CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

38

Date of Decision: 30-4-1992.

(1) Regn. No. O.A. 784/1988.

Northern Railway Officers' Association Vs. Union of India through Secretary, Railway Board, New Delhi.

(2) Regn. No. O.A. 83/1988.

S.K. Mahajan Vs. Union of India.

(3) Regn. No. O.A. 104/1989.

Shri S.K. Singh Vs. Union of India.

(4) Regn. No. O.A. 1760/1989.

South Central Railway Officers' Association Vs. Union of India and Anr.

(5) Regn. No. O.A. 2138/1989.

Babu Ram Vs. Union of India & Others.

(6) Regn. No. O.A. 1605/1988.

C.P. Gupta Vs. Union of India.

(7) Regn. No. O.A. 1862/1989.

Ashok Dinkar Mohile & Ors. Vs. Union of India & Others.

(8) Regn. No. O.A. 1761/1989.

V. Janakiraman Vs. Union of India & Others.

(9) Regn. No. O.A. 1863/1989.

R. Balsubramanian Vs. Union of India & Others.

(10) Regn. No. O.A. 1911/1988.

R.N. Tewary Vs. Union of India & Others.

(11) Regn. No. O.A. 1619/1990.

D.N. Kaushal Vs. Union of India.

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CORAM: Hon'ble Shri T.S. Oberoi, Member (J).
Hon'ble Shri P.C. Jain, Member (A).

Shri S.C. Gupta, Sr. Counsel
Shri R.K. Kamal, Counsel.
Shri J.K. Bali, Counsel. } For the Applicants.

Shri P.H. Ramchandani, Sr. Counsel
Shri M.S. Ramamurthy, Sr. Counsel
Shri P.S. Mahendru, Counsel. } For the Respondents.

Judgment of the Bench delivered by
Hon'ble Shri P.C. Jain, Member(A).

JUDGMENT

All the 11 cases cited above have been filed either by the Railway Officers' Associations or by the Railway Officers and are being taken up together, as these can be conveniently disposed of by a common judgment. Although the reliefs prayed for in each of these cases are not exactly the same, they directly or indirectly impugn two communications dated 15.5.1987 and 6.3.1986 issued by the Railway Board on the 'Norms for selection for promotion/deputation/training".

2. The reliefs prayed for in these cases are as under: -

(1) O.A. 784/1988: In this O.A., the applicant originally prayed for quashing the aforesaid two communications of the Railway Board dated 15.5.1987 and 6.3.1986, but in the Amended O.A., which was allowed to be filed by a Bench of this Tribunal, of which one of us (Shri T.S. Oberoi, Member (J) was a Member, vide order dated 14.9.90 in M.P. No.2334/89, the following reliefs were prayed for:

"(a) The Hon'ble Tribunal may be pleased to quash the impugned orders issued by the Railway Board.

(b) In the event of the aforesaid two impugned orders being quashed by this Hon'ble Tribunal or they being otherwise withdrawn by the respondents themselves, the members of the Applicant Association be considered for promotion on the basis of the rules and instructions relating to such promotions as the same existed prior to the issuance of the aforesaid two impugned orders."

(2) O.A. 83/1988: In this O.A., the applicant, who had gone on deputation to Rail India Technical and Economic Services (RITES), and whose representation dated 20.4.87 for grant of the benefit of Senior Administrative grade under Next Below Rule was rejected by the Ministry of Railways, has felt aggrieved by the

orders of the Railway Board issued in 1986-1987, referred to above, by which a 'point-system' for evaluation of the ACRs was introduced, and prayed for the following reliefs:

"9.1 The impugned order of the respondent conveyed through RITES on 19-5-87 (Annexure A-1) be set aside and quashed as illegal, null and void.

9.2 The point-system introduced by the Railway Board for promotion to higher grade in 1986-87 be set aside and quashed.

9.3 The respondent be directed to consider the case of promotion of the applicat to S.A. grade with effect from the date his junior was promoted, even taking into account all the C.Rs earned by him during his tenure in RITES.

9.4 Any other relief that the Hon. Tribunal may grant to extend substantial justice to the applicant."

(3) O.A. 104/1989: In this O.A., the applicant has prayed for the following reliefs:

"(i) quash the impugned point system introduced by the Railways vide their letters of 6.3.86 and 15.5.1987;

(ii) (In the alternative, and, without prejudice to the afore-mentioned submissions) quash the retrospective applications of the impugned Point System and direct that those who had already been promoted, or had become eligible for promotion, to various posts of Principal HOD's or equivalent posts, before the introduction of the impugned system, should not be adversely affected by the said new system.

(iii) direct that the Applicant be given all due benefits of the revised pay scale, Rs.7300-7600, with effect from the date on which his juniors had started holding the post of Principal HOD or equivalent post in this grade as mentioned above, and, that he should also be given promotions and benefits of higher pay-scales, with effect from the dates the same have been given to his juniors in service.

(iv) direct the Respondents to give the Applicant arrears of pay and other benefits on the afore-mentioned basis; and

(v) pass any other or further orders as this Hon'ble Tribunal deem fit and proper in the circumstances of the case."

