

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.728/2001.

Dated: 20.10.2004

A.M.Bhoite & Ors.

....Applicant(s)

Shri D.V.Gangal

....Advocate for  
applicant(s).

Vs.

Union of India & Ors.

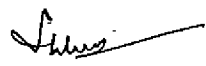
....Respondent(s)

Ms.D.Fernandes for Shri Suresh Kumar

....Advocate for  
Respondent(s)

Coram: Hon'ble Shri Anand Kumar Bhatt, Member (A),  
Hon'ble Shri Muzaffar Husain, Member (J)

- (1) To be referred to the Reporter or not? x
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal?
- (3) Library. ✓

  
(MUZAFFAR HUSAIN)  
MEMBER (J).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.728/2001.

Dated: 20.10.2004

Hon'ble Shri Anand Kumar Bhatt, Member (A),  
Hon'ble Shri Muzaffar Husain, Member (J).

1. A.M.Bhoite,
  2. Ambadas Laxman,
  3. S.K.Sontake,
  4. D.P.Wani,
  5. Mansingh Kallo,
  6. A.E.David,
  7. E.S.Patil,
  8. R.C.Kolhe,
  9. Sheshrao Punjaji,
- All are working as Goods Guard,  
Central Railway,  
Jalgaon.

...Applicant.

(By Advocate Shri D.V.Gangal)

v.

1. Union of India, through  
General Manager,  
Central Railway,  
Headquarters Office,  
Mumbai CST,  
Mumbai - 400 001.
2. Divisional Railway Manager,  
Bhusawal Division,  
Central Railway,  
DRM's Office,  
Bhusawal.

...Respondents.

(By Advocate Ms.D.Fernandes for  
Shri Suresh Kumar)

: O R D E R :


{Muzaffar Husain, Member (J)}

The applicants in this OA are challenging the impugned seniority list (Annexure - A-1) published in September, 1999. They have also sought for following relief :

"a) That this Hon'ble Tribunal be graciously pleased to call for the records of the case from Respondents and after going through its propriety, legality and constitutional validity it may be declared that the seniority list published in September, 1999 is illegal and should be corrected.

b) It may be declared that the Applicants be placed

...2.



between Sr. Nos.111 and 112 in Seniority List published in September, 1999, i.e. between Shri D.R.Patil and Shri T.R.Kachve.

c) It may be declared that the Applicants are entitled for pay fixation and arrears w.e.f. 10.02.1994 as Goods Guards in the scale of Rs.1200-2040/ 4500-7000 with all consequential benefits."

2. According to the applicants, facts of the case briefly enumerated are as follows. That the applicants who were working as switchmen were considered for promotion to the post of Goods Guard and empanelled. Their posting orders were issued vide letter dt. 10.2.1994. The respondents cancelled the said promotion order in respect of applicants alone besides two more employees who have now retired. The order dt. 6.8.1994/8.8.1994, cancelled the posting orders and not the promotion orders. It is also submitted that though applicants were promoted as Goods Guard and only posting is cancelled the pay fixation of the Goods Guards was not done. The pay fixation was done only after 27.12.1995. It is further submitted that the applicants were at Sl. Nos.4, 5, 6, 8, 8a, 10 12 and 13, whereas in the seniority list published in 1999 they are at Sl.Nos.165, 166, 167, 168, 169, 182, 190, 191 and 220. According to them, they out to have been placed between Sl.Nos.111 and 112 i.e. between Shri D.R.Patil and Shri J.R.Kachwe. Applicants submitted representation dt. 6.10.1999 followed by representation dt. 1.9.2001, but no reply has been received.

