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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH, AT  
HYDERABAD.

O.A.No.991 of 1994

Between

Rahul Gautam and two others ... Applicants  
and  
Union of India represented by ... Respondents  
Secretary, Ministry of Railways,  
New Delhi and others

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS: 86

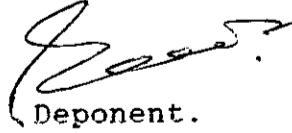
I, R.Gopala Rao, S/o R.Butchiramayya aged about 56 years resident of Vijayawada having temporarily come down to Hyderabad do hereby solemnly and sincerely affirm and state as under:-

I being an Organising Secretary of the Indian Railway Promotee Officers' Federation (IRPOF) have been authorised to represent the said Federation and as such I am well acquainted with the facts of the case. Thus I am in a position to submit this reply statement with reference to the application filed by applicants in O.A.No.991 of 1994. I have gone through the O.A.No.991 of 1994 filed by the applicants and I submit that the allegations made therein are not true and correct and did not disclose any valid or tenable grounds to grant the relief prayed for in O.A.No.991 of 1994. The material allegations made therein which are not specifically admitted herein shall be deemed to have been denied by this respondents.

I submit that the matter being agitated in this application is not covered by the judgement dated 15-8-94 in O.A.No.865 of 1st page

Corrp.

  
Attester

  
Deponent.

एस रघुनाथ/M. RAGHUNATH  
वरिष्ठ कार्यकारी अधिकारी  
Senior Personnel Officer  
द. स. रेलवे/म.वराबाद  
S. C. Railway, Secunderabad

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1993 filed before the Central Administrative Tribunal, Jabalpur Bench at Jabalpur. The issue of granting weightage in seniority to the promotee officers was not a subject matter in the said judgement of 865 of 1993 before the Jabalpur Bench. The induction of Gr 'B' officers in excess of their quota has been upheld by the Honourable Madras Bench of the Central Administrative Tribunal in O.A.No.784 of 1993, a copy of which is annexed as Annexure RI.

Without prejudice to the above submissions the following averments are made.

**II. Facts of the Case:**

1. The service of employees of Indian Railways are divided into Groups A,B,C&D. Group A and B services are Gazetted and Group C&D are Non-gazetted.

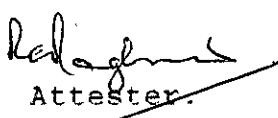
The recruitment to Group 'B' Services is mainly made by promotion of Group C employees.

The Recruitment to Group 'A' services is mainly by:

- (A) Appointment of Assistant Officers Directly recruited through the UPSC and
- (B) Promotion of Group B officers in terms of Rule 209 of the Indian Railway Establishment Code and the rules framed

A. The Assistant Electrical Engineers including the applicants herein of Group "A" and the Assistant Electrical Engineers of 2nd page

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Attester.

  
Deponent.

एम रघुनाथ/म. RAGHUNATH  
चरित्र कार्यालय नियोगी  
Senior Personnel Officer  
द. म. रेलवे/स. दरावाद  
S. C. Railway, Secunderabad

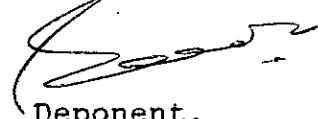
: 3 :

Group B (both commonly called as Asst. officers) discharge the same duties, shoulder the same responsibilities and exercise the same powers and hold inter-changeable posts. The percentage of vacancies in Junior Scale Group A (Asst. Officers) to be filled in by promotion from Group B is specified as 40% in Rule "4" of the Recruitment Rules published on 28-4-1962 which was amended later by the President of India in exercise of Article 309 of the Constitution (Annexure RI). Further, in terms of para 209 of the Indian Railway Establishment Code, annexed as RII promotion to Junior Scale in Group "A" shall be made by selection on merit amongst the Group B officers of the department concerned with not less than 3 years of nonfortitous service. This being the rule position, the respondent railways are taking minimum of 9 to 14 years as against 3 years to appoint Group 'B' officers into Group A, though, there were/ are vacancies which were/ are being manned by group B Officers on adhoc basis. This is explained in Annexure RIII. by way of a chart. The non-implementation of quota rule based upon the vacancies in induction of Group B officers into Group A junior scale has not only reduced the induction of Group B Promotee Officers to Group A, but also deprived them of their legitimate promotional chances into senior scale of higher scales on regular basis.

