

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 11.11.87

APPLICATION NO s. 1443 & 1444 / 86 (7)

W.P.No.s 6502 & 6503/85

APPLICANT

Vs

RESPONDENTS

Shri V.K. Parameswaran & another
To

The Secy, M/o Defence & 6 Ors

1. Shri V.K. Parameswaran
No. 4, K.R. Colony
7th Cross Road, Off 3rd Main,
Domlur Layout
Bangalore - 560 071
2. Shri M.S. Subramani
No. 1078, 18th Cross
Laxmipuram, Ulsoor
Bangalore - 560 008
3. Shri Ranganatha S. Jois
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004
4. The Secretary
Ministry of Defence
New Delhi - 110 011
5. The Engineer-in-Chief
Army Headquarters
DHQ P.O.
New Delhi - 110 011
6. The Officer Incharge Records
Madras Engineer Group,
Sivan Chetty Garden Post, Bangalore - 560 042

7. Shri D.Y. Narayanaswamy
Upper Division Clerk (Records)
Madras Engineer Group
Sivan Chetty Garden Post
Bangalore - 560 042
8. Shri T.S. Ramamurthy
Upper Division Clerk (Records)
Madras Engineer Group
Sivan Chetty Garden Post
Bangalore - 560 042
9. Shri N. Narasimha Raju
Upper Division Clerk (Records)
Madras Engineer Group
Shivan Chetty Garden Post
Bangalore - 560 042
10. Miss G. Kantha Rubi
Upper Division Clerk (Records)
Madras Engineer Group
Sivan Chetty Garden Post
Bangalore - 560 042
11. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application

on 6-11-87.

RECEIVED

Diary No. 1416/CR/87

Is Snd Date: 12.11.87 AB

Encl: as above.

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

Dated: the 6th day of November, 1987

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY VICE CHAIRMAN.

And

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

Applications Nos. 1443 And 1444 of 1986(T)

1. V.K. Parameswaran, Major,
S/o Late V. Krishnan,
No. 4, K.R. Colony,
7th Cross Road, Off 3rd Main,
Domlur Layout, Bangalore-71. Applicant in Appln. 1443/86
2. M.S. Subramani, Major,
S/o Late M.K. Somayya,
No. 1078, 18th Cross,
Laxmipuram, Ulsoor,
Bangalore-8. -do- " 1444/86

(By Shri Ranganath S. Jois for Shri H.S. Jois, Advocates for
the applicants)

-vs.-

1. The Union of India
represented by its Secretary,
Ministry of Defence, New Delhi-1
2. The Engineer-in-chief, Army-
Headquarters, DHQ P.O.,
New Delhi-11.
3. The Officer Incharge Records,
Madras Engineer Group,
Siven Chetty Garden Post, Bangalore-42
4. D.Y. Narayanaswamy, Major,
Upper Division Clerk, Records,
Madras Engineer Group,
Bangalore-42.

.. Respondents
(contd...2



5. T.S.Ramamurthy,
Major,
Upper Division Clerk, Records,
Madras Engineer Group,
Sivan Chetty Garden post,
Bangalore-560 042.
6. N.Narasimha Raju,
Major,
Upper Division Clerk, Records,
Madras Engineer Group,
Sivan Chetty Garden Post,
Bangalore-560 042 ..
7. Miss G.Kantha Rubi, Major,
Upper Division Clerk, Records,
Madras Engineer Group,
Sivan Chetty Garden Post, Bangalore-42. Respondents.

(By Shri M.S.Padmarajaiah, Senior Standing Counsel for
Central Government, for Respts.1 to 3)

These applications coming on for hearing,

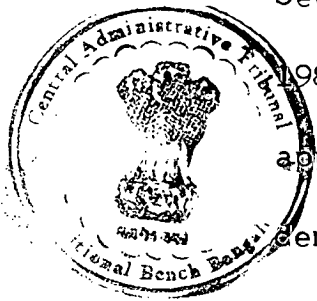
SHRI L.H.A.REGO, HON'BLE MEMBER(A), made the following:

ORDER

In these two writ petitions transferred
by the High Court of Judicature, Karnataka, under
Section 29 of the Administrative Tribunals Act,
1985, to this Tribunal and registered anew as
applications, the main prayer is, that the Respon-
dents (R) 1 to 3, be directed to consider the case of ⁴² _{DR}

of

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applicants for promotion, to the cadre of Upper Division Clerks (UDCs, for short), with effect from the date, their immediate juniors were promoted thereto and to grant them consequential benefit, inclusive of restoration of seniority and arrears of increment.

