CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision : 3.5.1991

PRESENT

Hon'ble Shri N.V.Krishnan, Administrative Member
Hon'ble Shri N.Dharmadan, Judicial Member

O.A. 592/90, MP 680/90 in OA 56/89
& OA 656/90

I. OA 592/90

P.C. Mariamma
C.P.Sreemathy
N.Rajam ... Applicants

Mr. M.R.Rajendran Nair .. Counsel for the applicants

Vs.

Union of India
(Secretary, Min. of Finance)
and 19 others. .. Respondents

Mr. K.Prabhakaran

Mr. K.Ramakumar .. Counsel for the respondents

II. MP 680/90 in OA 56/89

The Collector of Central
Excise & Customs, Cochin .. Petitioner (original R-3)

Mr. K.Prabhakaran .. Counsel for the petitioner

Vs.

C.P.Sreemathy & 17 others .. Respondents.

Mr. M.R.Rajendran Nair .. Counsel for R-1, 14 & 15.

Mr. K. Ramakumar .. Counsel for R-5, 6, 9, 10 to 13.

III. OA 656/90

P.V.Janaki .. Applicant

Mr. K.Ramakumar .. Counsel for the applicant

Vs.

Union of India (Secretary
Min. of Finance) & 2 others... Respondents

Mr. C.Kochunni Nair .. Counsel for R1 and R2

Mr. M.R.Rajendran Nair .. Counsel for R3

O R D E R

N.V.Krishnan, AM

At the root of all these matters is the full implication of the Annexure-V judgement which takes a coordinated view of the Ann.II and Ann.III judgements. Hence, all the matters are being considered together by common consent for disposal by this common judgement. The grievance complained of in OA 592/90 is that full effect has not been given to the Ann.V order in OA 150/89 in favour of the second applicant and the Ann.IV order in OA 56/89 in favour of the first and third applicants. The respondents 1 to 3 (Department, for short) have filed MP 680/90 in OA 56/89 seeking certain clarifications of Ann.V judgement on the basis of which Ann.IV judgement was delivered therein, more particularly as to the scope of the Ann.III judgement. Lastly, the 7th respondent has filed OA 656/90 seeking a declaration based on the Ann.III judgement that, in the cadre of Office Superintendent, she is senior to the second applicant and has, therefore, a prior claim for promotion as Administrative Officer.

2. We take up for consideration OA 592/90 first. The three applicants herein seek the following reliefs:

i) To declare that the applicants 1 & 2 are seniors to the respondents 4 to 20, and applicant No.3 is senior to respondents 14 to 20 in the category of DOS Level I, Office Superintendent and Administrative Officer, etc. in so far as it is applicable and to direct respondent No.3 to grant the applicant's promotion to respective higher categories xxxxxxxxxxxx at least with effect from the

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date of promotion of their juniors, with all consequential benefits including fixation of pay, arrears of salary and restoration of seniority.

ii) Quash Annexure-VI order and such other promotions granted to the juniors overlooking the claim of the applicants.

iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant.

It will be convenient to deal with the second applicant, Ms. C.P.Sreemathy's case in the first instance as the Ann.II and Ann.III and Ann.V judgements concern only her, among the three applicants. The case of the other applicants can be adverted to later on.

3. Ms. C.P.Sreemathy filed OP 5461/81 in the High Court of Kerala challenging the vires of certain rules relating to the promotion as Deputy Office Superintendent Level-I (DOS-I) of those Deputy Office Superintendents Level-II (DOS-II), who had started their career as Stenographers Grade-III. Besides the Department, 10 contesting respondents were impleaded, of whom 7 have been impleaded now, viz. respondents 4 to 10 being, perhaps, the only persons in service now. That OP was received on transfer and registered as TAK 549/87. It was disposed of by the judgement dated 25.2.88 (Ann.II) wherein the following directions were given:

> "The recruitment rules relating to promotion to the post of D.O.S. Level I have to be struck down as illegal, in so far as this aspect is concerned. We do so, and direct that the benefit given to those D.O.S. Level II promoted from the cadre of Upper Division Clerks shall be extended to those DOS Level-II promoted from the cadre of Stenographer (O.G) as well.
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> 4. In the result, we declare that the applicant, on completion of a total of 8 years service as Stenographer (O.G) and DOS Level-II, has become

> eligible for promotion to DOS Level-I. We direct the respondents 1 to 3 to consider the case of the appointment for promotion on the above basis, by convening a review Departmental Promotion Committee within a period of two months from the date of receipt of a copy of this order. In case it is found that the applicant is eligible for promotion, she will be granted consequential benefits and fixation of seniority in the cadre of DOS level I above the respondents 4 to 13."

4. It appears that, for a proper implementation of that judgement, the Department felt that certain persons who were promoted before that judgement, on the basis of the rules which then existed, have to be reverted to give relief to Ms. C.P.Sreemathy and others similarly placed. When such reversions were contemplated, five persons viz. respondents 11 to 15, filed OA 167/88 impleading officers of the Department as respondents 1 to 3 and Ms. C.P.Sreemathy as respondent-4. That case was disposed of by the Annexure-III judgement dated 5.8.88. We will have more occasion to refer to this judgement because, in the ultimate analysis, the dispute between the parties centres round the interpretation to be placed on this judgement. For the present, the following observations and directions may be noticed.

> "The declaration as to the invalidity of the rule and consequent striking down have not been given retrospective operation. To extend it retrospectively will have the result of unsettling matters which stand settled for the last several years.
>
> 5. It follows that there is no scope for disturbing the applicants from the present posts they hold as a result of the final order in TAK 549/87."

5. In the light of the Ann.II and Ann.III judgements, Ms. C.P.Sreemathy who had been promoted as DOS-I from 7.7.84 in the past, was now given notional retrospective promotion as DOS-I with effect from 8.2.80, by an order issued on 6.9.88. She thus became senior in the cadre of DOS-I to 28 persons, including all the party respondents vide Ann.R4(a), which is the seniority list of DOS-I as on 1.1.88. Many of these respondents had, however, been promoted to higher posts of Office Superintendent or Administrative Officer much earlier.

