CASE NO.:
Appeal (civil) 92 of 1997

PETITIONER:
Indian Rly. Class II Officers Fedn. & Anr.

RESPONDENT:
Anil Kumar Sanghi & Ors.

DATE OF JUDGMENT: 23/09/2002

BENCH:
S. Rajendra Babu & P. Venkatarama Reddi.

JUDGMENT:
J U D G M E N T

P.Venkatarama Reddi, J.

Aggrieved by the order of the Central Administrative Tribunal (C.A.T.) Principal Bench, passed on 4.8.1995 in O.A. No. 574 of 1993, the present appeal has been filed by the second respondent in O.A., which is an Association of Class II Railway Officers and one of the respondents in the O.A. The O.A. was filed in the C.A.T. by six Class I Officers working as Assistant Signal and Telecommunication Engineers (ASTEs), who are respondents 1 to 6 herein. The appellant-Association is espousing the cause of Group 'B' Officers of Indian Railways Services of Signals Engineers (IRSSE), who were, by an order dated 15.9.1992 issued by the Ministry of Railways, appointed substantively to the Junior Scale of IRSSE with effect from 23.7.1992. The Group 'B' (Class II) posts constitute the base level of gazetted cadre on the Indian Railways and these posts are filled up by promotion, from amongst Group 'C' personnel through the process of selection. Immediately above Group 'B' are the Junior Scale Group 'A' posts. It is a feeding cadre for the Group 'A' posts at higher level. The appointments for Group 'A' Junior Scale posts are made partly by direct recruitment and partly by promotion from amongst eligible Group 'B' Officers as per the quotas prescribed in the recruitment Rules. The incumbents of posts in Group 'A' Junior Scale and in Group 'B' are designated as Assistant Officers and it appears that these posts are operated inter-changeably. As per the recruitment rules, Group 'B' Officers who have rendered three years of non-fortuitous service in the grade are eligible for consideration for promotion to Group 'A'/Junior Scale. It is common ground that the 127 Officers covered by the appointment order dated 15.7.1992 were working for nearly 8 to 10 years against regular Group 'A' vacancies and most of them were promoted to Senior Scale on ad hoc basis and were working as such for several years. Apparently, the eligible Group 'B' Officers could not be promoted to Group 'A' Junior Scale for administrative reasons viz., delay in recruitment process of Group 'A' Officers and constitution of DPC. There was virtually stagnation of a number of Group 'B' Officers who as already stated were working on ad hoc basis in Senior Scale vacancies of Group 'A'. With a view to discontinue the ad hoc arrangements and to give better promotional opportunities to Group 'B' Officers who were stagnating without regular promotion, the Ministry of Railways proposed additional posts in Junior Time Scale not only in Signal and Telecommunication Department, with which we are concerned, but also in various other departments of Railways. As against

654 additional posts proposed by the Railways, the UPSC agreed for creation of 463 posts. Out of these, the allocation for the Signal and Telecommunication Department was 76. These additional posts (76) were to be filled by promotion of Group 'B' Officers in relaxation of the normal quota and such variation of quota was permissible, according to the Railways, under Rule 4(b) of the relevant recruitment Rules. In the reply filed by the Railways before the Tribunal, it is stated that the appointment of 127 Group 'B' Officers to Junior Time Scale was made against 153 vacancies in the promotion quota as per the particulars given below:

Recruitment year	Direct Recruitment Quota	Promotion quota
1989	35 (60%)	23(40%)+2 (Carry forward vacancies)
1990	42(29%)	104(71%)(including additional 76 posts decided by the Govt. in consultation with UPSC, for reasons brought out in para-8 to 10 of this counter affidavit.
1991	37(60%)	24(40%)
	Total 153	

It is further stated that the DPC recommended the appointment of 146 Officers out of whom 127 were appointed by the order impugned in the O.A.