2. The relevant facts are briefly as follows: Shri V.K. Parameswaran (Applicant(A) 1) was appointed as a temporary Lower Division Clerk (LDC, for short) in Training Battalion I of the Madras Engineer Group and Centre, Bangalore (MEG, for short) on 17-3-1961, in lieu of a Combatant Clerk. Consequent to the posting of Combatant - Clerks in 1965, the Civilian Clerks posted in their place, in the said Battalion, became surplus. As a result, A-1 was posted as LDC in the Record - Office, MEG, Bangalore, under R-3, on 10-9-1965 again, in lieu of a Combatant Clerk. He was regularised on 15-12-1967 in his establishment, against the 20% quota.



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3. Shri M.S.Subramani(A-2) entered service as a temporary LDC on 3-10-1968 in the Office of R-3, in a vacancy reserved for a Scheduled Tribe (ST, for short) by virtue of his caste, in favour of which he had produced the required certificate. He was confirmed in this post on 1-4-1970.

4. The applicants state, that certain posts of UDCs in the MEG, fell vacant on 1-3-1975, 1-3-1976, 1-10-1976 and 1-12-1977, consequent to retirement and that according to the prescribed 40-point roster, these vacancies were to be apportioned among "reserved" and "general" category employees. The applicants claim, that they were entitled to be considered for these vacancies. They allege, that R-7 (Kum G.Kantha Rubi), was however illegally promoted by R-3, against the vacancy of UDC, which occurred with effect from 1-8-1975 (Annexure 'A'), which was later ^{de corrected} postponed to 1-8-1977 by R-3, under his Order dated 20-4-1983 (Annexure-B).

5. Aggrieved, A1 and A2 filed W.P.No. 4670 and 4051 of 1975 respectively, in the High Court of Judicature, Karnataka, for redress. The applicants allege, that R-3, misconstruing this action on the part of the applicants, as a violation of the CCS (Conduct) Rules, 1964, subjected them to disciplinary proceedings.

6. In September-October, 1975, R-3 is said to have received complaints from the civilian employees against A-1, that he was indulging in indisciplinary activity

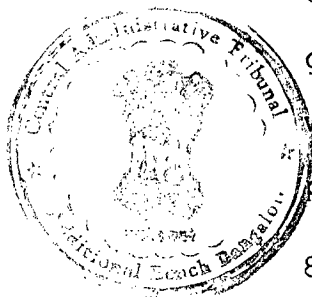
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against the administration and was inciting other employees to do so. After preliminary enquiry, he was placed under suspension on 17-10-1975. Regular charges were framed against A-1 and a departmental enquiry was held against him. The disciplinary proceedings continued for nearly two years and the charges having been proved, he was dismissed by R-3 from service with effect from 15-10-1977. He appealed thereon to R-2, who dismissed the appeal on 6-2-1978. A-1 filed W.P.No.4133 of 1978 thereon, in the High Court of Judicature, Karnataka, which on 6-8-1981, set aside the order of his dismissal with consequential relief. Consequently, he was reinstated in service on 21-9-1981.

7. A-2 was also involved in a disciplinary proceeding, for violation of CCS(Conduct) Rules, 1964, which culminated in his removal from service by ~~the~~ Order dated 19-1-1976, passed by R-3 and upheld by R-2 in appeal, on 10-8-1978. A-2 filed Writ Petition No.10998 of 1978 thereon, in the High Court of Judicature, Karnataka, which on 4-12-1979(Annexure-C) quashed the above orders (removing A2 from service) granting him consequential benefit. As a result, he was reinstated in service on 25-2-1980 and soon after, promoted as UDC, on 21-3-1980(Annexure-D).

8. The applicants further allege, that during the fairly long period of nearly 6 years, when they were



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out of employment, due to the illegal orders passed by R2 and R3 (which were later set aside by the High Court) their juniors viz., R4 to R7 were promoted as UDCs between August ¹⁹⁷⁷ to December 1977. R7 (Kum Kantha Rubi) they allege, was actually promoted as UDC, on 1-8-1975, illegally, against a vacancy reserved for a ST, which should have legitimately gone to A-2.