B. A statement showing the dates on which the respondents 5 to 85 were appointed as Assistant Officers in Group B, the date(s) on which they became eligible to be appointed in Jr. Scale Group 'A' Officers interms of Rule 209 (R) of I.R.E.C. the date from which they had been working in Sr. Scale Grade posts continuoulsy  
3rd page

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Attestor

  
Deponent.

एम राजनाथ/म, राजनाथ  
वरिष्ठ अधिकारी अधिकारी  
Senior Officer/Officer  
द. स. रेडी/म.दराज़द  
S. C. Railway, Secunderabad

are shown in Annexure -R.IV on the date of the publication of the impugned seniority list i.e. on 10-12-1994, all the respondents 5 to 85 were already working in Group A higher grade posts i.e., Sr. Scale posts in Scale Rs. 3000-4500 on adhoc basis.

C. During the last more than two decades, quite a large number of Group A posts in Sr. Scale cadre are being manned by Group B Officers on adhoc basis. During the last one decade, at any given point of time, there were/are on an average

Group B Officers working in Sr. Scale/ It may be made clear here that the post of

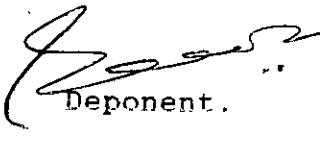
Group A post since there is only one category of Officers in Group B i.e., Asst. Officers.

It is also submitted that 1843 Sr. Scale posts of which 176 in IRSEE as on 1-1-90 (page 36 Annexure R-V) are being manned by Group B officers on adhoc basis. It is emphatically submitted that all these posts are vacancies in Group A and have not been taken into account to fill the quota of 40% of Group B Officers, though, the Group B Officers are available and as a matter of fact manning the posts of higher nature Viz., Sr. Scale . shown in Annexure R.VI Thus, it would be observed that there are vacancies in Jr. Scale Group A to a very large extent and that the same have not been correctly projecting and assessing the vacancies in Group A Jr. Scale, resulting in deprivation of the Group B Officers to Group A, adversely affecting their promotion chances to the higher scales. There has been a total failure in working out the vacancies position of Group A Jr. Scale.

4th page

Corrp.

  
Attester.  
एन राजाप/म. राजनाथ  
वरिष्ठ कार्यालयीय पर्सनल विभाग  
Senior Personnel Officer  
द. स. रेलवे/सिंगाराबाद  
S. C. Railway/Secunderabad

  
Deponent.

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The respondents herein also submit that a good number of the respondents are already been working in Sr. Scale posts even before applicants herein have entered the Railways service. Therefore, it is submitted that the applicants cannot question the seniority or induction of the Officers respondents. The respondents herein submit Annexure RVII showing the date of entry of respondents into Group B and their date of promotion to Sr. Scale. It could be seen there from that most of these respondents have put in more than a decade of service as Assistant Officers and a majority of them have served even in Sr. Scale on adhoc basis.

Though, eligible Group B Officers were available and had been working against Sr. Scale Group A posts continuously without any interruption, they were not inducted into Group even to the extent of their own prescribed quota of 40% of the vacancies available from year to year.

The averment of the applicants in para 2E stating 23  
hence only 17 candidates can be promoted from Group "B" to Group  
"A" is baseless and is denied. It is submitted that the  
induction of Group B Officers into Group A is not correlated to  
the number of persons directly recruited in particular year. The  
induction of Group B Officers into Group A depends upon the  
number of vacancies in Jr. Scale Group A and is no way related to  
direct recruitment quota.

It is also stated that all the respondents 5 to 85 have already been working for considerable time in Sr. Scale posts in Scale Rs 3000-4500/- and their induction into Group A Jr. Scale

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*Attester.*

Deponent.

एक विज्ञानी/Dr. DACHUNAIDU  
दिव्यांग विज्ञानी विज्ञानी  
डिव्यांग विज्ञानी विज्ञानी  
दिव्यांग विज्ञानी विज्ञानी  
दिव्यांग विज्ञानी विज्ञानी

i.e., lower scale of Rs 2200-4000/- w.e.f. 3-3-92 cannot be considered to be a promotion whatsoever. Further, their induction into Group A will not also affect adversely the applicants as all the officers of the impugned orders were already in higher scale prior to the applicants entering into Railway Service.

