

30/100  
**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 241/2000

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## FORM NO. 4

(See Rule 42)

**In The Central Administrative Tribunal**

GUWAHATI BENCH : GUWAHATI

## ORDER SHEET

APPLICATION NO. 241/2000

OF 199

Applicant(s) Sri Makemona Basad Aleha.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. G.K. Bhattacharya

Mr. G. N. Das.

Advocate for Respondent(s) Mr. B. Choudhury  
C. G. S.C.

Notes of the Registry	Date	Order of the Tribunal
Form and within Date C. F. of Rs 50/- deposited vide D.O.B.D. No. 598845 Dated 26/7/2000	25.9.00	Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.  Heard Mr G.K. Bhattacharya, learned Sr. counsel for the applicant and Mr Application is admitted. Issue usual notice.  List on 9.11.2000 for written state- ment and further orders.
<i>My 26/7/2000</i> <i>26/7/2000</i> <i>26-7-2000</i> Recd copies filed.  Now Notice prepared and Sent to D/S. for filing the respondent No 1 & 2 Rs 3 vide D.I.No 2151 21521 dtg 21/10/2000	pg 9.11.00	<i>Vice-Chairman</i>  Four weeks time allowed to the respon- dents to file written statement. List on 7.12.00 for order.
	pg	<i>Vice-Chairman</i>

2

(3)

Notes of the Registry	Date	Order of the Tribunal
	27.3.01	List on 30.4.01 to enable the respondents to file written statement.  IC(Ushan) Member
28-5-2001 No. W/S statement has been filed.  Bm	pg 30.4.01	Written statement has not been filed. However, on the prayer of learned Railway counsel one more chance be given to the respondents to file written statement. List on 29.5.01 for orders.  IC(Ushan) Member
No written statement has been filed.  24.4.01	1m 29.5.01	No written statement has been filed nor any step has been taken by the respondents to date. Office to list the matter for hearing on 25-7-2001. In the meantime the respondents may file written statement within three weeks from today.  Vice-Chairman
No W/S has been filed.  22.8.01	bb 25.7.2001	List again for hearing on 23.8.01 to enable the respondents to produce the records.  IC(Ushan) Member
No W/S has been filed.  27.8.01	nkm 23.8.	There is no Division Bench today. The cases adjourned to 10.9.2001. MLO A. K. Ray 23.8.

U  
O.A. 241/2000

Notes of the Registry	Date	Order of the Tribunal
	10.8.01	<p>It has been stated by Mr. B. Choudhury, that the written statement is served in course of the day and he wants to go through the same. List the matter on 4/10/01 for hearing. The applicant may file rejoinder, if any, within 2 weeks from today.</p> <p>K C Shaha</p> <p>Member</p>
		<p>Vice-Chairman</p>
	4.10.01	<p>Heard at length. List again on 8.10.01 for hearing and disposal.</p> <p>K C Shaha</p> <p>Member</p>
		<p>Vice-Chairman</p>
<u>12.9.2001</u> Counter reply on behalf of the Respondents has been submitted  P.D.	8.10.01	<p>Heard counsel for the parties. Hearing concluded. Judgement delivered in open court, kept in separate sheets.</p> <p>The application is allowed in terms of the order. There shall, however, be no order as to costs.</p> <p>K C Shaha</p> <p>Member</p>
<u>15.11.2001</u> Copy of the Judgement has been sent to the D.P.C.C. for issuing the same to the App. as well as to the Rly. Advocate for the Repld.  K.S.	pg	<p>Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

Original Application No. 241 of 2000.

8-10-2001.  
Date of Decision.....

Shri Mahendra Prasad Mehta

Petitioner(s)

S/Sri G.K.Bhattacharyya, G.N.Das, B.Choudhury Advocate for the  
Petitioner(s)  
-Versus-

Union of India & Ors.

Respondent(s)

Sri B.K.Sharma, Sr. Advocate.

Advocate for the  
Respondent(s)

THE HON'BLE MR D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 241 of 2000.

Date of Order : This the 8th Day of October, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Mahendra Prasad Mehta,  
Senior Divisional Operation Manager,  
N.F.Railway, Lumding. . . . . Applicant.

By Advocate S/Sri G.K.Bhattacharyya, G.N.Das  
and B.Choudhury.

- Versus -

1. Union of India,  
represented by the Chairman,  
Railway Board,  
New Delhi.

2. The Secretary,  
Railway Board,  
Ministry of Railways,  
New Delhi.

3. General Manager,  
N.F.Railway, Maligaon,  
Guwahati. . . . . Respondents.

By Sr.Advocate Sri B.K.Sharma, Railway standing counsel.

O R D E R

CHOWDHURY J.(V.C)

This application under Section 19 of the Administrative Tribunals Act 1985 has arisen and is directed against the action of the respondents for adhering to the sealed cover procedure in the matter of promotion of the applicant in the following circumstances.

The applicant joined as an Officer in the Railway service and initially he was assigned to the Central Railway Cadre and subsequently transferred to the N.F.Railway. He was promoted to the Junior Administrative Grade on ad hoc basis in September 1996. The name for empanelment of Junior Administrative Grade . . . came up for consideration in the

contd..2

year 1997. A panel was approved on 13.11.97. The case of the applicant was considered and kept in sealed cover. By order dated 1.12.97 the respondents appointed 35 officers belonging to the applicant's batch to officiate in Junior Administrative Grade from the date of their taking over the post. The applicant's name did not figure in the list. The applicant submitted representation before the authority questioning the action of the respondents in overlooking his promotion though there was no disciplinary proceeding pending nor he was prosecuted for a criminal charge at the relevant time. By order dated 16.6.99 the applicant was promoted with effect from 31.3.99. The applicant thereafter also submitted representation before the respondents for giving him retrospective promotion on and from November 1997 when his promotion was due. Failing to get remedial measures from the respondents the applicant has now moved this Tribunal by way of this O.A.

2. The applicant has stated and contended that at the time when his case came up for promotion there was neither any disciplinary proceeding where a charge memo was issued nor the was charge sheeted in any of the criminal case. Therefore the respondents failed into error in resorting to the sealed cover procedure.

3. Contesting the claim of the applicant in its written statement the respondents stated that at the relevant time an enquiry was conducted regarding leakage of question papers for a written test held by Railway Recruitment Board, Bhopal and the Central Vigilance Commission had advised the Railway Board to prosecute the applicant. Hence as per extant practice the findings of the DPC were kept in sealed cover.

The claim of the applicant for empanelment to J.A. Grade

Grade were again considered in the subsequent JAG/IRTS panel approved on 13.11.1998. By the time the competent authority had taken the decision to issue a minor penalty charge sheet to the applicant. Accordingly the findings of the DPC in respect of the applicant were kept in sealed cover as per extant procedure. The proceedings against the applicant concluded with the imposition of minor penalty of 'Censure' on 30.3.99. Thereafter the sealed cover was opened and on being found fit in the first panel of 13.11.97 the applicant was promoted to J.A. Grade. As per extant instructions contained in Board's letter dated 21.1.93 the applicant was entitled for promotion with prospective effect retaining his seniority as per the position assigned to him in the JAG/IRTS panel of 13.11.97 and he was promoted to JA Grade with effect from 31.3.99. The reasons for adhering to the sealed cover procedure according to the respondents was done in view of the advice of the Central Vigilance Commission received ~~at~~ the time relevant for prosecuting the applicant. Admittedly, no departmental proceeding was pending against the applicant at the time when his case came up for consideration.

4. Mr B.K.Sharma, learned senior counsel appearing on behalf of the respondents however, submitted that the respondents acted purely in terms of the Railway Board Circular dated 21.1.93. Mr Sharma submitted that there was no departmental proceeding pending as such, since no charge sheet was issued and disciplinary proceeding was pending against him. However, in that time the Railway authority received the Central Vigilance Commission's advice to prosecute the applicant and accordingly the Railway authority was contemplating for criminal prosecution.

5. On the own showing of the Railway authority the case of the sealed cover procedure is applicable only in the

case mentioned in para 2 of Circular dated 21.1.1993 which reads as follows :

.....

"Cases of Government Servants to whom 'Sealed Cover procedure will be applicable.

2. At the time of consideration of the cases of Government Servants for empanelment, details of Government Servants in the consideration zone for promotion falling under the following categories should be specifically brought to notice of the Departmental promotion Committee:-

- (i) Government Servants under suspension;
- (ii) Government servants in respect of whom a chargesheet has been issued and the Disciplinary Proceedings are pending;
- (iii) Government Servants in respect of whom prosecution for a criminal charge is pending.