9. A1 claims, that he should have been considered for promotion as UDC, in the vacancy that occurred on 1-8-1975, there being no other suitable ST candidate.

10. The Departmental Promotion Committee (DPC, for short) met on 16-6-1975, to select among other vacancies, suitable candidates for the 5 vacant posts of UDCs. Of these 5 vacancies, one was reserved for ST and the other, for the Scheduled Caste (SC, for short) candidate. Three separate panels, one each for ST, SC and "general category" candidates, were drawn up by R-3 and placed before the DPC, for ^{recommending} proposing suitable candidates for the posts of UDCs, earmarked for the respective categories.

11. On the basis of the Annual Confidential Reports (ACRs, for short) and other material record, the DPC observed, that A-2, who belonged to the ST, was "not yet fit" for promotion to the grade of UDC and was therefore not promoted. As a result, the vacancy of UDC reserved for



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a ST candidate, was exchanged with that earmarked for a SC candidate (there being no other ST candidate) at Point No.8 of the prescribed 40-point roster, maintained in the office of R-3, according to the prevalent rules and regulations. A-1, too, was considered by the DPC, as "not yet fit for promotion".

12. Both A1 and A2, filed Writ Petitions Nos.4670 and 4051 of 1975 respectively, in the High Court of Judicature, Karnataka, challenging the constitution of the above DPC. These writ petitions were however dismissed on 4-12-1979. Thereon, the applicants filed Writ Appeals Nos.1559 and 1558 of 1980 respectively. The Division Bench which heard these writ appeals, dismissed Writ Appeal No.1559 of 1980, but in respect of Writ Appeal No.1558 of 1980 issued the following writ, in the nature of mandamus:

- "(i) The authorities shall consider whether M.S.Subramani, the appellant in W.A.No. 1558 of 1980, was fit for promotion within two years from the date of occurrence of the vacancy in the cadre of Upper Division Clerks in the year 1974 and if he is so found fit, to treat him as having been promoted with effect from the date on which he was so found fit;
- (ii) If M.S.Subramani is found not fit for promotion within two years from the date of occurrence of that vacancy, the authorities shall treat respondent-4 as having been promoted in that vacancy after expiry of the aforesaid period of 2 years, and
- (iii) After making such deemed promotion or promotions, the authorities shall re-adjust the seniority vis-a-vis M.S.Subramani, G.Kantha-Rubi and other candidates belonging to Scheduled castes and Scheduled Tribes who have been subsequently promoted as Upper Division Clerks."

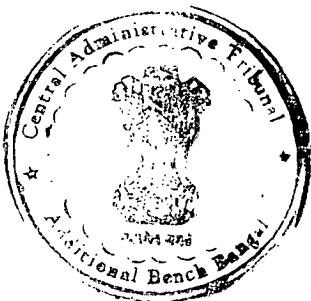


→ 15. As repeated representation by A-1 to the concerned authorities for redress, did not meet with any success, he filed a lawyer's notice on 28-12-1983 ^{on} to R-3, to which he was given a reply on 4-2-1984 (Annexure-K). It was stated therein, that the DPC which met on 21-11-1983 had examined ^{his} the ACRs of A-1, for the period from 1971 to 1975 but had not found him fit for promotion to the grade of temporary UDC, prior to the date of promotion of his juniors, to this grade. The above letter also reveals, that the proceedings of the DPC, were sent to Army Headquarters, to consider promotion of A-1 to the grade of UDC, on the basis of his ACRs for 1981 and 1982 and that after having examined the case, Army Headquarters decided, that A-1 be considered for promotion in his turn, along with others of his seniority. A-1 was finally promoted to the grade of UDC, on 17-4-1984.

16. A-1 alleges, that the proceedings of the DPC which met on 21-11-1983 were a mere farce, calculated to deny legitimate opportunity of promotion to him, to the grade of UDC and to maintain illegal promotions granted to his juniors viz., R4 to R7 to this grade. He also alleges, that his ACRs for 1974 and 1975 placed before the DPC, contained unfounded allegations made behind his back.

17. A-1 filed CCC No. 192 of 1984 against R1 to R3 in the High Court of Judicature, Karnataka, for failure

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to comply with its Order dated 6-8-1981 in Writ Petition No.4133 of 1978,whereon the Court pronounced the following order:

"Having regard to the averments made in the complaint, we are not satisfied that there is any disobedience to the order of this Court. It is not in dispute that the complainant has been paid all consequential monetary benefits resulting from quashing the order of dismissal. If the complainant has any grievance that he is entitled to retrospective promotion, the remedy lies somewhere else and not in these proceedings.

