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A -Special Guards and give them consequential benefits.

2. The case of the applicants is that initially they were recruited as Grade 'C' Guards i.e. Guards meant to work in Goods trains. After passing the suitability test, they were promoted to Grade B Guards for passenger trains. They were promoted to Grade B between 6.12.73 to 19.8.74. Respondents 3 to 5 were appointed as Grade 'C' Guards in 1964 and subsequently they were promoted to the next higher grade i.e. Grade 'B' between August 1980 and March, 1981. With effect from 1.6.81, 'C' Grade was merged with the next higher grade i.e. Grade 'B' and the 'B' grade Guards became Grade 'A' Guards. Prior to 1.6.81 Grade 'A' Guards were meant for Mail and Express trains, but after that date, those Guards belonged to 'A' Special Guards. In 1985 there was a re-structuring of the grades of Guards and those Passenger train Guards who were to work in the trains running for 250 Kms. and above came within the category of Grade 'A' Special, and the other Passenger train Guards remained in Grade 'A'. This order was passed on 25.6.85 a copy of which is at Annexure-A/1. This Annexure-A/1 is Annexure-B to the counter filed by the respondents 1 and 2. On 12.3.1986 the impugned order was passed by which 16 persons including respondents 3 to 5 were said to have been promoted to 'A' Special grade but the names of the applicants do not find place. The grievance of the applicants is that they were seniors to respondents 3 to 5 in Grade 'C' on account of their earlier appointment to that grade and they were also seniors to

*Manoj Kumar*  
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those respondents in the category of 'B' Grade Guards, they having been promoted much prior to <sup>- respds. 3 to 5 to -</sup> that grade. The applicants urged that as they were seniors, even if it was to be taken as a promotion, their cases should have been considered, but however, in fact, in view of Annexure-A/1 no question of promotion could arise as all those persons who were working in the passenger trains having a run of 250 Kms. and above were to be treated as 'A' Special grade Guards through upgradation of those posts.

3. Respondents 1 and 2 have filed a counter in which they have alleged that by restructuring of the cadres, 16 more posts were added to the cadre of 'A' Special Grade Guards. Therefore, under the rules of reservation of 40 point roster, three posts were to be reserved for the Scheduled Caste and Scheduled Tribe persons. That is the reason why respondents 3 to 5 were promoted from Grade 'A' to Grade 'A' Special Guards and as the others promoted to Grade 'A' Special were seniors to the applicants, the applicants <sup>- can -</sup> have no grievance. The promotions, it has been stated, are subject to the final result of the writ matter pending in the Supreme Court of India concerning the question of reservation.

4. We have heard Mr. G.A.R.Dora for the applicants and Mr. R.C. Rath, for the respondents 1 and 2. At the hearing there has been no dispute that 16 Guards were required to work in 4 pairs of trains in Khurda Road Division of South Eastern Railway which run for 250 Kms. or above. From Annexure-A/1 it would be manifest that by the restructuring, the <sup>posts of</sup> passenger train guards of Grade A having the pre-revised scale of pay of Rs.425-600/- were

*Mr. Eapen*  
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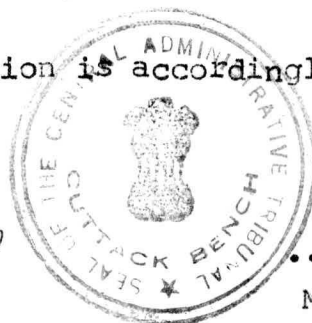
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upgraded to Grade 'A' Special carrying a pay scale of Rs.425-640/- and all Leave Reserve Guards both of Grade ~~A~~ and ~~A~~ were <sup>special treated</sup> upgraded as Grade 'A' Special. Mr. Rath has very vehemently contended that prior to this upgradation 16 posts were not there in the cadre of 'A' Grade Guards. Therefore, these 16 posts must be deemed to be additional posts in the cadre of 'A' Special Guards. Therefore, a reservation in the promotional post according to 40 point roster had to be made and has been made. We are not very much impressed by this argument of Mr. Rath because when a particular number of posts are upgraded, that cannot be said to be a promotion, promotion really means, when a person in the lower cadre is put in a higher grade by either seniority or by merit as the case may be and not by upgradation which is of the post he holds and not of the person. In this view of the matter, we would say that the principle of reservation would not apply to the upgraded posts. We have no materials before us as to who were the 16 persons who were added to the grade of Guards meant for four pairs of trains having a run of 250 Kms. or above. In these circumstances, we direct quashing of Annexures-A/2 and that those persons who were working as Guards of those four pairs of trains should be deemed to have been <sup>included in</sup> ~~promoted to~~ the cadre of 'A' ~~Grade~~ Special Guards.

The application is accordingly disposed of.

No costs.

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VICE- CHAIRMAN.



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MEMBER (JUDICIAL)