In the instant case the applicant was not under suspension nor there was any departmental proceeding. It may also be mentioned here that at the relevant time there was no prosecution for a criminal charge sheet was pending against the applicant. Mr. B. K. Sharma, learned senior counsel referred before us the decision of the Supreme Court in 1991(4) SCC 129, Union of India -vs - Tezendra Singh AIR 1993 SC 1165, 1148, 1585 and a decision of this Bench in O.A.171/2000 disposed of on 21.8.2001. Subsequent to the decision rendered in Tezendra Singh (supra) a Three Bench judgment was rendered by Supreme Court in Union of India & Ors. vs. K. V. Jankiraman & Ors. reported in AIR 1991 S.C. 2010. The Supreme Court in the aforesaid decision clearly delineated the scope of taking the sealed cover. In the aforesaid decision the Supreme Court observed that 'the sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage would not be sufficient to enable the authorities to adopt the sealed cover procedure.' To deny the benefit of promotion to the applicant in our view there must exist at the relevant time

some disciplinary proceeding or pendency of a criminal prosecution, where the person concerned is charge sheeted. Clause (iii) of para 2 of the instruction of the Railway Board is clear that a sealed cover procedure is permissible only when a Government servant in respect of whom prosecution for a criminal charge is pending. To govern by the said clause there must be a prosecution in which the applicant need to be charge sheeted and that the criminal prosecution is pending. In absence of any such thing it was unfair on the part of the respondents to adopt sealed cover procedure and to deny him the promotional benefit at the appropriate time.

6. For the reasons stated above, we hold that the respondents fell into error in adopting the Sealed Cover procedure and withholding the promotion of the applicant pursuant to the recommendation of the DPC. The promotion of the applicant to the Junior Administrative Grade therefore should be anticated on and from 1997 on which year his selection was considered.

The application is allowed to the extent indicated. There shall, however, be no order as to costs.

*K.K.Sharma*  
( K.K.SHARMA )  
ADMINISTRATIVE MEMBER

*D.N.Chowdhury*  
( D.N.CHOWDHURY )  
VICE CHAIRMAN

S/3 25 JUL 2000

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH  
(An application U/s.19 of the Administrative Tribunal  
Act, 1985).

ORIGINAL APPLICATION NO. 241 OF 2000

Shri Mahendra Prasad Mehta ... Applicant.

Versus

The Union of India & Ors. ... Respondents.

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Filed by -  
Bikram Choudhury.  
Advocate.

12  
Mahendra Prasad Mehta  
filed by the applicant  
Bikram Choudhury, Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

(An application U/s. 19 of the Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 241 OF 2000

Shri Mahendra Prasad Mehta,  
son of Kunji Lal Mehta,  
presently serving as Senior Divisional  
Operation Manager,  
N.F.Railway, Lumding.

... APPLICANT

-VERSUS-

1. The Union of India,  
(Represented by the Ministry of  
Railways, Railway Board,  
New Delhi).

2. The Secretary,  
Railway Board,  
Ministry of Railways,  
New Delhi.

Mahendra Prasad Mehta  
Filed by the applicant through  
Bikram Chandhury, Advocate.

3. General Manager,

N.F.Railway, Maligaon,

Guwahati.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.

Order No.E(0)III-99/PM/32 dtd. 16.6.99 passed by the Respondent No.1, so far as it relates to appointing the applicant in the Junior Administrative Grade w.e.f. 31.3.99 and not from November, 1997 when it was actually due.

2. JURISDICTION

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal.

3. LIMITATION.

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE

1. That, the applicant joined Railway Service on

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15.2.88 as an IRTS Officer and he was initially assigned to the same Central Railway Cadre and he was transferred to N.F.Railway in July, 1996. At present, the applicant is holding the post of Senior Divisional Operation Manager, Lumding.

2. That, the applicant was promoted to the Junior Administrative Grade (J.A.G.) on ad-hoc basis in September, 1996. During 1997, when the applicant was officiating in the J.A. grade there was no departmental proceeding pending against him and no charge sheet had been filed against him in any criminal court of law. and the applicant in view of his service record and length of service was anticipating that he would be promoted to the J.A. Grade when it was due. It would be relevant to mention here that during 1992 while the applicant was posted, at Gwalior and he was functioning as Town Officer, the seals of canvas bags for 3 centres for the N.T.P.C. examination were either broken or missing but as stated earlier, no departmental charge memo or any charge sheet in any criminal court was filed. That the Respondent No. 1 by order No. E(O) III-97/PM/53 dtd. 1.12.97 appointed 35 Officers belonging to the applicant's batch to officiate in the J.A.Grade w.e.f. 13.11.97 or the date of taking over the J.A.G. post. But surprisingly the applicant's name did not figure in the said list.

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A copy of the said order dated 1.12.97

is annexed herewith and marked as ANNEX-

URE-I.

3. That, as stated above the applicant was anticipating and expecting to be promoted to the J.A. Grade in view of his good service record and since there could be no other justification in denying promotion the applicant apprehended that his assessment was wrongly kept in a sealed cover. As such, the applicant immediately on 11.12.97 submitted an appeal to the Respondent No. 1 stating the facts and clearly stating that there was no departmental proceeding pending against him and that no charge sheet has been filed against him in any criminal court of law and prayed that he be promoted to the J.A. Grade. The aforesaid appeal was followed by a reminder representation on 17.11.98 and both the two representations were duly forwarded.

A copy of the representation dt. 11.12.97

is annexed herewith and marked as ANNEX-

URE-II.

4. That, it now appears that the applicant's case for promotion to the J.A. Grade was considered by the D.P.C. in 1997 but that because of wrong information the same was kept in a sealed cover. It further appears

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that when it became clear to the authorities that no criminal case or departmental proceeding was pending against the applicant, the sealed cover was opened and the Respondent Railways by the impugned order No.E(0) III-99/PM/32 dtd. 16.6.99 appointed the applicant in the J.A.Grade w.e.f. 31.3.99. The applicant states that since there was no departmental proceedings pending against him and no charge sheet in a criminal case was filed against him, the applicant ought to have been promoted w.e.f. November, 1997 when his batch mates were so promoted.

A copy of the order dtd. 16.6.99 is annexed herewith and marked as ANNEXURE-III.

5. That, meanwhile on 28.2.99 a minor penalty proceeding was drawn up against the applicant on the allegation that he while posted as Town Officer for the NTPC examination held in February, 1992 in Gwalior did not supervise the work when the canvas bags containing question papers was being kept in the Lost Property Office and it was found that the seals of canvas bags of 3 centres were broken or missing. On the basis of the said proceeding, on 30.3.99 the penalty of censure was imposed on the applicant.

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Copies of the memorandum and order of penalty are annexed herewith and marked as ANNEXURES-IV & V respectively.

6. That the applicant begs to state that in 1997 no departmental proceedings or any criminal charge was pending against him and he ought to have been promoted in November, 1997 itself and due to wrong appreciation of facts his case was kept in a sealed cover. Moreover, the applicant was already serving in the J.A. Grade on ad-hoc basis from September, 1996 and as such, the penalty of censure subsequently passed cannot have any effect on the order of promotion. The applicant on 24.6.99 and again on 6.7.99 submitted an appeal to the Respondent No. 2 through proper channel stating all the above facts and prayed that he be given regular promotion from November, 1997.

A copy of the representation dtd. 6.7.99 is annexed herewith and marked as ANNEXURE-VI.

7. That the Respondent No. 3 by his letter No. 545(E)/I/530(0) dtd. 28.7.99 addressed to the Respondent No. 2 forwarded the representations filed by the applicant clearly stating that though the applicant's case was kept in a sealed cover in 1997, there was no

Contd.../-

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case registered against the applicant and that no charge sheet was pending against him in December, 1997 or prior to that. In the forwarding letter it was also highlighted that the minor penalty charge sheet issued on 28.2.99 was finalised with imposition of penalty of censure vide order dtd. 30.3.99 and requested that the matter be reconsidered, but till date there has been no response from the authorities and the applicant is convinced that no useful purpose will be served by waiting any longer and as such, he is approaching this Hon'ble Tribunal for relief due to him.

A copy of the forwarding letter dtd. 28.7.99 is annexed herewith and marked as  
ANNEXURE-VII.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

1. For that, from the facts and circumstances as stated above it will be apparent that the authorities have committed a great illegality/error in keeping the assessment of the applicant in a sealed cover in as much as in November, 1997 there was no departmental proceeding pending against him and no charge sheet in a criminal case had been filed against him and as such, the applicant is entitled to be promoted w.e.f. November, 1997.

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2. For that, the minor penalty proceeding drawn up in 1999 can have no effect on the selection of the applicant made in 1997 and as such the authorities committed an error in promoting the applicant to the J.A. Grade w.e.f. from 31.3.99 and not from November, 1997 and as such, this is a fit case where this Hon'ble Tribunal will exercise jurisdiction and direct that applicants' promotion to the J.A Grade be ante-dated to November, 1997.

