

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

DATED THIS THE 25TH DAY OF FEBRUARY, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. P. Srinivasan,

.. Member(A).

APPLICATIONS NUMBERS 731 AND 1842 OF 1986.

Dr.(Mrs.) Radha Nayar,
Aged about 53 years,
Senior Research Officer(OG),
Sandal Research Centre,
Bangalore-3.

.. Applicant.

(By Sri V.K.K. Nair, Advocate)

v.

1. The Union of India represented
by its Secretary, Ministry of Forestry & Environment,
Department of Agriculture and Co-operation,
Krishi Bhavan, New Delhi-1.

2. The Inspector General of Forests,
Ministry of Forestry and Environment,
Department of Agriculture and Co-operation,
Krishi Bhavan, New Delhi-1.

3. The President,
Forest Research Institute and
Colleges, P.O. New Forest,
Dehradun, U.P.

.. Respondents 1 to 3
in both Applications.

4. Sri K.R. Venkatesan, I.F.S.,
Major, Co-ordinator, Sandal
Research Centre, Bangalore-3.

Respondent No.4
in A.No.731 of 1986.

5. Sri J.C. Jain,
Major, Head of Utilisation Research,
Forest Research Laboratory,
Bangalore-3.

Respondent No.5
in A.No.731 of 1986.

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

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These applications coming on for hearing, Vice-Chairman made

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the following:

ORDER

These are transferred applications received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act'). The applicant in these cases is common and the questions that arise for determination are inter-connected. We, therefore, propose to dispose of them by a common order.

2. In order to appreciate the questions that were ultimately projected before us, we will first notice only those facts that are necessary for their appreciation as gathered from the statements made by both sides and the voluminous records produced without attaching importance to the pleadings that are vague and prolix and regretfully unhelpful.

3. Dr.(Mrs.) Radha Nayar, who is the common applicant in these cases with high academic qualifications was working as officer-in-charge of a Central Government Organisation called "Areca Nut Research Centre", Palode, Kerala State. When she was working in that organisation, the Union Public Service Commission ('UPSC') called for applications for the post of a Senior Research Officer (Virologist) ('SRO') Class I Gazetted post in another Central Government Organisation called the 'Forest Research Laboratory, Bangalore' ('FRL') to which she was selected and appointed by Government in its Notification No.37-260 65-F dated 31-5-1965 (Annexure-A). Ever since then, the applicant is working at FRL which is now called 'Sandal Research Centre, Bangalore'. We will refer to the same as FRL hereafter also. But, her continuance in that post has not been smooth sailing and has given rise to perennial and endless controversies.



4. The FRL established in 1938 as an organisation of the then Government of Mysore/Karnataka, was taken over by the Central Government in 1956 and one of its objects was to undertake research to combat a disease called sandal spike which had then seriously afflicted the healthy growth of the sandal trees in the country. The applicant was primarily selected and appointed to conduct research to combat that disease.

5. The recruitment to Class I and II posts of the FRL, which itself was part of an organisation called Forest Research Institute and Colleges, Dehra Dun, was regulated by the Forest Research Institute and Colleges (Class I and Class II non-tenure Posts) Recruitment Rules, 1966 ('1966 Rules') framed by the President of India under the proviso to Article 309 of the Constitution. The method of recruitment to the posts of 'Seniors Research Officer (Selection Grade)' ('SG') and the Head of Utilisation Research ('HUR') of FRL with which only we are concerned in these cases, as originally framed in the said Rules, provided thus:

1. Sl.No.	10
2. Name of Post:	Senior Research Officer (Selection Grade)
3. No. of Posts:	7.
4. Classification:	G.C.S. Class I Gazetted.
5. Scale of Pay:	Rs.1300-60-1600.
6. Whether Selection post or non-selection post:	Selection.
7. Age limit for direct recruits.	N.A.
8. Educational and other qualifications required direct recruits.	N.A.
9. Whether age and educa- tional qualifications prescribed for the di- rect recruits will apply in the case of promotees.	NO.

- ii. Knowledge of Forestry.
 - iii. Knowledge of Foreign languages.
 - iv. Administrative experience.
9. Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees. N.A.
10. Period of Probation, if any. 2 years.
11. Method of rectt. whether by direct rectt. or by promotion or by deputation/transfer & percentage of the vacancies to be filled by various methods.
12. In case of rectt. by promotion deputation/transfer grades from which promotion deputation/transfer to be made. N.A.
13. If a DPC exists, what is its composition. N.A.
14. Circumstances in which U.P.S.C. is to be consulted in making recruitment. As required under the Rules."

