

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

DATE OF DECISION: 21-4-92.

(1) Regn. No. O.A. 245/88.

TRC Scientific Officers' (Class-I)
Association & Others ... Applicants.

Vs.

Union of India & Others ... Respondents.

(2) Regn. No. O.A. 281/88.

TRC Scientific Officers' (Class-I)
Association & Others ... Applicants.

Vs.

Union of India & Others ... Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J)
 Hon'ble Mr. P.C. Jain, Member (A).

Shri G.D. Gupta, counsel for the applicants.
Shri P.P. Khurana, counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

O.A. 245/88 and O.A. 281/88 are applications filed under Section 19 of the Administrative Tribunals Act, 1985 and can be conveniently disposed of by a common judgment because the applicants in both the O.A.s belong to the same cadre and the prayers made in both the O.A.s are sequel to common facts and grievances. In O.A. 245/88, the applicants who are employed as Deputy Director / Assistant Director Group-A (Senior Time Scale) in the Telecommunications Research Centre (TRC, for short), under the Ministry of Communications, have impugned Order No.1-82/78-TE, dated September 21, 1978 issued by the Ministry of Communications on the subject of "Re-classification Group-A posts from GCS Group-A to TES Grp-A, in TRC" by which out of 18 posts of Deputy Director in TRC borne on General Central Service Group-A (GCR, for short), 14 posts have been classified to Telegraph Engineering Service (now known as Indian

Telecommunications Service (Group-A). In O.A. 281/88, the applicants, who are working as Deputy Director, Gazetted Group-A (Junior Administrative Grade) in TRC, have challenged the validity of the act of the respondents in not filling any of the existing 8 vacancies/posts of Additional Directors created for Telecommunications Research Centre from the posts of Deputy Director in the TRC and on the other hand filling those posts from amongst officers belonging to the Indian Telecommunications Service Group-A (ITS, for short) by way of transfer/transfer on deputation from various field units of the Department of Telecommunication or by way of promotion of such officers of ITS.

2. The facts of the cases may be briefly given as under: -

O.A. 245/88. In this O.A., applicant No.1 is the TRC Scientific Officers (Class-I) Association through its Secretary and applicants 2 to 12 are employed as Deputy Director / Assistant Director Gazetted Group-A (Senior Time Scale) in TRC. The TRC was constituted in 1956. The applicants herein were all initially appointed as Scientific and Technical Officer Grade-I in TRC on various dates from 1967 to 1975, having been selected through UPSC. The Recruitment Rules for this post, which were called as "Scientific and Technical Officers Grade I (Telecommunication Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1962" are at Annexure-B and the applicants were appointed to the said post by direct recruitment through UPSC, which was one of the methods prescribed for recruitment. The Recruitment Rules for the higher posts of Assistant Director and Deputy Director, however, came to be promulgated under Notification dated 20.3.1978 (Annexure-D), called as the "Scientific and Technical Officers Grade I, Assistant Director and Deputy Directors (Telecommunication Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1977" and were notified in supersession of the Scientific and

Technical Officers Grade I (Telecommunication Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1962. The 1977 Rules are in respect of the posts of Deputy Director, General Central Service Group A, Assistant Director, General Central Service Group A, and Scientific and Technical Officer Grade I, General Central Service Group A. The 1977 Rules for the post of Assistant Director provided the method of recruitment "By promotion or transfer on deputation (including short term contract) or direct recruitment the exact method of recruitment to be decided each time in consultation with the Union Public Service Commission. In case of recruitment by promotion, "Non-deputationist Scientific Technical Officers Grade I with 5 years regular service in the grade" was provided in those Rules and the applicants herein were given promotion to the post of Assistant Director on completion of five years of service in the post of Scientific and Technical Officer Grade I. In the case of Deputy Director, the 1977 Rules provide the method of recruitment "By promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment." In the case of promotion, these Rules provide for "Non-deputationist Assistant Directors with 5 years' regular service in the grade failing which with 10 years' total combined regular service in the grades of Assistant Director and Scientific Technical Officer Grade I". It is here that the applicants are showing their grievance inasmuch as the first method of recruitment to the post of Deputy Director being 'By Promotion', they should have been promoted to the post of Deputy Director on completion of 10 years of service as stated above. On the other hand, Ministry of Communications have issued order dated September 21, 1978 (Annexure 'E') which has been impugned in the instant O.A. by which a number of posts of Deputy Directors, Assistant Directors and S&TOs Grade-I in TRC, which were borne in GCS Group-A, have been