3. For that, the applicant was promoted on ad-hoc basis to the J.A. Grade in 1996 and he has been satisfactorily carrying out his duties and since he had already been selected for regular promotion in 1997, the minor penalty of censure imposed upon him in 1999 cannot in any way affect his right to be promoted to the J.A. Grade in November, 1997 itself.

4. For that in any view of the matter the action of the authorities in granting promotion to the applicant w.e.f. 31.3.99 instead of November, 1997 is bad in law and is liable to be set aside.

6. DETAILS OF REMEDY EXHAUSTED

The applicant had submitted appeals to the Respondent No. 1 on 24.6.99 and 6.7.99 which were duly

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forwarded on 28.7.99 and though more than 11 months has elapsed no final orders have yet been passed.

7. DECLARATION

That applicant further declares that he has not previously filed any application/writ petition or suit regarding the matter in respect of which this application has been made before any court of law or any other authority or any other Bench of this Hon'ble Tribunal and no such application/writ application or suit is pending.

8. PRAYER

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the opposite parties to show cause as to why the appointment of the applicant in the Junior Administrative Grade made vide order dtd. 16.6.99 should not be ante-dated from 31.3.99 to November, 1997 when it was due and after perusing the causes shown, if any and hearing the parties direct that the applicant's appointment to the Junior Administrative

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Grade be made effective from November, 1997 with all consequential benefits and/or pass any other order/ orders as Your Lordships may deem fit and proper.

And for this act of your kindness, the applicant as in duty bound shall ever pray.

9. INTERIM ORDER : NIL.

10. DOES NOT ARISE.

11. POSTAL ORDER NO. 2G, 598845 DATED 20.7.2000 OF GUWAHATI POST OFFICE IS ANNEXED.

Contd.../-

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VERIFICATION

I, Shri Mahendra Prasad Mehta, son of Sri Kunji Lal Mehta, aged about 40 years, at present serving as Senior Divisional Operations Manager, N.F.Railway, Lumding, District Nagaon, Assam, do hereby, verify that the statements made in paragraphs No. 1, 3 and 6; are true to my personal knowledge and the statements made in paragraphs No. 2, 4, 5 and 7 are believed to be true on legal advice and that I have not suppressed any material fact.

Place :

*Mahendra Prasad Mehta*

Date :

Signature of the applicant

Contd.../-

*Mehta*

02/12/1997 16:48 3386805

AMV PLY BD

GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
( RAILWAY BOARD ).

WIRELESS/POST COPY  
ISSUED ON 01.12.97.

THE GENERAL MANAGERS

CENTRAL RAILWAY/MUMBAI

EASTERN RAILWAY/CALCUTTA

NORTHERN RAILWAY/NEW DELHI

NORTH EAST FRONTIER RAILWAY/GUWAHATI

NORTH EASTERN RAILWAY/GORAKHPUR

SOUTHERN RAILWAY/CHENNAI

SOUTH CENTRAL RAILWAY/SECUNDERABAD

SOUTH EASTERN RAILWAY/CALCUTTA

WESTERN RAILWAY/MUMBAI

THE OFFICER ON SPECIAL DUTY

EAST CENTRAL RAILWAY/HAJIPUR.

NO. E (C) (sic) 97 PM/53 (L) MINISTRY OF RAILWAYS HAVE DECIDED  
THAT THE FOLLOWING SENIOR SCALE OFFICERS OF IRTS SHOULD BE  
APPOINTED TO OFFICIATE IN JA GRADE ON THE RAILWAYS INDICATED  
AGAINST EACH W.E.F. 13.11.97 OR THE DATE OF TAKING OVER THE JAG  
POST WHICHEVER IS LATER:-

<u>S. L. NO.</u>	<u>NAME (S/ SIRI)</u>	<u>RAILWAY</u>
1.	SK Gupta	EASTERN
2.	Smt. Jaya Verma Sinha	NORTHERN
3.	U. Krishnamurthy	SOUTH CENTRAL
4.	Niraj Kumar	NORTHERN
5.	Smt. Seema (sic.)	NORTHERN

Attested by  
Rishabh Choudhury  
Advocate

contd...

<u>S. L. NO.</u>	<u>NAME (S/SHRI)</u>	<u>RAILWAY</u>
6.	A. Madhukar Reddy	RAILWAY BOARD
7.	D.P.S. Sandhu	NORTHERN
8.	K. Siva Prasad	SOUTH CENTRAL
9.	A.K. Behera	SOUTH EASTERN
10.	M. Guna Seksaran	SOUTH CENTRAL
11.	P. Biswanathan	SOUTHERN
12.	NK. Saohan	NORTH EASTERN
13.	Smt. C. Mukherjee	NORTHERN
14.	Smt. C. Ananda Sankaran	SOUTH CENTRAL
15.	Smt. Smita Rawat	SOUTH EASTERN
16.	Devendra Singh	NORTHERN
17.	BK Dada Bhoy	WESTERN
18.	M. Ravi Babu	SOUTH CENTRAL
19.	DK Singh	CENTRAL
20.	S.N. Ali	EAST CENTRAL
21.	Vishnu Kumar	EASTERN
22.	Alok Singh	NORTH EASTERN
23.	Sunil Jain	NORTH EAST FRONTIER/CENTRAL
24.	Smt. Seema Dhir	NORTHERN
25.	J.P. Singh	NORTHERN
26.	G. John Prasad	SOUTH CENTRAL
27.	M. Sanjana Rao	SOUTH CENTRAL
28.	Virendra Singh	CENTRAL
29.	S. Gagarin	SOUTHERN
30.	G.P. Meena	WESTERN
31.	B.M. Rao	SOUTHERN
32.	D.K. Chakma	NORTH EAST FRONTIER

contd....

-3-

<u>S. L. NO.</u>	<u>NAME (S/SHRI)</u>	<u>RAILWAY</u>
33.	J. L. Darkim	NORTH EAST FRONTIER
34.	K. B. Rao	SOUTH EASTERN
35.	M. Rao	SOUTH EASTERN
36.	V. Raj	SOUTH CENTRAL

THE ABOVE OFFICERS ASSUME CHARGE MAY BE ADVISED(.)

RAILWAYS (.)

Sd/- (D. R. MEHRA)

SECRETARY (E)/RAILWAY BOARD .

\*\*\*\*\*

Drrens: H.P.Mchta,  
Ex. Divl. Operations Manager,  
H.P.Railway, Lundin,  
P.O.Lundin, dist. Manager,  
Ass't.

To  
The Secretary,  
Railway Board,  
Ministry of Railways,  
New Delhi.

Dated, 12.12.97

Through proper channels.

8450

Subpoena duces tecum against denial of production  
to the grand jury.

12846 My. Board's letter to, B(O) 7th Army,  
SG dated 1.22.47.

Respectfully, I submit that I am an INGS Officer of 1980 batch, initially assigned Central Railway cadre and transferred to N.D.Railway in July, 1996. At present I am a Senior Scale Officer officiating ad hoc on a JAG post.

In terms of Day Board's letter referred to above a promotion order of 26 Senior Scale Officers of IAFS has been issued effective from 13.11.97 or the date of taking over the JAG posts. The list of senior scale officers includes many of my juniors. Since other conditions precedent for withholding of promotion are not applicable in my case, I apprehend the assessment of the Departmental Promotion Committee and the grading awarded by it have been presumably kept in a sealed cover on the assumption that prosecution on a criminal charge is pending against me. If that be so, my submissions below would clear the misapprehensions of facts, and demonstrate the inapplicability of the procedure followed in denying me my promotion to a JAG post.

## **MATERIAL STATEMENTS AND ARGUMENTS AGAINST THE PROCEDURE FOLLOWED**

3. In terms of Railway Board's letter No.B(DRA)D2R06-109(B) dated 21.1.93, dealing with promotion from Group 'B' to Group 'A' and within Group 'A' of Railway servants against whom disciplinary/court proceedings are pending, an elaborate procedure has been formulated. Para 2, *ibid*, formulates the procedure to be followed by DRC in respect of government servants under cloud. The government servants to whom the procedure applies have been classified into three categories, namely, a

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending;
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

(Continued at page 2)

Arrested By  
Bikram Choudhury

In terms of para 2.1, *ibid*, the DPC shall assess the suitability of the government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary/criminal prosecution pending, and the assessment of the DPC and the grading awarded by it will be kept in a sealed cover not to be opened till the termination of the disciplinary case or the criminal prosecution.

