

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH:BANGALORE

DATED THIS THE 6TH DAY OF MARCH,1987.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 1016 OF 1986.

M.Aftab Ahmed,  
51 years, Foreman,  
L.R.D.E., Bangalore-1.

.. Applicant.

v.

1. Union of India represented  
by the Secretary,  
Ministry of Defence,  
NEW DELHI.
2. C.V.Krishna Rao,
3. T.N.Nanjappa,
4. V.Venkataramanaiah,
5. R.Munuswamy  
Respondents 2 to 5,  
All Junior Scientific Officers,  
L.R.D.E., Bangalore-1.

.. Respondents.

(By Sri M.S.Padmarajaiah,Standing Counsel)

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This application coming on for hearing,Vice-Chairman made the following:

O R D E R

This is a transferred application and is received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act,1985 ('the Act').

2. Mr.Aftab Ahmed, the applicant with the educational qualification of B.Sc.,having joined service in a lower post in the Electronics and Radar Development Establishment of Government of India('LRDE') has been promoted and was working as a 'Foreman' by 1983. As 'Foreman' he was eligible for promotion to the next post of Junior Scienti-

fic Officer ('JSO') regulated by the Defence Research and Development Organisation (Junior Scientific Officer) Recruitment Rules,1980 ('Rules'). Under these Rules,Senior Scientific Assistants ('SSA') and Chief Draftsmen ('CD') are also eligible for promotion to the posts of JSOs. The posts of JSOs are selection posts. Selection to the posts of JSOs is made on the recommendations of a Board of Assessment or a Departmental Promotion Committee ('DPC') constituted for the purpose by Government.

3. In September,1983, there were 180 posts of JSOs earmarked for promotion.

4. On 5-9-1983 a DPC consisting of a Chairman and 6 other members considered the cases of the applicant, respondents 2 to 5 and a large number of eligible officers for the 180 vacant posts of JSOs graded them under the categories 'outstanding', 'very good', 'good' and 'not yet fit' and recommended promotion of 181 persons to the posts of JSOs with due regard to reservations to members of scheduled castes and scheduled tribes, in which list, respondents 2 to 5 also figure. In that assessment of the DPC, the applicant was graded as 'good'. But, still he was not recommended for promotion, as those who were graded 'outstanding' and 'very good' secured the necessary places to the vacant posts. Accepting the said recommendations of the DPC, necessary orders were issued in due course by the appointing authority. In other words, as on 5-9-83 the applicant though graded as 'good' was superseded and was not promoted as JSO. Hence, on 14-II-1983 the applicant approached the High Court in Writ Petition No.19561 of 1983 under Article 226 of the Constitution, challenging the Rules, his non-promotion and the promotion of others which necessarily includes the promotion of respondents 2 to 5 and requesting for incidental relief. On transfer, the said writ petition has been registered as Application No.1016 of 1986.

5. On 11-4-1986 the applicant was promoted as JSO and is holding that post eversince then. But, notwithstanding the same, the applicant who argued his case with considerable restraint and clarity has pressed for the reliefs sought in his application.

6. The applicant has urged that the posts of 'Foremen' carrying higher scales of pay were superior posts and the posts of SSAs and CDs carrying lower time scales of pay were far inferior to that of 'Foremen' and the Rules treating unequals as equals, and was violative of Articles 14 and 16 of the Constitution. Secondly, he has urged that he should have been graded as 'outstanding' or as 'very good' and promoted as JSO as on 5-9-1983.

7. In its reply, respondent-1 has urged that the Rules making eligible SSAs and CDs for promotion to the post of JSOs were not violative of Articles 14 and 16 of the Constitution and were valid. On the assessment of the applicant and others, respondent-1 has urged that the same had been done by the DPC on relevant considerations and material, for which reason his supersession and the promotion of others, were not open to correction by this Tribunal.

8. Mr. Aftab Ahmed has urged that the Rules that make eligible SSAs and CDs drawing lower scales of pay and the far superior posts of 'Foremen' drawing higher scales of pay was really cases of treating unequals as equals in contravention of Articles 14 and 16 of the Constitution and, therefore, invalid. In support of his contention, Mr. Ahmed has strongly relied on the ruling of the Supreme Court in KISHORI MOHANLAL BAKSHI v. UNION OF INDIA (AIR 1962 SC 1139) and a decision of this Tribunal in V.M.SASIDHARAN AND OTHERS v. UNION OF INDIA AND OTHERS (Application No.803 of 1986 and connected cases decided on 31-10-1980).

