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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.548 OF 1996

Cuttack, this the 15th day of September, 1998

D.Ranganayakulu

Applicant

Vrs.

Union of India and others

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

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.9.98
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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D.Ranganayakulu,
son of late D.Venkata Rao,
aged 62 years, retired Deputy Chief
Engineer (Con.),
S.E.Railway, Visakhapatnam,
residing at D.No.10-38-22/3/1,
Flat No.2, City View Apartments,
Ram Nagar, Visakhapatnam Applicant

By the Advocates - M/s Y.Subramaniyam
P.K.Chand.

Vrs.

1. Union of India, represented by
Director - Establishment (Gaz.),
Ministry of Railways,
Railway Board, New Delhi.
2. General Manager, S.E.Railway,
Calcutta-43.
3. Chief Administrative Officer (Projects),
Chandrasekharnagar, S.E.Railway,
Bhubaneswar Respondents

By the Advocates - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 13.7.1993
(Annexure-14) cancelling his promotion to the Junior Scale
of Indian Railway Service of Engineers (IRSE) and also the
letter dated 4.5.1994 (Annexure-18) from Railway Board to
General Manager, S.E.Railway, rejecting his
representation. The applicant has further prayed that his

pay should be fixed in Junior Administrative Grade from the date he assumed the charge of the post on 16.6.1987 to the date of his superannuation on 31.12.1992 as per FR 22-C. The next prayer is for a direction to give effect to his order of substantive appointment to Junior Scale from the date vacancies have arisen instead of meeting of D.P.C and thereby giving substantive promotion to Junior Scale of IRSE with effect from 1.1.1984 as has been ordered by the Bombay Bench of the Tribunal in R.K.Gupta's case. He has also asked for consequential arrear dues, fixation of pension, leave salary, commutation of pension and DCRG on the basis of pay so fixed.

2. Facts of this case, according to the petitioner, are that he joined the Railways on 28.2.1957. In order dated 21.9.1977 (Annexure-A/11) he was empanelled for promotion as Assistant Engineer through a written examination and viva-voce. In the list of selected candidates, the petitioner's position was 11 and serial no.25 was one B.B.Patra. In this order, it was mentioned that appointment of the 25 selected persons to Class II posts will be in the orders shown in the selected list subject to observation of reservation rules. The petitioner states that the Chief Personnel Officer in his order dated 7.3.1986 (Annexure-A/12) re-arranged the panel of 1977 which is at Annexure-A/11 and re-arranged the seniority. In this process, the petitioner came down from 11th position to 34th position after a lapse of eight years without any notice to the petitioner. In this revised list, name of B.B.Patra appears against serial no.63. Thus, he continues to be junior of the petitioner. The departmental authorities took the plea that this has been done on the basis of orders passed by Hon'ble High Court at Calcutta on 27.9.1985 and 7.10.1985. On the basis of original seniority position in Group-B, in order dated

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13.11.1985 (Annexure-1) the petitioner was appointed substantively to the Junior Scale of with effect from 14.10.1985. In this order, the petitioner was shown against serial no.33 and one R.K.Gupta was shown against serial no. 4. R.K.Gupta filed OA No.177 of 1986 before the Bombay Bench of the Tribunal which ordered that his promotion to Junior Scale of IRSE would take effect from 1.1.1984 instead of 14.10.1985 as mentioned in the order at Annexure-1. The Tribunal decided this on the ground that D.P.C. did not sit in 1984 and the meeting was held on 13.10.1985. The petitioner's case is that he is similarly placed as Shri R.K.Gupta and accordingly, his substantive appointment to the Junior Scale of IRSE should be from 1.1.1984 and not from 14.10.1985. This is his third prayer. The applicant, as earlier noted, was promoted to Junior Scale of IRSE by a Presidential order dated 13.11.1985 at Annexure-1. His case is that he was promoted to look after duties of Junior Administrative Grade post of Engineer-in-chief, Sambalpur, in order dated 1.6.1987 at Annexure-4. This order lays down that the applicant who is officiating Divisional Engineer, is transferred and detailed to look after the duties of the J.A.Grade post of Engineer-in-chief (CN), Sambalpur, in the vacancy of Shri P.B.Singh reported sick. It was also mentioned that this officiating arrangement in J.A.Grade was agreed on an ad hoc basis without conferring on him any claim or title to continue as such or for further promotion to J.A.Grade in preference to his seniors. The officiating appointment of the applicant in J.A.Grade was further subject to disposal of the Civil Misc.Petition No.6007 of 1982 filed in the