2. The terms of the above procedure unequivocally ordain that the sealed cover procedure is applicable only under circumstances enumerated above, namely, (i) in respect of a government servant who is under suspension, (ii) in respect of whom a government servant against whom a chargesheet has been issued and the disciplinary proceedings are pending, and (iii) in respect of government servant against whom prosecution for a criminal charge is pending. Since circumstances (i) and (ii) are not applicable in my case, the third circumstance of that of pendency of a prosecution for a criminal charge has been taken recourse to to deny me the promotion to a JAG post. I submit that even this ground is not applicable in my case as will be evident from below.

3. Under the criminal law, prosecution is supposed to be pending when a court takes cognizance of an offence under section 190 Cr.P.C. But in service jurisprudence, particularly for the purpose of promotion, confirmation etc. pending a proceeding, prosecution is supposed to be pending from the date a chargesheet has been submitted to the court against the government servant concerned. The honourable Supreme Court in *Union of India Vs.K.V.Jankiraman*, AIR 1991 SC 2010, declared the law which sets at rest all controversies in this respect. Before discussing the relevant portion of the judgment of the apex court, it is pertinent to mention here that the apex Court declared the law on an appeal against the judgment and order of CAT/Hyderabad in C.A.No.121/86, 950/86, TA No.100/86 & C.A.No.148/86 decided on 24.4.87, 2.3.87 and 1.4.87. Before the Tribunal the provisions of Department of Personnel and Training's Office Memorandum No.22011/2/86-5000, (A) dated 12.1.86 which analogous to Rly. Board's letter No.E (D&A) 50-RC6-21 dated 21.9.86 were impugned. *Inter alia*, the relevant question decided by the apex Court was: What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? The honourable Supreme Court held thus in *Jankiraman's case*:

"It is only when a charge memo in a disciplinary proceeding or a charge sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceeding/criminal prosecution is initiated against the employee. The sealed cover procedure is resorted to only after the charge memo/chargesheet is issued. To deny promotion the disciplinary/criminal proceedings must be at the relevant time pending at the stage when charge memo/chargesheet has already been issued to the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. Further, if the charges

(Continued on page 3)

are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities are thus not without a remedy. This finding of the Full Bench of the Tribunal is therefore acceptable."

(Para 16 and 17)

The above decision came in appeal from the decision of CAT/Hyderabad as stated earlier where the CAT had, inter alia, observed in para 33 of the judgment that the date of initiation of the proceedings is the date when the charge memo is served on the official and the charge sheet is filed before the court.

The above law declared by the apex Court therefore leaves no scope for confusion as to the stage when sealed cover procedure is to be resorted to. Therefore, the term pending prosecution for a criminal charge used in para 2 of the Rly. Board's letter dated 21.1.93 should mean that a charge sheet has been filed before the court against the government servant concerned before he is denied his promotion. Violated against this well-settled principle of law, the criminal case presumed to be pending against me may be examined.

5. A criminal case No.44/92 of P.S.Bajaria, Bhopal was registered by the police on an FIR against certain persons where my name did not figure. Ultimately, the police filed a chargesheet No. 196/95 dated 28.5.95 against the accused wherein it was specifically stated that chargesheet would be filed against me and two other officers on receipt of sanction from the competent authority.

A copy of the charge sheet No.196/95 dated 28.5.95 submitted by P.S.Bajaria, Bhopal is enclosed herewith for better appreciation of the case.

As a matter of fact the Bhopal police has been seeking sanction since 1992 but no sanction has so far been given. For want of sanction no charge sheet has been filed. The position had been the same on 1.12.97 when the Railway Board's letter under reference was issued whereby order for promotion of 35 senior scale IRTS officers has been issued.

6. From the above, it is evident that chargesheet has not been filed before the court against me for want of sanction under Section 197 Cr.P.C. and that on 1.12.97 or any date anterior to that when the R.P.C met and considered my case alongwith others and kept the assessment and grading awarded by it in a sealed cover as prosecution for a criminal charge can be said to be pending against me so as to warrant recourse to the sealed cover procedure and deny promotion. As such, denial of promotion to me on the ground of pendency of criminal prosecution is absolutely unfair and ultra vires the provisions of Rly. Board's letter No.E(D&A)92RG6-149(S) dated 21.1.93 on the subject as well as the law declared by the Supreme Court.

6. In view of the foregoing, I submit that the injustice caused to me on a misapprehension of fact or law in denying me the promotion to a JAG post may kindly be cured by issuing a supplementary order promoting me to a JAG post.

Thanking you,

21/m.

Yours faithfully,

*Mehta*  
(M. P. MEHTA )  
S.P. DOM/LMO.

C/-GM(P)/MLG for n/a pl.

~~516~~  
~~516~~  
**ANNEXURE - III**

80

GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
(RAILWAY BOARD).

THE GENERAL MANAGER  
NORTHEAST FRONTIER RAILWAY

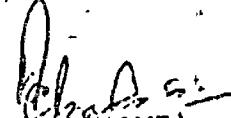
WIRELESS/POST COPY  
ISSUED ON: 16/06/99

cpo (6)

NO. E(O) III/99/PM/32(.) MINISTRY OF RAILWAYS HAVE DECIDED  
THAT SHRI M. P. MEHTA, SENIOR SCALE/IITS/NF RAILWAY,  
PRESENTLY LOOKING AFTER IN JA GRADE, SHOULD BE APPOINTED  
TO OFFICIALE IN JA GRADE ON NF RAILWAY ITSELF WITH EFFECT

FROM 31/03/99(.)

RAILWAYS (.)

  
(A.C. BAKSHI)  
JOINT SECRETARY (G)  
RAILWAY BOARD.

2/-

Attested By  
Bikram Chaudhary.

NF

-2-

Copy to:

1. The General Managers, Central Railway/Mumbai, Eastern Railway/Calcutta, Northern Railway, New Delhi, NE Railway/Gorakhpur, NF Railway, Guwahati, Southern Railway/Chennai, SC Railway, Secunderabad, SE Railway/Calcutta, Western Railway/Mumbai CLW/Chittaranjan, DLW/Varanasi, ICF/Chennai, RCF/Kapurthala, W&AP/Bangalore, DG/RDSO/Lucknow, Principal Railway Staff College/Vadodara, CORE/Allahabad.
2. The OSDs, North Central Railway/Allahabad, South Western Railway, Bangalore, East Central Railway/Hajipur, East Coast Railway, Bhubaneswar, West Central Railway/Jabalpur and North Western Railway/Jaipur
3. The CAO(R), COFMOW, Tilak Bridge, New Delhi and DCW/Patiala.
4. The Directors, All Training Institutes.
5. The General Secretary, IRCA, New Delhi, IRPOF, Room No.268 and the Secretary General FROA, Room No.256-A, Rail Bhawan, New Delhi.
6. The General Secretaries, AIRE, Room NO. 248 and NFIR, Room No.256-C Rail Bhawan New Delhi.
7. The Principal Director of Audit, NF Railway.
8. The FA& CAO, NF Railway.
9. OSD/CRB
10. PSs to MR, MOS(R), CRB, MT, Secretary, AM( I ), JS(G), OSD(I), JS(C), OSD(MS), EDE(E&R), Director(Trg.), DF(BC), DS(E), DS(P), Vig(C), ERB-I, CA/Secy, Railway Board
11. PS/Chairman Passenger Amenities Committee, Rail Bhawan, New Delhi.

(Information given under Rule 11 of the R.R.C. Rules, 1968). 32

MEMORANDUM.

CHIEF OF THE  
GENERAL MANAGER,  
C.G.R.R.-781411.

No. E/74/GAZ/384/Con.

Dated 23-2-69.

M E M O R A N D U M

Shri M.P. Mohta, Sr.DGM/LMC, N.P. Railway, ~~Maksgaon~~ is hereby informed that the undersigned propose(s) to take action against him under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. A statement of the imputations of misconduct or mis-behaviour on which action is proposed to be taken as mentioned above is enclosed.

2. Shri Mohta is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned within ten days of receipt of this Memorandum.

3. If Shri Mohta fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri Mohta ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri Mohta.

D.D. Statement of  
Imputation.

  
( RAJENDRA NATH )  
GENERAL MANAGER

Shri M.P. Mohta,

Sr.DGM/LMC,

Through DGM/LMC.

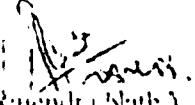
Attested by  
Bikram Chaudhury  
astros

STATEMENT OF IMPUTATIONS OF MISCONDUCT FRAMED  
AGAINST SHRI M.P. MEHTA, AREA MANAGER, GWALIOR &  
TOWN OFFICER, GWALIOR.

Shri M.P. Mehta was nominated as Town Officer for NTPC examination which was scheduled to be held on 23-02-92 at Gwalior (GWL) vide DRM P JHS's letter No P/198/1/EG/13/IV dated 13-02-92. While functioning as Town Officer Shri M.P. Mehta was required to have effective supervision done by way of thorough checking of cartons containing question papers prior to taking over the same from RRB/BPL, which he failed to do.

