O.A. 652/97

OA 653/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI-400001

O.A. No. 652/97
653/97 &
654/97

DATED: THIS 19th DAY OF August 1998

CORAM: Hon. Shri Justice R.G.Vaidyanatha, V.C.
Hon. Shri D.S. Baweja, Member(A)

O.A. No. 652/97 :

Shri R. Balasubramaniyan
Deputy General Manager
(Ghatkopar)
Office of Chief General Manager
M.T.N.L., Mumbai 400028
Flat No.20/14, 1st floor,
MTNL Flats, MHB Colony
Opp. to Lilavati Hospital
Reclamation, Bandra (W)
Mumbai 400050

(By Adv. Mr. S.P. Kulkarni) ..Applicant
(O.A.No.652/97)

O.A.No. 653/97 :

Shri M.M. Gupta
Deputy General Manager
Office of Chief General Manager
MTNL, Western Telecom Region
Mumbai 400028
Flat No.28, SANCHAR Colony
College Lane,
Prabhadevi
Dadar (West)
Mumbai 400088

(By Adv. Mr.S.S. Karkera) ..Applicant
(O.A.No.653/97)

O.A. No. 654/97 :

Shri B. Arunachala Rao
Deputy General Manager (CCS-I)
Office of Chief General Manager
M.T.N.L.
Mumbai 400028
Flat No.8, 4th floor,
Type V Quarters, C.T.O. Compound
Opp. SNDT University
Santacruz (W)
Mumbai 400054

(By Adv. Mr. S.P.Kulkarni) ..Applicant
(O.A.No.654/97)

V/s.

1. Union of India
through the Chairman
Telecom Commission
Deptt. of Telecom
Sanchar Bhavan
Ashoka Road
New Delhi 110001

2. The Chief General Manager
MTNL, Mumbai,
Telephone House
Prabhadevi
Dadar (W)
Mumbai 400028

3. Shri P.K. Mittal
(Staff No.2100)
A JAG Officer of DoT

4. Shri Prabhash Singh
Staff No.2105
A JAG Officer of DoT

5. Shri Sunil Kumar
Staff No.2106
A JAG Officer of DoT

6. Shri K. Sridhar
Staff No.2107
A JAG Officer of DoT

7. Shri P V Muralidhar
Staff No.2109
A JAG Officer of DoT

8. Shri M C Chaube
Staff No.2111
A JAG Officer of DoT

9. Shri C.G.Tewari
Staff No.2116
A JAG Officer of DoT

10 Shri B. D.Garg
Staff No.2117
A JAG Officer of DoT

11 Shri L. Anantharam
Staff No.2124
A JAG Officer of DoT

12 Shri Kuldeep Singh
Staff No.2138
A JAG Officer of DoT

13 Shri Gautam Kumar Audhya
Staff No. 2142
A JAG Officer of DoT

14 Shri K. Neelayya
Staff No.2168
A JAG Officer of DoT

15 Shri V K Sinha
Staff No.2170
A JAG OFFICER OF DoT

16 Shri Faizul Hasnain Zaidi
Staff No.2171
A JAG Officer of DoT

17 Shri S. Krishnan
Staff No.2178
A JAG Officer of DoT

18 Shri G. Venkateswar Reddy
Staff No.2179
A JAG Officer of DoT

(By Adv. Mr.V.S. Masurkar
Central Govt. Senior Standing
Counsel for Respondents Nos. 1 to
2 in O.A. Nos. 652/97; and 654/97

By Adv. Mr. P M Pradhan
Central Government Standing
Counsel for Respondents Nos. 1 & 2
in O.A. No. 653/97)

By Adv. Mr. C.M. Jha
for Respondent No. 9) ..Respondents

O R D E R

(Per: R.G. Vaidyanatha, Vice Chairman)

1. These three applications are filed by three applicants under Section 19 of the Administrative Tribunals Act, 1985, raising identical issues on identical grounds and seeking identical reliefs. Official Respondents Nos. 1 & 2 have filed identical pleadings in all the three cases only for the limited purpose of opposing admission. All the private respondents Nos. 3 to 18 have not appeared before the Tribunal to contest the proceedings except

Respondent No.9 who has filed reply in all the three cases. Since the applicants wanted interim relief regarding further promotions and deciding that question would be deciding the main issue in the Application, with the consent of the counsel appearing for the parties we have heard finally the arguments in all the three O.As. and they are being disposed of by this common order.

2. Few facts which are necessary for the disposal of these three applications are as follows:

Shri R. Balasubramaniyan, is the applicant in O.A.No. 652/97. He joined the Indian Telecom Service in 1978, and was promoted to Junior Administrative Grade (JAG) on ad hoc basis on 4.12.1990 and he took over charge of the post on 19.5.1991.