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Delhi High Court. It was also indicated that he would draw pay in accordance with the instructions of Railway Board in their letter dated 13.7.1982 (Annexure-5). Shri P.B.Singh was posted back to the post of Engineer-in-chief (CN), Sambalpur and the applicant, who was looking after duties of J.A.Grade post, was transferred and detailed to look after duties of one of the J.A.Grade posts lying vacant. This order was issued on 17.7.1987 (Annexure-6). The applicant states that he thus continuously worked in a J.A.Grade post till he attained the age of superannuation on 31.12.1992. Though the applicant worked in J.A.Grade post in the scale of Rs.3700-5000/- for five years and discharged full duties of the post, he was paid the scale of lower post, i.e., Senior Scale of IRSE at Rs.3000-4500/- plus Charge Allowance of Rs.200/- instead of fixing his pay in J.A.Grade under FR 22-C. The petitioner represented to Secretary (Establishment)/Gaz., Railway Board, in his letter dated 4.9.1992, 30.10.1992, 30.12.1992 and 10.9.1993 requesting fixation of his pay in G.A.Grade. The Joint Director (Establishment), Railway Board, denied fixation of pay in J.A.Grade on the plea of revision of seniority of Group-B officers including the applicant and cancellation of his substantive appointment to Junior Scale of IRSE with effect from 14.10.1985 and another notification dated 13.7.1993 cancelling his substantive appointment to Junior Scale of I.R.S.E. ~~*****~~ The applicant has stated that this cancellation notification ^{was} issued on 13.7.1993, eight years after he was promoted to Junior Scale of IRSE in order dated 13.11.1985 at Annexure-1 and for this no notice was issued to him. The petitioner has challenged this cancellation order at Annexure-14 on the ground of violation of principles of natural justice. It has been further stated that in the order dated 13.7.1993 the substantive appointment of five officers was cancelled in paragraph 2 of

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that order. One of them was B.B.Patra who was junior to the petitioner. Shri B.B.Patra came up before this Tribunal in OA No. 506 of 1993 which was disposed of in order dated 19.8.1994. The Division Bench of the Tribunal quashed the cancellation notification dated 13.7.1993 so far as B.B.Patra was concerned on the ground that no reasonable opportunity was given to him to show cause against that order. The departmental authorities were given liberty to give opportunity to the petitioner to be heard in case they want to proceed with such cancellation and then pass suitable orders. The Tribunal specifically mentioned that this order was confined only to the petitioner who had challenged the cancellation notification before them. The petitioner has stated that after the above order of the Cuttack Bench of the Tribunal, the respondents issued the order dated 6.1.1995 at Annexure-19 in which full benefit was given to Shri B.B.Patra and the cancellation notification dated 13.7.1993 was withdrawn so far as B.B.Patra is concerned. The petitioner states that B.B.Patra was junior to him and therefore, the same benefit should be given to him. That is why he has come up in this petition with the aforesaid prayers.

