

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01704/2015

DATED THIS THE 14th DAY OF SEPTEMBER, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sri D.S.Narahari
Age: 75 years
S/o Sri.D.S.Shastry
Chief Engineer(Retired)
Indian Railways.
Residing at No.342
Anupas, Vijayanagar
Railway Layout
Mysuru:570 016.

.....Applicant

(By Advocate Shri P. A.Kulkarni)

Vs.

1. Union of India
To be represented by its Chairman
Railway Board & Ex-Officio Principal Secretary
To Govt. of India
Railway Board
Railway Bhavan
New Delhi - 110 001.
2. Railway Board
Represented by its Chairman
Railway Board
Railway Bhavan
New Delhi-110 001.
3. General Manager
South Eastern Railways
Garden Reach
Kolkata-700 043.
4. Chief Personnel Officer
South Eastern Railways
Garden Reach
Kolkata-700 043.Respondents

(By Advocate Shri N.S.Prasad)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- i. *Quash the order bearing No:DCPO(G)/CON/CCCAT/BANG/421, dated 01.05.2015, Annexure-A9 passed by South Eastern Railways, Kolkata R-4 herein.*
- ii. *Based on the findings recorded by this Hon'ble Tribunal in its order dated 2.11.2011 in OA.877/1999 Ann-A3 and directions issued by the Hon'ble High Court of Karnataka at Bengaluru in paragraph 2 of its order dated 18.4.2013 in WP.No.12976/2013(S-CAT) Ann-A4 read with order dated 9.10.2013 passed in WP No.5631/2013 (S-CAT) Ann-A5, direct the respondents to cause promotion of the applicant to JAG w.e.f. 8.9.1978, Selection Grade JAG w.e.f.1.1.1986, SAG from May 1987 & HAG from 14.12.1996 and to extend the consequential benefits including the monetary benefits flowing there from along with revision of pension and terminal benefits on the basis of the last pay arrived at out of the above exercise and payment of difference amount arising out of such revision up-to-date with due interest accruing on such delayed payment.*

2. This is a third round of litigation. The background of the case leading to filing the present OA is as follows:

After serving in Indian Army as Short Service Commissioned Officer from 2.8.1964 to 30.8.1969, the applicant joined the Indian Railways on 7.4.1973 as a Group 'A' Officer on the basis of the selection of Graduate Engineer. He had retired on superannuation w.e.f. 28.2.1998 while working in Senior Administrative Grade which was extended to him w.e.f.31.5.1995. While working as a Deputy Chief Engineer(Construction) in South Eastern Railway, he approached the Tribunal in OA.No.699/1988 in regard to fixation of his seniority by taking into account the service rendered by him in the Armed Forces and for grant of promotions on the basis of such seniority. Pursuant to the order of the Tribunal, the Railway Board passed an order in 1992 fixing the seniority of the applicant from 7.4.1965 and antedated his date of entry into senior scale from 7.4.1977 to 7.4.1976. However, the applicant's date of promotion to JAG and SAG was retained. Aggrieved by the said order of the Railway Board dated 13.5.1992, the applicant again approached the Kolkata

Bench of the Tribunal in OA.No.146/1993 and the Tribunal set aside the Railway Board's order dated 13.5.1992 and directed the respondents to hold a review DPC once again for de-novo consideration of the case of the applicant for empanelment and promotion to Senior Scale, JAG, Selection Grade & SAG afresh. The Railway Board then passes an order dated 25.3.1996 preponing the date of promotion of the applicant to the grade of Senior Time Scale from 7.6.1976 to 19.8.1971. However, they held that the applicant's promotions ordered already to JAG in February 1984, to the Selection Grade on 2.1.1989 and SAG on 31.5.1995 are in order and do not warrant any change. Again the applicant challenged the Railway Board's order dated 25.3.1996 in OA.No.877/1999 before this Tribunal. This Tribunal vide order dated 13.12.2001 dismissed the OA saying that review DPC proceedings were in order and in compliance with the orders passed by the Kolkata Bench of this Tribunal. The applicant then challenged the order of this Tribunal dated 13.12.2001 before the Hon'ble High Court of Karnataka in WP.No.4835/2002. The Hon'ble High Court set aside the order of the Tribunal and remanded the matter for fresh consideration in the light of the observation contained in its order(Annexure-A2).