(4) O.A. 1760/1989: This O.A. was originally filed in the Hyderabad Bench of this Tribunal and registered as O.A. 578/1988, but under the orders of the Hon'ble Chairman of this Tribunal, it was transferred to the Principal Bench and assigned a new Registration Number O.A. 1760/1989. This O.A. has been filed by South Central Railway Officers' Association represented by its Secretary. The following reliefs have been prayed for:

" This Hon'ble Tribunal may be pleased to quash the impugned orders issued by the Railway Board under Confidential DO letters No.87/289-B/Secy/Admn dt. 15-5-87 and 86/289/B/Secy/Admn dated 6-3-86."

(5) O.A. 2138/1989: This O.A. was originally filed in the Jabalpur Bench of this Tribunal and registered as O.A. 17/1987, but on transfer to the Principal Bench, it was assigned a new Registration Number O.A. 2138/89 Herein also, the applicant is aggrieved by the orders of the Railway Board ibid and requests for the following reliefs: -

"(i) The order ignoring the applicant from being promoted by excluding his name in the list of promotees in order dated 14.10.1987 be set aside.

(ii) The system of categorisation is exofficio illegal and contrary to Article 14 and 16 of the Constitution of India as well as to the Rules of natural justice and the law pronounced by the Supreme Court.

(6) O.A. 1605/1988: In this O.A., the applicant has prayed for the following relief: -

"The Hon'ble Tribunal may be pleased to quash the impugned orders issued by the Railway Board vide Annexure A-1 and direct the respondents to allow

Cc.

the applicant to continue in his present post as a Principal Head of Department in the replaced scale of pay."

Here also, the applicant assails the orders of the Railway Board by which the so-called Points System has been introduced.

(7) O.A. 1862/1989: This O.A. was originally filed in the New Bombay Bench of this Tribunal under Registration Number 168/88. On transfer to the Principal Bench, it was given a new Registration Number O.A. 1862/1989. In this O.A. also, the point system introduced by the orders of the Railway Board has been assailed, praying for the following reliefs: -

"(a) That the Office Order No.44/88 E(G) 838/8 dated dated 1-2-88 (Exhibit 'D') along with the authority of the Railway Board vide Order no.XXR E(G)III 88/ TR/19 dated 20.1.1988 be quashed and set aside, after examining the legality, validity and constitutionality thereof,

(b) That it be declared that the Circular dated 15-5-1987 (Exhibit 'I') is null and void and unconstitutional as violating Articles 14 and 16 of the Constitution of India.

(c) That it be declared that the Applicant as well as others similarly situated, continue to be governed by the system of assessment as contained in Indian Railway Estabishment Code Vol. I, as annexed as Ex. 'G'.

(d) That in any event and in the alternative to prayer (b) and (c) above, it be declared that the said circular dated 15-5-1987 has no application to confidential reports prepared prior to 15-5-1987.

(e) Any other or further order/relief as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be granted.

(f) Cost of this Application may be provided for."

(8) O.A. 1761/89: This O.A. was originally filed in the Madras Bench of this Tribunal under Registration No. 533/1988, and on transfer to the Principal Bench, this has been given Registration Number O.A. 1761/89. The following reliefs have been sought for in this O.A:

"a) To direct the respondents pass suitable orders extending to the applicant the benefits of the revised higher scale of pay Rs.7300 - 7600 due to him as a result of upgradation of the post of CEE/MAS as per the order No.88 E(CG)12-20 Ministry of Railways with effect from 25.8.1988.

b) Set aside order No. E(o)III-88 TR/191(.) dated 29.8.1988 transfering the applicant to ICF and posting him as CEE/ICF since the said post is not one of the upgraded posts.

c) Set aside the order No.E(o)III-88 PM 111(.) dated 25.8.88 posting the third respondent Parthasarathy CEE/ICF tothe upgraded post of CEE/ MAS Southern Railway.

d) To direct the respondent to post the applicant only to one of the upgraded posts in the scale Rs.7300-7600 to which he is entitled by reason of his seniority and rank, and having worked as a Principal HOD in the existing SA grade post of principal HOD though it was in the grade of Rs.5900 - 6700.

e) To pass such further or other orders as may be deemed fit and proper in the circumstances of the case and render justice.

f) To quash the norms evolved by the Railway Board under confidential D.O. letters No.87/289-8/ See. Admn. dated 15.5.87 and consequently hold that selection based on these norms as bad.

g) To set aside the order No.E(o)III-88 PM 111(.) dated 25.8.88 posting (1) C. Satyanarayana as CEE South Central Railway, (2) NAPS.Rao as CEE, Central Railway, (3) N. Venkatesan as CEE, Eastern Railway, (4) M.B. Rao as CEE Western Railway, (5) A.S. Sant as CEE, Northern Railway and (6) K.R. Dorairaj, CEE, South Eastern Railway respondents 4 to 9 herein to the upgraded post of Chief Electrical Engineers in the 7 Electrified Railways in the scale of Rs.7300 - 7600.

h) To set aside order No.E(o)III-88 PM 114(.) Ministry of Railways dated 25.8.1988 posting Jagadish Chandra the 11th respondent as Additional General Manager, North East Frontier Railway in the scale of Rs.7300-7600.

i) To set aside order No.ERB 1/88/67(.) dated 25.8.88, Ministry of Railways posting T.K.A. Iyer

the 12th respondent herein as Advisor Electrical, Railway Board.

j) To set aside order No.E(o)III-88 PM/127 dated 5.9.88 transferring and posting N.A.P.S. Rao the 5th respondent herein as General Manager, Wheel and Axle Plant, Bangalore.

k) To set aside order No.E(o)III PM/131 dated 8.9.88, Ministry of Railways posting C.S. Chauhan the 10th respondent herein as Chief Electrical Engineer, Central Railway.

