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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 155,268 & 269/91
Cuttack, this the 4th day of May, 1998

Sudipta Das and others Applicants

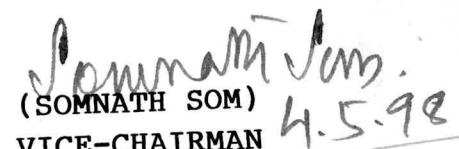
Vrs.

Director General,
Council of Scientific &
Industrial Research and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K.AGRAWAL) 4/5/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 4.5.98
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER (JUDICIAL)

In OA 155/91

Sudipta Das,
aged about 44 years
s/o Rabindra Nath Das
now residing at 113/B, Suryanagar,
Unit-7, Bhubaneswar,
Pin-751 003

..... Applicant

In OA 268/91

A.Shree
s/o A. Atchayya
aged about 41 years
At-Tenali,
Andhra Pradesh,
working as Scientist-C,
R.R.L.,
Bhubaneswar-751 013

In OA 269/91

Dr.K.L.Narayana,
aged about 47 years
s/o late K.Simhagiri,
At/PO-Bonthalakenduru,
Srikakulam.A.P.

Advocates for applicants - M/s M.R.Panda,
S.P.Sahu,
S.K.Sahu &
D.K.Pani.

Vrs.

1. Director General,
Council of Scientific & Industrial Research,
New Delhi
Anusandhan Bhawan,
Rafi Marg,
New Delhi.

2. Director,
Regional Research Laboratory,
At/PO/PS-Bhubaneswar, Dist.PuriRespondents

Advocates for respondents - Mr.Aswini K.Misra

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These three cases have been heard together. The petitioners in these three cases are similarly placed. Their grievance is also the same and the reliefs asked for by them are also identical. The learned counsels of both sides have argued these three matters jointly and one order will cover these three cases. For the purpose of adjudicating the dispute, the facts of OA No.269/91 are being referred to, as has been done by the learned lawyer for the petitioners.

2. In this case, the petitioner has come up under Section 19 of Administrative Tribunals Act, 1985, praying for a direction to the respondents not to enforce Merit And Normal Assessment Scheme (MANAS), particularly paragraph 6.4.10. There is also a prayer for a declaration that provision in 1.2.1 and the Table for Group III and Group IV are illegal. The last prayer is for a direction for restoring the rights of seniority and rights to be considered for promotion notwithstanding the provisions of MANAS. The petitioner's case is that after a brilliant academic record he joined the Regional Research Laboratory (RRL),

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Bhubaneswar, on 7.2.1975 after completion of M.Sc. (Tech.) as Senior Scientific Assistant and he was awarded Ph.D. Degree from Utkal University in 1983. The applicant made significant contribution to the conservation of energy and the device and the process developed by him have been adopted by Hindustan Copper Limited and Tata Iron & Steel Co., Jamshedpur. In recognition of his contribution, National Research & Development Council conferred on him an award in 1987. The petitioner also got the prestigious "Shanti Swarup Bhatnagar Award" for young scientists in 1989. In spite of his above record and achievement, he was superseded by many scientists who have not made contribution comparable to the applicant and thus his rights have been violated. It is further submitted that Council of Scientific & Industrial Research (CSIR) has a research institution system under it and Regional Research Laboratory (RRL), Bhubaneswar, is one such institution. CSIR has been established as a Society registered under the Societies Registration Act, 1886, having its own memorandum and articles of association under which bye-laws, rules and regulations have been framed and enforced from time to time. CSIR discharging public functions as enumerated in the memorandum of association and being a public body comes within the ambit of State. The petitioner has pointed out that Bye-law 11 of CSIR provides that recruitment and promotion in respect of all categories of

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staff of the Society shall be regulated in accordance with the detailed schemes formulated by Governing Body of CSIR.

