

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 20-11-87

APPLICATION NO. 1447/86(F)

Applicant

Shri R.J. Manohar

V/a The Secy, M/o Finance & 116 Ore

Respondents

To

1. Shri R.J. Manohar
Deputy Collector of Customs
and Central Excise
Office of the Additional
Collector (Customs)
P.V.S. Sadan
Kodiyal Bail
Mangalore - 575 003
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
3. The Secretary
Ministry of Finance
Department of Revenue
New Delhi - 110 001
4. The Chairman
Central Board of Excise & Customs
North Block
New Delhi- 110 001
5. The Chairman
Union Public Service Commission
Shahajahan Road
New Delhi - 110 003
6. Shri V.M.K. Nair
Deputy Collector of Customs
and Central Excise
C/o Central Board of Excise & Customs
North Block
New Delhi - 110 001
7. Shri R. Sundara Raman
Chief Vigilance Officer
Hindustan Teleprinters Limited
G.S.T. Road, Guindy
Madras - 600 032
8. Shri N. Krishnamurthy
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
Bombay
9. Shri Bijoyananda Dass
Dy. Collector of Customs &
Central Excise
C/o Secretary
Central Board of Revenue, Excise
and Customs
New Delhi
10. Miss Praveen Talha
Dy. Narcotics Commissioner
C-43 and C-44, E-Park Road
Mahanagar Extension
Lucknow
11. Shri Subrata Basu
Dy. Collector of Customs &
Central Excise
C/o Central Board of Excise
and Customs
North Block
New Delhi - 110 001
12. Shri G.K. Pillai
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
15/1, Strand Road
Calcutta - 1

9/c

13. Shri S.S. Sokhon
Dy. Collector of Customs
& Central Excise
C/o Collector of Central Excise
115, M.K. Road, Churchgate
Bombay - 400 020
14. Shri V.P. Singh
Dy. Collector of Customs
& Central Excise
C/o Collector of Central Excise
Central Excise Building
Navrangpura, Ahmadabad.
15. Shri Kailash Sethi
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
15/1, Strand Road
Calcutta - 1
16. Shri T.R. Rastogi
Dy. Collector of Customs
and Central Excise
C/o Collector of Central Excise
Central Revenue Building
Statue Circle, Jaipur - 5
17. Shri K. Paresuraman
Dy. Collector of Customs
and Central Excise
C/o Collector of Central Excise
Central Revenue Buildings
Chokkikulam
Madurai - 2
18. Smt Nisha Malhotra
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
38, M.G. Marg, Civil Lines
Allahabad - 1
19. Shri C.N. Balakrishnan Nair
Dy. Collector of Customs &
Central Excise
C/o Deputy Director
(Anti-smuggling)
Calcutta
20. Shri L.K. Kakkar
Dy. Collector of Customs &
Central Excise
Directorate of Inspection
'D' Block, I.P. Bhavan
Indraprastha Estate
New Delhi - 2
21. Shri H.L. Verma
Dy. Collector of Customs &
Central Excise
Deputy Director
Dte of Publications
"Gagan Deep Building"
Rajendra Place
New Delhi
22. Shri S.S. Badi
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
Import Cargo Warehousing Corpn.,
Gurgaon Road, Palam
New Delhi
23. Shri A.S. Sidhu
Dy. Collector of Customs &
Central Excise
Deputy Director (Anti-Evasion)
West Block-VIII, Wing No. 6
(II Floor), R.K. Puram
New Delhi - 110 066
24. Shri A.K. Jain
Dy. Collector of Customs &
Central Excise
Sr. Departmental Representative
C/o The Departmental Represent-
tatives, West Block No. 2,
R.K. Puram, N.K.
New Delhi - 110 066
25. Shri I.R. Saha
Dy. Collector of Customs &
Central Excise
C/o The Secretary (CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
26. Smt. Chitra Saha
Dy. Collector of Customs &
Central Excise
C/o The Secretary (CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
27. Shri T.V. Sairam
Dy. Collector of Customs &
Central Excise
C/o The Secretary (CBR)
Central Board of Revenue,
Excise & Customs
New Delhi

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28. Shri P.G. Pal
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
29. Shri Ramesh Ramachandran
Addl. Collector of Customs
and Central Excise
Addl. Collector (Airport)
Sahar International Airport
Sahar, Bombay - 400 099
30. Shri A.P. Sudhir
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
Customs House, Cochin - 9
31. Shri N.K.P. Sinha
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
& Customs
New Delhi
32. Shri K.C. Lahiri
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
(West Bengal), 15/1, Strand Road,
Calcutta - 1
33. Smt Sunipa Basu
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
34. Shri S.K. Singhal
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
35. Shri K.P. Singh
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
36. Smt Prem V.P. Singh
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
O.P. Estate
New Delhi - 110 002
37. Shri S.P.S. Pundir
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise,
Thane, 4th Floor,
Navprabhat Chambers,
Ranade Road, Dadar
Bombay - 400 028
38. Shri M.K. Bhada
Dy. Collector of Customs &
Central Excise
C/o Departmental Representative
West Block No. 2, R.K. Purem,
New Delhi - 110 066
39. Shri Bhale Ram
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue,
Excise & Customs
New Delhi
40. Shri Z.B. Nagarkar
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue,
Excise & Customs
New Delhi
41. Shri P. Subramani
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
Central Revenue Building,
Chokkikulam, Madurai - 2
42. Shri Devendra Dutt
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
New Custom House
Ballard Estate
Bombay - 400 020
43. Shri R. Almeida
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
(Dy. Collector), 4th Floor,
Central Excise Building,
115, M.K. Road, Churchgate,
Bombay - 400 020

