
(1997) 08 SC CK 0030

In the Supreme Court Of India

Case No : Transferred Case (C) No"s. 2, 3, 9-13 and 41 of 1996, SLP (C) No. 7076 of 1995 and W.P. (C) No. 98 of 1997

H.S. Grewal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-1997

Acts Referred:

Constitution of India, 1950 — Article 16, 32

Citation : (1997) 7 JT 594 : (1997) 5 SCALE 711 : (1997) 11 SCC 758 : (1998) SCC(L&S) 420 : (1997) 2 UJ 645 : (1997) 3 UPLBEC 1979

Hon'ble Judges : Sujata V. Manohar, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

M. Rao J.

1. Leave granted in SLP (C) No. 7076 of 1995.

2. These cases raise common questions relating to seniority of officers in the rank of Commandant/Security Officer/Asstt. Inspector General/Dy. Director/ Divisional Security Officer. The Rules which are relevant are the Railway Protection Force (Superior Officers) Recruitment Rules, 1974 (hereinafter called the "1974 rules") and the Railway Protection Force (Group A & B Posts) Recruitment Rules, 1981 (hereinafter called the "1981 Rules"). Eight writ petitions filed in various High Courts have been transferred to this Court and registered as Transferred Petitions, to be disposed of alongwith Civil Appeal arising out of the Judgment of a Division Bench of the Calcutta High Court on appeal from the judgment of a learned Single Judge of that Court. We also have before us an independent Writ Petition No. 98 of 97 filed under Article 32 of the Constitution of India.

3. Before referring to the facts of the cases it will be necessary to refer to the hierarchy of posts and the mode of recruitment and promotion under the 1974

rules as well as under the 1981 rules and the conditions for eligibility for promotions.

4. Under the 1974 Rules the hierarchy of posts was as follows. Initially the recruitment was to the post of Assistant Commandant/Assistant Security Officer in Class-II Group B (hereinafter called generally as assistant Commandant Cadre for convenience) in the pay scale of Rs. 350-900. Further promotion from that post was to the post of Commandant/Assistant Inspector General/Security Officer (Class-I, Group-A) in the pay scale of Rs. 700-1250. The promotion was by way of selection through the Departmental Promotion Committee and the condition of eligibility was that a person should have put in 8 years of regular service in the post of Assistant Commandant. So far as the post of Assistant Commandant at lower level is concerned, the said cadre was consisting of 30% direct recruits to that post and 60% promotees from a post which was below the post of Assistant Commandant and 10% by way of transfer etc. From the post of Commandant the further promotion was to the post of Deputy Chief Security Officer in Class-I, Group-A bearing a pay-scale of Rs. 1300-1600. The promotion was through the DPC and the condition of eligibility was that a person should have put in 5 years regular service as Commandant.

5. Under the 1981 Rules which came into force from 8th May, 1981, direct recruitment to the post of Assistant Commandant (Group-B, Class-II) in the pay scale of Rs. 650-1200 was completely stopped and the said post was to be filled entirely by promotees below the post of Assistant Commandant. From the said post of Assistant Commandant (Group-B, Class-II) instead direct promotion to the post of commandant as was obtaining under the 1974 rules, an intermediate post was created in Class-I in the pay scale of Rs. 700-1300 but the designation was the same namely Assistant Commandant/Assistant Security Officer. In the departmental communications this is described as Group-A, Class-I Junior Scale post. The recruitment to the intermediate post was 40% by promotion of Assistant Commandants who had put in 3 years of regular service. The promotion being from Class II to Class-I the promotees had to go through the DPC. The remaining 60% in this intermediate post was to be filled up by direct recruitment through the Union Public Service Commission. The next promotion from this intermediate post was to the post of Commandant/Security Officer/Assistant Inspector General/Deputy Director/ Divisional Security Officer (hereinafter generally called commandants cadre for convenience). In the departmental communication this is described as Group-A, Class-I post Senior Scale.

6. For promotion as Commandant, assistant Commandants in Group-A, Class-I are eligible under the 1981 Rules after 5 years of regular service. The promotion being from being Class I to Class I there is no DPC. From the post of Commandant, the further promotion is to the post of Deputy Chief Security Officer in Group-A, Class-I in the pay scale of Rs. 1500-2000. This post is also called a post of Senior Security Officer. The Commandant who has put in 5 years

regular service is eligible for promotion to this post and the promotion is through DPC. The further promotion is to the post of Deputy Inspector General/Chief Security Officer and finally to the post of Inspector General. For convenience we are setting out a tabular statement of the hierarchy of posts under the 1974 and 1981 Rules.