O.A. No. 653/97 is filed by M M Gupta, who also joined the Indian Telecom Service in 1978 and was promoted to JAG on ad hoc basis vide order dated 4.12.1990 and he took over charge of the post on 9.1.1991.

In O.A. No. 654/97 Shri B.Arunachala Rao is the applicant. He also joined the Indian Telecom Service in 1978 and like the above two applicants he got ad hoc promotion to JAG vide order dated 4.12.1990 but he has taken the charge of the promotion post on 31.1.1991.

3. Respondents Nos. 3 to 18 also belong to same Indian Telecom Service, but in the feeder cadre viz., Group 'A' Officers they were juniors to all the three applicants. It is stated that all the three applicants came to be promoted on ad hoc promotion only after proper screening of the records by the appointing authority. The applicants had eligibility criteria of five years regular service in the senior time grade in the feeder cadre. As per Rules ad hoc promotion should be continued for only one year. Since the ad hoc promotion of the applicants has been carried on beyond one year it is deemed to have been regularised at least from the date of initial ad hoc promotion or atleast one year after the expiry of the initial ad hoc promotion. The official Respondents did not hold D.P.C. every year as required by rules. For the promotion for vacancies of 1991-92 no D.P.C. was held for five years, till the D.P.C. was held in 1995. The applicants are entitled to non-functional selection grade from 1.7.1992, as per rules, which the Government has denied to them. The applicants have suffered financial losses due to in-action and delayed action on the part of the Government in making regular promotions as per rules and in not granting selection grade.

4. It is common ground that there were 62 vacancies of JAG in 1991-92 (though wrongly shown as 66 vacancies in the O.A.) for which the zone of consideration as per rules is 130 officers. It is argued on behalf of the applicants that Respondents 3 to 18 were in no way near the zone of consideration of 130 officers and they were far far below the last person

in the zone of consideration of 130 officers. But however, the D.P.C. has included respondents 3 to 18 in the zone of consideration wrongly and illegally and that has affected the seniority of the applicants by wrongly including respondents 3 to 18 in zone of consideration and considering them for promotion. The D.P.C. has placed respondents 3 to 18 in the top places in the final selection panel above the applicants and thereby the applicants have suffered loss of seniority. Respondents 3 to 18 were ineligible for consideration for promotion for vacancies of 1991-92. Official Respondents have issued promotion orders dated 8-7-1996 and modified by order dated 24-9-96 wherein in the Regular Promotion of JAG Respondents 3 to 18 were shown in the top of the list and applicants are kept below. Thus injustice has been done to the applicants since Respondents 3 to 18 were included in the zone of consideration wrongly.

5. The applicants have therefore approached this Tribunal on these allegations for setting aside the impugned orders of promotion and for a direction to the Government to hold a Review D.P.C. for the vacancies of 1991-92 strictly as per the zone of consideration after excluding the ineligible officers and then give promotion to the applicants and proper placement in the seniority list. Alternatively the applicants want a declaration that they must be deemed to have been regularly appointed with effect from the dates of their ad hoc promotions which are mentioned earlier. The applicants also want a direction to the Government to give them non-functional selection

grade in JAG with effect from 1.7.94 as per Government circular. The applicants also want consequential benefits like further promotion, increments, arrears of salary, seniority etc.

6. As already stated the official respondents have filed only a short reply for opposing admission therefore we find that they have not dealt with in detail most of the allegations in the application. But these omissions in pleadings on material points were supplied by oral arguments and by producing records at the time of arguments. According to the official respondents, the promotion of the three applicants in 1991 was purely ad hoc and temporary promotions and it will not confer any rights on them till they were regularly promoted after D.P.C. proceedings. As for as D.P.C. proceedings are concerned it is stated that the vacancies of 1991-92 were separately taken and since the vacancies were 62, the zone of consideration was 130 and all those eligible officers who were in service on the date of DPC were included in the zone of consideration by excluding those officers who had retired after 1991 and before the date of D.P.C. That is why Respondents 3 to 18 came to be included in the zone of consideration since about 70 to 80 officers senior to Respondents 3 to 18 had retired after 91 and before the date of D.P.C. meeting. Therefore, the inclusion of respondents 3 to 18 within zone of consideration is correct and perfectly justified, since this is a case of promotion on selection basis gradings were given and on the basis of gradings Respondents 3 to 18 have become senior to applicants in the panel for promotion.

7. As for as the claim for NFSG is concerned it is stated that the applicants would be entitled for the same only after putting in 14 years regular service and since the applicants were on ad hoc promotion in 1992 they could not get the NFSG and in 1996 it has already been granted to them.

As for as the applicant's claim for grant of deemed regular promotion from the date of their ad hoc promotion is concerned it is stated that applicants are not entitled to that unless their promotion is as per rules by holding the D.P.C. meeting. It is therefore stated that the applicants are not entitled to any other reliefs.