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44. Shri B. Saha
Dy. Collector of Central
Excise & Customs
C/o Collector of Central Excise
15/1, Strand Road
Calcutta - 1
45. Shri M.V.S. Prakasa Rao
Dy. Collector of Customs
& Central Excise
C/o The Secretary(CBR)
Central Board of Revenue,
Excise & Customs
New Delhi
46. Shri M.C. Kothandaraman
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
P.B. No. 331, Guntur (A.P.)
47. Shri R. Parthasarathy
Dy. Collector of Customs
& Central Excise
C/o Collector of Customs
Custom House
Madras - 1
48. Shri M.R. Srinivasan
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
Custom House
Madras - 1
49. Shri T.R.S. Mani
Additional Collector
C/o Collector of Central Excise
Chokkikulam, Madurai - 2
50. Shri K. Kumar
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
51. Shri N.I. Ramenathan
Dy. Collector of Customs &
Central Excise
Sr. Departmental Representative
West Block No. 2, R.K. Puram
New Delhi - 110 066
52. Shri B.R. Chawla
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
& Customs, New Delhi
53. Shri G.D. Pal
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
54. Shri Ramdhan Deb
55. Shri M.L. Verma
(Sl Nos 54 & 55 - Dy. Collectors of
Customs & Central Excise,
C/o The Secretary (CBR), Central Board
of Revenue, Excise & Customs,
New Delhi)
56. Shri V. Ramachandran
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs
Custom House, Madras - 1
57. Shri N.K. Kapoor
58. Shri P.S. Ahluwalia
(Sl Nos. 57 & 58 - Dy. Collectors of
Customs & Central Excise, C/o
The Secretary(CBR), Central Board of
Revenue, Excise & Customs, New Delhi)
59. Shri P.S. Venkatadri
Dy. Collector of Customs &
Central Excise
Dy. Director
South Regional Unit
No. 7, 5th Cross Street
C.I.T. Colony., Madras - 4
60. Shri W.S. Krishnan
Deputy Director
Regional Training Institute
Customs & Central Excise,
29, Barnaby Road, Kilpauk,
Madras - 600 010
61. Shri P.L. Paul
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue, Excise
and Customs
New Delhi
62. Shri Vijendra Kumar
Addl. Collector of Customs
C/o Collector of Air Customs
Palam Airport
New Delhi

o/c

63. Shri V. Chadra Sekharan
Dy. Collector of Customs
& Central Excise
C/o Collector of Customs
Custom House, Madras - 1
64. Shri M.M. Mathur
65. Shri T.B. Winter
(Sl Nos. 64 & 65 - Dy. Collectors of
Customs & Central Excise,
C/o The Secretary(CBR), Central Board
of Revenue, Excise & Customs, New Delhi)
66. Shri M.S. Rajappa
Dy. Collector of Customs &
Central Excise
Air Cargo Complex(CBR)
Sahar, Andheri (E)
Bombay - 400 099
67. Shri K.M. Tiwari
68. Shri J. Sridharan
(Sl Nos. 66 & 67 - Dy. Collectors of
Customs & Central Excise,
C/o The Secretary(CBR), Central Board
of Revenue, Excise & Customs, New Delhi)
69. Shri P.N. Srinivasan
Dy. Collector of Customs &
Central Excise
C/o Collector of Customs,
Custom House, Madras - 1
70. Shri Onkar Nath
71. Shri P.C. Jha
72. Shri K.K. Agarwal
(Sl Nos. 70 to 72 - Dy. Collectors of
Customs & Central Excise,
C/o The Secretary(CBR), Central Board
of Revenue, Excise & Customs, New Delhi)
73. Smt Komala Choudhary
Dy. Collector of Customs &
Central Excise,
C/o Collector of Central Excise, Delhi
I.P. Estate
New Delhi - 110 002
74. Shri A.K. Raha
Dy. Director of Customs & Central Excise
Directorate of Revenue Intelligence,
'D' Block, I.P. Bhavan,
I.P. Estate, New Delhi - 110 002
75. Shri Johendra Singh
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue,
Excise and Customs
New Delhi
76. Shri S.K. Pali
Addl Collector of Customs
C/o Collector of Customs
New Custom Annexe Building
Bombay - 400 038
77. Shri P.N. Sarangi
Dy. Collector of Customs &
Central Excise
C/o The Secretary(CBR)
Central Board of Revenue,
Excise & Customs
New Delhi
78. Shri M.A. Bhaemaiah
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
Coronation Hotel
Sayajigunj
Baroda
79. Shri J.M. Jain
80. Shri J.S.R. Kathing
81. Shri B.K. Gupta
82. Shri B.S. Ganu
(Sl Nos. 79 to 82 - Dy. Collectors
of Customs & Central Excise,
C/o The Secretary(CBR),
Central Board of Revenue, Excise
and Customs, New Delhi)
83. Shri J.M.K. Sekhar
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
15/1, Strand Road
Calcutta - 1
84. Smt Heera Radhakrishnan
Additional Collector of
Customs,
C/o Collector of Central Excise
Central Revenue Buildings,
Queen's Road, Bangalore - 1

85. Shri Lakhinder Singh

86. Shri J.K. Batra

87. Shri K.C. Puri

88. Shri S.S. Ranjhan

(Sl Nos. 85 to 88 - Dy. Collectors of Customs and Central Excise, C/o The Secretary(CBR), Central Board of Revenue, Excise & Customs, New Delhi)

89. Shri Vijay Singh
Dy. Collector of Customs and Central Excise
C/o Collector of Central Excise, Catholic Centre
Broadway, Cochin - 31

