

45

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH
NEW BOMBAY.

O.A.Nos. 169/87, 267/87, 278/87, 425/87, 446/87, 493/87,
493/87, 494/87, 515/87, 547/87, 284/89, 468/89, 488/89,
942/89 and 377/90.

1. OA 169/87

Abraham Titus and 25 others ...		<u>Applicants</u>
versus		
Union of India and others ...		<u>Respondents.</u>

2. O.A. 267/87.

Satyanarayan Shankarlal Attal ...		<u>Applicants</u>
and 38 others		
versus		
Secretary Ministry of Defence		
New Delhi and others ...		<u>Respondents.</u>

3. O.A. 278/87.

V.Ganapathy and 61 others ...		<u>Applicants.</u>
versus		
Union of India and others		<u>Respondents.</u>

4. O.A. 425/87.

A.N.Khedlekar and 2 others ...		<u>Applicants.</u>
versus		
Union of India and others ...		<u>Respondents.</u>

5. O.A. 446/87.

George K. Verghese and 3 others ...		<u>Applicants..</u>
versus		
Union of India and others ...		<u>Respondents</u>

6. O.A. 493/87.

Vinayak Gajanan Patankar		<u>Applicant.</u>
versus		
Union of India and others ...		<u>Respondents.</u>

OA 494/87

7. S.Pazhaniappan and 69 others ...		<u>Applicants.</u>
versus		
Union of India and others ...		<u>Respondents.</u>

8. O.A. 515/87.

A.V.Pandit and 3 others		<u>Applicants.</u>
versus		
Union of India and others		<u>Respondents.</u>

9. O.A. 547/87.

R.C.Ravalani		<u>Applicant.</u>
versus		
Union of India and others		<u>Respondents.</u>

10. O.A. 284/89

C.V.Ramana Murty and 3 others		<u>Applicants.</u>
versus		
Union of India and others.		<u>Respondents.</u>

11. O.A. 468/89.

Bhyendra Pal Singh	...	<u>Applicant.</u>
versus		
Union of India and others	...	<u>Respondents.</u>

12. O.A. 488/89.

M. Sundaram	...	<u>Applicant.</u>
versus		
Union of India and others	...	<u>Respondents.</u>

13. O.A. 942/89.

P.K. Sahasrabudha	...	<u>Applicant.</u>
versus		
Union of India and others	...	<u>Respondents.</u>

14. O.A. 377/90.

I.N. Mukhopadhyaya	...	<u>Applicant.</u>
versus		
Union of India and others	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri B.C. Mathur, Vice Chairman(A).

The Hon'ble Shri ^{JUSTICE} Kamleshwar Nath, Vice Chairman (J).

The Hon'ble Shri G. Sreedharan Nair, Vice Chairman(J).

For the applicants-

Mr. R.R. Pillai, Advocate in OA 169/87.
 Mr A.G. Abhyankar, Advocate in OA 267/87
 Mr S.P. Saxena, Advocate for the Intervenor
 Mr R.C. Ravlani, Advocate in OA 278/87.
 Mr A.G. Abhyankar, Advocate in OA 425/87.
 Mr Kalamkar, Advocate in OA 446/87.
 Mr J. Gadkari, Advocate in OA 493/87.
 Mr Mr J. Gadkari, Advocate in OA 494/87
 Mr V.J. Kalamkar, Advocate in OA 515/87.
 Applicant in person in OA 547/87.
 MR A.G. Abhyankar, Advocate in OA 284/89
 468/89, 942/89.
 Mr V.J. Kalamkar, Advocate in O.A. 488/89
 Mr S.P. Saxena, Advocate in OA 377/90.

For the respondents-

Mr Ramesh Darda, Advocate
 Mr. R. K. Shetty, M.I. Sethna,
 Mr P.M. Pradhan, Advocates.

47
3.

Date of hearing - 20.9.90.

Date of Judgment & Order - 23.8.90

JUDGMENT & ORDER :

G.SREEDHARAN NAIR, VICE CHAIRMAN :

These applications were heard together as common questions of law and facts are involved.

2. The first 12 applications have come up before us on a Reference being made by a Division Bench of this Tribunal to the Hon'ble Chairman under Clause(d) of sub-section(4) of section 5 of the Administrative Tribunals Act, 1985, for a decision by a Bench of more than two Hon'ble Members.

3. The Original Application at serial No.13, namely, OA 942/89 was filed after the order of Reference. The reliefs claimed in that application are identical to the reliefs in the applications at serial Nos. 1 to 12.

4. The application at serial No.14, namely, OA 377/90 contains a prayer not to allow the reliefs claimed in the applications at serial Nos. 1 to 13.

5. The Division Bench of this Tribunal made the order of Reference as it was not in agreement with the decisions of the Jabalpur Bench of this Tribunal in Ananthamurthy and others vs. Union of India (TA 322/86) and Ravindra Nath Gupta and others vs. Union of India (OA 104/86), which were followed by the Madras Bench in K.M.Kalidasan' vs. Union of India (TA 1032/86).

48

4.