9. Sri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appearing for respondent-1 contends that the Rule,

making Foremen, SSAs and CDs eligible for promotion to the post of JSOs was not violative of Articles 14 and 16 of the Constitution.

10-1. The Rules were made by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution to regulate recruitment to the posts of JSOs. The Rules came into force on 23-2-1980 on which day they were gazetted.

10-2. Rule 2 deals with the number of posts, their classification and the scale of pay. Rule 3 deals with the method of recruitment. Sub-rules (1) to (4) of Rule 3, regulate the method of initial recruitment to the posts of JSOs of the Department. We are not concerned with their import or their validity.

10-3. Sub-rule (5) of Rule 3 deals with further recruitment to the post of JSOs from time to time and that sub-rule and the schedule appended to the same as originally framed and challenged read thus:

(5) Future Recruitment: To the extent the authorised regular strength of Junior Scientific Officer in the Defence Research and Development Organisation is not filled at the time of the initial constitution, it shall be filled in accordance with the provisions specified in Columns 5 to 13 of the Schedule annexed to these rules.

#### SCHEDULE

1. Name of Post.	Junior Scientific Officer.
2. No. of Post.	662.
3. Classification	Civilians in Defence Services Group-'B' Gazetted Non-Ministerial.
4. Scale of pay	Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200.
5. Whether selection post or non-selection post.	Selection.
6. Age limit for direct recruits.	Not applicable.
7. Educational and other qualifications required for direct recruits.	Not applicable.
8. Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.	Not applicable.

9. Period of probation if any- 2 years.

10. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods. By promotion or transfer on deputation (including short-term contract) or re-employment; the method of recruitment on each occasion being decided by the Director General of Research and Development depending upon the recruitment of the organisation.

11. In case of recruitment by promotion/deputation /transfer, grades from which promotion/deputation /transfer to be made.

(1) Promotion:  
Senior Scientific Assistant, Foreman and Chief Draftsman with 5 years service in the respective grade rendered after appointment thereto on a regular basis.

(2) Transfer on deputation(including short-term contract)  
Officers under the Central or State Government or Universities or Recognised Research Institutions or Institutes of Technology or Public Undertakings holding analogous posts and possessing experience in the required areas (period of deputation or contract shall ordinarily not exceed 3 years).

(3) Re-Employment:  
Ex-Servicemen possessing experience in the required areas (Re-employment upto the age of superannuation with reference to Civil posts)-  
Note:-For selection by method (1) and (3) above the candidates should possess the following educational qualifications (according to requirement in each case)

(a) Degree in science subjects or Mathematics or Psychology of a recognised University or equivalent.

OR

(b) Diploma in Engineering or Technology or Metallurgy or Draftsmanship or Library Science of a recognised University or Institute or eqvt.

OR

(c) Had undergone such courses of study or training as may be deemed by the Director General of Res & Devpt as fulfilling the recruitments indicated in (a) or (b).

12. If a Departmental Promotion Committee exists what is its composition.

Promotion will be by a Board of Assessment consisting of

(a) Chairman: Chief Controller Research and Development concerned.

(b) Members:

(i) Director of Establishment or Laboratory concerned.

(ii) A representative of Research and Devpt. Headquarters (to be nominated by the Director general Research and Development)

(iii) Two experts of appropriate rank in the required discipline to be nominated by the Director General Research and Development from within Defence Research and Development organisation (one of these experts may be an officer from one of the Defence Research and Development or Laboratory but not belonging to the same establishment or Laboratory.

(iv) Director of Personnel Research and Development Headquarters.

note: Absence of any member other than the Chairman shall not invalidate the Assessment Board.

13. Circumstances in which Union Public Service Commission is to be consulted in making recruitment.

Selection shall be made in consultation with the Union Public Service Commission while appointing an officer on transfer on deputation or contract and re-employment.

On 17-1-1985, the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution, promulgated the Defence Research and Development Organisation (Junior Scientific Officer) Recruitment (Amendment) Rules, 1985. ('Amended Rules')

substituting the earlier schedule to the Rules and those provisions, which are material read thus:

NOTIFICATION

New Delhi, the 17th Jun,1985.

SRO 166 . In exercise of powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules to amend the Defence Research and Development Organisation (Junior Scientific Officer) Recruitment Rules,1980 namely:-

1. (1) These rules may be called the Defence Research and Development Organisation (Junior Scientific Officer) Recruitment (Amendment) Rules,1985.

(2) They shall come into force on the date of their publication in the official Gazette.

