

160

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.1113 of 1995.

DATE OF ORDER:- 16th FEBRUARY, 1999.

BETWEEN:

B.S.H. Rao, s/o Ramakrishna Rao,
Sr. Personnel Officer (Con.),
S.E. Railway, Visakhapatnam.

.. APPLICANT

A N D

1. Union of India, rep. by
Chairman, Railway Board,
Government of India,
Ministry of Railways,
NEW DELHI.

2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Calcutta - 43.

.. RESPONDENTS

Counsel for Applicant . Party-in-Person.

Counsel for Respondents : Mr. V. Bhimanna, ACGSC.

Coram :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

.... 2.

7. The above principle was reiterated by the Supreme Court in the case of Direct Recruit Class --
 ----- and others v. State of Maharashtra and others (2)(para-25) by holding that -

"It has however been rightly suggested on behalf of the appellants that when recruitment is from more than one source, there is no inherent invalidity in introducing quota system, but as was observed in Subraman's case (supra), the unreasonable implementation of such a rule may attract the frown of the equality clause. Further if a rule fixing the ratio for recruitment from different sources is framed, it is meant to be respected and not violated at whims of the authority.*

The same principle was asserted by Supreme Court in the case of S.S.Bola and others v. B.D.Sardana and others (3) in which the Hon'ble Court held as follows :

"X. The prescription of the ratio between direct recruits and promotees is equally constitutionally permissible and the permissible limits shall not be altered by executive action, unless the executive has the power. For exercise of such power it should give proper, valid and satisfactory explanation in writing prior to exercise of the said power, for deviation of the quota rules and that too as a short term arrangement to tide over administrative expedience."

8. In spite of the factual and legal position being as stated above, according to the applicant, the respondent-railways in Para-I(i) of the reply statement stressed that the promotee quota for recruitment was linked with the indent placed on UPSC for direct recruitment, but according to the applicant, this procedure adopted by the respondent-railways was patently against the recruitment rules as emanating from Rule 8(d) and Rule 209 of the Code.

9. Highlighting abnormal delay in conducting the DPC which, allegedly resulted in discrimination, the applicant submitted that the delay was intentionally committed by the respondents with an oblique motive of ^{delaying to} induction of Group B officers to Group A Junior scale.

4. Further according to the applicant, there were 155 vacancies in Junior scale Grade 'A' in 1981, 140 in 1982-83, 141 in 1984 and 163 in 1985. The same was the position of vacancies in the senior scale Group 'A' against the sanctioned strength of 110 and therefore, according to the applicant, from the year 1981 sufficient number of vacancies were available to consider the appointment of the large number of vacancies and in spite of the fact that the applicant was physically working against Group 'A' junior scale post, the applicant was given the junior scale only on 10.2.1993 i.e. after 14 years of Group 'B' service in violation of the norms provided in Rule 202 (b)(1) of the Code.

5. The respondent-railway comes up with a contention that "Promotee quota for recruitment is linked with the indent placed on UPSC for Direct Recruitment." However, Rule 9(i)(a) & (d) (ii) of I.R.P.S. Recruitment Rules and Rule 209 (B)(1) and (2) of the Code which, according to the applicant, make it abundantly clear that the promotee quota was to be filled independently and it had no link with the indent placed for direct recruitment.

6. The respondents' contention that 1/3rd quota could not be filled unless 2/3rd quota was exhausted, was an erroneous approach, according to the applicant because it was likely to introduce sterility in the quota-rule as far as promotees were concerned. Quoting from the Supreme Court's decision in the case of A.K. Subbaraman v. Union of India (1), the applicant submitted that the hopes and aspirations of the incumbents could not be related to the availability or non-availability of direct recruits to fill the two-third quota. Each quota was required to be worked out independently on its own force and the word 'rest' in the quota rule could not be pressed into service to defeat the object of the whole rule coming to the aid and advancement of the prospects of promotees in the hierarchy.

11. In the above view of the matter, therefore, the applicant submitted before us that his promotion to Senior scale with effect from 23.7.1992 as against the vacancy of the year 1989 was also incorrect. The applicant in support of his submission, pressed into service the decision of the Bombay Bench of the Tribunal in the case of R.K. Gupta v. Ministry of Transport (CP No.5/91 in OA 177/86) in which the Bench observed that merely because the respondents thought it convenient to hold the DPC only in 1985 and the approval of UPSC to the recommendation of DPC was given only on 14.10.1985, it would be unfair to give effect to promotion only from that date.