2. Contempt of Court case is, therefore, rejected."

16. In the light of the above order and on the premise, that the circumstances of their case were alike, the applicants filed Writ Petitions Nos.6502 and 6503 of 1985 before the High Court of Judicature, Karnataka, for relief. These have since been transferred by the High Court to this Tribunal, for the reasons already stated at the outset, ^{it} ~~and~~ ^{it} ~~have~~ ^{been} renumbered as applications and are now before us for consideration.



17. The principle ground of attack of Shri S.R.Jois, learned Counsel for the applicant (appearing for his Senior, Shri H.S.Jois), was on the irregularities in the ACRs and therefore on their credibility, for the

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relevant period, as he submitted, that these ACRs were largely relied upon by R1 to R3, to assess the suitability or otherwise, of the applicants for promotion to the grade of UDCs. The ACRs for 1974 and 1975 in particular, (the years proximate to the date, namely, 1-8-1975, when they became eligible for promotion to the cadre of UDCs for the first time) he alleged, were written behind the back of his clients, and were prejudicial to them. Besides, he pointed out, that according to instructions of the Union Ministry of Defence, when a disciplinary proceeding is instituted against a delinquent official, his ACR should be initiated, only after the disciplinary proceedings are concluded and not during the intervening period. Shri Jois also alleged that the Next Superior Officer (NSO, for short) who had differed from the Reporting and the Reviewing Officers, in their assessment of the performance of the two applicants, for the relevant years, had not stated full reasons, for disagreement, even though there was a specific requirement to that effect, as expressly stated in the prescribed standard ACR form. He therefore contended, that the assessment of the NSO was capricious and resulted in injustice to the applicants.



18. Shri Padmarajaiah, learned Counsel for the respondents, maintained, that there was no irregularity in the writing of the ACRs of the applicants, for the relevant

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relevant period, as alleged by Shri Jois. He explained, that the NSO as the overall authority, ^{who}~~who~~ oversaw the performance of the applicants, in the course of the year and was thus in a position, to make an objective assessment of their work, by virtue of which, he had the freedom and authority, to enter his remarks in the ACRs as NSO, which became final.

19. We notice from the relevant proceedings of the DPC, that the ACRs of the employees, empanelled for consideration of promotion, to the cadre of UDCs, were examined for the quinquennium, immediately preceding the year of occurrence of the vacancies, to be filled in. At its meeting held on 16-6-1975, the DPC had examined the ACRs, for the period from 1970 to 1974. In order to ascertain the facts, we examined the ACRs of the two applicants, as also of R-7, for the period from 1970 to 1974 and also for 1975 (in view of the involvement of the applicants in a disciplinary proceeding) in the presence of the Counsel for both sides. Their overall grading was found to be as under:

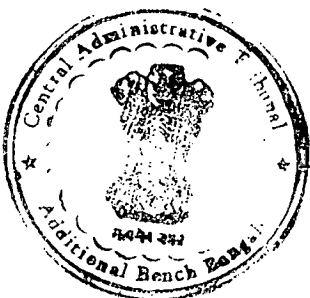
	Reporting year						
	1970	1971	1972	1973	1974	1975	
A-1	G	G	Av	Av	Av		Not fit for promotion.
A-2	G	Av	Av	Av	Av		Not dependable. Should be - wasted out.
R-7	G	G	Above Av	Above Av	Above Av		OS

NB: 'G' means, "Good"
'Av' means, "Average"
'Above Av' means,
"Above Average"
'OS' means, "Outstanding"

20. R-7 is seen to have been graded as "Above - Average", which however is not the standard grading prescribed. In fact, a minute study of the remarks of the NSO in their entirety, reveal that this grading is equivalent to 'Good', for the years 1972 and 1973 and "Very Good" for the year 1974.