2. For the existing Schedule, the following Schedule shall be substituted namely:-

SCHEDULE

1. Name of Post.	Junior Scientific Officer.
2. No. of post.	662~ (1984) ~Subject to variation dependent on workload.
3. Classification.	General Central Service Group-B Gazetted Non-Ministerial.
4. Scale of Pay.	Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200
5. Whether Selection post or non-selection post.	Selection
6. Age limit for direct recruits.	Not Applicable.
6(a).Whether benefit of added years of service admissible under Rule 30 of the CCS (Pension)Rules 1972.	Not Applicable.
7. Educational and other qualifications required for direct recruits.	Not applicable.
8. Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees.	Not applicable.
9. Period of probation,if any	Two years.
10.Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of vacancies to be filled by various methods.	By promotion failing which by re-employment and failing both by transfer on deputation (including short-term contract).
11.In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made.	(1) <u>Promotion:-</u> Foreman, Chief Draughtsman and Senior Scientific Assistant with five years regular service in the respective grade in the folowing ratio:-

i) Foreman	12%
ii) Chief Draughtsman	4%
iii) Senior Scientific Assistant.	84%

**(2) Re-employment:**

Ex-servicemen having a minimum rank of a Junior Commissioned Officer and possessing experience in the required areas to be specified at the time of requirement according to requirement in each case (Re-employment upto the age of superannuation with reference to civil posts).

**(3) Transfer on deputation (including short term contract)**

Officers under the Central/State Government/Universities/Recognised Research Institutions/Public Undertakings/Semi Governments Statutory or Autonomous Organisations holding analogous posts and possessing experience in the required areas to be specified at the time of recruitment according to requirement in each case.

(The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/department shall ordinarily not exceed three years)

NOTE: For selections by methods at (2) and (3) above the candidates should possess the following educational qualifications(according to requirement in each case).

(a) Degree in Engineering or Technology or Metallurgy or Draughtsmanship or Library Science of a recognised University or Institute or equivalent.

OR

(c) Had undergone such course



of a study or training as may be deemed by the Director General of Research and Development as fulfilling the requirement indicated in (a) or (b) above.

12. If a DPC exists, what is its composition.

1. Promotion will be made by Board of Assessment consisting of:-

(a) Chairman:

Any one of the Chief Controllers Research and Development (Nominated by the Director General Research and Development).

(b) Members

i. Any four Directors at Research and Development Headquarters or Defence Research and Development Establishment or Laboratory (nominated by Director General Research and Development).

Note: The absence of a Member of the Board of Assessment other than the Chairman shall not invalidate the proceeding of the Board.

2. Group 'B' DPC (for consideration confirmation) consisting of:

(a) Chairman:

Chief Controller Research and Development (Administration)

(b) Members:

i) Director of Personnel Research and Development Organisation

ii) Deputy Director of Administration, Research and Development Organisation.

13. Circumstances in which UPSC is to be consulted in making recruitment.

Consultation with the U.P.S.C. necessary while selecting an officer for appointment on re-employment, deputation and contract.

The applicant had not challenged the amended Rules. But, notwithstanding the same, having regard to the fact that he has no legal assistance and that the amendments were made during the pendency of the case, we propose to examine their validity also, as if challenged in the application.

II. In the Rules, as originally promulgated, the SSAs, Foremen and CDs with five years of regular service were eligible for promotion to the posts of JSOs. The Rules also made provision for transfer on deputation and re-employment but we are not concerned with their scope and ambit or their validity. The note appended to the rule also provided for one or the other educational qualifications to be possessed by those who were made eligible under Column No.1, Item No.11 of the schedule. The Rules did not specify any quota for SSAs, Foremen and CDs. But, the Amended Rules, without making any change in regard to the eligibility of SSAs, Foremen and CDs, the years of service, educational qualifications that they should possess, only provided for quota among the Foremen, CDs and SSAs in the ratio of 12:4:84 respectively. The amended Rules for the first time provided for quotas or ratios in the different categories. Except for this, there was no other change made in the Amended Rules. With this analysis we now pass on to examine the validity of the Rules.

