

Reserved

Central Administrative Tribunal  
Allahabad Bench Allahabad.

Original Application No.1171 of 1999.

Allahabad this the 8<sup>th</sup> day of April 2004.

Hon'ble Mr. Justice S.R. Singh Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Member-A.

1. G.K. Srivastava  
Son of Shri Babban Lal  
Resident of Bungalow No.53, DLW Colony,  
Varanasi presently working as Sr. System Analyst  
DLW, Varanasi.
2. B.C. Bose,  
Son of Shri S.C. Bose,  
Resident of Bungalow No.21, DLW, Colony,  
Varanasi presently working as Sr. System Analyst,  
D.L.W Varanasi.
3. R.S. Pal,  
Son of Shri R.D. Pal,  
Resident of Village Avaleshpur,  
presently working as Sr. System Analyst,  
D.L.W. Varanasi.
4. M.C. Mohnot,  
Son of Shri M.C. Mohnot  
Resident of 108-B, DLW Colony,  
Varanasi presently working as Sr. System  
Analyst, DLW, Varanasi.

.....Applicants.

(By Advocates: Sri Rajeshwar Yadav/  
Sri S.K. Om)

Versus.

1. Union of India  
through Secretary,  
Railway Board, Rail Bhawan,  
New Delhi.
2. General Manager,  
DLW, Varanasi.
3. Chief Personnel Officer,  
DLW, Varanasi.
4. Financial Advisor and Chief Accounts Officer,  
DLW, Varanasi.

.....Respondents.

(By Advocate : Sri A Sthalekar)

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O R D E R

(Hon'ble Mr. Justice S.R. Singh, V.C.)

The applicants G.K. Srivastava and B.C. Bose while officiating as Assistant Programmer in grade Rs.650-960 (RS) were promoted to officiate as Programmer-cum-Analyst in grade Rs.650-1200 (RS) (Group B) purely on ad hoc and temporary basis vide order dated 30.09.1986 allegedly on recommendation made by a Department Promotion Committee. Posting and promotion of Sri G.K. Srivastava was against the vacancy of Sri H.O. Baluja who was posted as Asstt. Operation Manager in the same grade against work charged post by the self same order dated 30.09.1986. The applicant R.S. Pal was given adhoc and temporary promotion vide order dated 08.11.1988 to the post of Programmer-cum-Analyst (Group 'B') in grade Rs.2000-3500 (RP) against the work charged post vacated by Sri G.K. Srivastava vide office order No.13 dated 26.04.1988 and fourth applicant Sri M.C. Mahnot Assistant Programmer, E.D.P Centre, was posted as Programmer (Class II) on adhoc basis vide office order No.310 dated 09.03.1990 against a resultant vacancy. Regular selection for promotion to the Gazetted post of Programmer Group 'B' in the scale Rs.2000-3500 (RP) through written test and viva-voce, as per instructions issued by the Board, was proposed vide letter dated 04.09.1992. Candidates numbering 17 (including the applicants) shown in list 'A' enclosed to the letter aforesaid were eligible for the test. Consequent upon the written examination and viva voce test held on 19.01.1993 and 25.02.2003. All the four applicants were empanelled provisionally for promotion to Class II Group 'B' service in the Electronic Data Processing Centre vide order dated 03.03.1993.