reclassified into TES Group 'A' with effect from 21.9.1978. So far as the applicants are concerned, they are aggrieved by this order as 14 posts out of the then existing 18 posts of Deputy Directors were shown to have been reclassified into TES Group 'A' - now known as ITS Group 'A', although the 1977 Rules classified the posts of Deputy Director into GCS Group-A. According to the applicants, such an amendment could not be made by an executive order like the one of 21st September, 1978 and that a mere executive order could not supersede the statutory Rules. Later on, pursuant to a number of representations made by the applicants, an official meeting was held in May, 1979 wherein it was decided that 6 posts out of 14 posts which were re-classified from GCS to ITS be put back to GCS cadre. Two TRC officers were promoted as a result of the DPC meeting held in July/August, 1979. In 1983, four new posts of Deputy Directors in TRC were created and the same were filled up by the TRC officers who had actually been approved by the DPC held in July/August, 1979. Subsequently, one more post was put back into GCS Group-A in 1985 and 3 more posts in 1986 and the same were also filled up by officers of the TRC Cadre. The applicants had also filed a writ petition in the Hon'ble Supreme Court (Civil Writ No.3269-3290 of 1982) claiming two reliefs - one related to the denial of promotional opportunities to them on account of irregular implementation of the Recruitment Rules of 1977-78 on account of the order of 21st September, 1978 and the other related to violation of Articles 14 and 16 of the Constitution by not granting them special pay which was given to ITS officers who were working in the same post in TRC as the applicants. The said writ petition was disposed of by the Hon'ble Supreme Court vide judgment at Annexure 'I'. So far as the relief relating to grant of special pay was concerned, the Hon'ble Supreme Court directed the Union of India to pay the Special Pay to the direct recruits with effect from the date on which the transferred officers

commenced to draw the Special Pay upto date and to continue to pay it in future also as long as the transferred officers continue to get it. So far as the question relating to the denial of promotional opportunities to the applicants according to the Recruitment Rules was concerned, the Hon'ble Supreme Court observed that having regard to the inadequacy of the material produced by both the sides before them and to the fact that the officers who were likely to be affected by the decision were not impleaded as parties by name, it was left open to be agitated before the Central Administrative Tribunal. The applicants have further annexed copies of two more letters dated April 28, 1987 and July 30, 1987, alleged to have been sent to the Secretary, Deptt. of Telecommunications, New Delhi (Annexure 'J'). Having received no reply, the applicants filed this O.A. on 15.1.1988 claiming for the following reliefs: -

- a) to allow this application of the applicants with costs.
- b) to issue appropriate order or orders, direction or directions:
 - i) quashing of the impugned order dated 21st September, 1978 Ministry of Communications, (P&T Board) and subsequent classifications, re-classifications of the post of Deputy Director TRC as belonging to TES/ITS Group-A and appointments to the said posts from amongst officers of ITS without first trying the method of promotion from amongst the TRC officers.
 - ii) declaring the applicants/TRC officers entitled for consideration for the promotion as per the Rules of 1977 for the post of Deputy Director from the dates they were filled up by the method of transfer on deputation by ITS officers in pursuance of the order dated 21st September, 1978 and subsequent orders with all consequential benefits.
 - iii) directing the respondents Nos.1 and 2 to promote the Applicants Nos.2 to 5 with

retrospective effect from the date of their being placed on the approved panel for promotion in July, 1979.