3. The applicant at Sl.No.6 A.E.David was issued a punishment order of reduction in pay from Rs.1350-1200 with cumulative effect by order dt. 12.6.1992. However, the Appellate Authority by order dt. 21.9.1993 has issued an order converting the major penalty into minor penalty. He is entitled to

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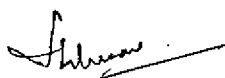


promotion as Goods Guard since only minor penalty is imposed on him. Secondly, denial of promotion is contrary to law. Therefore, he is also entitled to be promoted as Goods Guard along with his batchmates. Therefore, non-promotion of the applicant w.e.f. 10.2.1994 as Goods Guard is illegal. All the applicants are entitled to be promoted as Goods Guard w.e.f. 10.2.1994. They are also entitled for pay fixation, arrears and seniority as Goods Guard in the scale of Rs. 1200-2040/4500-7000. Respondents have denied the same, hence this O.A.

4. The respondents have resisted the claim on the point of limitation, as well as, on merits. In reply, they have stated that as per channel of promotion of staff in Transportation (Traffic) Department circulated under CPO (T) CSTM's L.No.HPB.229.R.TOT.IX dt. 30.4.1992. The percentage for filling up the posts of Goods Guard in Gr. Rs.1200-2040/4500-7000 (RSRP) have been revised as under :

1.	L.D.C.E.	..	15%
2.	T.N.C. Gr.Rs.950-1500		
	1200-2040	..	15%
3.	Switchman Gr.Rs.1200-2040		
	(RSRP)	..	07%
4.	Comm'l. Clerk/TCs		
	Gr.Rs.975-1550/950-1500(RSRP)	..	10%
5.	Shunting Jamadar		
	Gr.Rs.1200-1800/1200-2040	..	20%
6.	Asst. Guard		
	Gr.Rs.950-1400 (RPS)	..	08%
7.	P'man A/Leverman		
	Cabinman Gr. Rs.950-1500	..	25%
			-----
			100%
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The percentage for filling up the posts of Goods Guard in Gr. 1200-2040/4500-7000 (RSRP) have been revised for the different categories. The employees from the switchman category can be



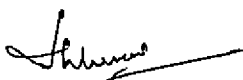
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promoted to the extent of 7% only. The total sanctioned strength of Goods Guard was 291, out of 291 the post available for the category of switchman was 21. In the year 1994 total 24 switchmen were available in the category of Goods Guard i.e. 3 excess switchmen were working as Goods Guard. The posting order were issued on 10.2.1994 and three switchmen were in excess of the prescribed quota, their promotion order was cancelled vide letter dt. 6.8.1994/8.8.1994. This action of the respondents was not challenged by the applicants and they continued to work as switchmen as they were part of the switchmen cadre. It is also stated that the promotion of the applicants was cancelled for reason stated above. The applicants have not officiated in the promotional posts. The applicants have given their own interpretation which is not correct. The applicants were again considered for promotion within their own quota and promoted vide order dt. 27.12.1995. They have denied that the applicants were working as Goods Guards. It is further stated that the applicants have not stated as to in which seniority list they were at Sl.Nos.4, 5, 6, 8, 8a, 12 and 13. They are rightly shown in their seniority list prepared on the basis of the date of promotion keeping in view the interse seniority.

5. The applicants have filed Rejoinder. Thereafter, respondents filed their sur-rejoinder. The applicant also filed reply to the sur-rejoinder.

6. The applicants have also filed M.P. No.955/2001 for condonation of delay stating that in the Indian Railway Establishment Manual, Rule No.321 it is provided that "Staff concerned may be allowed to represent about the assignment of

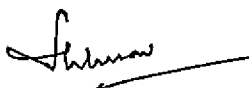
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their seniority position within a period of one year after the publishing of the seniority list." Thus, apart from the applicants, there may be others who might have represented and the Railway Administration was bound to wait for one year. Thereafter, the Railway Administration was supposed to reply to the representations, say any time after October, 2000. The Applicants waited till June, 2001 to get a reply from the Respondents and submitted the representation on 21.06.2001 and within three months thereof have filed the present Original Application. The applicants have further stated under Rule 189 of Railway Servants (Disciplinary & Appeal) Rules, 1968, an appeal is provided. The appeal in respect of 18 (iv) lies to the authority which appointed the Applicants. All the applicants were appointed as Guards by the Divisional Personnel Officer and the seniority is determined by the Personnel Branch. Hence the representation was properly addressed to the proper authority. No time limit is laid down for the Appellate Authority to decide the Appeal. The applicants could not approach the Hon'ble Tribunal. Therefore, the Original Application, filed in September, 2001 is well within time provided under Section 21 (b) of the Administrative Tribunals Act.

