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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Date of decision 6.3.92.

1) DA No. 170 of 1987.

Bhim Sen Kalra

.....Applicant.

Vs.

Union of India & others

.....Respondents.

2) DA No. 1822 of 1990

B.S. Rana and 34 others

.....Applicants.

Vs.

Union of India & others

.....Respondents.

3) DA No. 2134 of 1990

Balwant Singh Rana

.....Applicant.

Vs.

Delhi Administration and
another

.....Respondents.

CORAM: HON'BLE MR. B.S. SEKHON, VICE CHAIRMAN.
HON'BLE MR. I.M. RASGOTRA, MEMBER (A).

For the Applicants - Mr. B.B. Rawal, Advocate.

For the Respondents - Mr. Jagdish Vats, Advocate.
Mr. M.M. Sudan, Advocate.

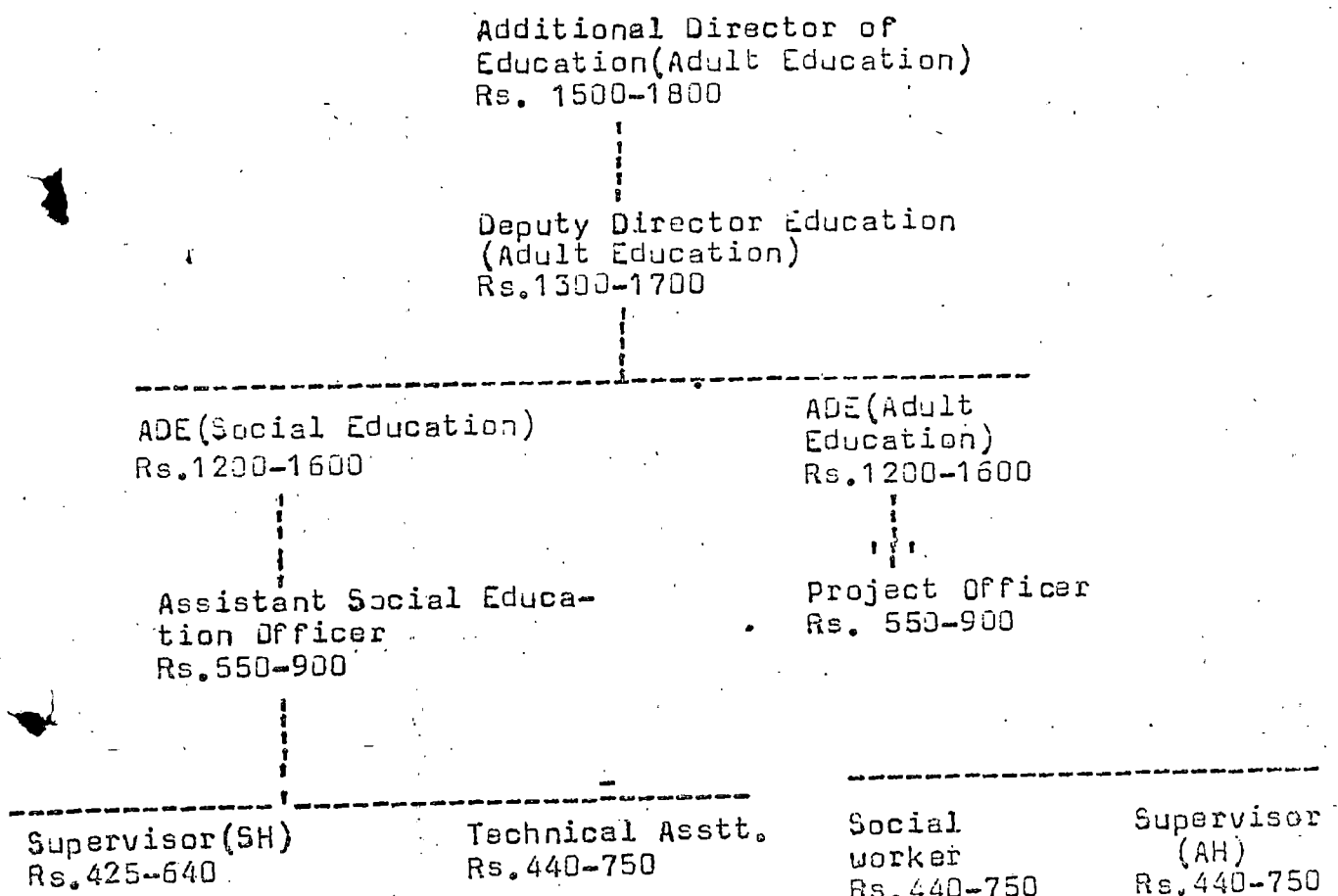
B.S. SEKHON:

As common questions of law and facts arise for adjudication in the captioned OAs, the same are being disposed of by a common judgment. The learned counsel for the parties were also one on the point that these OAs are interlinked to substantial extent and the same be disposed of by a common judgment. The main O.A is O.A. No. 1822/90. It would be both expedient and appropriate to state the factual position as culled from this O.A. Reference would, however, be made where-ever necessary to the other two O.As.

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2. Skipping superfluities, Applicants in these OAs have been working in the Adult Education Department, Directorate of Education in different capacities viz. as Project Officers and Supervisors for periods varying from 5 to 10 years. The Adult Education Department comprises two Branches namely, (i) Adult Education Branch and (ii) Social Education Branch. The following tabular statement would show the hierarchical order in the two Branches:-



The top slots i.e. the Additional Director of Education and Deputy Director of Education in both the Branches are merged. Applicants had been recruited after having been duly selected. There were no Recruitment Rules at the time the applicants were selected/appointed. School Cadre provided the biggest source of personnel in the Adult Education Deptt.