90. Shri Devender Singh

91. Shri S. Sabhapati

92. Shri J.R. Nobhoria

93. Shri V.M. Doiphode

94. Shri M. Dwivedi

(Sl Nos. 90 to 84 - Dy. Collectors of Customs and Central Excise, C/o The Secretary(CBR) Central Board of Revenue, Excise and Customs, New Delhi)

95. Shri V. Sridhar
Dy. Collector of Customs & Central Excise,
Office of the Deputy Collector of Central Excise,
N.H. IV, Faridabad (Haryana)

96. Shri S.P. Singh
Deputy Narcotics Commissioner,
Narcotics House, Station Road,
Kota, Rajasthan

97. Shri A.P. Kala
Deputy Director,
Directorate of Revenue Intelligence,
Bombay Zonal Unit,
3rd/4th Floor, Hotel Waldbat
16, Arthur Bunder Road,
Colaba, Bombay - 400 005

98. Shri A.C. Buck

99. Shri R.J. Beley

100. Shri Y.P. Panghar

101. Shri P.V. Das

102. Shri Rakesh Sharma

(Sl Nos. 98 to 102 - Dy. Collectors of Customs and Central Excise, C/o The Secretary(CBR), Central Board of Revenue, Excise & Customs, New Delhi)

103. Shri Jeet Ram Kait
Dy. Collector of Customs & Central Excise,
C/o Collector of Central Excise,
15/1, Strand Road,
Calcutta - 1

104. Shri K.S. Nair
Dy. Collector of Customs & Central Excise,
C/o Collector of Central Excise,
4, Promenade Road,
Tiruchirapalli - 1

105. Shri K.D. Mankar

106. Shri Anil Bhatnagar

107. Shri T.P. Singhal

(Sl Nos. 105 to 107 - Dy. Collectors of Customs and Central Excise, C/o The Secretary(CBR), Central Board of Revenue, Excise and Customs, New Delhi)

108. Shri S.S. Radhakrishnan
Dy. Collector of Customs & Central Excise,
C/o Collector of Central Excise,
P.M.C. Commercial Building,
Tilak Road, Hira Baug
Pune - 2

109. Shri V.K. Sharma

110. Shri A. Bhattacharya

(Sl Nos. 109 & 110 - Dy. Collectors of Customs & Central Excise, C/o The Secretary(CBR), Central Board of Revenue, Excise & Customs, New Delhi)

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111. Shri Dines Kacker
Dy. Collector of Customs &
Central Excise
C/o Collector of Central Excise
(North)

Bhisali Ground
Meerut (U.P.)

112. Smt Chitra Gourilal

113. Shri K.P. Misra

114. Shri S.D. Majumdar

(Sl Nos. 111 to 114 - Dy. Collectors of
Central Excise & Customs,
C/o The Secretary (CBR),
Central Board of Revenue, Excise & Customs,
New Delhi)

115. Smt V. Laxmi Kumaran
Dy. Collector of Customs &
Central Excise,
Sr. Departmental Representative,
West Block No. 2, R.K. Puram
New Delhi - 110 066

116. Shri A.S.R. Nair
Dy. Collector of Customs &
Central Excise,
C/o Collector of Customs,
15/1, Strand Road
Calcutta - 1

117. Shri K.C. Singh

118. Shri R.K. Gupta

119. Shri Prem Raj


(Sl Nos. 117 to 119 - Dy. Collectors of
Central Excise & Customs,
C/o The Secretary(CBR), Central Board of
Revenue, Excise & Customs, New Delhi)

120. Shri M.S. Padmarejaiah
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 passed by this Tribunal
in the above said application on 23-10-87

Encl : As above


~~SECTION OFFICER~~
(JUDICIAL)

RECEIVED 120 copies 23/11/87
Diary No. 1452/187
S.S. and Date: 24.11.87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated: the 23rd day of October, 1987

Present

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

And

SHRI L.H.A. REGO .. HON'BLE MEMBER (A)

APPLICATION NO. 1447 OF 1986(F)

R.J.Manohar,
Deputy Collector of Customs
and Central Excise, P.V.S.Sadan,
Kodiyal Bail,
MANGALORE-575 003. .. Applicant

(By Dr. M.S.Nagaraja, Advocate for the applicant)

-vs.-

1. Union of India
by its Secretary, Finance Ministry,
Department of Revenue, NEWDELHI.
2. Central Board of Excise
and Customs, by its Chairman,
Central Board of Excise and
Customs, North Block, New Delhi.
3. Union Public Service
Commission, by its Chairman,
Shajahan Road, New Delhi .. Respondents
and other 114 responts.

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

Application coming on for hearing this day,
Shri L.H.A. REGO, HON'BLE MEMBER(A), made the following:

ORDER

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O_R_D_E_R

The main prayer in this application filed under Section 19 of the Administrative Tribunals Act, 1985 is to:

- (i) direct respondents(R) 1 to 3, through an appropriate writ, to restore the seniority of the applicant above R4 to R-117;
- (ii) apply the doctrine of severance and direct R1 to 3, to retain his promotion to the grade of Deputy Collector of - Customs and Central Excise ('DC', for short) according to the impugned order dated 27-1-1983 (Annexure-E) by R1, but to strike down the seniority assigned therein, to him and to R4 to R-117;
- (iii) restrain R-1 to 3, from giving effect to the seniority indicated in the above impugned order, in regard to future promotions and for assignment of posts, whether on permanent or temporary or ad hoc basis; and
- (iv) grant all consequential benefit.