6. The facts in brief: The applicants belong to the Class-III personnel of the Indian Ordnance Factories. The applicant in OA 547/87 has retired from service. Recruitment to Class-III personnel of the Indian Ordnance Factories is governed by the Indian Ordnance Factories (Recruitment and Conditions of Service of Class -III Personnel) Rules, 1956, for short, the Rules, framed by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India.

7. The Class-III personnel services consists of the posts of the following grades, namely :-

Foreman (including Foreman/Design)

Storeholder

Assistant Foreman

Assistant Storeholder

Chargeman Grade I (including Chargeman Grade I/
Design).

Chargeman Grade II

Supervisor Grade 'A'

Supervisor Grade 'B'

Such posts comprise the following categories of officers :

1. Engineers -

A. Production

B. Mechanical Heavy

C. Mechanical Light

D. Electrical

E. Civil.

49

5.

2. Chemists
3. Metallurgists
4. Leather Technologists
5. Clothing Technicians
6. Non-Technical.

Vacancies in the posts of Supervisor Grade 'B' have to be filled up by appointment of qualified apprentices recruited and trained, to the extent of 33 1/3%; by promotion, on the basis of selection list by the duly constituted Departmental Promotion Committees (D.P.Cs.), to the extent of 33 1/3%, and the remaining by direct recruitment.

Vacancies in respect of other posts have normally to be filled up by promotion ^{of} ~~and~~ the employees in the grade immediately below, on the basis of selection by the D.P.C.

8. In the wake of the Chinese Aggression in 1962, the Government of India took steps to make the country self-sufficient in the production of arms, ammunition and armaments in the various ordnance factories, and accordingly it was decided to expand the capacities of the existing factories and to increase the strength of the personnel. With a view to attract persons with technical background to the Ordnance factories, the Director General, Ordnance Factories, who is the appointing authority in respect of Class-III personnel, issued the following circulars on 6.11.1962 :

" Subject: Non-Industrial Establishment-Promotion-
D.G.O.F. has decided that Diploma holders serving as Supervisor 'A' (Tech)/Supervisor 'B' (Tech) and in equivalent grades should be treated as follows :

(i) All those Diploma holders who have been appointed as Supervisor 'B' (Tech) (and in equivalent grades) should on completion of one year's satisfactory service in Ordnance factories be promoted to Supervisor 'A' (Tech) (and in equivalent grades)

(ii) All those diploma holders who work satisfactorily as Supervisor 'A' (Tech) or in equivalent grades for 2 years in Ordnance Factory should be promoted to Chargemen".

By way of a clarification, he issued another circular on 11.3.1963, which is extracted hereunder :-

" Sub. Non-industrial establishment- treatment of Diploma Holders in matter of appointment/promotion.

Ref: This office No.673/A/NI dated 6.11.62.

So long the position was that Diploma Holders in Engineering were being recruited as Supervisor 'B' grade and were being promoted to Supervisor 'A' grade after satisfactory completion of one year's service as Supervisor 'B' grade.

It has now been decided by the Director General, Ordnance Factories that in future Diploma Holders in Engineering should be straight-away appointed as Supervisor 'A' Grade.

2. In view of the decision stated above all those Diploma Holders who are not yet promoted to Supervisor 'A' grade because they have not yet completed one year service as Supervisor 'B' grade may be promoted to Supervisor 'A' grade with effect from 6.3.1963, provided their work as Supervisor 'B' grade is satisfactory so that they do not stand at any disadvantage as compared with those Diploma Holders who are yet to be recruited as Supervisor 'A' grade in view of the Director General, Ordnance Factories decisions as stated in Para 1 above.

3. Kindly acknowledge receipt."

51
7.

9. Evidently, as these two circulars were repugnant to the Rules, the Government of India, Ministry of Defence, by its letter dated 28.12.1965 intimated the Director General that a minimum period of three years' service in the lower grade, as is prevailing in other Ministries, should be fixed for promotion to the next higher grade. Thereupon, the Director General issued the following circular on 20.1.1966.

" Sub: N.G.Establishment- Treatment of Diploma holders as ex-apprentices service as Supr A Gr. in equivalent grades in the matter of promotion.

Ref: This office confidential No.673/A/NG dated 6.11.62 and 4416/A/NG dt. 29.6.65.

The question of promotion of Diploma holders in Mech/Elect Engineering and Ex-apprentices serving as Supr 'A' Gr or in equivalent grades has received further consideration of the D.G., O.F. who has decided that in future promotions of all such individuals will be effected in accordance with the normal rules i.e. on the basis of their listing by the relevant D.P.C. and not merely on completion of 2 years satisfactory continuous service as Supr. A Gr. or equivalent grades."

A number of Diploma-holders who were working in the grade of Supervisor 'A' acquired promotion to the grade of Chargeman -II before the issue of the above circular, based on the earlier circular dated 6.11.1962.

10. One K.B.Bhir, who was appointed as Supervisor Grade 'B' filed a petition before the High Court of Allahabad claiming the benefit of promotion to the grade of Supervisor 'A' with effect from 6.3.1963 in terms of the circular dated 11.3.1963. When he filed that petition, he had already been promoted to the grade of Assistant Foreman. The High Court of Allahabad

by the judgment dated 1.5.1980 allowed the petition with a direction to the respondents to promote him to the post of Supervisor grade 'A' with effect from 6.3.1963 and to allow the consequential benefits including re-fixation of seniority.