12. Reliance was also placed by the applicant on the decision of the Supreme Court in the case of Union of India v. Vipin Ch.Hiralal Shah (4) in which the Supreme Court held that the failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the select list for that particular year. The Hon'ble Court further observed that if the name was included in the selection list for any particular year, he should be appointed to the post against that vacancy of that year with all consequential benefits.

Further according to the applicant, he being the seniormost eligible Assistant Personnel Officer for Senior scale promotion in S.E.Railway in 1984, he had been empanelled to officiate in Group A senior scale post on ad hoc basis after subjecting him for selection by Zonal DPC in terms of Rule 214 of the Code. The applicant's pay on promotion was first fixed at Rs.810/- in Junior scale Group A carrying a scale of Rs.700-1300 and then at Rs.1100-1600 / 300-4500 as per Rules under concordance table. The continued officiating promotion in Senior scale post on ad hoc basis had the approval of the Ministry of Railways every year i.e. from 1985 to 1992. The applicant further submitted that the approval of the Railway Board /UPSC every year could only be against Group A post and the very fact that the applicant was

9 years elapsed, as against 3, as provided in Rule 209(b)(1) of the Code; whereas promotion of Jr. Scale Group A Officers was implemented on completion of 4 years immediately on fulfilment of their eligibility condition as per Rule 209(c), resulting in abject discrimination. The contention of the respondents that the delay in holding the DPC could not be ruled out on account of the need to collect and consolidate the information/documents relating to ~~the~~ very large number of officers ~~in~~ ^{over} Zonal Railways and Production Units was a deliberate misleading statement, according to the applicant. In terms of DPC procedure circulated vide their letter No.E(GP)97/1/5 dated 7.7.1997, the DPC was ^{supposed to be} guided only by the CRs of past 5 years. Further in the absence of any one or more CRs, the DPC was entitled to assess the eligibility based on the earlier CRs and thus, according to the applicant, that situation did not brook any delay whatsoever for clearance of promotions by DPC.

10. On the question of non-consideration of the applicant for induction into Group A in 1984, the applicant pointed out from the reply statement of the respondents in para-(k) that the applicant was first considered for induction to Group A Junior scale against Promotees' quota of 1986, the DPC for which met in 1989 and the applicant was formally inducted to Group A with effect from 23.7.1992 based on the recommendation of the DPC against the Promotees' quota of the year 1989.

It could thus be seen, according to the applicant, from the above that non-induction of the applicant even from the year 1986 could only be due to incorrect projection of vacancies by linking the Promotees' quota vacancies with the indent of direct recruitment, which is illegal and in contravention of Rule 8(d) of I.R.P.S. Recruitment Rules and Rule 209 of the Code.

accordance with the recruitment rules and in consultation with the UPSC. Clause (C) of Rule 209 also provides that promotion in order of seniority, subject to rejection of the unfit officers, with ordinarily not less than 4 years of service in the junior scale.

14. Rule 9(1) (d) of the Indian Railway Personnel Service (Recruitment) Rules, 1975 reads as under :

" Future Maintenance of the Service -(1) After initial constitution of the Service has been completed, vacancies shall be filled in the manner as hereafter provided :-

(a) x x x x
(b) x x x x x
(c) x x x x

(i) x x x
(ii) x x x

(d) Junior Scale (Class-I) - Assistant Personnel Officers-

(i) 50 per cent of the vacancies in the junior scale shall be filled by direct recruitment through an open competitive examination held by the Commission in the manner prescribed in Schedule II.

(ii) 50 per cent of the vacancies in the junior scale shall be filled by selection on merit from Class II officers with at least 3 years' service in the grade in the Railway Ministry and the Personnel Departments on the Railways."

2. In case any of the methods of recruitment referred to above fails, the vacancies shall be filled by transfer on deputation of suitable officers of the Class I Service under their Ministry of Railways (Excluding the Indian Railway Medical Service). The period of deputation shall not ordinarily exceed three years."