21. Analysis of the ACRs, for the above period in respect of A-1 reveals, the following factual position, yearwise:

Reporting Year.	Remarks
1970	The Reporting Officer has graded him as "Good" and the Superior Reporting Officer as "Very Good".
1971	The assessment of the Reporting Officer and the Superior Reporting Officer is uniformly "Good".
1972	The Reporting and Reviewing Officers have graded A-1 as "Good", while the NSO has graded him as "Average".
1973	- do -
1974	The Reporting Officer has graded A-1 as "Good", the Reviewing Officer as "Very Good", but the NSO has graded him as "Average" and "Not yet fit for promotion", without however stating reasons as required.
1975	The Reporting Officer has graded him as "Average" with some adverse remarks, though not of a grave nature. The Reviewing Officer commented adversely on him and regarded him as "Not yet fit for promotion". But his assessment was ignored, the tenure of A-1 under him, being only for 4 months. The NSO also commented adversely on him and opined, that he was "not fit for promotion", but without stating reasons.



22. A similar analysis of the ACRs of A-2, brings out the following:

Report- ing Year	R e m a r k s
1970	The Reporting Officer has graded him as "Average", while the Superior Reporting Officer has graded him as "Good".
1971	The Superior Reporting Officer has graded him as "Average", in keeping with the assessment of the Reporting Officer.
1972	The Reporting and the Reviewing Officers have graded him as "Good", but the NSO has rated him as "Average", without however stating reasons.
1973	The Reporting and the Reviewing Officers have graded him as "Average", with which the NSO has concurred.
1974	The Reporting and the Reviewing Officers have graded him as "Good" but the NSO has rated him as "Average", stating, that he needs more experience.
1975	All the three authorities have commented adversely on him. NSO has further remarked, that he is not dependable and should be "wasted out".

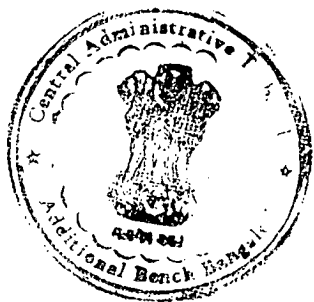
23. In so far as the dates are relevant to the case of the applicants for their promotion to the cadre of UDCs, the DPC met on 11-6-1975, 21-3-1980 and 29-11-1983. It examined the ACRs of the employees within the "zone of consideration" for the period from 1970 to 1974, 1975 to 1979 and 1971 to 1975 respectively. A-1 and A-2 were not considered suitable for promotion by the DPC, at its meeting

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meeting held on 11-6-1975, on the basis of their ACRs. At its meeting held on 21-3-1980, however, A-2 was considered 'fit' for promotion to the cadre of UDC, on the basis of his lone CR for the year 1975, though strange enough, it was adverse. This DPC meeting is seen to have taken place not long after A-2 succeeded in Writ Petition No. 10998 of 1978, wherein the punishment of removal from service imposed on him, was quashed by the High Court of Judicature, Karnataka, on 4-12-1979 and he was reinstated in service as LDC on 25-2-1980. At its meeting held on 29-11-1983, however, the DPC did not find A-1 suitable for promotion as UDC, on the basis of his ACRs.

24. Shri Jois reiterated his allegation, that the ACRs of the applicants for the Reporting Years 1974 and 1975, were written behind their back and that the adverse remarks entered therein, were not communicated to them, on account of which they were not afforded an opportunity to challenge them. This, he said, was violative of the principles of natural justice. He further alleged, that for the above two years, the NSO had either graded the applicants lower than recommended by both the Reporting and the Reviewing Officers and/or entered adverse remarks against them, without however giving specific reasons therefor, even though he was required to do so, as indicated in the ACR form itself. Shri Jois stated, that for the Reporting Years 1974 and 1975, the NSO was inimically disposed towards the

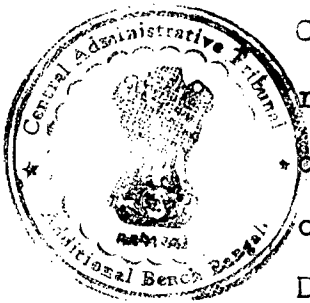
applicants



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applicants, for seeking remedy to their grievances in the Court of law and therefore, the applicants were placed in a hostile ambience⁴. Under these circumstances, he pleaded, no credence could be placed on the malicious assessment of his clients, in their ACRs, for the above years, to substantiate which, he relied on the ruling of the Central Administrative Tribunal in ATR 1986 CAT 350 (Y.P.GUPTA v. UNION OF INDIA). Shri Jois therefore submitted that owing to these illegalities, the applicants were denied their first legitimate opportunity of promotion, to the cadre of UDC, when the DPC met on 11-6-1975 to examine their case.