(9) O.A. 1863/89: This O.A. was originally filed in the New Bombay Bench of this Tribunal under Regn. No.864/1988 and on transfer to the Principal Bench, it has been assigned a new Registration Number O.A. 1863/89. The following reliefs have been prayed for:

"(a) The impugned orders, promoting respondents 3 to 9 to the upgrade post in pay scale of Rs.7300-7600 (RP) be quashed and set aside.

(b) Respondents 1 and 2 be directed to consider Applicant for posting in one of the upgraded posts in the scale of Rs.7300-7600 on the basis of the remarks of "fitness" made in the ACRs and his seniority in the Indian Railway Service of Engineers cadre.

(c) Costs of the Application be provided for.

(d) That such dates and further reliefs as are expedient be granted in favour of the Applicant."

In the grounds for seeking the aforesaid reliefs, the applicant has assailed the communication of the Railway Board dated 15.5.1987, which, according to him, led to his supersession by his juniors.

(10) O.A. 1911/88: In this O.A., the following reliefs have been prayed for:

"9.1. The impugned orders (Annexure A-1, A-2 and A-3) promoting respondent number 2 to 12, junior to the applicant, be set aside and quashed.

9.2. The respondent no.1 be directed to consider the applicant for posting against one of the upgrade posts in the scale 7300-7600 on the

on the basis of the remarks of "fitness" made in his ACRs and his seniority in the I.R.T.S. Cadre.

9.3. Any other relief deemed fit, including costs."

In this case also, the applicant has basically attacked the instructions contained in the communication of the Railway Board dated 15-5-87, which, according to him, were followed by the D.P.C. and resulted in his supersession by his juniors in the matter of promotion to the post in the scale of Rs.7300-7600.

(11) O.A. 1619/90: The following reliefs have been sought for in this O.A.

"8.1 The impugned order dated 6-4-90 (Annexure A-1) be set aside and quashed as illegal and void. The point-system (Annexure A-2) be declared illegal and arbitrary.

8.2 The respondent be directed to reconsider or get reconsidered the applicant for the upgraded post in the scale 7300 - 7600 on the basis of his actual performance and remarks in column 1 of the ACR i.e. fitness for promotion, with all consequential benefits by way of retrospective promotion with arrears with interest from the date when his juniors were promoted in 1989.

8.3 Any other relief, deemed fit, in the interest of justice, including costs."

3. As stated above, in all the aforecited 11 cases, the applicants have either directly prayed for quashing the instructions contained in the communications of the Railway Board dated 6.3.1986 and 15.5.1987 or have sought for reliefs, which, according to them, have arisen sequel to the new procedure adopted by the DPC in implementation of the instructions contained in the said communications of the Railway Board.

4. We have gone through the records of these cases and heard the learned counsel for the parties. None appeared for the applicants at the time of oral hearing in O.A. 1760/1989. In O.A. 784/1988, as stated above, originally the applicant Association had only prayed for quashing the two communications of the Railway Board dated 6-3-86 and 15-5-87, to which the respondents had file

a counter reply on 19.10.1988 and the applicant Association thereafter filed a rejoinder also on 17.1.1989. On 20.10.1989, however, the respondents filed a supplementary reply in which they stated that subsequent to the issuance of the two communications dated 6.3.1986 and 15.5.1987 which the applicant Association had challenged and had sought for quashing the same, the Ministry of Railways, Railway Board, have issued another D.O. letter No.89/289-B/Secy./Admn. dated 26.9.1989 in the matter of promotion to Administrative Grades in Railway Services (copy at Annexure R-I) and since this letter supersedes the instructions contained in impugned confidential D.O. letters dated 6.3.1986 and 15.5.1987, these letters are no more in operation and, as such, the application is liable to be dismissed as infructuous. On the other hand, the applicant Association filed M.P. No.2334/1989 dated 20-10-1989, praying for addition of a new relief as under:

> "(b) In the event of the aforesaid two impugned orders being quashed by this Hon'ble Tribunal or they being otherwise withdrawn by the respondents themselves, the members of the Applicant Association be considered for promotion on the basis of the rules and instructions relating to such promotions as the same existed prior to the issuance of the aforesaid two impugned orders."

The applicant Association prayed for adding this sub-para by hand at the end of para 9 instead of the entire amended petition being refiled. This M.P. was disposed of by a Bench of this Tribunal vide orders dated 14.9.90, whereby the applicant Association was directed to file a duly amended O.A. within a week from the date of order, which was filed only on 8.3.1991. In the meanwhile, an M.P. No.2423/1990 dated 28.9.1990 was also moved by the respondents wherein they stated that the amendment allowed to the applicant Association is extremely vague and devoid of particulars and precludes the respondents to file a proper reply and accordingly prayed for a few directions to be given to the applicant Association for furnishing a list of the members of the applicant Association, and a list of such

of its members on whose behalf relief is being claimed by way of reviewing the selections already made, indicating specifically the grade(s) and post(s) to which selections/promotions already made are being sought to be reviewed. They also prayed for a direction to the applicant Association to furnish the names of officers against whom relief is being claimed in the application and also to indicate the instructions of the competent authority, if any, laying down norms/procedure for conduct of selection for promotion to various grades with specific description of grade(s)/post(s), prior to issue of the impugned circulars of 6-3-1986 and 15-5-1987 as averred by them, along with copies of documents in support thereof. M.P. No.2423/90 filed on behalf of the respondents was disposed of by orders dated 7.11.90 with an observation that "In case any specific information with regard to the points raised in the present M.P. is considered necessary by the Bench, the same may be asked for, during the course of final hearing."