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Examination of the [redacted] of
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Central Intelligence Agency
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"In the facts and circumstances, we allow the petition and declare that the Recruitment Rules for the post of Project Officers Grade-II notified on 27.8.83 suffer from the vice of discrimination and are violative of Articles 14 and 16 of the Constitution in so far as they exclude Supervisors(Adult Education) as one of the feeder categories for promotions. We, therefore, set aside the Recruitment Rules only to the extent of such exclusion and direct that like Supervisors(SE), Supervisors(Adult Education) with five years of experience in the grade should also be included as the first of the eligible categories for promotions. A review DPC should be held to consider Supervisors (Adult Education) with five years of service as on 1.2.1985 when respondents 3 to 6 were promoted and if some of them are included in the panel within the number of vacancies of Project Officers available on that date they should be given notional promotion as Project Officers till they are retained in the Adult Education Wing. Action on the above lines with payment of arrears of higher pay and allowances, if any, should be completed within a period of three months from the date of communication of this order. There shall be no order as to costs."

3. It is common-ground that in compliance with the aforesaid judgment, the Recruitment Rules were amended making the Supervisors(AE) with five years' experience eligible for promotion to the post of Project Officer Gr.II. After quoting from the aforesaid judgment and referring to CCP 95/89, applicants have averred that the motive behind exclusion of Supervisors(AE) was that respondent No.3 Shri Kali Charan, Additional Director(Adult Education) was determined to get rid of all who came from

from the teaching profession and to fill the Adult Education Department by his favourites. In view of the pendency of CCP 95/89, respondents, however, made a show of compliance with the judgment by issuing the order dated 24th November, 1989 promoting applicant No.1 - Shri B.S.Rana as Project Officer w.e.f. 1-2-85 on notional and ad hoc basis vide order of the same date (copy Annexure A-III). This order was issued subject to the condition that the said applicant would be entitled to the arrears of pay and allowances only from the date of judgment i.e. from 9-10-88. Applicants have averred that this was followed by the order dated 15-12-89 (Annexure A-IV), arbitrarily reverting applicant No.1 on 24-11-89 itself from the post of Project Officer to which he had been nominally promoted vide Annexure A-III. The ground set out in Annexure A-IV was the abolition of the post of Project Officer. There-upon, applicants along with their colleagues preferred OA 2450/89 entitled 'B.S.Rana and others vs. Union of India & others' challenging the abolition of the post of Project Officers/ Supervisors (AE) as invalid, discriminatory, violative of Articles 14 and 16 of the Constitution. The aforesaid OA was disposed of vide judgment dated 19th December, 1989 (Annexure A-V). As per the aforesaid judgment, applicants were directed to make representations against the impugned orders to the Lt. Governor, Delhi as well as to the Secretary, Ministry of Education and Social Welfare within a period of three weeks from the date of communication of the order. Respondents were directed to consider the points raised in the representations as

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expeditiously as possible, but in no event later than 28th Feb., 1990. They were directed to pass a speaking order on the representations made by the applicants. The applicants were granted liberty to file a fresh Application in the Tribunal in case they felt aggrieved by the decision taken by the respondents. Applicants accordingly submitted representations to the Secretary, Ministry of Human Resource Development (Department of Education), Govt. of India as also to the Lt. Governor of Delhi (copy of the aforesaid representation is Annexure A-VI). The representation was rejected vide order dated 28th August, 1990 (Annexure A-VII). Applicants have impugned the aforesaid order and have sought the following reliefs:-

- (i) Tribunal may be pleased to quash the order dated 28th August, 1990 and direct that the applicants shall be retained in the Adult Education Branch in preference to their juniors selected in 1985 and 1986;
- (ii) Tribunal may be pleased to direct that if, after filling all the posts of Project Officers and Assistant Project Officers as per the approved Financial Pattern for RFL Project under the National Literacy Mission, there are not enough posts to accommodate all the existing Project Officers and Supervisors, the reversion to substantive posts should be on the basis of 'last come, first go'.

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- (iii) Restore to the applicants the 24 posts of Social Workers(AE) in non-formal education; and
- (iv) Any other relief which the Tribunal may consider just and proper in the light of the facts and circumstances of the case

4. Before setting out the grounds pleaded by the applicants, it would be both appropriate and expedient to indicate the reasoning contained in the main portion of the impugned order. After referring to DA No.2450/89, the impugned order runs as under:-

"They had also represented to the Secretary, Ministry of Human Resource Development who has informed vide letter No.F-11-19/89-AE (D.II) dated 2.3.90 that Financial Pattern approved by Govt. of India for implementation of Scheme of Adult Education under N.L.M. be followed. Any deviation in implementation of the Scheme will be the sole responsibility of the State Govts./U.T. Administration & had advised that the administration may take decision on the representations of the Project Officers and Supervisors.

It is informed that their representations have been examined. The decision to abolish the posts has been taken in view of the policy decision of the Govt. of India which has been

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approved by the State Board of Adult Education and Delhi Administration. In view of the financial implications involved it has been decided not to deviate from the financial pattern recommended by the Govt. of India which has been adopted by many other State Govts. and U.T. Administrations. It has been seen that the posts were abolished after adopting usual prescribed procedure applicable in such like cases.

Taking into account these facts, representations/Appeals made by Shri B.S. Rana & others and Shri B.S. Kalra are hereby rejected and the abolition orders which were held in abeyance in view of the Court Order shall now prevail and also the transfer orders issued on 24.11.89 will operate with immediate effect."

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5. Request of the applicants for ad-interim relief seeking stay of the operation of the impugned order and for ad-interim injunction restraining the respondents and their Subordinates/Servants to do any thing in furtherance of the orders as also for allowing the applicants to work against their respective posts of Project Officers/Supervisors/ Social Workers as an interim measure was disposed of vide order dated 4th January, 1991. The interim relief was allowed only to the extent that respondents No. 2 & 3 shall pay to the applicants remuneration as pay in the event the applicants have actually worked after joining their duties on their respective posts after 28-8-90 till 26-10-90, if not already paid.