25. He further contended, that when the DPC met next on 21-11-1983 to examine the case of A-1, for promotion to the cadre of UDC, consequent to the punishment of his dismissal from service, having been quashed by the High - Court of Judicature, Karnataka, on 6-8-1981 in Writ Petition No.4133 of 1978, only one ACR of A-1 for the Reporting Year 1975 was taken into account, as no other ACRs were available for consideration, he being out of employment from 1977 till his reinstatement on 21-9-1981. This lone CR too, he stated, was vitiated, in that, the adverse remarks entered therein, were without warrant and not communicated to A-1. As a result, he asserted, that the consideration of the case of A-1, at the meeting of the DPC held on 21-11-1983 was nothing but a farce. Relying



on 1981 SCC(L&S) 1(BALDEV RAJ CHADHA v. UNION OF INDIA & ORS.), Shri Jois sought to focus attention on the observation of the Supreme Court, that ACRs are subjective and must receive sedulous checking as basis, for decision-making. The DPC, he submitted, sadly failed to exercise this check.

26. It is not in dispute that R-4 to R-7 were juniors, to both the applicants in the cadre of LDCs. It is also not in dispute, that the post of UDC in this case is a "non-selection post" and that therefore promotion to this post, is governed essentially by the well established criterion of seniority-cum-rejection of the unfit, unlike a "selection post" where seniority alone is not, but outstanding merit is the determining factor.

27. We shall first proceed to examine the case of A-1 in the light of the above averment of Shri Jois. Para-21 above, gives an analysis of the ACRs of A-1 for the period from 1970 to 1975. In fact, at its meeting held on 11-6-1975, the DPC had examined his ACRs for the period from 1970 to 1974 only. It would be seen from the above analysis, that A-1 had not come for adverse comment during the period from 1970 - 1973. He was graded as "Very Good" in 1970, "Good" in 1971 and "Average" in 1972 and 1973. In 1974, however, even though the Reporting Officer graded him as "Good" and the Reviewing Officer



as "Very Good", the NSO rated him as "Average", without however giving detailed reasons as required, and strange enough remarked that he was "Not Yet Fit for Promotion". This assessment of the NSO, was at variance with that for the Reporting Year 1973, when he had graded A-1 as "Average", but had not regarded him as "Unfit for Promotion". This, to us appears to be a flagrant contradiction, particularly, when the Reporting Officer had graded A-1 as "Good", and the Reviewing Officer, had enhanced it as "Very Good". Nowhere, do we find, that deficiency if any in the work of A-1, for that year, was brought to his notice in time, and opportunity given to him to show improvement. Under these circumstances, we are satisfied that the assessment of the NSO, in regard to A-1 for the Reporting Year 1974, which was cursory, discrepant and without reasons, needs to be ignored and that the grading of the Superior Officer, immediately below (i.e., Reviewing - Officer) namely "Very Good" should stand. ^{Ordinarily} ~~Accordingly~~ we would have refrained from entering into the domain of scrutinising the ACRs and the proceedings of ^{the} DPC, but we are constrained to do so, in view of the glaring disparities and deficiencies brought to our notice, by ^{the rulings cited by Sri Jais, etc} Shri Jois, in this regard - vide paras 24 and 25 supra seem apposite to the case before us, in view of the facts that have come to light.



28. Viewing in this background, the performance of A-1, from 1970 to 1974 on the basis of his ACRs, it is apparent, that he had more than satisfactory record of service to his credit, which should have rendered him eligible, to be considered for promotion to the cadre of UDCs, in any of the vacancies available, at the time the DPC met on 11-6-1975 or thereafter. It is manifest, that the DPC overlooked this important aspect, while examining the ACRs of A-1 for the period from 1970 to 1974, for considering his case for promotion to the cadre of UDC. As more than a decade and a half, has since elapsed, we do not consider it desirable to direct the DPC, at this distance of time, to re-examine the case of A-1 for promotion to the cadre of UDC, as on 11-6-1975 or thereafter, in the light of our above observations. We therefore deem it proper, in view of the above facts and analysis of the ACRs, which are self-revealing and in the interests of justice, not to remit this case to the DPC, for recommending anew, promotions to the cadre of UDC, as on 11-6-1975 or thereafter, in the light of our above observations but to direct A-3, to grant promotion to A-1 notionally, with effect from the date his immediate junior was granted promotion in the said cadre in supersession of his claim.