But, on 1-11-1975, the President of India under the proviso to Article 309 of the Constitution amended the 1966 Rules in so far as they relate to the Head of Utilisation Research, FRL by promulgating the Forest Research Institute and Colleges (Class I and Class II non-tenure Posts) Recruitment (Amendment) Rules, 1975 ('Amendment Rules'). The material provisions of the amended Rules which came into force from that day read thus:

" G.S.R.No. In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules further to amend the Forest Research Institute & Colleges, (Class I and Class II non-tenure posts) Recruitment Rules, 1966, namely:-


- (1) These rules may be called the Forest Research Institute and Colleges (Class I and Class II non-tenure posts) Recruitment (Amendment) Rules, 1975.
 - (2) They shall come into force on the date of their publication in the official Gazette.
2. In the Schedule to the Forest Research Institute & Colleges, (Class I and Class II non-tenure posts) Recruitment Rules

- | | |
|--|--|
| 12. In case of rectt. by promotion deputation /transfer, grades from which promotion deputation/transfer to be made. | <u>Transfer on putation.</u>
Senior Research Officers (Selection Grade) failing which Senior Research Officers (Ordinary Grade) with 5 years service in the grade, and failing both, officers of the Indian Forest Service in the scale of Rs.1300-1800 (Pre-revised) or with 5 years service in the service of Rs.1100-1600 (revised) (Period of deputation ordinarily not exceeding 3 years). |
| 13. If a DPC exists, what is its composition. | Not applicable. |
| 14. Circumstances in which UPSC is to be consulted in making recruitment. | For direct recruitment, as required under the Union Public Service Commission (Exemption from Consultation Regulations 1958)." |

On their enforcement, the applicant and others were asked whether they would like to be considered for appointment to the post of HUR to which she expressed her unwillingness and did not apply. On the basis of these Rules and all other factors, Government, from time to time had appointed different persons as HUR. The term of appointment of those persons has all expired and the post is vacant from 1-12-1986 and is currently held by one Sri S.W.Rai on incharge basis.

6. In application No.731 of 1986, the applicant had impleaded one J.C.Jain who held the post of HUR from July,1980 to November, 1982. But, at the oral hearing, the applicant furnished a list of persons who held that post from 1-7-1973 and onwards setting out grounds therein itself either on their ineligibility or unsuitability or both to hold that post and for a direction for her appointment to that post from that very date.

7. On 29-10-1982 and 18-2-1986 a Departmental Promotion Committee ('DPC') constituted for that purpose considered the case of the applicant for promotion to the post of SRO(SG) and recommended that she was not fit for promotion and accepting the same she had been superseded and her juniors who were found fit for promotion had been promoted on those occasions.



8. While the applicant had sought for various and different reliefs in the two applications on assertions made in them, at the final oral hearing, her learned counsel Sri V.K.K.Nair, who finally argued these cases, has confined her challenge to the amended Rules, non-consideration of her case for promotion to the post of HUR on every occasion another person was appointed to that post and her supersession to the post of SRO(SG). We, therefore, propose to rivet our attention to these challenges only and not to the challenges made in the original applications.

9. In both the cases, the respondents have filed their separate replies justifying their actions and orders made from time to time.


10. In the two applications, the applicant has not challenged the amended Rules. In Application No.731 of 1986 the applicant has proceeded as if there were no amended Rules and had, therefore, sought for a direction to frame Rules. But, in her rejoinder filed on 4-11-1986 to the reply filed by the respondents in Application No.731 of 1986 the applicant had sought for striking down the Amended Rules. In the course of the protracted hearing of these cases, the applicant did not seek for an amendment to include that prayer in her application. Even when we pointed out this defect, her counsel was content in urging that this Tribunal should adjudicate the same without being technical.

11. Sri Nair has urged that the Amended Rules excluding persons possessing the qualification of Botany from consideration to the post of HUR, Botany being a subject, intimately connected with the nature of duties of that post, had no nexus with the object of the Rule or classification, irrational, arbitrary and was violative of Articles 14 and 16 of the Constitution. In support of his contention Sri Nair has strongly relied on the ruling of the Supreme Court in *INDRAVADAN H.SHAH v. STATE OF GUJARAT AND ANOTHER* (AIR 1986 SC 1035).

