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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1000 of 1987 (C.M.Writ Petition  
No.6166 of 1982)

Vishwanath Misra and 36 others ..... Petitioners

Vs.

Union of India and 3 others ..... Respondents

CONNECTED WITH

T.A.No.965 of 1987 (C.M.Writ Petition No.12113 of 1982)

Ishwar Deen and 18 others ..... Petitioners

Vs.

Union of India and 4 others ..... Respondents.

AND

T.A.No.1024 of 1986 (C.M.Writ Petition No.15372 of 1984)

Vishwanath Misra and 33 others ..... Petitioners

Vs.

Union of India and 4 others ..... Respondents.

Hon. D.S.Misra, AM  
Hon. G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

These transferred applications are Civil Misc.  
Writ Petitions under Art.226 of the Constitution of India  
and have been received from the High Court of Judicature  
at Allahabad u/s.29 of the Administrative Tribunals Act  
XIII of 1985. On the request of the parties, they were  
heard together and are proposed to be disposed of by this  
single order as common questions of law and facts are  
involved in these cases.

2. The relevant and undisputed facts of these cases in brief are that the petitioners were initially appointed as Trade Apprentices in different trades on the <sup>shop</sup> floor of the North Eastern Railway on different dates in 1958 and earlier and after training, they were posted as Skilled Artisans on its shop floor. Between 1959 and 1967, notifications were issued by the North Eastern Railway inviting applications from Skilled and Highly Skilled Artisans and Mistries of the shop floor for working in the Production Control Organization (for short PCO) inter alia on the following terms and conditions :-

(i) The preliminary selection will be made from amongst the applicants and those who are considered *prima facie* suitable will be attached to a Section in the PCO on the same pay and post for a period of 4 months during which their aptitude for the specified work will be adjudged.

(ii) At the end of 4 months, those considered suitable for the PCO may have the chance of promotion to the grade of Mistries - Rs.150-240.

(iii) The preliminary selection at this stage is being made with a view of making a panel of all staff within the workshop who may be suitable for this work so that they can be utilised in the Organization.

(iv) Staff who are transferred to the PCO will continue to be borne in the cadre of their respective shops and will be considered for

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promotion to post in the shop floor  
according to their position on the shop  
and not on the basis of their position  
in the PCO.

3. The petitioners along with other persons had applied for working in the PCO and on their being found fit and undergoing the requisite training, were posted as Mistri Grade I in the PCO in the pay scale of Rs.150-240 on different dates between 1959-1967. On 22.4.1963, the Railway Board issued a circular (copy annexure 3 to the first writ petition) laying down the procedure to be followed on all the Railways in respect of the work shop staff employed in PCO. The relevant principles to be followed in this connection were as follows :-

- (1) All posts in the PCO should be treated as ex-cadre posts.
- (2) Every work shop employee will be borne on the seniority list of the particular category of the shop floor and will have a lien against a post in the shop floor.
- (3) Suitable staff from shop floor cadres will be eligible for transfer to the PCO on the basis of a selection/seniority-cum-suitability either in their own grades or in the higher grade in accordance with the normal rules governing the promotion.
- (4) The selection to the post in the higher grades in the PCO would not in itself give

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an employee any right for consideration for the higher grade post on the shop floor, unless he is regularly selected for that grade on the shop floor. As and when an employee reverts to the shop floor, he will revert to his due position in the cadre on the shop floor.

(5) Staff already working in the PCO prior to the decision to treat posts in this Organization as ex-cadre posts fall under the following categories :-

(a) those transferred from shop floor to PCO and retained their lien on shop floor ;

(b) those transferred from shop floor and absorbed permanently in PCO and

(c) those recruited directly to PCO. For the purposes of promotion in future:-

(i) staff falling under category (a) above will be deemed to have been on temporary transfer to the PCO. Their original seniority will be taken into account in determining their position on the shop floor which the employee would have continued to occupy but for their transfer to the PCO.

(ii) Staff falling under category (b) above will be given option to accept the position on the shop floor which they would have continued to occupy but for their transfer to PCO. In case they do not exercise their option in favour of transfer to the shop cadre they will be considered for promotion along with others to higher

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grade post in the PCO.

(iii) Staff falling under category (c) will also be given an option for being absorbed in the shop cadre and will be treated in the same manner as staff falling under category (b).

(6) Staff deputed to PCO will be retained in that organization for 3 to 5 years depending upon the exigencies of the service.

4. In accordance with the deliberations in the Negotiating Machinery Meetings of the Railway, the Railway Board issued a circular on 11.7.1972 (copy R.A.-6 in the first writ petition) directing the conversion of all temporary posts in PCO into permanent posts and for simultaneous steps for confirmation of eligible staff against temporary posts converted into permanent posts.

5. Accepting the recommendations of the Labour Tribunal Award commonly known as Mian Bhoi Award, the Railway Board had issued another circular on 6.4.1973 (copy annexure 2 to the first writ petition) containing the following directions :-

(i) Posts of Mistries in the scale of Rs.150-240 ~~as they~~ supervise work of highly skilled workman, should be upgraded to the scale of Rs.175-240 w.e.f.

1.8.1970.

(ii) Mistries in grade of Rs.150-240 should not be placed in independent charge of Sections. But depending on worth of charge, only Chargeman 'C' in scale of Rs.205-280 should be placed in independent charge of Sections.

6. The Railway Board further directed that a review should be undertaken of all posts of Mistries in scale of Rs.150-240 who are at present holding independent charge of Sections. In Sections, where the work load on the basis of the worth of the charge requires supervision at the level of Chargeman 'C', of Chargeman 'C' post/in the grade of Rs.205-250 be created in lieu of post of Mistries grade I of Rs.150-240. In case of those incumbents who have been holding independent charge of the Sections from 1.8.1970 or earlier and fitted against posts upgraded as Chargeman 'C' as a result of the review, their pay be fixed proforma under rule 2018(B) (F.R.22-C) w.e.f. 1.8.1970 and arrears paid from 1.8.1972.