11. In 1972, one Virendra Kumar and 74 others filed a Writ Petition in the High Court of Allahabad alleging that since they have been appointed as Supervisor grade 'A' pursuant to the circular dated 6.11.1962, they were entitled to be promoted to the grade of Chargeman-II on completion of two years of service, but it was not allowed though a number of other Supervisor 'A' had been so promoted. The Writ Petition having been dismissed by the High Court, they preferred Civil Appeal No.441/81 before the Supreme Court. It was allowed by the following order:-

" Heard counsel. Special leave granted.

Our attention has been invited by learned counsel for both the sides to the relevant rules which govern promotion to the post of Chargeman Grade II. It appears that a large number of persons have been promoted to those posts though they have completed only two years of service. The Government now appears to insist that in so far as the appellants are concerned they cannot be considered for promotion unless they complete three years of service. We see no justification for any such differential treatment being given to the appellants. If a large number of other persons similarly situated have been promoted as Chargeman Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service. We are not suggesting that the appellants are entitled to be promoted to the aforesaid posts even if they are found unfit to be promoted.

We therefore direct that the concerned authorities will consider the cases of the appellants for promotion as Chargeman Grade II and promote them to the said posts unless they are found to be unfit. If the appellants are promoted they will naturally have to be promoted with effect from the date on which they ought to have been promoted.

This order will dispose of the appeal.

There will be no order as to costs."

/ AIR 1981 SC 1775 /

12. This was followed by 6(s8x) writ petitions before the High Court of Madhya Pradesh wherein they claimed similar reliefs relying on the judgment of the High Court of Allahabad in the case of K.B.Bhir and the judgment of the Supreme Court in Virendra Kumar's case. The claim was not resisted by the respondents as they admitted in the reply that the petitioners may be given notional seniority from the date of their initial appointment as Supervisor Grade 'B'. One of these petitions was by a Science Graduate, while other five were by Diploma holders in Engineering. Even regarding the petition filed by the Science Graduate, namely, M.P.9/1982, it was admitted by the respondents that the petitioner be given notional seniority as Supervisor 'A' from the date of initial appointment. Based on the said admission and on the judgment of the Supreme Court in Virendra Kumar's case, the High Court of Madhya Pradesh allowed the petitioners the relief to be treated as Chargeman-II on completion of two years of service as Supervisor 'A', as well. All these petitions were disposed of by a common judgment delivered in MP 174/81, the petition filed by D.S.Chauhan and others.

13. Thereafter, B.H. Ananthamurthy and thirty others, all Science Graduates, filed MP 108/84 in the High Court of Madhya Pradesh to treat them as Supervisor 'A' from the date of their appointment and for promotion to the next grade of Chargeman -II and for consequential benefits. This Writ Petition, on the establishment of this Tribunal, was transferred to the Jabalpur Bench and was numbered as TA 322/86.

Ravinder Nath Gupta and 18 others, also Science Graduates, filed OA 104/86 before the Jabalpur Bench for the similar reliefs.

These two petitions were disposed of by the Jabalpur Bench by its order dated 30.6.1987, the operative portion of which is as follows :

" 8. In the net result, in both these petitions TA 322 of 1986 (Ananthamurthy and others Vs Union of India) and also OA 104 of 1986 (Ravindra Nath Gupta and others v. Union of India), we direct that petitioners who are Science Graduates and such of the petitioners who are diploma holders shall be treated as Supervisor A from the date of their initial appointment and their notional seniority revised. They shall be entitled to be considered for promotion to the post of Chargeman Grade-II on completion of 2 years of satisfactory service as Supervisor A retrospectively. If found fit and promoted by the DPC-III(C) their notional seniority shall be refixed for the post of Chargeman grade-II, Chargeman Grade-I or that of Assistant Foreman as the case may be. Their present salary shall also be so fixed that it is not lower than the salary of those who are immediately below them in seniority. They shall not be entitled to past arrears of pay, but they shall be considered for further promotion on basis of this revised notional seniority. "

14. Following the aforesaid decision, Writ Petition No. 11263/84 in the High Court of Madras filed by Kalidasan and 38 others, which was received by the Madras Bench of this Tribunal on transfer and was numbered as TA 1032/86 was disposed of allowing the applicants therein to be treated as Supervisor 'A' from the date of their initial appointment as Supervisor 'B' and for fixation of their notional seniority, as well as for further promotion if found fit by the DPC on completion of two years of service.