The respondents herein submit copies of the correspondence Annexure R.V entered into by the Railway Board (Respondents 1 & 2) with the UPSC admitting the failure of induction of Group B Officers into Group A to the requisite extent as per the Recruitment Rules. Lr.No.E(GP)89/1/65, dated 30-10-89 from Adviser (Management Services) to the Secretary, UPSC, clearly establishes that 1482 Group B Officers were working in Sr. Scale on adhoc basis due to failure of the Railway Administration to induct them into Group A as per the Recruitment Rules.

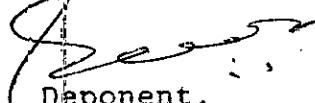
An extract of para-2 of the note, dated 14-9-89 from the Director Establishments (GC) of the Railway Board clearly brings out the failure of the Railway Administration in filling up the 40% quota of the Group B Officers in Group A services (Annexure RV page -57)

Posts in Sr. Scale and above are all Group A posts which in the normal course are required to be manned by Group A Officers whether directly recruited or promoted from Group B. To facilitate this, rules provided that 60% of vacancies in Jr. scale (Group A) should be filled by direct recruitment and 40% by promotion from Group B. If this percentage had been

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Corrp.

  
Attestor

  
Deponent.

एम रघुनाथ/ए. रघुनाथ  
संस्थान कार्यालय प्रबंधकारी  
Senior Personnel Officer  
द. स. रेलवे/रेलवे बाबू  
S. C. Railways, Secunderabad

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consistently and correctly followed over the years, the percentage of promotee Group A officers in Sr. Scale and above posts. However, promotee Group A officers constitute only 14% of the Sr. Scale and above posts and the remaining 86% of such posts are manned by directly recruited Group A officers (including 'Temporary' Officer). Taking Sr. Scale posts alone, the position is even more anomalous as promotee Group A officers man only 7.7% of Sr. Scale posts and about 87% Sr. Scale posts are manned on adhoc basis by Group B Officers".

It is respectfully submitted by these respondents that even after the induction of the 81 Officers of Group A mentioned in the impugned order, still large number of Group B Officers disregarding the recruitment rules mentioned herein above. The respondents herein submit that the applicants herein cannot question the validity of the percentage of induction only in a particular year when the Railway Board have failed to adhere to the recruitment rules consistently for a number of years, depriving the Group B officers of their legitimate quota, even though there are vacancies.

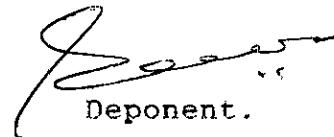
The second issue relates to the weightage of 5 years given to the promotee officers on their induction to Group A. The principles governing the relative seniority of Group A officers are circulated vide Board's letter No. E(O)1.72/SR6/29 dated 30-11-76 as amended from time to time. Principle (VII) of these principles provide for weightage of Group B service in determining seniority of Group A of Group B officers on their promotion from Group B service to Group A based on:

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Corrp.

  
Attestor

मुख्य अधिकारी, रेलवे  
कर्मचारी विभाग  
सचिव, रेलवे विभाग  
क्रमांक 100  
S. C. D. 100  
B. M. D. 100  
S. C. D. 100  
B. M. D. 100

  
Deponent

: 8 :

a) The year of service connected by the initial pay on payment promotion to Class-I service or

b) Half the total No of years of continuous service in Group B both officiating and permanent which even in higher scale subject to a maximum weightage of five years provided that the weightage so assigned does not exceed the total non-fortuitous service rendered by the Officer in Group B.

The seniority of Group B Officers permanently promoted to Jr. Scale /IRSEE w.e.f. 3-3-92 has been fixed vide letter No. E(O)1-91/SAR-6 18 dated 10-2-94 after giving weightage from the date of their induction in terms of principles governing assignment of seniority as mentioned above.

The contention of the applicants that the question of giving weightage shall not arise in the case of Group B Officers promoted to Group A is denied. The contention of the applicants that relevant principle for granting weightage to promotees while fixing their seniority on induction to Group 'A' is arbitrary and illegal is also denied. The principles for determining the seniority are fixed by an order of the President and has stood the test of judicial scrutiny. Reckoning of weightage for the purpose of seniority to Group B Officers on their promotion to Group A service by granting weightage has been followed since 1955 onwards. There has been no infringement of any rules on the subject. The relative seniority of promotion is fixed in accordance with the prescribed principles without any discrimination. The rule of weightage was upheld by various decisions as reported in AIR 1987 SC 1427 and 1993 (23 ATC).