He also did not supervise the work when the canvas bags containing question papers were being kept in the Lost Property Office of Parcel Office at GWL station. It was later reported that seals of canvas bags of 3 centres out of 32 were either broken or missing. Shri M.P. Mehta did not care to visit these venues to check the condition of the bags and the contents inside. Thereafter he also failed to report the matter to the concerned authorities when the matter was brought to his notice by venue supervisor at one of the centres.

By his above acts of omission and commission Shri M.P. Mehta, Area Manager & Town Officer, GWL has shown lack of devotion to duty and acted in a manner unbecoming of a Railway Servant and thus contravened the provisions of Rule No. 3 (i) & (ii) of Railway Services (Conduct) Rules, 1966.

  
(Rajendra Nath)  
GENERAL MANAGER

N. P. RAILWAY

No. E/74/GAZ/384/Con.

Maligaon, dated 10.3.99.

To  
DGM/Lumding.

Sub: E&R action on Minor penalty against  
Shri M.P. Mehta, Sr. DGM/MLG.

A Memorandum bearing No. E/74/GAZ/384/Con dated 30.3.99 regarding a penalty of 'Consure' is sent herewith which is required to be served on Shri M.P. Mehta, Sr.DGM/MLG under clear acknowledgement. In this regard a blank format of acknowledgement is attached herewith. The said acknowledgement may kindly be send back to this office for record.

DA:-1.

( M. BRAHMO )  
Dy.C.P.O.(C).  
for GENERAL MANAGER(P).

Copy to:-

- 1) Dy.CVO/MLG. This has ref. to his letter No. Z/Vig/94/1/3/99/G dated 18.3.99.
- 2) PS to GM/MLG.

( M. BRAHMO )  
for GENERAL MANAGER(P).

Attested by  
Bikram Choudhury

MEMORANDUM

I have gone through the charges levelled against Shri M.P. Mehta, the then Area Manager, Gwalior, Central Railway, presently working as Sr. DOM Lumding, N.F. Railway, as brought out in the Memorandum of charge dated 28.02.99, his statement of defence dated 15.03.99 and all, other relevant records. On careful consideration of the facts and circumstances of the case, I am of the opinion that Shri Mehta being the town Officer In-charge of the RRB examination in question, did not exercise proper check to ensure that the bags containing question papers were in safe custody intact condition. As the in-charge of the examination, it was expected of Shri Mehta to have had greater involvement for effective and better supervision of the entire process of examination. The points brought out by him in his representation itself indicate that his approach towards the examination was very casual. I, therefore, hold Shri Mehta responsible for lack of involvement in shouldering the responsibility entrusted to him by the Administration.

However, keeping in view the fact that Shri Mehta, had just then taken up the working post and did not have any experience of conducting such an examination previously and also that he had perhaps not been briefed properly by his superiors regarding the proceedings to be followed in such cases, I take a lenient view of the matter and consider that the ends of justice would be met if a penalty of "Censure" is imposed on the Officer.

For the above acts of omission and commission, I hereby impose the penalty of 'Censure' on Shri M.P. Mehta, Sr. DOM:xxxx Lumding. Appeal against this order (is) with the President and should be preferred within 15 days of receipt of this order.

Attested by  
Bikram Choudhury  
Advocate

Sd/- (RAJENDRA NATH)

GENERAL MANAGER  
N.F. RAILWAY.

- 2.

Shri M. P. Mehta,

Sr. DOM: LMG

NO. E/74/GAZ/384/CON

Maligaon, dated 30.3.99

Copy to :-

1. DRM LMG.
2. DY.CVO/T/Maligaon,
3. PS to G.M.

For General Manager (P).

From: M.P.Mehta,  
Sr.Divl.Operations Manager,  
N.F.Railway, Lumding.  
P.O: Lumding, dist: Nagaon.  
ASSAM.

ANNEXURE

VI

37

To

The Secretary,  
Railway Board.  
Ministry of Railways  
New Delhi.

Through proper Channel.

Sub: Regular promotion to JAG.  
Ref: My earlier letter dtd: 11.12.97,  
17.11.98 & 24.6.99.

Sir,

In reference to my earlier letters on the above subject, it is to bring to your kind notice that I was given adhoc promotion to JAG and posted as Sr.DOM/LMG in N.F.Rly wef. 20/9/98 and since then I have been working in JAG. My batch-mates and Juniors have got regular promotion to JAG wef. Nov'97 whereas, my case was not considered for regular promotion to JAG by Railway administration, despite my several requests. It is relevant to mention here that one Minor penalty charge Memorandum was issued to me dtd: 28/2/99, which was closed with the imposition of penalty of Censure vide, GM(P)/MLG's letter No. E/74/GAZ/384/Con, dtd: 30/3/99. Now I have been promoted to JAG on regular basis by Railway administration vide, its Wireless Message No.E(0)III-99/PMY/32, dtd: 16/6/99 wef. 31/03/99. Here I would like to quote Railway Board's letter No.E(I&A)92 RG6-149(B), dtd: 21/1/93 which is very relevant to my case but that has not been taken into account while considering my case for promotion to JAG. That is why I have been given promotion to JAG wef. 31/3/99 instead of Nov'97 ( The date of actual promotion to my batch-mates & juniors to JAG). Para- 5.3 of the above quoted Railway Board's letter reads as under:-

" Para - 5.3.....

However, in case of promotion from Group 'B' to Group 'A' and within Group 'A' ( upto & including promotions to JA Grade), if the Railway Officer is given ad-hoc promotion as envisaged in para 5.2 above, and is finally imposed any of the minor penalties of Censure, Stoppage of Passes/PTOs, Recovery from pay and withholding of increment, such Railway Officer should be deemed and regularly promoted from the date of ad-hoc promotion duly retaining the position assigned to him in earlier panels) ".

Therefore, I request you to kindly consider my case of promotion to JAG in accordance with the instructions laid down in Rly. Board's letter quoted above.

Thanking you,

Yours faithfully,

*M.P.Mehta*

( M.P.Mehta )  
Sr.Divl.Operations Manager,  
N.F.Railway/Lumding.

Dtd: 06/7/99.

Copy to Member Traffic/Rly. Board/New Delhi: for his kind attention  
please

*Rakesh Chowdhury*

Sr.Divl. Operations Manager,  
Lumding.



महाप्रबन्धक (कार्गिक)

पूर्वोत्तर रेलवे

मलिगाँव, गुवाहाटी - 781 011

GENERAL MANAGER (PERSONNEL)

Northeast Frontier Railway

Maligaon, Guwahati - 781 011

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HO.5452/I/53 (O)

28th July, 1999

To  
The Secretary,  
Railway Board,  
New Delhi - 110011.

Sub:- Regular promotion to JA Grade  
in case of Sh.M.P.Mehta, Senior  
DCE/N.F.Railway/Lending.

Shri M.P.Mehta, an IAS officer of 1986 examination batch, currently posted as Sr.DCE/Lending/N.F.Railway, has submitted a representation regarding denial of regular promotion to JA Grade to him along with his batch mates. His representations dated 24-6-99 and 6-7-99 are enclosed in original.

In this connection his earlier appeals dated 11-12-97 and 7-11-98 were forwarded to the Railway Board vide this Railway's letters of even number dated 06-7-98 and 27-2-1-99.

Railway Board vide their letter No.E(0)III-98/AE/06 dated 26-4-99 intimated that, - Sri Mehta was considered for empanelment to JAC in 1997. Findings of the DPC were, however, kept in sealed cover due to his involvement in a vigilance case. Finally Sri Mehta was considered for promotion to JA Grade on regular basis with effect from 31-3-99 vide Board's No.E(0)III-99/PW/32 dated 16-6-99.

In this connection it is intimated that as far as this Railway's Vigilance/DAR records are concerned, there was no case registered against Shri Mehta, neither was he placed under suspension

Contd., 2/-

*Subrata  
Bishwanath Choudhury*

-१(२)८-

महाप्रबन्धक (कार्मिक )

पूर्वीर रीगा रेलवे

मालिगाँव, गुवाहाटी - 781 011

GENERAL MANAGER (PERSONNEL)

Northeast Frontier Railway

Maligaon, Guwahati - 781 011

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nor there was any charge sheet pending against him in December '97 or prior to that. The minor penalty charge sheet was issued to him only on 23-2-99 which was finalised with imposition of the penalty of 'Censure' vide orders dated 30-3-99. Hence the contention of Shri Mehta as highlighted in the representation appears to be correct inasmuch as his case did not fall within the categories specified for consideration under sealed cover procedure, as circulated under Railway Board's letter No. E(DAR) 92 RG 149(B) dated 21-1-93.