3. The respondents in their counter have submitted that IRSE has the following grades in the ascending order:

Junior Scale	- 2200-4000
Senior Scale	- 3000-4500
Junior Administrative Grade	- 3700-5000
Selection Grade	- 4500-5700
Senior Administrative Grade	- 5900-6700

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The lowest rank in Group-A, i.e., Junior Scale is filled up

by way of direct recruitment through Union Public Service Commission and also by way of promotion from Group-B officers belonging to Civil Engineering Department of Railways. The respondents have not indicated what is the percentage of break-up between these two types of recruits. It is further averred that substantive appointment by way of promotion from Group-B posts to Group-A posts, i.e., Junior Scale of IRSE is ordered by the President on the basis of recommendation of D.P.C. presided over by Member of Union Public Service Commission. The D.P.C. consists of four members and usually a Member of Union Public Service Commission is the Chairman. The respondents have further stated that in the year 1976-77 in order to fill up 25 posts of Group-B in the cadre of Assistant Engineer, after due selection a panel of 25 candidates was approved and was published in order dated 21.9.1977 at Annexure-A/11. This panel was challenged by one N.R.Das in a Writ Petition before the Hon'ble High Court of Calcutta. While the matter was subjudice before the Hon'ble High Court, the applicant was given ad hoc promotion to Group-B. The Hon'ble High Court of Calcutta in its judgment dated 16.7.1984 directed the departmental authorities to enlarge the panel and to recast the interse seniority. The Railways filed an Appeal before the Division Bench of the High Court of Calcutta which upheld the judgment of the Single Bench. Against the above judgment, the Railways filed SLP No.8099/85 before the Hon'ble Supreme Court, but the S.L.P. was dismissed on 10.7.1985. As such in obedience to the order of the Hon'ble High Court of Calcutta, the original panel of 1977 at Annexure-1 was enlarged from 25

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to 80. But Shri N.R.Das filed a Contempt Petition in the Hon'ble High Court of Calcutta complaining that the panel of 1977 had not been enlarged in accordance with the judgment of the Hon'ble High Court of Calcutta. He also alleged that seniority list has been wrongly prepared. This Contempt Petition was disposed of by the Hon'ble High Court of Calcutta with a direction to the Railway Administration to modify the seniority list strictly in accordance with the rules and the judgment of the High Court of Calcutta. Accordingly, in order dated 8.10.1985 the revised seniority list was published. This was again challenged by Shri N.R.Das in another Contempt Petition on the ground that this list was also not in accordance with the rules. The Hon'ble High Court of Calcutta once again directed the Railway Administration to revise the seniority list. In terms of further orders of the Hon'ble High Court, the seniority list was modified. The respondents have stated that soon after publication of the modified seniority list, ten persons including the present applicant filed a Review Petition before the Hon'ble High Court of Calcutta for reconsideration of the order passed by the Hon'ble High Court. After hearing the parties, on 25.2.1985 the Hon'ble High Court of Calcutta passed the interim order directing the Railway Administration not to take any further step in implementing the seniority list published on 21.2.1986 till the disposal of the Review Application. Ultimately, the Hon'ble High Court of Calcutta in its order dated 19.6.1990 vacated the interim order and thereafter the seniority list issued on 21.2.1986 was released for being given effect to. The petitioner had in the meantime been promoted to Senior Scale of Group-B on ad hoc basis

on 11.8.1982. He was considered and selected for substantive appointment by way of promotion to Group-A, i.e., Junior Scale of IRSE by the D.P.C. which met on 26.7.1985. Accordingly, in order dated 13.11.1985 (Annexure-1) he was substantively appointed by way of promotion to Junior Scale of IRSE with effect from 14.10.1985. The respondents have stated that as the seniority was under dispute and subjudice in the Hon'ble High Court of Calcutta, the names of 85 candidates who ultimately found place in the panel of 1977 could not be considered for promotion to Junior Scale of IRSE. The applicant was given ad hoc promotion to Junior Administrative Grade with effect from 5.7.1986 on the basis of his induction in Junior Scale of IRSE without any claim or title to continue as such or further promotion to J.A. Grade in preference to his seniors. Thereafter, in terms of judgment dated 19.6.1990 of Hon'ble High Court of Calcutta, seniority of Group-B officers underwent revision. Besides the applicant, several other officers could not find place in the revised panel of 1981-84 on the basis of which review DPC was held. The respondents have stated that the purpose of holding a Review D.P.C. would be defeated if it is held that the officers who had been promoted earlier could be retained in the panel notwithstanding their revised seniority position. On the basis of revised seniority in Group-B he was inducted in the Junior Scale of IRSE with effect from 4.12.1992. But the petitioner has in the meantime retired from Railway service with effect from 31.12.1992 and as such, his further promotion to Junior Administrative Grade as a regular measure does not arise. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. The applicant in his rejoinder has reiterated the facts mentioned in his O.A. He has also stated that in case of B.B.Patra, the original order of promotion to Junior Scale of IRSE was maintained and there is no reason why in case of petitioner, who is senior to Shri Patra, this should not be done. He has also referred to the decision of the Cuttack Bench of the Tribunal in OA No.506/93 and has reiterated his prayers.