As stated earlier,
15. the Bombay Bench of this Tribunal in R.K.Gupta v. Ministry of Transport (C.P.No.5/91 in OA No.177/86) observed that merely because the respondents thought it convenient to hold DPC only in 1985 and the approval of the recommendations of the DPC by the UPSC was given only on 14.10.1985 it was unfair to give effect to promotions only from that date. The Supreme Court also held in Union of India v. Vipinchandra Hiralal Shah ^(4-supra) that the failure on the part of the Selection

not subjected to any further DPC in Senior scale after his induction to Group A in 1992 led to the only conclusion that the applicant's selection in 1984 to the post of Group A senior scale post was final.

13. Before embarking upon the discussion on the rights claimed by the applicant we may have a close look at the Rule

"209.(A) Promotions to Railway Services, Group A.-

(1) All substantive promotions to Railway Services Group "A" shall be made by the President; and

(2) No officer shall be eligible for promotion to and within the service, unless the Government is satisfied that the officer is suitable for promotion in all respects.

(B) Promotion from Group "B" to Group "A"(Junior scale).-

(1) Appointments to the posts in the junior scale shall be made by selection on merit from amongst Group "B" officers of the departments concerned with not less than 3 years of non-fortuitous service in the grade.

(2) If the quota reserved for Group "B" officers for promotion to junior scale is not fully utilised, the remaining vacancies may be filled by Government in accordance with the recruitment rules and in consultation with the UPSC; and

(3) The Departmental Promotion Committee for this purpose shall consist of a representative of the Union Public Service Commission as Chairman and two representatives of the Ministry of Railways as Members.

(C) Promotion from junior scale to senior scale
(1) Appointments to the posts in the Senior scale shall be made by promotion in the order of seniority, subject to rejection of the unfit, of officers with ordinarily not less than 4 years service in the junior scale.

..... "

It is evident from the above rule position that the appointments to the posts in the junior scale can be made by selection on merit from amongst Group "B" officers of the departments concerned with not less than 3 years of non-fortuitous service in the grade and that the quota reserved for Group B officers for promotion to junior scale if not fully utilised could be filled up by the Government in

Departments including the applicant were continued in senior scale on ad hoc basis for a further period upto 30.9.1988. The officers of the Personnel Departments as shown in the order including the applicant were continued to officiate in senior scale on ad hoc basis for a further period upto 28.2.1989. The order dated 7.4.1989 in the same terms continued the officers of the Personnel Departments including the applicant in senior scale on ad hoc basis for a further period as shown against the name of each officer and in case of the present applicant whose name appears at Sl.No.6 of the said order, the continuation was extended upto 28.2.1990. By a further order dated 12.9.1990 such officiation in Senior scale on ad hoc basis was extended upto 28.2.1991 in case of the applicant whose name appears at Sl.No.4 in the said order.

18. Initially in the office order No.836/78 dated 7.10.1978 issued by the Chief Personnel Officer, it is stated that having been empanelled for the posts of Assistant Personnel Officer/ Assistant Welfare Officer (Class II) vide office letter dated 7.10.1978 the ad hoc APOs were continued as a regular measure on the posts mentioned against each. The present applicant is shown in the said order at Sl.No.7 in Item D(7) of the said order which reads as under :

"7. Shri B.S.H.Rao, CA, ENC(RE)'s office/Waltair, as Offg.APO/BSP at Bhilai against the upgraded post of PI under DS/BSP, vide item (6) of this Office Order No.567/78 dt. 13-7-78. From the date the upgraded Class II post is filled, a permanent Class III post in the base grade of the stream of the upgraded post is reduced in lieu of the post of PI under DS/BSP, in terms of Board's letter No.PC III/78/PS-2/UPG/1 dt. 2-9-78."

19. By order No.574/84 dated 30.8.1984 issued by the Chief Personnel Officer, S.E.Railway, the applicant was transferred to CKP and retained to look after the duties of Senior scale post of DPO(II)/CKP vice Sri B.K.Shah, DPO(II) transferred to GRC.

Committee to meet during a particular year would not dispense with the requirement of preparing the select list for that particular year and that the incumbent was entitled to be appointed to the post against that vacancy of that year with all consequential benefits if the name of the incumbent was included in the selection list for any particular year.