3. Following the remand of the matter by the Hon'ble High Court of Karnataka, this Tribunal heard the matter once again and vide order dated 2.11.2011(Annexure-A3) disposed of the OA.No.877/1999 with the following observation:

'The Hon'ble High Court had clearly directed this Tribunal to see whether there were any adverse remarks passed by the juniors of the petitioner which came in the way of review DPC denying him promotion on the due date. Unless the ACRs are produced it would not be possible to see whether the adverse remarks were communicated and also whether such adverse remarks were recorded by persons who are actually junior to the applicant before his seniority was revised. The High Court has also observed that very same promotions were granted subsequently and hence the reasons for denying the promotion w.e.f. an earlier date should be looked into.

In the absence of ACRs we had looked into the career card which is produced by the respondents. It is seen that there were no adverse remarks in any of the CRs from 1975 to 1978. The applicant's junior Sri.K.K.Brahma was promoted as per the recommendations of the DPC held in 1977. Learned counsel for the applicant submits that the respondents would have considered utmost the ACRs of 1975, 1976 & 1977 only for promotion to JAG and the grading was 'Very Good', 'Good' and 'Very Good' for these years. We agree that review DPC has to be held by the respondent-department for considering the applicant's promotion along with Sri.K.K.Brahma w.e.f. 8.9.1978 to JAG. In short the ACRs for the years which were considered by the said DPC by which Sri.Brahma was promoted (whether held in 1976 or 1977) only are to be considered in respect of the applicant also while considering him for promotion in the grade of JAG. Further promotions to SAG & HAG will also have to be reviewed based on the date of promotion of the said immediate junior in the grades of JAG & SAG as per the result of the review DPC.

We direct the respondent-department to conduct review DPCs as mentioned in the above paragraph for considering the promotion of the applicant from 8.9.1978 to JA Grade within a period of 3 months from the date of receipt of copy of this order. If the promotion to JA Grade is preponed to 8.9.1978, subsequent promotions shall also be reviewed by holding review DPC within a period of one month thereafter. Needless to say that the applicant will be entitled to all consequential benefits including arrears of pay and allowances and re-fixation of pension etc. After holding the review DPC if the applicant is getting the relief of promotion w.e.f. an earlier date the respondents shall revise the pay and allowances within the period of 2 months' time from the date of receipt of a copy of this order to complete the entire review and settlement of consequential benefits."

4. The order of the Tribunal dated 2.11.2011 was challenged by the applicant as well as the respondents in WP.No.12976/2013 & WP.No.5671/2013(S-CAT) respectively before the Hon'ble High Court of Karnataka. While the applicant's contention was that the Tribunal should have granted the relief rather than remitting the matter to the authority, the respondents contended that since the service records are not available, it may be permitted to hold review DPC by looking into the minutes of those records made in the earlier proceedings of the DPC and all other material. The Hon'ble High Court vide order dated 18.4.2013(Annexure-A4) dismissed both the WPs with the following observation:

"In the WP filed by the applicant:

Tribunal has issued direction to respondent to conduct review DPCs. It cannot straightaway grant promotion to the applicant and all consequential benefits. If the authorities do not obey the directions in the manner they are required by law and there is any deliberate attempt on the part of the authority in not granting what is legitimate on the part of

the applicant and then if the applicant were to approach the court thereafter then the Tribunal may think of granting the relief of promotion before the Tribunal itself. Accordingly petition is dismissed reserving liberty to the petitioner to approach the Tribunal if the directions are disobeyed or is not granted the relief.

In the WP filed by the Railways:

What is not available cannot be looked into. What is available has to be looked into and appropriate orders are to be passed.

The contention raised by the respondent-party in person is the matter which has to be considered when the DPC looks into it and passes an order. If the respondent were to get the benefit of promotion as directed by the Court, the litigation ends. Otherwise, we have to look into the legal aspects.

There is no justification to interfere with the orders passed by the Tribunal. Accordingly, WP is dismissed by granting 2 months' time for reviewing the case of the respondent by DPC.