- iv) directing the respondents to consider and promote the remaining applicants/TRC officers with retrospective effect from the dates they became eligible for promotion under the Rules of 1977 subject to the availability of the posts of Deputy Director in TRC on year to year basis from 1978 onwards to-date.
- v) directing the respondents Nos.1 and 2 to transfer 4 of the IIS officers working as Deputy Director, TRC (Respondents 3 to 6 herein) to their parent cadre on equivalent posts and filling these vacancies by promotion of the Applicants Nos.9 to 12 with retrospective effect from the dates the said applicants became eligible for promotion under the Rules of 1977.
- c) to issue appropriate order or orders, direction or directions as deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice."

O.A. 281/1988. In this O.A., applicant No.1 is the TRC Scientific Officers (Class-I) Association through its Secretary and applicants 2 to 9 are employed as Deputy Director, Gazetted Group-A (Junior Administrative Grade) in TRC. The applicants herein were also appointed initially as Scientific and Technical Officer Grade-I directly on various dates from 1965 to 1968 through UPSC. The facts of this O.A. are the same as are elaborated above under O.A. 245/88. The applicants herein have by now rendered service in the post of Deputy Director by getting promotions firstly to the post of Assistant Director and then to the post of Deputy Director for many years. The next higher post is that of Addl. Director in the Senior Administrative Grade. According to the applicants, the respondents have been filling up the posts of Addl. Director from amongst officers belonging to IIS, working within or outside TRC without framing any Recruitment Rules for the post and by this act of the respondents, the TRC officers have been deprived of their legitimate right of promotion to the post

of Addl. Director in TRC. Their grievance is that although they belong specifically to the cadre of TRC and have been holding the post of Deputy Director, TRC, they are not even being considered for appointment / promotion to the post of Addl. Director. According to them, taking the eligibility period for promotion from Junior Administrative Grade to Senior Administrative Grade as three years of regular service as prescribed in Rules of ITS, the applicants also ought to have been considered for promotion after they had rendered three years of regular service as Deputy Director in TRC. Copies of representations made by the applicants are annexed as Annexure-J. A copy of the reply received by the applicants in June, 1982 (Annexure-K) states that the posts of Additional Directors and Director, TRC are borne in Senior Administrative Grade of I.T.S. Group 'A', and that the existing Recruitment Rules for Senior Administrative Grade which were framed under the proviso to Article 309 of the Constitution are thus applicable for these posts also and it is not necessary to frame separate rules for these posts. They have also annexed a copy of the judgment of the Hon'ble Supreme Court (supra) at Annexure 'L' and copies of their further representations at Annexure 'M'. Their last representation is dated 1st December, 1987 addressed to Hon'ble Minister of State (Communications), New Delhi. Having received no reply, they filed this O.A. in January, 1988, praying for the following reliefs: -

(a) to allow this application of the applicants with costs.

(b) to issue appropriate order or orders, direction or directions:

i) declaring that the post of Addl. Director is to be filled by promotion from amongst the Deputy Directors of TRC, the same exclusively belonging to the TRC with 3 years service as Deputy Director, failing which by transfer / transfer on deputation from other sources.

- ii) directing the respondents Nos. 1 and 2 to consider the eligible applicants for promotion to the post of Addl. Director in TRC with retrospective effect from the dates the posts of Addl. Director, TRC were created or fell vacant after October, 1980 onwards and promote them if found suitable for such promotion with all the consequential service benefits.
- iii) directing the respondents Nos. 1 and 2 to frame Rules for filling the post of Addl. Director, TRC within a period of three months in line with the provisions of the Rules of 1977 for the feeder post of Deputy Director, TRC.
- iv) ITS classification of the post of Addl. Director in TRC should be struck down.
- v) quashing all the promotions/appointments to the post of Addl. Director in TRC already made out of ITS Cadre and transferring such ITS officers (Respondents Nos. 3 to 9 herein) to their parent cadre on equivalent posts.
- vi) to issue such other and further order or orders, direction or directions as deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case to meet the ends of justice."

3. We have gone through the record of the two cases and heard the learned counsel for the parties. The official respondents have contested these O.As by filing their replies to which rejoinders have also been filed by the applicants.