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6. Applicants have assailed the impugned order and the abolition of posts in the Adult Education Branch on the following grounds:-

- (i) The impugned order does not deal with any of the grounds specified in para 5(A)(i)(ii) & (iii) and can in no way be called a speaking order which the respondents had been directed to pass.
- (ii) The impugned order is self contradictory as stated in ground (B) of para 5 and also contains contradictions referred to in ground (C).
- (iii) The order abolishing the posts and transferring the applicants & reverting them to their substantive posts of Teachers is discriminatory. The favourite group is allowed to continue in Adult Education Branch.
- (iv) The applicants, who were selected and appointed as Project Officers and Supervisors about 10 years back have got merged with others in the cadres of Project Officers and Supervisors. Project Officers constitute one class and Supervisors another class. Separating from two classes ^{the} personnel who had been drawn from the teaching profession would amount to a mini-classification and singling them out for hostile discrimination infringe their fundamental rights guaranteed under Articles 14 and 16(1) of the Constitution.
- (v) Applicants who were appointed mostly 10 years back have acquired special knowledge and experience in the field of organising and running the Adult Education Projects. It would be unfair and

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arbitrary to send them back to their parent department.

- (vi) The argument used by the Additional Director in getting the posts abolished that it would be cheaper to recruit volunteers on honorarium or fixed salary of Rs. 1500/- is against the dictum of the Supreme Court in Union of India vs. M.P. Singh and others¹. The abolition of the posts is only a ruse and a pretence to get rid of the former Teachers.
- (vii) The existence of posts to man the Scheme of Rural Functional Literacy Project, National Literacy Mission are built in the Scheme itself and the right of creation and/or abolition of the posts rests solely with the Central Govt. and not with the Union Territory or the State Governments.
- (viii) Applicants have been pronounced as eligible vide decision of the Tribunal dated 19-10-88 (Annexure A-II). One of the eligible categories cannot be entirely done away with except with the abolition of the whole Scheme.
- (ix) Respondents No. 2 and 3 had asked for the options of the applicants for their willingness to be absorbed in the Adult Education Department meaning thereby that Adult Education Scheme was to be created. It would thus only be logical to send the junior-most people back to their cadre.
- (x) By eliminating one complete feeder cadre and not resorting to direct recruitment of 80% envisaged

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in the Recruitment Rules, the benefit of manning all available posts is being given only to one particularly highly favoured section/group which smacks of utter favouritism and mala fide.

- (xi) Respondents have promoted and retained as Project Officers ineligible persons as well as ineligible Supervisors specified at Sr. Nos 7 to 14 of office order No. F-13(5)(3)/89/AE dated 24-11-89, all of whom but one are Matriculates. The posts of Supervisors and Project Officers even after abolition are being held by a group of junior favourites and sub-standard officials from Social Education Branch.

7. Respondents have resisted the Application, inter-alia, on the grounds that Application is mis-conceived; the same is not maintainable. Articles 14 and 16 do not forbid creation or abolition of different cadres in the Govt. Service. It is entirely a matter of State and Policy to decide whether to have different cadres or one integrated cadre in the services. The policy decision for winding up of a cadre cannot be challenged in the Tribunal and the same is not open to the judicial scrutiny. The power to create and abolish posts and administer the Rural Functional Literacy Project (RFLP) vests with the State Govt. which has got full powers to create, abolish and administer the Project. The Ministry has prescribed honorarium for the Project Officers, Preraks & Instructors according to their job requirements. In Adult Education

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as per the policy documents, the illiterates are to be made functionally literate and acquire proficiency as given in Annexure RA/4. By having PGT/TGT the administration had to spend a sum of Rs. 71.38 extra for which CAG has raised objection and the matter has gone to the Public Accounts Committee. The background of the Adult Education Programme in general and that of RFLP in particular together with the reasons thereof behind various provisions that underline the character and nature of duties and responsibilities of the Project and its functionaries are as under:-

- (a) High incidence of illiteracy, particularly among women, SC/ST and other weaker sections of the society was taken as a constraint in the overall development of the social, economic and political life of the nation. In the meantime, subsequent to education being placed in the Concurrent List as entry 23 of item 3 of the VII Schedule, Adult Education Programme was launched at all India level on 2nd October, 1978 as a palliative to the bane of illiteracy in the age group of 15-35 which constitutes the most productive age group vital to the success of individual national development.
- (b) The programme is spread all over the country, particularly in the remote village sites. Illiteracy rate being very high among the women, SC&ST target groups, they constitute the

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clientele group. Learners are otherwise mature and sensible persons whose cognitive ability is much different from the young children. They need to be told about the developmental aspects and awareness about the cause factors leading to their deprivation exploitation. They are to be aroused and awakened about the need for relevance of literacy and made to learn issues much of direct interest to them. This sort of education is possible only by way of a crash programme that lay emphasis on functionality and awareness aspects of education. This is to be time bound lest the demographic constraints, should centralise the benefits. The functionaries of the programme were, therefore, to be activists with social commitment.

(c) The programme had to be cost effective in the light of overall economic situation in the nation. There have accordingly been provisions for consolidated pay/honorarium, depending on the duration of involvement in the task.

(d) Education has, largely been a State subject. Keeping all this in view, the task of implementation including the power to lay down the norms and procedure in the selection, training and placement process has been well within the compliance of the State Government/UT Administration.

(e) The Scheme of Rural Functional Literacy Project is a centre-based programme. Each centre is supposed to enrol 30 adult learners. The centre

location is to be decided keeping in view the convenience of the learners, and particularly women and those belonging to the SC&ST community. The learning hours were 350 hours during the first phase and 150 hours during the second phase which worked out to be one and half hours a day on day-to-day basis. The duration has subsequently been reduced to 200 hours with the introduction of IPCL (Improved Pace and Content of Learning) technique. There is nothing hard and fast about the timing since the learners and the volunteer instructors have to take care of mutual convenience. The Scheme provides for honorarium of Rs. 100/- P.M. to the volunteer instructor."