Bye-law 12 lays down that Central Civil Services (Classification, Control & Appeal) Rules and Central Civil Services (Conduct) Rules shall apply to the officers and establishments in the service of the Society subject to certain modifications indicated in the Bye-laws. Bye-law 14 lays down that scales of pay applicable to all the employees of the Society shall not be in excess of those prescribed by Government of India for similar personnel except in the case of specialists. Bye-law 15 provides that in regard to all matters concerning service conditions of employees of the Society, the Fundamental and Supplementary Rules framed by Government of India and such other rules and orders issued by Government of India shall apply to the extent applicable to the employees of the Society. It is also directed under this bye-law that notwithstanding anything contained in this Bye-law, the Governing Body shall have the power to relax the requirement of any rule to such extent and subject to such conditions as it may consider necessary. From the above it has been argued that CSIR adopts the statutory rules and executive instructions relating to conditions of service as have been laid down by the Union Government from time to time. Rule making powers of CSIR are subject to the provisions of the Constitution, Articles of Association

and statutory rules adopted. According to the rules applicable to the Central Government, principle for guidance and computing seniority is the date of appointment of a person in the concerned group. Several other conditions of service are inter-linked with the question of seniority which is, therefore, a basic principle. The petitioner has submitted that a seniority list of Scientists including this applicant was being prepared by CSIR establishment and such seniority list conferred a status on the applicant and gives him rights flowing from his position in the seniority list. It is submitted by the petitioner that deviation from this basic principle of computation of seniority brings uncertainty to the members of staff including the applicant. It is further stated that alteration of the principle of seniority would bring in unequal treatment to equally placed persons and would result in discrimination and would be violative of Article 14. This will also take away the period of service rendered by an employee. The petitioner states that if according to the Scheme entitled MANAS, an employee who has put in shorter number of years of service is given promotion, then the employee who has put in longer number of years of service will face discrimination and morale will go down. Notwithstanding this, MANAS specifically lays down that seniority has no relevance for the purpose of merit assessment. The petitioner further states that in accordance

with the memo dated 28.5.1986 of Department of Science & Technology, Government of India, which is the administrative Department for CSIR, a personnel policy among other things has been laid down. From paragraph 2 of this memorandum extracted by the petitioner, it appears that a minimum residency of five years in each grade is required for promotion under flexible complementing scheme. The petitioner states that this requirement of minimum residency of five years in each grade has been made on the basis of seniority and this cannot be changed by CSIR. The petitioner further states that even though MANAS is based upon erroneous concept that there is no concept of seniority in the Scheme and the classification of the grade is only relevant in actual practice, rule of seniority is observed in several matters like appointment of Acting Director in the absence of Director, appointment of Head of Department, house allotment and assessment reporting. Coming to more specifics, the petitioner states that in paragraph 1.2.1 of the Scheme, it is stipulated that there would be direct recruitment in each grade. This will affect the promotional prospects of the existing employees and according to the petitioner, would be hit by Articles 14 and 16 of the Constitution. The petitioner further states that paragraph 6.4.10 of the Scheme obliterates the concept of seniority and therefore, is illegal. The petitioner states in paragraph 4.22 of the application that the break-up of assessment for promotion

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(7) (8)

to the higher rank consisting of marks obtained through:

Annual Performance	Appraisal
Report (APAR)/C.R	- 30 marks
PEER Review	- 30 marks
And Interview	- 40 marks

In the PEER Review, the Examiners would be external experts.

In the Interview also there would be majority of external experts. Thus, in the examination or assessment for 70 marks, Review or Referees' comments 30 marks for PEER / and 40 marks for Interview, there is a provision for impartial examination. Therefore, the marks obtained through external examiners should be given priority and marks obtained under three heads should be taken into consideration to bring fairness to the selection process.