2. Earlier by order dated 09.03.1992, the applicant Sri G.K. Srivastava had been promoted and posted as Senior

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System Analyst on adhoc basis against the existing vacancy on payment of charge allowance of Rs.300/- per month in addition to his pay in Group 'B' or the pay which he was to receive under normal fixation rule, whichever being less. It may be observed here that charge allowance was paid because due to non-finalisation of selection for Group 'B' service in E.D.P. Centre he was not eligible for the regular grade/scale of Senior System Analyst. To complete the chain of facts it may be stated that by order dated 03.01.1994, Sri B.C. Bose, Programmer, Staff No.02058 was promoted in senior scale as Senior System Analyst on ad hoc basis against an existing vacancy while Sri R.S.Pal, Programmer, Staff No.2062 was promoted by order dated 29.05.1997 on ad hoc basis as Senior System Analyst (Programmer) in grade of Rs.3000-4500 (RPS) and the 4th applicant Sri M.C. Mahnot, Staff No.3529, Programmer in grade of Rs.2375-3750 (RP) was promoted to officiate as Senior System Analyst in grade of Rs.3000-4500 (RP) with immediate effect on adhoc basis against work charged post created vide order dated 26.06.1997.

3. It appears that by his letter dated 14.01.1995 the Dy. Chief Accounts Officer (gazetted) speaking for Financial Advisor and Chief Accounts Officer sought a clarification from the Secretary (Finance, CCA) Ministry of Railways, Railway Board, New Delhi on the question whether S/Sri R.D.P. Mishra and G.K. Srivastava (both promoted to senior scale before finalisation of selection for Group 'B' service in E.D.P. Centre) and Sri B.C. Bose (Promoted to senior scale after finalisation of selection for Group 'B' service in E.D.P. Centre) would be entitled to fixation of pay in senior scale w.e.f 03.03.1993 and 03.01.1994 or from the date they were promoted in senior scale on adhoc basis as requested by the administration

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in their letter dated 13.11.1991 or after completion of three years of service countable from 03.03.1993 i.e. the date of publication of panel for regular promotion to Group 'B' service. In response to said letter, the Joint Director Establishment Gazetted (P) Railway Board by his letter dated 17.07.1997 informed the General Manager D.L.W. Varanasi that S/Shri R.D.P. Mishra, G.K. Srivastava and B.C. Bose would be eligible for adhoc promotion to senior scale w.e.f. 03.03.1996 with charge allowance only. This letter which is the subject matter of impugnment is quoted below:-

"No. E(GP) 94/1/10

New Delhi dt.17.7.97.

The General Manager  
D.L.W.  
Varanasi.

Sub: Fixation of pay on promotion to Senior Scale in EDP Centre.

Ref: Your letter No.A/Adm/PF/BCB dt.14.1.95.

In terms of extant instructions Group 'B' officers who are promoted to Senior Scale on adhoc basis in the organised Services only are allowed Senior Scale pay if they have completed 3 years of regular service in the Grade. In Miscellaneous Department where there is no Junior Scale and promotion is direct from Group 'B' to Senior Scale, as per the Recruitment Rules, the eligibility for promotion is minimum 8 years regular service in Group 'B' ~~officers who have not put in 8 years regular service in Group 'B'~~. In the Miscellaneous Departments, such Group 'B' officers who have not put in 8 years regular service in Group 'B' but are allowed to officiate in Senior Scale on adhoc basis are eligible to draw charge allowance only. On completion of 8 years regular service in Group 'B' only they are allowed to draw pay in Grade Rs.3000-4500/- (Board's letter No. E(GP)81/1/91 dated 1.4.91 may be referred to). In all cases of promotion, in Organised Services or in Miscellaneous Departments, it is only the regular service in Group 'B' that is taken into account.

In view of the position indicated above, S/Shri R.D.P. Mishra, G.K. Srivastava and B.C. Bose are eligible for adhoc promotion to Senior Scale w.e.f. 03.03.1996 with charge allowance only. Further action may be taken accordingly.

(A.V.M. Kutty)  
Jt. Director Estt (Gaz.P)  
Railway Board".