8. Respondent No.9, one of the private respondents, has also taken a similar stand like the official respondents regarding the zone of consideration and promotion and getting seniority by virtue of gradation.

9. Mr. S.S. Karkera, learned counsel, argued on behalf of one of the applicants and Shri S.P. Kulkarni, argued on behalf of two applicants. Their main contention is that the applicants were promoted on ad hoc basis after screening and therefore they must be deemed to have been regularly promoted from 1991 itself and hence they should be placed in the seniority list above respondents 3 to 18 who came to be promoted on ad hoc basis in 1992. As a consequence of this argument they contended that the applicants are entitled to get non-functional selection grade from 1.7.92. They furtner contended that in the D.P.C. convened in 1995 the zone of consideration has been unduly and illegally

stretched to include many juniors including Respondents 3 to 18 who were not within the required zone of 130 as per seniority of officers in 1991. It was therefore submitted that Respondents 3 to 18 have been wrongly and illegally promoted for the vacancies of 1991-92 and therefore placing them above the applicants in the seniority list on the basis of grading is liable to be struck down. On the other hand the learned counsel for official respondents Mr. Masurkar and Mr. P M Pradhan and Mr. Jha counsel for private respondent No.9 contended that since the DPC was held in 1995 for the vacancies of 1991-92 the zone of consideration was prepared in 1995 of only 130 persons excluding those officers who had retired after 1991 and before the date of DPC meeting and their claims could not have been included since they cannot be now promoted since they are no longer in service. It was, therefore, submitted that the department rightly included respondents 3 to 18 in the zone of consideration of 130 persons and as per grading adopted by the DPC, the private respondents who obtained the grading of 'Outstanding' and 'Very Good' were placed top in the panel and that is how the seniority of the three applicants is affected though they were senior in the feeder cadre. As for as ad hoc promotion is concerned it is stated that ad hoc promotion was not as per rules and it was not by a regular DPC and not by adopting the selection process and therefore it cannot be treated as regular promotion. It is also stated that the applicants are entitled to get non-functional selection grade only after putting in 14 years service in a regular service and they cannot get this grade in the ad hoc grade.

10. In the light of the arguments addressed before us, the points that fall for consideration in these three applications are as follows :

(i) Whether the applicants are deemed to have been regularly promoted from the date of their ad hoc promotion in 1991 as contended ?

(ii) Whether applicants are entitled to non-functional selection grade from 1.7.1992 as claimed ?

(iii) Whether the inclusion of Respondents 3 to 18 in the zone of consideration for the vacancies of 1991-92 was illegal and contrary to rules and their names ought to be removed from that list and consequently from the panel of promotion prepared by the DPC ?

(iv) What order ?

POINT (i) :

11. The ad hoc promotion order of the applicant in the first case OA 652/97 is at page 39 of the paper book. It clearly says that the applicant is promoted to officiate in JAG grade on "purely temporary and ad hoc basis". It is further stated that the promotion is subject to outcome of Writ Petition pending in the Supreme Court and outcome of O.A. 988/90 pending before C.A.T. Ernakulam Bench. It clearly shows

that the intention was to give officiating promotion on purely ad hoc and temporary basis in view of two litigations pending in Supreme Court and the Central Administrative Tribunal, Ernakulam Bench. Since there was dispute regarding seniority on the basis of existing seniority, ad hoc and temporary promotions are given.

12. However, it is not a case of regular promotion but a ad hoc promotion in view of pending litigations. There are many cases where the D.P.C. meets and takes a decision on regular promotion. But if some litigation is pending then they may formally issue the order by styling it as ad hoc promotion. But that is not the case in the present case. It is no bodies case that the three applicants were selected for promotion by the regular D.P.C. as per the procedure for promotion by selection.

13. In service matters we are familiar with two types of promotions. One is seniority cum merit promotion where the person who is senior is entitled to get promotion unless he is found to be unfit. That means normally one gets promotion only by seniority provided he is not unfit. Then we have the promotion by selection method where the promotion is not done only on the basis of seniority, but it is mainly on the basis of merit. Seniority may give eligibility for being considered for promotion but actual promotion is done on the basis of merit. In such a case zone of consideration is prescribed depending upon the number of vacancies, if the vacancies are more than five, then zone of consideration is $2\frac{1}{2} \times n + 4$. Here 'n' represents the number of vacancies. For example if there are 10 vacancies then /