7. In accordance with the directions and correspondence with the Railway Ministry, the General Manager NorthEastern Railway vide his letter dated 11.2.1974 (copy annexure 4 to the first writ petition) accorded sanction to the upgradation of the then existing permanent and temporary posts of Mistries grade I in scale of Rs.150-240 to that of 175-240 and replacing the then existing permanent post of Mistries grade I by equal number of Chargeman 'C' in the workshop as a result of the review carried on under the orders dated 6.4.1973 of the Railway Board. The General Manager issued another letter dated 13.2.1974 (copy annexure 4-A to the first writ petition) to the Deputy Chief Mechanical Engineers of his Railway forwarding therewith the names of all the incumbents of the post of Mistries replaced by Chargeman 'C'. The names of the petitioners in the first case appeared in this list.

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8. The General Manager North Eastern Railway by his Memorandum dated 20.3.1974 (copy annexure 5 in the first case) later on superseded his previous Memorandum dated 11.2.1974 aforesaid changing the sanction accorded therein adversely affecting the rights of the petitioners regarding arrears of pay.

9. On 10.7.1976, the Dy.CME North Eastern Railway issued an order (copy annexure 6 in the second case) confirming the petitioners of the second writ petition w.e.f. 11.7.1972 stating that they were being confirmed in the permanent cadre posts of Mistri grade I in PCO and this confirmation would not give them any advantage of seniority, promotion or confirmation etc., in their regular cadre on the shop floor and they will continue to retain their lien on the shop floor.

10. The Railway Board by issuing this circular dated 22.1.1979 (copy annexure 6 in the first case) clarified that the circular letter dated 6.4.1973, aforesaid, was equally applicable to Mistries in the PCO. The Deputy CME North Eastern Railway vide his letter dated 29.4.1979 (copy annexure 7 in the first case) permitted to draw the arrears of pay to the incumbents of former Mistry Grade I posts on their posting as Chargeman 'C' w.e.f. 1.8.1972 on their upgradation from 1.8.1970. This letter was, however, amended by him by his subsequent letter dated 2.8.1979 (copy annexure 10 in the second case) by stating that though the effect of upgradation will be given from 1.8.1970, the arrears of difference of pay, if any, will be paid from 1.1.1979 as per Railway Board's letter dated

9.10.1979. The petitioners were, thus, not allowed to draw the arrears of their pay on their upgradation as Chargeman 'C' from 1.8.1970 for the period preceding 1.1.1979.

11. On 16.4.1982, the Additional CME North Eastern Railway Gorakhpur issued a letter (copy annexure 12 in the first case) to the Chief Time Keeper, Gorakhpur workshops stating that in terms of the office order dated 29.4.1979 the incumbents of 65 permanent posts of Mistri grade I in the PCO were allowed to draw the pay of Chargeman 'B' till they were replaced by the selected hands and they were never promoted as Chargeman 'B' even on adhoc posts. The Chief Time Keeper was further asked to state under what authority the designation of such PCO Mistries was allowed to be changed as Chargeman 'B'. This created doubts in the minds of the concerned staff and 37 former Mistri grade I working as Chargeman 'C' now Chargeman 'B' in the Gorakhpur PCO filed the first writ petition -T.A. No.1000 of 1987 on 20.5.1982 for quashing the directions contained in the aforesaid letter dated 16.4.1982 of the Additional CME and for a further direction in the nature of mandamus to the respondents to pay arrears of salary to the petitioners w.e.f.1.8.1972 and to treat the petitioners on the post of Chargeman 'B' on regular basis and further to enforce the Award given by Mian Bhoi Tribunal. The High Court admitted the writ petition and on the same day (20.5.82) stayed the operation of the order dated 16.4.1982. On 1.10.1982, the High Court further passed an interim order restraining the respondents from making any change in their record relating to the petitioners and the stay orders are still in force.

12. On 4.10.1982, the Deputy CME Izatnagar issued letter dated 4.10.1982 (copy annexure 12 in the second case) giving notice to some staff of Izatnagar shops for appearing in the selection for the post of Chargeman 'B' which created an impression in the minds of the Chargeman 'C' now Chargeman 'B' working in the PCO Izatnagar that they were likely to be reverted to the shop floors on the selection of new incumbents.

13. The second writ petition (T.A.No.965 of 1987) was filed by 19 Chargeman grade 'B' of Izatnagar, Bareilly PCO of North Eastern Railway on 20.10.1982 for quashing the selection by letter dated 4.10.1982 issued by the Deputy CME Izatnagar and for a further direction in the nature of mandamus to restrain the respondents from interfering in the working of the petitioners and not to hold the selection on the post of petitioners and enforce the Mian Bhoi Tribunal Award in the true spirit. In this case as well, the interim orders were issued by the High Court staying the reversion of the petitioners and directing the respondents to permit the petitioners to appear in the selection, if they are eligible and to consider the petitioners for promotion.

14. In accordance with the circular letter dated 1.5.1984 of the Railway Board made applicable to the posts of Technical Supervisors in PCO by subsequent letter dated 31.8.1984 (copy annexure 4 in the third case) regarding review and restructuring of group 'C' cadre posts in the Railways the General Manager, N.E.Railway issued memorandums dated 19.7.1984 and 8.8.1984 (copy annexures 5 and 6 in the third case) sanctioning the percentage of upgradation of Technical Supervisors. The Railway Board, thereafter issued another circular on 13.9.1984 (copy annexure CA-1 in the third case) regarding streamlining of the staff pattern of the PCOs in the Railways inter alia to the

following effects :-

- (i) Posts in PCO will continue to be ex-cadre posts.
- (ii) Staff from shop floor shall be transferred to PCO only in the same grade and not on promotion.
- (iii) Tenure of posting in the PCO shall be of 5 years.
- (iv) No staff working in the PCO will be promoted to higher grades within the PCO unless the staff concerned becomes due for regular promotion in his own cadre within the prescribed tenure in the PCO.
- (v) Tenure prescribed will be enforced in respect of the existing PCO staff also subject to the following conditions :-
  - (a) staff who have already completed 5 years term may be phased out within one year's time,
  - (b) if a staff has secured promotion in the PCO on or before 31.12.1983 and his transfer may involve reversion to a lower grade, he may be allowed to continue in PCO till he becomes due for regular promotion in his turn in the shop floor.