15. In the year 1983, some of the Diploma-holders who were appointed as Supervisor 'A' Grade between 1962 and 1966, filed writ petitions before the Supreme Court praying that they may be allowed the same relief that was allowed by the Supreme Court in Virendra Kumar and others in Civil Appeal No. 441/81. Those writ petitions came up for hearing before a Bench of two Hon'ble Judges, when on the view that the judgment in Virendra Kumar's case may require reconsideration, the petitions were directed to be placed before a 3-Judge Bench, and accordingly, the matter was considered by a 3-Judge Bench and was disposed of by the judgment dated 29.3.1989. The Writ Petitions were dismissed after a detailed reconsideration of the scope and legal effect of the circulars dated 6.11.1962 and 20.1.1966 as well as the letter from the Ministry of Defence, Government of India to the Director General, Ordnance Factories dated 28.12.1965, in the light of the Rules.

The judgment of the Supreme Court is P. Ramkrishnaiah & others v. Union of India reported in 1989(1)SCALE 830.

16. Sundar Raman and others filed OA 209/87 before the Jabalpur Bench which was disposed of along with 7 other applications.

by the order dated 24.4.1989. There the Jabalpur Bench was apprised of the judgment of the Supreme Court in P.Ramkrishnaiah's case. However, holding that the view that the Bench has taken in Ananthamurthy's case is not in conflict with the aforesaid decision of the Supreme Court, those applications were disposed of by the Jabalpur Bench. The operative portion of the order is as follows :-

" Accordingly, we direct the respondents to treat the initial appointment of Diploma holders and Science graduates as having been made to the post of Supervisor 'A'. On basis of two years experience as Supervisor 'A' they shall be entitled to promotion to the post of Chargeman Grade-II on recommendations of a review DPC which may be constituted and further promotions on recommendations of the review DPC from the requisite dates when they were eligible and due to be considered for promotion on the basis of departmental rules or executive instructions in the light of Supreme Court's directions contained in Writ Petition No.530 of 1983 decided on 28.3.1989(supra) read with their observation in the case of Union of India and others vs. Somasundaram Vishwanath and others and decision of this Tribunal in the case of B.M.Ananthamurthy and others (supra).

The applicants in OA 416 of 1987 are Engineering Apprentices. Some of them are Science Graduates but not Diploma holders. They have been trained by the respondents in the factory and as such they are not entitled to get more benefit than what has been granted to the Diploma holders or Science graduates at the time of their appointments. Therefore, those who on the date of appointment were Science Graduates shall get similar reliefs as have been granted to Science Graduates in OA 51,53,209,215 and 270 of 1987. Applicants who are neither Science Graduates nor diploma holders are not entitled to any benefit. The respondents are further directed to revise the relevant seniority lists and finalise these after circulation and suitable decisions on representations objections if any in the affected cadres of Supervisor 'A'. Chargeman Grade-II and Assistant Foreman. On the basis of and subject to

13.

the recommendations of the Review DPCs refixation of the applicant's salaries in their respective posts and cadres shall also be done after allowing proforma promotions retrospectively but without payment of back wages on the principle of 'no work no pay'. Necessary action shall be taken by the respondents within a period of six months from the date of communication of this order".

17. We ~~proceed~~ to discuss the reliefs claimed by the applicants in the first 13 applications. The discussion with respect to OA 377/90 will be made separately.

18. These applicants were all appointed as Supervisor Grade 'B' during the period 1959-1966. The ~~main~~ relief claimed by them is to treat them as Supervisor Grade 'A' from the respective dates of initial appointment, to promote them to the grade of Chargeman-II on completion of two years of service in the post of Supervisor Grade 'A' and to allow further promotions to the Grade of Chargeman -I, Assistant Foreman and Foreman accordingly, and for refixation of their seniority in the grade of Supervisor 'A' as well as in higher grades. The main ground urged in support of the relief claimed is that in respect of certain others, similarly situated, the benefit has been allowed and orders have been issued refixing their seniority in the respective grades and allowing monetary benefits.

19. In the replies filed by the respondents, it is contended that these applications are barred by limitation as the cause of action relates back to the date of initial appointment of these applicants during the period 1959-1965. There is also the plea that all these applicants have secured

14.

three or ^{or} four promotions during the intervening years, and after accepting the same they cannot seek to unsettle matters which have been settled. It is asserted that the applicants cannot claim automatic promotions based on the circular dated 6.11.1962, in view of the Rules which clearly lay down the principles governing such promotions. It is also pointed out that the impact of the circulars dated ^{and 11.3.1963} 6.11.1962 have been superseded by the subsequent circulars dated 28.12.1965.

20. On a perusal of the reliefs claimed by these applicants, it is clear that what is sought for is to allow the same benefits which were allowed by the High Court of Madhya Pradesh in MP 9 of 1982, decided alongwith D.S. Chauhan's case, and by the Jabalpur Bench in the case of Ananthamurthy's case (TA 322/86) and in the case of Ravinder Nath Gupta's case (O.A. 104/86), and by the Madras Bench in Kalidasan's case (TA 1032/86).

21. It was submitted by the counsel of the applicants that steps have been taken for the implementation of the decisions in the aforesaid cases, and hence, if the applicants are also not allowed the same benefits, they will be materially affected. It was emphasised by them that, at any rate, as the applicants are similarly situated and circumstanced, the failure to extend the benefits to the applicants is discriminatory and violative of the equality clause enshrined in the Constitution of India. The circumstance that the respondents did not contest the claim of the petitioners before the High Court of Madhya Pradesh and expressed their willingness to extend the benefits of the judgment of the Supreme Court in Virendra Kumar's case was stressed by them.