zone of consideration would be 24. That means the service record of 24 officers are scrutinized by the Regular Departmental Promotion Committee which is precided by the Chairman or Member of the Union Public Service Commission. Then that Committee examines the service records of the 24 officers and gives gradation as 'Outstanding', 'Very Good', 'Good' and 'Unfit'. Once grading is given, then on the basis of merit, the candidates getting 'Outstanding' gradation will top the list, followed by candidates having grading as 'Vergy Good' and then candidates having grading as 'Good'. In the present case no such selection was made for giving the ad hoc promotion. It is admitted in the O.A. itself by all the three applicants that ad hoc promotions were given after proper scrutiny of records by the appointing authority (vide para 4.4 of the O.A.No.652/97). Therefore, it is not a case of ad hoc promotion being given as per rules, by adopting the procedure of Sdection by the regular D.P.C. It is not disputed that for promotion to the GRADE OF JAG the method of promotion is by way of selection as per recruitment rules dated 29.5.92 (vide page 42 of the paper book). In the schedule to the recruitment rules at page 51 we find that JAG grade promotions are made by way of 'Selection'. At page 53 of the paper book we find the D.P.C. for JAG grade would consist of Chairman or Member of the U.P.S.C., who shall be the Chairman of the D.P.C. and Advisors of Telecom Department as Members of the DPC.

14. In this case there is no allegation in the O.As., and no material placed on record to show that the applicants were selectef for ad hoc promotion for JAG grade as provided in the recruitment rules. Therefore this is a case where ad hoc promotion is given on the basis of seniority after perusing the ACRs, since litigations were

pending regular D.P.C. was admittedly not held during the relevant periods. If once we come to the conclusion that ad hoc promotions are not as per rules, then the ad hoc promotions, as per law declared by the Supreme Court, cannot be regularised or cannot be deemed as regular promotions.

15. Another argument of the learned Counsel for the applicants is that ad hoc promotion is permissible only for one year and if it extends beyond one year, it must be deemed to be automatically regularised. We reject this argument as without any merit. If ad hoc promotion is permissible for one year only, then the logical inference is that after one year continuing the official on ad hoc promotion is illegal and it does not make the appointment a regular one.

16. The learned counsel for the Applicants has placed reliance on some authorities :

In (1995) 31 ATC 325 (P. VENUGOPALAN Vs. UNION OF INDIA & ORS.) a Division Bench of this Tribunal at Ernakulam held that when ad hoc promotion has been continued for number of years and regular DPC was not held for eight years, the ad hoc promotees must be deemed to be regularly promoted. In fact in para 3 of the reported judgment the Tribunal clearly observed as follows:

> " Ordinarily, ad hoc service will not count for service benefits. But there are cases where such ad hoc service remains ad hoc service, solely due to the inertia of the Department. In such cases, the official concerned cannot be denied the service benefits. ..."

The peculiar facts of that case are due to long delay of 9 to 10 years in holding the D.P.C. and continuing the officers on ad hoc promotion it was observed that it should be deemed as regular promotion. From the perusal of the judgment it is a case of promotion on Seniority-

Cum-Merit. At any rate it is not a case of promotion by Selection Method. There is a vast difference between the two. In the case where promotion is by way of Seniority-cum-merit, there is not much difference between ad hoc promotion and regular promotion because both for ad hoc promotion and regular promotion the criteria is seniority provided the candidate is not unfit. As far as promotion by selection method is concerned, ad hoc promotion is given only on the basis of seniority, but regular promotion is given on the basis of selection by applying the zone of consideration and selecting the best amongst the candidates for such promotion. Therefore what applies to ad hoc promotion on the basis of seniority-cum-merit cannot be applied to a case of ad hoc promotion by Selection method. Therefore the said decision is not helpful to us in deciding the present O.As.

In (1991)18 ATC 338 (SMT. SADHNA SAXENA & ORS Vs. UNION OF INDIA & ORS), the question was about ad hoc appointment of Lower Division Clerks. In that case appointments had been made after getting list of candidates through Employment Exchange and holding interviews. But still the appointments were called as ad hoc. After noticing that the applicants in that case had worked for number of years, still the Tribunal did not give a direction that they are entitled to be regularised as of right. Having narrated the facts and circumstances of the case, the Tribunal required the Government to examine and find out whether it is possible to regularise the services of the candidates by relaxing the rules, or to give some chances to the candidates to pass the Staff Selection Commission examination for regularisation. Therefore the Tribunal directed the respondents to continue the applicants and not to terminate their services and give two opportunities to clear the test prescribed before their regularisation.

Since we are dealing with the question of promotion by selection method the decision will have no application to the facts of the present case.

In (1997) 6 SCC 406 (I.K. SUKHIJA & ORS Vs. UNION OF INDIA & ORS) it was a case of ad hoc promotion against a regular vacancy and were according to recruitment rules. In para 14 the Supreme Court has recorded a finding that the promotion was not contrary to any recruitment rules and the promotions were done by a regular D.P.C. on the basis of their placement in the merit list and according to their seniority. The promotions were shown as ad hoc because the new recruitment rules had not been finalised. It is on both these grounds the Supreme Court held that the ad hoc promotion must be held to be regular promotions. In view of the facts of the present case, which we have pointed out earlier, the selection is made based on merit and not on seniority-cum-merit as per the recruitment rules, and hence the said decision of the Supreme Court is not applicable to the facts and circumstances of the present case.

