General Managers held to them no assurance in regard to then absorption or seniority in service, in the case of their subsequent permanent appointment to regular cadre; whereas such assurance existed in the case of those selected by the S.S.B. or the J.S.C. That it was possible by subsequent process of screening to separate from the recruits from the open market persons who satisfied the age as well as the minimum educational qualification would not perse amount to a circumstance which should place them on equality with the recruits by the S.S.B. or the J.S.C. It was necessary that a fresh assurance should be given to them at such screening regarding the terms of subsequent employment. Without such assurance or modification of the rules in their case, they could not claim that no differentiation should be made between them and the recruits by the S.S.B. or the J.S.C.

16. At this stage, we are not dealing with the point whether the assurance given to them in regard to the seniority in the communication dated 3.2.1949 "could be revised in the subsequent communication dated 2.11.1957. That we shall deal with separately.

17. At this stage, we will refer briefly to the authorities cited before us in this connection. Govind Dattatray Kelkar and Others Vs. Chief Controller of Imports and Exports and Others, , a decision of the Supreme Court, contains the following observations at page 842:

The concept of equality in the matter of promotion can be predicated only when the promotes ate drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can

legitimately be sustained on the basis of a valid classification. There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and, in that event, a court may hold that there is no reasonable nexus between the differences and the recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and violative of Article 16 of the Constitution.

In the present case, the source of candidates on permanent absorption came from a general category of temporary staff found unemployable, when the grain-shop organization was wound up. That general category by its very nature contained people recruited from different sources and possessing different rights in regard to future confirmation and seniority. From this point of view, those recruited by the S.S.B. and the J.S.C. occupied a distinct position from those recruited in the open market. There can, therefore, be no question of unfair discrimination between the two categories, when it came to a question of giving the benefit of their temporary service for the purpose of seniority. In the case of recruits by the S.S.B. or the J.S.C. as already mentioned, there was a positive assurance given to them for that purpose at the time of their recruitment. But no such positive assurance was given to the open market recruits. Assurance had to be given only by authorities at a much later date and that in their discretion. In *Rajalakshmi v. State of Mysore* AIR 1967 S.C. 993, it is observed:

There was no service rule which the State had transgressed nor has the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from surveyors. The indulgence shown to the different batches of persons were really ad hoc....

In the present case also, there was no service rule which had been evolved at the time of the recruitment of persons to the grain-shop establishment on an ad hoc basis from the open market; whereas such a rule had been evolved in the case of recruiters by the S.S.B. or the J.S.C. They cannot, therefore, complain against the decision taken which is really a matter of indulgence or discretion to be shown in their case. The position in the case of the temporary employees would have been different, if after their recruitment to the grain-shop establishment, an integrated cadre had been formed treating them as common cadre irrespective of the different sources from which the recruiters were selected. Such a situation arose in the Supreme Court decision in *Roshan Lal Tandon Vs. Union of India (UOI)*, where at page 1893, we find the following observation:

At the time when the petitioner and the direct recruits were appointed to Grade "D" there was one class in Grade "D" formed of direct recruits and the promotes

from the grade of artisans. The recruits from both the sources to Grade "D" were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade "C". To put it differently, once the direct recruits and promotes are absorbed in one cadre, they form one class and they cannot be "discriminated for the purpose of further promotion to the higher Grade "C". In the present case, it is not disputed on behalf of the first respondent that before the impugned quantification was issued there was only one rule of promotion for both the departmental promotes and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits.

It is this point that must be borne in mind, when we approach the subsequent absorption made from the temporary grain-shop employees in the present case. The same point that is referred to by the Supreme Court has figured in certain other decisions which were cited before us. In *Aswini Kumar Bath v. Director of Public Instruction* 1966 I.L.J. 277, the High Court of Calcutta dealt with a situation which is explained by the following reasoning of the Court:

The mere fact that two different cadres are created does not show whether Article 14 or 16 has or has not been violated but once having included employees into a single grade or unit of employment, it is not permissible for Government to provide a differential treatment between two sections of the same unit with retrospective effect." The same principle was reiterated by the Punjab High Court in a more recent decision in *Punjab State v. Lokh Raj* 1968 L.I.C. 1076, In that case, there was a separate cadre of Vaidyas and Nakims in the State service Class III. They were initially appointed in the different States which merged into the Patiala and East Punjab States Union. Subsequently, they were formed into a single cadre on the same conditions and in the same grade with exactly same or similar nature of duties to perform under one and the same designation. But by a subsequent notification, they were differentiated in their pay, the distinction being based upon whether they held a five years" degree or not. The Punjab High Court struck down that distinction observing;

Once this had happened, some members of the unified cadre could not be treated dissimilarly as against others of the same cadre in the matter of their pay and other relevant conditions of service on the ground that some of them possessed higher or better qualifications. It is settled law that the equality of opportunity guaranteed by Clause (1) of Article 16 of the Constitution does not end with the stage of initial appointment, but would inevitably govern all matters relating to employment including questions of emoluments, chances of promotion etc.

