

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Original Application No.30 of 2003

This the 13th day of October, 2011

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN
HON'BLE DR. VEENA CHHOTRAY, MEMBER (A)

P. S. Vimal, IRTS (Retd.) S/o Angan Lal,
R/o B-3/12, Rail Vihar Indirapuram,
Ghaziabad.

... Applicant

(By Shri L. R. Khatana, Advocate)

Versus

1. Union of India through
Secretary, Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.

2. General Manager,
South Eastern Railway,
Garden Reach, Calcutta.

... Respondents

(By Shri V. S.R. Krishna, Advocate)

ORDER

Justice V. K. Bali, Chairman:

P. S. Vimal, the applicant herein, an employee under the Ministry of Railways, came to be promoted in the Senior Administrative Grade (SAG) on 31.3.1988. Next promotion in the hierarchy is to the Higher Administrative Grade (HAG). The applicant, however, could not secure promotion to the HAG and

retired on 31.7.2001. Clamouring for promotion to the HAG, the applicant filed the instant Original Application by the end of the year 2003 with multiple reliefs, but when the matter came for hearing before the Tribunal on 5.11.2003, he confined his prayer to promotion to the HAG only. He amended the OA confining the relief to promotion to the HAG. The Tribunal vide orders dated 20.12.2004, dismissed the OA. Aggrieved, the applicant filed WP(C) No.20163 of 2005 in the High Court of Delhi. Vide orders dated 30.4.2009, while setting aside the order passed by the Tribunal, the High Court remitted the matter to the Tribunal for fresh consideration. The limited controversy that may be relevant at this stage in the context of the order dated 30.4.2009 passed by the High Court, would require mention of only such facts as may be relatable to the questions that have been debated before us in the light of the observations made by the High Court in its order referred to above.

2. The applicant was working in the Ministry of Railways and reached to the position of SAG, as mentioned above, on 31.8.1988. His case for promotion to the HAG was considered along with others in the Departmental Promotion Committee (DPC) held in the year 1999. There were 13 vacancies but ultimately the Appointments Committee of the Cabinet (ACC) approved only 11

officers, in which, obviously, the applicant was not included. The DPC for the 13 vacancies considered candidature of 30 officers, and it is not in dispute that the name of the applicant appeared at serial number 25. No DPC was held in the year 2000. Before the applicant superannuated, however, the DPC was convened in the year 2001, but his name was not considered as he was due to retire within few months. The DPC would not consider the applicant for promotion in view of the resolution dated 28.3.2000 issued by the Railway Board laying down the stipulation of one year of residual service. In other words, those would not have even one year of residual service, as per the resolution referred to above, could not be considered for promotion. The plea raised by the applicant as regards the invalidity of the said resolution of the Railway Board was repelled by the Tribunal. As on date, there is no controversy as regards the resolution aforesaid, as no plea in that regard has been reiterated by the counsel representing the applicant. As regards the plea of the applicant that the DPC ought to have been held in the year 2000, for which vacancies were available at that time, the Tribunal held that since there were no vacancies available, the question of holding DPC in the year 2000 would not arise. The applicant in his writ before the Hon'ble High Court would urge that in the year 1999, there were only 7 vacancies, and 18 vacancies arose in the year 2000 in the HAG.

He urged before the High Court that his plea in the OA that as per the instructions of the Department of Personnel and Training, there should have been year-wise DPC, was not adverted to by the Tribunal. He urged that since vacancies were there in the year 2000 as well, there could be no reason for not holding DPC in that year. The High Court, on the issue as mentioned above, referred to the stand taken by the respondents for not holding DPC in the year 2000, i.e., that the panel of 11 officers which was approved by the ACC in the DPC held in the year 1999 could be exhausted only in January, 2001, and thus there were no vacancies in the year 2000 and the select panel of the year 1999 continued till January, 2001, and in the circumstances aforesaid, there was no occasion for holding DPC and framing another panel in the year 2000 for want of vacancies. On the rival contentions of the learned counsel representing the parties, as mentioned above, the High Court observed, "Insofar as issue as to whether there were 7 vacancies or 13 vacancies in Higher Administrative Grade in the year 1999 may not be of much relevance. The reason is simple. The petitioner has himself pleaded that there were 13 vacancies for which, 30 officers were considered and 11 officers were approved for promotion by the ACC. The petitioner was much below in seniority of those officers, as he was at Sl. No. 25. If the vacancies were 13, as per the contention of the petitioner he