RECRUITMENT RULES 1974 RECRUITMENT RULES 1981 INSPECTOR GENERAL
INSPECTOR GENERAL DY. INSPECTOR GENERAL/ DY. INSPECTOR GENERAL/
CHIEF SECURITY OFFICER CHIEF SECURITY OFFICER DY. CHIEF SECURITY
OFFICER DY. CHIEF SECURITY OFFICER COMMANDANT/AIG/ COMMANDANT/
SECURITY OFFICER/ SECURITY OFFICER AIG/DEPUTY DIRECTOR | ASSTT.
COMMANDANT/ | ASSTT. SECURITY OFFICER ASST. COMMANDANT/ ASSTT.
SECURITY OFFICER/ ASSTT. SECURITY OFFICER ASSTT. COMMANDANT

It is also necessary to note the number of posts in as much as that has come bearing on the issues in the case. Under the 1974 Rules there were 138 posts in the cadre of Assistant Commandant, 48 posts in the cadre of Commandant and 6 temporary posts of Deputy Chief Security Officer. Under the 1981 Rules the posts of Assistant Commandant Group B Class II are reduced to 56 while 85 posts are allocated to the intermediate post of Assistant Commandant Group A Class I (Junior Scale). The number of posts of Commandant remained as 48 while posts of Deputy Chief Security Officer are 7.

7. After the recommendation of the 4th Pay Commissions a policy decision was taken to disband the intermediate category of Assistant Commandant Group-A Class-I (Junior Scale) and the result was that those in Assistant Commandant Group-B Class-II stood equated w.e.f. 1.1.1986 as Assistant Commandants Group-A Class-I Junior Scale.

Facts and contentions raised by group B (Class II) Officers:

8. The dispute is between two groups of officers. One group consists of officers who were recruited prior to the introduction of 1981 Rules (i.e. before 8.5.1981) to the post of Assistant Commandant Class-II Group-B and. who by the time the rules of 1981 came into force on 8.5.1981 had completed several years of service as Assistant Commandant Class-II Group-B and were awaiting further promotion as Commandant Class-I Group-A. Regular promotions were not made because no DPC was held from 1981. Some of these officers who had been promoted on adhoc basis as Commandants had even completed 5 years of adhoc service in that cadre and were expecting promotion as Deputy Chief Security Officer. Even after the new rules came into force on 8.5.1981, and even after 1.1.1986, since no Departmental Promotion Committee met for more than 15 years, the result was that these officers working in higher posts but who were recruited before 1981 had still to be reckoned as belonging regularly to the cadre of Assistant Commandant, now described under the 1981 Rules. as Class-II Group-B. However, notifications were issued in 1990 first promoting some of them to the intermediate post created in 1981, namely, Assistant Commandant

Group-A Class-I Junior Scale and then promoting them as Commandants in Class-I Group-A on an adhoc basis. These officers in Asstt. Commandant, Group B, Class-I recruited before 1981 contend that there is no difference between them and those officers who were directly recruited to the newly created intermediate post of Assistant Commandants, Class-I (Group A) after the 1981 rules inasmuch as the examination which they passed before 1981 was the same as the one passed by these direct recruits after 1981 and that the duties and responsibilities are same for both for Assistant Commandants Group-B Class-II and for the intermediate post of Assistant Commandants Group-A Class-I (Junior Scale). They further contend that under the 1974 Rules which were in force at the time of their appointment, they had a vested right to be promoted as Commandant (Class-I) (Group-A) and the 1981 Rules could not affect their vested rights for promotion after 8 years of service as Asstt. Commandant and thus the introduction of an intermediate post in group A (Class I) (Junior Scale) is violative of Article 16 of the Constitution of India. They also contend that this amounts to giving retrospective effect to the 1981 Rules. They further say that the new direct recruits after 1981 in group A (Class I) have no right to be placed above them in the seniority list and that they were entitled by virtue of their seniority to be promoted as Commandants in Group-A Class-I in preference to these direct recruits. The above contentions are raised by the petitioners in Transferred Case Nos. 2, 13, & 41 of 1996 and the writ petitioners who filed the writ petition in the Calcutta High Court out of which Civil appeal arises and also by the petitioners in Writ Petition No. 98 of 1997 filed in this Court. We shall briefly refer to the grievances of this group of officers from their writ petitions. The petitioner in T.P. No. 2 of 1996 initially joined the Army as Commissioned Officer on 27.9.1963 and after being discharged from there on 1.11.1967, appeared before the U.P.S.C. for selection as Assistant Commandant and he was appointed on 14.3.1975 in Class-II Group-B as Assistant Commandant in the scale of Rs. 350-900. He was confirmed in that post w.e.f. 16.11.1978 and was later promoted on adhoc basis on 27.12.1980 as Commandant. He put in more than 5 years experience as Commandant and was expecting further promotion as Deputy Chief Security Officer in the scale of Rs. 1300-1600 after completion of 5 years by 27.1.1986 but in view of the scheme of the 1981 rules which introduced the intermediate post above-mentioned, the authorities issued a notification dated 10.8.1990 promoting him as Assistant Commandant Group-A Class-I in the Junior Scale of Rs. 2200-4000 w.e.f. 1.1.1986 (the previous scale was Rs. 700-1300). The petitioner submitted a representation on 15.7.1991 contending that he ought to have been confirmed as Commandant in Class-I Group-A and also promoted as Deputy Chief Security Officer in preference to the direct recruits to the post of Assistant Commandant Group-A Class-I introduced in the 1981 rules. He then filed a writ petition C.W.P. No. 924 of 1991 in the High Court of Punjab & Haryana for quashing the notification dated 10.8.1990 and for giving him the further promotion in preference to the direct recruits in Group-A Class-I. The writ petitioner in the writ petition which is the subject matter of Civil Appeal who was in a similar post, had filed writ petition No. 493 of 1988 in the Calcutta