2. The fact-situation relevant to this case, is concisely as follows: The Indian Customs and Central Excise Service, Class-I (now designated as Group 'A'), to which the applicant belongs, was constituted with

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effect

effect from 15-8-1959, by a Government Resolution dated 12-8-1959 (Annexure-R1), by merging the erstwhile Indian Customs Service Class-I and the Central Excise Service Class-I, into one service. The above Resolution indicated, that the rules of recruitment, training, promotion etc., would be notified in due course. The Recruitment Rules, however could not be finalised, owing to certain Court proceedings and representations made by the Service Associations, safeguarding the interests of the respective services. R-1 and R-2 state, that the Recruitment - Rules have since been drawn up and would be notified shortly.

3. The present hierarchical pattern, in the Indian Customs and Central Excise Service, Class-I (Group 'A') ("Integrated Service", for short), is as under:

S.No.	Designation of the post	Pay scale Rs.
(1)	(2)	(3)
(i)	Superintendent of Central Excise/Assistant Collectors of Central Excise/Customs (Junior Time Scale).	700-40-800-EB-40-1100-50-1300.
(ii)	Assistant Collectors of Central Excise/Customs (Senior Time Scale)	1100-(6th year or under)-50-1600.
(iii)	Deputy Collectors of Customs/ Central Excise.	1500-60-1800-100-2000.

(iv)



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(1)	(2)	(3)
(iv)	Non-functional selection grade Deputy Collector of Customs/Central Excise.	2000-125/2-2250.
(v)	Collector of Customs/Central Excise:	
	(a) Level-II ..	2250-125/2-2500 (50% of the posts)
	(b) Level-I ..	2500-125/2-2750.

4. It is stated, that pending framing of the Recruitment Rules, appointments to the initial grade of the Integrated Service (Rs. 700-1300), were made partly by promotion and partly by direct recruitment, through a Civil Services Examination, conducted annually, by the Union Public Service Commission ('UPSC', for short).

5. The next higher grades in the Integrated Service, are said to be all filled by promotion and that except in regard to promotion from the Junior to the Senior Time Scale and the Non-functional Selection Grade DC, promotions to all other higher grades, are granted on the basis of selection-cum-merit, as recommended by the DPC, presided over by a Member/Chairman of the UPSC. As against this, the principle adopted for promotion from the Junior to the Senior Time Scale and to the grade of Non-functional DC, is seniority-cum-fitness.



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6. The applicant joined the Integrated Service on 18-9-1969, as a direct recruit, after qualifying himself successfully, in the competitive examination held by the UPSC for the All India Services. After completion of the prescribed probationary period, he was posted to the Hubli Central Excise Division, of the Karnataka Collectorate, as Superintendent Class-I. In June 1972, he was posted to Mangalore, as Assistant Collector (Customs) where he worked upto June 1976. Thereafter, his services were placed at the disposal of the Department of Personnel and Administrative Reforms, for appointment as Assistant Collector in the Zonal Office of the Directorate of Revenue Intelligence, Bangalore, with effect from 30-7-1976, until further orders. He was on deputation in this post to the said Directorate, during which period, he was granted Special Pay at Rs.20 per mensem.

7. On 26-7-1980, he was promoted by R-1, purely on an ad hoc basis, to officiate in the higher grade of DC in the pay-scale of Rs.1500 to 2,000/- (Annexure-B), stipulating clearly, that this promotion was purely provisional and would not confer any right on him to continue in that grade, or any claim for seniority in the grade of DC, vis-a-vis those who may be promoted on regular basis. It was further specified in that order, that this promotion would be subject to the decision of the High Court of Judicature, Calcutta, in Writ Petition No.13840(W) of 1979, filed by SHRI M.K:HALDAR & ANR. -vs.-

UNION OF INDIA. In June 1981, the applicant was transferred to the Madurai Collectorate, as Additional Collector of Customs and Central Excise, and thereafter to Mangalore.

8. The applicant states that his seniority in the Seniority List of Assistant Collectors, in the initial grade of entry as at Annexure-C, (Sl.No.310 therein), was much higher than that of R-4 to R-117, and that it was not disturbed, while he was promoted on an ad hoc basis as DC, by R-1.

9. R-1 and R-2 state, that the DPC could not meet from 1979 to 1981, on account of certain interim orders passed by the High Court of Judicature, Calcutta in 1979, in the aforesaid Writ Petition No.13840(W) of 1979. It met thereafter in December 1982, (after these interim orders were clarified/vacated by the Calcutta High Court) and drew up panels yearwise separately, for the period from 1979 to 1982, in respect of the ACs, considered eligible for promotion to the cadre of DC, in accordance with the instructions issued by the Department of Personnel and Administrative Reforms, Government of India, in their Memorandum dated 24-12-1980 (Annexure-R2). The DPC, at its meeting held in 1982, considered the case of eligible officers and drew up panels yearwise, for the period from 1979 to 1982 as below, confining the "zone of consideration" ("field - of choice"), to thrice the number of vacancies existing

and

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and/or anticipated for the respective years, subject to availability of the eligible officers:

Year	No. of officers empanelled.	No. of officers considered ("zone of consideration")
1979	4	12
1980	4	12
1981	15	45
1982	118	142 *

*Only 142 officers were eligible, with the requisite minimum service of 8 years, against 354, required to be considered within the "zone of consideration".

10. The case of the applicant for promotion to the cadre of DC regularly, came up for consideration before the DPC, on the basis of his seniority in the grade of AC, at the aforesaid meeting held in December, 1982. After due consideration, the name of the applicant was empanelled in the year 1982, with due regard to his seniority and his grading on the basis of his merit, as assessed from his Annual Confidential Reports ('ACRs') and other relevant material. Consequently, he was regularly promoted to the grade of DC, on 27-1-1983 (Annexure-E) by R-1. In the aforesaid order dated 27-1-1983, whereby the applicant was regularly promoted as DC among others, in the pay-scale of Rs.1500-2000, it was clearly specified, that the seniority of the officers, shown as promoted to the cadre of DC, would be in the order as shown therein, which was based on their placement in the panel, as recommended by the DPC. The

applicant



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applicant was shown at Sl.No.123, much lower than R4 to R-117. The applicant alleges, that all these respondents were junior to him, in the original Seniority List of officers, appointed to the initial grade of entry to the Integrated Service (Group 'A') after 15-8-1959 (Annexure-C). As a result, the applicant further alleges, that his career prospects have been gravely marred.