15. The third writ petition (T.A.No.1024 of 1986) was thereafter filed on 31.10.1984 by 34 Chargeman 'B' for a direction to the respondents to upgrade and promote the petitioners from Chargeman grade 'B' to Chargeman grade 'A' and to give the petitioners seniority over and above the Chargeman in the trade group who were junior to them considering the length of service and for computing the seniority of the petitioners w.e.f. 1.8.1970 on the upgraded post of Chargeman Grade 'B'.

16. These writ petitions have been contested on behalf of the respondents. In the first writ petition counter affidavit was filed on behalf of the respondents by the Divisional Personnel Officer, Workshop Gorakhpur and it was stated therein that the PCO is an ex-cadre organization in the Mechanical Workshop of the N.E.Railway and ex-cadre posts therein are filled by transfer of staff from shop floor in tenure capacity for a limited period of 5 years. The staff working in various grades on the shop floor who had volunteered for the post of Mistri against ex-cadre post in the PCO, were after due screening given short term know how training of the organization and all persons posted in PCO were specifically told that they would hold their lien, seniority etc., in the respective cadres of shop floor and their future growth will be considered in their regular cadre. In accordance with the circular dated 11.7.1972 of the Railway Board, as clarified by letter dated 21.9.1973 of the Railway Board, the staff who were in the scale below the scale of Charge-man 'C' and had volunteered and posted in the PCO were ordered to be confirmed but it was directed that they shall continue to maintain their lien on the shop floor in their respective trades. The petitioners have no right to continue in the PCO for any indefinite period on the basis of their confirmation <sup>in conformity</sup> with the said circular letters of the Railway Board. The petitioners are working against ex-cadre tenure post of Mistri in PCO and are being paid the emoluments of Chargeman 'B' till their replacement by selected Chargeman since the posts have been upgraded.

It was further stated that according to the recommendations of Mian Bhoi Award 54 posts of Mistries were upgraded to that of Chargeman in two phases and arrears of emoluments were paid to the working incumbents subject to their replacement by suitable men. The upgradation of the post of Mistri ipso facto did not upgrade the incumbents of the post. The posts of Chargeman 'C' now Chargeman 'B' are selection posts and the posts cannot be filled on a regular basis by non-selection persons. The order dated 20.3.1974 superseding the earlier office memorandum dated 12.2.1974 regarding upgradation of post did not contravene the recommendations of the Mian Bhoi Tribunal and the order of payment of arrears of pay w.e.f. 1.1.1979 was issued with the sanction of the President. The post held by Rajeshwar Prasad Singh who was paid the arrears from 1.8.1972 was upgraded to that of Chargeman 'B' on 11.12.1974 with retrospective effect from 1.8.1972, while the post held by other petitioners were upgraded on 12.3.1979 and as such there is no discrimination against the petitioners in the matter of payment of arrears of pay. The incumbents of the post of Mistri in the PCO are not regular Mistries in their normal cadre and they have no right to be retained as such in the PCO and after a careful consideration of the merits of their case, the Board had decided to give the arrears of pay to them w.e.f. 1.1.1979. The Railway Board is fully competent to make such rule and take the decision.

17. It has been next stated in the counter affidavit that even for appointment against ex-cadre post, the normal rule of selection is to be observed and only

those who are eligible for selection can be considered for posting as Chargeman 'B'. A large number of persons senior to the petitioners are working as Mistries and ~~Unskilled~~ Grade I on the shop floor and are eligible for consideration for the selection to the post of Chargeman 'B' and are waiting in the queue for their pro-motion. The petitioners have no right to remain in the PCO beyond the prescribed tenure of 5 years fixed by the Railway Board. The claim of the petitioners for continuation in the PCO as Chargeman 'B' is misconcieved and is not maintainable. The incumbents of the post in PCO have their seniority maintained in their cadre on the shop floor and they have every chance of promotion to higher grade posts on their turn there. The petitioners while working against upgraded ex-cadre post, of Chargeman 'B' were never promoted as such and they can be designated as Chargeman 'B' only when they are promoted by a specific order by the competent authority. The question of their reduction in rank in violation of Art.311 (2) of the Constitution, therefore, does not arise in their case.

18. In the second writ petition, the counter affidavit was filed on behalf of the respondents by the Production Engineer Izatnagar and it was stated that the posting of the petitioners on the ex-cadre post, in the PCO was with the condition that it will not give any advantage of promotion or confirmation etc., on the shop floor and they will continue to maintain their lien on the shop floor. All the existing incumbents of Mistri grade I

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of the PCO Izatnagar have been allotted the grade of Chargeman 'C' now Chargeman 'B' in terms of the Railway Board's letter dated 22.1.1979 in a purely local and tentative arrangement subject to replacement by senior and suitable & most selected/staff. The proforma fixation of the petitioners in the PCO w.e.f. 1.8.1970 did not confer any right on them to claim arrears of pay from that date or from 1.8.1972 and the petitioners have been rightly paid the arrears w.e.f. 1.1.1979 and the allegation of discrimination against them is not correct. As the petitioners have been working in the PCO on ex-cadre posts and have been allotted the grade of Chargeman 'C' now Chargeman 'B' in local and tentative arrangement in compliance with Board's letter dated 22.1.1979 and the post of Chargeman 'B' is a selection post, no staff can claim his retention on the said post without being selected by Selection Board and the petitioners are liable to be replaced by the selected staff in case they are not selected on the post, held by them in accordance with rules.

19. Regarding the letter dated 4.10.1982, it has been stated that this letter was issued by the Dy.CME in compliance with the Railway Board's letters dated 16.7.1981 and 15.7.1982 and the petitioners will also be entitled to appear in the selection as per their combined seniority in the particular trade in which they are borne and the action taken by the Dy.CME is perfectly in accordance with law.