High Court. He was appointed as Assistant Commandant Group-B Class-II in 1979. In the writ petition the "added respondents" were the direct recruits recruited subsequent to 1981 in Group-A Class I Junior Scale. In Transferred Case No. 13 of 1996 the petitioner had filed Writ Petition No. 2883 of 1994 in the Rajasthan High Court. He was also appointed as Assistant Commandant Class-II Group-B on 13.3.1979. He has also raised a grievance about appropriate weightage not having been given to him for the service rendered in Group-B Class-II from May 1979 to 31.12.1985. He further mentioned that in the seniority list prepared on 8.4.1993 his name was shown higher up by giving him weightage but that several direct recruits Assistant Commandants Group-A Class-I were shown above him and this was not permissible. He was entitled to be promoted in preference to these direct recruits to the post of Commandant as well as to the higher post of Deputy Chief Security Officer/Senior Security Officer. In T.C. No. 41 of 1996, the petitioner filed writ petition No. 2235 of 1988 in the Madras High Court. He was appointed as Assistant Commandant on 24.6.1980 in Class-II Group-B. His grievance is also similar. He prayed that the order dated 4.2.1986 rejecting his representation be quashed. In Writ Petition No. 98 of 1997 filed under Article 32 of the Constitution of India in this Court, the petitioner appeared for the Civil Services Examination in 1978 and was appointed in 1980 as Assistant Commandant Class-II Group-B. His grievance is also similar. Facts and contentions of group A Class I (Junior Scale) Officers).

9. Coming to the second group of officers namely the direct recruits in the intermediate category of Assistant Commandant Group-A Class-I Junior Scale, their grievance is that after the abolition of the distinction between Group-A & Group-B w.e.f. 1.1.1986 pursuant to the recommendations of the 4th Pay Commission, the Assistant Commandants of Group-B are being unduly favoured and that those officers ought not to have been equated with them nor given any seniority above them. The retrospective seniority given to some of the Assistant Commandants Group-B Class-II with added weightage under a weightage formula had suddenly pushed up the Assistant Commandants Group-B Class-II above them and has affected their seniority in group A. They contend that it is wrong on the part of the department to straightway promote the Assistant Commandants Group-B Class-II as Commandants in Group-A Class-I Senior Scale without first promoting them as Assistant Commandants Group-A Class-I through DPC. In fact no DPC was held after 1981, i.e. for more than 15 years. They contend that even assuming these officers can be treated as Assistant Commandants in Group-A Class-I within the promotion quota of the 40% from group B to group A, it was wrong to give them weightage without going into the question. whether they were eligible i.e. whether they had 3 years of regular service as Assistant Commandant Group-B Class-II. They could not be given any promotion in group A from a date which was within a period of 3 years of their regular service in group B. These points are raised by the writ petitioner in transferred Case Nos. 10 of 1996, 9 of 1996 and 12 of 1996 and the "added respondents" in the writ petition filed in the Calcutta High Court out of which Civil

appeal arises. For example, seven petitioners in T.P. 10/96 namely Premjit Singh Rawal & Others (who filed Matter No. 2276/89 in the Calcutta High Court) contend that they were recruited as Group-A Class-I officers (Junior Scale) by the Civil Services Examination held in different years during 1980 & 1982 and were already promoted to the Senior Scale post of Commandant. Although the 1981 Rules introduced 85 posts in Group-A (Class-I) Junior Scale only a few have been so filled and the rest were being held by Group-B officers. Uptill 1989, only 28 posts of direct recruits Group-A (Class-I) have been filled out of 51. Petitioner No. 1 has been promoted as Commandant after completion of 5 years regular service in Group-A (Class-I) while petitioners Nos. 2 to 7 who were promoted before completion of 5 years regular service, have since completed that period of service. While so, rules were made in 1987 prescribing the principles of seniority of superior officers (vide Rules 95.1 and 95.2). They point out that Group-A officers were drawing in the scale of Rs. 700-1300 while Group-B were drawing in the scale of Rs. 650-1200. The IVth Pay Commission recommended one pay-scale of Rs. 2200-4000 to Assistant Commandants and equivalent posts w.e.f. 1.1.1986, in Group-A and Group-B. But, the rules were not amended and this was clear from the orders promotion dt. 15.2.1989 given to Group-B Class-II officers as Commandant (Senior Scale) on an adhoc basis. This, according to them, was arbitrary and illegal. This was done by way of a circular of the Railway Board dt. 31.12.19 8 5 which permitted group-A officers(Junior Scale) with 5 years (or 3 years) to be promoted as Commandant (Senior Scale). The circular also said that Group-B Class-II officers could be promoted, if they had more than 3 years service in Group-B and have been adjudged suitable by a Committee for appointment regarding Commandant (Senior Scale) vacancies for adhoc promotion. But the promotion of Group-B officers was being made even though Junior Scale Group-A officers (direct recruits) were available. This happened when orders of promotion dt. 15.2.1989 and 6.1.1989. were passed. Thus even the circular dated 31.12.1985 was being violated by making direct promotions from Group-B class-II to Commandant (Senior Scale) skipping over Group-A (Junior Scale). At the moment in 1989, out of 60 posts of Commandant (Senior Scale), only 7 were from Class-I (Group-A/ Junior Scale) while 53 were from Class-II Group-B. No DPC was held after 1980 for promotion from Group-B to Group-A. Non filling of Group-A Class-I Junior Scale by direct recruitment was deliberate. Yet another circular dated 21.8.1987 was issued by the Railway Board that before promotion of Group-B officers for Group-A as on 31.12.1985, on a regular basis, they should be "screened" w.e.f. 1.1.1986 and pending such screening, promotion to Group-A in scale of Rs. 2200-4000 would be treated as adhoc. This circular also showed that there could be no automatic promotion from Group-B to the post of Commandant (Senior Scale) without first being appointed to Group-A, Class-I (Junior Scale). The proposals sent to U.P.S.C. to promote Group-B officers as Group-A with retrospective effective from 1.1.1986 are therefore bad. Such a procedure would make Group-A Junior Scale recruited after 1.1.1986 juniors to Group-B officers in service as on 1.1.86. This was also in violation of the quota rule because for the post of Asstt. Commandant Senior