The present system of merit assessment for analysing the Annual Performance Appraisal is illegal and unconstitutional. The petitioner states that in the order dated 1.7.1991 at Annexure-1 several persons have been given assessment promotion from Grade IV (2) to Grade IV (3) ignoring persons who are admittedly more meritorious on the basis of personal likes and dislikes. The petitioners in these three cases are Scientists in Grade IV (2) and their next promotion is to Scientist Grade IV (3). In the context of the above submissions, the petitioners have come up with the prayers referred to earlier.

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3. The respondents in their counter have pointed out that CSIR was constituted by Government of India with the aim and object to develop research and development activities for the country. The works to be done are not merely the jobs which are routine in nature. The aim of CSIR is also to break new grounds in the field of scientific research and development and if the claim of the applicant and others for their promotion on seniority alone is allowed, then the purpose for which CSIR is established would be defeated. The respondents have stated that MANAS was approved by the Governing Body in their meeting of 26.4.1990. The basic seniority feature of the Scheme is that it does not consider as the criterion for promotion and merit is the sole consideration for promotion and residency period is also taken into consideration. The petitioner has no right to promotion but only has a right to be considered for promotion. According to the respondents, the petitioner joined RRL, Bhubaneswar on 7.2.1975 as Senior Scientific Assistant. He was an M.Sc. at that time and later on he acquired Ph.D. qualification. He was assessed and promoted as Scientist-A with effect from 7.2.1980. While continuing as Scientist-A, the petitioner was selected as Scientist-B against an open advertisement in response to which he applied, and he joined his duties as Scientist-B on 19.8.1980. Normally, had he continued as Scientist-A, he would have got his promotion after five years

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as Scientist-B, i.e. on 7.2.1985. But by applying through open advertisement, he got the post of Scientist-B, the next promotional grade little over six months after his joining as Scientist-A. While continuing as Scientist-B, the petitioner was assessed under MANAS to the next higher grade with effect from 19.8.1990. The respondents have stated that the petitioner has never been awarded "Shanti Swarup Bhatnagar Award" of CSIR. The respondents have further stated that under the Flexible Complementing Scheme, assessment and promotion are not vacancy based. Any incumbent qualifying as per Merit Scheme or as per the normal scheme will be eligible for consideration for promotion. The purpose of MANAS is to encourage young scientists to join the research and development work and to provide them adequate scope for advancement on their doing good work. The petitioner is not entitled to be considered for normal assessment as he had not completed the requisite number of years. On completion of the requisite number of years, his case would be taken up for normal assessment. As per merit assessment, he was considered and not found suitable. It is further stated that CSIR under its Bye-laws has the authority to frame rules with regard to assessment and promotion and under MANAS this has been done. The respondents have further stated that there is no concept of seniority amongst Scientists and Technical Cadre and this has always been made clear in circulars issued from time to

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time. Because of this, no seniority list is maintained by CSIR, but only an establishment list is maintained. It is further stated that under MANAS, even a Scientist who has completed three years of service in a particular grade, is eligible for consideration for merit promotion on his securing 225 marks in Annual Performance Appraisal Report and he becomes eligible for consideration for merit promotion in the specified grade. The respondents have stated that the provisions in MANAS are not discriminatory. The petitioner himself has availed of this opportunity by applying in response to an open advertisement for the post of Scientist-B only after six months of his joining as Scientist-A. Having taken the advantage of the merit assessment scheme once, he is precluded from challenging the same when in the next merit assessment, he has not been found eligible. According to the respondents, the minimum period of residency of five years is a condition for normal assessment scheme and not for merit assessment. Thus the respondents' basic point is that amongst the Scientific personnel, there is no concept of seniority. No seniority list has been maintained and the concept of establishment list was introduced in as early as 1965. There is only a requirement of minimum period of residency for normal assessment scheme and for merit assessment there is no requirement of minimum residency. A

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more meritorious person even with three years of residency can go to the next grade if according to his performance adjudged by giving of marks as mentioned earlier he is found suitable for promotion to the next grade. The respondents have also stated that the Scheme lays down detailed procedure for assessment and marking and there is no scope for exercise of arbitrary powers. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Dr.M.R.Panda, learned lawyer for the petitioners and Shri Aswini Kumar Misra, the learned panel counsel appearing on behalf of the respondents, and have also perused the records.