Board are, therefore, requested to kindly re-consider the matter in the light of the above and communicate their decision to this Railway for suitable disposal of the appeal of Shri Mehta.

22. 2. 99

*ubrahmo*  
( H. BRAHMO )  
Dy. Chief Personnel Officer (Gaz)  
for GENERAL MANAGER (P.M.G.)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL अधिकरण  
GUWAHATI BENCH, GUWAHATI, Central Administrative Tribunal

10 SEP 201

ORIGINAL APPLICATION No. 241/2000 गुवाहाटी अधिकरण  
Guwahati Bench

MAHENDRA PRASAD MEHTA

APPLICANT

Versus

UNION OF INDIA & OTHERS

... RESPONDENTS

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3.	Copy of Annexure R-II (Letter dated 21.01.1993 issued from Railway Board)	11 - 16
4.	Copy of Annexure R-III (Letter dated 26.04.1999 issued from Railway Board)	17.

RESPONDENTS

Filed through:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION No. 241/2000

Filed by  
Siddhartha  
10-9

MAHENDRA PRASAD MEHTA

..... APPLICANT

Versus

UNION OF INDIA & OTHERS

... RESPONDENTS

COUNTER REPLY ON BEHALF OF THE RESPONDENTS

The Respondents respectfully sheweth as under:-

1. That before giving a parawise reply to the application, it is necessary to give brief background and relative facts of the case, which are as under:
2. That on the Indian Railways there are 9 organised Group 'A' services, namely-
  - (i) Indian Railway Service of Engineers (IRSE)
  - (ii) Indian Railway Traffic Service (IRTS)
  - (iii) Indian Railway Service of Mechanical Engineers (IRSME)
  - (iv) Indian Railway Service of Electrical Engineers (IRSEE)
  - (v) Indian Railway Stores Service (IRSS)
  - (vi) Indian Railway Service of Signal Engineers (IRSSE)
  - (vii) Indian Railway Personnel Service (IRPS)
  - (viii) Indian Railway Accounts Service (IRAS)
  - (ix) Indian Railway Medical Service (IRMS)
3. That the cadre of Group 'A' organised services of Indian Railways consists of posts in the following grades: -

Contd...2/-

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		<u>Pre-revised</u>	<u>Revised</u>
(I)	Group 'A' Junior Scale	Rs.2200-4000/-	Rs.8000-13500/-
(ii)	Group 'A' Senior Scale	Rs.3000-4500/-	Rs.10000-15200/-
(iii)	Jr. Administrative Grade	Rs.3700-5000/-	Rs.12000-16500/-
(iv)	Selection Grade	Rs.4500-5700/-	Rs.14300-18300/-
(v)	Sr. Administrative Grade	Rs.5900-6700/-	Rs.18400-22400/-

4. That apart from the above, there are certain posts in scale Rs. 7300-7600 also (since revised to Rs. 22400-24500/-).

5. That in terms of Rule 203 of the Indian Railway Establishment Code, Vol.1, which are statutory rules framed under Article 309 of the Constitution of India, posts in Administrative Grades are Selection posts.

6. That selection to the posts in Junior Administrative Grade is made by a very high level Selection Committee comprising of the Chairman, Railway Board, who is ex-officio Principal Secretary to the Government of India, and other Members of Railway Board, who are ex-officio Secretaries to the Government of India. The recommendations of the Selection Committee are considered and approved by the highest authority in the Ministry of Railways. The procedure of holding such selection is contained in Ministry of Railways' D.O. No. 89/289-B/Secy/Admn. dated 26.09.1989, a true copy of which is annexed as Annexure R-I.

7. That the name of the applicant for empanelment to Junior Administrative Grade was considered for the first time in the JAG/IRTS Panel approved on 13.11.1997. At that time, the Applicant was involved in a Vigilance Case regarding leakage of question papers for a Written Test held by Railway Recruitment Board (RRB), Bhopal, and the Central Vigilance Commission (CVC) had advised the Railway Board to prosecute the Applicant. Hence, as per extant practice, the findings of the DPC in respect of the Applicant were kept in a 'Sealed Cover'.

8. The claims of the Applicant for empanelment to J.A. Grade were again considered in the subsequent JAG/IRTS Panel approved on 13.11.1998. By the time the Competent Authority had taken the decision to issue a Minor Penalty Charge sheet to the Applicant. Accordingly, the findings of the DPC in respect of the Applicant were kept in 'Sealed Cover', as per extant procedure. The proceedings against the Applicant concluded with the imposition of minor penalty of 'Censure' on 30.03.1999. Thereafter, as per the extant instructions, the 'Sealed Covers' containing the recommendations of the DPCs in respect of the Applicant were opened and on being found fit in the first Panel of 13.11.1997, orders were issued for his promotion to J.A. Grade. As per extant instructions contained in Board's letter dated 21.01.1993, (Annexure R-II), the Applicant was entitled for promotion with prospective effect, duly retaining his seniority as per the position assigned to him in the JAG/IRTS Panel of 13.11.1997. Accordingly, he was promoted to JA Grade prospectively with effect from 31.03.99.

**PARAWISE REMARKS:**

1 to 3: These paragraphs do not call for any remarks.

4.1 The contentions made in this para are not denied to the extent these are borne on records.

4.2 In reply to the contentions made in this para, it is submitted that the Applicant, while working as Town Officer, Gawalior, Central Railway, during the year 1992, was involved in a Vigilance Case regarding leakage of question papers for a Written Test held by RRB/Bhopal. The CVC advised to prosecute the Applicant. Meanwhile, the Applicant was also considered for empanelment in J.A. Grade in the JAG/IRTS Panel approved on 13.11.1997. However, as he was involved in a Vigilance Case in which CVC had already advised for his prosecution, the findings of the DPC in respect of the Applicant were placed in a 'Sealed Cover'. The other Officers who were empanelled in J.A. Grade in the same Panel were ordered for promotion to J.A. Grade with effect from 13.11.1997 in terms of Orders issued on 01.12.1997.

Ministry of Railways' letter dated 21.01.1993 (Annexure R-II). In terms of para 2 (iii) of this letter, in the cases of 'Government Servants in respect of whom prosecution for a criminal charge is pending', their cases for promotion are to be kept in a 'Sealed Cover'. When the case of the Applicant for empanelment to J.A. Grade was first considered in the JAG/IRTS Panel approved on 13.11.1997, CVC's advice for prosecuting him had already been received and was in process in the Office of Respondent Nos. 1 & 2. Therefore, as per the instructions quoted above, the case of the Applicant for promotion to J.A. Grade was kept in a 'Sealed Cover'. It is denied that the 'Sealed Cover' procedure was adopted wrongly, as alleged.

As for the Applicant's contention that he had forwarded two representations dated 11.12.1997 and 17.11.1998 to the Respondents, it is submitted that these representations were duly considered in the Office of the Respondent Nos. 1 & 2 and a reply was also sent to the Office of the Respondent No.3 (General Manager, N.F. Railway) for communicating the same to the Applicant. A copy of this letter dated 26.04.1999 is annexed herewith as Annexure R-III. The Applicant has conveniently suppressed the fact that his representations have been replied to by the Respondents.

4.4 The contentions made in this para are denied. The case of the Applicant's promotion to J.A. Grade was placed in 'Sealed Cover' not because of wrong information, as alleged, but because of the factual position and the extant instructions on the subject. Attention in this connection is invited to para 3.2 of Railway Board's letter dated 21.01.1993 (Annexure R-II) which lays down that '.....in the case of ..... promotions within Group 'A' (up to and including promotions to S.A. Grade) those imposed with the minor penalties of censure, stoppage of Passes/PTOs, recovery from pay and withholding of increments may also be promoted prospectively in their turn with reference to their position in the earlier Panel(s) of the DPC. In the case of those imposed with the penalty of withholding of increment, however, they cannot be promoted before expiry of the penalty. The pay on promotion in all these cases should be fixed under the normal rules with reference to the date of actual promotion'.

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When the proceedings against the Applicant concluded with the imposition of a minor penalty of 'Censure' on 30.11.1999, the 'Sealed Covers' containing the recommendations of the DPC in respect of the Applicant were opened. On being found that he was fit for promotion to J.A. Grade in the first Panel of 13.11.1997, orders were issued promoting him to J.A. Grade with effect from 31.03.1999. As per the extant procedure, the Applicant was promoted to J.A. Grade prospectively, duly retaining his seniority position as assigned to him by the DPC in the JAG/IRTS Panel approved on 13.11.1997. Thus, the Applicant has no claims for promotion to J.A. Grade with effect from November 1997, when his batch mates were so promoted.

4.5 The contentions made in this para are not denied to the extent these are borne on records.

4.6 The contentions made in this para are repetitive in nature and the remarks given in para 4.4 above are reiterated in this regard.