12. Sri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appearing for the respondents refuting the contention of Sri Nair has urged that (1) we should not adjudicate the validity of the Rule in the absence of a challenge in the main applications and (2) that the applicant had voluntarily declined to apply for appointment when she was given the opportunity to do so, cannot challenge their validity. In the very nature of things, it is necessary to examine these objections of Sri Padmarajaiah first and then the merits if that becomes necessary.

13. As noticed earlier, these applications were filed before the High Court under Article 226 of the Constitution. In both the cases, the respondents have filed their reply before this Tribunal.

14. A petition under Article 226 of the Constitution is analogous to a plaint filed before a civil Court under Order VII Rule 1 of the Code of Civil Procedure. A statement of objections or a return filed before the High Court to a writ petition filed under Article 226 of the Constitution or a reply filed before this Tribunal in answer to the same in a fresh application filed before this Tribunal is analogous to a written statement filed under Order VIII Rule 1 of the Code of Civil Procedure. The Act only contemplates an application and a reply to the same. In other words, the Act only contemplates a plaint and a written statement and does not contemplate a reply or a rejoinder to be filed by the parties. Even if these proceedings had been pending before the High Court, under the writ proceedings Rules of the High Court, a reply cannot be filed as of right and can be filed only with the leave of the Court and not otherwise. A reply cannot be construed as a pleading. A reply can only explain the very case pleaded in the application with reference to the written statement or objections filed by the opponent but cannot be made use of to seek additional prayers or plead a totally new case that




had never been pleaded in the original plaint, application or petition as the case may be. On this view itself, we cannot examine the challenge of the applicant to the validity of the Amended Rules.

15. Section 22 of the Act undoubtedly declares that the Tribunals constituted under the Act shall not be bound by the procedure laid down in the CPC but should be guided by the principles of natural justice subject to the provisions made in the Act and the Rules. We consider it unnecessary to define and delineate the terms 'natural justice' or to set out their true scope and ambit and the myriad principles that are now well settled. But, every one of the principles of natural justice, in particular, one of the basic components of natural justice viz., audi alteram partem, would be clearly violated if we were to adjudicate the challenge made by the applicant to the validity of the Amended Rules without affording an opportunity to the respondents to state their case in opposition to the same. If we were to adjudicate the challenge to the validity of the Amended Rules, on the basis of the pleas and the prayer made by the applicant in her rejoinder and the vague case pleaded thereto, we are of the view that we would be clearly contravening the principle of audi alteram partem and the requirements of Section 22 of the Act.

16. On the foregoing discussion, we hold that we will not be justified in examining the challenge to the validity of the Amended Rules on the facts and circumstances noticed by us earlier. We, therefore, decline to examine their validity and leave open the same. But, this does not prevent the applicant from challenging them in appropriate legal proceedings.


17. As we have held that we should not go into the validity of the Amended Rules, it necessarily follows from the same that the appointments made to the HUR based on those rules or the non-appointment of the applicant to that post from time to time, cannot



also be examined by us. We, therefore, leave open their validity also.

18. The applicant had visited Denmark for 3 months from 1-1-1980 on a fellowship. In that connection a disciplinary proceeding for imposition of a minor penalty had been commenced under the Central Civil Services (Classification, control and Appeal) Rules, 1965 and an order had been made by Government administering warning and treating the absence of the applicant as leave without pay (Appendix-B to the reply in A.No.731 of 1986). In her rejoinder the applicant has challenged this order also and has urged that the same should have been excluded by the DPC. The applicant has urged that the order made on or about 27-2-1982 had not been communicated to her till 26-7-1983 and on receipt of a copy of the order she had lodged an appeal to Government on 8-8-1983, which are denied by the respondents. Every one of the reasons on which we have rejected the challenge of the applicant to the Amended Rules hold good for declining to examine the challenge of the applicant to the said order made and the appeal, if any, alleged to have been filed by her against the same. Even otherwise, that order is a distinct and independent proceedings and has necessarily to be challenged in a separate application and its validity or the non-consideration of the appeal if any filed, if the same had been really filed, cannot be considered in this proceeding. We, therefore, decline to examine the validity of the order or the alleged appeal if any filed by the applicant against the same.