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20. In the third writ petition, the counter affidavit was filed by the Asstt. Personnel Officer, Workshop Gorakhpur and it was stated therein that the charge of the post in PCO was assumed by the petitioners on tenure basis from the shop floor on the condition that they will continue to maintain their original position and seniority in the shop floor and posting in the PCO would not confer on them any additional benefit for promotion to the shop floor post. The petitioners were allowed to draw ~~the pay~~ <sup>the pay & increments &</sup> as Chargeman 'C' (now Chargeman 'B') on proforma basis from 1.8.1970 till their replacement by the selected staff purely in a local and adhoc arrangement and they were paid the arrears from 1.1.1979. While the action was being taken to hold the selection for the posts held by the petitioners they obtained stay orders from the High Court which are still in force. The petitioners have not been regularly selected as Chargeman 'B', the question of maintaining their seniority as Chargeman 'B', therefore, does not arise. There is no question of availability of any post to the petitioners for promotion in the PCO and they are not entitled to such promotion under the rules. Under the letter dated 13.9.1984 of the Railway Board, no staff working in the PCO can be promoted to the higher grade within the PCO itself unless the concerned staff becomes due for regular promotion in his own cadre within the prescribed tenure period of 5 years in the PCO. The petitioners working on ex-cadre posts on tenure basis are not due for regular promotion even for the posts of Chargeman 'B' and as such, there is no question of further promotion as Chargeman 'A'.

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21. The petitioners have filed rejoinder affidavits in all these cases reiterating the grounds taken by them in their petitions for the relief claimed and have further stated that after confirmation of the petitioners as Chargeman 'C' in PCO they became the members of the regular staff of PCO and their lien in the shop floor came to an end and they are entitled to all the benefits and privileges including the chance for further promotion in PCO.

22. The basic question arising for determination in all these petitions is whether the petitioners hold substantive posts as Chargeman 'B' in their respective PCOs and cannot be ~~reverted~~ to their parent shop floors. The petitioners have based their claim for permanent retention in PCO on the grounds that they were selected for PCO after trade test and they were appointed in PCO by transfer without fixing any tenure. It is not in dispute that the petitioners were not deputed in PCO on any special pay or on deputation for any specific period. The petitioners were formerly holding the posts of Mistri Grade I and when these posts were upgraded they were treated as Chargeman 'C' in PCO <sup>accordance with</sup> ~~on formation~~ ~~at~~ the recommendations of Mian Bhoi Award and the petitioners are continuously working in PCO since 1960 or so and they now cannot be sent back to the shop floor and due to their long stay in PCO their fitmen as Chargeman 'C' (now Chargeman 'B') therein should be treated as regular. Placing reliance on the decisions of the Hon'ble Supreme Court in Narendra Chadha v. Union of India (AIR 1986 S.C. 638) it has been contended on their behalf that they have acquired a right to remain in PCO due to their continuous long stay there.

23. It has not been disputed on behalf of the petitioners that all the posts in PCO at Gorakhpur and Izatnagar are ex-cadre posts, their contention, however, ~~is~~ <sup>is this</sup> that ~~this~~ is irrelevant for the purpose of their case and placing reliance on Gopal Ballab Roy v. State of Orissa (1985 (3) SLR 363) it has been contended that

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on confirmation against the ex-cadre posts, lien over cadre posts terminates.

24. The petitioners have further contended that their alleged continued lien on shop floor is of no consequence as such lien does not create any obligation nor any right in favour of the Railway Administration to send the petitioners back to shop floor and in law such lien should be deemed to have become non-existent. They have tried to support this contention by the decisions of the Ahmedabad and Allahabad Benches of the Tribunal in Maujiram D Choudhary v. Union of India (1987 (3) SLJ 8) and Janardan Singh v. Union of India (T.A. No. 1166 of 1986) decided on 15.4.88 respectively, in support of their contention that the petitioners after their confirmation in PCO cannot be treated to hold their substantive post in the shop floor. The petitioners have further placed reliance on State of U.P. v. Ram Naresh Lal (AIR 1970 S.C. 1263), Dr. Binay Kumar Das v. State of Orissa (1974 (1) SLR 320) and Pranab Bandhu Pradhan v. Collector (1977 (2) SLR 520).

25. We have very carefully examined this contention of the petitioners but find ourselves ~~unable~~ ~~difficult~~ to agree with the same. In our opinion the decision of the Allahabad Bench in the case of Janardan Singh v. Union of India (supra - a transferred appeal), does not support the contention of the petitioners but demolishes their case all together. One of us was a party to that decision. It was also a case of some employees of PCO, Gorakhpur originally belonging to shop floor cadre. They were claiming their permanent absorption in PCO and the consequent benefits accruing to them of such absorption. The defence taken in that case was almost the same and the contention of the Union of India was that the petitioners were temporarily holding the ex-cadre posts in PCO and were liable to be sent back to their parent cadre in the shop floor. Even in that case reliance was placed on their behalf on the case of Narendra Chadha v. Union of India (supra), Maujiram

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D. Choudhary v. Union of India (supra) and some other decisions of different Courts. It was held by the Allahabad Bench in that case that no parallel could be drawn between the case of Narendra Chadha (supra) and of the petitioners (Janardan Singh & others) and the principles laid down in the case of Narendra Chadha could not be applied to the petitioners. The petitioners were not duly selected to the posts held by them in PCO and their posting orders were very clear and showed that they had their lien in the shop floor. It was further held that the ratio of the case of Maujiram D. Choudhary was applicable to the cases where the employees transferred to PCO from the shop floor were permanently absorbed there. The Bench had up-held the view of the trial court that the Railway Board's directions and circulars have statutory force and since the posts in PCO were ex-cadre posts, the incumbants of these posts will have to retain their lien on the shops from which they were drawn and will have no claims whatsoever to be retained in PCO. In our opinion the present case is fully covered by the decision of this Bench in the aforesaid case of Janardan Singh & others so far as the question of permanent absorption of the petitioners in PCO is concerned.