The Group 'A' Junior Scale Officers who were apprehensive of dimunition of their promotional prospects by virtue of weightage in service which the Group 'B' Officers would be entitled to, filed the O.A. before the CAT questioning the appointment of 127 Officers mainly on the ground that it is in excess of their quota and that the relaxation was not permissible. The case of the Group 'A'/Class I Officers (Respondents 1 to 6 in this appeal) was substantially accepted by the Tribunal and the following directions were given by the Tribunal in the concluding part of the order :-

i) It is not competent for the Railways to appoint as many persons by promotions as they like, in disregard of the provisions of Rule 4 which stipulates the quota for promotion and direct recruitment. Repeated violent departures from the quota rule will lead to collapse of the quota rule (Direct Recruits' case supra) and therefore of the linked seniority rule (B.S. Gupta's case supra).

ii) The principle of weightage in seniority will be limited to promotees appointed against their quota.

iii) As the rules stand at present, the maximum quota for promotees is only 40%. It cannot be raised further by relaxation, as Government has no such power.

iv) Vacancies not filled in a year whether in the direct recruitment quota or promotee quota can be carried over, but all such vacancies have to be

filled in the subsequent years by both methods on the basis of the quota mentioned in Rule 4.

v) Out of the 127 appointments made by the Annexure A-1 order dated 15.9.1993, promotion should be deemed to have been made to the extent of 40% of the vacancies in 1992 which have been computed tentatively at 89 (para 34 supra) subject to departmental verification. They alone are entitled to weightage and seniority on the seniority principle (vii) and (ix).

vi) The remaining 38 persons, subject to departmental verification, have been promoted in excess of the promotion quota and they are not entitled to weightage in seniority on the basis of the Annexure A-1 order. Their promotion shall be treated as ad hoc only. They can be treated as regularly promoted against the quota for promotees in 1993 and thereafter. In that case, such promotees can be given weightage from the dates their promotions are regularized.

vii) The Annexure A-1 order shall stand modified to the extent indicated above.

viii) The O.A. is disposed of as above.

The Tribunal was of the view, agreeing with the Jabalpur Bench on the issue, that the provision authorizing variation of percentage in terms of concluding part of clause (b) of Rule 4 did not authorize the Government to exceed the ceiling of 40 per cent of vacancies in relation to departmental promotees. The Tribunal relied on the expression "not more than" occurring in clause (b) of Rule 4. The Tribunal further held that power of relaxation in favour of departmental promotees cannot be spelt out in Rule 4. At the same time, the Tribunal held that Note 1 to Rule 4 did not preclude carrying forward of the unfilled vacancies in the promotion quota. The Tribunal pointed out that if vacancies in the quota for promotees or direct recruits are not filled up fully, those vacancies can be filled up in the succeeding year. However, the carried over vacancies will be filled up in the same ratio as is indicated in clauses (a) and (b) of Rule 4. The Tribunal then examined the number of vacancies available against the promotee quota pertaining to years 1989, 1990 and 1991. The Tribunal was of the view that only 40 per cent of the 76 additional posts created i.e. 30 posts will fall to the share of the promotees. The Tribunal worked out that promotees could get only 89 against their quota of 40 per cent out of the total vacancies available upto 1992. The Tribunal, therefore, concluded that 38 Group 'B' officers should be deemed to have been promoted in excess of quota and those 38 persons are not entitled to weightage of past service while determining their seniority. Their promotion should be treated as ad hoc only and they could be treated as regularly promoted against the quota for promotees available in 1993 and thereafter. In other words, 30 respondents promoted in excess of quota should be adjusted against future vacancies. The contention that the seniority rule had collapsed by reason of break down of quota rule was negatived on the ground that departure from quota rule was only marginal and it cannot be said that the quota rule had substantially failed. The Tribunal finally directed that the impugned order of the Railway Ministry