15.

It was also brought to our notice that the decision of the Madhya Pradesh High Court in D.S. Chauhan's case was challenged by the respondents before the Supreme Court in SLP 5987-92 of 1986, but ^{it} was dismissed on 28.7.1986 and, thereafter, as regards the petitioners in these writ petitions the respondents have implemented the decision of the High Court on account of which the seniority and promotional chances of these applicants have been affected. It was argued that in deference to the ratio of the decision of the Supreme Court in Amrit Lal v. ~~Collector~~, Central Excise, 1975 SCC (L&S) 422, when a citizen has approached ~~to~~ a Court of Law and obtained a declaration of law in his favour, others in like circumstances should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of the declaration without the need to take their grievances to Court. Reliance was also placed on the decision of the Principal Bench of this Tribunal in A.K. Khanna and ors v. Union of India (ATR 1988 (2) CAT 518), where it was held that an employee who is not a party in the earlier litigation and is similarly placed, is entitled to get the same reliefs as were granted to the earlier litigants, because by not extending the benefits ^{discrimination} ~~a discrimination~~ would take place thereby violating Articles 14 and 16 of the Constitution of India. It was highlighted that the injustice that has been caused to these applicants by the grant of the benefits only to those who approached the Court and got the verdict in their favour, has to be alleviated on the basis of the principles of natural justice.

22. As against this, the counsel of the respondents submitted

that the applicants cannot claim any benefit under the circulars relied upon by them as they apply only to the Diploma holders and not to the Science graduates and that there is no scope for treating the applicants who were appointed only as Supervisor Grade 'B' as having been appointed as Supervisor Grade 'A' or for the grant of accelerated promotions, as neither is warranted by the Rules. It was submitted that the concession that was made in the Writ Petition before the High Court of Madhya Pradesh cannot be relied upon by these applicants. It was further stated that all these applications are barred by limitation as the reliefs claimed dates back to the 60s. It was emphasised that, in any event, after the decision of the Supreme Court in Ramkrishnaiah's case, the claim of these applicants cannot be sustained at all.

23. The reliefs claimed by these applicants fall under three main heads :

- (i) To treat them as Supervisor 'A' from the respective dates of initial appointment as Supervisor grade 'B'.
- (ii) To be promoted to the post of Chargeman-II on completion of two years of service as Supervisor Grade 'A'.
- (iii) Consequential refixation of seniority in the different grades and monetary benefits.

24. Evidently, these reliefs are claimed on the basis of the circulars issued by the Director General, Ordnance Factories on 6.11.1962 and 11.3.1963 extracted earlier. The fact that such reliefs have been allowed to some other Supervisors by the judgment of the Supreme Court in Virendra

Kumar's case and by the decisions of the High Court of Madhya Pradesh in D.S. Chauhan's case and of the Jabalpur Bench of this Tribunal have also been pressed into service for claiming these reliefs. As such, we proceed to consider the sustainability of the reliefs from both the above angles.

25. At the outset, it has to be pointed out that both the circulars relied upon by the applicants govern only the Diploma-holders, though both Diploma-holders in Engineering as well as Graduates in Science were eligible as per the Rules for appointment to the cadre of Supervisor Grade 'B', the former for the technical posts falling within the grade, and the latter for the non-technical posts. This is clear from Appendix - 'C' to the Rules. As regards the technical posts, a pass in the Matriculation Examination preferably followed by one year's practical research/teaching experience by itself is sufficient qualification. Those who have served regular apprenticeship of not less than three years' duration in the trade, and those who have served in the particular trade for a total period of not less than 10 years - out of which three years is to be in a junior supervisory capacity also ^{are} within the eligible categories for recruitment to the technical posts in Supervisor Grade 'B'. It was with a view to induct persons having the requisite practical training by expansion of the staff to meet the urgent need of increased production of arms, ammunitions and armaments that the Director General, Ordnance Factories, issued the aforesaid circulars giving sufficient incentive to the Diploma-holders in Engineering. Some of these applicants were in the service of the respondents at that time in the grade of Supervisor Grade 'B'. Being Graduates in Science and as such holding only non-technical posts in the grade, they were not given the benefit under the circulars. Indeed, it was never intended to confer the benefits of any such

Graduate in Science.

26. It was submitted by the counsel of the applicants that as the Graduates in Science are also appointed as Supervisor Grade 'B' and are discharging the same duties as the Diploma-holders such discrimination is vitiated. We are afraid, it is too late in the day to advance such an argument. The circulars held the field during the period 1962 to 1966, when no Science Graduate~~s~~ ever chose to assail the same on the ground of discrimination or arbitrariness.