5. The first point made by the learned lawyer for the petitioner is that in paragraph 0.7 (page 4) of MANAS, it has been mentioned that the Scheme incorporates the latest decision taken in the Governing Body meeting on 26.4.1990. The respondents have also mentioned in paragraph 3 of their counter that MANAS was approved by the Governing Body in their meeting on 26.4.1990. From Annexure-1 it is seen that the promotions given therein were based on recommendation of the Assessment Committee which met on June 27-29, 1991, i.e., after coming into force of MANAS, but effective dates of promotion of the persons mentioned therein are from different dates in 1988 and in one case from

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31.1.1989. The petitioner's case is that since the vacancies relate to 1988 and 1989, the rules approved in April 1990 cannot be applied for filling up of those vacancies. In support of this contention, the learned lawyer for the petitioner has referred to the following cases:

- (i) AIR 1970 SC 385 (The Income-tax Officer, Alleppey v. I.M.C., Ponnoose and others);
- (ii) AIR 1980 SC 1872 (Regional Transport Officer, Chittoor, etc. v. Associated Transport, Madras (P) Ltd.);
- (iii) AIR 1983 SC (Y.V. Rangaiah and others v. J. Sreenivasa Rao and others);
- (iv) AIR 1987 SC 1858 (Ex-Capt. A.S. Parmar and others, etc. v. State of Haryana and others);

Reliance has also been placed on two decisions of the Hon'ble High Court of Orissa in the case of Gayadhar Sahoo v. State of Orissa and others, OJC No.811 of 1990, decided on 26.4.1991, and in the case of Sri Mayadhar Panda v. President of Board of Management, Mayurbhanj Central Co-operative Bank, OJC No.1926 of 1986, decided on 3.5.1991.

These cases are being referred to in brief. In the case of **The Income-tax Officer, Alleppey (supra)**, their Lordships of the Hon'ble Supreme Court held that notification investing Tahasildar with powers of Tax Recovery Officer under Income Tax Act, 1961 cannot be given retrospective effect. In the case of **Regional Transport Officer, Chittoor (supra)** it was held that under Andhra Pradesh Motor Vehicles (Taxation of

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Passengers and Goods) Act, 1952, rules framed in 1957 cannot be given retrospective effect as Section 4(1) of the Act did not confer power on Government to make retrospective rules.

In the case of **Y.V.Rangaiah and others (supra)** their Lordships have made the following observation:

".....But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

In the case of **Ex-Capt.A.S.Parmar and others (supra)** the Hon'ble Supreme Court held that the benefits which accrued to persons who joined the army during the emergency as commissioned officers and who after serving the Indian Army for more than five years were appointed in the service of the Haryana Government as temporary Assistant Engineers against the posts reserved for the ex-emergency commissioned officers could not be taken away by amending the rules with retrospective effect. The learned lawyer for the petitioner has also referred to the case of Ex-Major N.C.Singhal v. Director General, Armed Forces Medical Services, New Delhi and another, AIR 1972 SC 628, where it was held that Government has no power to alter or modify the conditions of service of a Government servant with retrospective effect to the prejudice of the Government servant. In the case of

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Gayadhar Sahoo (supra) the Hon'ble High Court of Orissa held that Rule 8(2) of Orissa Education (Recruitment of Conditions of Services of Teachers and Members of Staff of Aided Educational Institutions)Rules,1974 could not be given retrospective effect. An amendment to the rule which came into force from 3.6.1988, it was held, cannot govern the case of vacancies which arose before that date. In the case of **Sri Mayadhar Panda (supra)** , it was held by the Hon'ble High Court of Orissa that for appointment to the post of Branch Manager in Central Co-operative Bank for vacancies which arose prior to 1.10.1984, the Central Co-operative Bank Staff Service Rules, 1984, which came into force from 1.10.1984, cannot be applied. In all these cases, therefore, the decisions of the Hon'ble High Court and the Apex Court are to the effect that for vacancies which arose prior to amendment of a rule or coming into force of a rule, the new rule cannot be given retrospective effect and applied and the vacancies are to be filled up on the basis of the rule as it stood when the vacancies arose. In the instant case, however,these promotions under Flexible Complementing Scheme are not related to vacancies except at the lowest grade. Paragraph 1.2.1 of MANAS makes it clear that induction is normally made only at the lowest grade in each group and therefore, a vacancy arising due to any reason will occur