6. She then submitted a representation on 28.9.88 requesting for further promotion from the grade of DOS-I, based on her revised seniority in that cadre from 8.2.80. This representation was rejected by the Department's letter dated 30.1.89 informing her that the Ann.II judgement has already been complied with by promoting her as DOS-I from 8.2.80 and that no further promotion has been directed to be given by the Ann.II and Ann.III judgements on the basis of her revised seniority as DO S-I.

7. Aggrieved by this reply, Ms. C.P.Sreemathy filed OA 150/89 which was disposed of by the Ann.V judgement as follows:

> "12. Taking into account all these facts, we are of the view that directions may have to be issued consistent with the first and second judgements for rendering justice to the petitioner without in any way affecting the rights of respondent-4 or others similarly situated like her. Accordingly, we issue the following directions:
>
> i) The petitioner is not only entitled to the promotion and seniority as DOS level-I

as per the first judgement as shown in the seniority list at Annexure-VI, but also entitled to be considered for further promotion on the basis of the date assigned to her in Annexure-VI, notwithstanding Annexure-X. So, we direct the respondents 1 to 3 to consider the claim of the petitioner for promotion as Office Supdt. on the basis of the seniority assigned to her in Annexure-VI seniority list, in accordance with the rules then in force regulating such promotions.

ii) While considering the seniority of the petitioner after giving her the promotion to the post of Office Supdt., the respondents 1 to 3 may also bear in mind the decision of this Tribunal in OAK 167/88. We make it clear that the petitioners in that case are not to be disturbed, while considering the claims of the petitioner in this case for further promotion from the grade of DOS Level-I.

iii) In case the petitioner is found to be eligible for the promotion to the post of Office Supdt. from a date earlier to the date on which she has now been promoted (i.e. 9.8.89), she may be given notional promotion w.e.f. that date, if she cannot be given effective promotion from that date in the light of the decision in OAK 167/88. In that event, her pay as Office Supdt. from 9.8.89 (i.e. the date w.e.f. which she was actually promoted) should be fixed by assuming that she had been promoted as such from that earlier date."

8. Ms. C.P.Sreemathy then applied for a review (RA 47/89) of the aforesaid judgement to get a further direction to promote her as Administrative Officer (A.O), in accordance with the seniority to be assigned to her as O.S. This application was dismissed by observing that this request was a matter to be urged before the authorities concerned. Similarly, the Department also filed RA 27/90 seeking either a review or a clarification

of the order, contending that, if the applicant was given notional promotion retrospectively to the grade of D.S., on the basis of the seniority assigned to her as DOS-I, this will result in disturbing the applicants in OAK 167/88. This review application was also dismissed stating that no case has been made out for a review.

9. CCP 27/90 filed by Ms. C.P.Sreemathy in TAK 549/87 and OA 150/89 was closed by us when OA 592/90 and MP 680/90 in OA 56/89 were filed later on. The Department was, however, threatened with contempt proceedings against them by respondent 14 and 15 (C.Arumughan and T.V.Annamma) in case Ms. C.P.Sreemathy is promoted, ignoring their claims. In the meanwhile, the Department has promoted the 12th respondent, Ms. Rahelamma George as A.O. by the Ann.VI order, which has been challenged in this application.

10. OA 56/89 filed by the first and third applicants was pending when Ann.V judgement was delivered in OA 150/89. It was disposed of by the Ann.I V judgement dated 16.2.90. The directions therein are as follows:

> "(i) The respondents 1 to 3 may consider the claims of the applicants for promotion to DOS Level I from earlier dates viz. 8.2.80 in the light of the directions of the Tribunal in Annexure-VI judgement, the benefit of which was already granted to Smt. C.P.Sreemathy as admitted by the respondents.

(ii) In case the applicants are found to be eligible for promotion from earlier date as DOS Level I they may be given notional promotion if they cannot be given effective promotion from the earlier date in the light of the decision in OAK 167/88, with all consequential benefits in accordance with law."

The Ann.VI judgement referred to in the above extract is the judgement in TAK 549/87 (Ann.XI). It may be noticed that the direction at (ii) is on the lines of the judgement in OA 150/89. The Department, therefore, took advantage of this judgement and has filed MP 680/90 in this OA seeking the following clarifications:

"1. Whether, in the light of the findings and the directions issued in TAK 549/87, OAK 167/88, OA 150/89, OA 56/89 and CCP 27/90, the 1st respondent herein is entitled to be considered for promotion in the next vacancy likely to arise in the post of Administrative Officer or which other respondents herein is to be considered in the said vacancy.

2. In the light of the findings and the declarations contained in OAK 167/88 and OA 150/89 whether respondents 9 to 13 herein, who were the applicants in OAK 167/88, are entitled to protection only in the posts they occupied on the date of passing the orders in the said OA. i.e. on 5.8.88 while implementing the orders in TAK 549/87, OA 150/89 and CCP 27/90 or whether they are also entitled to claim further promotion based on the seniority and the position they were allowed to be retained by virtue of the order in OAK 167/88.

3. To pas such other clarificatory orders as is deemed fit by this Hon'ble Tribunal in the interest of justice so as to settle the various claims raised by the respondents herein and others who are parties in the pending applications, namely, OA 592/90, OA 610/90 and OA 656/90."

11. As the applicants felt that the Ann.III judgement as sought to be interpreted by the Department was really standing in the way of their getting their legitimate promotion, they have filed OA 592/90 impleading all the contesting parties so as to obtain a judgement binding on all parties.

12. We have heard in great detail the rival contentions raised by the counsel of the parties in OA 592/90 and also perused the records.

13. Shri M.R.Rajendran Nair, the learned counsel for the applicants submitted that, in pursuance of the Ann.V judgement, the Department was bound to first consider and determine the date with effect from which Ms. C.P.Sreemathy can be given notional promotion as O.S. from a date earlier than the date of actual promotion and determine her revised seniority. If it is found that she is senior to Respondent-12, her prior claims for promotion as A.O. should have been considered on the basis of that revised seniority, before promoting the 12th respondent by the Ann.VI order.

14. In short, the learned counsel contends that his client has certainly a right to be considered for further promotion on the basis of the revised seniority which will accrue to her on her retrospective promotion as O.S., in pursuance of the Ann.II judgement and the further directions in Ann.V judgement.