26. This Bench further had the occasion to examine the similar question in T.A. No. 329 of 1987 (Civil Misc. Writ Petition No. 4082 of 1979), Hridaya Narain Upadhyay & others v. Union of India & others, decided on 17.10.1988 and it was held that on the up-gradation of the posts in PCO normal process required for filling up such post was to be followed and those, who were not qualified to hold the up-graded post or did not appear for selection, had no right to continue on the said post. The officiation of Mistri Grade I of the Workshop, Izatnagar as Chargeman 'C' in PCO was held to be on ad hoc basis. In that case we had placed our reliance on the case of Janardan Singh (supra) and on the decision of the Rajasthan High Court in 15 connected Special Appeals, Union of

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India v. Shiv Ratan Soni & others. The petitioners of that case had challenged the decision of the Rajasthan High Court before the Hon'ble Supreme Court by filing Special Leave Petition in which the status quo order was made by the Hon'ble Supreme Court, as contended on behalf of the petitioners, and their contention is that this said SLP is still pending and decision of the Rajasthan High Court is not yet final. Without entering into this controversy, it is evident that the decisions of this Bench of the Tribunal in the case of Janardan Singh & others v. Union of India and Hridaya Narain Upadhyay v. Union of India (supra) have become final and they are not under challenge before the Hon'ble Supreme Court in any proceedings and as such we are bound to follow the ratio of the said cases in these petitions.

27. The petitioners have also placed before us a copy of the judgment dated 2.3.1981 of Munsif VII, Gorakhpur in Suit no. 322 of 1977, Jawahar Lal Srivastava & 20 others v. Union of India, in which the Union of India was restrained from interfering with the working of the plaintiffs as Chargeman Grade 'B' in the North-Eastern Railway, Gorakhpur and preventing it from holding any selection for the posts held by them. This judgment on the own showing of the petitioners is not yet final and Second Appeal no. 3080 of 1982 filed by the Union of India is still pending in the High Court of Judicature at Allahabad and as such it neither has the force of res judicata nor can otherwise be used as a precedent. The other cases cited on behalf of the petitioners, as mentioned above, are ~~based~~ <sup>based</sup> on the interpretation of rules of different departments and have no application to the cases before us.

28. Coming to the facts of these cases in brief, we may point out that while the petitioners were working in their respective shop floors the applications were invited from the skilled and highly skilled Artisans and Mistries for working in PCO on the terms and conditions laid down in para 2 of this judgment above. The

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petitioners had applied for working in PCO accepting the said terms and conditions. According to condition (iv) their transfer to PCO did not affect their position or status in their respective cadres, in which it was specifically mentioned that the staff who were transferred to PCO will continue to be borne in the cadre of their respective shops and will be considered for promotion to post in the shop floor according to their position on the shop and not on the basis of their position in PCO. The petitioners thus clearly knew at that time that by their working in PCO they will not cease to be the staff of the shop floor. Further, in accordance with the circular letter dated 22.4.1963 of the Railway Board, as quoted in para 3 of the judgment above, it was specifically mentioned that all posts in PCO should be treated as ex-cadre posts and every workshop employee will be borne on the seniority list of the particular category on the shop floor and will have a lien against a post in the shop floor. It was also specifically mentioned therein that the selection to the post in the higher grades in PCO would not in itself give an employee any right for consideration for the higher grade post on the shop floor, unless he is regularly selected for that grade on the shop floor. It was also very clearly stated in this circular letter that the staff deputed to PCO will be retained there for 3-5 years. In order to suit its requirement when the Railway Administration decided to convert all the temporary posts in PCO into ~~which~~ permanent posts vide its circular letter dated 11.7.1972 (copy Annexure 'RA-6' in the first writ petition) and the petitioners were confirmed in PCO as a consequence thereof, it was clearly stated in the orders of their confirmation that they will continue to retain their lien on the shop floor. All this was done within the knowledge of the petitioners and they never raised any objection to the said conditions before filing the petitions. The posting of the petitioners in PCO thus having been made on the terms and conditions stated above, they cannot be allowed to say that after their confirmation in PCO they lost their lien in the

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petitioners had applied for working in PCO accepting the said terms and conditions. According to condition (iv) their transfer to PCO did not affect their position or status in their respective cadres, in which it was specifically mentioned that the staff who were transferred to PCO will continue to be borne in the cadre of their respective shops and will be considered for promotion to post in the shop floor according to their position on the shop and not on the basis of their position in PCO. The petitioners thus clearly knew at that time that by their working in PCO they will not cease to be the staff of the shop floor. Further, in accordance with the circular letter dated 22.4.1963 of the Railway Board, as quoted in para 3 of the judgment above, it was specifically mentioned that all posts in PCO should be treated as ex-cadre posts and every workshop employee will be borne on the seniority list of the particular category on the shop floor and will have a lien against a post in the shop floor. It was also specifically mentioned therein that the selection to the post in the higher grades in PCO would not in itself give an employee any right for consideration for the higher grade post on the shop floor, unless he is regularly selected for that grade on the shop floor. It was also very clearly stated in this circular letter that the staff deputed to PCO will be retained there for 3-5 years. In order to suit its requirement when the Railway Administration decided to convert all the temporary posts in PCO into ~~temporary~~ permanent posts vide its circular letter dated 11.7.1972 (copy Annexure 'RA-6' in the first writ petition) and the petitioners were confirmed in PCO as a consequence thereof, it was clearly stated in the orders of their confirmation that they will continue to retain their lien on the shop floor. All this was done within the knowledge of the petitioners <sup>long ago</sup> and they never raised any objection to the said conditions before filing the ~~the~~ petitions. The posting of the petitioners in PCO thus having been made on the terms and conditions stated above, they cannot be allowed to say that after their confirmation in PCO they lost their lien in the

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shop floor and have <sup>now</sup> no concern with the same. Regarding their contention that they were trade-tested before appointment in PCO and their appointments as Chargeman 'C' cannot be said to be on ad hoc basis, we are of the view that in order to attract the best workers from the workshops in PCO the Railway Administration had decided to hold a preliminary test and thereafter another test for ascertaining their aptitude and even after such test the appointments of the selected candidates were made on the specific condition that they will continue to be borne in the cadre of their respective shops and will have their lien there. The trade test undergone by the petitioners thus cannot be said to be a trade test for their permanent absorption in PCO and none of the grounds put forward on their behalf for their permanent absorption in PCO thus appears to be valid and their contentions have ~~thus~~ no force and cannot be accepted.