7. The respondents have also filed reply to the MP for condonation of delay. They have stated that the applicants have not made any representation against the seniority list published on 14.5.1999 as alleged by them. The representation was general and it has no reference to the seniority list. It is also stated that the cause of action has arisen to the applicants on 6.8.1994/8.8.1994, when they were reverted. The statement of the

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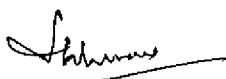


applicants are not correct. Their promotion order as Goods Guard issued on 10.2.1994 was held in abeyance and by letter dt. 6/8.8.1994 posting orders were cancelled. It is true that as per provisions of Rule representations can be made within one year of the publishing of the seniority list, but in the representation, the applicants did not make out any case for change of seniority. The applicants have not give any reason for condonation of delay in representation made after the expiry of the period of limitation does not extend the period of limitation. They have prayed that the OA being barred by limitation be dismissed.

8. We have heard Learned Counsel for the parties and perused material placed on the record.

9. Learned Counsel for the applicant contended that the applicants were promoted vide order dt. 10.2.1994 and they were not relieved in the exigency of the service and in the interest of the administration to join as Goods Guard. The non-posting of the applicants as Goods Guard and instead forcing them to work as Switchmen is contrary to law. He has also contended that the promotion carries with it the pay scale and seniority. The pay fixation on promotion is part of the exercise. Despite delay of posting in the interest of administration, the denial of the benefit of pay fixation, arrears and seniority is contrary to law and violation of the legal rights of the applicants. It is further contended that the applicants have right to correct the seniority within one year from the date of publication of the same. Hence, non-decision of the respondents on the

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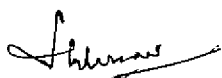


representation of the applicants dt. 6.10.1999 is contrary to Rule 320 of IREM.

10. Learned Counsel for the respondents, on the other hand, contended that this OA is barred by <sup>Limitation</sup> delay and laches. The applicants quota of the switchman was exceeding the prescribed quota of 7% in the category of Goods Guard, hence, the promotion orders dt. 10.2.1994 were kept in abeyance and the posting orders were cancelled and they were continued to work as switchmen. Later on, they were considered for promotion and they were promoted by order dt. 27.12.1995 and so on. Learned Counsel has also contended that the applicants are not entitled for seniority as claimed by them. They are also not entitled for the pay from 10.2.1994 as Goods Guard as they were working as switchman and they have been paid salary of switchman.

11. The impugned order dt. 10.2.1994 (Annexure A-2) provides posting of Staff at Sl.Nos.1 to 36 as Goods Guards Gr. Rs.1200-2040 (RPS) in officiating capacity and on trial basis in view of the existing channel of promotion for filling up the post of Goods Guards Gr.1200-2040 (RPS) subject to the conditions mentioned therein. The placement of the applicants in serial order is as under :

"1. A.M.Bhoite	-	4
2. Ambadas Laxman	-	5
3. S.K.Sontake	-	6
4. D.P.Wani	-	7
5. Mansingh Kallo	-	8
6. A.E.David	-not placed	
7. E.S.Patil	-	10
8. R.C.Kolhe	-	12
9. Sheshrao	-	13
Punjaji		






Letter dt. 6.8.1994/8.8.1994 is extracted below :

" The transfer and posting orders as Goods Guard in favour of following switchmen issued vide this office order No.1 of 1994 under this office letter of even No. dated 10.2.1994 is hereby cancelled. In view of this, the following S/men who are posted as Goods Guard will work as Switchman only at their present stations.