5. The Railway Authority, however, did not comply with the direction of the Tribunal because of which the contempt petition was filed. Only thereafter, the South Eastern Railway passed an order dated 1.5.2015(Annexure-A9) communicating the Railway Board's decision in compliance with the order of the Tribunal dated 2.11.2011. The Railway Board's decision says as follows:

"The departmental promotion Committee met on 11.11.2014 to consider the case of D.S.Narahari, IRSE(Rtd) for promotion to JAG & above.

In the matter, the DPC after carefully scrutinizing the available records and taking various aspects into account including the performance of Sri.D.S.Narahari and on the basis of totality of performance as reflected in his career card found Sri.D.S.Narahari 'unfit' for empanelment to JAG w.e.f. 8.9.1978. Since he has been found unfit for JAG, the question of considering him for further promotion to SAG & HAG does not arise."

Aggrieved by the said order of the Railway Board, the present OA is filed by the applicant.

6. The main contention of the applicant is that he is entitled to empanelment to JAG when his junior Sri.K.K.Brahma was empanelled and promoted to JAG on 8.9.1978 and on that basis he will be entitled for further promotions on par with the said junior. This factor according to him has also been recognised by the Tribunal in its order dated 2.11.2011. He submits that he had obtained

through RTI, the file notings of the Railway Board pertaining to DPC proceedings held on 11.11.2014(Annexure-A12). It is evident from the records that the DPC held on 11.11.2014 did not conduct the review by assessing the position as on 8.9.1978. Para-3 of the said DPC minutes mentioned that the DPC held on 4.2.2014 found the applicant unfit for empanelment to JAG as on 8.9.1978 with reference to the standards of performance adopted in the original DPC dated 21.7.1979 in which Sri K.K.Brahma junior to the applicant was considered and assessed fit. Earlier DPC held on 4.2.2014 also did not review the position as on 8.9.1978 with a deliberate excuse that 'there was no papers like performance assessments etc. on this panel available'. According to the applicant, fitness for promotion during the said period as per the policy formulated by the Railway Board was 'Good' and 'Higher' grading in three reports and fitness is not required to be insisted upon. The applicant had gradings of 'Very Good' in 1975, 'Good' in 1976 and 'Very Good' in 1977. Therefore, there is no question of holding him unfit for the empanelment to JAG as on 8.9.1978 when Sri.K.K.Brahma junior to the applicant came to be promoted to JAG. The DPC deliberately avoided considering him as on 8.9.1978 but chose to consider the case of the applicant with reference to the panel approved on 21.10.1979. Even in same DPC proceedings held on 21.7.1979, the applicant's name was included in the select list at Sl.No.57A by hand written interpolation. When the review DPC proceedings of 4.2.2014 were placed before the Hon'ble Minister for Railways for approval, he returned the file for fresh consideration. In the next meeting of the review DPC held on 11.11.2014, it only endorsed the review DPC recommendations made on 4.2.2014 and after obtaining the Hon'ble Minister's approval, the impugned order of the Railway Board was passed.

7. The applicant submits that when the DPC on 4.2.2014 indicated that no papers of the performance, assessments etc. of the panel is available, the

review DPC in its meeting held on 11.11.2014 recorded that the DPC held on 4.2.2014 has considered the ACRs of 1975-76, 1976-77, 1977-78. Therefore, the action of the respondent authorities appears to be illogical. As observed by the Hon'ble High Court in WP.No.4835/2002, since the inception the Railways were not willing to give the benefits to the petitioner what is legitimately due to him on some pretext or the other. The applicant submits that his performance assessment for the year 1975 was 'Very Good', for 1976 it was 'Good' and for 1977 'Very Good' and therefore, in the light of the observation of this Tribunal in the order dated 2.11.2011, the DPC ought to have found him fit for the empanelment w.e.f. 8.9.1978 the date on which his junior was promoted and consequently he is entitled for Selection Grade, Senior Administrative Grade and to Principal HOD Grade in line with the benefits extended to his junior. Therefore, he submits that he is entitled to the relief as sought by him in the OA.