27. It was pointed out by the counsel of the respondents that even as regards the Diploma holders covered by the circulars, the provisions contained therein which are repugnant to the Rules governing the recruitment to the post of Supervisor and for promotion to the higher grade are unsustainable. There is force in the submission. The Rules have been made by the President of India in exercise of the powers conferred under the proviso to Article 308 of the Constitution of India, and, as such, a circular issued by the Director General, Ordnance Factories, containing any provision repugnant to the Rules is bad. It is to be noted that, realising the same, the letter dated 28.12.1965 was sent by the Ministry of Defence, Government of India, to the Director General that the minimum period of three years' service in the lower grade prescribed by the other ministries for the purpose of eligibility for promotion to the next higher grade has to be insisted upon, and pursuant to it, the Director General issued the circular dated 20.1.1966. It cannot be doubted that the provisions contained in the circulars of 1962 and 1963 for initial appointment as Supervisor 'A' and for automatic promotion after two years in that grade to the Grade of Chargeman-II are opposed ~~to the~~

to the Rules, according to which there is no scope for direct appointment to the next higher cadre of Chargeman-II without an assessment of fitness by a DPC.

the cadre of Supervisor 'A' or for promotion to

28. 'Nevertheless, what has transpired is that some Diploma-holders in Engineering got the benefit of the circulars of 1962 and of 1963, during the period while they were holding the field. Hence, claiming the same benefit, K.B.Bhair, who was appointed as Supervisor^g approached the High Court of Allahabad and his Writ Petition was allowed on 1.5.1980 with a direction to the respondents to promote him to the post of Supervisor 'A' with effect from 6.3.63 and to allow the consequential benefits. Virendra Kumar and 74 others who were appointed as Supervisor 'A' based on the circular of 1962 also approached the High Court of Allahabad claiming automatic promotion to the grade of Chargeman-II. Though the Writ Petition was dismissed by the Allahabad High Court, in Civil Appeal No.441/81, the Supreme Court allowed the prayer and directed the respondents to consider them for promotion to the grade of Chargeman-II unless they are found unfit, after the completion of two years of service. The respondents have contended before the Supreme Court that they cannot be considered for such promotion unless they complete three years of service, evidently on the basis of the instructions contained in the letter from the Ministry of Defence dated 28.12.1965 and the provisions in the circular dated 20.1.1966. However, it was held by the Supreme Court that ^{as} a large number of other persons similarly situated have been promoted as Chargeman-Grade II after completing two years of service, there is no reason why the appellants should also not be similarly promoted after completing the same period of service.

29. Drawing inspiration from the aforesaid judgment a number of Diploma holders approached the High Court of Madhya Pradesh with writ petitions. Alongwith them some Graduates in Science also filed Writ Petitions. It so happened that all these petitions were disposed of together by the common judgment in D.S.Chauhan's case (MP 194/81). By the judgment all the petitioners were allowed the benefit granted by the Supreme Court in Virendra Kumar's case. It appears that the respondents therein did not dispute the claim of the petitioners to be treated as appointed in the grade of Supervisor 'A' from the dates of their initial appointment.

30. This was followed by Ananthamurthy and 30 other Science Graduates by filing MP 198/84 in the High Court of Madhya Pradesh. They prayed to treat them as Supervisor 'A' right from their appointment in the cadre of Supervisor 'B' and for promotion to the grade of Chargeman-II and for consequential benefits. This Writ Petition was transferred to the Jabalpur Bench of this Tribunal and was numbered as TA 322/86. There was an Original Application (OA 104/86) before the Jabalpur Bench filed by Ravinder Nath Gupta and 18 other Science Graduates claiming the similar reliefs. These two applications were disposed of ^{together} by the Jabalpur Bench. Despite the fact that the applicants were Science Graduates, following the decision of the High Court of Madhya Pradesh in D.S.Chauhan's case, the benefit was allowed to these applicants. The operative portion of the judgment has been extracted earlier ^{In Paragraph 13.} In view of this judgment, the Madras Bench allowed the identical reliefs to Kalidasan and 38 other Science Graduates in TA 1032/86.

65

31. It was emphatically submitted by the counsel of the applicants that in view of the above, denial of the same benefits to these applicants is per se arbitrary and illegal, and that the respondents are totally unjustified in not allowing the benefits to all who are similarly situated.

32. This takes us to the second facet of the submissions of the counsel of the applicants. When a Court after analysis of the rival pleas enunciates a proposition of law and based on it allows certain reliefs to some civil servants who are applicants before it, normally it behoves the Administration to extend the benefit of the relief to other civil servants similarly circumstanced. But in certain circumstances, the principle cannot be applied. One such instance is where in a subsequent pronouncement the Court holds that the enunciation made in the earlier case is without due regard to the entire facts and circumstances, and on that account arrives at a different conclusion. This is exactly what has happened in the instant case, as is clear from the following.

33. After the judgment of the Supreme Court in Virendra Kumar's case, some of the Diploma-holders who were appointed as Supervisor Grade 'A' in the various Ordnance Factories during the period 1962-1966 filed writ petitions before the Supreme Court praying that the relief that was allowed to the petitioners in Virendra Kumar's case may be allowed to them as well. When these petitions came up for hearing before a Bench of two Judges, on the view that the judgment in Virendra Kumar's case may require reconsideration, in order to look into the

correctness of the judgment and the question whether the relief allowed there can be extended to the petitioners in the Writ Petitions, the matter was placed before a larger Bench of three Judges. After considering the matter in-depth, if we may say so, with respect, the Writ Petitions were dismissed by the judgment delivered on 29.3.1989. That is the judgment in P.Ramkrishnaiah's Vs. Union of India, 1989 (1) SCALE 830.