group A (Junior Scale) only 40% Group-B Officers could be promoted. Therefore from group A to the post of Commandant also, not more than 40% could come from group B. Under 1981 Rules, a promotee officer to the post of Group-A is not entitled to count his service for seniority if his promotion is beyond the quota prescribed from Group-B to Group-A. The further decision to give weightage to the promotee officers on promotion to Group-A (w.e.f. 1.1.1986) to the extent of half of the gazetted years of service in Group-B-(subject to a maximum of 5 years)- for the purpose of counting their seniority in Group-A Junior Scale, was also bad for that would make them steal a march over other directly recruited Group-A officers recruited before 1.1.1986. Most of the Group-B officers were likely to get weightage of 5 years to 4 1/2 in Group-A. This was likely to place all Group-B officers so promoted as Commandant (Senior Scale) above such of the Group-A officers who were yet to be promoted as Commandants (Senior Scale). 60 Group-B officers would go above 1st petitioner, 104 above 2nd & 3rd petitioners and 125 officers above petitioners 4 to 7, in the category of Commandants (senior Scale). They prayed, therefore, that all these policies by which Group-B officers were being favoured should be struck down. The case of the petitioners in T.P. No. 9/96 (by W.P. Matter 2410/89) filed in the Calcutta High Court by Shashikanta and others and in T.P. No. 12/96 (W.P. 8129/94) filed by P.K. Agarwal in the Allahabad High Court and of the "added respondents" in the Writ Petition from the Calcutta High Court out of which the Civil appeal has arisen, is the same.

Orders Passed by the Calcutta High Court in the matter under Civil Appeal.

10. Before referring to the points arising in these cases, it is necessary to refer to Civil Appeal and to the orders passed by the learned Single Judge of the High Court of Calcutta and the orders of the Division Bench in appeal, to the extent relevant. As already stated, the writ petitioner there Rajeev Kumar Sharma was a Group-B (Class-II) officer appointed in 1979 while the "added respondents" were Group-A officers (Junior Scale) recruited after 1981. Petitioner was promoted as Commandant on 20.8.90 alongwith 1985 Group-A officers. The learned Single Judge by his order in Matter No. 493 of 1988 by judgment dated 4.3.94, rejected the plea of the petitioner and held that a person specifically selected into Group-B in 1979 could not claim seniority over Group-A officers who were directly recruited to the intermediate post of Group-A officer. But having done so, the learned Judge dealt with the grievance of the "added respondents" Group-A officers, namely, that the Union of India was favouring the Group-B officers and held that the petitioner's promotion as Commandant on 20.8.1990 alongwith 1985 Group-A officers was by way of frog leap" while the "added respondents" promoted as Commandants from Group-A post were from the 1983 batch of group A officers, that the latter were promoted as Commandants on 29.4.88 and therefore, the petitioner from group B could not become senior to them in the category of Commandants. Learned Judge further noticed that the promotion of the "added respondents" on 29.4.88 as Commandants was "ad hoc" instead of on regular basis and this was because of

the interim order obtained by the petitioner in the Writ petition and with a view to rectify the same, the learned Judge directed the department to treat the period of adhoc promotion of the added respondents from 29th April, 1988 till date i.e....as regularise and consider -them for promotion to the next higher post....