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Corrp.

*Raghunath*  
Attester.

*J. S. Rao*  
Deponent.

एम. राघुनाथ राघुनाथ  
दरिया रोड, बैंगलोर  
Senior Second Officer  
द. न. रेल्वे/मुद्रावाद  
S. C. Railways, Secunderabad

: 9 :

III. THE ANSWERING RESPONDENT HEREIN SUBMITS THE FOLLOWING PARAWISE REMARKS

Paras 1 & 2      Needs no reply.

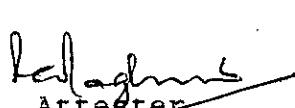
Para-3: The applicants in their argument requesting the Honourable Tribunal to revise the seniority lists published by the Railway Board vide their order No.E(O)I-91/SR-6/18 dated 10-2-94 without challenging the seniority principles laid down by the Ministry of Railways for fixing the seniority of directly recruited Group A Officers and promotee Group A Officers is correct. The seniority list published by the Railway Board on 10-2-1994 is strictly as per the principles and rules framed by the Ministry of Railways and as such need not be revised, particularly when the seniority rules have not been challenged.

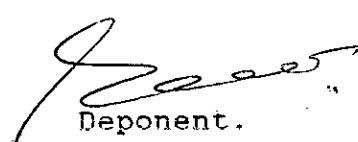
It is already submitted that the appointment of the answering respondents in Group A Sr. Scale vide Order No.E(GP)91/154, dated 25-4-92 is within the quota of 40% prescribed for appointment of Group B Officers into Group A under rule 4(b). Hence, these grounds are not valid grounds for interfering with the order dated 25-4-92. It is also submitted that majority of them are working in Sr. Scale well before the entry of the applicants to the gazetted service and hence, the adverse affect of these orders on the applicants is negligible.

Para-6      Save and except the matters on record as admitted hereunder, rest of the contents are denied.

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Attester.

  
Deponent.

एम रघुनाथ/M. RAGHUNATH  
वरिष्ठ प्रार्थी अधिकारी  
Senior Personnel Officer  
द. म. रेलवे/भिकदराबाद  
S. C. Railway/Secunderabad

: 10 :

a) For the purpose of fixation of seniority, years of examination is not relevant, but it is the date of appointment that is relevant. For inter-se seniority between direct recruits, it is the merit, order of the panel.

b) It is submitted that contents of sub-para 6(b) are denied. The appointment of Group B Officers to Group A is governed under para 209B(1) of Indian Railways Establishment code-volume-1 (Annexure-RII).

c) The contents of this para are denied. The contention of the applicants that "There is no provision to fill up 60% posts reserved for Group A candidates by promoting Group B Officers" is specifically denied. It is submitted that no quota is prescribed for direct recruitment under clause(a) of Rule 4 of recruitment rules of IRSEE and hence, the contention of the applicant is without any support of Rules.

~~..... of power and also the basic principles followed in other recruitments where the vacancies are filled by promotion and direct recruitment, the promotee's quota is to be filled first. This is supported by note to Rule 4(b) of Recruitment Rules of IRSEE. In order to asses the real requirement of direct recruits, the respondent Railways are supposed to fill the departmental quota first and if there is any shortfall due to non-availability of eligible Group B Officers against their own quota of 40% the left over vacancies should be filled by direct recruitment. Extract of Rules 4 of Recruitment Rules of IRSEE is attached as Annexure-I/~~

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Corrp.

*Debendra*  
Attester.  
एम एस/मा. RAGHUNATH  
कर्मचारी  
Senior Assistant Officer  
व. प. विभाग/संविधानालय  
S. C. Railways/underdated

*Deponent.*  
Deponent.

: 11 :

Contrary to this principle and the Recruitment Rules, the respondent Railways are filling the direct recruitment quota first at a very reduced rate. Even this reduced induction of Group B Officers into Group A is not done in the relevant recruitment years but after a delay of 3 to 4 years.

Promotees quota given to them after a delay of 3 to 4 years is not based on the actual vacancies (even manned) but on the basis of reduced direct recruitment though the promotees quota is not supposed to be linked with the direct recruitment. This unethical method of reducing the promotees quota linked with direct recruitment and giving the same after a delay of 2 to 4 years in malafide, arbitrary and against all canons of natural justice and also violative of article 14 & 16 of the Constitution. In support of this settled principles of Law, the case of A.K.Subraman and others Vs U.O.I. AIR 1975 SC 483 reiterated in the case of direct recruits Vs State of Maharashtra (AIR 1990 SC 1607 para 25) is relied upon. was held.