4.7 The contentions made in this para are denied. As has been stated herein above, the CVC's advice to prosecute the Applicant was received by the time the JAG/IRTS Panel was approved in November 1997. Hence, the case of the Applicant was kept in a 'Sealed Cover'. The same procedure was adopted for the subsequent JAG/IRTS Panel approved on 13.11.1998. The disciplinary proceedings against the Applicant concluded with the imposition of Penalty of 'Censure' on 30.03.1999. Thereafter, the 'Sealed Covers' in respect of the Applicant were opened and the Applicant was promoted prospectively with effect from 31.03.1999. However, he retains his seniority position as assigned to him by the first DPC in the JAG/IRTS Panel approved on 13.11.1997. Therefore, he has no claims for promotion to J.A. Grade with effect from November, 1997 along with his batch mates.

5.1 The contentions made in this para are denied. There has been no illegality or error on the part of the Respondents in adopting the 'Sealed Cover' procedure in the case of the Applicant, as alleged. The Applicant is also not entitled to be promoted to J.A. Grade with effect from November 1997, as claimed. The reasons have already been adequately explained in the foregoing paragraphs.

5.2 The contentions made in this para are also denied. It has already been established that CVC's advice to prosecute the Applicant was received by the time the JAG/IRTS Panel was approved in November 1997. Hence, the case of the Applicant was kept in a 'Sealed Cover'. The same procedure was adopted for the subsequent JAG/IRTS panel of 13.11.98. It was only on conclusion of the proceedings with the imposition of penalty of 'Censure' on 30.03.1999 that the 'Sealed Covers' were opened and the Applicant was promoted prospectively with effect from 31.03.1999. He, therefore, has no claims for promotion to J.A. Grade with effect from November 1997. However, he will retain his seniority position as assigned to him by the first DPC in the JAG/IRTS Panel of 13.11.1997.

5.3 The contentions made in this para are repetitive in nature and do not call for any fresh comments. It may, however, be stated that ad hoc promotion of the Applicant to J.A. Grade in 1996 can not be made a ground for regular promotion in 1997. Moreover, ad hoc promotion can not be treated to be fitness for regular promotion, as has been made out to be by the Applicant.

5.4 The contentions made in this para are denied, being totally untenable.

6. In reply to this para, it is submitted that the representations dated 24.06.1999 and 06.07.1999 were forwarded by the Office of the Respondent No.3 (General Manager, NF Railway) to the Office of Respondent No.2 (Secretary, Railway Board) and the same were duly examined by the Competent Authority. However, as there was no substantial change in the position already advised vide Railway Board's letter dated 26.04.1999 (**Annexure R-III**), no further reply was sent. Moreover, by the time the papers were perused by the Competent Authority in September 2000, the present OA was already filed by the Applicant.

7 & 8 In view of the submissions made in the foregoing paragraphs, the Applicant has no claims for retrospective promotion to J.A. Grade with effect from 13.11.1997. He is only entitled to prospective promotion with effect from 31.03.1999, by retaining his seniority position as assigned to him by the DPC in JAG/IRTS Panel approved on 13.11.1997. Thus, the case of the Applicant has been correctly processed as per extant instructions and his interests have been duly protected as per rules.

## PRAYER

It is, therefore, humbly prayed that the O.A. may be dismissed being devoid of any merits.

## RESPONDENTS

देव नान सेहरा/D R MEHRA  
उप सचिव (ए.) Dy. Secretary (Estd.)  
रेल मंत्रालय /Ministry of Railways  
रेलवे बोर्ड /Railway Board  
नई दिल्ली /New Delhi.

## VERIFICATION

I, D.R. Mehra, aged 52 years, S/o Late Shri R.L. Mehra, working as Deputy Secretary (Establishment), Railway Board, do hereby verify that the contents of paras 1 to 8 of the Counter Reply are true and correct to my knowledge as derived from the official records and that nothing material has been suppressed.

So verified at New Delhi on this 11 day of August 2001.

## RESPONDENTS

देव गज मेहरा/O R MEHRA  
उप सचिव (पाय.) Dy. Secretary (Estt.)  
रेल मंत्रालय/Ministry of Railways  
रेलवे बोर्ड/Railway Board  
नई दिल्ली/New Delhi

भारत सरकार **Government of India**  
रेल मंत्रालय **Ministry of Railways**  
रेलवे बोर्ड (Railway Board)

(8) 48

रेल भवन, नयी दिल्ली - ११०००१, तिथि: २६.०९.१९८९

**A.N.SHUKLA**  
**SECRETARY**

D.O.89/289-B/Secy/Admn.

Dated: September 26, 1989

My dear

**Sub: Procedure for promotion to Administrative  
Grades in Railway Services.**

Ministry of Railways have reviewed the present policy of promotions to various Administrative Grades in Railway Services with a view to streamlining the procedure and to ensure greater selectivity and thus strengthen the middle and Senior Management Cadres. While merit has to be recognised and rewarded, advancement in an officer's career should not be regarded as a matter of course, but should be earned by dint of hard work, good conduct and result-oriented performance and potential for shouldering higher responsibilities, as reflected in the Annual Confidential Reports (ACRs), and it should be based on a strict and rigorous selection process.

2. For promotions from Senior Scale to J.A. Grade, the Selection Committee shall consider all eligible Officers and assess their fitness for promotion on merit and the selected officers shall be placed on the panel in the order of seniority.

2.1 In promotions to posts which carry an ultimate salary of Rs. 5700/- p.m. in the Revised Scale, SC/ST Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion.

3. For promotions from J.A. Grade to S.A. Grade and from S.A. Grade to Additional Secretary's Grade (Rs.7300-7600/-), the following principles will be followed:-

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i) **Field of Eligibility**

For the purpose of determining the number of officers who will be considered from out of those eligible in the feeder grade, the field of choice will be restricted as under with reference to the number of vacancies proposed to be filled in the year:

No. of vacancies	No of officers to be considered.
1	5
2	8
3	10
4	Three times the number of vacancies.

ii) **Assessment of Confidential Rolls.**

Confidential Rolls are the basic inputs on the basis of which assessment is to be made by the Selection Committee. While evaluating the CRs, the following would be kept in view:-

- a) The Selection Committee will assess the suitability of the Officers for promotion on the basis of their service records and with particular reference to the five preceding years.
- b) Where one or more CRs have not been written for a sufficient reason for a particular period the CRs of the years preceding the period in question, would be considered. If this is not possible, all the available CRs should be taken into account.
- c) Where an Officer is working against a higher grade and has earned CRs in that grade, his CRs in that grade would be considered by the Selection Committee only as an assessment of his work, conduct and performance and no extra weightage should be given merely on the ground that he has been officiating in the higher grade.
- d) The Selection Committee would not be guided merely by the overall assessment, if any, that may be recorded in the CRs, but will make its own assessment on the basis of the entries in the CRs.
- e) Before making the overall grading after considering the CRs for the relevant years, the Selection Committee would take into account whether the Officer has been awarded any major or minor penalty or whether any displeasure of any Superior Officer or Authority has been conveyed to him as reflected in the CRs.

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f) Due regard to the remarks recorded against the column on 'Integrity' would be given.

iii) **Selection Procedure:**

For the purpose of promotion from J.A. Grade to S.A. and S. A. Grade to Additional Secretary's Grade (Rs. 7300-7600), the benchmark shall be 'Very Good'. For this purpose, the Selection Committee will grade the Officers who are considered suitable for promotion as 'Very Good' or 'Outstanding'. Officers graded 'Outstanding' will rank Senior to all those who are graded 'Very Good' and placed in the Select Panel accordingly. Officers with the same grading will maintain their existing Inter-se Seniority.

4. This letter supersedes instructions contained in Confidential D.O. Letters No.86/289-B/Secy/Admn dated 06.03.1986 and 15.05.1987.

Yours sincerely,

Sd/-

(A.N.Shukla)

**भारत सरकार Government of India**  
**रेल मंत्रालय Ministry of Railways**  
**रेलवे बोर्ड (Railway Board)**

No.E(D&A)92/RG6-149(B)

RBE. No.14/93  
New Delhi, dated 21.01.1993

The General Manager (P),  
All Indian Railways, etc.

**Sub:** Promotion from Group 'B' to Group 'A' and within Group 'A' of Railway Officers against whom Disciplinary/Court Proceedings are pending -- Procedure and Guidelines to be followed.

In supersession of all instructions contained in Board's letters referred to in the margin <sup>(1)</sup> on the above subject, the procedure and guidelines laid down below shall be followed in the matter of promotion from Group 'B' to Group 'A' and within Group 'A' of Railway Officers against whom Disciplinary/Court Proceedings are pending.