11. Aggrieved thereon, the applicant is said to have submitted representations on 18-4-1983 and 14-12-1983 (Annexures 'F' and 'G' respectively) to R-2, through proper channel i.e., through the Collector of Customs and Central Excise, with a request to redress the injustice caused to him. The applicant states, that these representations were summarily rejected by R-1 by a bald, unreasoned, arbitrary and cryptic one-line order, on 14-5-1985 (Annexure-H), which was received by him on 16-6-1985. Dissatisfied, the applicant has approached this Tribunal, through the present application, for relief.

12. Dr.Nagaraja, learned Counsel for the applicant, filed an Interlocutory Application ('IA') on 8-9-1987, for permission to raise an additional ground, after seeing the relevant proceedings of the DPC, to which we had permitted him access. Shri M.S.Padmarajaiah,

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learned Counsel for R-1 and R-2, has filed an additional reply to this IA. After hearing both sides, we allowed the IA, to facilitate full and effective adjudication of the various questions raised in this application. Initiating his attack, Dr.Nagaraja contended, that in the absence of authoritatively framed and duly published rules, specifically in regard to promotion to the cadre of DC, the reasonable inference would be that promotion to the cadre of DC, de hors these rules, was based on seniority-cum-fitness, in which case, the seniority in the feeder cadre ^{is} of ACs, should be the dominant factor, to determine suitability for promotion to the cadre of DC. He alleged, that in the absence of these rules of promotion, R-1 had fixed seniority arbitrarily, contrary to law. Since the rules of promotion were non-existent, Dr.Nagaraja contended, that the post of DC in the Integrated Service, was to be categorised as a 'non-selection' post and therefore, application of the principle of "selection", by merit, for this post, was improper, and without authority and basis.

13. Countering this argument, Shri Padmarajaiah submitted, that the principle of granting ^{is} ~~of~~ regular promotion, to the cadre of DC, on the basis of selection-cum-merit and not merely on length of service, as pleaded by Dr.Nagaraja, was being followed ever since the very inception (i.e., from 15-8-1959) of the Integrated Service. The Integrated Service was constituted from the erstwhile

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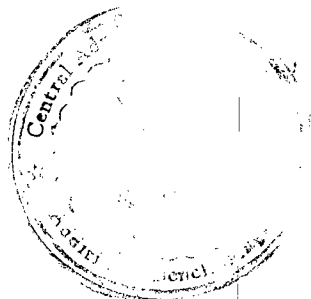
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Indian Customs Service Class-I and the Central Excise Service Class-I, with effect from 15-8-1959. Thus, the Integrated Service, was merely an integration of the above old two services, which were in existence since long, and not an entirely new service.

14. Prior to 15-8-1959, the posts of DC (Customs) in the Indian Customs Service Class-I, was being filled in by promotion from the cadre of ACs, in that service, on the principle of "selection". The post of DC (Central Excise) in the Central Excise Class-I, was also being filled in similarly, from the feeder cadre of AC (Central Excise), as proof of which, Shri Padmarajaiah referred to the relevant extracts at Annexure-R3, from the Central Board of Revenue Office Procedure Manual, 1955. Shri Padmarajaiah confirmed, that the posts^{of} of DCs, in the Integrated Service have been filled throughout, from the feeder cadre of ACs in that service, on the very same principle of "selection".

15. In order to bolster his contention further, Shri Padmarajaiah invited our attention to the instructions issued by the Union Ministry of Home Affairs, in consultation with the UPSC, to their Memorandum dated 16-5-1987 (Annexure-R4), laying emphasis on merit, as the criterion for promotion in regard to senior posts. He also referred to the Memorandum dated 16-5-1959 (Annexure-R6) of the said Ministry, clarifying, that the UPSC need

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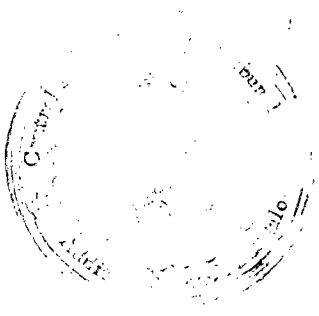
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not be associated with the DPCs, for assessing suitability of candidates, for "non-selection" posts, which he said, led to the obvious inference, that a member of the UPSC is to be associated only with Class-I DPCs, where the principle to be adopted for promotion was that of "selection", and not with other DPCs.

16. Yet another plea advanced by him was, that consequent to bifurcation of the Central Board of Revenue into two constituent Boards viz., The Central Board of Customs and Central Board of Direct Taxes, the Union Ministry of Finance (Department of Revenue), had in their letter dated 17-12-1964 (Annexure R-VII), indicated the composition of the various DPCs, for different posts in the Integrated Service. Shri Padma-
rajaiah, therefore, stressed, that Annexure-R-VII read with Annexure R-VI, made it amply clear, that the principle adopted for promotion of ACs to the cadre of DCs, was throughout, "selection" and not seniority-cum-fitness. Accordingly, he confirmed, that the posts of DCs in the Integrated Service, have all along been filled in by promotion, from the feeder cadre of ACs in that service, on the principle of "selection" only, right from 15-8-1959 i.e., from the inception of merger of the two services. He further pointed out, that this principle was in keeping with the practice uniformly adhered to, right from the formation of the Integrated

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Service from 15-8-1959, and was also adopted likewise, in other comparable All India Services, like the Indian Income Tax Service, the Indian Audit and Accounts - Service, the Indian Postal Service etc., where the principle of "selection" only, is still being adopted, in regard to promotion, to comparable senior posts. The draft recruitment rules for the Integrated Service Shri Padmarajaiah indicated, were now on the anvil, and would be published before long. These draft rules he said, also envisaged promotion to the cadre of DC, in the Integrated Service, on the principle of "selection" only.