18. Our attention was drawn to a judgment of the Bombay High Court in *Indradeo A. Deshmukh v. Manohar* 1967 I.L.J. 811, where an identical question as the case before Venkatadri, J., came up for decision. The learned Judge of the Bombay High Court followed the decision of Venkatadri, J. It appears to us, by

reference to page 818 of the report, that the learned Judge's decision was materially influenced by the following considerations:

However, on the materials placed before me, it is difficult to accept the proposition of Sri Desai that whereas while recruiting temporary staff to permanent departments such qualifications were insisted upon, and they were not so insisted upon while recruiting temporary staff to temporary departments. No rule or document waiving such educational qualification or age qualification in the matter of recruiting temporary staff to temporary departments has been put before me. All that has been relied upon by Sri Desai in this behalf has been certain instances that Sri Desai wanted me to infer that such qualifications were waived while making recruitment of temporary staff to temporary departments. It is difficult to draw such an inference merely from a few instances of that type.

19. In the foregoing paragraphs, we have referred to the clear data made available in this case to show the conditions governing the people recruited by the Staff Selection Board and the Joint Service Commission and the conditions governing those recruited from the open market by the Deputy General Manager, and the essential distinction between those two classes of recruits in regard to the rights of confirmation and seniority of service. While the former possessed certain definite rights, the latter had none at the time of their recruitment; nor at the time of their continued employment in the grain-shop establishment. Those rights were made available to them only subsequently by specific orders passed ad hoc in their case at the time of their absorption. In such circumstances, the principle of discrimination cannot be invoked.

20. Reference was also made by the learned Counsel for the respondent, Sri Dolia, to certain statement in two further affidavits of the petitioner in W.P. No. 3110 of 1965, Vijayarangam, dated 24.11.1966 that in the case of staff, selected initially for other regular departments of the railway, during the period prior to the functioning of the Staff Selection Board or the Service Commission, (which came into existence only from 1944 in some places and from 1947 in other places) there were some people who had not yet been employed or had been employed in a lower category, like class 4. on a temporary basis, and then transferred to the grain-shop organization. The contention of the petitioner in the affidavit is that this group of people included some who at the time of their initial recruitment did not possess the minimum educational qualification and the age qualification. In such cases, these requirements were relaxed at the time of their initial recruitment. The point made by Sri Dolia is that there was discrimination in giving the last-mentioned group of people the benefit of counting the temporary service in the grain-shop organization for the purpose of seniority and depriving the open market recruits of that benefit.

21. It will be seen from the record that this contention of the petitioner Vijayarangam was not admitted by the railway in the counter-affidavit filed on its behalf by one of the railway officers. Nevertheless, Vijayarangam would say that the deponent to the counter-affidavit was not in the Personnel Department and

therefore his statement could not be accepted and that in fact there were people who were initially recruited for appointment in the regular establishments of the railways who did not possess the minimum educational qualification and age limit at the time of such recruitment. We have already referred to the fact that in the case of direct recruits to the grain-shops recruited before 15.9.1945 the authorities were prepared to relax the age restriction, but insisted only on their possessing the minimum educational qualification before they could be permanently absorbed. We have no data as to the circumstances under which, in the prior years when candidates were recruited for the regular establishment of the railways there were orders in particular cases for relaxing the age and educational qualification rules. But what we have stressed in the foregoing paragraph as the essential point of distinction for the purpose of this case, is that in the case of all the recruits to the permanent establishment of the railways, whether the recruitment was by the Staff Selection Board or Joint Service Commission or previously by agencies who functioned before the S.S.B. or J.S.C., there was an assurance given at the time of their recruitment that they would be able to count their seniority from the date of their selection. That formed an essential condition of the terms of their initial recruitment. But in the case of the open market recruits to the grain shop organization no such assurance existed at any time. The relief was left open for being considered at the time of their absorption, when permanent vacancies arose in the regular department.

22. On the other question, whether the Railway Board had the power to rescind its earlier orders giving the benefit of counting temporary service for seniority, after a lapse of five years, it appears that the point was not considered by the learned Judge in his judgment. He disposed of the matter solely on the finding of discrimination. Before us, it was shown that while rescinding its earlier order, the Railway Board had issued subsequent clarifications which preserved the rights of confirmation and the rights of promotion to higher posts which had accrued to the individuals in the interregnum, but what was changed by the revised orders was only the right of seniority. No doubt, this decision to revise the earlier order about the right of seniority was taken after representations were made by the Railwaymen's Federation. Apparently, the Federation put forward representations on behalf of persons recruited through the medium of the S.S.B. and J.S.C. It cannot be urged that because such "pressure" was applied by the Federation, when they voiced the interests of a certain class of employees, the decision of the Board should be modified. The decision to rescind was within the power of the Railway Board, and, as mentioned already, wherever protection was essential, that has been given by subsequent orders clarifying the position. Therefore, on this ground also, we are not inclined to interfere with the decision of the Railway Board.

23. The writ appeals are allowed and the order of Venkatadri, J., is set aside. There will be no order as to costs.