8. After stating that the representations submitted by the applicants had been rejected by the Ministry of HRD as also by the Lt. Governor of Delhi, respondents have averred that the impugned order has been issued by the Special Secretary as per directions of the Lt. Governor which is the highest authority of Delhi Administration. The impugned orders were issued after due careful consideration by the Delhi Administration. All the applicants have not put in 10 years of service in their parent cadre and consequent upon their transfer to their substantive posts, they will be financially and otherwise benefited, as they will be getting teaching Allowance of Rs. 100/- P.M., medical allowance of Rs. 15/- PM, Selection Grade and age of retirement is 60 years. In view of the modification of the Scheme, there exists no post of the Grade in which the applicants were earlier working; the

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Schools where the applicants are legally supposed to join are suffering a lot because of non-compliance with the order. This is also having a financial burden on the State exchequer. The averments made in clauses (ii) and (iii) of paragraph 5(A) about the impugned order being non-speaking are stated to have been quoted out of context. In respect of the impugned order being contrary and containing contradictions, respondents' plea is that the allegation is wrong and the order has been wrongly interpreted. After stating that the Recruitment Rules were amended in view of the directions of the Tribunal in OA 53/86, respondents have referred to the order dated 26-10-90. It is further stated that all the posts have been abolished and the Project Officers/Supervisors/UDCs/Paons etc. have been sent to their parent cadres. The posts have been abolished as per policy decision of the Govt.. The same has only been followed by the Additional Director and has been approved by the State Board of Adult Education and the Administrator of Delhi. The new appointments have been made according to the pattern after open advertisement in the Press. Applicants cannot claim prior right for appointment in ^{the} School Education Cadre and the applicants are not entitled to any relief.

9. We have heard the exhaustive and fairly lengthy arguments addressed by the learned counsel for the parties and have also perused the relevant records produced by the respondents. We have also heard the arguments addressed by the interveners.

10. The first question which arises for consideration is as to whether the impugned order dated 28th August, 1990 (Annexure A-VII) is a speaking order which the respondents were directed to pass vide judgment dated 19th December, 1989. It would be pertinent to state that the grounds set out in para 2 of the impugned order for rejecting the representations made by the applicants are:-

- (i) The decision to abolish the posts has been taken in view of the policy decision of the Govt. of India which has been approved by the State Board of Adult Education and Delhi Administration;
- (ii) In view of the financial implications involved, it has been decided not to deviate from the financial pattern recommended by the Govt. of India which has been adopted by many other State Govts. and U.T. Administrations; and
- (iii) The posts were abolished after adopting usual prescribed procedure applicable in such like cases.

11. In view of the aforesaid reasons, it is difficult to subscribe to the view that the impugned order is an unreasoned order or is a non-speaking order. As to whether or not the aforesaid reasons are valid or not is, however, an altogether a different question. Any infirmity or invalidity assuming there is any in the aforesaid reasons cannot render the reasons non-existent. During the course of arguments on this ground, the learned counsel for the applicants urged that the applicants had, inter-alia, put-forth the following grounds:-

- (a) The petitioners are faithfully, sincerely and diligently performing the duties of the posts to which they

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were appointed and earned for the Union Territory of Delhi a higher rank than rest of all the States, except Kerala. They had also collected and given to the department cash prize of approximately 19 lacs in State competitions;

- (b) As per Policy statement at pages 23-24 of the National Adult Education Programme issued by the Ministry of Education and Social Welfare, it has been stated that as far as possible, it would be desirable to ensure that persons co-opted into Adult Education System continue to grow and progress within the System rather than being pushed out of it;
- (c) Applicants were duly selected and appointed as also trained in the profession of Adult Education acquiring experience in the field of over a decade are being mala fide singled out. As per para 9(d) of the Revised Scheme issued vide Govt. of India, (Deptt. of Education) letter No. F.7-1/87-AE(D-I) dated 6-4-88, persons once selected for the Adult Education Programme shall normally not be withdrawn unless there are exceptional administrative exigencies. Persons who acquire specialised knowledge and administer evidence of their interest in and commitment to the programme and opportunities for advancement in career by way of promotion should be provided to such persons within the Adult Education field.

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12. We have perused the original notings dealing with the representations submitted by the applicants. The aforesaid notings deal with the representations in a fairly elaborate fashion and have dealt with several points raised by the applicants. Mere omission to state in the impugned order the grounds referred to hereinabove would not make the impugned order a non-speaking order.

The decision for abolishing the posts including the extent of judicial intervention into the validity of such a question are, however, distinct questions. In view of the foregoing, the statement of the learned counsel for the applicants that the impugned order is a non-speaking order is hereby repelled.

13. The next ground stressed by the learned counsel for the applicants was that the decision to abolish the posts of Project Officers and Supervisors and the entire Education Branch is mala fide. The respondents have raised a threshold objection about the jurisdiction of the Tribunal to go into the validity of the act of abolition of certain posts which according to the respondents is a matter falling within the policy domain.

In view of the aforesaid objection, it would be appropriate to deal with the question of province of the Tribunal.

The learned counsel for the applicants commenced his arguments on this point by fairly conceding that applicants do not deny the right of the Govt. to abolish certain posts. The learned counsel, however, added that if a decision to abolish a post or posts is motivated by grounds other than administrative grounds or if the power is misused for attaining collateral purposes, the exercise of power is

bad. Applicants had also made some-what similar statement in paragraph 16 of Annexure A-6. Strong reliance was placed by the learned counsel for the applicants on the decision rendered by a Constitution Bench of the Apex Court in 'M.Ramanatha Pillai vs. The State of Kerala & another'². Our attention was specifically invited to the following observations made in column 'H' at page 522:-

"The post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, malafide or as a mask of some penal action within the meaning of Article 311(2)."

14. The learned counsel for the applicants basing himself upon the above extracted observations strongly urged that in the instant case the action has been taken malafide. The action to abolish the posts in question has been taken as a result of prejudice and bias which respondent No.3 had been nursing against the applicants. The same is also arbitrary and is a cloak/device for repatriating the applicants. In columns 'D' & 'E' at page 520, Supreme Court has ruled in 'M.Ramanatha Pillai' (supra) that the power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and

administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public. It has also been held by the Apex Court that when the exigencies of administration require alterations in the establishment and creation of a new department, the same is a governmental function and a policy decision and that the right to hold a post comes to end on the abolition of the post which a Government servant holds. In State of Haryana vs. Des Raj Sangar and another³, following the dictum in 'M.Ramanatha Pillai'(supra), it was ruled as under:-

"Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the court. It is not open to the court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of a employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside."