would not gain any mileage as with the reduced vacancies chances of the petitioner to get into the Select Panel would also be lesser, even when claim of the petitioner was that his name appeared at Sl. No. 21 and not at Sl. No. 25". The High Court, while holding that the applicant would not be in an advantageous position whether there were 7 vacancies or 13 vacancies in the HAG in the year 1999, however, observed that the moot question in the case would be as to whether there were 16 vacancies for the year 2000 as contended by the applicant. It was observed that the applicant had made a specific averment to that effect in the OA and the respondent had denied the same, and that the judgment of the Tribunal would show that this aspect had not been dealt with at all. It was then observed that the applicant had placed certain documents on records along with CM No.12653/2008 on the basis of which he had endeavoured to contend that there were in fact 16 vacancies in the year 2000. The applicant had filed some more documents indicating vacancy position in the years 2000 and 2001. It was then observed that the answer to the question as to whether there was any justification in not holding DPC for the year 2000, would depend upon the answer to the question as to whether there were any vacancies in the year 2000 or not. This is opined to be an important question to be decided, which would have hearing on the outcome of the case, with which aspect, it is observed,

the Tribunal had not dealt with at all. It is in the circumstances as mentioned above that the matter has been remitted to the Tribunal for it to deal with the question framed by the High Court as mentioned above.

3. After remand, the matter came up for hearing before us, and after hearing the learned counsel for parties, we recorded the following order on 12.8.2010:

"The case was reserved for orders after hearing the arguments. However, after going through the records it is seen that further clarification about vacancies in the vacancy years 2000-01 and 2001-02 has to be given by the Respondents. The Respondents are directed to clarify the following/ give additional information regarding:

- (1) How many posts of Railway Claims Tribunal were considered in the vacancy of the year 1999-2000;
- (2) How many of these vacancies of Railway Claims Tribunal remained unfilled in the year 1999-2000;
- (3) How many of these vacancies were carried forward to the year 2000-2001;
- (4) How many vacancies were available for the year 2000-2001;
- (5) Even if the panel of 1999-2000 was extended it would have only covered the vacancy of that year. How many vacancies arose subsequently in the year 2000-2001 and when were these considered; and
- (6) Whether the persons junior to the applicant who were working in the SAG were promoted on upgradation of those posts retrospectively with

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notional benefit of promotion from the date when the Applicant was still in service.

2. The Respondents would give the aforesaid information by filing an additional affidavit by 24.08.2010 with copy to the Applicant, who may file rejoinder affidavit, if he so wishes by 27.08.2010.

Post this case on 30.08.2010."

Pursuant to order aforesaid, an additional affidavit has been filed by the respondents wherein, it has been mentioned as regards query no.1 that total 16 vacancies (14 Member/Technical and 2 Vice Chairman/Technical) were considered in the vacancy year 1999-2000 in the Railway Claims Tribunal; two posts of Vice Chairman (Technical) and eight posts of Member (Technical) were pertaining to 1999-2000, whereas six posts of Member (Technical) pertained to the year 1998-1999. It is then pleaded that it was expected that 10 officers belonging to IRTS may be appointed as Member (Technical) in Railway Claims Tribunal in the year 1999-2000 and, therefore, in the HAG IRTS panel 1999-2000, ten vacancies were taken into account while considering the officers for HAG appointment for IRTS for 1999-2000. In reply to query no.2, it has been pleaded that one post of Vice Chairman (Technical) and five posts of Member (Technical) in Railway Claims Tribunal remained unfilled in the year 1999-2000. In reply to query no.3, it is stated that all the above vacancies in the Railway Claims Tribunal were carried forward to 2000-2001. As

regards query no.4, it is pleaded that total 12 vacancies (10 Members/Technical and 2 Vice Chairman/Technical) were available for the year 2000-2001. In reply to the 5th query, it is stated that 10 vacancies arose in HAG/IRTS for the year 2000-2001, which were considered in the subsequent panels. In reply to the 6th query, it is stated that no officers junior to the applicant, working in the SAG, had been promoted on upgradation of those posts retrospectively with notional benefit of promotion from the date when the applicant was still in service. It is then pleaded that the applicant would have no claim for appointment to the HAG as his immediate junior Shri S. B. Ghosh Dastidar was appointed to HAG in January, 2002, while the applicant had superannuated in July, 2001, and moreover, his date of superannuation being 31.7.2001, he could still not have come for consideration for promotion to the HAG, had a panel been prepared for the year 2000-2001 in view of the fact that a minimum of one year residual service is required for promotion to the HAG.