8. The respondents have initially filed a short reply followed by further reply statement. In the short reply, the respondents while referring to the detailed order passed by this Tribunal in OA.No.877/1999 and the Hon'ble High Court of Karnataka in WP.No.5631/2013 submitted that the case of the applicant Shri Narahari was considered for promotion to JAG in relation to promotion to his junior Shri K.K.Brahma by conducting a review DPC. The applicant was considered for regular promotion to JAG for the first time in July 1978 where he was working at that time in terms of power delegated to the Zonal Railways. He was, however, not found fit for promotion while his junior Shri K.K.Brahma was promoted to JAG in this panel. Subsequently in July, 1979 it was decided by the Board to withdraw the power delegated to Zonal Railways for promotion of JAG panel and to regularise all the panel promotions made by Railways on all Railway seniority basis. Accordingly, the claim of the

applicant was considered in the Railway Board in JAG/IRSE panel approved on 21.10.1979 along with other officers. In this panel, APAR of three years period 1975-76, 1976-77 and 1977-78 were taken into consideration and the applicant was not found fit for empanelment to JAG on the basis of his performance. A meeting of review DPC was held on 4.2.2014. In said review DPC, the applicant was found unfit or empanelment to JAG with regard to stands of performance adopted in DPC dated 21.7.1979 in which Sri K.K.Brahma, junior to the applicant was considered and assessed fit. At that time the Hon'ble Minister for Railways raised certain observation and thereafter, again, review DPC was held. The review DPC held that the ACR for the year 1975-76, 1976-77 and 1977-78 are only to be considered and this has already been done by preview DPC and the applicant has not been found fit for empanelment to JAG. Therefore, the present DPC endorsed the recommendation of the Review DPC. Therefore, the applicant's claim has been reconsidered by conducting a review DPC.

9. In the further reply, the respondents only reiterated the same submission and also raised the issue of res judicata which is not relevant. They highlighted that the review DPC held on 11.11.2014 after carefully scrutinising the available records and taking various aspects into account including the performance of the applicant as reflected in his career card found that the applicant was found unfit for empanelment to JAG w.e.f. 8.9.1978. Therefore, the question of considering him for further promotion to SAG and HAG does not arise. They submit that the applicant's rights are limited to consideration for promotion and not for promotion itself. Therefore he is not entitled to any further relief.

10. We have heard the Learned Counsel for the parties. Both sides have also filed written arguments. The Learned Counsel for the applicant while highlighting the facts brought out in the OA itself submitted that earlier the

Tribunal held that ACRs for the year 1975-76(taken as 1975 ACR), 1976-77(taken as 1976 ACR), and 1977-78 ACR(taken as 1977 ACR) are the relevant ACRs for consideration in respect of the 1978 DPC wherein Sri K.K.Brahma came to be promoted w.e.f. 8.9.1978. When the recommendation of the DPC held on 4.2.2014 was placed before the Railway Ministry, the Minister has observed that the ACRs preceding the year 1978 alone are required to be considered in the review DPC, due to which subsequent review DPC was held. He submitted that the DPC has classified the applicant as 'Average' in his ACR for the year 1977-78 and in his latest appraisal for the year ending March 1979 he has been assessed as 'Average'. This on the face of it is unsustainable as his ACRs for the year 1977-78 is not average but 'Very Good' as evidenced by performance record card furnished by the Railways. The review DPC ought to have considered the position in July 1978 wherein Sri K.K.Brahma came to be promoted on regular basis w.e.f. 8.9.1978.

11. The Learned Counsel for the respondents, on the other hand, referring to the reply statement submitted that the review DPC was held as directed by this Tribunal and the Hon'ble High Court of Karnataka. The minutes of DPC as available in the Railway Board file clearly shows that the DPC held in July, 1978 had taken into consideration 3 years ACRs up to the year 1977-78 when a total 23 officers were considered by the DPC out of whom, 14 officers were found fit, 6 officers were not found fit and 3 officers to be considered after their ACRs for the year 1977-78 were available. The communication from the South Eastern Railways to the Railway Board forwarding the panel for JAG in the Civil Engineering Department clearly indicated that the panel has been treated as provisional as the confidential reports for the year ending 31st March 1978 has not been available for three officers who have been deputed