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15. On the basis of the foregoing, it can be safely stated that the question of retention or abolition of certain posts is a question to be decided by the Government as a matter of policy keeping in view the relevant factors. The Tribunal's jurisdiction to question a decision to abolish a post is necessarily restricted. Tribunal cannot interfere if the decision was taken in good faith. The Tribunal can, however, interfere if the decision was taken malafide or arbitrarily or is a mere cloak or device to terminate the services of an employee. The threshold objection raised by the respondents that the Tribunal cannot at all question the decision to abolish the posts in question is ^{thus} unsustainable. We further hold that the Tribunal has jurisdiction/province to question the decision abolishing the posts on the limited grounds referred to hereinabove.

16. Cognizant of the legal position, the learned counsel for the applicants strenuously urged that the decision to abolish the posts in this case has been taken malafide on account of the prejudice and bias of respondent No.3 against the applicants. According to the learned counsel, respondent No.3 wanted to teach the applicants a lesson for their having knocked the doors of the Tribunal. He had several favourites in the Social Education Branch, whose interest he wanted to promote. Respondent No.3 has been able to influence the other officers. It was further submitted by the learned counsel that the decision to abolish the posts is a mere cloak or pretence to get rid of the applicants. In support of the foregoing, the learned counsel for the applicants made the following points:-

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- (a) Respondent No.3 got biased and prejudiced against the applicants as the applicants had assailed the Rules to the extent to which the Supervisors drawn from the School cadre were ignored. Applicants' claim was upheld by the Tribunal in the judgment dated 19-10-88 (Annexure A-II). The Tribunal set aside the Recruitment Rules to the aforesaid extent directing the respondents to include the Supervisors in the Adult Education Wing with five years of experience as first of the eligible categories for promotions. Respondent No.3 wanted to punish the applicants for seeking redress of their legitimate grievance from the Tribunal.
- (b) Pressing into service Annexure A-II, the learned counsel stated that the respondents had also been directed to convene a Review D.P.C. to consider Supervisors (Adult Education) with five years of experience as on 1-2-85. Respondents, including respondent No.3 did not consider the applicants, save applicant No.1 - Sh. B.S. Rana notwithstanding the clear cut directions of the Tribunal. In the case of Shri Rana only a pretence for show of compliance was made by making paper promotion order which had also been rescinded.
- (c) Respondent No.3 wanted to make room for his favourites in the Social Education Branch, some of whom were even not eligible to be appointed as Supervisors.
- (d) Juniors to the applicants have been retained reverting the seniors.

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(e) The applicants are far more qualified and have to their credit rich experience. The object of the Scheme would be subserved by retaining such experienced and qualified persons. Respondent No.3, however, appointed lesser qualified persons and hijacked the Scheme.

(f) The public interest and administrative exigencies have not been mentioned in the order.

(g) Posts had been sanctioned by the Central Govt. and had also been continued, but respondent No.3 was bent upon easing out the applicants by abolishing the whole feeder category in the Adult Education Branch.

(h) Another point made by the learned counsel for the applicants was that respondent No.3 misguided the Chief Secretary and obtained approval subsequently.

17. The learned counsel for the respondents controverted the aforesaid grounds by submitting that the decision was taken in good faith in pursuance of the Scheme approved by the Govt. of India and with a view to economising, adding that a very high expenditure was being incurred on manning the posts by engaging fully employed Teachers. It was further stated by the learned counsel for the respondents that the allegations of malafide and bias against respondent No.3 have not been substantiated. The same are not well-founded and that the interest of the student community as also of the applicants, who have better prospects and avenues of promotion in the Teaching Department, require that applicants should go back to their Schools. Another

point urged by the learned counsel for the respondents was that applicants had had far longer experience in the Schools as compared to the experience in the Adult Education Branch and that it would be economical and in the public interest to get the work carried out by the persons on the basis of honoraria. The learned counsel termed the allegation about obtaining subsequent approval of the Chief Secretary as baseless adding that the matter had been considered in depth by the competent authorities including the Special Secretary, Education.

18. It is axiomatic that allegations of malafide are easier made than substantiated and that there should be adequate and cogent material to substantiate the allegations of malafide. The points referred to hereinabove in support of the plea for malice and lack of good faith etc. do not seem to be adequate to substantiate the allegations of malafide or that the order abolishing the posts had been passed as a device or pretence to ease out the applicants. In the absence of adequate material, it is difficult to fall in line with the submission of the learned counsel for the applicants that respondent No.3 was able to misguide the senior officers concerned including the Chief Secretary or that that the approval of the Chief Secretary was obtained subsequently. As regards the plea that the respondents have hijacked the Scheme by retaining less qualified persons, suffice it to point out that the question as to how and by whom a particular Scheme is to be got implemented/carried out is for the executive authority

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to decide in the exercise of their policy domain.

It is not for the Tribunal to question the wisdom of the administration in this behalf. The retention of junior persons particularly in view of the judgment of the Tribunal and non-consideration of such of the applicants as were ripe for consideration in terms of judgment, Annexure A-II, is no doubt questionable. This by itself or coupled with retention of some of the lesser qualified persons does not, however, substantiate the plea of malafide etc.

19. We have perused the relevant notings pertaining to the allegations of abolition of the posts. The note dated 3rd October, 1980 recorded by the Director of Education including the portion pertaining to continuance of the then PSTs/TSTs may pertinently be reproduced. It reads thus:

"The matter was also discussed in the chamber of C.S. today. The matter has been further examined in detail in the foregoing notes on pages 5/N-8/N ante. In view of the judgment of the Central Administrative Tribunal, which is at F/A, the court has ordered that the applicants (the existing P.G.Ts/T.G.Ts) who are drawn from the Schools to the Adult Education Deptt., may be allowed to continue in the posts, which are presently being occupied by them till such time these posts are abolished. In view of this order of the Court, the existing incumbents could not be transferred back to the schools nor the other P.G.Ts/T.G.Ts can be posted in their place from the Schools.