15. For this proposition, he relies on the judgement of the Hon'ble Supreme Court in Rana Randhir Singh Vs. State of U.P. [1989 (Supp.) (1) SCC 615]. That was a case where there was a dispute about the inter-se seniority as between direct recruits and promotee police officers belonging to the U.P.Police Service Class II, mainly as a result of what has been described in the judgement as "the callous

indifference on the part of the State Government to adhere to the scheme in the rules relating to recruitment from the two sources and make substantive appointments in time." Therefore, the following directions were given:

> "As we find, the dispute was raised in the Services Tribunal in the year 1979 by way of a claim petition, the writ petitions before this Court are either of 1983 or of 1986. We are of the view that if the entire dispute of seniority is reopened at this stage, serious prejudice may be caused to many of the officers who on the basis of the assigned seniority, have obtained further promotions. It is relevant to take note of the fact that many of such officers have retired and all the officers who may be affected are not before us. It has also been pointed out to us that confirmations have been made up to the period ending 1980. In such circumstances we have found it prudent not to disturb inter se seniority fixed up to 1980 inclusive and to direct re-fixation of inter se seniority on the basis of the Rules from 1981 inclusive onwards. All incumbents, whether directly recruited or promoted after December 31, 1980, shall be subjected to re-fixation of their seniority on the basis of the provisions contained in the Rules and particularly Rule 21(5). Temporary vacancies which have been created and have been in existence for a continuous period of three years or more shall be treated as permanent vacancies borne on the permanent cadre of the service and shall be taken into account for purposes of computation of seniority.
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> 9. All substantive appointments and promotions made prior to December 31, 1980, shall be treated to have been in accordance with the Rules. Recruitment on the basis of 1:1 from the sources shall be kept in view and the State shall work out the recruitment to the Service in such a phased way that within a period of five years (by end of 1993) the proper ratio shall be reflected."

The applicants' counsel claims similar reliefs for Ms. C.P.Sreemathy as far as future promotions are concerned.

16. Secondly, he refers us to the judgement of the Hon'ble Supreme Court in Balkrishan Vs. Delhi Administration and Another [1990(1) LLJ p.61]. That was a case where the appellant was promoted from cadre to cadre without considering his seniors for promotion, in purported implementation of an earlier direction of the High Court. When this came to light, a notice was given to him to show cause why his seniority should not be fixed correctly and why the promotions granted to him wrongly should not be cancelled. The Hon'ble Supreme Court held that though it was not so intended by the High Court, a faulty implementation of that Court's order gave an undue advantage to the applicant which required to be corrected. Accordingly, the issue of the aforesaid show cause notice was upheld. The following observations are relevant.

> "9. We have perused the list and gave our anxious consideration to the question urged. We fail to understand how the appellant could be ranked above his seniors and how he could get flyover promotions in every cadre. The High Court while directing confirmation of the appellant with reference to a particular date did not say that he should be ranked above even to those who were appointed earlier to him. There was also no direction that he should be ranked above those who were liable to be confirmed before him. Indeed, it was not the intention of the High Court and it

could not have been intended too, since his seniors were not parties to the writ petition. But the faulty implementation of the order of the High Court has resulted in that undesirable consequence. It has resulted in supersession of appellant's seniors. In fact, the appellant has overtaken 21 SIs who were senior to him. That was totally unjustified and arbitrary.

10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

11. It is not shown that the seniors were not eligible for confirmation when the appellant was confirmed. Nor it is shown that the seniors were not suitable for promotion when the appellant was promoted. The appellant therefore, could not complain against the corrective action taken by the respondents."

17. It is contended by the learned counsel that Ms. C.P.Sreemathy was denied her timely promotion and her juniors in the cadre of DOS-II were given a march over her, not because of anybody's fault, but because certain relevant recruitment rules were discriminatory ~~and denied her promotion, while granting it to others~~. Ms.C.P. Sreemathy cannot be made to suffer perpetually for this reason, after she has come out successful in getting the rule declared ultra vires in Ann.II judgement. She cannot be placed, for all times to come, as a junior to the respondents, who were all, admittedly, juniors to her as DOS-II. It is contended that as and when Ms. C.P. Sreemathy gets first promoted to a cadre and then a decision is taken as to the earlier date from which she can be so promoted in that cadre, without affecting the positions held by the contesting respondents, she gets

a claim to be considered for promotion to higher posts along with persons who now become her juniors in that cadre.

18. On the contrary, Shri Ramkumar, the learned counsel for the contesting respondents 7 to 9 and 11 to 16 has raised serious objections to granting any of the prayers in this application. He submitted that the judgement in OA 150/89 (Ann.V) has become final and binding, and two review applications have also been rejected. That apart, there is no need to consider this OA because the Department has already contended that the judgement in favour of Ms. C.P.Sreemathy in TAK 549/87 had already been complied with and that nothing remains to be done. He also pleaded that it will not be a proper exercise of judicial power to disturb those decisions which have become final. The main plank of his argument is that the judgement in OA 167/88 (Ann.III), besides giving a declaration that they cannot be disturbed, also gave the applicants therein (i.e. respondents 11 to 15) certain vested rights for future promotions ~~xxx~~, which cannot now be interfered with. More specifically, he contended that the seniority that they had obtained in the respective cadres by virtue of the posts they held on the date that OA was filed, cannot be altered, despite the judgement in TAK 549/87 and OA 150/89. Thus, Ms. C.P.Sreemathy can never become senior to any of the applicants in O A 167/88 in the cadres to which they had respectively been promoted before the judgement in TAK 549/87, whatever retrospective benefit is now given to her in those cadres in pursuance of the Ann.V judgement, particularly when she had not challenged such promotions in time. Future promotions should be only on the

basis of the seniority already acquired by those applicants, before Ms. C.P.Sreemathy got corresponding promotion by virtue of the Ann.II and Ann.V judgements. He was firmly of the view that the Ann.III judgement not only gave a direction that the applicants therein should not be reverted from the posts held by them on the date of that judgement but also that there was a declaration therein that the applicants therein would be seniors to Ms. C.P.Sreemathy, for all times to come.