to Nigerian Railways. However, in the said communication, the officers who were not found to be promoted were mentioned which includes the applicant. It also mentioned that Sri P.M.Venkatesan & K.K.Brahma are available for promotion in the future vacancies. It is thus clearly evident that three years ACRs ending with March 1978 were taken into consideration by DPC and the applicant was not found fit as his grading for the year 1977-78 was 'average'. He mentioned that report card of the applicant which has been produced clearly shows the gradings for different years. He says that ACRs for the year 1975-76, 1976-77, 1977-78 have been taken into consideration and the grading of the applicant for the year 1978 was 'average'. Therefore, there is nothing wrong in the assessment made by the respondents at that point of time and also by the review DPC.

12. Since both the Counsels have interpreted the assessment and report cards for different years differently i.e whether 1978 would mean 1977-78 or 1978-79, the Learned Counsel for the respondents was asked to submit ACRs to show as to how the gradings are reflected in the report card. Since the Counsel for the respondents mentioned that the records of the applicant are not available, he was directed to produce some other report card and ACRs for any two consecutive years having different gradings to indicate the meaning of the year against which grading has been mentioned. The Learned Counsel for the respondents sought time to produce the same. Subsequently he filed a memo on 5.9.2017 vide which personal data and performance record in respect of another officer Shri K.S.Kalra who was working in South Western Railway and retired now has been produced. In the report card, his grading in 2012 is shown as 'outstanding' whereas in 2013 it is 'very good'. The Learned Counsel for the respondents had separately shown to Admn. Member the ACRs of the person which showed that for the year 2011-12, there are two ACRs as he worked under two different authorities and both

were classified as 'outstanding'. Accordingly, 2012 in report card has been shown as 'outstanding'. Similarly for the year 2012-2013, his grading was 'very good' and in his career card 'very good' has been shown under 2013. The respondents therefore submit that the years shown in the ACRs relates to period ending with 31st March of that year. They have mentioned that it has also been indicated in the written arguments that ACRs for the three years ending 1977-78 means ACRs are meant up to 31st March 1978. It is further indicated in memo that as far as the applicant is concerned, it has been re-verified with the Railway Board that the ACRs are not available in the Railway Board's office.

13. We have carefully considered the records and submissions made by either sides. The issue under consideration is whether the assessment made by the review DPC in its meeting held on 11.11.2014 holding the applicant as unfit for JAG as on 8.9.1978 and communicated to the applicant vide letter dated 1.5.2015(Annexure-A9) is justified based on his service records.

14. The Learned Counsel for the applicant had referred in detail to the observation made vide para-3 of the Tribunal's order dated 2.11.2011 in OA.No.877/1999 which resulted in holding of review DPC. This Tribunal vide para-3 of the said order held as follows:

In the absence of ACRs we had looked into the career card which is produced by the respondents. It is seen that there were no adverse remarks in any of the CRs from 1975 to 1978. The applicant's junior Sri.K.K.Brahma was promoted as per the recommendations of the DPC held in 1977. Learned counsel for the applicant submits that the respondents would have considered utmost the ACRs of 1975, 1976 & 1977 only for promotion to JAG and the grading was 'Very Good', 'Good' and 'Very Good' for these years. We agree that review DPC has to be held by the respondents' department for considering the applicant's promotion along with Sri.K.K.Bahma w.e.f. 8.9.1978 to JAG Grade.

15. Regarding records, the respondents have constantly maintained that the same are not available. This was also mentioned by the Tribunal's order as mentioned above and also noted by the Hon'ble High Court of Karnataka.