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at the lowest grade. After entry in the lowest grade on the basis of normal assessment or MANAS when a person is adjudged suitable for promotion, he would be promoted to the next grade whether or not there is any vacancy. It is also laid down that when an officer is promoted from one grade to another, if in the lower grade there is an assessed need for the post according to the Research Council/Director General of CSIR, then the position will revert to the lowest grade.

This is the import of paragraph 1.2.1. An example will make it clear. If a Scientist in Grade IV(2) is adjudged suitable for appointment to Grade IV (3), he would be promoted to Grade IV(3) without any consideration whether there is a vacancy in that grade or not. After his promotion, if it is felt that there is need for another person in Grade IV(2), then this will have to be approved by Research Council or Director General of CSIR and the position will revert to the lowest grade which would be filled up by direct recruitment.

Therefore, in the case of filling up of the vacancies in CSIR under the Flexible Complementing Scheme, there is no question of the vacancy arising from a certain date and the question of applying the rules as on that date is not relevant. In the memorandum on personal policy quoted by the petitioner in paragraph 4.17 of the application it has been stated that earlier under the Flexible Complementing Scheme, in between

the grades of Rs.700-1300/-, Rs.1100-1600/- and Rs.1500-2000/- there was a condition that of the total number of posts in the three grades, posts in the grade of Rs.1500-2000/- would not be more than 30%. But in this circular it was made clear that there would be no restriction as regards percentages and full flexibility would be available in all grades upto Rs.2500-3000/-. As in the matter of promotion under the Flexible Complementing Scheme there is no concept of a vacancy to be filled and the promotions are not vacancies based, the decision of the Hon'ble Supreme Court and the Hon'ble High Court of Orissa in all those cases can have no application to the facts of the present case.

6. The second aspect of the matter is that admittedly MANAS was approved on 26.4.1990. The question is, can assessment be made under the Scheme and the benefit of merit assessment given to persons from dates in 1988 and 1989 on the basis of meetings of Assessment Committee in June 1991? This is the background of the order at Annexure-1. This order specifically mentions that the officers mentioned in the order have been given promotion from Grade IV (2) to Grade IV(3) for the assessment year 1988-89 under MANAS. For considering this aspect, it has to be borne in mind that in

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CSIR, even now there are two systems of assessment, one is normal assessment and the other is merit assessment, and a Scientist is entitled to be considered for promotion under both the schemes. For the normal assessment scheme, he has to have five years of residency in the existing grade before he could be considered for promotion under the normal assessment scheme. By introducing the merit assessment scheme, this benefit is not being taken away from him. The decision in the case of **Ex-Major N.C.Singhal (supra)** laying down that the conditions of service cannot be varied to the disadvantage of a Government servant with retrospective effect does not apply to this case because prior to introduction of MANAS there was only scheme of normal assessment and the same is still in force and has not been changed to disadvantage of the petitioners. A new method of assessment and scope for advancement in addition to the normal scope for promotion has been introduced under the merit assessment scheme where there is no requirement of period of residency and a person adjudged to be meritorious through APAR, Referees' comments (PEER Review) and Interview can go to the next higher grade even only with three years of residency as mentioned by the respondents in paragraph 10 of the counter. It cannot be said that by introduction of MANAS the existing system of assessment and scope of advancement