19. In support of these contentions, Shri Ramkumar drew our attention to the decision of the Hon'ble Supreme Court in TR Kapur Vs State of Haryana, 1989(4)SCC 71. That was a case where the petitioners were Diploma holders promoted to officiate in Class II Engineering Service, but were denied further promotion from December 1970 on the ground that the State Government held that a Degree of Engineering was necessary for further promotions. The petitioners kept quiet for a long time. Subsequently, the Supreme Court rendered a decision in AS Parmar's case (1984 Supp. SCC 1) holding that such an interpretation was wrong. When the petitioners claimed promotion from back dates on the basis of this judgement, that was turned down by the Supreme Court by observing as follows:

> "Taking up for consideration the contention of the petitioners that by reason of their being constituted Class II officers with effect from December 25, 1970, they were entitled to promotion as and when they attained seniority, but the State Government had unjustly deprived them the benefit of promotion due to wrong interpretation of the Rules, we are unable to accept the plea for more than one reason. In the first place, the

petitioners had acquiesced in the interpretation of the rules by the State Government all along and it was only after the decision in A.S. Parmar case, they chose to move this Court under Article 32 of the Constitution to seek promotional benefits. Having remained complacent for a long number of years, the petitioners cannot now turn round and say that notwithstanding their inaction, they should be granted promotion from deemed dates on the basis of seniority. Secondly, in the long interval of time that had elapsed before the petitioners chose to file the writ petitions, several other Class II officers holding engineering degrees have been promoted to Class I service. The benefits which had accrued to those persons by reason of their promotions cannot now be disturbed or interfered with by giving the petitioners promotions from deemed dates of eligibility for promotion. In other words, a settled state of affairs among the Class I promotees cannot be unsettled now."

He contends that when Ms. C.P.Sreemathy kept quiet for nearly a decade and did not challenge the promotions given to his clients before the Ann.II judgement was delivered, she cannot now claim retrospective benefits. She has permanently forfeited her rights of seniority vis-a-vis these respondents.

20. The learned counsel for respondents 1-3 (i.e. the Department) submitted that they were earlier under the impression that the Ann.III judgement gave the applicants therein the benefits now claimed for them by their counsel. It is for this reason that the impugned Ann.VI order promoting the 12th respondent as A.O. was passed, taking her to be senior as O.S. to Ms CP Sreemathy He, however, expressed the view that it would appear

from that judgement that the only benefit granted to the applicants therein was that they should not be reverted, even if this became necessary to give promotion to Ms. C.P.Sreemathy. As conflicting views were being expressed by the Department officers themselves and as both sides threatened to initiate contempt proceedings, MP No.680/90 was filed in OA 56/89 seeking certain clarifications to facilitate implementation of the judgements.

21. It is clear from the strong views expressed before us that the parties have not fully appreciated the scope of Ann.V judgement. In that judgement we had given clear directions after adverting to the interests of all parties in whose favour the Ann.II judgement in OAK 549/87 and the Ann.III judgement in OA 167/88 were delivered. If the Department had carefully studied that judgement and drawn the further logical conclusions, it should have been possible for them to implement the directions in that judgement without fear of any further consequences. It appears that the Department ~~itself~~ was not sure of itself and further, the threat to institute contempt proceedings has unnerved them. Therefore, the Department is, understandably, compelled to seek clarifications by filing MP 680/90 in OA 56/89. In the circumstances, we feel that, though the judgements earlier rendered have become final, the interest of justice requires that the doubts raised by the Department are examined, after giving a hearing to all the concerned parties. We, therefore, do not find any objection or impropriety in dealing with these matters again.

22. The clarification sought can be given only after considering whether the Ann.III judgement in OA 167/88 declares that the seniority acquired by the applicants therein before it is final and unalterable and that judgement should be the basis for future promotions.

23. The first and second paras of the Ann.III judgement mention the circumstances under which the applicants approached the Tribunal, viz. the proceedings initiated by the Department to revert the applicants therein, in purported implementation of the Ann.II judgement in TAK 549/89. The logic of the Department in initiating such action was that if Ms. C.P.Sreemathy had been wrongfully denied promotion as DOS-I at the appropriate time as a result of an unconstitutional rule, then, when that wrong was rectified by theAnn.II judgement, she became entitled to promotion as DOS -I from 8.2.80 instead of from 7.2.84 from which date she was actually promoted. Thereby, she became senior as DOS-I to many persons, including the applicants in OA 167/88, thus giving her a right to an earlier promotion, successively as OS. and then as A.O., than the 5 applicants in that case. If Ms. C.P.Sreemathy had to be given this benefit the Department felt that this required reverting the juniors (applicants in OA 167/88) from the post of A.O. to O.S. and from the post of O.S. to DOS-I, etc. as the case may be. It is to prevent such reversion that OA 167/88 was filed.

24. Some more conclusions can be drawn by a perusal of the record of OA 167/88. We find that the applicants therein (Respondents 11 to 15 in this case) apprehended an imminent reversion. Paras 6, 7 and 8 of that application reproduced below will make this clear:

> "6. The fourth respondent has also not challenged the promotions made from among the persons found in Exhibit P1. Therefore by the implementation

of the present order those promotions cannot be affected at any rate without hearing them. The fourth respondent has also not challenged any promotions to the post of DOS Level I. Yet, if the directions issued by this Hon'ble Tribunal to give her retrospective benefits (sic) the promotions already given to this applicants and the contesting respondents in the application will be affected. Such a result will be contrary to the spirit of series of Supreme Court decision on the point. It is therefore, respectfully submitted that the order of this Hon'ble Tribunal has been made on a misunderstanding of the correct facts and the rules and without impleading the necessary parties.

7. The applicants therefore respectfully submit that on the basis of the present recruitment rules they cannot be reverted to any lower post. It is also submitted that the order of this Hon'ble Tribunal to which this applicants were not parties cannot be a reason for respondents 1 to 3 to revert them as the order is not binding on them. Besides all but one among the applicants are members of the Scheduled castes and scheduled tribes promoted also on that basis. The applicants therefore submit that their promotions cannot be disturbed and any proposal to revert them may be stopped. The applicants are approaching this Tribunal even before the order of reversion is passed, because in implementation of the earlier orders of this Tribunal any day they may be reverted and they may not be able to stop that by any method. The applicants, therefore, are filing a separate petition to dispense with the production of the order. The applicants, therefore, respectfully pray that respondents 1 to 3 may be directed to continue the applicants in their present posts to which they have been lawfully promoted and not to revert them to any lower post. Their rights guaranteed under Article 14 and 16 will be infringed if their promotions are disturbed and they are reverted.