4. In their reply filed in O.A. 245/88, the main plea taken by the respondents is that the 1977 Rules promulgated vide G.S.R. dated 20th March, 1978 were for the GCS Group 'A' to which the applicants belong and they are not connected with all the posts of Assistant Director and Deputy Director in TRC. The department is empowered to reclassify posts from GCS to ITS or to any other relevant cadre in a particular service, and that the aforesaid 14 posts did not exclusively belong to the GCS Group 'A' to which the applicants belong. They have denied that the classification of posts cannot be done by an executive order or the order dated 21.9.78 is in violation of the statutory recruitment rules of 1977. The

officers of ITS are being posted in TRC either on promotion or on normal transfer within ITS in the Department. They have, therefore, stated that there is no justification in declaring the applicants entitled to be considered for promotion to the posts of Deputy Director from the date the posts were filled in by the alleged methods of transfer on deputation by ITS officers.

5. In their reply filed in O.A. 281/88, the main plea taken by the respondents is that the post of Additional Director is classified in Indian Telecommunications Service Group 'A' and thus can be filled from amongst ITS officers only by promotion or by transfer. Recruitment Rules already exist for appointment to the posts of Additional Director which are in SAG of ITS. They have also denied that the work of TRC is not within the purview of the ITS. According to the respondents, the recruitment rules for the post of Addl. Director and Deputy Director are separate and different and the method of recruitment for both cannot be the same. They have also denied that the criterion for appointment in SAG i.e., on the post of Addl. Director is three years service in the grade of Deputy Director. According to them, it is 17 years service in Group 'A' which should include four years service in JAG or 8 years service in the grade of Deputy Director. The ITS is a different service from GCS to which the applicants belong and, according to the respondents, they cannot be considered for all posts belonging to ITS, and the promotional avenues cannot be compared. It is further stated by the respondents that the ITS officers are recruited through a rigorous competitive examination conducted by UPSC both written and oral, whereas the GCS officers come through interview alone. Eligible ITS officers are considered for the posts of Addl. Director and Director TRC on the basis of existing Recruitment Rules.

6. The main thrust of the applicants in O.A. 245/88 is that they are the officers who were initially appointed to the post of Scientific and Technical Officer Grade-I in the TRC, which post was classified as General Central Service Class I, in the 1962 Statutory Rules. When these Rules were superseded by the new Statutory Rules of 1977 by notification dated 20.3.1978, this post continued to be classified as General Central Service Group 'A'. The next higher post of Assistant Director in the new Statutory Rules of 1977 was also classified as General Central Service Group 'A' and similarly in the same Statutory Rules, the post of Deputy Director was also classified as General Central Service Group 'A'. The method of recruitment to the post of Assistant Director is ~~fixxx~~ by promotion or transfer on deputation (including short term contract) or direct recruitment, the exact method or recruitment to be decided each time in consultation with the Union Public Service Commission. The source of promotion is available only to Non-deputationist Scientific Technical Officers Grade I with 5 years regular service in the grade. In the event of persons coming on deputation/contract, the period of their deputation/contract shall ordinarily not exceed three years. In the case of Deputy Director also, the method of recruitment is by promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment. Here again, promotion is available only to non-deputationist Assistant Directors with 5 years' regular service in the grade failing which with 10 years' total combined regular service in the grades of Assistant Director and Scientific Technical Officer Grade I. The period of deputation/contract shall ordinarily not exceed 4 years. These provisions go to show that the posts of Assistant Director as also the Deputy Director were provided as promotional avenues for the lower posts of Scientific and Technical Officer Grade I. The title of the 1977 Rules