S.No.	Name S/Shri	Design. Stn.	Gr.Rs. (RPS
1.	P.A.Gadkar	S/man	1200-2040
2.	A.M.Bhoyate	- do -	-do-
3.	Ambadas Laxman	- do -	-do-
4.	S.K.Sontakke	- do -	-do-
5.	D.P.Wani	- do -	-do-
6.	Mansingh Kalloo	- do -	-do-
7.	Swatantra Karbhari	- do -	-do-
8.	E.S.Patil	- do -	-do-
9.	S.F.Sayyed	- do -	-do-
10.	R.C.Kolhe	- do -	-do-

A perusal of these two letters indicate that the applicants while working as switchman (except applicant No.6) were posted as Goods Guard in an officiating capacity and on trial basis. The posting order as Goods Guard in favour of the applicants were cancelled and they were continued as switchman at their present station. There is no averment or evidence by the applicant that they did join as Goods Guard. It means their promotion order though temporary were not carried out. The respondents in their reply have given reason stating that according to CPO (T) letter dt. 30.4.1992 the percentage for filling up the post of Goods Guard

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was revised for different categories. Letter has been placed as (Exhibit R-7). On a perusal of this letter, it is seen that the post of Goods Guard Gr. 4500-7000 (RP) are filled up from different categories with the prescribed percentage and the employees from the switchmen category can be promoted to the extent of 7 % only. According to the respondents three switchman in excess were working as Goods Guard at the relevant time and therefore, their posting orders were cancelled. Learned Counsel for the applicant has referred rules 124 of IREM Vol. I to contend that General Manager has no power to issue direction in contravention of the Rules made under Article 309 of the Constitution and therefore, direction in letter dt. 30.4.1992 violates rule 124 of IREM Vol.I. The relevant rules is extracted below :

"124. (1) The vacancies in the category of Goods Guard in scale Rs.1200 - 2040 will be filled as under :

(i) 15% by direct recruitment from the open market through the Railway Recruitment Boards; and

(ii) 85% by promotion as under : (a) 31% by selection from amongst Senior Train Clerks/ Train Clerks : [E(NG) I-86PM 2-21 (PN-MNFIR) dt. 24.2.87] (b) 54% by selection from amongst Ticket Collectors, Commercial Clerks, Switchmen, Yard Staff, Brakesmen as per quota decided by each Zonal Railway Administration for each of these categories. [E(NG) I-78/PM1-100 18.9.71."

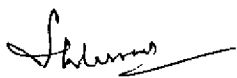
A perusal of para 124 of IREM makes it clear that 85% of the posts of Goods Guard will be filled from the various categories as per quota decided by each Zonal Administration for each of these category. Thus, it appears that General Manager of each zone has power to prescribe the quota for the various categories eligible for the promotion to the post of Goods Guard.

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Therefore, the letter dt. 30.4.1992 (R-7) issued by the Chief Personnel Officer, Central Railway was within the competence of the authority and it is not in-consistent with para 124 of the IREM Vol.I. A perusal of the order dt. 10.2.1994 and letter dt. 6/8.8.1994 clearly reveals that the applicants were not relieved to join as Goods Guard after passing of the order dt. 10.2.1994 (A-2) and their posting orders were cancelled by letter dt. 6/8.8.1994 (A-3). By letter dt. 27.12.1995 (Annexure - 4) the posting or promotion orders of five applicants were issued. It further goes to show that these applicants were promoted by subsequent orders. The promotion follows the seniority unless the date of promotion is granted, the applicants cannot claim seniority. Similarly, they cannot claim pay fixation w.e.f. 10.2.1994 as the pay is fixed when the person is promoted to officiate on the higher post or on the promoted post. In the present case, the applicants had never officiated on the promotional post from 10.2.1994. Later on, some of the applicants were promoted vide letter dt. 27.12.1995. The respondents, in para 27 of the written statement have given details of the persons indicating the office order number and dates of their promotion. It clearly indicates their dates of promotion. The relevant portion of para 27 is extracted below :

S1. No.	Name S/Shri	Office Order No.	Dt. of Promotion
01.	P.A.Gadkar	18/1995	27.12.95
02.	Devidas Namdeo	- do -	- do -
03.	A.M.Bhoite	- do -	- do -