8. In view of the facts mentioned above, the applicants pray for the following reliefs:

i) To direct respondents 1 to 3 to continue the applicants in their present posts and not to revert them to any lower post.

ii) To declare that the applicants are entitled to be promoted in preference to the 4th respondent in accordance with the rules in force on the date of promotion of the applicants.

xxx xxx xxx "

It is equally clear that the applicants therein did not pray that by virtue of the earlier promotions granted to them (i.e. prior to the decision in TAK 549/87 giving Ms C.P.Sreemathy her rightful due) certain inter-se seniority/rights had accrued to them and that this inter-se seniority alone should be made the basis for future promotions also, even after Ms. Sreemathy's claims are granted to her in accordance with the judgement in TAK 549/87.

25. Thus, the first relief sought is a direction to the respondents not to revert them. This prayer was allowed/by the Ann.III judgement in the following terms:

"As such, in purported implementation of that judgement, there is no question of disturbing the present applicants who are holding posts higher than that of DOS, Level-I as a result of subsequent promotions on the basis of selection.

xxxx xxxx xxx

It follows that there is no scope for disturbing the applicants from the present posts they hold as a result of the final order in TAK 549/87."

26. The second relief is for a declaration that notwithstanding the Ann.II judgement in TAK 549/87 which Ms. C.P.Sreemathy had obtained in her favour and any order passed in pursuance thereof, the applicants in

OA 167/88 were entitled to be promoted on the dates on which they were actually promoted in the past, on the basis of the rules then in force, to the respective posts held by them when they filed OA 167/88, in preference to Ms. C.P. Sreemathy. The contention is that when the applicants in OA 167/88 were actually so promoted to the postsheld by them when that OA was filed, the 4th respondent was not in the zone of consideration because she was promoted as DOS-I only on 7.7.84, whereas the applicants in OA 167/88 had been promoted much earlier. The relevant dates are given in Ann.R7 filed by the Department. That statement shows that the five applicants in OA 167/88 stood promoted as DOS-I on 6.2.80, 30.5.82, 1.10.80, 30.1.83 and 21.9.83 respectively, whereas Ms. CP Sreemathy was so promoted on 7.7.84 only. In other words, Ms. C.P.Sreemathy was then junior to those five applicants when further promotions to the rank of O.S. and A.O. were subsequently considered. Hence those promotions cannot now be disturbed and they cannot be reverted. This prayer has also been conceded by the directions reproduced in para 25 supra, that their position cannot be disturbed, whatever benefit is given to Ms. C.P.Sreemathy.

27, The learned counsel for the respondents, however, vehemently stated that from the following extract of para 3 of the judgement in OA 167/88 (Ann.III), the conclusion necessarily follows that the seniority gained by the applicants therein on the posts held by them

would hold good for further promotions also.

> "From the judgement it is clear that what was directed to be considered was only the eligibility of the present respondent No.4 for promotion to the cadre of DOS, Level-I. In case she was found eligible for such promotion her seniority was directed to be fixed above the respondents 4 to 13 in that applications. No direction for disturbance of the seniority of the present applicants was made there, and such adirection could not have been granted, or even intended, as these applicants were not parties there."

We are unable to agree with that proposition and interpretation.

28. The judgement itself states that Ms. Sreemathy, the fourth respondent therein, was entitled to claim seniority over respondents 4 to 13 in TAK 549/87, who themselves were, admittedly, senior to all the applicants in OAK 167/88. Therefore, if Ms. Sreemathy was granted as DOS-I with consequential benefits she seniority over respondents 4 to 13 in TAK 549/87 will necessarily also become senior to all persons junior to those respondents, even though they may not have been impleaded. It can never be contended that the Ann.III judgement held that while Ms. Sreemathy could prospectively become senior as DOS-I and in other higher cadres / to Respondents-4 to 13 in TAK 549/87 / who are all senior to the five applicants in OA 167/88, she has to remain junior to the applicants in OA 167/88, on the only ground that they were not impleaded therein. Ann.III did not intend any such conclusion, which is patently untenable.

29. The Ann.III judgement, therefore, only cautioned that as the judgement in TAK 549/87 (Ann.II) was not retrospective in operation, there should, however, be no reversion from the posts held by any person who becomes junior to Ms. C.P.Sreemathy after implementing

the Ann.II judgement. Nothing more has been stated in this judgement. More particularly, there is no direction or declaration that the seniority which the applicants in OA 167/88 had acquired on the posts of A.O., O.S. or DOS-II, immediately prior to the Ann.II judgement in TAK 549/87, would remain undisturbed even thereafter and that further promotions would be made only on the basis of that seniority.

30. It is for this reason that we also made it clear in theAnn.V judgement that Ms. C.P.Sreemathy is entitled to further promotions above the rank of DOS-I on the basis of the revised seniority assigned to her as DOS-I i.e. from 8.2.80, in pursuance of the Ann.II judgement. This higher seniority will now give her consequential benefits for further promotions in future and because of her higher seniority, she would fall in the zone of consideration earlier than others, who are now junior to her in that list. The only caution we sounded was that while granting such promotion, the decision in OAK 167/88 should be borne in mind and the applicants therein should not be disturbed. In other words, if Ms. C.P.Sreemathy is to be promoted as OS from an earlier date and there is no vacancy that promotion cannot be given to her by reverting any of the persons promoted earlier as OS. Hence, we directed that, she should be given notional promotion from an earlier date, if actual promotion from such date involved any reversion.

31. We are, therefore, clearly of the view that the only protection given to the applicants in OA 167/88 (i.e. respondents 11 to 15) is that they would not be reverted from the posts held by them when that judgement

was delivered, either as a result of any retrospective promotion granted to Ms. C.P.Sreemathy to any of the grades of posts held by the applicants in OA 167/88 or as a result of seniority assigned to her in that grade. The respondents 11 to 15 cannot claim that the seniority acquired by them on the posts to which they stood promoted before the Ann.II judgement was delivered in favour of Ms. C.P.Sreemathy, should be the basis for future promotions and that such seniority cannot be disturbed by placing Ms. C.P. Sreemathy above any one of them.