17. In our view there are a number of decisions of the Supreme Court bearing on the point under consideration, of which we refer only to two or three to fortify our opinion that ad hoc promotion can be treated as regular promotion only if it has been done as per rules.

In AIR 1981 SC 41 (BALESHWAR DASS & ORS Vs. STATE OF U.P. & ORS.) it has been observed that continuous officiation should be applied to department seniority if the appointment is made as per rules.

Similarly in (1993) 24 ATC 932 (STATE OF W.B. & ORS. Vs. AGHORE NATH DEY & ORS), though it is observed that ad hoc service should be counted for the

purpose of seniority in para 22 it was clearly mentioned that the ad hoc appointments must be according to the rules and the in para 26 it is clearly observed that if ad hoc appointments were not according to rules then the ad hoc appointment would not count for seniority.

Similarly in AIR 1983 SC 769 (A. JANARDHANA Vs. UNION OF INDIA & ORS) it is observed that if the recruitment ~~rules~~ were otherwise legal and valid then even though it is styled as temporary appointment it will hold good for determining the seniority.

In the case of CHIEF OF NAVAL STAFF & ANOR. Vs. G. GOPALA KRISHNA PILLAI & ORS, 1996(1) SLR 631, it was found that the officer in that case was promoted on ad hoc basis as Storekeeper and subsequently he was regularised in that capacity. This Tribunal held in that case O.A. No. 1507/93 that the applicant is entitled to regularisation from the date of initial ad hoc promotion and allowed the application. When the matter was taken in appeal before the Supreme Court, the Apex Court held that since the initial ad hoc appointment was not by a regularly constituted selection body for giving promotion as per rules, but it is a case of simple ad hoc appointment without following the rules, and laid down procedure as laid down in the rules, the ad hoc service cannot be counted for the purpose of such regularisation.

18. It is, therefore, clear that if the initial ad hoc appointment is according to the prescribed procedure as per recruitment rules, then the ad hoc appointment will be regularised as and when regular promotion takes place. But if the ad hoc promotion was not according to rules then the ad hoc service cannot be treated as regular service for the purpose of seniority.

19. We have already seen that as per recruitment rules the promotion to JAG must be made by a regular D.P.C. consisting of UPSC Chairman or Member of UPSC as Chairman of the D.P.C. and two Advisors of Telecom Department. In this case the applicants have not placed any material to show such a regular D.P.C. was constituted while deciding their initial ad hoc appointment. Further as per the recruitment rules the promotion to JAG was by selection method. There is no allegation and ~~any~~ material on record to show that selection method was adopted by ~~not~~ applying zone of consideration and consideration of number of candidates as per rules and then giving grades and selecting candidates as per recruitment rules. In the absence of this material either by their pleadings or by way of documents it cannot be said that the promotion of the applicants was according to the recruitment rules. As could be seen from the admitted facts on record it is a case of screening of service record by the appointing authority which means promotion by seniority-cum-merit which was adopted for the purpose of ad hoc promotion of the applicants. In such a case we have no hesitation to hold that the promotion of the applicants on ad hoc basis was not according to rules and it was not a regularly constituted D.P.C. as per recruitment rules and therefore in the light of the law declared by the Apex Court, mentioned above, the applicants cannot get the right of deemed promotion from the date of initial ad hoc promotion. Hence Point (i) is answered in the negative.

20. POINT (ii) :

In view of our finding on Point (i), Point (ii) does not survive for consideration. It is common ground that an official who has put in 14 years regular service is entitled to get Non Functional Selection Grade (NFSG). The applicants were initially appointed in 1978 and therefore they claim NFSG from 1.7.92, but the applicants did not have regular service during 1991-92 since it was an ad hoc appointment. If we had held Point (i) in favour of the applicants that their initial ad hoc promotion must be deemed to be regular promotion, then applicants would have had 14 years regular service by 1.7.92 and they would be entitled to NFSG. But since their service during 1991-92 was an ad hoc promotion they cannot get the benefit of NFSG in 1992. They will certainly get it and in fact they have got it after getting regular promotion in 1996 as per the impugned order. Hence Point (ii) is also answered in the negative.