17. Taking into account the various authorities, and the well-established convention, in regard to promotion in comparable posts in other All India Services, as pointed out by Shri Padmarajaiah, and the fact, that the DPC for considering promotion of ACs to the cadre of DCs, in the Integrated Service, is headed by no less than a person of the status of a member of the UPSC, we are rather bemused by the line of argument of Dr. Nagaraja, that in the absence of rules of promotion to the cadre of DCs in the Integrated Service, it should be inferred, that promotion to this cadre, should be based only on seniority-cum-fitness but not on selection-cum-merit. We, therefore, find his plea meritless, and reject the same.

18. The other ground of attack of Dr. Nagaraja was, that the DPC had failed to devise its own procedure and

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follow the same uniformly, as required by the relevant rules. He alleged, that the DPC had not laid down, as to for what particular period, the ACRs of the eligible officers, could be taken into account, for the purpose of assessment of merit and what would be the "zone of consideration" or the "field of choice", for empanelment of the eligible candidates. He stated, that the DPC had not taken into account, the relevant personal dossiers, of the eligible officers, particularly, of the applicant, who had earned commendation for meritorious performance in various spheres of his duty. Consequently, he submitted, ~~that~~ⁱⁿ the DPC had not graded the applicant fairly and realistically, on a total assessment of his ACRs, as also his personal dossiers, which according to him, ~~was~~ⁱⁿ to the detriment of the applicant, resulted in his being underrated, from the point of view of his merit. He said, the DPC had not stated reasons precisely and elaborated as to why a particular officer, and the applicant in particular, in this case, was overlooked, for promotion to the cadre of DC. In this regard, he relied on the ruling in AIR 1974 S.C. 87 (UNION OF INDIA -v.- MOHANLAL KAPUR), wherein the Supreme Court had quashed the Selection List, on the ground, that the Select Committee had not recorded reasons, for superseding senior officers. According to this ruling, Dr. Nagaraja emphasised, the DPC should have indicated the facts precisely, on the basis of which, conclusions were

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arrived at by it. In this case, he averred, the DPC had clearly failed to do so, and this had resulted in irreparable injustice to the applicant. He also sought to derive support, from the ruling of the Supreme Court in 1987 ATC 628 (R.S.DASS -vs.- UNION OF INDIA & ORS.). He relied particularly, on the observations of the Supreme Court, in paras 5 and 6 of that judgment, which read thus:

"5. In order to rule out any grievance actual or fancied, some objective basis for the categorisation in the manner indicated should be laid down. If such objective basis is made known, the fact that after categorisation, the selection of junior officers in preference to senior officers need not state reasons and would not be violative of the canons of justice but otherwise there will be room for suspicion and that too would not be wholly unjustified.

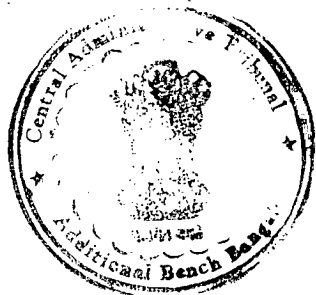
6. I would therefore like to suggest to the Government and the authorities concerned that there should be some basis of the categorisation of the officers and such basis should be objective and not merely subjective evaluation and furthermore such basis should be formulated in the form of guidelines. Objectivity in subjective evaluation of the worth of the different officers would go a long way to generate a feeling that justice has been done and unless members of the administration feel that justice has been done to them, the administration cannot become an effective weapon for social change ushering in social justice."



19. The next contention of Dr.Nagaraja was, that the DPC had not scrupulously followed, the instructions issued by the Department of Personnel and Administrative Reforms, Government of India, in their Memo dated 30-12-1976 and 2-10-1980 (Annexure-J), while considering grant of promotion to the cadre of DCs, in regard to screening and selection. According to these instructions, Dr.Nagaraja urged, the DPC should have met annually at regular intervals, to draw up panels for grant of promotion to the cadre of DCs, in the vacancies required to be filled up yearwise.

20. The details of these vacancies yearwise and the number of officers considered within the "zone of consideration", have been indicated in para-9 supra. Dr.Nagaraja alleged, that instead of apportioning the vacancies equitably yearwise, they were all bunched together, thereby depriving the eligible officers, inclusive of the applicant, of the legitimate opportunity of promotion in the year he would have become eligible, if these posts were equitably distributed. He pointed out, that as many as 102 vacancies, resulting out of review of the cadre of DCs, as also other vacancies, were bunched together, to be considered during 1982 to be filled in, for promotion to the cadre of DCs. This, according to him, resulted in avoidable large-scale supersession of ACs, like the applicant, thereby denying them, their legitimate opportunity for promotion to the cadre of DCs.