4. The above clarification was based on the fact <sup>that</sup> as per instructions of the Railway Board, Group 'B' officers who

are promoted to Senior scale on ad hoc basis in the Organized Services only are allowed senior scale pay after they have completed 3 years of regular service in their grade. While in the Miscellaneous Departments where there is no junior scale and promotion is direct from Group 'B' to Senior Scale the eligibility for promotion is minimum 8 years regular service and such Group 'B' officers who have not put in 8 years regular service in Group 'B' but are allowed to officiate in Senior Scale they would draw charge allowance only and it is only on completion of 8 years regular service in Group 'B' that they are allowed to draw pay in the senior grade Rs.3000-4500. The order dated 17.07.1997 is impugned in this O.A. besides the order contained in letter dated 09.02.1999 whereby the representation preferred by the applicant Sri G.K. Srivastava Sri B.C. Bose and Sri R.S. Pal for treating their ad hoc service in Group 'B' as regular for the purpose of both grant of grade pay in Senior Scale and revision of their date of empanelment for regular promotion in Group 'B' from 03.03.1993 to the date of their ad hoc promotion, has been rejected.

5. Question that requires consideration is whether the ad hoc services rendered by the applicant in Group 'B' can be taken into reckoning for the purpose of determining the qualifying service necessary for promotion to Senior Scale?. In other words the question is whether promotions of the applicant in Group 'B' service could relate back to the dates of their adhoc promotion?. It has been submitted by Sri S.K. Om the learned counsel appearing for the applicants that ad hoc promotions of the applicants to Group 'B' service were made against substantive posts and being not in the nature of stop gap arrangement they are entitled to count their

ad hoc service in Group 'B' for counting qualifying service for promotion to the Senior scale. Sri A Sthalekar learned counsel appearing for the respondents, on the other hand, has submitted that ad hoc promotions were made de hors the rules and applicants' are not entitled to be regularised in Group 'B' service with effect from the date they were given ad hoc promotion nor they are entitled to count their ad hoc services for the purpose of computation of qualifying service necessary for promotion to Senior Scale.

6. We have given our anxious consideration to the submissions made across the bar. Indisputedly recruitment to Group 'B' services was earlier governed by the Indian Railway Computer Organisation (Gazetted Posts) Recruitment Rules, 1969 (in short 1969 Rules) which came to be superseded by the Indian Railways Electronic Data Processing Department (Gazetted posts) Recruitment Rules, 1989 (in short 1989 Rules). According to 1969 Rules, recruitment to the posts referred to therein was permissible only by transfer on deputation whereas according to 1989 Rules, recruitment to the post of Programmer/System Analyst/Asstt. Data Processing Officers/Asstt. Data Preparation Officers could be made by promotion failing which by transfer on deputation and failing which by direct recruitment in the manner indicated in column 12 of the Schedule. Applicants 1 to 3 were given ad hoc promotions while 1969 Rules were in force, which visualised for recruitment to Group 'B' services only through transfer on deputation. In para 3 (IV) of the counter affidavit, it has been stated that since it was not always possible to get qualified officers on transfer on deputation terms, the Railway Administration were only able to provide ad hoc promotion to suitable Group 'C' staff of the Department to man the Group 'B' posts. Admittedly, there <sup>was</sup> ~~was~~ no channel of promotion for Group 'C'

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staff of Electronic Data Processing Department in Railways to Group 'B' posts under the 1969 Rules. Promotions of the applicants under the 1989 Rules were made vide order dated 03.03.1993 which can not relate back to the dates of their ad hoc promotions except on pains of violating 1969 Rules. It is not disputed that in Miscellaneous Department to which the applicants belong, officers who had not put in 8 years regular service in Group 'B' and yet allowed to officiate in senior scale on ad hoc basis, were eligible to draw charge allowance only and it was only on completion of 8 years of regular service in Group 'B' that they were allowed to draw the prescribed pay of senior scale i.e. Rs.3000-4500 under the Railway Board's instructions then in force. It was on this premises that the Joint Director, Estt. (Gaz.P) Railway Board through his letter dated 17.07.1997 opined that Sri. G.K. Srivastava, Sri. B.C. Bose and Sri R.D.P. Mishra were eligible for ad hoc promotion to senior scale w.e.f. 03.03.1996 with charge allowance only.