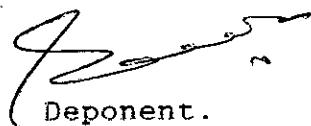
It is submitted by the respondents that on-third quota cannot be filled unless the two-third quota was exhausted. This in our view, will introduce sterility in the quota rule so far as the promotees are concerned. Their hopes and aspirations cannot be related to the availability or non-availability of the direct recruits to fill the two third quota. Each quota will have to be worked independently on its own force. The word 'rest' in the quota rule cannot be pressed into service to defeat the object of the rule coming in aid of advancement of prospects of the promotees in the hierarchy of the service".

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Corrp.

  
Attester

एस. राधाराम/M. RADHANATH  
वरिष्ठ पर्सनल ऑफिसर  
Senior Personnel Officer  
द. म. रेड्डी/कल्पदरामाराव  
S. C. Railway, Secunderabad

  
Deponent.

Therefore, humble submission of this Respondents is that they were/are not inducted into Group A Junior Scale even to the extent of their 40% quota reserved as per recruitment rules in the respective recruitment years though the Group B officers being eligible to be appointed in Group A were available and manning the vacancies inspite of vacancies being available both in Senior Scale posts.

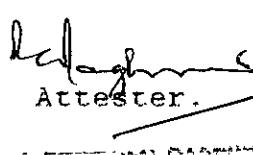
This non-implementation of quota rules has not only reduced the percentage of intake of Group B Officers into Group A (14 % in Senior Scale and above posts and 7.7% in Senior Scale posts alone) but also reduced promotional prospects to senior Scale and above posts on regular basis. Thus there is a failure of quota

Railways have accepted their failure in not adhering to the quota of 40% for promotees consistently over the years as may be seen from para 2 of Executive Director (GC)'s Note dated 14-9-89 (Annexure RV) extracted below:

" posts in Senior Scale and above are all Group A posts which in the normal course are required to be manned by Group A Officers whether directly recruited or promoted from Group B. To facilitate this, rules provide that 60% of vacancies in Junior Scale Group A should be filled by direct recruitment and 40% by promotion from Group B. If this percentage had been consistently and correctly followed over the years the percentage of promotee Group A Officers. In Senior Scale and above posts should not be very much below 40% of the total senior scale and above posts.

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Attester.

  
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C. O. S. C. S.  
S. C. H. A.  
C. O. S. C. S.  
S. C. H. A.

However, promotee Group A Officers constitute only 14% of the senior scale and above posts and the remaining 86% of such posts are manned by directly recruited Group A Officer (Including Temporary Officers). Taking senior scale posts alone, the position is even more anomalous, as promotee Group A officers man only 7.7% of Senior Scale posts and about 87% of Senior Scale posts are manned on adhoc basis by Group B Officers". Thus it is an admitted position that the respondent Railways have failed to follow the quota rules.

d) save and except the matters on record, rest of the contentions are denied.

As already submitted, the seniority of the respondents has been fixed strictly as per seniority rules mentioned in principle (VI). As there is no violation of the seniority rules, the fixation of the seniority of the respondents vide Railway Board's order dated 10-2-1994 is good in law: vide Annexure RVII it is once again submitted that the year of examination is not relevant for the purpose of fixation of seniority of direct recruits.

e) The contentions in this para are denied as they are not based on facts and truth. It is specifically denied that the Respondent Railways are supposed to appoint 60% Jr. Scale officers through direct recruitment, As already submitted supra, the recruitment rule 4(a) of IRSEE does not prescribe any quota for direct recruitment, whereas the promotee quota is 40%. The question of short-fall as envisaged in Note-1 to Rule 4 arises

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Attestor.

  
Deponent.

एम रघुनाथ/म. RAGHUNATH  
कर्मचारी नियुक्ति विभाग  
स. रेलवे एक्सामिनेशन  
क. रेलवे एक्सामिनेशन  
स. रेलवे, सेकंडराबाद  
S. C. Railways, Secunderabad

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only when the eligible promotee officers are not available for filling the 40% quota. The answering respondents, who were appointed in Gazetted Cadre as many as 10 - 20 years back, were very much available and in fact manning the higher scale posts for filling the 40% quota for Group B to Group A in terms of para 209-B(1) of Indian Railways Establishment Code- Volume-1 Annexure-III.