4. The applicant has filed reply to the affidavit aforesaid, and would have some more pleadings to make with charts showing the vacancies for the respective years. We need not make a mention of the same, as on conclusion of the arguments, parties have given

written arguments, and it would be better to confine the controversy as may be now in offing in the context of the written arguments only.

5. The applicant in the written submission would urge that there were vacancies in the year 2000-01, which has been admitted by the respondents in their additional affidavit dated 5.10.2010 to the queries as raised by the Tribunal in its order dated 12.8.2010. Three important paras of the reply relevant for determination of vacancies that accrued in the year 2001-01, have been mentioned as follows:

- “(1) How many of these vacancies of RCT were carried forward to the year 2000-01? Answer to this question is that 6 vacancies including one V/C and 5 member technical were carried forward to the year 2000-01 (para 7).
- (2) How many vacancies were available in the year 200-01, the answer to this is that 12 vacancies (10 Members + 2 VC/Tech) were available in the RCT in the year 2000-01.
- (3) Even if the panel of 1999-2000 was extended, it would have covered the vacancies of that year, how many vacancies arose subsequently in the year 2000-01? The answer to this is that Ten (10) vacancies arose subsequently in the year 2000-01 in the HAG/IRTS. These were considered in the subsequent panels (Para 9 of the reply) available at pp 323 of the case file. Thus total no. of vacancies in HAG/IRTS in 2000-01 aggregated to $10+6 = 16$. These tally with argument of the applicant at 67-78 (Ann A 8(ii) of the OA), showing gradation list of IRTS for the year 2000-01.”

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It is then pleaded that a look at the seniority list would show that the applicant was well within the number of vacancies as per the seniority in the IRTS (1968) seniority list, and further that the gradation list would reveal that the applicant was at the 8th place in respect of the 16 vacancies that accrued in the year 2000-01. It is further mentioned that serial number 1, Mr. T. S. Babu was appointed from 1999 DPC select list some time in the year 2000; serial number 2, Mr. R. C. Dube was on deputation to CONCOR and got absorbed there; the officer at number 3, Mr. P. K. Bandhopadhyaya got promoted to SAG on 18.12.1995 only, and, therefore, did not complete five years service in the SAG up to December 2000, and was thus not eligible for consideration to the HAG; he sought voluntary retirement in 1999-2000; therefore, Mr. I. J. Malhotra became number 1 for consideration to the HAG promotion and the applicant was at the 8th place in the list in March/ April, 2000 and was thus well within the 16 vacancies that accrued in the year 2000-01, and even if the vacancies were to be taken as 10, he would still be entitled to be considered for the HAG promotion, being at the 8th place. It is then stated that having conceded the number of vacancies that accrued in HAG/IRTS in the year 2000-01, the 1st respondent has been repeatedly raising the issue of the stipulation of one year's residual service before retirement for consideration of the applicant's

eligibility for consideration for HAG promotion despite the fact that the Hon'ble High Court has specifically referred to the resolution dated 28.3.2000 laying down condition of one year's residual service for promotion to HAG/IRTS vide its order dated 30.4.2009, and decided that the outcome of the OA would be based on the number of vacancies that accrued in the year 2000-01, and that the applicant should have been considered and given notional benefit of this promotion, and, therefore, to raise the issue of one year's residual service would amount to disobedience of the order of the Hon'ble High Court. The order of the High Court is said to have attained finality and that it is in the light of the observations made by the High Court alone that the controversy in the present case has to be decided. It is then stated that the respondents have taken the plea in their additional affidavit dated 14.7.2010 that 11 officers of IRTS cadre were placed in select list for HAG/IRTS for the year 1999-2000 and only two officers were promoted from the select list, and that thereafter the said panel was got extended up to January, 2001 in order to promote officers against vacancies arising during the currency of the panel, and as empanelled officers were available for promotion against future vacancies, no panel was framed for the year 2000-01. It is urged that the plea against settled legal proposition that vacancies cannot be filled up over and above the number of vacancies