16. The applicant claims to be the seniormost eligible Assistant Personnel Officer in the South Eastern Railway in 1984 and he had been ~~empanelled to officiate in a~~ senior scale post on ad hoc basis after being subjected to selection by Zonal DPO in terms of Rule 214 of the Code.

17. On perusal of the relevant record of the respondent railway, the copies of which are produced with the present O.A., it appears that by order No.708/85 dated 29.10.1985 (Annexure-A.8 to the OA) the applicant B.S.H.Rao, Offg. DPO(II)/CKP on expiry of leave was transferred and posted as Offg. DPO/WAT against the J.A.Grade post of Senior Divisional Personnel Officer/Waltair (to be operated in the senior scale) vice Sri D.L.N.Murthy, Offg. Senior DPO/WAT retiring from Railway service with effect from 31.10.1985. By a further order dated 21.2.1986 (Annexure-A.11 to the OA) the approval of the Railway Board was communicated to the officers of Personnel Department (including the present applicant whose name appears in the order at Sl.No.2) continuing them to be officiating in the senior scale on ad hoc basis for a further period upto 31.12.1986 or till the posts were filled up on regular basis whichever was earlier. By order dated 27.11.1986 further approval of the Railway Board was communicated to the Officers of Personnel Departments including the applicant that they continued to officiate in senior scale on ad hoc basis for a further period upto 30.9.1987. Similarly by a subsequent order dated 8th September, 1987 the Officers of the Personnel

continuous officiation by a Government servant after his appointment by following the rules applicable for substantive appointments, had to be taken into account for determining his seniority and the same could not be determined on the sole test of confirmation, for confirmation was one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The Supreme Court observed that the principle of deciding inter se seniority had to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment was made by way of stop-gap arrangement without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment could not be equated with the experience of a regular appointee because of the qualitative difference in the appointment. To equate the two would be to treat two unequals which would violate the equality clause. But if the appointment was made after considering the claims of all eligible candidates and the appointee continued in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there was no reason to exclude the officiating ^{the} service for purpose of seniority.

23. On the question of delay which took place in conducting DPCs, our attention is drawn by the applicant to the extant procedure for conducting the DPC for promotion from Group B to Group A, from the perusal of which it becomes evident from Item No.7 relating to procedure for preparing yearwise panels when DPCs for vacancies of different years are held together, that where the DPC could not be held in a year or years even though the vacancies arose during that year(s) the first DPC that meets thereafter should follow the procedure laid down in the aforesaid item No.7. Sub/item (1) of the said Item No.7 provides that the DPC should determine

By letter dated 23.9.1991 (Annexure-A.7 to the OA at page 25) the delay in conducting DPCs is sought to be explained to the Indian Railways Promotee Officers' Federation by pointing out that normally it took about 2 years to finalise the direct recruitment of Group 'A' Officers from the date of UPSC notification and even in case of promotees it took about 2 years to finalise the DPC proceedings as it involved a protracted procedure as explained in the said letter.

that the appointment of the applicant along with others though on ad hoc basis was made only after the approval of the competent authority and the approval of the Railway Board and his continuation right upto 29.2.1992 was made with the approval of the Railway Board. The order dated 5.9.1988, 7.4.1989, 12.9.1990 and 3.10.1991 referred to above were in fact issued with the approval of the Ministry of Railways; and secondly, the delay in conducting DPCs is sought to be explained in paragraph (ii)(a),(b),(c) and two unnumbered paragraphs under the said item.

21. The Supreme Court has eloquently dealt with these subjects in various rulings. ^{(supra) ⊗} In the case of Union of India v. Vipin Chandra Hiralal Shah (^{it was ⊗} 4-supra) held that the question whether DPC was bound to make yearwise panels for selection by promotion to I.A.S. where DPC could not meet for certain years it was held that it was incumbent to hold DPC every year and in any case, it must make yearwise panels having regard to the fact that Regulation 5 of IAS (Appointment by Promotion) Regulations, it was incumbent for the DPC to make yearwise panels for selection by promotion.

22. A Constitution Bench of the Supreme Court in The Direct Recruit Class II Engineers Officer' Asocation v. State of Maharashtra and others (2-supra) held that the period of

(i) Appointments to the posts in the senior scale could be made by promotion in the order of seniority subject to rejection of unfit officers.