32. We can now revert to the case of applicants 1 and 3. Applicant-1, Ms. P.C.Mariamma, was, in fact, the first person who had obtained from the High Court of Kerala, in OP 4922 of 1981, the same kind of reliefs which were granted to Ms. C.P.Sreemathy in TAK 549/87; by the Ann.I judgement dated 28.2.83. The contesting respondents in that OP were the same as respondents 4 to 13 in TAK 549/87 filed by Ms. C.P.Sreemathy.

33. What transpired thereafter is not too clear except that, as can be seen from para 6 of the application, a writ appeal was filed by the Department against that judgement and the petitioner therein (i.e. first applicant) was permitted to withdraw the OP itself, with liberty to agitate the matter before this Tribunal. That petitioner and the third applicant Ms. N.Rajam then filed OA 56/89 before this Tribunal, which was pending when we delivered the Ann.V judgement in OA 150/89. That application was finally disposed of by the Ann.IV judgement dated 16.2.90 with the following directions:

> " The respondents 1 to 3 may consider the claims of the applicants for promotion to DOS Level I from earlier dates viz. 8.2.1980 in the light of the directions of the Tribunal in Annexure VI

judgement, the benefit of which was already granted to Smt. C.P.Sreemathy as admitted by the respondents.

(ii) In case the applicants are found to be eligible for promotion from earlier date as DOS Level I they may be given notional promotion if they cannot be given effective promotion from the earlier date in the light of the decision in OAK 167/88, with all consequential benefits in accordance with law."

It has only to be added that the Annexure-VI judgement referred to in the extract is the one delivered by us in OA 150/89.

34. It is also necessary at this stage to deal with an argument repeatedly advanced by Shri Ramkumar that there was no necessity to declare some portions of the recruitment rules impugned in TAK 549/87 as ultra vires for, the relevant rule had already been amended twice, once in 1982 and again in 1987 and that, therefore, the applicants had hopelessly delayed seeking proper reliefs. We have carefully considered this matter. We find that the relevant rule was amended only on 20th June 1987 by notification GSR 474. The rule so amended provided for the first time, that a DOS-II who has at least 2 year's regular service will be eligible for promotion as DOS-I if, including his earlier service as Stenographer Grade III, he has a total service of 8 years. Before such amendment, earlier service as UDC alone (and not of Stenographer Gr.III) was eligible to be counted. This was considered to be discriminatory. As this provision was amended only on 20.6.87, it could be invoked during earlier periods to deny promotion to DOS-II who had earlier service of only Stenographer Gr.III, as it was done in the case of the applicants. This mischief could be undone only by striking down the offending rule and directing that the benefit given to those DOS-II promoted from the cadre of UDC shall be extended to those DOS-II promoted from the cadre of Stenographer (OG) as well. This was done by the Ann.I judgement on 28.2.83, but this became abortive because, at the writ appeal stage, the O.P.

itself was allowed to be withdrawn. Therefore, it had to be rightly struck down again in TAK 549/87. Therefore, no delay can be attributed to the applicants in seeking relief as contended by the contesting respondents.

35. We have now to consider the objection raised by Shri Ramkumar based on the judgement of the Supreme Court in 1989 (4) SCC 71. The main consideration therein was the long delay in seeking relief. That situation does not obtain here. Ms. P.C.Mariamma filed OP 4922 in 1981 and Ms. C.P.Sreemathy also filed OP 5461 in 1981. That apart, even now, the contesting respondents already stand fully protected by the Ann.III judgement in O A 167/88 to the same extent as in the case referred to above. The Ann.III judgement declares that the applicants therein cannot be reverted from the higher level posts to which they had been promoted before the Ann.II judgement, notwithstanding the fact that they could, perhaps, have not got the promotion on the dates they were actually promoted, if the applicant in TAK 549/87 (Ms.CP Sreemathy) too had been considered for such promotion in case she had not been discriminated against unlawfully. But they cannot get this undue benefit for ever. The mischief resulting from a discriminatory rule had to be undone and the present applicants given their due, at least in future. They are entitled to this consideration in terms of the judgement of the Supreme Court in Rana Randhir Singh's case and Bal Kishan's case supra relied upon by the applicants' counsel.

36. We can now deal with the prayers made in OA 592/90 as follows, by stating in general terms, what the rights of parties are, so as to enable the Department to take necessary action.

(i) All promotions of the applicants to be made now from prospective or retrospective dates have to be made on the basis

of the recruitment rules obtaining at the relevant time and after satisfying the relevant eligibility conditions and following the procedure laid down in the rules.

(ii) Any such promotion of the applicants to a post, prospectively or retrospectively, necessitated for implementing the Ann.II, IV or V judgements, shall not result in the reversion of any person on the ground that such person has now become junior to the applicants, if such person had been promoted to that post prior to the judgement in OA 167/87 (Ann.III). In other words, promotion of certain persons, treating them as senior to the applicants, made prior to the Ann.III judgement, cannot be upset at present, merely because the applicants have now secured a higher seniority over them.

(iii) The first and second applicants are entitled to be considered for promotion as DOS-I from retrospective dates in pursuance of the Ann.IV judgement, in the same manner as the second applicant was earlier given such benefit by the Department.

(iv) The seniority list of DOS-I as on the dates on which the applicants would stand promoted from retrospective dates would indicate if further promotion as O.S. has been given to any person or persons junior to them.

(v) If any person junior to an applicant has been so promoted as O.S., that applicant has a right to be considered for such promotion with immediate effect, either against an existing vacancy or, if no such vacancy exists, against a supernumerary post, which shall be created by the Department.

(vi) As such a promotion of an applicant to be now considered is in lieu of his promotion which ought to have been considered earlier, but for the operation of an invalid rule, only his case need be considered and not that of any others junior to that applicant.

(vii) After such promotion as O.S. the question of granting it retrospectively from the date from which any immediate junior DOS-I was promoted as O.S. should be considered.

(viii) If, however, any applicant had already been considered for promotion as O.S. in the past, but superseded by a junior, then, such an applicant cannot now be considered for promotion from any date earlier to the date of such supersession.

(ix) The exercise as above, mutatis mutandis, has to be done for consideration for further promotion as A.O. also.

(x) The retrospective promotion, if any, made to the posts of O.S. and A.O. will not entitle the applicants to any arrears. It will be taken into account only for fixation of pay from the date on which the applicant is now promoted on an existing vacancy or on a supernumerary post. It will count for seniority only from the date on which the orders granting retrospective promotion is passed.