29. The next point arising for consideration in the first two petitions is whether the petitioners are entitled to arrears of pay of the post of Chargeman 'C' with effect from 1.8.1972. The arrears were granted to them with effect from 1.1.1979 and as such dispute between the parties is about the arrears accruing from 1.8.1972 to 31.12.1978. The petitioners have based their claim for arrears on the circular letter dated 6.4.1973 (copy Annexure 'A-2' in the first case). By this circular letter the Railway Board had decided to up-grade the post of Mistries in the workshops with effect from 1.8.1970 with a proviso that the arrears should be paid from 1.8.1972 only. This circular letter was implemented so far as the staff of the workshop was concerned, but on account of the ~~doubts~~ as to whether it was applicable to the Mistries or other staff working in PCO or not, it was not implemented in PCO and on 22.1.1979 the Railway Board issued another circular letter (copy Annexure '6' in the first case) clarifying that the circular letter dated 6.4.1973 was applicable to the posts of Mistries in the

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Production Control Organisation as well and the orders contained therein are equally applicable to the Mistries of PCO. On the issuance of this circular letter the petitioner, *prima facie*, became entitled to the benefit of upgradation and arrears of pay from 1.8.72. The Railway Board, however, vide its subsequent circular letter dated 9.10.1979 (copy Annexure '8' in the first case) directed that PCO Mistries may be given proforma fixation from 1.8.1970 but payment of arrears would be made only with effect from 1.1.1979. It was further stated that this was done after further consideration of the matter and had the sanction of the President. The Railway Board thereafter issued another circular letter of 18.8.1981 (copy Annexure '8-A' in the first case) stating that the matter of fixation of pay was raised in JCM meetings and the Railway Board reiterated that the decision conveyed in their letter dated 9.10.1979 would apply in all cases arising of upgradation. It, however, made an exception that the cases decided otherwise prior to the issue of Railway Board's letter dated 9.10.1979 need not be reopened. The undisputed case of the parties in these cases is that the petitioner no.35, Rajeshwar Prasad Singh, in the first case, was granted the arrears of pay with effect from 1.8.1972 but the others were denied this right.

30. The contention of the petitioners is that as their cases were decided by the circular letter dated 31.1.1979, aforesaid, and only the payment was left to be made the subsequent circular letter dated 9.10.1979 does not apply to them and their cases cannot be reopened in view of the clarification made in the subsequent above mentioned circular letter dated 18.8.1981. In the alternative their contention is that they had worked as Chargeman 'C' and they are entitled to the arrears of pay of the said post with effect from 1.8.1972 and there is no reason to change the date from which the arrears were to be paid. The petitioners have further challenged this action of the respondents on the ground that their choosing

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to give the arrears with effect from 1.1.1979 is arbitrary and ~~does is~~ not founded on any rational basis and is against all the norms of fairness, justice and reasonableness. The date 1.8.1972 was nearest to justness, fairness and reasonableness and the arrears were allowed from that date even to others. This action of the respondents is, therefore, against the principles of fairness and equality upheld by the Hon'ble Supreme Court in the cases of D.R. Nim v. Union of India (AIR 1967 S.C. 1301) and D.S. Nakara & others v. Union of India (AIR 1983 S.C. 130). In the case of D.R. Nim (supra) while considering the principle of reckoning the service of promotee Indian Police Service Officers the Hon'ble Supreme Court had held that if the date taken into consideration for reckoning the service is artificial and arbitrary and has nothing to do with the application of the relevant rule, the same is invalid. In the case of D.S. Nakara (supra) the question, which ~~demanded~~ <sup>engaged</sup> the attention of the Hon'ble Supreme Court was whether the Government could deprive the pensioners, who had retired before 1972, of the benefit of liberalized pension scheme and it was held that the date of retirement is irrelevant and all pensioners whenever they retired would be covered by the liberalized pension scheme because the scheme is a scheme for payment of pension to a pensioner governed by the 1972 Rules.

31. Placing reliance on the decision of the Hon'ble Supreme Court in T.R. Kapoor v. State of Haryana (AIR 1987 S.C. 415) it was further contended on behalf of the petitioners that under the circular letters dated 6.4.1973 and ~~2/~~ 31.1.1979 the petitioners acquired a right to get the arrears of pay of the post held by them with effect from 1.8.1972 and this right could not be taken away or altered or modified to their disadvantage by the subsequent letter dated 9.10.1979. They have maintained that the date from which the arrears were to be paid to the petitioners could not be changed by the respondents arbitrarily under any law or rule.

32. The respondents have admitted in their counter affidavit that the arrears were paid to petitioner no.35, Rajeshwar Prasad

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Singh, with effect from 1.8.1972 as the post held by him was upgraded on 11.12.1974 with retrospective effect from 1.8.1972 while the other 65 posts of Chargeman were upgraded on 12.3.1979 and as such there was no discrimination against the remaining petitioners on this point and ~~hence~~<sup>as</sup> their posts were upgraded with effect from 12.3.1979, they were rightly denied the arrears of pay from 1.8.1972. The stand taken by the petitioners in this connection in their rejoinder affidavit is that all the petitioners including Rajeshwar Prasad Singh, petitioner no.35, were given the benefit of upgradation of post with effect from 1.8.1970 in pursuance of the circular letter dated 6.4.1973 of the Railway Board and the contention of the respondents to the contrary is incorrect. The respondents have not produced any material to distinguish the case~~s~~ of petitioner no.35, Rajeshwar Prasad Singh, from the cases of other petitioners and the defence taken in this connection, therefore, cannot be accepted. Further, at the cost~~s~~ of ~~the petitioners~~, we will like to point out that under the circular letter dated 6.4.1973 the posts of Mistries in the workshops were upgraded and were replaced by Chargeman 'C' with effect from 1.8.1970 and by issuing the circular letter dated 22.1.1979 the Railway Board had clarified that the upgradation made under circular letter dated 6.4.1973 is applicable to the post~~s~~ of Mistries in PCO also. After issuance of this circular letter all the petitioners became entitled to the upgradation and the consequent benefits thereof as in the case of Mistries in the workshops, and the decision taken by the Railway Board giving the benefit of the upgradation to the petitioners only with effect from 1.1.1979 is irrational, discriminatory and erroneous. We are, therefore, inclined to accept the case of the petitioners so far as the question of arrears is concerned and all the petitioners are entitled to arrears of pay with effect from 1.8.1972 in terms of the circular letters dated 6.4.1973 and 22.1.1979 of the Railway Board.