The Union of India filed an Appeal in 1994 and the Division Bench held that the directions given by the learned Single Judge were only intended to remove the injustice done to Group-A officers because of interim orders passed in that very writ petition in favour of Group-B officers (Petitioners) and there was nothing wrong in the order of the learned Single Judge. The Court, however, noticed that there was also another writ petition filed by group A officers pending in the Court and in that petition by Premjit Singh Rawal the grievance of Group-A officers was against the policies of the government in favour of Group-B officers. The policies of government have not reached a stage of finality and hence they were not pronouncing anything on the validity of the promotional policies in favour of Group-B officers, including the question of weightage and the notifications dated 10.8.1990 by which Group-B officers were promoted into a Group-A scale w.e.f. 1.1.1986 and further promoted on 29.8.1990 as Commandants, within 10 days. They pointed out that the notification dated 10.8.1990 clearly stipulated that it would not prejudice the rights of group-A officers. The Division Bench, however, "modified" the direction issued by the learned Single Judge stating that the said direction would be subject to the result of the judgment in the Writ petition filed by Mr. Premjit Singh Rawal and others (Now T.P. 10/1996). They made it clear they were not suspending the orders dated 10.8.1990 and 20.8.1990 which were in favour of the Group-B officers.

11. Against this order the Union of India has filed the SLP No. 7076 of 1995 in which special leave has been granted. The writ petition filed by Mr. Premjit Singh Rawal & Others in the Calcutta High Court is now transferred to this Court and numbered as T.P. (Civil) No. 10 of 1996.

Merits of the contentions of group B. (Class II) Officers.

12. Having stated the facts and import of the 1981 Rules etc., we shall now deal with the validity of the contentions raised by the officers. We shall take up the batch of cases filed by the Assistant Commandants, Group-B officers (Class-II) recruited prior to 1981 Rules. They contended that the introduction of the post of Group-A (Junior Scale) of Assistant Commandant as an intermediate post was illegal and that the procedure of promotion of Group-B officers to Group-A and then to the post of Commandant under the 1981 Rules amounted to interference with vested rights with retrospective effect to and that all recruits into group B prior to the 1981 Rules should be governed by the 1974 rules. It is also argued that the Group-A officers passed the same examination as the Group-B officers and were having the same powers and duties. No principle for fitment of existing group-B officers as on the date when the 1981 rules came into force was specified in the rules.

13. In our view, there is no merit in these contentions. There is no question here of giving retrospective effect to 1981 Rules. It is, in our opinion, open to the employer, namely, Union of India and it is its prerogative, as a matter of policy, to introduce an intermediate post and lay down the conditions of eligibility of Group-B office in Class-II for promotion to such intermediate post of Group-A in Class-I (Junior Scale). Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights, even assuming that the contention that vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created prospectively for future promotions from Group-B Class-II to Group-A Class-I. If, before these rules of 1981 came into force, these officers were eligible to be directly promoted as Commandants under the 1974 rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights. Further before 1981 among the Group-B officers in Class-II, there were direct recruits upto 30% and promotees upto 60%. and transferees upto 10%. It would not be correct to permit the direct recruits in class-B to be governed by the 1974 Rules for direct promotion to the post of Commandant leaving the promotees and transferees to go by the 1981 Rules and through the intermediate post. Further, these officers were specifically recruited to Group-B as they came lower in the merit list at the time of their appointment prior to 1981 while those recruited after the 1981 Rules were persons who were specifically recruited for the intermediate post in Group-A. Further there is no difficulty with regard to fitment of the existing Assistant Commandants (Class II) on the coming into force of the Rules of 1981 for all those who were Asstt. Commandants or of equal grade came to be designated as group B (Class II) officers. For the aforesaid reasons, there is no merit in these contentions of group B Officers. Merits of contentions of second Batch-group A (Class I)(Junior Scale Officers:

We shall now deal with the writ petitions filed by the group A (Class-I) officers. We may first refer to the T.P. No. 10/96, being the Writ petition filed by Premjit Singh Rawal & others in the Calcutta High Court, the result in which is to govern the Civil Appeal. In that writ petition, there is an order dt. 28.8.89 of another learned Single Judge of the Calcutta High Court as follows:

...the interim order already passed is modified to the extent that the respondent shall prepare afresh promotion policy of the Asstt. Security Commissioners which the respondent says has not yet done but there should not be adverse affection of the position of the present writ petitions "till the disposal of the writ petition and without leave of this Court.

Therefore a "fresh promotion policy" was to be prepared and placed before Court.

14. Pursuant to the above direction of the Calcutta High Court, fresh policy decisions have since been taken and placed before this Court. The U.P.S.C. has written to the Government of India on 10.12.1991 indicating the "promotion policies" requesting the Government to place the same before the Court. It wrote

another letter dated 3.8.1992 after "reexamining" the question of weightage given to group-B officers. A letter of the Union of India dated 30.11.76 which laid down principles of "weightage" applicable in all departments of Railways (except the Medical department) has also been placed before us as being the basis for the policy in the above letters so far as weightage is concerned.

15. Further a combined provisional seniority list of Junior Scale Group-A officers in position as on 8.4.1993 has been placed before us in W.P. 98/97. It however appeared that this was prepared without fully giving effect to the principles stated in the above letters dated 10.12.1991 and 3.8.1992.