7. The impugned order dated 17.07.1997 is based on Railway Board's letter No. E(GP) 81/1/91 dated 01.04.1991 which provides that it is only on completion of 8 years of regular service in Group 'B' that an officer of that service officiating in the senior scale becomes eligible to draw pay in the grade of Rs.3000-4500 i.e. senior scale and ad hoc promotions of Group 'B' officers to senior scale before completion of 8 years of regular service in Group 'B' only entitles them to payment of charge allowance only in addition to pay and allowances admissible to Group 'B' service. Railway Board's letter dated 01.04.1991 referred to in the impugned letter dated 17.07.1997 has not been questioned in the present O.A. Concededly

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under 1969 Rules in force at the time of ad hoc promotion of the applicants 1 to 3 to Group 'B' post did not provide for recruitment to Group 'B' service by promotion. Rather these Rules provided for ~~the~~ recruitment to Group 'B' posts by transfer on deputation. Ad hoc promotion of the applicants 1 to 3 was thus obviously de hors the Rules <sup>as was</sup> albeit/in consonance with the instructions issued by the Railway Administration providing for ad hoc promotion of suitable Group 'C' staff of the department to man temporarily the Group 'B' posts since, as stated in the counter affidavit, it was not always possible to get qualified officers on transfer on deputation terms but in view of specific stipulation contained in the Railway Board's letter dated 01.04.1991 referred to in the impugned letter/order, the applicants claim for pay in grade of Rs.3000-4500 before fulfilling the eligibility criterion cannot be countenanced. In the circumstances, therefore, no exception can be taken to the order contained in the impugned letter dated 17.07.97 nor can any exception be taken to the impugned order dated 9.2.99 whereby the representations preferred by S/Sri G.K. Srivastava, B.C. Bose and R.S. Pal have been rejected.

8. Boards letter dated 20.10.1975 reliance on which was placed by learned counsel appearing for the applicants, was issued with a view to avoiding hardship to Class II officers in the particular situation visualized therein and the said order was in fact issued on the subject of seniority and promotion and it has no relevance to fixation of pay of Group 'B' officers given ad hoc promotion to senior scale before their regular promotion/ empanelment in Group 'B' service. The applicants herein were given ad hoc promotion to Group 'B' service much after the Railway Board's order dated 20.10.75 and it is not that they were selected to Class II post as a result of selection on the basis of seniority list revised in terms

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of advance correction slip No.70. The decision of the Tribunal in O.A. No.619/91 relied on by learned counsel appearing for the applicant is of no avail in that the applicants therein had approached the Tribunal for assignment of their seniority and promotion in terms of Railway Board's letter dated 20.10.1995 whereas in the present case the question is what should be the effective date for fixation of pay of the applicants in the senior scale. Tribunals decision in O.A. No.619/91 (Jang Bahadur and Ors. Vs. Union of India and Others) decided on Sept, 3, 1992, in our opinion, is per incuriam so far as the issue involved in the present case is concerned. The related rules discussed above were not considered nor was the Railway Board's letter dated 20.06.1980 brought to the notice of the Tribunal. A decision sub-silentio is of no moment as held by the Supreme Court in State of U.P. Vs. Synthetic Chamical, (1991) 4 SCC 139.

9. Learned counsel appearing for the parties have cited certain decisions of the Supreme Court in support of their rival contention. Sri S.K. Om, learned counsel for the applicants has placed reliance on I.K. Sukhija & Ors. Vs. Union of India and Ors, 1997 SCC (L&S) 1512; Rudra Kumar Sain & Ors, Vs. Union of India & Ors, 2000 (3) E.S.C. 2095 (SC); Ti. Vijayan & Ors. Vs. Divisional Railway Manager & Ors, 2000 (2) ESC 1096 (SC); P Venugopalan Nair and Another Vs. U.O.I & Ors. (1991) 15 ATC 432; and R.K. Ganagopadhyay & Ors. Vs. Union of India & Ors. (1991) 15 ATC 434 in support of his contention that if ad hoc promotion is not fortuitous made purely by way of stop gap arrangement it would count towards seniority after the incumbent is regularised to the post he was holding on ad hoc basis. Sri Amit Asthalekar, on the other hand, has cited Y.H. Pawar Vs. State of Karnataka & another, (1996) 10 S.C.C. 443; Davinder Bhatia & Ors. Vs. U.O.I. & Ors. (1998) 5 SCC 262; Swapan Kumar Pal & Ors. Vs.