5. We have heard Shri Y.Subramaniam, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel appearing for the respondents, and have also perused the records. The learned lawyer for the petitioner has submitted written note of arguments which has been taken note of. Shri Ashok Mohanty, the learned counsel for the respondents has given a memo of citations which has also been looked into.

6. From the above recital of facts, it appears that in Group-B the petitioner was originally empanelled in order dated 21.9.1977 and his position in this list of 25 empanelled persons was 11. More than eight years later, in order dated 7.3.1986 at Annexure-A/12 the revised panel of 80 persons was drawn up and in this panel the petitioner's position came down to serial no.34. It has been submitted by the petitioner that before issuing this order revising the panel, no showcause notice was issued to him and he had not been given a chance to state his case and therefore, the principles of natural justice have been violated. The respondents have pointed out that revision of the panel has been done in pursuance of the decision of the Hon'ble High Court of Calcutta after the S.L.P. against that order filed by the Railways was dismissed. Thereafter, the revised seniority list was prepared and a larger

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panel was drawn up. That was also challenged in two Contempt Petitions. Ultimately, the revised seniority list was finalised. The petitioner along with certain other persons had filed a Review Petition before the Hon'ble High Court of Calcutta for reconsideration of their orders with regard to revision of seniority and enlargement of the panel, but the Review Petition was dismissed. In view of this, it is not open for the petitioner now to challenge the revised panel which has been issued in order dated 7.3.1986 at Annexure-A/12. As the petitioner had challenged the decision of the Hon'ble High Court of Calcutta by filing a Review Petition, he was aware of the decision of the Hon'ble High Court of Calcutta regarding recasting of seniority and enlargement of the panel. As such, the submission of the learned counsel for the petitioner that revision of this panel by the order at Annexure-A/12 is illegal cannot be accepted and is accordingly rejected.

7. Basing on the earlier seniority position in Group-B vide Annexure-11 the petitioner was substantively appointed to the Junior Scale of IRSE with effect from 14.10.1985 in order dated 13.11.1985 at Annexure-A/1. This order has been issued in the name of the President and as has been pointed out by the respondents, on the basis of the recommendation of D.P.C. presided over by a Member of Union Public Service Commission. At the time of issuing this order dated 13.11.1985 the earlier seniority list and the panel in Group-B held the field and the petitioner was substantively appointed by way of promotion to Junior Scale of IRSE on the recommendation of the D.P.C. and U.P.S.C. As the seniority list was changed, a Review

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D.P.C. was held and because of the change in the seniority, the petitioner did not come up in the zone of consideration. Accordingly, the Review D.P.C. did not recommend his name. Therefore, in order at Annexure-14 his substantive appointment to Junior Scale of IRSE with effect from 4.10.1985 was cancelled. It has been submitted by the learned counsel for the petitioner that before cancelling this appointment, that too after eight years of the original notification dated 13.11.1985, no notice was given to him and as such this order is liable to be set aside on the ground of denial of reasonable opportunity. It is further stated that on this very same ground Shri B.B.Patra, a person who was junior to the petitioner in the seniority list and who was also junior to the petitioner according to the original order dated 13.11.1985 promoting the applicant and Shri B.B.Patra to the Junior Scale of IRSE, came up before the Tribunal in OA No.506/93 and this order at Annexure-14 cancelling Shri Patra's original order of promotion to Junior Scale of IRSE was quashed on the ground that no showcause notice was given to him. It is further submitted that even though the Tribunal gave liberty to the Railway authorities to consider cancellation of the original notification, if they so choose, after giving opportunity to Shri Patra, the Railway Board in their order dated 6.1.1995 withdrew the cancellation order. In this order at Annexure-19, it has been laid down that the substantive appointment of Shri B.B.Patra to the Junior Scale of IRSE with effect from 14.12.1992 as notified in Ministry's Notification dated 13.7.1993 is hereby cancelled. It is further laid down that consequently, the order regarding cancellation of the substantive