(xi) Subject to what has been stated at (ii) and (x) above, the seniority of the applicants in a cadre will be reckoned from the retrospective date of promotion, if any, or from the date of actual promotion, as the case may be, for purposes of further promotion to the next higher cadre.

We make it clear that all these rights of parties flow from the Ann.II, III, IV & V judgements themselves, which, needless to say, are maintained without any change.

37. We now consider the challenge to the impugned Ann.VI order dated 14.9.89, in so far as it concerns the promotion of Ms. Rahelamma George (R-12) as A.O. This post of A.O. became available for promotion after the Ann.V judgement in OA 150/89 was delivered on 31.8.89. We had directed therein, inter alia, that the question whether Ms. C.P.Sreemathy was entitled to be promoted notionally from a date earlier to the actual date of promotion had to be considered. Therefore, the promotion of Respondent-12 ought not to have been made, before first ascertaining what the ultimate seniority of Ms.CP Sreemathy is in the cadre of O.S., after going through the process outlined in para 36 supra. If it is found that she is senior as O.S. to the 12th respondent and also that her junior has already been promoted as A.O., then the Department should have considered her for promotion as A.O. to the vacant post of A.O. then available. If she is found suitable for such promotion, the Department will be at liberty to revert the 12th respondent and promote the applicant in her place. Till such a decision is taken, the promotion granted to the 12th respondent by the Ann.VI order will continue, but it shall be necessarily treated to be purely on an adhoc basis. Such a direction cannot be given in favour of the first applicant because the decision in her case, similar to the Ann. V judgement, was rendered only on 16.2.90, before which date the 12th respondent had already been promoted and that promotion stands protected in accordance with the principle laid down in OA 167/88. The third applicant does not claim seniority over respondent-12.

38. In the result we dispose of the applications and other matters we have considered as follows:

(i) OA 592/90

The nature of reliefs to which the applicants are entitled have already been mentioned in para 36 and 37 of our judgement. We direct the Department to comply with the directions/observations therein within a period of three months from the date of receipt of this order. We further direct that the impugned Ann.VI order, in so far as it grants promotion to Ms. Relamma George (respondent-12) cannot be maintained for the present and hence, her promotion by that order is to be treated purely as an adhoc promotion, subject to the consideration of the claims of Ms. C.P.Sreemathy in the manner indicated in para 37.

(ii) MP 680/90 in OA 56/89

(a) The first issue raised in the MP already stands answered by the principles stated in para 36 supra.

(b) In regard to the second issue, we declare that the applicants in OAK 167/88 are entitled to only the protection of the posts they held on the date of passing of the judgement therein and they cannot be reverted from those posts to accommodate any of the applicants in OA 592/90, whatever be the seniority assigned to them. However, the applicants in OAK 167/88 are not further entitled to claim that the seniority they acquired on the basis of the date of promotion to the post they so held should be the basis for all future promotions and that such seniority cannot be disturbed by the grant of any retrospective promotion to the applicants in OA 592/90. The applicants in OA 592/90 can be granted retrospective promotion on notional basis in a cadre subject to their eligibility and entitlement, and the Department shall

create supernumerary posts if needed, if so advised. In the event of such retrospective promotion to a cadre, by the issue of orders to that effect, their seniority in that cadre, with effect from the date of such orders, will count from such retrospective date and shall be taken into account for future promotion. There is nothing in the Annexure-III judgement which prevents the applicants in OA 592/90 from gaining such seniority over the applicants in OAK 167/88.

(iii) OA 656/90

We dismiss this application with the observations that it is premature for us to declare whether the applicant is senior to the contesting respondent Ms. CP Sreemathy in the cadre of O.S. or not, as this matter will have to be decided in the light of the directions given in OA 592/90 and the question of making further promotions will also have to be considered in the manner indicated in OA 592/90.

3.5.91

(N.Dharmadan)
Judicial Member

3/5/91

(N.V.Krishnan)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 16.2.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 56/89

P. C. Mariamma & N. Rajam — Applicants

Vs.

1. Union of India represented by the Secretary to Government, Ministry of Finance, Department of Revenue New Delhi,

2. The Secretary, Central Board of Excise and Customs, North Block Central Secretariat, New Delhi

3. The Collector of Customs and Central Excise, Catholic Centre, Cochin-31

4. Smt. G. Rahelamma George, Office of the Supdt., Central Excise Head Quarters Office, Cochin-31

5. B. Satheedevi Amma, DOS Level-I Central Excise Divisional Office Trivandrum

6. M. Gladius Hebsiban of DOS Level-I Central Excise Divisional Office, Trivandrum

7. C. Arumughan, O.S. Central Excise Headquarters Office, Cochin

8. E. J. Savithri, DOS Level-I Central Excise, Ernakulam I Division Cochin and

9. T. V. Annamma O.S. Central Excise Headquarters Office, Tharakandam Centre, Cochin — Respondents

M/s. M. V. Bose, Mathew John & T. K. Latif — Counsel for the applicants

Mr. P. V. Madhavan Nambiar, SCGSC — Counsel for Respondents 1-3

M/s. K. Ramakumar & V. R. Ramachandran Nair — Counsel for R-4,7 & 9

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JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants who are working as Dy. Office Supdts. Level-I, Central Excise Divisional Offices at Kottayam and Trichur respectively approached this Tribunal with the grievance that they are not promoted as DOS Level-I, Office Supdt. and Administrative Officer on the basis of seniority assigned to them in the seniority list of Deputy Office Supdt. Level-II.

2. The first applicant entered as Stenographer (O.G.) in the service of the Central Excise Department on 1.8.1969. She was confirmed in the post on 1.8.1971. She got promotion as DOS Level II on 1.7.1980. Annexure-II is the seniority list of DOS Level II as on 1.1.1980 and Annexure-III is the extract of seniority list of DOS Level-II as on 1.1.1984. The first applicant is at Sl. No. 2 and the second applicant is shown as S. No. 18 in the seniority list. Smt. C. P. Sreemathy who is the third rank holder and various other juniors of the applicants were given promotion. So the grievance of the applicants is that they should have been promoted to DOS Level-I after two years of service as DOS Level II but the Recruitment Rules of 1979 (Annexure-1) made some distinction in the matter of further promotion even to the category of DOS Level-II, between those promoted from UDC and Stenographer (O.G.) Under this rule the total service of a DOS Level-II who has come

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from Stenographer (OG) are not at all counted in the matter of promotion to the higher grade though it is counted if promotion is made from UDC grade.