However, the DPC was held in July 1978 and not 1977 as mentioned in the Tribunal's order dtd.2.11.2011. Hence it is to be seen which ACRs were taken in to consideration in that DPC of July 1978. We have gone through the records produced by the respondents relating to formation of JA Grade panel of IRSE (Annexure-R1). In the notes regarding formation of JA Grade panel prepared by the Secretary on 28.9.1979, it is mentioned vide para-2, 3, 3.1 & 4 as follows:

2. Board noted that the last panel framed in this Ministry was approved by the then MR on 30.11.76. In the intervening period from 30.11.76 to 18.7.79, the date from which Railway Ministry decided to frame regular panels in this Ministry, the JA grade panels were framed by the General Managers under the powers delegated to them. These panels are to be treated as 'provisional'.
3. Board, therefore, considered the JA grade panels of IRSE framed by Zonal Railways with a view to regularise them.
- 3.1. In accordance with the 'Promotion Policy' an officer eligible for promotion from Senior Scale to JA grade should have earned consecutively 3 'good' reports, last 2 should certify him fit for promotion.
4. Cadre statement of the eligible officers shown in fitness/assessment for the last 3 years ending Mar'78 has been prepared and placed below at F/A. The position as to their having been passed over/empanelled by the Railway administration is shown against each, together with the remarks whether an officer is already working in JA grade.

The respondents had enclosed along with their written statement a communication from the Chief Personnel Officer to Railway Board dated 19.7.1978 enclosing therewith a panel formed by them in respect of Senior Scale officers of Civil Engineering Department for their promotion to JA Grade. The said communication clearly mentioned that the panel has been treated as provisional as the confidential reports for the year ending 31st March 1978 in respect of three officers who are presently on deputation with Nigerian Railways are not available. The said communication also considered the applicant as not found suitable for promotion and specified that only two officers namely Shri P.M.Venkatesan and Shri K.K.Brahma were available for promotion in the future vacancies. The said communication also enclosed minutes of the proceedings of the committee held on 17.7.1978 in which it

was held that it did not consider the applicant as suitable for promotion to JA Grade.

16. It is evident from the note regarding formation of JA Grade panel as referred to earlier that though the panels for promotion to JA Grade were sent by different Railways in 1978, the performance of eligible officers was considered by Board in its meeting held on 22.4.1979 for regularisation. The said note also indicated in case of the applicant that he was classified as 'average' in his ACRs for 1977-78. Further in his latest appraisal for the year ending March 1979, he has been assessed as 'average'. Thus it is quite clear that the initial panel was prepared by the DPC in July 1978 which was further considered by the Board in September 1979 for regularisation. The DPC held in July 1978 wherein Shri K.K.Brahma junior to the applicant was considered for promotion took into consideration the ACRs up to March 1978 only.

17. During the hearing, a reference was made to the personal data and performance record card of the applicant wherein the grading for the period from 1975 to 1979 is mentioned as follows:

Mar 75	Mar 76	Mar 77	Mar 78	Mar 79
VG/Not yet	G/Not yet	VG/Fit	A/Not Fit	A/Not Fit

The Learned Counsel for the applicant submitted that 1978 should mean 1978-79 and could not be considered by DPC/review DPC. The Learned Counsel for the respondents indicated that 1978 actually mean 1977-78. The minutes of the DPC held on July 1978 mentioned that the ACRs for the year ending 31st March 1978 is not available in respect of 3 officers. The note of the Secretary to Railway Board while processing the cases for formation of JA Grade panel also categorically mentioned the same. In the subsequent memo filed by the respondents showing the ACRs and gradings recorded in personal data of performance records of another officer Sri K.S.Kalra, it is

quietly evident that the year in the report card means for the period ending March of that year. Thus 1978 would mean the period from April 1977 to March 1978 and not April 1978 to March 1979 as contended by the Ld.Counsel for the applicant. Since the DPC was held in 1978, three ACRs relevant for promotion to JA Grade was 1975-76, 1976-77 and 1977-78. The grading of the applicant was 'average' for the year 1977-78 and as such he was not considered fit for promotion to JAG. This fact was clearly mentioned in the communication of the South Eastern Railway to the Railway Board and also note of the Railway Board. Sri K.K.Brahma, junior to the applicant was considered in the DPC held in July 1978 and was recommended for promotion.

18. The Tribunal in its order dtd.2.11.2011 had categorically indicated that the ACRs for the year which was considered by the DPC by which Sri K.K.Brahma was promoted only to be considered in respect of the applicant also while considering him for the promotion in the grade of JAG. From the minutes of the meeting of DPC held on July, 1978 wherein Sri Brahma was considered for promotion to JAG, it is clear that ACRs for the year ending up to 31st March 1978 was considered by the said DPC.