appointment of Shri Patra to Junior Scale of IRSE with effect from 14.10.1985 is also withdrawn. A combined reading of these two paragraphs makes it clear that so far as Shri B.B.Patra is concerned, the cancellation notification was withdrawn and consequently his substantive appointment by way of promotion to Junior Scale of IRSE with effect from 14.10.1985 was sustained. In the same order, a subsequent order promoting Shri Patra to the Junior Scale of IRSE with effect from 14.12.1992 was cancelled. The petitioner's case is that Shri Patra was junior to him and on the same grounds, as have been upheld by the Cuttack Bench of the Tribunal in OA No.506/93, the cancellation notification is liable to be quashed and the Railway authorities should be directed to confer upon him the same benefit, as has been conferred on Shri Patra as the applicant is similarly situated. It has been submitted by the learned counsel for the respondents that admittedly before issuing the cancellation notification at Annexure-A/14, no opportunity was given to the petitioner to show cause against the order. But it has been submitted that as this has been done because of revision of seniority on the basis of a decision of the Hon'ble High Court of Calcutta which is binding on the applicant because of dismissal of his Review Petition before the Hon'ble High Court of Calcutta, no prejudice has been caused to the petitioner because of the fact that he has not been given an opportunity to show cause before the order dated 13.7.1993 was issued. In support of his contention, the learned counsel for the respondents has relied on a decision of the Hon'ble Patna High Court in the case of

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M/s Vishnu Talkies v. State of Bihar and others, AIR 1975

Patna 26. It is not necessary to go into the facts of that case. In that case their Lordships of the Hon'ble Patna High Court have held that an order may be purely of an administrative character, but that by itself does not preclude the application of the principles of natural justice. Having held this, their Lordships held that in that case the decision was taken in public interest and as a matter of public policy and therefore, there could not be any possible or reasonable question to be answered by the petitioner if called upon to meet the case. Relying on an earlier decision of the Bombay High Court in the case of Wasudeo Laxman, Nandanwar v. Union of India, 1974 Lab.I.C. 141, the Hon'ble Patna High Court held that principle of natural justice incorporated in the maxim audi alteram partem could not be applicable in cases where no change in result was possible even by hearing a party affected since it would only be an empty formality or an exercise in futility. Applying the law as laid down by their Lordships of the Hon'ble Patna High Court to the facts of the present case, it is seen that it is not open for the petitioner to challenge the seniority and the panel after his Review Petition was dismissed by the Hon'ble High Court of Calcutta. On the basis of the revised seniority list, the Review D.P.C. has been held and the petitioner having come down in the seniority has not been selected in the panel to be substantively appointed by way of promotion to the Junior Scale of IRSE. In these circumstances, no purpose would have been served by giving an opportunity to the petitioner to show cause against the order dated 13.7.1993 at Annexure-A/14. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