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thereunder has been varied to the disadvantage of the petitioners. A scope for separate line of accelerated advancement has been provided for Scientists with the view to harness the best talents available in the country and even those who are abroad and there is no rule or instruction which prohibits that this cannot be applied to the assessment year 1988-89. The assessment has actually been made in June 1991 after coming into force of MANAS and those who have been adjudged suitable have been given promotion to the next grade with effect from 1988 and 1989. The petitioner was also assessed under NRAS in 1985, but he was not adjudged suitable for further advancement at that stage. In view of this, we hold that assessing the Scientists under the merit assessment scheme and giving them promotion from 1988 and 1989 are not illegal because promotion is not being given against any vacancy which was available in 1988-89. This contention of the petitioners must, therefore, fail and is hereby rejected.

7. The next point is that while making assessment both under normal scheme and under the merit scheme, seniority is not taken into account. The petitioner has stated that this is illegal. The respondents, on the other hand, have pointed out that from as early as 1965 only establishment lists are being published and there is no seniority list amongst the Scientists. It has been mentioned

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in paragraph 6.4.10 of MANAS that all scientific and technical posts in the National Laboratories/Institutes and CSIR Hqrs. are created on functional needs and they are advertised and appointments made on merit through selection committees. Similarly, assessments based on threshold limits are delinked from the availability of vacancies and movement from one group to another is not permissible. As assessment and appointment in CSIR are distinct from departmental promotions, maintenance of seniority among such scientific and technical employees is not possible. Even in the case of normal Government employees, who are promoted on the basis of vacancies available in the higher grade, seniority is not a criterion to be considered in all cases. Where the rules provide for appointment to be made to the higher grade purely by selection, seniority is not to be taken into account. In the instant case two persons in a particular grade are both entitled to opt for being assessed under the merit assessment scheme irrespective of the number of years of their residency in their grade. They are to be assessed through APAR, Referees' comments and Interview, for which in total there are 100 marks and the petitioner himself has stated in his application that out of these, 70 marks are awarded either by external examiners or by examiners amongst whom majority would be external examiners. Thus the petitioner has himself

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30 (21) mentioned that the method of assessment under the merit scheme relying heavily on external examiners is an impartial method. The question of seniority becomes important when two persons in a lower grade compete for one post in the higher grade. In the instant case each one can be promoted on his being adjudged suitable to the higher grade without reference to the availability of vacancies and therefore, doing away with the concept of seniority, which in any case has been done in 1965, cannot be said to be illegal or discriminatory.

8. The last point urged by the learned lawyer for the petitioners is that since vacancy in each grade is filled up by direct recruitment, the promotional prospects of the petitioners will be adversely affected thereby and this will be illegal. There cannot be anything illegal if the petitioners are made to compete along with the direct candidates for openings in the higher grades. In a scientific organisation like CSIR the merit has to be the guiding principle. A similar provision in State Bank of India for a normal promotion scheme where 65% of the total vacancies in Middle Management Grade-II were reserved for Seniority Channel and remaining 35% for the Merit Channel, was challenged before the Hon'ble Supreme Court in the case of S.P.Biswas and others v. State Bank of India, AIR 1991 SC 2039 and their Lordships of the Hon'ble Supreme Court observed as follows:

".....Keeping in view the laudable

object of attracting academically brilliant candidates into the Bank's service as officers by direct recruitment by giving incentive of accelerated promotion to the most meritorious amongst them who maintain a high standard of achievement is conducive to public interest and cannot be faulted....."

Thus, it is seen that even for regular vacancy based promotion, adoption of two channels, normal seniority channel and merit channel, has been upheld by the Hon'ble Supreme Court in the above case. In view of the above, we hold that the petitioners have failed to make out a case for any of the reliefs mentioned in their applications.

9. In the result, therefore, the applications fail and are rejected. Parties to bear their own costs.


(S.K.AGRAWAL) 4.5.98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 4.5.98

AN/PS