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As already pointed out in the notes of the Adult Education Deptt., the Govt. of India has also taken a policy decision for all over the country for having the Project Officers with fixed salary of Rs. 1500/- PM. Our humble submission is that if we appoint P.Os at a fixed salary of Rs. 1500/- PM we could get a large number of applicants out of the category of the retired or unemployed qualified persons, who could devote sufficient time for implementation of the programme and the additional financial burden will also not be put on the Govt. Besides it will be easier to replace these persons if their work is not found satisfactory. Thirdly, we shall be in line with the pattern as applicable all over the country and as approved by the Govt. of India, vide his D.O. on page 49/C in the linked file No.13-23(3)/80-AE at F/N has also reiterated the stand of the Govt. of India while addressing the letters to all the States Secretaries of Education.

If the Chief Secy. agrees, we may abolish the posts of Project Officers and Supervisors which are at present in the scale of P.G.Ts/T.G.Ts respectively. We can transfer these present incumbents back to their Schools and we could recruit motivated and qualified persons from out of the open market on a fixed salary of Rs. 1500/- (Project Officers) and on Rs. 550/- PM (Motivators)

The Chief Secretary asked for discussion. After discussing

EXAMINER

Central Board of Secondary Education

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the Chief Secretary approved the orders of abolishing the posts of Project Officers and Supervisors and of reverting the P.G.Ts/T.G.Ts back to their Schools etc. The proposal was also submitted to the Finance Department as also to the Law Department. The matter was also placed before the Member(SIU) and the Chairman(SIU). As per note dated 21st November, 1989, the Finance Secretary concurred in the proposal for abolition of the following 120 posts:-

Project Officers	-	20
Supervisors	-	60
UDCs	-	20
Peons	-	20

and to the creation of 20 posts of Project Officers, 20 posts of Office Asstts., 20 posts of Peons and 60 posts of Supervisors on fixed pay as under:-

Project Officer	- 20	Fixed pay Rs. 1500/-PM
Office Asstts.	- 20	Fixed pay Rs. 1300/-PM
Peons	- 20	Fixed pay Rs. 300/- PM.
Supervisors	- 60	Fixed pay Rs. 4000/- . for supervision of 10 Centres.

The sanction for the continuance of 2000 Part-time Instructors was also granted valid upto 26-2-90 with the rider that the permission of the Finance Deptt. to continue the engagement of 2000 Part-time Instructors on fixed honorarium of Rs. 100/- PM does not amount to and cannot be construed to mean the creation of such posts.

20. From the foregoing, it is evident that the posts in question were abolished not on account of

malafide or merely to get rid of the applicants but the same had been made for reasons which cannot be said to be extraneous or arbitrary. It may be that the respondents' conduct in not faithfully complying with the judgment of the Tribunal dated 19.10.88 is blameworthy. This and the other grounds would not, however, render the order of abolition of posts of Project Officers/Supervisors invalid on the alleged ground of its being malafide, arbitrary etc.

21. Another attack against the order of abolition of the posts launched by the learned counsel for the applicants was that the Chief Secretary is not ^{the} competent authority to abolish the posts and that the posts had to be continued under the Scheme, the U.T. Administration could not on their own abolish the posts. The learned counsel for the respondents met this attack on the reasoning that the posts in question had been created by the Finance Department. The Chief Secy. to whom the powers have been delegated by the Lt. Governor, is fully competent to abolish the posts in consultation with the Finance Department. We are inclined to agree with the submission of the learned counsel for the respondents. More so, as the official acts are presumed to have been regularly done. It is a fit case for drawing the aforesaid presumption envisaged by Section 114(e) of the Indian Evidence Act.

22. It was next urged by the learned counsel for the applicants that after the Tribunal had held vide Annexure A-II that the Supervisors in the Adult Education Branch with five years should be included as the first of the eligible categories for promotion to the post of Project Officer and had also directed that a Review D.P.C. should be

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held to consider the Supervisors with the aforesaid experience as on 1.2.85 when respondents No. 3 and 6 therein were promoted with the further direction that if some of them are included in the panel within the number of vacancies of Project Officers available on that date, they should be given notional promotion as Project Officers till they are retained in the Adult Education Wing, it was obligatory on the part of the respondents to consider all the eligible Supervisors particularly, when the Recruitment Rules had also been amended. The learned counsel added that the action of the respondents in confining consideration only to Shri B.S. Rana who too had been reverted from the date he was promoted and that too without payment of arrears of higher pay and allowances as directed by the Tribunal is plainly indefensible. There would appear to be substance in the foregoing submission put forward by the learned counsel for the applicants. This is not to say that Applicants are in contempt of the Tribunal. CCP No. 95/89 filed by Shri B.S. Rana and another for initiating contempt proceedings against the respondents on the ground that they have not complied with the final order made in OA 53/86 had been disposed of vide judgment dated 23.4.90 (Annexure A/2 in OA 2134/90). Following is the operative portion of the judgment in the said CCP set out in paragraph 6 thereof:-

"It follows from the discussion above, that there is no scope for initiating proceedings against the respondents. While dismissing the petition and discharging notice, we would make it clear that this order shall not preclude the petitioners, if they are

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aggrieved by the adhoc promotion granted to the first petitioner or denial of promotion to the others, to challenge the same in appropriate proceedings".

23. It was next argued by the learned counsel for the applicants that as the respondents are continuing certain employees on the posts of Project Officer and Supervisors and some of whom are not only ineligible but also junior to the applicants, such of the applicants as are senior should have been retained on the basis of the principle of 'last come, first go'. According to the learned counsel repatriation of the applicants without following this principle infringes their right guaranteed by Articles 14 and 16(1) of the Constitution.