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32. The other point arising for determination in this case is whether the petitioners cannot be compelled to go to their parent shop floor and are entitled to remain in PCO and are entitled to the benefit of seniority and promotion from the respective dates they are working therein as Chargeman 'C' (now Chargeman 'B'). As a matter of fact to a large extent this point is covered under our discussion on point no.1. Any how, as certain more points were raised in support of this contention we will like to deal with the same here. It had been held above that despite the confirmation of the petitioners in PCO they continued to have their lien in their parent shop floors and they have not acquired a right to hold the post of Chargeman 'B' in PCO substantively despite their long stay on such post there. It has not been disputed before us that the posts of Chargeman 'B' are selection posts. The petitioners, therefore, cannot claim a right to hold such post without undergoing the process of selection. In the third case the Hon'ble High Court had duly safeguarded the interest of the petitioners by directing the respondents to permit the petitioners in the selection, if they are otherwise eligible for the same. All the posts in PCO still being ex-cadre posts, the petitioners cannot claim a right to hold any post there in their substantive capacity under the law. Apart from the above considerations the circular letter dated 13.9.1984 issued by the Railway Board will govern the rights of the petitioners to hold the post of Chargeman 'B' in PCO in future.

33. We have quoted above in para 14 of this judgment the salient features of the said circular letter providing for the streamlining of the staffing pattern of PCO on the Indian Railways. The petitioners contend that they are entitled to the benefits of continuing in PCO and getting further promotions in the light of this circular letter. Their further contention is that this circular letter has been modified by the Calcutta Bench of the Tribunal in T.A. No. 1143 of 1986, Subhash Chandra Kshetrapal & others v. Union

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of India, decided on 8.12.1986 and the decision of the Calcutta Bench has been upheld by the Hon'ble Supreme Court in SLP reported in Judgments Today 1988 (3) S.C. 76. We have given our due consideration to this contention of the petitioners and are of the view that their this contention too does not entitle them to the benefits claimed in PCO. This circular letter clearly provides that the posts in PCO will continue to be ex-cadre posts, so that experienced shop floor staff may be drawn from time to time as per requirement on tenure basis. The tenure of posting in PCO will be five years, which should be strictly adhere to and no staff working in PCO will be permitted to the higher grade with PCO unless the staff becomes due for regular promotion in his own cadre within the prescribed tenure period of five years in PCO. It was further specifically stated in this letter that the tenure period of five years will apply even to the existing staff of PCO. The letter further makes some provision for the staff absorbed permanently in PCO or recruited directly as on 31.12.1983. It is not the case of the petitioners that they were recruited in PCO directly and we have held above that they have not been permanently absorbed in PCO. They have, therefore, no right to continue in PCO as they had already completed the tenure period of five years long ago. The petitioners are, therefore, not entitled to the benefits of further promotion and other benefits merely on the basis of their working in PCO for any period.

34. Regarding the amendment or modification of any terms and conditions of this circular letter by the Calcutta Bench of the Tribunal, we are of the view that this contention is totally misplaced and unfounded. A copy of the judgment of the Calcutta Bench has been placed before us on behalf of the petitioners. It appears from it that 75 employees of PCO, Kharagpur of the South-Eastern Railway had challenged the memorandum dated 4/5.10.1979 issued by the Additional Chief Mechanical Engineer declaring all posts

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in PCO as ex-cadre posts by filing a writ petition in the Calcutta High Court after the issuance of the circular letter dated 13.9.1984, aforesaid. The petitioners in that case, with leave of the High Court, challenged even the validity of the said circular. The writ petition was transferred to the Calcutta Bench of the Tribunal on its establishment and it had upheld the validity of the memo dated 4/5.10.1979 and the circular letter dated 13.9.1984 both and the writ petition was dismissed. The Bench had, however, made certain observations regarding the circular letter dated 13.9.1984 on which the petitioners are placing their reliance. For the sake of better appreciation we will like to reproduce below the relevant observations made by the Calcutta Bench in this connection :

"The net effect of the impugned memorandum of 1979 and the Railway Board circular of 1963 and 1984 is that the P.C.O. at Kharagpur will have only ex-cadre posts to be filled by drafting employees from the shop-floors. In all these orders provision has been made for exercise of option by P.C.O. employees who want to continue in the P.C.O. The latest circular of the Railway Board dated 13.9.84 however departs from the earlier orders in one important aspect. Though provision has been made for employees for option for continuing in the P.C.O. no scope has been left for promotion of those who would not opt to continue in the P.C.O. and as such they will face permanent stagnation in the P.C.O. This in our opinion is not fair. Some avenues for promotions should be left for those who opt to continue in the P.C.O. Such an avenue was there in the first circular of the Railway Board issued in this connection on 22.4.1963. It was provided in paragraph 7 of the said circular that if employees permanently absorbed in the P.C.O. or directly recruited to the P.C.O. did not exercise option in favour of transfer to the shop cadre, they would be considered for promotion alongwith others in higher grade posts in the P.C.O. only. Similar provision should be made for those who opt to continue in the P.C.O. at Kharagpur after the issue of the circular dated 13.9.1984. The applicants in this application should be given an opportunity to

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exercise their option in this regard and be provided with avenue for promotion within the P.C.O. as directed above, subject to what we have stated above, the application fails and is dismissed without any order for costs."