21. POINT (iii) :

It is not disputed and it is an admitted fact that in the feeder cadre viz., Group A officer, the Respondents 3 to 18 were juniors to the applicants in these three cases. The D.P.C. was held in 1995. It cannot be disputed and in fact it is settled law that promotions must be made as per the vacancies in each year separately. In fact, in this case, the D.P.C. has correctly selected candidates for promotion for vacancies yearwise basis. For 1991-92 there were 62 vacancies. It is also an admitted case that the zone of consideration was 2 n + 4 where 'n' stands for number of vacancies. Therefore for 62 vacancies the zone of consideration is 130 officers. So far there is no dispute.

Admittedly Respondents 3 to 18 were far below No.130 in the ~~detailed~~ seniority for the year 1991-92. So far there is no dispute. But the D.P.C. while preparing the list of 130 officers for zone of consideration excluded many officers who had retired by the time the D.P.C. was held in 1995. Then to make up the number 130 many juniors including respondents 3 to 18 came to be included in the zone of consideration. When the D.P.C. was held in 1995, since the promotions were being considered for the year 1991-92, if the D.P.C. had considered only the first 130 officers as per the seniority list available for the year 1991-92, then admittedly Respondents 3 to 18 would not be in picture as they were far below the zone of consideration and hence they could not have been considered for promotion for the vacancies of 1991-92. By an erroneous procedure the D.P.C. which met in 1995 prepared the seniority list as on the date of the D.P.C. and thereby excluded all those officials who had retired by 1995 and as a consequence Respondents 3 to 18 came to be included in the zone of consideration.

22. Now the question is whether the D.P.C. should consider the eligibility of officers as on the date of its meeting or as per the year of vacancy. If the eligibility is as on the date of the D.P.C. then Respondents 3 to 18 were rightly included in the zone of consideration and as per the grading given to them which is higher than the grading given to the applicants and they should come above the applicants in the promotion order. But, however, if the eligibility is to be considered as per the year of vacancy viz., 1991-92 then Respondents 3 to 18 will not be within the zone of consideration since there were many senior officers who were within the zone of consideration at that time.

23. We may make useful reference to Swamy's Compilation of seniority and Promotion (1989 Edition). At page 83, para 6.4.1 provides for preparation of preparation of year-wise panels by D.P.C. if they have not met for number of years. Para 6.4.1 reads as follows:

> "6.4.1 Where for reasons beyond control, the D.P.C. could not be held in an year(s), even though the vacancies arose during that year (or years), the first D.P.C. that meets thereafter should following the following procedures:-
>
> (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
>
> (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
>
> (iii) Prepare a 'Select List' by placing the select list of the arlier year above the one for the next year and so on."

From a perusla of the above rule we find that for each vacancy year only in which those who are within the zone of consideration at that time need to be considered.

24. Now admittedly the vacancies are for the year 1991-92. If the zone of consideration is 2 n + 4 viz., 130 officers and if officers eligible during 1991-92 are taken into consideration, then Respondents 3 to 18 being far below the number 130 cannot be considered and brought within the zone of consideration for vacancies of 1991-92. Therefore, the test for the eligibility is not the date of

D.P.C., but the eligibility is on the date or year of vacancy. The question is no longer res-integra and is covered by a decision of the Supreme Court reported in (1995) 30 ATC 262 (VINOD KUMAR SANGAL Vs. UNION OF INDIA & ORS.). The Supreme Court referred to a circular of Ministry of Home Affairs dated 24.12.1980 and then found that the D.P.C. had bunched the vacancies of three years and selected ~~from~~ persons for promotion. The Supreme Court has observed that this bunching of the vacancies has resulted in enlargement of the filed of choice for the purpose of selection. The Supreme Court observed that if the selection had been made as per yearwise vacancies, then the field of choice would have been much more restricted and the applicant in that case had a better chance of selection. Therefore in our view the field of choice or the zone of consideration must be as on the date of vacancy for a particular year and not on the date of D.P.C. meeting.

25. The learned counsel for the applicant also relied on(1997) 9 SCC 287 (UNION OF INDIA & ORS Vs. N.R. BANERJEE & ORS) where the D.P.C. had met earlier to consider future expected vacancies. The Supreme Court has observed at page 295 in para 12 of the reported judgment that if D.P.Cs are not held every year then it should prepare yearwise panel and all the eligible candidates within the zone of consideration for filling up the vacancies of each year.

26. Therefore, the date of D.P.C. is not relevant but the year of vacancies are important. In the present case the year of vacancies was 1991-92. If all the

eligible officers of 1991-92 are taken into consideration then Respondents 3 to 18 will not be within the field of choice or zone of consideration since they were far juniors to the applicants and other officers who have subsequently retired. Therefore, in our view the inclusion of Respondents 3 to 18 in the D.P.C. meeting in the zone of consideration for 1991-92 vacancies was clearly illegal and contrary to the rules and unjustified. It may be that some of the senior officers had subsequently retired prior to the D.P.C. meeting. But since we are taking the crucial date for determining the zone of consideration or field of choice as the date ~~from~~ when the vacancies arose, Respondents 3 to 18 admittedly will not come within the zone of consideration of 130 officers for the year 1991-92.