The case of the answering respondents, as already been submitted supra, is that they were available being eligible to be appointed in Group A after 3 years in terms of Rule 209B(1) of IREC and are physically working against the vacancies of Group A and that these manned vacancies were not taken into account by respondents No.1 and 2 - - - - - quota for Group B in terms of Rule 4(b) of recruitment rules.

f) The contents of this para are denied.

It is humbly submitted that the order in the merit list in Group A is the criterion for the direct recruitees for the purpose of fixation of seniority and not the year of examination. The applicants were appointed in 1987 and their seniority is reckoned from 1987. The inter-se seniority of the direct recruitees is, however, maintained according to the merit of the panel of direct recruitees. It is specifically denied that 60:40 is the ratio of appointment to Group A Jr. Scale between the direct recruitees and departmental candidates. As already submitted supra rule 4(a) of recruitment rules does not provide

Page 14

Corrp.

McLaughlin  
Arrestee

  
Deponent

एन रमेश / M. RAGHUNATH  
 रेलवे दर्तक ग्रन्तिकारी  
 Senior: "Railway Officer"  
 द.ग. १०८८/ दरावाद  
 S. C. Railways, Secunderabad

through open market. In the case of the promotees only, 40% of the vacancies are to be filled from Group B as prescribed under rule 4(b) in recruitment rules. The applicants by mentioning the ratio of 60:40 are trying to mislead the Honourable Tribunal by wrong averments. When there is no prescribed quota for direct recruitment in the recruitment rules, question of non-maintaining 60:40 in the year 1990 between the direct recruits and the promotees does not arise.

As submitted herein before, respondents No.1 & 2 havewith a view to avoid stagnation in the promotional prospect of direct recruits resorted to the reduced direct recruitment from open market. The promotion of promotees' quota of 40% has been linked with intake of direct recruits in violation of recruitment rules. As already submitted it is only in the case of promotees that 40% of the vacancies have been prescribed to be filled from Group B as per rule 4(b) of the Recruitment Rules and no quota is prescribed for direct recruitment. In terms of Note-1 to Rule 4(b), if the quota of 40% prescribed for promotees is not fully utilised, the remaining vacancies shall be filled by direct recruitment under clause (a) of rule 4. Therefore, it implies that the promotees' quota of 40% should be filled first in the year in which vacancies occur and then the direct recruitment should be resorted to under clause (a) of rule 4 of recruitment rules, so as to fill the rest of the vacancies. The respondents No 1& 2 by not taking into account the vacancies in Group A manned physically by Group B officers though they have completed 3 years and became eligible for appointment in Group A against the terms of rule 209-B(1) of IREC, have

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Corrp.

Attester

Q. H. Rao / Attester  
S. C. Raihan / Attester

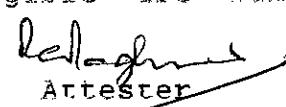
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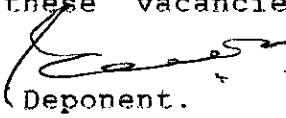
violated the recruitment rules for the reasons already mentioned above. In view of these averments, the contention of the applicants that 17 Group B Promotees can only be appointed in Group A as 23 direct recruits were appointed in 1992 is totally wrong as the filling up of 40% quota does not depend upon direct recruitment. By making these wrong averments, the applicants are trying to mislead the Honourable Tribunal.

As many as 632 upgraded senior scale posts in Group A as mentioned in Railway Board Lr. No. E(OP)89/1/65 dt. 30-10-89 meant for filling from the years 1973 and 1980 have not been filled by Group B Officers during the last more than 10 years though the eligible Group B Promotee officer were manning these posts physically. Similarly, a number of Jr. Scale Group A posts are manned by the answering respondents and manned Jr. Scale vacancies have not been taken into account by respondents No. 1&2 for the purpose of filling their own quota of 40% as for rule 4(b). This fact has been established vide the noting of the Railway Board while corresponding with the UPSC for giving additional posts to Group B. In the light of these facts, it is clear that the induction of the answering respondents vide order dated 25-4-92 is not in excess to 40% quota, but is within the quota of 40%. Even taking into account the vacancies that were available in the years 1989, 1990 & 1991, the additional posts granted to the answering respondents are within the quota of 40% and, therefore, the allegation of the applicants is totally baseless. As already submitted, the case of the answering respondents is that they were not appointed in Group A after 3 years of their regular service in Group B as shown in Annexure-R 3, though they were eligible are manning these vacancies

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Attestor

  
Deponent.