04.	Ambadas Laxman	- do -	- do -
05.	S.K.Sontakke	- do -	- do -
06.	D.P.Wani	- do -	- do -
07.	Mansingh Kalloo	- do -	- do -
08.	E.S.Patil	03/1996	08.03.96
09.	S.T.Sayyed	- do -	- do -
10.	Rambhan Pandurang	10/1996	14.05.96
11.	Arvind E. David	- do -	- do -
12.	R.C.Kolhe	- do -	- do -
13.	Babulal Baijnath	- do -	- do -
14.	Baburao Girdhar	- do -	- do -
15.	Mahendra Ku. Yadav	- do -	- do -
16.	Sheshrao Punjaji	08/1997	23.05.97

12. Learned Counsel for the applicant has drawn our attention to para 8 of the Rejoinder and argued that O.A. deserves to be allowed because it is not merely the question of seniority, but the pay fixation and arrears also. He has quoted the example of Shri E.S.Patil who was drawing pay of Rs.1470/- as on 10.2.1994. His pay would have been increased to Rs.1500/- in February, 1994 and in February, 1995 his pay would have been Rs.1530/- and therefore, on 1.1.1996 his pay would have been Rs.1530/- and his pay should have been fixed at Rs.5500/- on 1.1.1996 in Vth Pay Commission recommended scale. However, his pay has been fixed at Rs.4875/-. It shows that Shri Patil is losing basic pay of Rs.800/- p.m. The same applies to all applicants. This is the loss caused to the applicants. Learned Counsel has also relied upon the decision of OA No.411/2000 decided on 9.7.2003. In this case, The Tribunal allowed the OA and the applicant was granted

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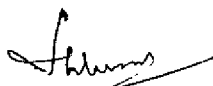


benefit of proforma fixation from the date of his junior joined the promotional post. In the present case, the quota prescribed for the category was 7 % and quota available for the post of Switchmen was already over and there was no post vacant for Switchmen category. The applicants were promoted by the subsequent orders and dates. Their promotion was not effected as the order dt. 10.2.1994 was cancelled by the order dt. 6/8.8.1994. Therefore, the question of fixation does not arise and the decision cited by the Learned Counsel for applicants is not applicable. Learned Counsel for the Respondents has also drawn our attention to Rule 302 of IREM which reads as under :

"302. *Seniority in initial recruitment grades* - Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular post. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group."

It is seen that the seniority of the applicants has been fixed as per provisions of the Rule 302 of IREM. The applicants have not shown how they are entitled to seniority. 5 applicants were promoted by letter dt. 27.12.1995 and one promoted by letter dt. 8.3.1996, 2 on 4.5.1996 and one on 23.5.1997 and they are placed in the seniority list according to their promotion order. Since

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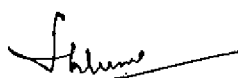
no junior of the applicants has been promoted and the applicants have received their promotion orders with respective dates shown in the order dt. 27.12.1994 (Exhibit - A-4), 14.5.1996 (Exhibit R-3) and order dt. 8.3.1996 and 2.3.1996 (Exhibit - R-7 and R-8). Therefore, the seniority of the applicant has been fixed accordingly. Simply because the applicants were placed on the panel of Goods Guard does not entitle them pay fixation and seniority unless they join and practically work on the post. In case of All India SC & ST Employees Association and Ors. v. A.Arthur Jeen and Ors. {(2001) 6 SCC 380}, the Apex Court held that :

" Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State was under no legal duty to fill up all or any of the vacancies."

Learned Counsel for the applicant has placed reliance on Roshan Lal Tandon v. Union of India & Ors. {AIR 1967 SC 1889}. In this case, the absorption of direct recruits and promotees was involved. This case has no relevance with the facts of the case on hand. Learned Counsel has also relied on The General Manager, South Central Railway, Secunderabad and Anr. v. A.V.R. Siddhanti & Ors. {AIR 1974 SC 1755}. The Apex Court held as follows :

" Once the persons coming or recruited to the service, from two different sources are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original source, for the purpose of absorption and seniority."