16. Learned Counsel for the group-A officers submitted before us that the fresh draft policy letters of the Union of India dated 10.12.1991 and 3.8.1992, read with the weightage principles laid down in the earlier dated 30.11.1976 of the Railway Board offend the rights of the Group-A Class-I officers in as much as Group-B officers are retrospectively promoted into Group-A w.e.f. 1.1.1986 without a DPC and they were in addition given weightage for the said promotion in respect of 50% of their service in Group-B. They could not, in any event, be promoted to Group-A posts from a date anterior to the very date of creation of Group-A posts under the 1981 Rules. The entire exercise was violative of the 1981 Rules relating to promotion. The promotion of eligible officers from Group-B to Group-A as per the 1981 Rules can be only for 40% of the 85 posts in Group-A (Junior, Scale) the rest 60% in Group-A are to be filled by direct recruitment. It is only after the promotion to group A through DPC is completed, that too in respect of Group-B officers having 3 years regular service, that their promotion from Group-A (Junior Scale) to the Commandants category could be considered. The letters of the UPSC dated 10.8.1990 and 20.8.1990 amounted to giving double promotion to Group-B officers and were illegal. To the extent the draft new policy dated 10.12.1991 and 3.8.1992 read with the weightage principles dt. 30.11.1976 were applied to group B Officers, there was clear is clear violation of the Rules. It was also submitted that the proceedings dated 30.11.1976 were not applicable to the Group-B officers appointed under the R.P.F. Act.

17. On the other hand, the learned Counsel for the Union of India and the counsel for Group-B officers contended that the quota rule had broken down because of want of recruitment to all posts in Group-A, and hence there is no question of applying the 40% quote rule for promotion from Group-B to Group-A. The UPSC and the Government of India took into consideration that the IVth Pay Commission recommendations have virtually withdrawn the distinction between Group-B and Group-A w.e.f. 1.1.86. Further, from 1981 there was no DPC for promotion from Group-B to Group-A and therefore the UPSC and the Union of India have now come forward with an equitable solution which is fair to both groups. The weightage principles dt. 30.11.1976 are clearly applicable to these Class I officers. These Rules have been upheld by this Court in *A.K.Nigam Vs. Sunil Misra* 1994 (2) Suppl. SCC 245

18. Counsel for group B officers raised an extra point that under these two letters

based on merit-cum-seniority. The procedure to be followed is indicated in para-3 of the said letter as follows:

(i) The number of officers to be considered in the eligibility zone would be calculated with reference to the number of vacancies to be filled up in each year. 5 officers would be considered against one vacancy and 8 officers would form the zone of consideration for 2 vacancies and 10 for 3 vacancies. Thereafter the eligibility zone would be twice the number of vacancies plus 4. Officers finding a place in the eligibility zone as stated above would be considered for promotion seniority wise on the basis of their ACR for previous 5 years with regard to the year of the vacancy. While assessing ACR, grading will be assigned to each officers such as "Outstanding", "Very Good", "Good", "Average" and "Unfit". All officers assessed "Outstanding" would be placed unblock above officers categorised as "Very Good" and similarly those who are categorised as "Very Good" would be placed above those who are categorised as "Good" and those who are categorised as "Good" would be placed above those categorised as "Average". Officers in the list so prepared would be recommended for promotion based on the number of vacancies. Only those who were graded as "Good" and above would be recommended for promotion.

(ii) The officers promoted as mentioned above would also be eligible to the advantage of ante-dated seniority to the extent of 50% of the total service rendered in Group-B subject to a maximum of 5 years. However, this ante-dated seniority would not go beyond 1.6.1981 i.e. a date from which the group A junior time scale was introduced in RPF.

(iii) Officers not recommended against vacancies of 1981 to 1985 would be placed in Group-A w.e.f. 1.1.1986 on the basis of screening which has already been conducted by the UPSC. Such placement will not entitle them to any benefit of weighted seniority and they will be placed below the 17 direct recruit officers of Group-A who were in service on 1.1.1986.

(iv) Inter-se seniority of direct recruits vis-a-vis promotees would be in accordance with the number of vacancies in each year and the quota for direct recruits and promotees.

21. The further letter of the U.P.S.C. dated 3.8.1992 modifies the policy in the above letter in regard to weightage. It says that the U.P.S.C. has re-examined the question of weightage in the seniority to be given to the promotees Group-B officers. In order to protect the interests of Group-A officers and to be fair to Group-B officers also, the Commission proposed the following equitable criteria:

(a) Only 32 promotees who are to be recommended to the actual promotion quota vacancies, should get the weightage in seniority.

(b) All the other 31 vacancies decided to be diverted year wise from 1981 onwards from direct recruitment quota should be clubbed together and treated as vacancies of 1985. The officers to be promoted against these 31 vacancies

need not be given any weightage in seniority and they should. be placed unblock below the direct recruits of 1985. Accordingly the formulation contained in paras 3(ii) and 3(iv) of office letter of even number dated 10.12.1991 was to be treated as modified to the above extent.