27. We may in this connection refer to a new material brought on record by the learned counsel for the applicants viz., the letter dated 21.4.1998 written by the Ministry of Personnel to the Secretary UPSC. There is no dispute that Ministry of Personnel is the Ministry which gives necessary ~~correction~~ instruction in circulars regarding service matters. In the latest letter dated 21.4.1998 the Ministry of Personnel had referred to the decision of the Supreme Court in VINOD KUMAR SANGAL's case which we have referred to above and then opinion of the Law Department was taken and then they have given direction that all the eligible officers who are within the zone of consideration in the relevant year must be taken into consideration though some of them might have retired by the time the D.P.C. meeting is held. In the place of those retired persons, it is pointed out, the juniors cannot be included since they would not be within ~~the zone of consideration~~ if the D.P.C. meeting had taken

in the relevant vacancy year. The respondents are bound by the directions or clarifications issued by the nodal Ministry viz., Department of Personnel and Training. Therefore, this circular also fortifies the view taken by us that the date of eligibility is the year of vacancy and not the date of D.P.C. meeting.

28. As already stated there is no dispute and there cannot be any dispute that Respondents 3 to 18 will not come within the filed of choice of 130 officers for the vacancies of 1991-92. Therefore, their inclusion in the zone of consideration by an erroneous process of reasoning by the D.P.C. by excluding the retired persons between 1991-92 and the date of D.P.C. in the year 1995 is wholely unjustified and contrary to the rules. Hence the promotion of Respondents 3 to 18 for the vacancies of 1991-92 is wholely unjustified and contrary to rules and is liable to be quashed.

29. Though we are saying that Respondents 3 to 18 could not have been promoted for the year 1991-92 vacancies, there is no question of reverting them. There are number of vacancies and they are entitled to the promoted post in the vacancies of subsequent years. In fact the applicants and Respondents 3 to 18 and many others have already been promoted and the only dispute is now about the seniority and not about the reversion.

30. In view of the above discussions we have to direct the respondents to hold a review D.P.C. meeting for considering promotion for the year 1991-92 vacancies on the basis of field of choice or zone of consideration of 130 persons as existing in 1991-92 (including those officers who have subsequently retired) and then give grades to all the 130 persons and then prepare a panel

of officers to be promoted on the basis of grading and on the basis of grading promotions shall have to be made having regard to the number of vacancies and grading of the officers. The D.P.C. will have to consider whether applicants are entitled to be promoted for the year 1991-92 vacancies or not. If by chance due to grading the applicants do not get promotion for 1991-92 vacancies then they must be considered for the vacancies of 1992-93 and then 1993-94. As already stated Respondents 3 to 18 should be deleted and they should not be considered for the vacancies of 1991-92. The applicants are entitled to be given seniority and appropriate placement depending on their grading and empanelment for vacancies of 1991-92 or 1992-93 or 1993-94. Similarly, the Review D.P.C. must consider the placement of Respondents 3 to 18 for vacancies of 1992-93 or 1993-94 depending on zone of consideration and their placement in the seniority of the feeder cadre.

31. Point (iv):

In the result all the three O.A. ie., O.A. No. 652/97; 653/97 and 654/97 are hereby allowed as follows:

1) Respondents are directed to hold Review D.P.C. for the vacancies of the year 1991-92 bytaking into consideration the zone of consideration by considering all the 130 officers who were in service at that time including the officers who have subsequently retired prior to D.P.C. meeting, by excluding the names of Respondents 3 to 18 from the zone of consideration for that year and then after making the

necessary gradings on the basis of records, the Review D.P.C. shall select the names of officers who are to be promoted for the vacancies of 1991-92.

ii) If, however, on the basis of the grading the applicants do not get promotion for the vacancies of 1991-92 then the applicants should be considered for promotion in the vacancies for the subsequent years. For every such Review D.P.C. the names of such eligible officers shall be selected by ~~complying~~ for the zone of consideration only from the officers who were in service for the relevant vacancy year including those officers who have subsequently retired and then on the basis of grading select the officers for promotion.

iii) Similarly Respondents 3 to 18 be considered by the Review D.P.C. for the vacancies of 1992-93 or 1993-94 depending upon their coming within the zone of consideration and depending upon the number of vacancies and the grading, they may be promoted.

iv) After the exercise of review D.P.C. are over as mentioned above and formal promotion orders are issued for the vacancies of the relevant years, then a seniority list should be prepared of all the promoted

officers. The officers promoted in the earlier years will certainly rank senior to the officers who are promoted in the subsequent years. As far as officers promoted in one year their rank position should be arranged as per their grading given by the D.P.C.