(ii) Ordinarily the incumbents should ^{be} ~~not~~ have put in ^{not} less than 4 years of service in the junior scale. The applicant was a Grade 'B' officer in the junior scale and therefore, was not eligible for promotion to the senior scale on regular basis.

(iii) In view of non-availability of Group 'A' junior scale officers, the applicant was promoted on ad hoc basis on account of exigencies of work.

(iv) Para/214(b) of the Indian Railway Establishment Code provides that the General Manager may appoint a Group 'B' officer to officiate in Group 'A' senior scale on ad hoc basis for a continuous period not exceeding one year on each occasion.

(v) Such ad hoc promotion to the senior scale did not constitute regular appointment to Group 'A' service which could only be done by the President in consultation with the UPSC.

(vi) Although the applicant became eligible for consideration for induction into Group A junior scale of IRPS since 13.10.1981, mere eligibility for promotion did not entitle any officer to be promoted instantaneously.

(vii) Actual promotion depends on the number of vacancies in the higher grade, seniority of the officer and his suitability for higher post.

(viii) Mere fact that the number of Group B officers ^{who} were holding senior scale posts on ad hoc basis could not be treated as or indicative of the number of vacancies in Group A which were required to be filled on regular basis.

(ix) Railways had to take up large number of construction works throughout the country as a part of natural transport infrastructure building activity. The man power for

the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding the actual number of regular vacancies proposed to be filled in the current year separately.

Sub-item (ii) provides that DPC should consider in respect of each year 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.

Sub-item (iv) of item 7 provides that a select list should be prepared by a final select list of the earlier year above the one for the next year and so on.

Sub-item (v) provides that while promotions may be made in the order of consolidated select list, such promotions will have only prospective effect, as indicated in para-6(d) even in a case where the vacancies relate to earlier years.

24. In para-6 (d) it is provided that the date of the UPSC's letter communicating the Commission's approval to the panel or the date of actual promotion of the officer whichever is later is reckoned as the date of regular promotion of the Officer.

25. Clause (iii) of para-7 provides that for the purpose of evaluating merit of the officers while preparing yearwise panels, the scrutiny of the record of service of the officers should be limited to the records that would have been available had the DPC met ^{at} the appropriate time.

26. The submissions made on behalf of the respondent-Railways opposing the claims advanced by the applicant could briefly be stated as under :

regular.

(xvii) In K.K.Vadhera's case (5) the Supreme Court held that the promotions could not be given with retrospective effect from the date of creation of posts and it would have the effect of giving promotion even before the Assessment Board had met and assessed the suitability for promotion.

(xviii) In Majji Jangamayya's case (6) the Supreme Court held that no employee had any right to have a vacancy in the higher post filled as soon as the vacancy occurred.

27. There is no doubt about the fact that the applicant had put in more than 4 years of service in the junior scale. It is also not disputed that the applicant was promoted on ad hoc basis to the senior scale post by the General Manager of the South Eastern Railway. In fact the approval of the Railway Board as well as the Ministry of Railways was also obtained for promotion on ad hoc basis. It is true indeed that the applicant's first appointment was made by order dated 29.10.1985 on officiating basis, but it was not clarified in the order dated 29.10.1985 that the applicant's appointment was on ad hoc basis. In fact it appears that the applicant was posted in a regular vacancy vice Sri D.L.N.Murthy, who retired from railway service with effect from 31.10.1985. The order, ~~however~~, is silent whether the appointment was made for a period not exceeding one year. However, by a subsequent order dated 21.2.1986 the applicant was informed that he would be continued officiating in the senior scale on ad hoc basis for a further period upto 31.12.1986 till the posts are filled on regular basis. Subsequent to 31.12.1986 the respondents went on issuing such orders giving one year extension on each occasion from 1986 till 29.2.1992. However, it appears that no clarification was made in such extensions made from time to time that the applicant's appointment was made on account of creation of work/charged posts only till the duration of the work or that for the said reason the post in question was not susceptible of being filled by induction of regular Group

supervision of these works was derived by creation of workcharged posts for the duration of the work. Railways had a significant component of work-charged posts in all departments which were purely temporary and were created for a specified period as per the provisions available in the sanctioned works estimates.

(x) As these posts were created and filled for a specific short period at a given time, the same were not susceptible of being filled by induction of regular Group A officers, and therefore, ...

filled by ad hoc promotion of Group B officers.