5. In the Amended O.A. No.784/88, which has been filed along with an application under Rule 4(5) of the Central Administrative Tribunal (Procedure) Rules for filing a single application on behalf of Class-I Officers of the Northern Railway the applicant Association has assailed the impugned letters dated 6-3-1986 and 15-5-1987 on the grounds that these letters provide for the norms for selection for promotion/deputation/ training on the basis of classification of ACRs in terms of 'Points' as under:

Classification	Outstanding	Very Good	Good	Good/ Not Fit	Average	Below Average
Points:	5	4	3	2.5	2	1

The letter dated 15.5.1987 further says:

> "2.1 Total points obtained in last 5 years ACRs by the eligible officers will be considered.
>
> 2.2 'Average' rating or 'Not Fit' in the last ACR will be treated as 'Grey Area', irrespective of qualifying marks obtained. The cases of officers falling in the 'Grey Area' will be reviewed by the Board.

"2.3 There is a provision of weightage for officers of outstanding merit in the Select Lists drawn up for promotion to Senior Administrative Grade. For the purpose of overall assessment as 'Outstanding', the officer has to obtain 23 or more points in the ACRs for the preceding 5 years."

The said communication also gives the norms decided upon for the various posts under columns 'Clear for promotion', 'Grey Area' and 'Fitness(s) required'. The earlier communication dated 6.3.1986 also describes the 'Point' system evolved and adopted in the matter of drawing up of panels by the DPC and lays down certain guidelines for adjudging the suitability of officers for placement in the panels for (i) J.A. Grade, (ii) Level-II and (iii) Level-I. In a Note beneath para 4 of the letter, it is given as under:

(i) "The question of integrity will be judged separately as it may not fully get reflected in the 'point' calculations."

(ii) "In very exceptional cases, the DPC may, at discretion, consider a person suitable or unsuitable for promotion in departure from the pointwise yardstick."

6. The plea of the applicant Association is that the norms prescribed for selection for promotion are arbitrary, unconstitutional and are to be quashed. The main argument putforth by the applicant Association is that the officers initiating, reviewing and accepting the ACRs upto 31-3-1986 were ignorant of the scheme of the Point System and they had written the ACRs with a different perspective not conforming to the requirements of the new system. It is also pointed out that the new instructions relegate the remarks regarding fitness for further promotion in the ACR to an unimportant position. Thus, according to the applicant Association the new system has been virtually made applicable with retrospective effect as the ACRs of the past five years have to be evaluated on the new pattern. A number of eventualities have been cited such as an officer securing 'Very Good' rating in all the five ACRs will get only 20 points and will, thus, not be eligible for promotion to the post of SDGM, GPLO, DRM, Principal HOD and grade Rs.7300-7600 (RS) despite the fact that in all the five ACRs, he

may be adjudged fit for promotion. Similarly, an officer getting one 'Outstanding', one 'Very Good' and three 'Good' ratings will be assigned only 18 points and will not even fall in the 'Grey Area' though in every ACR he may have been assessed as 'Fit for promotion'. Thus, the new norms do not give any weightage to 'Fitness for promotion'. It is pleaded that the new policy has not been made known to the officers concerned. The officers concerned are not informed of any deficiency in their performance rendering them unsuitable for promotion and they are kept deprived of a chance to improve their performance. The instructions are silent in respect of the officers falling in the Grey Area and such a procedure is likely to lead to arbitrary decisions in the selection of officers for promotion.

7. In the counter reply filed by the respondents, the points raised in M.P. 2423/90 filed on behalf of the respondents, have been revived. According to the respondents, the O.A. originally filed by the applicant Association became infructuous when the impugned instructions were superseded by instructions dated 26.9.1989 (copy at Annexure R-1). The objections raised by the respondents in regard to the amendment allowed to be carried out in the O.A. were kept open. It has been urged that the cause of action is not the same for all the members of the applicant Association. In a selection where more meritorious officers elbow out the less meritorious officers, the cause of action can never be the same for everybody. Another objection raised is that none of the officers who will be affected, if the relief sought for is granted, has been made party respondent, either individually or in a representative capacity grade-wise, class-wise and category-wise or service-wise. No grievance in regard to non-promotion of any individual officer prior to 20.10.1988 can be permitted to be convassed in this application and any such grievance is liable to be dismissed in limine as barred u/s 21 of the Administrative Tribunals Act, 1985. Besides, the amended O.A. does not mention the names of the members of the Applicant