3. The first petitioner filed O.P. 4922/81 before the High Court challenging the 1979 Rules. Annexure-V is the judgment in that case. The High Court held that there is unequal treatment of equals and quashed the existing Rules. The court also directed that if the first petitioner was entitled to promotion from an earlier date, she should be deemed to have been promoted from that date and consequential benefits in regard to seniority in the promoted post etc. be given to her.

4. Thereafter Smt. C. P. Sreemathy, who was having a rank below the first applicant in Annexure-III, filed another O.P. before the High Court which was later transferred to this Tribunal and disposed of as T.A.K. 549/87. Annexure-VI is the judgment of the Tribunal. The operative portion in the judgment reads as follows:

> "4. In the result we declare that the applicant on completion of a total of 8 years service as Stenographer (O.G.) and DOS Level II has become eligible for promotion to DOS Level I. We direct the respondents 1 to 3 to consider the case of the applicant for promotion on the above basis by convening a review Departmental promotion committee within a period of two months from the date of receipt of a copy of this order. In case it is found that the applicant is eligible for promotion she will be granted consequential benefits and fixation of seniority in the cadre of DOS Level-I above the respondents 4 to 13."

..

5. Pursuant to Annexure-VI judgment, Annexure-VII seniority list of DOS Level-I as on 1.1.88 was issued. In this list the first applicant who was senior to Smt. C. P. Sreemathy was shown as Sl. No. 18 while Smt. C. P. Sreemathy was at Sl. No. 3. According to the first applicant she ought to have been placed above the applicant in Annexure VI case, since both the persons come in the category of Stenographer (OG).

6. The case of the applicants is that they are also entitled to the same benefit which was granted to Smt. C. P. Sreemathy. Accordingly Annexure VIII and IX representations were submitted. The representations were rejected as per Annexure-X. The second applicant who is also situated in identical position submitted separate representations which were also rejected as per Annexure XIV order. The ground for rejection in both the representations is same and it reads as follows:

> "As per specific orders from CAT only the case of Smt. C. P. Sreemathy has been considered."

On this ground both the applicants were denied their right to get earlier promotion. Accordingly, they have now come up before this Tribunal for getting direction to promote the applicants to the post of DOS Level I and grant further promotion on the basis of their seniority assigned to them in the seniority list of DOS Level II.

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7. The respondents 1 & 3 and respondents 4,7 & 9 filed separate counter affidavits denying the averments in the Original Application. But it is pertinent to note that the respondents 1 to 3 have not denied the right of the applicants for getting earlier promotion along with the juniors who are similarly placed. On the other hand they have stated as follows:

> "The applicant and Smt. C. P. Sreemathy being promotees to the cadre of DOS Level II from the cadre of Steno (OG), had to complete 5 years service as DOS Level II before they could be promoted as DOS Level. I. In the meanwhile some of their juniors in the cadre of DOS Level II who were promotees from the cadre of UDC got promoted as DOS Level I by virtue of their total service as DOS Level II and UDC taken together (with two years as DOS Level II). This was the circumstance in which juniors of the applicant and Smt. C. P. Sreemathy got promotion as DOS Level I earlier."

8. Subsequently Smt. C. P. Sreemathy filed O.A. 150/89 before this Tribunal for getting her due promotions on the light of earlier judgment. This was heard and disposed of with the following directions as per the judgment dated 31.8.89. The relevant portion reads as follows:

> "Taking into accounts all these facts, we are of the view that directions may have to be issued consistent with the first and second judgments for rendering justice to the petitioner without in any way affecting the rights of respondent-4 or others similarly situated like her. Accordingly we issue the following directions:
>
> (i) The petitioner is not only entitled to the promotion and seniority as DOS Level-I as per the first judgment as shown in the seniority list at Annexure-VI, but also e entitled to be considered for further promotion on the basis of the date assigned to her in Annexure-VI notwithstanding Annexure X. So, we direct the respondents 1 to 3 to consider the claim of the petitioner for promotion as Office Supdt. on the basis of the seniority assigned to her in Annexure-VI seniority list in accordance with the rules then in force regulating such promotions.

..

ii) While considering the seniority of the petitioner after giving her the promotion to the post of Office Supdt., the respondents 1 to 3 may also bear in mind the decision of this Tribunal in AK 167/88. We make it clear that the petitioners in that case are not to be disturbed, while considering the claims of the petitioner in this case for further promotion from the grade of DOS Level-I.

iii) In case the peitioner is found to be eligible for promotion to the post of Office Supdt. from a date earlier to the date on which she has now been promoted (i.e. 9.8.89). She may be given notional promotion w.e.f. that date if she cannot be given effective promotion from that date in the light of the decision in OAK-167/88. In that event, her pay as Office Supdt. from 9.8.89 (i.e. the date w.e.f. which she was actually promoted) should be fixed by assuming that she had been promoted as such from that earlier date."

9. When the case came up for final hearing the counsel$ appearing on behalf of the parties agreed that the law in respect of the matter is settled in the light of the previous decisions of this Tribunal and this case can be disposed of with the directions similar to the directions in OA 150/89. Accordingly, on going through the papers carefully, we are satisfied that this case can be disposed of in the interest of justice with the following directions:

(i) The respondents 1 to 3 may consider the claims of the applicants for promotion to DOS Level I from earlier dates viz. 8.2.1980 in the light of the directions of the Tribunal in Annexure VI judgment, the benefit of which was already granted to Smt. C. P. Sreemathy as admitted by the respondents.

(ii) In case the applicants are found to be eligible for promotion from earlier date as DOS Level I they may be given notional promotion if they cannot be given effective promotion from the earlier date in the light

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the decision in OAK 167/88, with all consequential benefits in accordance with law.

10. Accordingly, we dispose of the Original Application with the above directions.

11. There is no order as to costs.

(N. Dharmadan) 16.2.'90
Judicial Member

(S. P. Mukerji) 16.2.90
Vice Chairman

kmn