(xi) Around efforts were made to convene DPC meetings expeditiously. The delay took place inevitably on account of the need to collect and consolidate the information documents relating to large number of officers of various departments spread over 9 Zonal Railways and 6 Production Units.

(xii) The applicant's empanelment into Group 'A' junior scale of IRPS with effect from 23.7.1992 was based on the recommendations of the DPC which met on 1st, 2nd, 6th, 7th, 8th, 9th and 13th July, 1992 in which the DPC considered the vacancies of 1989 and 1990.

(xiii) It was not disputed that the applicant was recommended against a vacancy of 1989.

(xiv) It was not disputed that a Group B officer after rendering three years of non-fortuitous service in the grade becomes eligible for consideration for induction into Group A junior scale.

(xv) There has to be a positive act of selection and three years' service was the immediate eligibility condition. It was not that immediately on acquiring the said eligibility condition one would get absorbed into Group A cadre.

(xvi) According to the extant order in cases where the Commission's (UPSC) approval was required, the date of UPSC's letter communicating its approval from the date of actual promotion of the officer, whichever was later, was the relevant date from which promotions were to be treated as

surface from the submissions made by the learned counsel for the rival parties on the question of seniority. The fitness of the applicant can also not be questioned because he has been continuously officiating in the post of senior scale Group A since 1985. If there was any cause for considering that he would not have been continued on officiating basis for several years together. It is contended by the respondents themselves that in view of the non-availability of Group A junior scale officers, the applicant was promoted on ad hoc basis to the senior scale. If there was any controversy relating to seniority, the respondents would not have chosen the applicant for such ad hoc appointment. There is also no controversy on the proposition that in terms of para 209(b)(i) of the Code, the applicant became eligible for consideration for induction into Group A junior scale of IRPS since 13.10.1981.

29. The only point on which the applicant's case could be defeated is the provision in the guidelines in conducting DPCs to the effect that promotion cannot be recommended or made by the DPC with retrospective effect. If the submission made on behalf of the respondents, ^{however} is to be accepted that the promotion could be effected only prospectively and not retrospectively it would give rise to an unreasonable and inequitable proposition that irrespective of the delay which, in the present case was as much as 11 years, the incumbents who are eligible for promotion could not be saved from the vice of gross injustice. If the delay was reasonable say for a period of 1 or 2 years and it was properly explained, the contention raised by the respondents that the delay was inevitable could have been considered and the adverse effect, if any, produced by such delay could have been ignored but not in the present situation where without any satisfactory explanation the delay is sought to be overlooked and the guidelines in

Officers. The extensions appear to have been granted from year to year only with a view to giving the appointment a colour of temporary nature and with a view to precluding the officer from claiming regular promotion with effect from the date on which he was posted on officiating basis. The fact that the applicant had been officiating in Group A senior scale right from 1985 could not be overlooked. It is an admitted fact that the applicant became eligible for since 13.10.1981 after 3 yearss of regular service in Group-B. We cannot find fault with the submission made by Mr.Bhimanna that mere eligibility for promotion did not entitle any officer automatically to be promoted and that the actual promotion depended on number of vacancies available in the higher grade, seniority of the officer and his suitability for higher post. All these three factors deserve to be adjudicated in favour of the applicant, inasmuch as the vacancies in the senior scale were very much available against 50 per cent quota prescribed for promotion for Class II/Group B as under :-

<u>VACANCIES IN JR.SCALE GROUP-A.</u>				
Year	Sanctioned	No.filled by promotee quota.	Promotion	Vacancies.
1981	174	19	-	155
1982	174	22	12	140
1983	174	16	18	140
1984	174	16	17	141
1985	175	12	-	162

The seniority of the applicant for the disputed promotion can also not be called in question as no controversy comes to

senior scale in favour of Group B officers which is found in the letter dated 23.9.1991 (Annexure-A.7 to the OA) which is addressed to the General Secretary, Indian Railways Promotee Officers' Federation, the relevant extract of which is reproduced below :

" The Ministry of Railways are constantly endeavouring to improve the career prospects of Group 'B' officers. The recent liberalisation of the procedure for ad-hoc promotions to Sr.Scale in favour of Group 'B' officers who have completed 6 years regular service in Group 'B', grant of a maximum weightage of 5 years in seniority on induction into Group 'A', application of corrective factor while assessing 40% vacancies, opportunity for Group "B" officers for officiating in Group 'A' Sr.Scale without any restrictions are some of the important special features of the Indian Railways which have benefited the Group 'B' officers enmasse."