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/ The legal principle enunciated by the learned counsel for the applicants would seem to be correct. We may, however, add that apart from the aforesaid legal principle urged by the learned counsel, the applicants as such have no right to continue in the posts of Project Officers/Supervisors after these posts had been abolished. The parties had also joined the issue on the point as to whether certain persons are being retained as Project Officers/Supervisors in the regular scale subsequent to the making of the impugned order abolishing the aforesaid posts. There were lot of allegations and counter allegations. In the absence of convincing material, we are not in a position to give clear findings on the number of posts of Project Officers/Supervisors in the regular scale as distinguished from the Project Officers/Supervisors on payment of honoraria which may have been continued as also on the

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point of juniors having been retained against such posts in the regular scale. If, however, such posts are being continued despite abolition and persons junior to the applicants on the basis of length of service in the two Branches are being retained in regular scale, applicants' claim to be retained in preference to their juniors till the posts are continued would seem to be well founded. Another moot point ^{was} between the parties/as to whether the abolition of the posts is in conformity with para 4.5. of the Scheme of R.F.L.P. (Annexure A/VIII) as also about the true import and applicability of the same. According to the learned counsel for the respondents, the administration of the Scheme including the power to create/abolish posts vests with the State Govt./U.Ts, whereas, the learned counsel for the applicants' stand was that it is only the administration of the sanctioned amount in accordance with the prescribed norms of expenditure in the financial pattern which is the concern of the State Govt. and that the stipulation, "in deviation from the norms with regard to the expenditure shall be the sole responsibility of the State Govt./U.Ts does not empower the State/U.Ts to create/abolish posts". This para per-se ^{tion} would not seem to confer powers of crea/ or abolition of posts on the State Govt./U.T. Administration. That they have, otherwise such a power, is a different question.

24. In view of the foregoing, OA 1822/90 in so far as it seeks to challenge the impugned order dated 28.8.90 (Annexure A/VII), merits rejection. Regarding the Applicants' claim on the basis of the appropriate directions principle of 'last come first go' would, however, be made in the operative portion of this judgment.

25. We may now refer to OA 2134/90 filed by Applicant No. 1 in the main OA. seeking the following material reliefs:-

- i) Quash the order dated 15.12.89 (Annexure 'AA') as arbitrary, illegal and violative of Fundamental Rights of the applicant under Articles 14 and 16 of the Constitution and also modify the order dated 24.11.89 (Annexure 'A') by making it read the promotion effective from 1.2.85 on regular basis with arrears etc. eligible to be paid from the date of promotion i.e. 1.2.85 and not from the date of judgment.
- ii) Consequent to relief at (i), clear directions may please be issued to respondents to make payment of all arrears of pay and allowances etc. up-to-date with 24% interest till the date of realisation.

As per order Annexure-A, dated 24.11.89, Applicant was promoted as Project Officers on purely adhoc basis subject to the condition that he would be entitled to the arrears of pay and allowances only from the date of judgment i.e. 19.10.88. Vide impugned order dated 15.12.89 (Annexure 'AA'), Applicant was reverted to his original post w.e.f. 24.11.89 (F.N) consequent upon the abolition of the post of Project Officer. Prior to filing this OA, applicant had also filed CCP No. 95/89 which had been disposed of vide judgment dated 23.4.90 (Annexure A/2). So far as relief (i) claimed vide para 8 of this OA is concerned, the order dated 15.12.89 cannot be faulted with for the reason that we have already held that the order dated 28.8.90 (Annexure A/VII)

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impugned in OA 1822/90 cannot be invalidated. The logical and inevitable consequence of the order of abolition of post of Project Officer/Supervisor is that the incumbents thereof had to be reverted. The challenge to the order dated 15.12.89 (Annexure 'AA' in this OA) cannot, thus, be sustained and the same is hereby repelled.

26. Turning to portion of Clause (i) of para 8 for modifying the order dated 24.11.89 (Annexure-A) by making it read the promotion effective from 1.2.85 on regular basis with arrears etc. and not from the date of the judgment, it may be pointed out that the aforesaid order has been made for complying with the judgment dated 19.10.88 rendered in OA 53/86. There is nothing in this judgment imposing an obligation on the respondents to grant promotion to the applicant on regular basis w.e.f. 1.2.85. The Respondents cannot, thus, be directed to grant regular promotion to the applicant w.e.f. 1.2.85 merely on the basis of the aforesaid judgment. It is, however, ^a separate question as to whether the applicant is entitled to be promoted on regular basis for the reason that the respondents had promoted the ^{junior} officials ^{Social} working in the Education Branch w.e.f. 1.2.85 on regular basis. In this connection, the learned counsel for the applicants invited our attention to the order dated 1.2.85 (Annexure A/3). According to the learned counsel for the applicants, the officials specified therein are ^a pretty junior to the applicant as also some of them were ineligible. The

learned counsel added that as the applicant was in the first of the eligible categories for promotion, he was entitled to be promoted on regular basis w.e.f. 1.2.85. This contention of the learned counsel for the applicant has a force all its own. In case the officials promoted vide Annexure A/3 are junior to the applicant as would appear to be the case, the applicant ^{would be} entitled to be promoted if found suitable by the DPC w.e.f. 1.2.85. In case the applicant is found suitable to be promoted by the DPC on regular basis, he would also be entitled to consequential benefits. Relief (ii) would be taken care of in the operative portion of the judgment.

27. Applicant in DA 170/87 is Applicant No. 35 in the DA viz. DA 1822/90. The grievance sought to be redressed by the applicant in this DA pertains to order dated 30.1.87. As per the aforesaid order, applicant was surrendered and relieved of his duties with immediate effect with the direction to report for duty to the Addl. Director of Education for his posting as PGT. Applicant was also asked to hand over complete charge of the office of Hari Nagar Project to Mr. B.R. Kumar, Project Officer who was directed to look after the dual duties of two Projects till further orders. The Applicant has prayed for setting aside the aforesaid order. He has also prayed for restraining the Director of Education and Addl. Director of Delhi Education - Respondents, from surrendering him from Adult Education wing to teacher cadre. He has also sought a direction to release stagnation increments as also fixation of his pay in the new pay scales announced by the Fourth Pay Commission and to allow him to continue Education to serve as Project Officer in the Adult/Department.