Samitabhar Chakraborty & Ors, (2001) 5 SCC 581; Anuradha Mukherjee & Ors. Vs. U.O.I & Ors (1996) 9 SCC 59; Chief of Naval Staff & Anr. Vs. Gopal Krishna Pillai & Ors. (1996) 1 SCC 521; U.O.I & Anr. Vs. S.K. Sharma (1992) 2 SCC 728; and State of Orissa Vs. Dr. Pari Mohan Misra, (1995) 3 SCC 128 to buttress his contention that ad hoc service in Group 'B' would not count for seniority and subsequent regular promotion would not relate back to the date of ad hoc promotion. We have carefully gone through the decisions cited at the bar. None of these decisions was rendered in the context of the Service Rules and the Railway Board's instruction we are concerned with - in this case. Regular promotions of the applicants 1 to 3 to Group 'B' service cannot relate back to the dates of their ad hoc promotions for that would be violative of 1969 Rules in that recruitment to the service by any means other than by way of transfer on deputation forbidden under 1989 Rules by necessary implication. Therefore, ad hoc service prior to enforcement of 1989 Rules, can in no case be treated as regular service for the purpose of grant of senior scale. The view we are taking finds support the pronouncement of the Supreme Court in Ram Ganesh Tripathi & Ors. Vs. State of U.P. & Ors. (1997) 1 SCC 621, where it was held that ad hoc employees whose services were subsequently regularised could not for the purpose of promotion or selection grade be treated as regularly appointed from a date earlier than the date of their regularisation. That apart some of the applicants were given ad hoc promotion to Group 'B' against work charged post and not against substantive post in the cadre. Further the case in hand is not one of regularisation of ad hoc promotion in Group 'B' and the dispute herein does not pertain to seniority of the applicants in Group 'B' cadre. Instead, the dispute pertains to fixation of pay in the senior scale which

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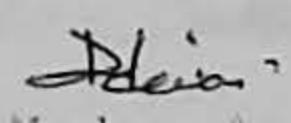
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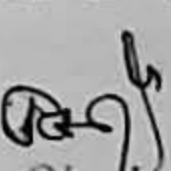
is governed by Railway Board's letter No. E (GP) 75/1/58 dated 20.06.1980, the relevant portion of which reads as under:

"After careful consideration, Board have decided that Group 'B' (Class II) officers who have put in a minimum of three years service in Group B (Class II) both fortuitous and non fortuitous may be put to look after duties in senior scale on payment of a charge allowance of Rs.150/- per month in addition to their pay in Group B (Class II) post. These officers will, however, be eligible to draw pay in senior scale after completion of three years regular service in Group B (Class II)".

The applicants have been granted the senior scale w.e.f the date they fulfilled the eligibility conditions as prescribed and visualized in the Railway Board's letter dated 20.06.1980 which contemplates in no uncertain language that Class II officers who have not put in a minimum of three years regular service in Group 'B' (Class II), both fortuitous and non fortuitous, may be put to look after duties in senior scale on payment of a charge allowance of Rs.150/- per month in addition to their pay in Group B post and that such officers will be eligible to draw pay in senior scale after completion of three years regular service in Group 'B'.

10. In view of the above discussion and conclusions, the O.A. fails and is dismissed with cost on parties.

  
Member-A.

  
Vice-Chairman.

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