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21. Dr.Nagaraja submitted,that it was learnt, that the ACRs of the eligible officers,for five consecutive years,immediately preceding 1982, were examined by the DPC, at its meeting held on 22-12-1982, to consider recommendation of promotion on a regular ^{the} basis ^{of} promotion, to the cadre of DCs. Elaborating this contention, Dr.Nagaraja stated, that the performance of the applicant for the period from 1-1-1980 to 26-7-1980,during the Reporting Year 1980 as AC, was not assessed by the Reporting Authority namely, Shri R. Gopalan, DC, who was then his immediate superior, as he had not recorded his remarks in the ^{the} pertinent ACR. On the contrary, he stated,that Shri Wadhwan, who was the Reviewing Authority, had recorded his remarks for the entire period of the Reporting Year 1980, which had resulted in a distorted and unrealistic assessment of the performance of the applicant, to his disadvantage. The applicant, he said, was promoted as DC on an ad hoc basis in 1980,while in the case of R-4 to R-117, their ACRs for this period,were taken into account, in respect of their performance, only in the feeder cadre of ACs. In the case of the applicant, however, his ACRs of 1980 and 1981,which related to his officiating promotion in the cadre of DC,were also examined. Referring to the instructions contained in para 174 in particular, in the Posts and Telegraphs Manual Vol.III, in regard to how the ACRs should be written, what they should contain, how the

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memorandum of services should be maintained as the basis for writing ACRs etc., which he said were of universal application to all the Departments of the Government of India, Dr.Nagaraja, alleged that these instructions were not meticulously adhered to, while writing the ACR of the applicant. This he said was, grossly ~~was~~^{is} discriminatory and was another violation on the part of the DPC, in assessing the merit of his client, for promotion to the cadre of DC, which had resulted in injustice to him.

22. Refuting the contentions of Dr.Nagaraja, Shri Padmarajaiah submitted, that the DPC had examined the case of the applicant as well as of the concerned respondents, with the desired fairness and objectivity, in due compliance with the prescribed procedure and relevant instructions in the matter. He stated, that the applicant had not challenged in his application, the defects in his ACRs for the pertinent years, as now urged by his counsel, in the course of the hearing of the case and therefore this belated contention of Dr.Nagaraja should not merit consideration.

23. Dr.Nagaraja stated, that the DPC had examined the ACRs of more than 3 years, in respect of as many as nearly 200 ACs, as well as other relevant service record, at the time of its meeting held on 22-12-1982. He alleged, that it was physically impossible for the DPC,

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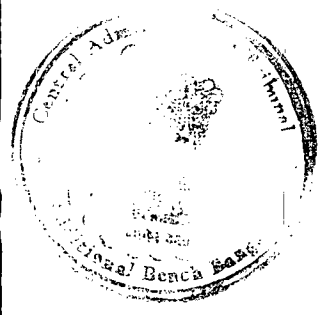
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to examine this voluminous record, of such a large batch of officers objectively, within a few hours, just in a day and therefore, the natural inference would be, that scrutiny of the ACRs and other relevant service record of these officers by the DPC, was merely stereotype and mechanical, resulting in improper assessment of their merit and grading on that basis, which has caused injustice to the applicant and others concerned.

24. Rebutting the contention of Dr. Nagaraja, that the DPC had not properly examined the ACRs and other relevant service record of the officers concerned, inclusive of the applicant, Sri Padmarajaiah submitted, that the Chairman of the DPC and its members, apart from the ACRs and other relevant service record, were furnished with requisite material and notes, to facilitate quick, but proper assessment of merit of the concerned officers, including the applicant, to help consider their case for promotion to the cadre of DC. The DPC he said, was thus in a position to examine each case expeditiously and in fair detail, with the desired objectivity. He pointed out, that this was borne out by the fact, that a test check, by this Tribunal, in respect of the ACRs of R-17, 20, 24, 43, as also of the applicant, as suggested by Dr. Nagaraja, had revealed, that the assessment as arrived at by the DPC, on the basis of these ACRs, was factual and objective. Counsel for the applicant, was also given an opportunity by the Tribunal to see these ACRs. Shri Padmarajaiah referred

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to the judgment of the Calcutta Bench of the Central Administrative Tribunal rendered in O.A.89 of 1986 (ARUN KUMAR SRIVASTAVA -vs.- UNION OF INDIA & ORS.), wherein it had categorically stated, in regard to the same DPC meeting, that it had no reason to doubt its competence and fairness, in examining the ACRs and other relevant service record of the officers and assessing their merit thereon, to consider grant of promotion to the cadre of DCs. Scanning through the ACRs of the applicant, we are satisfied that they do not suffer from any serious defect, as alleged by Dr.Nagaraja - vide para 21 above.

25. Dr.Nagaraja relied on the following string of decisions of the Supreme Court, to buttress his case that the merit of the applicant, was not objectively assessed by the DPC:

- (i) 1981 SCC (L&S) 258 (AJAY HASIA & ORS. -vs.- KHALID MUJIB SEHRAVARDI & ORS.);
- (ii) 1981 SCC (L&S)588 (LILA DHAR -vs.- STATE OF RAJASTHAN);
- (iii) 1986 SCC (L&S) 88 (ASHOK KUMAR YADAV & ORS. -vs.- STATE OF HARYANA & ORS.)
- (iv) (1987) ATC 628 [R.S.DASS vs. UNION OF INDIA(SC)]7.

Shri Padmarajaiah contended, that these decisions had no relevance to the case on hand, as the facts and circumstances therein were not similar.

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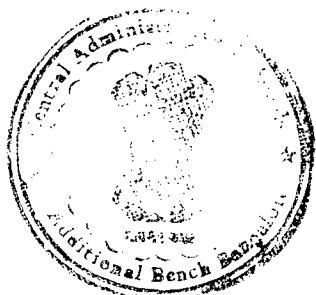


26. As for the averment of Dr.Nagaraja, that the ACR of the applicant for the Reporting Year 1980, was not properly recorded, for want of assessment of his merit by Shri R.Gopalan, DC, who was his Reporting - Authority, Shri Padmarajaiah clarified, that Shri Wadhwan, who was the Reviewing Authority, had an opportunity to observe closely, the performance of the applicant, even as AC and therefore, was in a position to assess his merit objectively. In view of this, Shri Padmarajaiah asserted, that it was erroneous to infer, that merely because Sri R.Gopalan, DC, had not recorded his remarks as a Reporting Authority, in the ACR of the applicant, for the period from 1-1-1980 to 20-6-1980, covering his tenure as AC, the ACR was vitiated, for the entire Reporting Year 1980.