advertised, i.e., against the future vacancies, as the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution of India of those who may have acquired eligibility for the post in question in accordance with statutory rules subsequent to the date of notification of vacancies, would be neither permissible nor desirable as this exercise would be arbitrary, and that filling up of vacancies over the notified vacancies would amount to filling up of future vacancies and thus, not permissible in law. Reliance in that context has been placed upon the judgment of the Hon'ble Supreme Court in *Rakhi Ray & others v Delhi High Court & others* [2010 (2) SCALE 93 (SC)]. The law laid down by the Apex Court, it is stated, would be squarely applicable to the case of the applicant, and moreover, the select list once prepared cannot be treated as perennial reservoir against future vacancies. It is pleaded that as per DoP&T instructions and the law laid down by the Apex Court, the DPC is to be held year-wise. The question of promotion of junior to the applicant when the applicant was still in service is stated to be not relevant in the facts and circumstances of the case.

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6. The respondents, *per contra*, in their brief have mentioned that the dispute in the present case relates to the HAG IRTS panel prepared for the year 1999-2000, the factual details of which are as under:

- "a. Period of vacancy - 01.07.1999 to 30.06.2000.
- b. number of vacancies - 13 (one against an upgraded post, 10 against officers to be appointed as Member/Technical in Railway Claims Tribunal and 2 to meet the contingencies).
- c. Total number of officers considered - 30.
- d. Position of the Applicant (Sh. P. S. Vimal) in the list - 25.
- e. Total Number of officers recommended for empanelment by the Selection committee - 13.
- f. Total Number of officers approved by the ACC for appointment to HA Grade - 11.
- g. Date of approval of the panel by A.C.C. - 07.10.1999.
- h. Period of validity of the panel - One year, i.e., up to 06.10.2000.
- i. Number of appointments made till 06.10.2000 - 02.
- j. Reasons for only two appointments were being made - delay in appointing of Members in Railway claims Tribunals resulting in delay occurrence of resultant vacancies.
- k. Extension sought from DOP&T for extension of currency of the HA Grade/IRTS panel up to six months.

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- l. DOP&T advised that Ministry of Railways (Respondent herein) is competent to decide.
- m. Approval of the Competent Authority in the Ministry of Railways obtained for extension of the currency of the panel up to 06.01.2001.
- n. In view of sub para (m) above, no HA Grade/IRTS panel was prepared for the year 2000-2001.
- o. The date of retirement of the applicant (Sh. P. S. Vimal) was 31.07.2010. Therefore, he was not having the residual one year's service for being considered for promotion to HA Grade in the next panel."

It is then mentioned that the applicant has filed an additional affidavit along with a chart of vacancies that had occurred during the year 2000-2001 in HA grade of IRTS, and that according to this chart, number of vacancies had arisen in HA Grade of IRTS during the year 2000-2001, but the respondents did not prepare any panel of HA Grade/IRTS during the said year, thereby depriving the applicant of an opportunity to be considered for empanelment and promotion to HA Grade/IRTS. As mentioned in para (m) reproduced above, it is reiterated that the earlier panel for the year 1999-2000 contained 11 officers and only two of them could be appointed to HA Grade, and, therefore, the said panel was got extended up to January, 2001 in order to promote the empanelled officers to the HA Grade against the vacancies arising during the currency of the panel, including the

extended currency of the panel, and that as empanelled officers were already available for promotion against future vacancies, there was no need to prepare a fresh panel for the year 2000-2001, and in any case, the applicant's date of superannuation being 31.07.2001, he could still have not come for consideration for promotion to HA Grade in view of the fact that a minimum of one year's residual service is required for promotion to HA Grade.

7. We have heard the learned counsel representing the applicant and with their assistance examined the records of the case.