34. It is clear from the judgment of the Supreme Court that the main plea which was put forward was that in case of the same relief allowed to Virendra Kumar and others was not granted to the writ petitioners, they are likely to be junior to the former as well as the petitioners in the writ petitions decided by the High Court of Madhya Pradesh. Adverting to the circular issued by the Director General on 6.11.1962, after noticing that it is only an executive instruction, it was held ^{by the Supreme Court} that notwithstanding it the procedure for making promotion as laid down in Rule 8 of the Rules had to be followed and it could not be abrogated. Reference was made to the orders contained in the letter from the Government of India dated 28.12.65 prescribing a minimum period of service of 3 years in the lower grade for promotion to the next higher grade and the circular issued by the Director General on 20.1.1966 doing away with the accelerated chance of promotion and relegating Supervisors 'A' in the matter of promotion to the normal position as it obtained under the Rules. Referring to the judgment in Virendra Kumar's case, it was pointed out that when that case was heard neither the order contained in the letter dated 28.12.1965, nor the circular dated 20.1.1966 and the legal consequences flowing therefrom was brought to the notice of the Court or was not properly emphasised. It was held :

" For aught we know, if the effect of the order dated 28th December, 1965 and the circular dated 20th January, 1966 had been properly emphasised at the time of hearing of Civil Appeal No. 441 of 1981 its result may have been different."

It can be gathered from the judgment that about 1,175 Diploma holders were recruited during the relevant period due to the acute need of the Ordnance Department, and that out of them 625 were promoted to the post of Chargeman-II based on the circular of 1962 and the remaining 550 were denied such promotions, since the instructions contained in the letter dated 28.12.1965 and the subsequent circular dated 20.1.1966 came into force by then. It was held that Supervisors 'A' who have been so promoted stood in a class separate from those whose promotions were to be made thereafter and, as such, the fact of their promotion cannot constitute the basis for an argument that those Supervisors 'A' whose cases came up for consideration for promotion thereafter and who were promoted in due course in accordance with the Rules were discriminated against, as they apparently did not fall in the same category.

35. When the relief of accelerated promotion based on the 1962 circular was thus negatived in the case of the Diploma holders holding the position of Supervisor 'A', it is idle to contend that the said benefit is to be allowed to the Science Graduates, who be it noted, were not covered by the circular at all.

36. Counsel of the applicants took pains to sustain the decision of the Jabalpur Bench in *R.J. Sundara Raman v. Union of India* (O.A. 209/87) and the connected applications, delivered on 24.4.1989 subsequent to the aforesaid decision of the Supreme Court. In this connection, the

following passage from that judgment was brought to our attention :

" There is no conflict in our aforesaid decision above and the recent decision of the Supreme Court cited above. This Tribunal unlike the High Court had not directed that automatic promotions should be given to Supervisor 'A' to the post of Chargeman-II on completion of 2 years of satisfactory service but only held that he was entitled to be considered subject to selection by DPC etc. In other words the procedure for promotion would be governed not by the circular of DG OF of 6th November, 1962 but by the subsequent order dated 28.12.1965 read with circular of 20.1.1966 a distinction which has been succinctly brought out in the aforesaid judgment of the Hon'ble Supreme Court in Writ Petition (Civil) No.530 of 1983 decided recently on 28.3.89. In other words while disposing off TA 322 of 1986 in the case of B.H. Ananthamurthy and others vs. Union of India and others decided on 30.6.87 this Tribunal had not closely followed the decision of the M.P. High Court in similar cases in the wake of Supreme Court's judgment in Civil Appeal No.441 of 1981 (Virendra Kumar and others vs. Union of India and others) but was more in line with the subsequent decision of the Supreme Court in Writ Petition (Civil) No.530 of 1983 cited above."

37. From the operative portion of the judgment of the Jabalpur Bench which we have extracted earlier in paragraph 13 the respondents were directed to treat the initial appointment of Diploma holders and Science Graduates as having been made to the post of Supervisor 'A' and they were also directed to be considered for promotion to the grade of Chargeman II on the basis of two years' experience, on the recommendation of a Review DPC to be constituted. Though the promotion was directed to be governed by the result of the recommendation of the DPC, it is to be underlined that again an experience of only two years as Supervisor 'A' was required. The said direction being clearly opposed to the instructions

contained in the letter of the Ministry of Defence, Government of India, to the Director General, Ordnance Factories, dated 28.12.1965, and in the circular issued by the Director General on 20.1.1966, cannot be held to be in accordance with law and in consonance with the judgment of the Supreme Court in Ramkrishnaiah's case. To us, it is clear that it is only a reiteration of the direction in Virendra Kumar's case.