shall stand modified in the light of directions given by it.
The relevant rule dealing with recruitment is as follows :
"Rule 4 Method of Recruitment - Recruitment in the service shall be by the following methods :
(a) By competitive examination held in accordance with part II of the rules.
(b) By promotion of Class II officers of the Signal Engineering Department. Not more than 40 per cent of the vacancies shall be filled by departmental promotion. This percentage is likely to be varied from time to time, if found necessary.
NOTE :If the quota of 40 per cent reserved for Class II officers for promotion to Class I is not fully utilized, the remaining vacancies shall be filled by direct recruitment under clause (a),
(c) By occasional admission of other qualified persons appointed by the Government on the recommendation of the Commission."
We areconcerned here with Clause (b) and the Note thereto. As noticed earlier, 76 additional posts were created in S&T department in order to facilitate the absorption of Group 'B' (Class II Officers) in Group 'A' Junior Time Scale. It also transpires from the pleadings that the induction of Group 'B' officers to the extent of vacancies falling within their quota could not take place on account of administrative delays in constituting the DPC and moreover on account of linking up the promotional quantum to the number of direct recruits inducted during the year. The extent of intake of direct recruits fell short of the requisite available number of vacancies as a result of which there was corresponding reduction in the number of officers appointed to Group 'A' Jr. scale against promotion quota. That there was ample justification for remedying the injustice done to the Group 'B' officers who were manning the posts in Group 'A' (Jr. scale) on ad hoc posts since considerable time and to put an end to the long time ad hoc arrangements is amply clear from the pleadings and the correspondence forming part of the record. Though the Tribunal conceded the power to carry forward the vacancies, the Tribunal was of the view that having regard to the rule position, it was not possible to allocate all the newly created posts to Group 'B' officers awaiting promotion. The learned members of the Tribunal held that the carry forward vacancies have to be filled up in subsequent years on the basis of the quota i.e. 60 : 40 per cent. In other words, the Tribunal was of the view that the direct recruits too have their share in the 76 newly created posts and they cannot be exclusively filled by promotees.

Let us see how far Rule 4 (b) and the Note thereto stands in the way of allocation of additional posts exclusively to Group 'B'/Class II officers in order to compensate the deficiency in the intake of promotee officers into Group 'A'/Class I during the preceding years. The answer depends on the proper construction of the Rule.

No doubt the second sentence in clause (b) places a ceiling of 40 per cent on the vacancies to be filed up by departmental promotion. The Note reinforces this mandate by providing that in case of shortfall in the promotional quota of 40 per cent, those vacancies remaining should be allocated to direct recruits. That means, in a given year, the direct recruits can go beyond 60 per cent, if sufficient number of promotee officers are not

available. It is a different thing that it had never happened and the direct recruitment could not be made in some years even to the full extent of 60 per cent. But, that is what the Rule provides. However, the rule in so far as it operates against the promotee officers has been diluted to a certain extent by reserving the power to vary the percentage allocated to promotees. The variation, in our view, could be both downward and upward, depending upon the exigencies of service and the march of events. Going by the plain language, the variation could be either way. If the variation was intended only to curtail but not to enhance the promotion quota of 40 per cent, suitable language could have been employed. That apart, the word 'not more than' itself would have provided some flexibility to the appointing authority to reduce the promotee quota in a given year for good and relevant reasons. Hence, it is not appropriate and proper to limit the ambit of variation to the reduction of percentage. If the last sentence in Clause (b) is to be read subject to the preceding sentence with the appended note, the very purpose for which such power is reserved to the Government will be lost. A reading of the Rule so as to confine the variation of percentage to impinge on the normal promotee quota but not vice-versa is clearly unwarranted either on the plain language of the provision or its intendment. There is nothing which precludes the Government of India to take a policy decision that the percentage should be so varied so as to give the benefit to the stagnating promotee officers. When once such policy decision is taken, the normal rule that 40 per cent is the maximum for departmental promotees would stand protanto modified for the time being. Of course, such variation, either upward or downward should be based on rational basis and relevant considerations. When once such test is satisfied, there is no difficulty in giving effect to the variation of percentage so as to operate in favour of promotee officers. The Tribunal harped on the fact that there is no power of relaxation under the rules such as the one provided for by the Indian Railway Traffic Service Rules. The provision for variation of percentage from time to time in case of necessity is for all practical purposes equivalent to the power of relaxation. There is no particular reason why the Class II promotee office of S&T department should be treated differently from the same category in Traffic department. The application of such different standards could very well be avoided by giving a wider meaning to the expression "varied from time to time". Whether it be variation or relaxation, it is meant to provide a leeway for adjustment in exigencies of service which is very much necessary in administrative interest and to cope up with unforeseen contingencies.

Therefore, we are of the view that no illegality has been committed by the Union of India in appointing 127 Group 'B' officers of S&T department of Railways to the junior scale of Group 'A' by the impugned order dated 15.9.1992. The Central Administrative Tribunal has committed an error of law in interpreting the relevant rule and holding that 38 Group 'B' (Class II officers) promoted in excess of normal quota of 40 per cent have to be promoted on regular basis against future vacancies. The impugned order of the Tribunal is, therefore, set aside and the appeal is allowed. We make no order as to costs.