12. ~~xxxxxxxxxxxx~~ The true scope and ambit of Article 14 of the Constitution has been explained by our Supreme Court in a large number of cases and it is enough to refer to two of them only. In *Shri Ram Krishna Dalmia and others v. Shri Justice S.R.Tendolkar and others* (AIR 1958 SC 538) a Constitution Bench of the Supreme Court speaking through S.R.Das CJ reviewing all the earlier cases till then decided, summed up the true scope and ambit of that Article at paras 11 to 13 (pages 547-550), which has been referred to with approval in all the later cases decided by the Court. In *re: The Special Courts Bill, 1978* (AIR 1979 SC 478) a larger Bench of seven learned Judges again reviewing all the earlier cases speaking through Chandrachud, CJ summed up the scope and ambit of that Article in these words:

"72. There are numerous cases which deal with different facets of problems arising under Article 14 and which set out principles applicable to questions which commonly arise under that article. Among those may be mentioned the decisions in Budhan Choudhary vs. State of Bihar (1955) 1 SCR 1045: (AIR 1955 SC 191); Ram Krishna Dalmia vs. S.R. Tendolkar, 1959 SCR 279; (AIR 1958 SC 538); C.L. Imden vs. State of U.P. 1960-2SCR 592; (AIR 1960 SC 548); Kangshari Haldar vs. State of West Bengal, (1960) 2 SCR 646: (AIR 1960 SC 457); Jyoti Pershad vs. Administrator for the Union Territory of Delhi, (1962) 2 SCR 125; (AIR 1961 SC 1602) and State of Gujarat vs. Shri Ambika Mills Ltd., Ahmedabad, (1974) 3 SCR 760: (AIR 1974 SC 1300). But, as observed by Mathew, J. in the last mentioned case.

"it would be an idle parade of familiar learning to review the multitudinous cases in which the constitutional assurance of equality before the law has been applied."

"We have, therefore, confined our attention to those cases only in which special Tribunals or Courts were set up of Special Judges were appointed for trying offences or classes of offences or cases or classes of cases. The survey which we have made of those cases may be sufficient to give a fair idea of the principles which ought to be followed in determining the validity of classification in such cases and the reasonableness of special procedure prescribed for the trial of offenders alleged to constitute a separate or distinct class.

73. As long back as in 1960, it was said by this Court in Kangshari Haldar that the propositions applicable to cases arising under Article 14 have been repeated so many times during the past few years that they now sound almost platitudinous. What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous to-day, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar

9. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty ~~on it~~ to classify the subject matter of legislation in accordance with the objective indicated in the statute. If the Administrative body proceeds to classify the persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does not occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making <sup>of</sup> a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination"

On this statement, with which alone we are concerned, there was no difference of opinion in the different opinions expressed by the other learned Judges in that case.

13. In E.P.Royappa vs.State of Tamilnadu (AIR 1974 SC 555) Bhagwathi,J.(as His Lordship then was) speaking for himself and Chandrachud,J. (as His Lordship then was) and Krishna Iyer,J. for the first time evolved the principle that arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution in these words:

"We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. Infact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore violative of Article 14...."

In the later cases, notably in Smt. Maneka Gandhi vs. Union of India and Another (AIR 1978 SC 597), Ramana Dayaram Shetty v. The International Airport Authority of India and others (AIR 1979 SC 1628) and Ajay Hasia Etc. vs. Khalid Mujib Sehravardi and others (AIR 1981 SC 487) the Court has reiterated and elaborated this principle. In Smt. Maneka Gandhi's case Bhagwati,J.(as His Lordship then was) observed thus:

"The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.."

Apart from these, we deem it profitable to refer to a very pregnant statement made by Justice Holmes, one of the greatest Judges of the American Supreme Court in NOBLE STATE BANK v. C.N. HASKELL (219 US 104) considered to be one of the land mark cases (see: The Mind and Faith of Justice Holmes - Max Lerner Modern Library). In that case that great Judge in adjudging the validity of an action for a guarantee deposit by Banks under an Oklahoma legislation, to safe guard depositors as offending the 14th Amendment of the American Constitution, which guaranteed equal protection of laws in that country to its citizens which finds its place in Article 14 of our Constitution (see para 73 page 508 of Special Courts Bills case) expressed thus:

"In answering that question we must be cautious about pressing the broad words of the Fourteenth Amendment to a drily logical extreme. Many laws which it would be vain to the Court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees of the Bill of Rights"

Bearing all these principles, we must examine the challenge to the Rules.

14. The rule making authority which is better equipped and more competent to decide on the eligibility of different categories of officers and the requirements of the posts of JSOs, had made provision on the eligibility for promotion to the posts of JSOs. If that is so, then this Tribunal which is ill-equipped to decide on the technical requirements of the promotional posts of JSOs as also on the technical competence of the different categories eligible for promotion should be loathe to interfere with the provisions made

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unless it is demonstrated that they are plainly hostile, discriminatory, arbitrary and opposed to all commonsense and principles of recruitment to public services. We have not been shown that the provisions made are plainly hostile, discriminatory, arbitrary and are opposed to commonsense and principles of recruitments to public services. On this short ground, we must reject the challenge to the rules.