38. It was argued on behalf of the applicants that since the relief claimed in Ramkrishnaiah's case only related to promotion from the cadre of Supervisor 'A' to that of Chargeman II, the first relief claimed by these applicants to treat them as having been appointed to the cadre of Supervisor 'A' from the respective dates of their appointment, has to be allowed. We are unable to agree. The fallacy in the argument lies in ignoring the basis for negating the relief in Ramkrishnaiah's case. As a matter of fact, the deemed appointment as Supervisor 'A' is claimed only on the strength of the circulars of 1962 and 1963, the provisions of which were found as repugnant to the Rules, and over and above that superseded by the instructions in the letter dated 28.12.1965 and in the circular dated 20.1.1966. That apart, when the circulars of 1962 and 1963 do not take in Science Graduates, as pointed out earlier, the applicants cannot claim relief on their strength. Then, what is left is only the grant of ~~that~~ benefit ^{by} of the High Court of Madhya Pradesh in D.S. Chauhan's case and by the Jabalpur Bench in the case of Ananthamurthy's case and Ravinder Nath Gupta's case. The former judgment was based on the concession of the respondents in the reply to the writ petitions agreeing to allow notional seniority

as Supervisor 'A' from the date of initial appointment as Supervisor 'B'. It was taking the aforesaid judgment into consideration and by placing reliance on the judgment of the Supreme Court in Virendra Kumar's case, the reliefs were allowed by the Jabalpur Bench in those cases. The Madras Bench in Kalidasan's case has only followed the decision of the Jabalpur Bench. As such, these judgments are of no assistance to the applicants.

39. There is yet another aspect as regards this matter. Although the issue of deemed appointment to the ^{Cadre of} Supervisor Grade 'A' did not directly arise in ~~the~~ Ramkrishnaiah's case, ^{the} ~~but~~ reasonings in that judgment to negative an accelerated promotion to the cadre of Chargeman II, claimed by the petitioners therein, applies to this issue as well. Despite the fact that the relief relating to accelerated promotions to the cadre of Chargeman II was allowed by the Supreme Court in Virendra Kumar's case, though the petitioners in Ramkrishnaiah's case were similarly situated, it was not allowed to them for the reasons stated in the judgment. The same reasons apply in the matter of the relief claimed by these applicants for deemed appointment in the cadre of Supervisor 'A', based on the judgment of the Madhya Pradesh High Court and of the Jabalpur Bench.

40. Lastly, it was argued by the counsel of the applicants that when a revisional ^{of} seniority is being made pursuant to the decisions of the High Court of Madhya Pradesh and of the Jabalpur Bench, the applicants will be affected and hence, on principles of natural justice, they have also to be allowed the same benefits. We are not in a position to invoke any principle of natural justice so as to sustain the reliefs claimed by the applicants. If the revision of

seniority is made by the respondents, it can only be on the strength of the decisions of the High Court of Madhya Pradesh and of the Jabalpur Bench of this Tribunal, which the respondents are bound to implement, so long as they are not reversed on appeal.

41. In view of the foregoing discussions, we hold that the applicants are not entitled to any of the reliefs prayed for.

42. In two of these applications, some Supervisors who have been recruited under the scheme of Apprenticeship have filed petitions to intervene, which were allowed. They oppose the reliefs claimed by these applicants on some some of the grounds which we have dealt with above.

43. These applications are dismissed.

44. In OA 377/90, the applicants are persons who have joined the service under the Apprenticeship training scheme and on completion of training were appointed as Chargeman II. They pray for cancellation of the orders issued by the Ordnance Factories Board on 30.1.1989, 2.2.1989, 4.2.1989, 25.2.1989 and 10.7.89. These orders have been passed by way of refixation of seniority consequent upon the judgment of the Jabalpur Bench and of the Madras Bench. Since the applicants have not impleaded the persons who will be affected by the quashing of these orders, the relief cannot be allowed. Moreover, when these orders have been issued in deference to the judgments of this Tribunal, which the respondents were bound to implement, they cannot be faulted.

45. The second relief is to protect the seniority. It is dependent upon the first relief and, as such, it too cannot be allowed. Of course, if the applicants were aggrieved by the aforesaid judgments on the basis of which the seniority has been recast, the remedy of filing of petitions for review was there.

46. The third relief is for declaration that the Rules cannot be treated to have been amended/superseded/altered/modified by the administrative orders dated 6.11.1962, 11.3.1963 and 29.6.1965. We have already held that these administrative orders, so far as they are repugnant to the Rules, are bad in law. The latter part of the relief to declare that the reliefs claimed by the Science Graduates in various applications pending before this Tribunal at different Benches on the basis of the administrative orders are inadmissible in law, cannot be allowed as it concerns various other applications before various Benches of this Tribunal and as the applicants therein are not impleaded in this application. The last relief "to dismiss all applications before the Tribunal for an adjudication on the instant subject matter," has to be referred only for the purpose of rejecting the same.

47. It follows that the applications has to be dismissed, subject to the findings that the Rules cannot be treated as superseded by the administrative orders dated 6.11.1962, 11.3.1963 and 29.6.1965, so far as they are repugnant to the Rules. We do so.

29.

48. Before parting with these cases, we would like to place on record the able assistance rendered by the counsel on either side.