Association, nor does it give the names of officers against whom relief is being claimed. The amended O.A. does not specify the instructions with supporting documents in terms of which the selections are to be reviewed as prayed for. It is stated that during 1986-1988, as many as 1795 officers in different grades were empanelled and a number of officers were approved for foreign training and deputation and they availed of such training/deputation. They may also be affected if the OA is allowed. They have also averred that the amended O.A. deals with academic and hypothetical issues relating to certain procedural clarificatory instructions contained in confidential Demi-Official letters between Railway Board and Railways, and such matters are not maintainable in the Tribunal. The selection procedures are applicable to one and all uniformly and just one Zonal Railways Officers' Association cannot represent the case of all other Zonal Railways' Officers' Associations. Besides these, a few more objections have also been raised. The respondents have denied that prior to March, 1986, the ACRs had been written with different perspective and did not conform to the requirement of the adjudgement of suitability for higher grade posts. Further, the system applied uniformly to all and the applicant Association cannot claim any grievance on that score. It is also denied that the remarks against column "Fitness for promotion" was the only relevant factor before 31-3-1986. By issue of the impugned letters, the Administration had only sought to streamline the procedure and define the selection standards specifically and numerically so as to strengthen the middle and senior management cadres, keeping in view the policy of the Government for increasing efficiency in services. The fitness is finally assessed as before on the basis of the entries in the ACRs which continue to be carefully scrutinised by a very high level DPC, members of which are of the rank of Secretaries to the Government of India. There was no change in the basic concept of selectivity and procedure as such as the point system was only

an indicative system which collated the performance recorded in the ACRs of an individual officer and enabled closer scrutiny of cases to enforce proper selectivity uniformly in an objective and scientific manner. The manner in which the grey area cases were to be reviewed had been indicated in para 4(ii) of letter dated 6-3-1986 and there has been no arbitrariness in filling up the posts. In selection posts, merit of the officer is assessed and no individual can claim promotion merely with reference to his seniority position. According to the respondents, the letters only amplified the extant procedure and clarified the position. The applicant Association has not made out any case of discrimination against anybody and the instructions contained in the impugned letters applied uniformly to all, and as such, there has been no violation of Article 14 of the Constitution of India. The grey area cases were given the maximum possible consideration by detailed scrutiny of the entire service record. It is further stated that the Government has every right to amend, alter, review and revise its instructions, policies, procedures from time to time having regard to the changing needs. The impugned communcations have since been superseded with the issue of letter dated 26-9-1989 not because of their being illegal unjustified or because of any other such infirmity. The new instructions have not been challenged by the applicant Association.

8. Learned counsel for the applicant Association reiterated the points given in the amended O.A. He emphasised that an Association can challenge the system as a whole and the O.A. has already been admitted. He argued that there is a separate column on the "Fitness for promotion", which becomes irrelevant in the new pattern of evaluation of ACRs. The new order of 26th September, 1989 gives a different procedure in the field of eligibility from the one adopted under the orders of 1987. The amended O.A. has been filed only after M.P. No.2334/89 was allowed by the Tribunal in its order dated 14.9.90. He, therefore, emphasised that the cases of promotions effected sequel

to the impugned circulars have to be reconsidered; and the cause of action would accrue after the impugned orders are declared as illegal by the Tribunal.

9. Learned counsel for the respondents, during the course of arguments, drew attention to the various objections raised in the counter reply. In particular, he pointed out that the applicant Association has no common grievance and there is a conflict of interest among its members. Association itself is not an aggrieved person, and in matters of promotion, an Association has no locus standi. The O.A. filed originally had become infructuous when the impugned letters had been superseded by new instructions contained in letter dated 26.9.1989. The Government can always change its policies and if any change is made or any instruction is superseded, it does not mean that the earlier instruction was bad. The respondents had filed an M.P. No.2423/90 against the amendment allowed to the applicant Association, but that M.P. had been kept open to be argued at the time of final hearing. The applicants have not been allowed any interim relief. According to the respondents, the amended relief is vague. Necessary parties have not been impleaded as if the relief prayed for is allowed, it might affect a number of persons who have not been made party respondents in this case. Also the point of limitation may come up. The instructions issued were only the guidelines in evaluation of the ACRs of the officers. It is not the case of the applicant Association that persons with less merit have been selected as compared to more meritorous persons. Fitness or suitability for promotion is a matter for the DPC to decide. Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC.

10. As stated above, the impugned instructions as contained in the two communications of the Railway Board dated 15.5.1987 and 6.3.1986 which have been impugned directly or indirectly by the applicants in all the above cited cases, have since been

superseded by instructions contained in the Railway Board communication dated September 26, 1989 (Annexure R-1). These instructions on the subject of 'Procedure for promotion to Administrative Grades in Railway Services' are based on the guidelines contained in Office Memorandum dated 10.3.1989 issued by the Department of Personnel and Training, Government of India on the 'Procedure to be observed by Departmental Promotion Committees'. The guidelines of September 26, 1989 have not been impugned and these instructions have outlined the procedure for assessment of confidential rolls in a broad manner. In clause (d), it states that the Selection Committee would not be guided merely by the overall assessment, if any, that may be recorded in the CRs, but will make its own assessment on the basis of the entries in the CRs. The field of choice with reference to the number of vacancies proposed to be filled in the year, out of those eligible in the feeder grade, has also been specified as under:-

No. of vacancies	No. of officers to be considered
1	5
2	8
3	10
4	Three times the number of vacancies.

In the Selection Procedure, it has further been clarified that for the purpose of promotion from J.A. Grade to S.A. and S.A. Grade to Additional Secretary's Grade, the Bench Mark shall be 'Very Good'. For this purpose, the Selection Committee will grade the officers who are considered suitable for promotion as 'very good' or 'outstanding'. Officers graded 'outstanding' will rank senior to all those who are graded 'very good' and placed in the select panel accordingly. Thus, the new guidelines has done away with the so-called 'point-system' introduced in the earlier communications of the Railway Board dated 15.5.1987 and 6.3.1986.