v) We make it clear that none of the applicants or Respondents 3 to 18 or any other promoted officer should not be demoted by virtue of this exercise of Review D.P.C. If by chance by virtue of Review D.P.C. some officers who are yet to be promoted become entitled to be promoted then they can be promoted in the future vacancies, but of course giving them seniority as per D.P.C. grading and year of vacancy.

vi) For the purpose of further promotions, till such seniority list is prepared after holding review D.P.C. as mentioned in this order, the official respondents can take up promotion to senior administrative grade on the basis of existing seniority list and in case any of the respondents no. 3 to 18 gets selected in the next promotion, the same may be made purely on adhoc basis to be subject to the final seniority list to be prepared as per the directions in this order and adhoc promotion to be reviewed after finalising the said seniority list. In the order of

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promotion itself it should be mentioned that in case any of the respondents no. 3 to 18 are selected, their promotion would be adhoc and will be reviewed after the seniority list is finalised as per the judgement.

vii) We hereby direct the official respondents to complete the exercise of Review D.P.Cs. and issuing fresh orders of promotion and preparation of fresh seniority list on that basis as early as possible and preferably within a period of four months from the date of receipt of a copy of this order.

In the circumstances of the case, there would be no order as to costs.

(D. S. BAWEJA)
MEMBER (A).

(H. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. No: 52/98 in O.A. No. 653/97, R.P. No.:53/98 in O.A. No. 652/97 and R.P. No: 54/98 in O.A. No. 654/97.

Dated the 9th day of October, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri D. S. Baweja, Member (A).

Shri R. Balasubramaniam ... Applicant in O.A. No. 652/97.

Shri M. M. Gupta. ... Applicant in O.A. No. 653/97.

Shri B. Arunachal Rao ... Applicant in O.A. No. 654/97.

VERSUS

Union Of India & Others ... Respondents.

And

Chandra Gupta Tiwari,
D.G.M., Mulund Telephone,
M.T.N.L.
Residing at -
Shivaji Park,
Telephone Exchange,
Quarter No. 2,
Anant Patil Road,
Dadar (W),
Mumbai - 400 028. .. Review Petitioner.
(Original Respondent No. 9)

ORDER ON CIRCULATION

(PER : SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

These are three Review Petitions filed by Respondent No. 9 in all the three original applications in respect of our common order dated 19.08.1998 in O.A. Nos. 652/97, 653/97 and 654/97. We have perused the Review Petitions and the entire records.

2. Many of the grievances made in the Review Petitions are on the merits of the case, which cannot be

re-agitated again in the form of a review petition. The scope of review petition under Order 47 Rule 1 C.P.C. is very limited. If there is any apparent error on record or for any other reasons as mentioned in Order 47 Rule 1 C.P.C., the power of review can be exercised. A review petition cannot be filed to show that the order passed by the Tribunal is wrong or that the reasoning given is wrong. If the order of a Court or Tribunal is wrong, the remedy is by way of an appeal before the appropriate forum. Hence, the review petitions so far as it touches the question of merits of the judgement, it does not come within the parameters of Order 47 Rule 1 C.P.C.

3. One of the point raised in the review petitions is, for the vacancies of 1991-92, the relevant date is 01.10.1991 and the seniority list on that date must be considered for promotion. The D.P.C. has to consider the relevant date as per rules and as per Government orders for fixing the zone of consideration for the vacancies of a particular year. We have not expressed any opinion on this point on the R.P., and, therefore, we leave it to the D.P.C. to decide the date on which the seniority list should be considered for the vacancies of a particular year.

Another grievance made out is that the same yardstick which applies to the vacancies of 1991-92 should apply to the subsequent years also. There cannot be any dispute on this point and we have made it very clear in the order that for all the vacancies

of 1991-92 and ubsequent years, year-wise vacancies has to be taken into consideration and seniority of the officers of the relevant vacancy year must be considered for fixing the zone of consideration. Since this point is already covered by the judgement, there is no necessity of reviewing our judgement.

4. For the above reasons, the Review Petition is rejected by circulation.

(D. S. BAWEJA)
MEMBER (A).

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

Certified True Copy
Date.....

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Section Officer
Central Admn. Tribunal

No. CAT/BOM/JUDL/OA653/97, 652/97, 654/97 / Date: /10/98

Copy to:

1) Shri S.P. Kulkarni, Counsel for applicant in OA 652/97 & OA 654/97.
2) Shri S.S. Karkera, Counsel for applicant in OA 653/97.
3) Shri V.S. Masurkar, Counsel for Resp. No. 1 to 2 in OA 652/97 & 654/97.
4) Shri P.M. Pradhan, Counsel for Resp. Nos. 1 & 2 in OA 653/97.
5) Shri C.M. Jha for respondents No. 3 in all cases.

S.O.