22. In other words, weightage was given to some extent and the breaking down of the quota rule was also taken into account but both these principles were balanced against each other. Finally the letter dated 3.8.1992 further states that on the basis of above criteria, it would be necessary to prepared separate year wise panels i.e. one for the 32 promotion quota vacancies of 1981 to 1985 and another for the 31 diverted vacancies being treated as that of 1985. The panels for the 31 diverted vacancies would be prepared from amongst the left, over officers after preparation of the panels for the 32 vacancies falling in actual promotion quota. As such the Ministry was requested to intimate the break-up of reservation for the 32 actual promotion quota vacancies and 31 diverted vacancies separately, so that the proposed DPC for the vacancies of 1981 to 1985 could be held at the earliest.

23. So far as 50% weightage given to group B officers is concerned it is based on an earlier letter dated 30.11.1976 issued by the Railway Board. That letter deals with the grant of weightage to promotees to all Class I posts in regard to half of their service rendered in the post from which they are promoted. It deals with the principles for determining seniority of Class-I officers in the Indian Railways. The contents of the letter read as follows:

Consequent on the deletion of para 8 of Appendix I to Indian Railway Service of Engineers, Indian Railway Service or Signal Engineers, Indian Railway Service of Electrical Engineer Recruitment Rules, 1962, paragraph 9 of the Appendix I of the Indian Railway Service of Mechanical Engineers Recruitment Rules, 1968 and the I.R.S.S. Recruitment Rules, 1969 for determining seniority of officers on their appointment to Class I Service, Board have decided to circulate the principles, laid down for determining the seniority of officers, appointed to various Class services from different sources, specified in the various Recruitment Rules except officers of the Medical Deptt. and other misc. categories. These are enclosed as an Appendix to this letter.

So far as Appendix is concerned, we are concerned here, with principles (i) and (vii):

Principle (i)-The seniority of officers, appointed to various Indian Railway Services (Class I) shall be determined on the basis of the "date for increment on time scale" to be specifically determined in each case in accordance with these principles.

Principle (vii)-In the case of Class II officers permanently promoted to Class I Services, if two or more than two officers are promoted on the same date their relative seniority will be in the order of selection. Subject to the aforesaid provision the seniority of officers, permanently promoted from Class II to Class I

Services, shall be determined by giving weightage based on:

(a) the year of service connoted by the initial pay on permanent promotion to Class I Service; or

(b) half the total number of years of continuous service in Class II, both officiating and permanent;

whichever is higher, subject to a maximum weightage of five years.

24. Identical principles of weightage were upheld in A.K. Nigam's case-1994 Supp (2) SCC 245. This Court observed as follows:

One thing may be noticed that the seniority in IRPS is not governed by the date of joining. If one look at the Principles, as approved by the President, Principle (i) is-"the seniority of officers, appointed to various Indian Railway Services (Class I) shall be determined on the basis of the "date for increment on time scale" to be specifically determined in each case in accordance with these principles." It is not an invariable rule that seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from it would be unreasonable and illegal. It is open to the rule making authority to take a note of the relevant circumstances obtaining in relation to each department and determine objectively the rules that should govern the inter se seniority and ranking. The dates of increment of the appellants in time scale having been specifically determined by the authorities before respondent No. 1 joined service, he has to rank junior to the appellants.

Thereafter, this Court further observed as follows:

the principle of granting seniority on the basis of weightage of past service and lower service to the category of promoting officers is well known and well recognised in the service jurisprudence.

This Court also referred to an earlier judgment in State of Andhra Pradesh & Another Vs. K.S. Muralidhar and others [1992 (2) SCC 241] where weightage formula was accepted.

25. In view of the above-said judgment of this Court, it is clear that the principle of weightage proposed to be applied in these letters of the UPSC is unassailable.

26. The other contention raised by learned Counsel for the Class-A officers was that a reading of the opening paragraph of the letter dated 30.11.1976 of the Railway Board (already extracted) shows that the said principles were not intended to be applied to a statutory service like the one governed by the Railway Protection Force Act, 1957. This contention, in our view, is not correct. We have examined this aspect in depth and we are convinced that letter dated 30.11.1976 was intended to apply to these Class-I officers in RPF as well. The opening paragraph of the letter in fact says that principles in the Appendix thereto are applicable to all officers except those in the Medical Department. In fact the decision of Supreme Court in A.K. Nigam's case related to Indian

Railway Personnel Services Officers.

27. Further, it is not as if these group B officers are being given promotion in group A from a date when group A posts were not created. It is specifically made clear that in spite of weightage, none will be given a date anterior to 1.6.81, the date of creation of these group A posts. Nor is the extent of weightage unrestricted. It is provided that it will not exceed 5 years in any case. Interest-se seniority is to be based on vacancies in each year and on the quota for direct recruits and promotees. The point that group B officers cannot be given promotion to group B from a date on which they are not eligible as per 1981 rules is also taken care of. DPC panels are to be prepared year wise as stated in the two letters. Weightage is confined to the promotion quota. Again while recommending that unfilled vacancies in direct-recruitment quota are to be diverted it is stated that for such promotees, no weightage is to be given while promoting to them into the diverted vacancies.