54

11. Learned counsel for the respondents emphasised that each Departmental Selection Committee has to decide its own method and procedure for assessment of the suitability of the candidates and the gradations like 'Outstanding' etc. in the Confidential Reports have always played a dominant role in the matter of selection by promotion. In the 'grey area' cases, the role of the Selection Committee is more important. With the issuance of the new guidelines for the Selection Committees, which restrict the field of choice with reference to the number of vacancies available, and give a liberal approach in evaluating the CRs with reference to the overall assessment recorded in the CRs and enumerate the various points to be kept in view, a part of the prayers made in the aforesaid cases is accepted by the respondents themselves, with effect from September 26, 1989.

12. The grievance of the applicants in respect of the cases of officers considered during the relevant period i.e., from the date the 'point system' was introduced till the date the revised guidelines have superseded the same, remains to be considered. As stated above, the respondents have raised a number of objections, firstly on the ground that the application from an Association is not maintainable as the Association is not an aggrieved person within the meaning of the expression u/s 19(1) of the Administrative Tribunals Act, 1985 and the Association is not ventilating any common grievance of all its Members, as some might have been promoted on the basis of the selections made in accordance with the earlier guidelines. At this stage, we do not consider it equitable to reject this O.A. on this ground alone. Moreover, this grievance has not been raised by the Association alone. We are deciding by this judgment 11 cases, some of which have been filed by individuals as well seeking for the same relief, which the Associations have prayed for. The respondents have also raised an objection that the relief claimed by the amendment is time-barred under Section 21 of the Administrative Tribunals Act, 1985 and they

have averred that no grievance in regard to non-promotion of any individual officer which had arisen prior to 20-10-1988 could be permitted to be convassed in this application. Admittedly, the respondents empanelled during 1986-1988 as many as 585 officers in SA Grade and 1210 officers in JA grade, totalling 1795. Besides a number of officers were approved for foreign training and deputation which they might have availed of by now. If the prayer of the applicant Assocation in so far as it is contained in clause (b) of their Amended O.A. 784/1988 were to be accepted, it would amount to reopening of all cases of promotion/deputation/training considered on the basis of the then existing instructions. On the other hand, it is not the case of the applicant Association that there has been any discrimination in the matter of application of the norms followed in selection for promotion/deputation/training. The norms adopted to be followed in accordance with the instructions were uniformly applied and on that basis, it cannot be said that the persons selected during the relevant interregnum were in any way less meritorious and not deserving for promotion/deputation/training. If as a result of their outstanding service record, they were considered better than some of their seniors by the DPC and were allowed to march over them, they cannot be found fault with, nor can there be any justification for their reversion for the procedure adopted by the Selection Committees. What is required to be seen is that there is no discrimination with any individual in the matter of application of policies and procedures which are to be followed uniformly in such matters. A number of authorities were cited on behalf of the respondents to support their plea that in the matter of selection for such posts, an officer has the right to be considered on the basis of seniority, but he has not the right to promotion, and in promotions, supersession of seniors by juniors is not an uncommon feature, more so, when the posts are 'selection' posts. It cannot be denied that there may be cases when

56

persons who have never been communicated any adverse remarks from their C.R.s, are superseded by their juniors because of comparative assessment in the selection procedure.

13. In M. SATYANADAM Vs. UNION OF INDIA & ORS. (A.T.R. 1990(1) C.A.T. 565), the Hyderabad Bench of this Tribunal dealt with an application filed by a Senior Personnel Officer in the South Central Railway who questioned his non-selection to the post of Junior Administrative Grade in the Indian Railways and his reversion from the said post which he was holding on adhoc basis, and alleged that the action of the respondents was discriminatory and violative of his rights under Articles 14 and 16 of the Constitution. In the said case decided on 8.1.1990, the Hyderabad Bench also discussed in details the instructions contained in D.O. No.87/289.B/Secy/Admn. dated 15.5.1987 issued by the Railway Board. Although the facts of that case are somewhat different from those in the instant cases, yet the Hyderabad Bench went into the question whether non-selection of the applicant therein could be assailed. It was observed by the said Bench that the instructions issued by the Railway Board in its letter dated 15-5-1987, by introducing the marks system had improved upon on the grading system and thereby sought to introduce a more scientific or rational method of assessing suitability on the basis of the character rolls.

14. In Dr. TEJ BAHADUR SINGH Vs. UNION OF INDIA & OTHERS (O.A. 242/1989), the Patna Bench of this Tribunal dealt with the case of the applicant, who was posted as Divisional Medical Officer, North Eastern Railway, Sonpur, and who had been superseded by officers junior to him in the process of promotion to the Junior Administrative Grade. In that case also, the Patna Bench observed that "The promotion to the Junior Administrative Grade was thus based on a scientific method of selection. The applicant has himself to blame if his performance as reflected in the five annual confidential reports were not good enough to earn him the minimum of 17 points." Since some of his juniors had been promoted

earlier to the Junior Administrative Grade, they became senior on their promotion and some of them were therefore given further promotion to the selection grade on the basis of their performances. The applicant's claim for promotion with effect from an earlier date was not considered valid and his application was accordingly dismissed.