27. We have examined carefully, the rival contentions, as regards assessment by the DPC, of the merit of the applicant, to consider his case for promotion to the cadre of DC. During the hearing of this case, Dr.Nagaraja had requested us, to examine as a test, the ^{ACRs} ACRs of the applicant and four respondents (as picked by him) as referred to in para-24 supra. We examined these ACRs carefully and even showed them to Dr.Nagaraja. Normally, we would not have intruded into this domain of scrutinising the ACRs, which is legitimately the function of the DPC. Nevertheless, we undertook this exercise solely

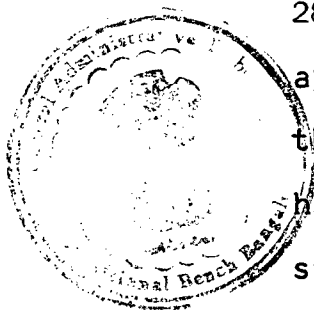
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with the object of ensuring that there was no travesty of justice, on the part of the DPC in this respect. We are convinced, that the assessment of merit arrived at by the DPC, on the basis of these ACRs, was factual and objective and that there was no reason to doubt its fairness in this assessment, as alleged by Dr.Nagaraja. The Calcutta Bench of the CAT, as mentioned earlier, had also come to the conclusion, that the very same DPC, which had assessed the merit of the concerned officers, was fair and objective in its assessment. We notice, that the DPC had not flagrantly deviated from the well-established practice and procedure of confining the "zone of consideration", to thrice the number of vacancies existing and/or anticipated and of assessing the ACRs, for a period of five consecutive years, immediately preceding the date of the meeting of the DPC. We thus find no basis whatsoever, in the above allegation of Dr.Nagaraja, and no taint of illegality or arbitrariness, attached to the proceedings of the DPC and therefore reject his contention, as ill-founded.

28. That being the case, it is evident, that the applicant, lost his place (seniority) for promotion to the cadre of DC for the relevant period, solely because, his merit was distinctly lower, as compared to those who superseded him, as has been proved by the cases examined by us as a test, as referred to in para-24 supra.



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29. The various rulings relied upon, by Dr.Nagaraja vide para 25 above, do not directly bear on this case and therefore are of little avail to him, in advancing his plea. The case ^{CR} ~~relating to~~ ^{CR} ~~to~~ ^{CR} AJAY HASIA, relates to consideration of admissions, to a Regional Engineering College at Srinagar and to interview of candidates for that purpose, lasting merely 2 to 3 minutes, which the Court felt, was superficial and to asking questions which it observed, had no relevance to assessment of suitability of the candidates, at the viva voce. The facts of this case are clearly discernible from the one before us, and therefore in our view, the ruling in that case does not squarely apply.

30. LILA DHAR's case too is distinguishable, in that, it pertains to the method of awarding marks in a test, prescribed for appointment to a judicial service. The Supreme Court had observed in this case, that Courts cannot sit in judgment thereon, unless it was proved or obvious, that the method of marking adopted was palpably with an oblique motive. Such is not the situation, in the case before us and therefore, the ruling is inapt for that case.

31. In ASHOK KUMAR YADAV's case, the Supreme Court expatiated, that the basic principle underlying was, that justice must not only be done but must also appear to be done. It has to be applied, to arrive at a fair and just
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decision. This case related to selections made by the Haryana Public Service Commission, to the Haryana Civil Service (Executive) and other allied services. The Court observed, that the viva voce test, cannot be conducted satisfactorily, if the number of candidates to be interviewed was too large, unmanageable and unwieldy. It remarked, that in these circumstances, the interviews would tend to be casual, superficial and ^{is} sloppy and the assessment made thereat, would not reflect correctly, the true measure of the personality of the candidate. But the Court pointedly observed, that something more than merely calling an unduly large number of candidates, for interview must be shown, in order to invalidate the selection made. Such is not the case in the application before us. On the contrary, a test check of the ACRs of the persons (as indicated by Dr.Nagaraja) by us, proved, that the DPC was fair, objective and impartial in its assessment, and this has been corroborated by the judgment of the Calcutta Bench of the Central Administrative Tribunal-vide para 24 above.

32. Lastly, R.S.DASS's case, referred to by Dr.Nagaraja, dwells in great detail, as to the soundness of the methodology adopted, in the grading of officers on the basis of merit, as assessed from their ACRs and other relevant service record, in the absence of any other alternative. Inter alia, the Supreme Court observes

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in this case, that principles of natural justice do not require an administrative authority or a Selection Committee, to record reasons for selection or non-selection of a person and that it is not expedient to extend the horizon of natural justice in this respect. It also observes, that the methodology of assessment of merit on the basis of grading and the composition of the Select Committee from among high-ranking responsible officers, presided over by a Member of the UPSC, are an adequate safeguard against arbitrariness and ensures fair and impartial selection. In fact this judgment does not countenance the case of the applicant.

33. In view of the above facts and discussion of the various questions involved in this case, we find no merit in this application. We, therefore, dismiss the same, but with no order as to costs.

Sd/-

(K. S. PUTTASWAMY)
VICE CHAIRMAN.

23-10-1987

Sd/-

(L.H.A. REGO)
MEMBER (A).

23.10.1987

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