19. The decision of the review DPC which met on 11.11.2014 observed vide para-5 of the minutes as follows:

5. The present DPC noted that the ACRs have been considered as per the orders of Hon'ble CAT/Bangalore. The ACRs for the years 1975-76, 1976-77 and 1977-78 are only to be considered and this has already been done by the previous Review DPC and Shri D S Narahari has not been found fit for empanelment to JA Grade. Also, his date of entry into service or his service as Short Service Commissioned Officer are not factors in assessing his performance for empanelment to JAG in Railways. Therefore, the present DPC endorses the recommendations of the Review DPC(S.No.4).

20. Based on the available records and discussion made in the preceding paras, it is quite clear that for the promotion to JA Grade as on July 1978, the ACR for preceding 3 years i.e. up to March 1978 was considered. Hence, we hold

that the decision of the review DPC appears to be in order and cannot be faulted. The ACRs for 3 years which were taken into consideration by the DPC and review DPC, the grading of the applicant for the year 1977-78 was 'average' and hence he was not considered fit for promotion to JAG grade. Therefore, in our view there is nothing irregular and unjustified in the action taken by the respondents. Therefore, we hold that the present OA is clearly devoid of any merit. Accordingly the OA stands dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/01704/2015

Annexure-A1: CAT BG order dated 13.12.2001 passed in OA.877/1999

Annexure-A2: High Court order dated 8.11.2010 passed in WP.No.4835/2002

Annexure-A3: CAT BG order dated 2.11.2011 passed in PA.877/1999

Annexure-A4: High Court order dated 18.4.2013 passed in applicant's
WP.No.12976/2013

Annexure-A5: High Court order dated 9.10.2013

Annexure-A6: This Hon'ble Tribunal's order dated 19.2.2013 passed in CP.84/2012

Annexure-A7: This Hon'ble Tribunal's order dated 20.6.2014 passed in MA.300/2014
in CP.84/2012

Annexure-A8: This Hon'ble Tribunal's order dated 1.4.2015 passed in CP.84/2012

Annexure-A9: Impugned order dated 1.5.2015 by South Eastern Railways

Annexure-A10: Order dated 22.7.2015 passed in MA.170/0050/2015 in CP.84/2012

Annexure-A11: Copy of the Railway Board order dated 13.5.1992

Annexure-A12: Copy of the RTI information received by applicant under
communication dated 9.4.2015

Annexures with reply statement:

Annexure-R1: Review DPC file i.r.o. the applicant by the Railway Board

Annexures with written arguments filed by the applicant:

Document No.1: Copy of the RTI reply dated 11.8.2015

Document No.2: Copy of the promotion order of Sri.K.K.Brahma to JA Grade

Document No.3: Copy of the seniority fixation order dated 14/17-3-1975

Annexures with Memo filed by the applicant on 12.4.2017:

Document No.1: Copy of letter No.RB/RTI Cell/2015/50277, N.Delhi dtd.28.10.2015 issued by Jt.Secretary, Railway Board(running to 4 pages) (kept in 'B' file)

Annexures with Memo filed by the applicant on 23.8.2017:

Document No.1: Copy of judgment dtd.31.7.1990 passed in OA.No.699/1988 by the Calcutta Bench of the Tribunal (kept in 'B' file)

Annexures with written arguments filed by the respondents:

Document No.1: Copy of the minutes of the DPC(running to 3 pages)

Annexures with Memo filed by the respondents on 29.6.2017:

Document No.1: Copy of the letters dtd.18.7.1978 & 19.7.1978 of CPO, SE Rly.

Annexures with Memo filed by the respondents on 23.8.2017:

Document No.1: Personal data & performance record of the applicant given by Railway Board

Document No.2: Copy of File No.79/629/Secy/Admn(93)(Panel of JAG/IRSE)(running to 31 pages) (kept in 'B' file)

Annexures with Memo filed by the respondents on 5.9.2017:

Document No.1: Personal data & performance record of Sri K.S.Kalra