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8. As regards the second aspect that if the order 13.7.1993 is quashed, he would get an opportunity to get the same benefit as Shri B.B.Patra who is similarly situated like him, we are unable to accept this contention because *prima facie* there is no material on record that the applicant is similarly situated as Shri B.B.Patra. It is quite clear of course that Shri B.B.Patra was junior to the petitioner according to the original panel of Group-B officers and also in the revised panel. Moreover, in the original order dated 13.11.1985 in which both applicant and Shri B.B.Patra were promoted to Junior Scale of IRSE from 14.10.1985, the petitioner's name is at serial no.33 and Shri Patra's name is at serial no.35. But in this order, Shri Patra has been shown as a Scheduled Caste candidate. In the order dated 6.1.1995 at Annexure-A/19, where benefit was conferred on Shri Patra, he has been shown as a Scheduled Tribe. Whatever it may be, it is clear that Shri B.B.Patra comes in the Reserved Category and the petitioner who is a General Candidate cannot claim equality with him. This contention of the learned counsel for the petitioner is also held to be without any merit and is rejected. In view of the above, we hold that there is no infirmity in the cancellation notification dated 13.7.1993 at Annexure-A/14 and the prayer of the petitioner to quash this order dated 13.7.1993 is also rejected.

9. In view of our above order, the third prayer of the petitioner that his promotion to Junior Scale of IRSE should be ante-dated from 14.10.1985 to 1.1.1984 following the order of the Bombay Bench of the Tribunal in the case of R.K.Gupta also falls through. In any case, whatever view is taken in the matter, the

petitioner cannot be allowed to agitate this point after such a long lapse of time. This contention is also held to be without any merit.

10. There is one aspect of the matter which arises out of the cancellation of the notification giving the petitioner substantive appointment to Junior Scale of IRSE from 14.10.1985 and the subsequent cancellation of that notification eight years later in the order dated 13.7.1993. This order has been issued after the petitioner retired from service on 31.12.1992. Thus, during his service career he worked in Junior Scale and Senior Scale of IRSE. Even though his appointment in Junior Scale and Senior Scale of IRSE were subsequently cancelled, during the relevant period he has worked in the higher posts and therefore, he would be entitled to get the pay of Junior Scale and Senior Scale of IRSE held by him. Presumably, he has got these scales and the amounts drawn by him should not be recovered from him. As regards the prayer to allow him the Junior Administrative Grade because of the order dated 1.6.1987 transferring him to look after the duties of J.A. Grade post of Engineer-in-chief, Sambalpur, in the vacancy of Shri P.B.Singh vide Annexure-A/4 and subsequently detailing him to look after the dues of one of the J.A. Grade posts lying vacant under the control of Chief Administrative Officer, Visakhapatnam, in order at Annexure-A/6, the petitioner has prayed that he should be allowed the scale of pay of J.A. Grade because he has worked in a J.A. Grade post. The respondents in their counter have made no specific averment in this regard except to say that as he was inducted finally into Junior Scale of IRSE

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with effect from 4.12.1992 and he retired on 31.12.1992, consideration of his promotion to J.A.Grade as a regular measure would not arise. The petitioner is not asking for his promotion to J.A.Grade as a regular measure. He has only prayed the scale of J.A.Grade. In the order dated 1.6.1987 at Annexure-A/4 it is mentioned that he would draw pay as per instructions contained in Railway Board's letter dated 13.7.1982. This order has not been produced by either side before us. The petitioner has stated that he was only allowed the Senior Scale plus Rs.200/- Charge Allowance for the period he held the post in J.A.Grade. We are unable to come to a finding if this is in accordance with the circular dated 13.7.1982 of the Railway Board. We also note that the order at Annexure-A/4 was only for looking after the duties of J.A.Grade post on an ad hoc basis. As the circular is not before us, we dispose of this prayer of the petitioner by issuing a direction to the Railway authorities to consider this prayer of the petitioner strictly in accordance with the Rules which were in force in 1987 to 1992 and take a view on this prayer of the petitioner within a period of 60 (sixty) days from the date of receipt of copy of this order and inform the petitioner of the result in another 15 (fifteen) days. We also direct that pension and other retiral benefits of the petitioner should be fixed on the basis of pay allowed by us equivalent to Junior Scale and Senior Scale of IRSE and the order to be passed by the respondents on his prayer for getting J.A.Grade scale of pay.

11. In the result, therefore, the Application is disposed of in terms of the observation and direction

contained in paragraph 10 of this order. There shall be no order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.9.98
VICE-CHAIRMAN

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