"Scientific and Technical Officers Grade I, Assistant Director and Deputy Directors (Telecommunication Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1977" is also an indicator that these rules were exclusive to the aforesaid three categories of officers of TRC who have chosen that Centre for permanent stay in the matter of promotion as the deputatists could not stay there indefinitely. Here it is necessary to refer to some of the other facts. The 1977 Rules, already referred to above, do not mention the number of sanctioned posts which could be considered as forming part in each of the three grades of the Service. Normally, the number of sanctioned posts (permanent or temporary) as on the date of notification of the Rules framed under proviso to Article 309 of the Constitution of India are given in the schedule to the Rules themselves. As stated above, this is not so in the case before us. In this view of the matter, it becomes difficult to assess the promotional opportunities available to the members of the Service in the three grades included in the Service under the 1977 Rules. It may also be mentioned that the provision for direct recruitment to the posts of Scientific and Technical Officers Grade I, which existed in the 1962 Rules was removed while these Rules were repealed and replaced by the 1977 Rules. Even in the 1962 Rules, direct recruitment was only one of the methods for filling up the posts of Scientific and Technical Officers Grade I. It has, thus, to be assumed that apart from the 21 officers who had been ^{directly} ~~primarily~~ recruited to the posts of Scientific and Technical Officer Grade I in four batches in 1965, 1967, 1970 and 1973 (as per judgment of the Supreme Court in writ petitions No.3269-3290 of 1982), there would have been other appointees to this Grade in the TRC since its inception. This is also borne out by the impugned order dated September 21, 1978 (Annexure-E), vide which 140 posts of S&TO Grade I were reclassified from

GCS Group-A to TES Group-A and 27 posts of S&TO Grade I were left to carry their original classification as belonging to GCS Group-A. Similarly, 78 posts of Assistant Director were reclassified from GCS Group-A to TES Group-A and 27 posts were left to the original classification. In the case of Deputy Directors also, only 12 posts were reclassified and four were left with the original classification, apart from the two temporary posts of Deputy Director, which were initially created in TES Group-A. That is how the figure of 18 posts of Deputy Director in the TRC stands. If that was the position when the impugned order dated 21.9.1978 was issued, there is material on the record to show that additional posts had been created since then. This is also confirmed by what we have already stated in para 2 above of this judgment. The whole question, therefore, is to be seen not only with reference to the 21 directly recruited officers, but the entire strength of the posts in the three grades of the Service under the 1977 Rules has to be kept in account. These facts also lead us primarily to the conclusion that from the very inception of the TRC, the posts in these three grades have been filled up not only by the directly recruited S&TO Grade-I but also from other sources and that too from a period even prior to the issue of the impugned order dated 21.9.1978. Filling of the posts of S&TO Grade-I after the 1977 Rules came into effect vide notification issued in March, 1978 when direct recruitment to the posts of S&TO Grade-I was abolished, raises the question as to how the incumbents of the posts which were filled by either transfer on deputation or on short term contract could become members of this Service. However, the issue ^{as raised} adjudicated before us in this O.A. is about the posts of Deputy Director and accordingly we confine our adjudication in this O.A. to that post and the impugned order dated 21.9.1978 only to the extent it relates to the posts of Deputy Director in the

TRC. It is in this context we are inclined to ask ourselves as to whether it would be expedient and proper to reserve all the posts of Deputy Directors, which number in any case at present exceeds 21, to be filled up only by directly recruited S&TOs, whose number, as admitted in the Writ Petition is only 21.

7. Be that as it may. The main question before us is whether the posts of Deputy Director which were classified as GCS Group-A and under the 1977 Rules were primarily to be filled by non-deputatists in the TRC could be reclassified into TES Group-A by means of an executive order issued on 21.9.1978. While we do not have any hesitation in saying that the Union of India have the powers to classify and reclassify the posts and include them into a Service from another, yet having included the posts of Deputy Director in GCS Group-A under the 1977 Rules notified under the proviso to Article 309 of the Constitution, these posts cannot be excluded from the Service unless the statutory rules are amended in accordance with law. This having not been done, the impugned order dated 21.9.1978, in so far as it relates to the 12 posts of Deputy Directors, which were initially included in the GCS Group-A and were later on included in the TES Group-A, cannot be sustained in law. It may again be mentioned here that two temporary posts of Deputy Directors, which were initially created in TES Group-A do not involve any reclassification and to that extent no fault could be found with the impugned order dated 21.9.1978, as these two posts were not reclassified by any executive order. Similarly, no fault can be found with the impugned order in respect of the four posts of Deputy Directors whose classification was not changed and further with the posts which were put back to GCS after initial reclassification to ITS as also the new posts of Deputy Director in TRC which were created and filled up by appointment of the TRC officers thereto in 1979 and thereafter in 1985 and 1986. The official respondents have

failed to show any provision of law or any authority on the basis of which, they could effect amendment in the 1977 Rules which have the statutory force, by only issuing an executive order. At their request, we gave them time to substantiate their contention in the written reply that reclassification could be done by means of an executive order, but they failed to do so.