29. The case of A-2 is governed by the decision of the High Court of Judicature, Karnataka, in Writ Appeal No.1558 of 1980, which has been reproduced by



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us in para-12 supra. According to this decision, A-2 should have been considered for promotion to the cadre of UDC within 2 years from the date of occurrence of the vacancy in that cadre, from 1974 provided he was found fit. A-2 belongs to the ST and a vacancy earmarked for ST was available to him on 1-8-1975, in the cadre of UDC. The DPC which met on 11-6-1975, had taken into account this vacancy, but R-7 was promoted as UDC in this vacancy, since on the basis of his ACRs for the period from 1970 to 1974, A-2 was regarded by the DPC as "Not Yet Fit for Promotion". Analysis of the ACRs of A-2, as furnished in para-22 supra reveals, that he had not received any adverse remarks⁴², for the period from 1970 to 1974. The post of UDC being a "non-selection" one, as stated earlier, there was no reason, as to why the DPC at its meeting held on 11-6-1975, should have overlooked A-2 who belonged to ST, for promotion to the cadre of UDC, against the ST vacancy of 1-8-1975(anticipated). Instead, R-7 (Kum Kantha Rubi) is seen to have been promoted against this vacancy, as seen from Annexure-A. Her date of promotion, subsequently on 24-4-1983(Annexure-B), is seen to have been corrected to take effect from 1-8-1977. In the light of the above facts, we are convinced, that A-2 should have been promoted to the cadre of UDC in place of R-7, against the vacancy which had occurred on 1-8-1975, in compliance with the direction of the High Court of Judicature, Karnataka, in W.A.No.1558 of 1980.



For the reasons stated above (para 27 supra) in regard to A-1, we do not deem it necessary to direct the DPC to ^{consider} ~~recommend~~ the case of A-2 ^{as a new,} at this distance of time, for promotion to the cadre of UDC, as on 11-6-1975. The promotion of A-2 to the cadre of UDC, would also be notional as in the case of A-1, as explained by us in para 28 supra.

30. In the result, we make the following orders and directions:

- (i) We hold that on the basis of their ACRs for the relevant period, and their respective seniority, A-1 and A-2, were fit for promotion to the cadre of UDCs, in the "general" and "reserve" categories respectively, in the posts that were available to be filled in, when the DPC met on - 11-6-1975 and thereafter.
- (ii) As a consequence, we direct that they be promoted to the cadre of UDCs, from the date their immediate juniors were so promoted earlier.
- (iii) These promotions however, would be notional, till such date, the applicants actually shoulder or shouldered responsibility, as the case may be, in the post of promotion, ^{to} ~~namely~~ that of UDC. They would therefore, not be entitled to draw arrears of salary during this intervening period, but this



period

PK

period would count for annual increments, while fixing the pay of the applicants, on the date they actually shoulder or shouldered responsibility in the said post.

31. Applications are disposed of in the above terms. No order as to costs.



Sd/-

(K.S. PUTTASWAMY)
VICE CHAIRMAN.

6/11/87

Sd/-

(L.H.A. REGO) 6-11-87
MEMBER (A).

- True Copy -

[Signature]
DEPUTY REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

kms :

✓ *30/10*
S. H. R.
D.No. 3456/87/iv.

SUPREME COURT OF INDIA
NEW DELHI

Dated 23rd November, 1987.

From:

The Additional Registrar,
Supreme Court of India,

To

The Registrar,
~~High Court of~~

*Central Administrative Tribunal,
Bangalore, Bench Bangalore.*
PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9300 of 1987

(Petition under Article 136 of the Constitution of
India for Special Leave to Appeal to the Supreme Court
from the Judgment and Order dated 2-4-1987
of the ~~High Court of~~ Central Administrative Tribunal
Bangalore in Application No. 11111 of 1986

M. R. Gundu Rao

....Petitioner

Vs.

The Secretary, Ministry ofRespondent,
Communications & Gov.
Sir,

I am to inform you that the petition above-mentioned
for Special Leave to Appeal to this Court was filed on
behalf of the petitioner above-named from the judgment
and Order of the High Court noted above and that the
same was/were dismissed by this Court on the 16th
day of November, 1987.

Yours faithfully,

[Signature]
for ADDITIONAL REGISTRAR