8. The stand of the rival parties, as mentioned above by us, is almost reproduction of their written arguments. As is often seen, the parties in service disputes indulge into lengthy pleadings, even though the points involved in majority of the cases may be limited and simple. Present case is no exception to the general trend of indulging in lengthy pleadings. Our analysis of the controversy would, however, reveal that the point involved in the present case is simple and would need adjudication on facts alone. Before we may do that, we may once again refer to the observations made by the High Court while remitting this matter to the Tribunal. Insofar as the issue as to whether there were 7 or 13 vacancies in the HAG in the year 1999 is concerned, the High Court observed that the same would

not be of much relevance, as the applicant had himself pleaded that there were 13 vacancies, for which 30 officers were considered, and 11 were approved for promotion by the ACC. The applicant was much below in seniority of those officers, as he was at serial number 25, and if the vacancies were to be only 13, as per the case set up by the applicant, it has been observed that he would not gain any mileage, as with the reduced vacancies his chances to get into the select panel would also be lesser, and he would not be in any advantageous position. The moot point, it was observed, would be as to whether there were 16 vacancies in the year 2000, as stated by the applicant. Justification for not holding DPC in the year 2000, it was further observed, would depend upon the answer to the question as to whether there were any vacancies in the said year or not. It may be recalled that this Tribunal vide order dated 12.8.2010 had directed the respondents to clarify and give additional information as regards points mentioned hereinbefore in para 3 of the judgment. From the pleadings of the parties, it would appear to this Tribunal that the vacancies were to be counted for a year, like 1999-2000 (1.7.1999 to 30.6.2000) and 2000-2001 (1.7.2000 to 30.6.2001). It is a block of years in which thus vacancies were to be considered. For the vacancy year 1999-2000, the reply of the respondents, as would reflect from the written arguments submitted by them, is that there

were 13 vacancies (1 against an upgraded post, 10 against officers to be appointed as Member/Technical in Railway Claims Tribunal, and 2 to meet the contingencies, although, as per the additional affidavit dated 5.10.2010 filed by the respondents, the number of vacancies for the said year would be 14. The respondents were expecting that 10 officers belonging to IRTS may be appointed as Member (Technical) in the Tribunal in the year 1999-2000, and, therefore, in the HAG panel of 1999-2000, 10 vacancies were taken into account while considering the officers for HAG promotion for the said year. As regards query No.2, it is the case of the respondents that one post of Vice Chairman (Technical) and five posts of Member (Technical) remained unfilled in the year 1999-2000. All the above vacancies in Railway Claims Tribunal were carried forward to 2000-2001. As regards the 4th query, which pertains to the block year 2000-01, it is stated that total 12 vacancies (10 Member/Technical and 2 Vice Chairman/Technical) were available. The applicant was to be considered against the post of Member only, for which there would be 10 vacancies. The applicant would, however, state that there were 16 vacancies for the year 2000-2001, and would further go on to say that even if the vacancies were to be taken as 10, he would be entitled to promotion to HAG being at the 8th place. The total vacancies for the years 1999-2000 and 2000-2001 would be 23. We may clarify that

to the queries put by the Tribunal, the respondents have mentioned that for the vacancy year 1999-2000 there were 13 vacancies (1 against an upgraded post, 10 against officers to be appointed as Member/Technical in Railway Claims Tribunal, and 2 to meet the contingencies. Insofar as the number of vacancies for the year 2000-2001 is concerned, the same, as mentioned above, for Members would be 10. The total vacancies thus, as mentioned above, would be 23. The applicant was at serial number 25, and despite availability of 10 vacancies for the year 2000-2001, he could not be promoted, unless a person senior to him was to be ignored. The applicant would still endeavour to fall within the vacancies by pleading that Mr. T. S. Babu at serial number 1, was appointed from 1999 DPC select list some time in the year 2000, whereas Mr. R. C. Dube at number 2, was on deputation to CONCOR and got absorbed there, and the officer at serial number 3 Mr. P. K. Bandhopadhyaya got promoted to SAG on 18.12.1995 and, therefore, did not complete five years service in the SAG up to December 2000, and was thus not eligible for consideration to the HAG; he sought voluntary retirement in 1999-2000, and, therefore, Mr. I. J. Malhotra became number one for consideration to the HAG promotion and the applicant was at the 8th place in the list in March/April, 2000. We are of the view that if it would be the case of the applicant that persons above him were not

entitled to be promoted for one reason or the other, he ought to have raised such a plea, and should have even made such persons who could not be considered for promotion, as party respondents. For lack of pleadings in that regard and non-joinder of such persons who may have been ignored for promotion for one reason or the other, the applicant cannot be held to be at number 8 and thus within the vacancies in existence for promotion to HAG. Before we may part with this aspect of the case, we may mention that the immediate junior to the applicant admittedly came to be promoted after retirement of the applicant, and it is not in dispute that no person junior to the applicant was promoted till such time the applicant retired.