**Cases of Government Servants to whom 'Sealed Cover' Procedure will be applicable.**

2. At the time of consideration of the Cases of Government Servants for empanelment, details of Government Servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government Servants under suspension;
- (ii) Government Servants in respect of whom a chargesheet has been issued and the Disciplinary Proceedings are pending;
- (iii) Government Servants in respect of whom prosecution for a criminal charge is pending.  Jha

(1) Board's letters No.E(D&A)88RG6-21 dated 21.09.1988 and 02.07.1990

S✓

Procedure to be followed by DPC in respect of Government Servants under cloud.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government Servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the Disciplinary Case/Criminal Prosecution pending. The assessment of the DPC, including 'Unfit for promotion' and the grading awarded by it will be kept in a 'Sealed Cover'. The Cover will be superscribed "Findings regarding suitability for promotion to the grade/post of.....in respect of Shri/Smt ..... (name of the Government Servant). Not to be opened till the termination of the Disciplinary Case/Criminal Prosecution against Shri/Smt.....". The Proceedings of the DPC need only contain the note 'The findings are contained in the attached 'Sealed Cover'. The Authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government Servant for his promotion are kept in a 'Sealed Cover'.

Procedure by subsequent Departmental Promotion Committees.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the Disciplinary Case/Criminal Prosecution against the Government Servant concerned is concluded.

Action after completion of Disciplinary Case/ Criminal Prosecution.

3. On the conclusion of the Disciplinary Case/Criminal Prosecution, which results in dropping of allegation against the Government Servant, the 'Sealed Cover' or Covers shall be opened. In Case the Government Servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the 'Sealed Cover'/Covers and with reference to the date of promotion of his next Junior on the basis of such position. The Government Servant may be promoted, if necessary, by reverting the Junior most officiating person. He may be promoted notionally with reference to the date of promotion of his Junior. However, whether the Railway Servant who has been promoted, as mentioned above, will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the Disciplinary Proceedings/Criminal Prosecution. Where the authority denies arrears of salary or part of it, it will record the reasons for doing so. It is not possible to anticipate

and enumerate exhaustively all the circumstances under which such denial of arrears of salary or part of it may become necessary. However, there may be Cases where the Proceedings, whether Disciplinary or Criminal, are, for example, delayed at the instance of the employee or the clearance in the Disciplinary Proceedings or acquittal in the Criminal Proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstance where such denial can be justified.

3.1 If any major penalty is imposed on the Government Servant as a result of the Disciplinary Proceedings or if, he is found guilty in the Criminal Prosecution against him, the findings of the 'Sealed Cover/Cover's shall not be acted upon. His Case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 However, in the Case of ad hoc promotions from Group 'B' to Group 'A' and promotions within Group 'A' (upto and including promotions to S.A. Grade) those imposed with the minor penalties of censure, stoppage of Passes/PTOs, recovery from pay and withholding of increments may also be promoted prospectively in their turn with reference to their position in the earlier Panel(s) of the DPC. In the Case of those imposed with the penalty of withholding of increment, however, they cannot be promoted before expiry of the penalty. The pay on promotion in all these Cases should be fixed under the normal rules with reference to the date of actual promotion.

3.3 It is also clarified that in a Case where Disciplinary Proceedings have been held under the relevant Disciplinary rules, 'warning' should not be issued as a result of such Proceedings. If it is found, as a result of the Proceedings, that some blame attaches to the Government Servant, at least the penalty of censure should be imposed.

#### **Six monthly Review of 'Sealed Cover' Cases.**

4. It is necessary to ensure that the Disciplinary Case/Criminal Prosecution instituted against any Government Servant is not unduly prolonged and all efforts to finalise expeditiously the Proceedings should be taken so that the need for keeping the Case of a Government Servant in a 'Sealed Cover' is limited to the barest minimum. It has, therefore, been decided that the Appointing Authorities concerned should Review comprehensively the Cases of Government Servants, whose suitability for promotion to a higher grade

has been kept in a 'Sealed Cover' on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the 'Sealed Cover'. Such a Review should be done subsequently also every six months. The Review should, inter alia, cover the progress made in the Disciplinary Proceedings/Criminal Prosecution and the further measures to be taken to expedite their completion.

#### Procedure for ad hoc promotion.

5. Inspite of the six-monthly Review referred to in para 4 above, there may be some Cases where the Disciplinary Case/Criminal Prosecution against the Government Servant are not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government Servant in a 'Sealed Cover'. In such a situation the Appointing Authority may Review the Case of the Government Servant, provided he is not under suspension, to consider the desirability of giving him ad hoc promotion keeping in a view the following aspects:-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is no likelihood of the Case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of Proceedings, departmental or in a court of law is not directly or indirectly attributable to the Government Servant concerned;
- e) Whether there is any likelihood of misuse of official position, which the Government Servant may occupy after ad hoc promotion, which may adversely affect the conduct of the departmental Case/Criminal Prosecution.

The Appointing Authority should also consult the Central Bureau of Investigation and take their views into account where the departmental Proceedings or Criminal Prosecution arose out of the investigations conducted by the Bureau.

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5.1 In Case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad hoc promotion to the Government Servant, his Case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad hoc basis. Where the Government Servant is considered for ad hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending Disciplinary Case/Criminal Prosecution against him.

5.2 After a decision is taken to promote a Government Servant on an ad hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- (i) the promotion is being made on purely ad hoc basis and the ad hoc promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad hoc promotion and revert at any time the Government Servant to the post from which he was promoted.

5.3 If the Government Servant concerned is acquitted in the Criminal Prosecution on the merits of the Case or is fully exonerated in the departmental Proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as regular from the date of the ad hoc promotion with all attendant benefits. In case the Government Servant could have normally got his regular promotion from a date prior to the date of his ad hoc promotion with reference to his placement in the DPC Proceedings kept in the 'Sealed Cover'(s) and/or the actual date of promotion of the person ranked immediately Junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

However, in Cases of promotion from Group 'B' to Group 'A' and within Group 'A' (upto and including promotions to S.A. Grade), if the Railway Officer is given ad hoc promotion as envisaged in para 5.2 above, and is finally imposed any of the minor penalties of Censure, Stoppage of Passes/PTOs, Recovery from pay and Withholding of Increment, such Railway Officer should be deemed as regularly promoted from the date of ad hoc promotion, duly retaining the position assigned to him in earlier Panel(s).

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5.4. If the Government Servant is not acquitted on merits on the Criminal Prosecution but purely on technical ground and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government Servant is imposed a penalty other than those mentioned in the preceding paragraph in the departmental Proceedings, the ad hoc promotion granted to him should be brought to an end.

**'Sealed Cover' applicable to Officers coming under cloud before promotion.**

6. A Government Servant, who is recommended for promotion by the Departmental Promotion Committee but in whose Case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his Case had been placed in a 'Sealed Cover' by the Departmental Promotion Committee. He shall not be promoted until the conclusion of Disciplinary Case/Criminal Proceedings and the provisions contained in this letter will be applicable in his Case also.

**'Sealed Cover' Procedure for confirmation.**

7. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an Officer under suspension, etc. A permanent vacancy should be reserved for such an Officer when his Case is placed in a 'Sealed Cover' by the Departmental Promotion Committee.

8. Please acknowledge receipt.

Sd/-  
(Elias Kullu)  
Joint Director Estt.(D&A),  
Railway Board.

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भारत सरकार GOVERNMENT OF INDIA  
रेल मंत्रालय MINISTRY OF RAILWAYS  
(रेलवे बोर्ड RAILWAY BOARD)

NO.E(O)III-98/AE/06

रेल भवन, नयी दिल्ली - ११०००१, तिथि २६.०४.१९९९  
Rail Bhavan, New Delhi - 110001, dated 26.04.1999

The General Manager,  
Northeast Frontier Railway,  
Guwahati.

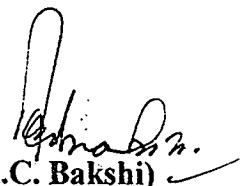
(Attn.: Smt. M. Brahmo, Dy. CPO/G)

Sub: Shri M.P. Mehta, Senior Scale/IRTS/NF Railway  
- Request for promotion to JA Grade.

Ref: COM/NF Railway's D.O. letter  
No.T/SS/GAZ/NF/Pt.II dated 03.07.1998.

The request of Shri M.P. Mehta, Senior Scale/IRTS/NF Railway, for promotion to JA Grade has been considered by the Board. Shri Mehta was considered for empanelment to JAG in 1997. Findings of the DPC were, however, kept in 'Sealed Cover' due to his involvement in a vigilance case.

Shri Mehta may be advised accordingly.

  
(A.C. Bakshi)

Joint Secretary (G)  
Railway Board