35. The Hon'ble Supreme Court dismissed the Special Leave Petition against the said decision of the Calcutta Bench and on the point in question had made the following observations :

"9. Further the Tribunal modified certain portions of the impugned memorandum and directed that the provisions should be made for those who opt to continue in the PCO at Kharagpur after the issue of the Circular dated 13.9.1984 so that they may be given an opportunity to exercise their option in this regard and be provided with avenue for promotion within the PCO. Previously, in 1963 such option was provided and it was stipulated that employees permanently absorbed in the PCO or directly recruited in the PCO who did not exercise option in favour of transfer, they would be considered for promotion along with others to higher grade posts in the PCO only. In our opinion, it was done to help the petitioners."

36. The circular letters dated 22.4.1963 and 13.9.1984 considered by the Calcutta Bench of the Tribunal appear to be the same as have been placed on record in these cases. The position of the employees of the PCO Kharagpur <sup>however</sup> ~~was~~, totally different than the employees of the PCO of N.E.Railway Gorakhpur and Izatnagar. In the case of Kharagpur, the PCO was in existence from before the South Eastern Railway came into existence while the PCO at Gorakhpur and Izatnagar appear to have come in existence in 1962. The posts in the PCO were declared ex-cadre posts by the circular letter dated 22.4.1963 but due to the opposition from the Organised Labour, the same

could not be implemented in Kharagpur PCO as appears from the copy of the judgement of the Calcutta Bench and when the stress was laid in the circular dated 13.9.1984 for treating the posts in the PCOs ex-cadre, the Calcutta Bench had taken a compassionate view of the matter and had directed that a similar provision should be made for those who opt to continue in the PCO at Kharagpur after the issue of circular letter dated 13.9.1984 and the petitioners should be given an opportunity to exercise such option and be provided with avenue for promotion within the PCO. This direction was not given for the Production Controlled Organizations throughout the country and the special provision was suggested to be made only for Kharagpur PCO on account of the fact that for the first time the provision for treating the posts in Kharagpur PCO was going to be enforced. Keeping this aspect in view, even the Hon'ble Supreme Court had observed, as quoted above, that it was done to help the petitioners. We are, therefore, of the view that it was a special concession granted by the Calcutta Bench in the case of the employees of Kharagpur PCO and the general provisions of the circular letter dated 13.9.1984 of the Railway Board were not, in any way, amended or modified for its application to the cases of employees working in other Production Controlled Organizations. It is, therefore, not correct to say that the circular letter dated 13.9.1984 was modified by the Calcutta Bench of the Tribunal and the Hon'ble Supreme Court.

37. The concession granted by the Calcutta Bench to the employees of Kharagpur PCO cannot be granted to the petitioners before us for the simple reason that the posts in the PCO at Gorakhpur and Izatnagar are being treated as ex-cadre posts since 22.4.1963 and in case the option is given to the employees working in the said PCOs for continuing in the PCOs, the very scheme of the Railway Board regarding the treating of the PCO posts as ex-cadre posts will fail and even after the expiry of the tenure of 5 years fixed for PCO, no employee will like to revert back to his parent shop floor in case <sup>as</sup> his getting more pecuniary benefits or other advantages there. We are, therefore, of the view that after completing their tenure in the PCO the petitioners cannot be permitted to stay there for any period and they cannot be treated to be absorbed there on the posts held by them without any selection merely on the basis of their adhoc fitment and they are liable to be reverted in accordance with the scheme contained in circular letter dated 13.9.1984.

38. An affidavit has been filed by Baboo Ram, petitioner no.11 in the second case, in which it has been stated that during the pendency of these petitions, the petitioner nos.1 and 19 -Ishwar Deen and A.N.Kohli of the <sup>second</sup> ~~these~~ cases have died and the petitioner nos.10 and 17- Saligram and Kunti Nandan of this case and the petitioner nos.2 and 5-Banka Lal and H.P.Mal of the first case retired on reaching the age of superannuation and the retired petitioners and the widows of the deceased petitioners have been duly

paid the pension and other benefits in respect of the post of Chargeman 'B' held by ~~thim~~ by the railway administration. In this way, the second case has abated so far as the petitioner nos. 1 and 19 are concerned and the first two cases have become infructuous in respect of the reliefs claimed by the retired petitioners aforesaid.

39. An application was filed at a very late stage for the amendment of the third writ petition to claim certain additional reliefs which was ordered to remain on record for being considered at the time of final hearing. The said application has not yet been disposed of. One of the reliefs claimed by way of amendment by the petitioners is for granting arrears of pay of the post of Chargeman 'B' from 1.8.1972 instead of from 1.1.1979. In view of our discussion made above, we feel that the petitioners are entitled to get the arrears of pay for the upgraded post of Chargeman 'C' now Chargeman 'B' from 1.8.72 and the amendment to this extent can be allowed and is accordingly allowed. We further find that in their first writ petition the petitioners of Gorakhpur PCO claimed the arrears of salary from 1.8.72 and the relief claimed by way of amendment is, therefore, not a new relief and even otherwise we were inclined to grant this relief to the petitioners. The other benefits claimed by the petitioners by way of amendment cannot be granted to them as ~~has~~ already ~~been~~ been considered above and in our opinion, the petitioners have not been found entitled to any other relief. As such, there will be no use to allow any other part of the amendment.

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40. To sum up, the first and second writ petitions have become infructuous in respect of the claims put forward by petitioner nos. 2 and 5 of the first writ petition and petitioner nos. 10 and 17 of the second writ petition; the second writ petition has ~~altered &~~ <sup>become</sup> ~~infructuous~~ in respect of the claims made by the deceased petitioners nos. 1 and 19 and no relief can be granted to the retired petitioners or their legal representatives in these cases. The remaining petitioners are entitled to the arrears of their pay of the upgraded post of Chargeman 'C' now Chargeman 'B' in their respective PCOs w.e.f. 1.8.1972. The petitioners are not entitled to any other relief claimed in these writ petitions.

41. The writ petitions are disposed of accordingly without any orders as to costs.

*S. Bhavani*  
MEMBER (J)

Dated: 9<sup>th</sup> May, 1989  
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*S. Bhavani*  
MEMBER (A)