28. We are of the view that a fair and proper balancing of the rights of group A and group B officers has been made in these draft policies. The contentions of group A officers as well as of group B officers against these draft policies are therefore rejected. Thus the new policy has our full acceptance and the authorities can take further steps on that basis.

Implementation of the policy:

29. It will now be for the department to implement the above said policy and after taking the various steps indicated therein, publish a provisional seniority list of Asstt. Commandants, etc. (group A officers) (class I), invite objections and upon finalising the same, after disposal of objections (restricted only to the manner of implementation of the fresh policy), proceed to issue a final seniority list of group A Class I Officers. Thereafter respondents will publish a provisional seniority list in the category of Commandant and equivalent posts again after following such steps required in law, invite objections and dispose of the same and finalise the seniority in that category. This procedure can then be carried upwards.

30. Having regard to the long litigation in the matter, we are of the view that within four months from now, the steps required for implementation of the policy will be completed, and a provisional list of Asstt. Commandants, etc. group A officers (Class I) will be issued and the final list be prepared within three months thereafter after disposing of objections. Then for the regular promotions to the post of Commandants, etc. provisional list of Commandants etc. category could be issued within four months of the publication of the final list of Asstt. Commandants group A (Class I), invite objections, dispose them of and finalise the list. The same procedure could be followed upwards expeditiously.

31. The above directions will dispose of all the matters before us subject to certain specific directions which are necessary in two matters, namely, T.P. 3/96 and T.P. 11/76 which we are being taking up separately. T.P. 3 of 1996 : The

petitioner filed the writ petitions in the Allahabad High Court in 1991 (W.P. 736/91). Petitioner passed the Civil Services (Main Examination) 1979 and was appointed as Asstt. Commandant Cadre on 6.6.1981. He joined on 22.6.81. The 1974 Rules were replaced by the 1981 Rules w.e.f. 8.5.81 in 650-1200 scale. The grievance of the petitioner is that the 1981 Rules were applied to him and he has treated as belonging to group B (Class II), even though his appointment letter says in para 1 that he will be governed, in respect of matters not specifically referred to in the order, by various other provisions, including the Railway Protection Force (superior officers) Recruitment Rules 1974 and, therefore, he cannot be governed by the 1981 Rules. In that writ petition, two officers who were appointed in 1985 in group A filed impleadment application dated 10.5.91 and got themselves impleaded as respondents 4, 5.

32. Now the 1981 Rules clearly mention that Assistant Commandant group A will be in scale 700-1300 and that the Assistant Commandant group B will be in scale 650-1200. From the order of appointment of the petitioner it is clear that he was put in the scale of Rs. 650-1200 i.e. group B Class II as per new Rules of 1981 and, therefore, it is clear, he accepted the appointment in group B as per 1981 Rules. Petitioner cannot therefore rely on the clause "1974" Rules in the appointment order.

33. Learned Counsel made a submission that the notification in which the 1981 Rules were published used the words "except in respect of things done or omitted to be done" and that he was therefore governed by the 1974 Rules in respect of the examination conducted in 1979 by virtue of the advertisement. We are unable to agree. We do not have the date of publication of the results etc. In our view, the offer of appointment in the scale of Rs. 650-1200 is very clear and was made on 6.6.81 and it was accepted by petitioner without demur. We, therefore, do not find any merit in this writ petition. In other respects, his case will be governed by the judgment and directions given above.

T.P. 11\9.6 : The petitioner filed Civil Misc. Petition 44478 of 1993 in the Allahabad High Court. Petitioner was commissioned in the Army in August 1964 and discharged on 1.8.70 and he says he was appointed in Asstt. Commandant Cadre in RPF w.e.f. 26.6.72 and was confirmed by order dated 11.1.79 w.e.f. 16.11.78. He says he was promoted as Commandant on adhoc basis on 7.2.79 (senior scale) and according to him, he became entitled to be confirmed as such in May 1981 and for further promotion as Dy. Chief Security Officer/Senior Commandant. He submitted several representations. His grievance is that on 23.10.90 orders were issued and he was promoted to group A (Junior Scale), though he was actually working in the higher post of Commandant since 7.2.79. Petitioner is aggrieved by the provisional list dated 2.4.93 and also by the seniority given to some group A officers, Mr. P.K. Soni and O.P. Kaushal. He filed the writ petition in 1993. He got further adhoc promotion on 17.5.1994 and 18.5.1996 during pendency of the writ petition. He claims that he should have been given these promotions on a regular basis and from anterior dates.

34. Petitioner is about to retire in a few days. Learned Counsel pointed out that for last fifteen years, petitioners grievances have not been redressed and no DPC were conducted. It was suggested to counsel that the petitioner could submit a fresh representation within one month and the respondents could dispose of the same as early as possible. We direct accordingly. In other respect the directions given in the main judgment to the extent relevant, apply.

35. All the matters are disposed of accordingly.