32. A question may also arise for consideration though not raised by the respondents, why the present O.A. filed in 1995 could be treated as maintainable in view of the fact that the actual cause of action arose only on 10.2.1993 when the applicant was ordered and directed to be promoted; ^{but} and thereafter several representations were made not only by the applicant but even the Indian Railways Promotee Officers' Federation to which a reply dated 19.9.1994 was given by the Railway Board. Delay or laches do not, therefore, create any impediment in the maintainability of this O.A.

33. In the above view of the matter, therefore, we are not inclined to accept the proposition advanced by the respondents that the applicant was not entitled to promotion retrospectively. Even if it is accepted, it cannot be denied that such entitlement came into being impliedly and implicitly, on 30th August, 1984 when Order No. 574/84 dated

this regard are sought to be enforced which produce the effect of wrongful denial of the legal right of the applicant to be promoted from the date on which he acquired the eligibility for promotion, more particularly because there were sufficient vacancies in the junior and senior scale Group A posts and the applicant was not regarded as unfit for promotion.

30. We may, therefore, repeat and reiterate that in spite of the fact that there was no positive act of promotion, the applicant is still entitled to promotion in view of the fact that he had already been working in the promotional post for more than 5 years at a stretch without any slur on his efficiency and without any adverse report against the suitability and fitness of the applicant for the said post. His seniority has also not been assailed on any count apart from the fact that he was inducted into Group A post after the Ministry of Railways granted approval from year to year right from 1985 to 1992. It is significant to note that para-(k) of the reply statement of the respondents itself discloses that the applicant was first considered for induction into Group A post against the Promotees' quota of 1986, the DPC for which met in 1989 and the applicant was actually inducted into Group A with effect from 23.7.1992. Having regard to the fact that the applicant had already acquired the necessary eligibility it was incumbent upon the DPC which met in 1989 for considering induction into Group A Junior scale against Promotees' quota of 1986, but nothing has come on record to show why the DPC thought it fit to withhold the applicant's promotion till 23.7.1992. Such attitude taken by the DPC came for severe criticism by the Supreme Court in R.K.Gupta's case (supra) as also in Vipin Hiralal Shah's case (4-supra) which we have already discussed above.

31. It will not be out of place to take note of the rationale which the respondents had in mind for the purpose of liberalisation of the procedure for adhoc promotions to

30.8.1984 was passed by South Eastern Railway by which the applicant was detailed to look after the duties of senior scale post of DPO(II)/CKP vice Shri B.K.Shaw, DPO(II) who was transferred to GRC. However, since this posting was only for the purpose of "looking after", the more relevant date is 1.11.1985 for the reason as stated in the following para.

34. The facts and circumstances of the case being as stated above, we are convinced that the promotion in question was wrongfully delayed in case of the applicant, and in spite of well settled principles that promotion cannot be claimed as a matter of right and the Tribunal cannot act as a substitute of DPC for deciding promotions, we are firmly of the opinion, in the light of the situation which has emerged before us in an unambiguous manner, that the applicant is lawfully entitled to promotion to Junior scale of I.R.P.S. atleast from 1.11.1985 if not from 30.8.1984, in view of the fact that the applicant was posted in place of the officer who retired on 31.10.1985 from that position which was nothing short of a substantive position. It is true that the applicant became eligible for promotion from 13.10.1981, but we agree with Mr.Bhimanna that mere acquisition of the requisite eligibility criteria is not sufficient for granting promotion instantly on such acquisition. It is on that basis that we have come to a conclusion that the disputed promotion is required to be antedated from 23.7.1992 to 1.11.1985 with all consequential benefits.

35. In the result, therefore, it is hereby declared and directed that the promotion of the applicant to the Junior scale of I.R.P.S. shall be antedated to 1.11.1985 with arrears of pay and allowances in the grade applicable to the Junior scale officers of I.R.P.S. from time to time, together with all consequential and attendant benefits including seniority.