9. The respondents have contested the cause of the applicant also on the ground that once, the panel year 1999-2000 could not be exhausted, and by specific orders passed on that behalf, was extended (details mentioned in para 6 of the judgment), no panel for the year 2000-2001 could be prepared. This aspect of the case has been mentioned by the Hon'ble High Court in its order dated 30.4.2009, but has not been dealt with. Shri Khatana, learned counsel representing the applicant, would contend that once the plea of the respondents has been mentioned and even though, the same may not


have been dealt with, and an order has been passed that the fate of the case would depend upon the availability of vacancies for the year 2000, the plea of the respondents shall have to be held impliedly overruled, and this Tribunal cannot possibly go into this issue. *Prima facie*, it appears to us that when the matter is remanded, all issues, unless specifically commented and adjudicated upon, would be open for debate. However, there would be no need to delve on this aspect of the case, as in our view, the applicant would not succeed even if there were 10 vacancies available for the year 2000-2001 as he would still not make it for promotion as per his seniority. We may, however, give our views simply with a view to obviate the possibility of remand. Assuming, on the first issue determined by us negating the claim of the applicant, a higher judicial forum may have a different opinion, it would be always open for the respondents to defend the judgment on the issue raised by them as regards there being no requirement whatsoever to prepare a panel for the year 2000-2001. In that event, it would be better to give our view, even though not to determine the controversy, on the same.

10. From the pleadings of the parties, it remained undisputed that the panel for the year 1999-2000 could be exhausted only in January, 2001. Substantial number of vacancies were actually in

anticipation for being manned in Railway Claims Tribunal. Out of 13 vacancies, we may once again mention that whereas, one was against an upgraded post, ten against officers to be appointed as Member/Technical in Railway Claims Tribunal, and two to meet the contingencies. Those who were in the select panel for the year 1999-2000 could not be promoted because of delay in appointment of Members in Railway Claims Tribunal. The period of validity of the panel is one year. Total number of officers approved by the ACC for appointment, out of 13, was 11. The ACC gave its approval on 7.10.1999, and only two appointments could be made till 6.10.2000. This necessitated extension of currency of the panel, for which permission was sought from DOP&T, which in turn, advised the Ministry of Railways to deal with the matter as it was the competent to do so. Approval of the competent authority in the Ministry of Railways was obtained for extension of currency of the panel up to 6.1.2001. It is for this reason that no panel was prepared for the year 2000-2001. We find it difficult to digest that despite the facts as mentioned above, there ought to have been a panel prepared for the year 2000-2001 to include the applicant for promotion, and to promote him, even when admittedly many persons far senior to him could not be accommodated, which would have resulted into his being promoted in precedence to his admitted seniors. This is our

view on the issue, but as mentioned above, we are not deciding the matter on this aspect of the case. This opinion is only for the purpose that if the respondents may take this issue before a higher judicial forum, which, it would be, in any case, competent to do, if not the Tribunal, it will facilitate the said forum in the matter, and in any case, it would obviate the possibility of remand once again. The aspect of the case that the applicant retired on 31.7.2001 cannot also be lost sight of. There is no argument on the issue already determined by the Tribunal based on the resolution dated 28.3.2000 that unless a person may have a residual period of one year's service, he cannot be promoted. If the DPC for vacancies of the year 2000-2001 (1.7.2000 to 30.6.2001) would have taken place, it would have been held somewhere in March, 2001, by which time the applicant would not have the compulsory residual period of one year and would be thus ineligible for promotion.

11. For the reasons as mentioned above, finding no merit in this Original Application, we dismiss the same, leaving, however, the parties to bear their own costs.


(Dr. Veena Chhotray)
Member (A)


(V. K. Bali)
Chairman

/as/