15. The Rule making authority with due regard to the requirements of the promotional posts of JSOs, qualifications and length of service in the lower cadres and all other requirements of the lower posts of SSAs, CDs and Foremen had treated all of them as equals. In other words, in the opinion of the rule making authority, SSAs, CDs and Foremen possessing one or the other educational qualifications with 5 years of regular service in any one of them were all in one and the same stream or category notwithstanding the minor differences in their time scales of pay, even assuming that the same had also continued at all times notwithstanding the recommendations of the Board of Arbitrators to the contrary. Absolute and dead equality among all men in the country, which is unattainable is only a myth and dogma. At any rate that it is impossible to attain is well settled. The theory of classification has been evolved by Courts only to give meaning and content to Article 14 of the Constitution. Any attempt to invalidate the prescriptions made in the impugned rule, on the too tenuous differences of time scales of pay in various categories, would only attract the condemnation of what Justice Holmes in Nobel State Bank's case very poignantly said. We are also of the view that the provision made, is not arbitrary and does not violate the new dimension of Article 14 evolved by the Supreme Court in *E.P.ROYAPPA v. STATE OF TAMILNADU* (1974 SCC (L & S) 165 = AIR 1974 SC 555) and elaborated in *MANEKA GANDHI v. UNION OF INDIA* (AIR 1978 SC 597). If this then is the position, this Tribunal on the superficial minor differences of time scales of pay of different categories cannot hold that they are unequal and that unequal have been treated as equals as claimed by the applicant.

16. In Kishori Mohanlal Bakshi's case, the Court was examining the provisions made by Government in an executive order constituting the earlier class of Income-Tax Officers into two grades viz., Class I and Class II and the provision for promotion of Class I officers to the posts of Assistant Commissioners and Commissioners of Income -Tax. The challenge of K.M.Bakshi to these provisions as violative of Articles 14 and 16 of the Constitution was rejected by the Court. We are of the view that the ratio in K.M.Bakshi's case or any of the observations made by the Court, far from supporting the applicant, supports the case of respondent-1.

17. In Shashidaran's case a Division Bench of this Tribunal had dealt with the validity of an amendment made in 1976 to the Defence Research and Development Organisation Class III Non-Gazetted (Technical, Scientific and other non-Ministerial) Posts Recruitment(Amendment) Rules,1976 regulating the inter se seniority of Chargeman Grade-I and Chargeman Grade-II. We have carefully read the decision of this Tribunal in that case. We are of the view that the ratio or any of the observations made in that case, do not really bear on the point and assist the applicant.

18. On the foregoing discussion, we hold that the challenge to the impugned rule based on Articles 14 and 16 of the Constitution is without any merit and we reject the same.

19. Mr. Ahmed next contended that his grading as 'good' by the DPC on 5-9-1983 and his consequent supersession on that occasion were illegal.

20. Sri Padmarajaiah, urged that the grading of the applicant on 5-9-1983 based on relevant considerations and materials and his consequent supersession cannot be examined by this Tribunal as a Court of Appeal and a different conclusion reached on the same.

21. From the proceedings of the DPC held on 5-9-1983 we find that it had considered the case of the applicant, who was eligible for promotion and had graded him as 'good'. The applicant's supersession on 5-9-1983 was on an assessment made by the DPC on his suitability to hold the promotional post. The assessment of the applicant and others was made on the basis of the service records. What emerges from this and the proceedings of the DPC, is that the assessment of the applicant and others found suitable for promotion was based on relevant considerations and relevant material.

22. The Tribunals constituted under the Act are not Courts of Appeal but are only empowered to exercise judicial review that was formerly exercised by the High Courts in the Country (see S.K.SRINIVASAN v. THE DIRECTOR GENERAL AND OTHERS - A.No.1653 of 1986). In exercise of its power of judicial review, it is not open to this Tribunal, to examine the grading of the applicant or his assessment as if we are a Court of Appeal and reach a different conclusion. What is true of the grading or the assessment of the applicant is also true of others who have been found suitable for promotion to the posts of JSOs (See: SYED NOOR MOHAMAD v. UNION OF INDIA AND OTHERS - Application No.729 of 1986 dated 21-10-1986). From this it follows that the supersession of the applicant on 5-9-1983 which does not suffer from illegalities cannot be interfered by us.

23. As all the contentions urged for the applicant fail, this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

Ms. Praveen  
VICE-CHAIRMAN 6/3/1987.

6/3/1987  
MEMBER(A) 6/3/1987

np/