8. In the case of O.A. 281/88, the respondents took a plea that doors for the officers belonging to GCS are closed for their promotion to the post of Addl. Director / Director as the recruitment rules for these posts have made provision only for officers of ITS. If it is so, how could the posts of Assistant Director and Deputy Director classified as GCS be converted into TES, now known as ITS. The respondents have to stick to one stand. To our mind, the statutory provisions must be adhered to, and the posts earmarked for one Service must not be taken away by a simple executive order. In other words, if the circumstances justify for a change in any content of the statutory provisions, this must be effected through a statutory amendment.

9. So far as the posts of Additional Directors in the TRC are concerned, a list of these posts is available at Annexure-F. Sanctions of the President to the creation of these posts show that these posts have been created in the Senior Administrative Grade in TES/ITS Group-A except the one in GCS Group 'A' which is for the Satellite Telecommunication Equipments Projects in the TRC. All these posts have been encadred in ITS Group 'A' being of Senior Administrative Grade. Although the applicants have been making a number of representations for framing separate Recruitment Rules for the posts of Additional Director and Director in TRC on the lines of the "Scientific and Technical Officers Grade I, Assistant Director and Deputy Directors (Telecommunication Research Centre of the Posts and

Telegraphs Department) Recruitment Rules, 1977, referred to above they were informed vide letter dated 25-6-1982 (Annexure-K) that the existing Recruitment Rules for Senior Administrative Grade, which were framed under the proviso to Article 309 of the Constitution, are applicable for these posts also and it is not necessary to frame separate rules for these posts. An amendment to the TES (Class I) Rules, 1965 issued on 6.1.1975 is at Annexure-L. In these Rules, it is mentioned that "Appointment to the Senior Administrative Grade level-II in the Service shall be made by selection on merit from amongst officers ordinarily with not less than three years approved continuous service in the Junior Administrative Grade on the recommendations of a duly constituted Departmental Promotion Committee", and appointments to the Senior Administrative Grade Level-I in the service shall be made by selection on merit from amongst officers ordinarily with not less than two years approved continuous service in the Senior Administrative Grade Level-II on the recommendations of a duly constituted Departmental Promotion Committee. Thus, admittedly, there have been no separate Recruitment Rules for the posts of Additional Director and Director in TRC and these posts being of the rank of Senior Administrative Grade are being filled by ITS officers only. The plea of the applicants in this behalf is that the contention of the respondents that the post of Addl. Director in TRC being in SAG, is covered by the ITS Rules is not correct, and that the work of the TRC is not within the purview of ITS. Recruitment Rules for the posts of S&TO Grade I, Assistant Director and Deputy Director in TRC have already been notified and, according to the applicants, Recruitment Rules for the higher posts of Additional Director and Director could also be framed separately for the TRC posts under the classification of General Central Service. On 7.3.91, the counsel for the departmental respondents

submitted before a Bench of this Tribunal that the respondents were prepared to fill up three posts of Additional Director which had been created recently, from amongst persons belonging to GCS Group 'A' and accordingly the Bench, in partial modification of the interim order dated 29.4.88 as per which 'Status quo as on today' was to be maintained, permitted the departmental respondents to fill up the three posts of Additional Director from persons belonging to GCS Group 'A' on purely ad-hoc basis, and that the appointments so made will be subject to the outcome of this application. In M.P. No. 1779/1991 in O.A. 281/1988 filed on behalf of Union of India, the respondents have clarified that "in so far as the GCS officers in the TEC (earlier TRC) are concerned, they are governed by the General Central Services Gr. A Rules. While the recruitment rules in the case of promotion to SAG (Additional Director of GCS Gr.A) are in the process of formation, three posts in SAG of GCS Gr.A have already been created. (Annexure-I). The respondents are in desperate need of manning these posts and other SAG posts for smooth functioning of TRC Organisation." In this M.P., the respondents prayed for allowing them to fill up the vacant SAG posts subject to the result of the Application. They also annexed a copy of the sanction issued vide communication dated 3rd December, 1990 in regard to upgradation of three posts of Jr. Admn. Grade in GCS Group 'A' to Sr. Admn. Grade in GCS Group 'A' in the TEC, upto 29.2.1992.