मुमुक्षु/M. RAGHUNATH  
विविध विभाग  
संस्कृत विभाग  
द. व. र. / राज्य  
S. C. Railway, Secunderabad

physically against their own quota of 40% and, therefore, induction of the 81 Group B Officers into Group A is not in excess to the quota of 40%. However, for the time being assuming that the quota of 40% has been exceeded, though not factually correct the answering respondents say that the respondents No.1&2 are vested with the powers under rule 4(b) and Rule 5 for varying the percentage of 40 in case the need is found. Rule 4(b) provides for inducting Group B Officers to not more than 40% of the vacancies in Group A. The second rule 5 reads as "This percentage is likely to be varied from time to time if found necessary" On a careful reading of rule 4(b) with the proviso of variation provided in the rule itself, it will be seen that the powers for variation of the percentage have been given only if variation is required on higher side i.e., beyond 40%. To vary the percentage below 40, there is no need to provide a separate proviso in rule 4(b) for variation for the reason that the language of not more than 40% itself empowers the respondents No.1 & 2 to recruit 40% or 35 % or 30% or 20% or anything below 40% for which no separate proviso is required for variation on the lower side. For variation on the higher side only, separate proviso is required. In view of this specific proviso, it is submitted that the respondents No.1 & 2 are within their powers for exceeding the quota of 40% if the need is recognised. The need has been recognised as the quota of 40% meant for Group B officers has not been filled by respondents No.1 &2 though they are eligible by being eligible and by manning those vacancies so long as the 40% of vacancies prescribed for promotions has not been contravened particularly when the

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Corrp.



Atteester

एम रेलवे/रेलवे  
वरिष्ठ प्रौद्योगिकी  
Senior Personnel Officer  
द. म. रेलवे/रायलमैर्स  
S. C. Railway/Secunderabad



Deponent.

vacancies in the Group 'A' Junior Scale/ Senior Scale have already been occupied and have been working on adhoc basis by Group B Officers there is no illegality in giving paper promotion a regular basis. The same is fully protected under rule 5 of the recruitment rules. It is only to undo the injustice done to Group B Officers, the Respondents No.1 & 2 have promoted 81 officers in 1992 within there quota. As already stated, even in the same recruitment year, according to available vacancies, inducting of 81 Officers in 1992 is with in the quota of 40% and the contention of the applicants that the respondents No.1 & 2 have exceeded the quota of 40% is not admitted and specifically denied.

G) The contentions in para (g) are totally misleading as they are not based on facts and truth and hence not admitted. The contentions of the applicants that the post of Group B is lower than Group A Jr.Scale and that the Group B Officers is inferior to that of Jr.Scale Group A is specifically denied. As already submitted in para II(a) supra, the posts of Asst. Electrical Engineers (commonly called as Asst.Engineers) are held by both Group A direct recruits and Group B Officers. In otherwords, the post of Asst.officer is a combined Jr.Scale A Group B and it is not possible to demarcate the Jr.Scale posts and Group B posts in an organisation like the Indian Railways. The post is cosidered as Group A Jr.Scale when it is manned by Jr.Scale Group A officers, otherwise it is a Group B post. Therefore, in the light of this Admission by Respondents No.1 & 2 the contention of the applicants in this para that the posts of Group B, is lower

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Corrp.

*D. Raghunath*  
Attester  
एम रघुनाथ/म. राघुनाथ  
संस्कृत भाषा विभागी  
Senior Personnel Officer  
S. C. RAILWAY, SECUNDERABAD  
S. C. Railway, Secunderabad

*S. C. RAILWAY, SECUNDERABAD*  
Deponent.