15. In V.T. KHANZODE AND OTHERS Vs. RESERVE BANK OF INDIA AND ANOTHER (AIR 1982 S.C. 917), which dealt with 25 petitions under Art. 32 of the Constitution of India challenging the decision of the Reserve Bank of India as regards the introduction of common seniority and inter-group mobility amongst different grades of officers belonging to Group I (Section A), Group II and Group III, with retrospective effect from May 22, 1974, although the subject of the writ petitions has no bearing on the issues involved in the instant cases, yet the observations of the Hon'ble Supreme Court made in para 40 of its judgment are very much relevant which state that "No scheme governing service matters can be fool-proof and some section or the-other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these."

16. In yet another case "STATE BANK OF INDIA AND OTHERS Vs. MOHD. MYNUDDIN (1987.(4) SLR 383), the Hon'ble Supreme Court, in its judgment dated 17.7.1987, in para 5 thereof, observed: "Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion on the higher post as a matter of right by virtue of seniority alone with effect from the date on

which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. ..."

17. In "UNION PUBLIC SERVICE COMMISSION Vs. HIRANYALAL DEV AND OTHERS" (AIR 1988 S.C. 1069), the Hon'ble Supreme Court dealt with appeals preferred by the UPSC against the judgment of the Central Administrative Tribunal, Guwahati Bench wherein the CAT held that Respondent No.1 should be deemed to have been included in the impugned select list prepared in 1983, at least in the place in the order of his seniority on the basis of the assessment of his C.C. Rolls, and had issued a direction to appoint Respondent No.1 with effect from the date on which his immediate junior, namely, Shri Sardar Pradeep Kar was appointed and allowed all the benefits on that basis. That was a case in which some adverse remarks which had subsequently been expugned were stated

to have been taken into consideration by the Selection Committee, and the CAT had come to the conclusion that the non-selection of Respondent No.1 was in that view of the matter bad in law. In the said appeals of the UPSC, the Hon'ble Supreme Court observed: "How to categorise in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The Tribunal could not make a conjecture as to what the Selection Committee would have done or to resort to conjectures as to the norms to be applied for this purpose. The proper order for the Tribunal to pass under the circumstances was to direct the Selection Committee to reconsider the merits of Respondent No.1 vis-a-vis the official who was junior to him and whose name was Shri Sardar Pradeep Kar. ..... The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee...."

18. In another case "RESERVE BANK OF INDIA AND OTHERS Vs. C.N. SAHASRANAMAN AND OTHERS"(AIR 1986 S.C. 1830 also, the Hon'ble Supreme Court observed: "It has to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touch-stone."

19. There are a catena of cases, besides the aforecited authorities, which have laid stress on the point that the function of the court is to ensure that there is no arbitrariness, irrationality or mala fides

in the application of procedures and policies evolved in service matters. However, it is a fact that no scheme governing service matters can be fool-proof and as observed by the Hon'ble Supreme Court in V.T. Khanzode & Others Vs. Reserve Bank of India and Another (supra), some section or the other of employees is bound to feel aggrieved. To streamline procedures, guidelines are also issued from time to time, so that uniformity is observed in all cases and no room is left for discrimination. The role of the Selection Committees cannot be minimised as powers to make selections are vested in them. The Selection Committees are expected to follow the guidelines in the spirit they are made, so that no injustice is done to anyone. If as a result of the introduction of the so-called "Point System" which might have been followed by the Selection Committees, the more meritorious persons were selected, it cannot be said that any injustice or discrimination has been done to those who could not be selected, or because the system did not prove favourable to the comparatively less meritorious persons, it must be struck down. If the "Point System" has been assailed by persons of the category of applicants herein, it is graded as an improvement and a more scientific or rational method of assessing suitability by another category of persons. Any-how, since the system is above arbitrariness, irrationality, perversity and mala-fides, it cannot be set aside for the sake of re-opening of all cases considered by the Selection Committees for promotion/ deputation/training. As stated above, the new guidelines issued by the Railway Board in communication dated September 26, 1989 (Annexure R-1) have superseded the earlier communications dated 15.5.1987 and 6.3.1986 and to that extent the prayers of the applicants have been accepted by the respondents themselves.

20. Great stress was laid by the learned Senior Counsel for the petitioners in some cases that as per instruction No.2 of the format prescribed for recording confidential report categorisation as 'Outstanding, 'Very Good, 'Good','Average' or 'Below Average' is required to be only with reference to the assessment of the officer in the grade in which he is working and should have no relevance to promotion to the next higher grade etc., and that remarks regarding the suitability of an officer for accelerated or promotion in due course etc. are required to be recorded against item (1). He accordingly argued that the selection for promotion on the basis of the grading in the relevant five years alone as per the impunged instructions cannot be justified. We are not persuaded by this contention. The prescribed format for recording confidential report, a copy of which was made available by the learned counsel for the petitioners has four portions. The first portion contains the following columns;-

(1) Technical ability.

(2) How the officer has acquitted himself in the management of his technical work, office & staff.

(3) Aptitude displayed for any special type of work.

(4) His tact and ability to deal with labour.

(5) Brief comments on his relationship with his colleagues, officers, above and below him and those others, with whom he comes in contact and his social attainments.

(6) Any special comments on his traits of character, his general conduct and behaviour.