10. From the foregoing facts, it is evident that the respondents themselves have recognised the need for creating promotional avenues for officers of the rank of Deputy Director belonging to GCS Gr. 'A' in the Telecommunication Engineering Centre (earlier known as Telecommunication Research Centre) and they have already initiated the process of formation of the Recruitment

Rules for Additional Director in the classification of GCS Gr. A and have already upgraded three posts in GCS Group A to Sr. Administrative Grade in GCS Group 'A'.

11. In the conspectus of the facts and circumstances as given above, O.A. 245/88 is partly allowed to the extent that the impugned order No.1-82/78-TE, dated September 21, 1978 issued by the Ministry of Communications (P&T Board) in so far as it relates to the reclassification of 12 posts of Deputy Director in TRC from GCS Group-A to TES/ITS Group-A is hereby quashed and set aside. The effect of this is that the posts of Deputy Director so reclassified would need to be filled up in accordance with the 1977 Rules from the date these fell vacant on a regular basis, and accordingly a Review D.P.C. in accordance with the 1977 Rules shall be held as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this judgment, to consider the selection of eligible non-deputatist Assistant Directors and if any such eligible officer is found suitable for promotion to the post of Deputy Director against any of the aforesaid 12 posts from the date these became available for filling up on a regular basis, the officer / officers so selected shall be deemed to have been promoted to the post of Deputy Director from that date. They will also be entitled to arrears to the extent of difference of pay and allowances admissible thereon for the period from one year prior to the date of filing this O.A. (15.1.1988). However, for purposes of seniority in the cadre of Deputy Director, the persons selected and appointed as above will count their seniority from the deemed date of promotion subject to the provisions of 1977 Rules. We make it clear that promotion of persons belonging to TES / ITS Group-A who might have been selected and promoted to any of these 12 posts of Deputy Director prior to 31.5.1988 when an interim order was passed to the effect that any post of Deputy Director which may fall vacant

on the basis of the order of 21.9.1978 shall remain stayed, shall not be affected and, if necessary, official respondents shall create supernumerary posts to the extent and for the period / periods, it is necessary to accommodate the new promotees in pursuance of these directions.

12. O.A. 281/88 is disposed of in terms of the directions that the departmental respondents shall frame and finalise the Recruitment Rules for the post of Additional Director in TRC / TEC and from now onwards, such posts shall be filled up in accordance with those rules. Other reliefs prayed for in the O.A. are declined for the simple reason that the classification of posts being within the powers of Union of India and the posts already included in TES / IIS Group-A, and this power having been exercised by the Executive in filling up these posts from TES / IIS Group-A, these posts cannot be directed to be filled up from members of another service and that too with retrospective effect. As the rules stand, the applicants have no legal right to appointment to this post in accordance with the 1977 Rules, as this post is not covered by those rules. We also see no justification in quashing the rules under which the posts of Additional Director in TRC / TEC ^{were} filled in accordance with the judgment exercised by the Executive, which cannot be said either arbitrary or illegal. The posts of Additional Director in the TRC / TEC to which members of applicant No.1 have already been appointed pending finalisation of the new rules and who may be so appointed till the rules are framed and notified, will, however, not be affected by this direction. The relevant rules should be framed and notified as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy

of this judgment by the official respondents. ,

13. We leave the parties to bear their own costs in both these O.A.s. A copy of this order shall be placed on files of both these O.A.s.

24/52
(P.C. JAIN)
MEMBER(A)

24/52
(RAM PAL SINGH)
VICE CHAIRMAN(J)