Pursuant to a request for interim relief, sought by the applicant, an interim stay against the impugned order was granted vide order dated 17.2.87. The aforesaid order had been continued from time to time. As per orders dated 24.1.91, respondents were directed to allow the applicant to continue as Project Officer till the next date and also release the salary for the month of August onwards. Vide orders dated 23.4.91, made in MP 3259/90, the orders dated 24.1.91, were repeated directing the respondents to pay emoluments of the applicant from 26.10.90 till 31.1.91. This order was made subject to the rider that the payment as ordered, may be made on provisional basis, subject to adjustment in the final order in the OAs. As per orders dated 2.8.91 made in MP 1565/91, respondents were directed to pay the pay and allowances of the post of Project Officer, Hari Nagar to the applicant from 1.2.1991 till the disposal of the OA with and in any case not later than 15 days from the receipt of copy of the aforesaid order. Still another order was made in MP 2413/91 on 25.9.91 regarding the payment of arrears of pay and allowances to the applicant.

20. So far as the claim of the applicant to continue in the post of Project Officer subsequent to the abolition of the post of Project Officer/Supervisor vide order dated 28.8.90 (Annexure A/VII in OA 1822/90) is concerned, the same cannot be sustained as the challenge to the order abolishing the post of Project Officer/Supervisor made in OA 1822/90 has not been upheld. In view of the aforesaid, respondents will be free to repatriate the applicant subject to the observations/directions

which will be made in the operative portion of the judgment. 63 49

29. Turning to the claim of the applicant for payment of salary and allowances as the applicant is being paid salary and allowances on the basis of interim order, the only grievance which may survive would be non payment of the pay and allowances till the decision of this Application. Needless to add that the Applicant would also be entitled to short fall, if any, in the pay and allowances. As regards the stagnation increments, the claim of the applicant cannot be sustained in that applicant has been ^{on} drawing the pay of the post of Project Officer/which he has been directed to be continued. It is scarcely necessary to add that upon his repatriation to the parent department, applicant's claim for ^{in that department} stagnation increments/would remain alive for consideration in accordance with law.

30. For all what has been said and discussed hereinabove, OA 1822/90 insofar as it seeks to get quashed the impugned order dated 28th August, 1990 (Annexure A-VII) merits rejection and the same is hereby rejected. The challenge of the applicants to the order of their repatriation and to be retained in the Adult Education Branch on that count is held to be unsustainable. If, however, the respondents have continued certain employees on the posts of Project Officers and Supervisors who are junior to the applicants on the basis of their seniority against the posts of Project Officers/Supervisors in the regular scale, despite abolition

of the posts, the respondents shall continue such of the applicants as are senior to the retained officials till the juniors are retained. In such a case, the applicants who may be retained would also be entitled to pay and allowances for the period in question in accordance with law and the applicable instructions. Respondents are also directed to consider the eligible Supervisors in the Adult Education Branch for promotion to the posts of Project Officers in conformity with the judgment dated 19-10-33(Annexure A-II). In case the DPC finds the Supervisors to be considered, suitable for promotion to the posts of Project Officers, the orders of promotion of such officers will be made. They shall also be entitled to consequential benefits in accordance with law. This direction will not, however, impinge on the validity of orders of repatriation of the applicants to their parent department.

MP 3246/90:

No further directions on this MP need be issued in view of the final orders made hereinabove.

31. As regards OA 2134/90, applicant's prayer for quashing the order dated 15-12-89, Annexure 'AA' is hereby disallowed. In case any officials junior to the applicant - Sh. B.S.Rana, working in the Social Education Branch have been promoted on regular basis w.e.f. 1-2-85, respondents shall consider the applicant for promotion to the post of Project Officer with effect from 1-2-85. In case the applicant is found suitable by the DPC to be promoted on regular basis, he would also be entitled to consequential benefits in accordance with law/ and the applicable instructions. In the event of applicant's being found suitable

for promotion and entitled to the consequential benefits in accordance with law and the applicable instructions, the same shall be paid to him within a period of three months from the date of receipt of copy of this judgment, failing which, applicant would also be entitled to interest at the rate of 12% per annum on the amount found due to him from the date of the Application till the date of actual payment.

MP 3259/90:

No further directions on this MP
for removing the super-imposed lock or to restrain the respondents and their subordinates from breaking open the locks and doors of the store etc. need be issued. As regards the salary and arrears, requisite directions have already been given.
MP stands disposed of accordingly.

32. The prayer of the applicant - Sh. Bhim Sen Kalra in OA 170/87 for quashing the order dated 30th January, 1987 is hereby rejected. So also the prayer of the applicant to release stagnation increments. As the applicant had been directed to be continued on the post of Project Officer, he is held entitled to the pay and allowances of the post of Project Officer till the date of the decision of this Application. It is scarcely necessary to add that applicant would be entitled to be paid only the difference in the pay and allowances after adjusting the payments which may have already been made to the applicant in compliance with the orders issued from time to time. The interim order on the basis of which the applicant was directed to ^{be} continued is hereby

vacated. The payment of the amount found due to the applicant in this case be made within a period of three months from the date of receipt of copy of this judgment, failing which, applicant would be entitled to the interest at the rate of 12% per annum on the amount found due to him for the period ending the date of actual payment. Applicant's claim for stagnation increments in his parent department on his repatriation to that department would, however, remain alive for decision in accordance with law and the applicable instructions.

MP 129/91:

In view of the final order made, it is not necessary to issue directions by way of mandamus sought as per this MP. As regards the prayer for initiating contempt of court proceedings, it would be up to the applicant to file a proper CCP, if he feels so advised. It would be both inappropriate and inexpedient to grant the prayer for initiating contempt of court proceedings on the basis of this MP. MP stands disposed of accordingly.

33. Respondents shall comply with the directions contained hereinabove within a period of three months from the date of receipt of copy of this judgment. The captioned OAs and the aforesaid MPs stand disposed of accordingly. No costs.

(I.K. Rasgotra)

(B.S. Sekhon)
VC.

Pronounced by me today in the open Court.

Date...

27/7/93

(I.K. RASGOTRA)
MEMBER (A)
6.3.1992