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than Group A Jr. Scale is totally baseless and far from truth. It is, therefore, submitted that for a Group B Officer, appointment in Group A Jr. Scale is not a promotion in reality as he was holding the same post of Asst. Officer (Jr. Scale/Group B) and on being inducted into group A he is not shouldering any higher additional responsibility and on the other hand he has given the paper promotion to Group A Jr. Scale though some of Group B Officers are working on Adhoc basis in the Sr. Scale. They are given paper promotion to Jr. Scale Group A and are made to work in Sr. Scale. Similarly some of the Group B officers who had been working as Asst. Officers (Jr. Scale) are given paper promotion with out any higher responsibilities. Further group A Jr. Scale Officers as well as Group B Officers occupy the same post and they are interchangeable and exercise same powers and duties are one and the same except to the limited extent of pay difference of Rs. 200/-. That is the reason why Group B Officers are promoted on adhoc basis to Sr. Scale without even giving paper promotion to Jr. Scale in Group A and most of the respondents have \_\_\_\_\_ for more than a decade. Whereas Group A Jr. Scale Officer after completion of 3 years service is eligible to be appointed as a Sr. Scale officer on adhoc basis and after 1 year of service he is given a regular promotion.

The seniority of the applicants is not taken away or interfered with by the impugned order. The year of the allotment of the applicants remains the same and is not altered. Rules provide for giving weightage to the promotee officers for

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Attestor.  
S. C. RAILWAY/ M. R. R. C. RURATE  
वरिष्ठ प्रबोधनी अधिकारी  
Senior Permanent Officer  
द. न. रेल्वे / रेलवे  
S. C. Railways/Secunderabad

*Joseph*  
Deponent.

their post services in the departments in accordance with the provisions of the statutory rules framed under Article 309 of the constitution. The relevant rules as contained in Railway boards Lr.No.E.54SB6/1/2, dated 10-3-55 and Lr.No.E01-72SR6/9 dated 30.11.76 are annexed as:

The rule of weightage has been upheld by the various decisions reported in:

- i) AIR 1987 SC 1427 (jasinghani Vs. U.O.I)
- ii) SLJ 199091) Page 67 (U.O.I) and others Vs.Dr.Krishnamurthy and others
- iii) AIR 1993 (23) ACT Page 788 (IAS Vs. U.O.I)
- iv) 1993 SSC (3) FROA Vs. U.O.I. Page 364
- v) O.A.No.1422/1987 Sunil Mishra Vs. U.O.I. decided on 9.5.93 in CAT. principal Bench/New Delhi.

It is also submitted that when all the answers - - -

entered the gazetted service and promoted to the Sr.Scale Group A posts, the applicants have not even entered the Railway service and therefore, they have no locus standi to question the seniority or induction of the officers mentioned in the impugned order. The seniority is fixed in Jr.Scale Officer for directly recruited Officers according to their rank in the merit list. Similarly when group B Officers is promoted Jr.Scale Group A though they discharge similar duties and exercise similar powers their seniority has to be reckoned in Jr.Scale Group A. That is the reason why certain weightage is provided under the rules, dated 30.11.76. The weightage not exceeding 5 years, is provided so that the seniority list may be prepared in the Jr.Scale Group A officers between directly recruited and promotee officers. The

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*[Signature]*  
Attester.

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S. K. [Signature]  
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grant of weightage while fixing the seniority in Group A is, therefore, neither arbitrary nor illegal nor violates Article 14 or 16 of the constitution of India.

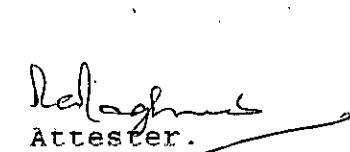
The contention of the applicants contained in para 6 (j) is specifically denied. As already submitted supra. The answering respondents being available by meaning both Jr. Scale Group A and Sr. Scale Group A posts well before the date of entry of applicants into the service were eligible to get induction into group A immediately after 3 years of their entry into the Gazetted service in terms of rule 209(b) (1) against their own quota of 40%. The answering respondents, therefore, pray the Honourable Tribunal to declare that the induction of respondents 3 to 85 to Group A Jr. Scale is in order.

Under the reasons and circumstances stated supra, this respondents pray that this Hon'ble Tribunal may be pleased to dismiss the O.A.No.991/1994 with costs as devoid of merits and to pass such other order to orders as deemed fit and proper in the circumstances of the case.

Solemnly and sincerely affirmed  
and signed on this 26<sup>th</sup> day of  
April, 1995.

Before me

  
Deponent.

  
Attester.

एम राजाराम/म. राजाराम  
सेनिट पर्सनल अफिसर  
Senior Personnel Officer  
द. स. रेल/मुद्राबाद  
S. C. Railways/Secunderabad