In the present case, the applicants were not promoted in

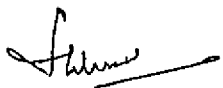


pursuance of the letter dt. 10.2.1994. Therefore, the question of granting seniority does not arise. Hence, the ruling cited by the Learned Counsel for the applicant are not applicable.

18. In the present case, the OA is also hit by the law of limitation. The original order of the posting of the applicant as Goods Guard was passed on 10.2.1994 and it was cancelled by letter dt. 6/8.8.1994, but the applicants neither raised any grievance against that cancellation nor challenged the order of cancellation of promotion/posting. The applicants were promoted by subsequent order dt. 27.12.1995 (A-4), 14.5.1996 (R-3) and 8.3.1996 and 23.5.1997 (R-7 and R-8) and their pay was fixed as Goods Guard in the grade of Rs.1200-2040 after their promotion. They never raised any objection at that time. The applicants have not protested nor made any representation to the department showing that their date of promotion is not correct. In these circumstances, the first cause of action arose to the applicants when the first adverse order was passed, but the applicants have not challenged any of the aforesaid orders within the time prescribed by section 21 of the Administrative Tribunals Act, 1985. The applicants are now challenging the seniority. It also shows that the applicants made first representation to correct the seniority on 6.10.1999. Since the adverse orders were passed on 6/8.8.1994 the repeated representation does not give fresh cause of action as it has been held in S.S.Rathore v. State of Madhya Pradesh {AIR 1990 SC 10}. Therefore, the application suffers from delay and laches and not filing within section 21 of the Administrative Tribunals Act, 1985.

19. The applicants are seeking their placement in the

...15.



seniority over the persons already promoted before them without impleading them as a party respondent. Therefore, the application is also bad for non-joinder of necessary parties.

20. Applicant No.6 A.E.David is also claiming seniority with other applicants on the basis of the letter dt. 10.2.1994. His name neither finds place in that order nor in the order dt. 6/8.8.1994 cancelling that order. Therefore, the present applicants are not similarly situated like other applicants and he ought to have not included in the present OA. Respondents have in their reply stated that the applicant A.E.David was undergoing effective punishment of withholding of increment for two years nine months i.e. from 1.10.1991 to 30.6.1994 and he was not considered for promotion and accordingly his name was not included in the panel published on 10.2.1994. R-1 is the punishment order. Again, he was awarded the penalty of withholding increment for one year which was reduced to six months by the Appellate Authority and the penalty was operative from 1.5.1995 to 31.3.1996. Therefore, his name does not figure in the promotion order issued on 27.12.1995. It is also stated that he was subsequently promoted on 14.3.1996. It is also stated that he made his representation dt. 10.6.1999 for assigning of correct seniority position with Shri Swatantra Karbhari, Switchmen who was junior to him and his name was shown at Sl.No.170, whereas, the name of the applicant No.6 was shown at Sl.No.190. His representation was replied by letter dt. 24.9.1999 (R-4). The applicant has not challenged the reply dt. 24.9.1999. Thus it appears that the applicant No.6 was not promoted due to operation of the punishment order and his name

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was accordingly placed in the seniority list according to his date of promotion. The contention of the Learned Counsel for the applicant that the applicant had suffered minor punishment only, he is entitled to be promoted on his turn as Goods Guard in view of Rule 5.3 of the Railway Servants (Discipline & Appeal) Rules. This rule applies to the case of promotion from Group 'B' to Group 'A' and is not applicable in the case of Group 'C' employees. Moreover, the applicants representation has already been rejected on 24.9.1999 and he has not sought his remedy within the period of limitation prescribed by section 21 of the A.T. Act. Therefore, claim of the applicant No.6 is also barred by limitation.

21. For the reasons stated above, the OA is devoid of any merit. It is dismissed accordingly. No order as to costs.



(MUZAFFAR HUSAIN)  
MEMBER (J)



(ANAND KUMAR BHATT)  
MEMBER (A)

B.