(7) Any special good work which would require mentioning.

(8) Any adverse remarks including penalties imposed or warnings/displeasures communicated.

(9) Physical disability, if any, for out-door work or posting to a particular area.

This portion is to be filled in by the Reporting Officer and is also meant for endorsement by other officers.

Portion 2 has the following four columns, which are to be filled in by Deputy Head of Department / Divisional Supdt.: -

(1) Fitness for further promotion to Senior Scale, or if a Senior Scale Officer and above, his fitness for Junior, Intermediate or Senior Administrative Grade.

(2) An assessment whether he can be classified as Outstanding, Very Good, Good, Average or Below Average.

(3) Integrity.

(4) General assessment.

Portion 3 is meant for assessment / remarks by Head of Department, and the last portion is for remarks/comments by General Manager. Instruction No.2, already referred to above, refers to column No.2 in portion 2 as mentioned above. It is seen that the column for fitness for further promotion is independent of the column for grading as Outstanding, Very Good, etc. Thus the instruction that the categorisation as Outstanding, Very Good, etc., has to be only with reference to the assessment of the officer in the grade in which he is working, can be said to be neither inconsistent with the scheme of the format or otherwise invalid./ In the very nature of/the things, assessment of the performance as Outstanding, Very Good, etc., has to be with reference to the performance in the grade / post for which the report is being made; it cannot be with reference to his performance in a post to which he is yet to be promoted / appointed. Further, this, in itself, does not prove that the assessment about fitness for further promotion has been given a go-by as alleged by the petitioners in the scheme under the two impugned orders of 6.3.1986 and 15.5.1987. If the integrity of the officer is certified and his performance is rated as Outstanding or Very Good, it is difficult to conceive of a situation where he is not considered fit for further promotion. Thus, when weightage is given in terms of the points to be awarded for the categorisation of Outstanding or Very Good, it cannot be said that the assessment for his fitness for further promotion

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has been ignored. It is well known that all promotions which are required to be made on the basis of selection and not seniority alone, it is the Annual Confidential Reports for the prescribed period which are always taken into account for further promotion. This is exactly what has been done also in the scheme incorporated in the impugned orders. The arguments advanced on behalf of the petitioners that the Reporting or the Reviewing Officer, while recording their remarks in the ACRs before the impugned orders were issued, were not aware that their categorisation would be used with a view to making selection for further promotion, cannot be accepted for the simple reason that the categorisation like 'Outstanding', 'Very Good' etc. has always been the basis for promotion based on selection on merits and the Reporting / Reviewing Officers, while recording their remarks even before the instructions were issued, were expected to make their assessment on an objective basis. The scheme under the impugned instructions already provides that the question of integrity will be judged separately as it may not fully get reflected in the 'point' calculations. Similarly, it is provided that the DPC may, in its discretion, consider a person suitable or unsuitable for promotion in departure from the pointwise yardstick. Thus, it cannot be said that the discretion of the D.P.C. has been curbed or curtailed in the matter of enabling it to make their recommendations on an objective and a comparative meritorious basis. It also needs to be pointed out that the petitioners have failed to place before us the yardstick, which, according to them, was in existence before the 'point' system was introduced under the impugned orders. We specifically asked for this information from the learned counsel for the petitioners, but relevant orders on the subject could not be produced by them. In this view of the matter, it ~~is~~ was not possible for us to compare exactly as to how the new system

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has otherwise affected the eligible officers. It is not the case of the petitioners that they were not considered, and that too on the basis which was uniformly applicable. In the light of the above discussion, we have no hesitation in saying that the plea of the petitioners that the scheme was either arbitrary or discriminatory has not been substantiated. The respondents' case is that earlier the Railway Board used to work out and issue guidelines on their own in this matter, but after the issue of the Office Memorandum dated 10.3.1989 by the Department of Personnel and Training on the subject of 'Procedure to be observed by Departmental Promotion Committees', the Railway Board also decided to fall in line with the general instructions on the subject and that that was a reason for superseding the impugned instructions and not because the same were illegal or defective in any sense.

21. In the light of the foregoing discussion, all these applications must fail in so far as they relate directly or indirectly to the prayer for quashing the impugned orders dated 6.3.1986 and 15.5.1987. Similarly, the O.A.s in which the relief prayed for is for grant of the higher pay scale on the posts held by the petitioners and quashing the orders giving such higher scales of pay to others who have been selected for the upgraded posts, must also fail for the reason that it is not the designation of the post which alone is sufficient for grant of the higher scale of pay. If a post has been classified into two grades, one higher and the other lower, and persons selected for the posts in the higher grade in accordance with the prescribed procedure have been selected and promoted to the post in the higher grade, their promotions and appointments to such higher grade cannot be quashed if the applicants have also been considered for the same but did not find a place in the merit list of such a

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selection. In view of this, we do not consider it necessary to go into the details of each of these O.A.s. The reliefs claimed in all these cases flow from the challenge to the 'point' system under the impugned orders and if this challenge cannot be sustained, as in our view it cannot be upheld for the reasons already given above, the reliefs prayed for in some of the O.A.s also cannot be granted. We thus see no merit in these O.A.s and the same are hereby dismissed with no order as to costs. A copy of this judgment be placed in each of the 11 O.A.s disposed of by this judgment.

(P.C. JAIN)
MEMBER(A)

(T.S. OBEROI)
MEMBER (J)