19. Sri Nair has urged that the supersession of the applicant as on 29-10-1982 and 18-2-1986 to the post of SRO (SG) was vitiated as the same had been done on the former occasion without communicating the adverse entries of the CRs and on the later occasion



without CRs for the year 1984 and 1985.

20. Sri Padmarajaiah has sought to support the supersession of the applicant on both the occasions.

21. On 29-10-1982 the DPC considered the case of the applicant and others who were then within the range of selection for the post of SRO(SG) and recommended thus:

UPSC File No.F.1/35(42)/82-AUII
D/O of Agri.&Coopn., Ref.No.3-2/81-Forest Estt.I.

Minutes of the meeting of the Departmental Promotion Committee held on 29-10-1982 at 3-00 P.M. in the Office of the Union Public Service Commission, New Delhi.

PRESENT:

- | | |
|---|-------------------------|
| 1. Prof. K.Venkata Ramaiah,
Member,UPSC. | Chairman. |
| 2. Shri Samar Singh,
Joint Secretary (F&SC),
D/O Agri.& Coopn. | Member. |
| 3. Shri M.R.Bhardwaj,
Joint Secretary (Admn.)
D/o Agri.& Coopn. | Member
(not present) |
| 4. Shri N.D.Bachkheli,
I.G.F.,D/o Agri.& Coopn. | Member. |
| 5. Shri K.M.Tiwari,
President, FRI & C,
D/o Agri.& Coopn. | Member
(not present) |

ITEM: Selection of officers for officiating promotion to the grade of Sr.Research Officer (Selection Grade) (Group-A:Scale of pay:-Rs.1500-1800) in the D/O Agri & Coopn.

The Committee considered the question of selection of officers for officiating promotion to the grade of Sr.Research Officer (Selection Grade). Having examined the character rolls of the following seniormost eligible officers, the Committee assessed them as indicated against each:-

<u>Sl.No. Names</u>	<u>Assessment</u>
1. Mrs.Radha Nayar	Not yet fit.
2. Sri K.Parthasarathi	Very Good.
3. Sri Ramesh Dayal	Very Good.
4. Sri J.C.Jain	Very Good.
5. Sri S.N.Sharma	Very Good.
6. Sri V.V.Srinivasan	
7. Sri S.N.Sanyal.	
8. Sri M.D.Mahrotra.	
9. Y.K.Sharma.	
10. Sri P.S.Rehill.	
11. Pratap Singh.	
12. Sri Satish Kumar Sharma.	Sl.Nos.6 to 12 None found 'Outstanding'.

2. The Departmental Members of the Committee desired

into consideration of the DPC held on 25-10-1982 there was no CR to enable the DPC to examine and decide on the suitability of the applicant on that date. We are of the view that this fact also vitiates the supersession of the applicant on 29-10-1982.

24. On 18-2-1986 the DPC considered the case of the applicant and four others for selection to the post of SRO(SG) and recommended her supersession and promotion of one S.N.Sharma in these words:

U.P.S.C.file No.F.1/35(25)/84-A.U.VII.

Deptt. of Environment Forest & Wildlife Ref.no.13-50/84-FE(I)/P.II

Minutes of the meeting of the Departmental Promotion Committee held on 18-2-1986 at 12-00 Hrs. in the office of the Union Public Service Commission, New Delhi.

The Departmental Promotion Committee consisting of -

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| 1. Shri Surendra Nath,
Member,U.P.S.C. | .. Chairman. |
| 2. Shri L.H.A.Rego,
Special Secretary. | .. Member. |
| 3. Shri R.Srinivasan,
Jt.Secretary. | .. Member. |
| 4. Dr. Narayan Singh,
Deputy Inspector General Forest
Research Institute, Dehra Dun. | .. Member. |
| 5. Sri G.Naik,
Deputy Secretary,Ministry of Agriculture. | .. Member
(Co-opted). |

considered the question of selection of one officer for officiating promotion to the post of Senior Research Officer (Selection Grade) (Rs.1500-1800) (Group-A) in the Forest Research Institute and Colleges, Dehra Dun under the Department of Environment, Forests and Wildlife. Having examined the Character Rolls of the following seniormost eligible officers, the Committee assessed them as indicated against each:

<u>Sl.No.</u>	<u>Names</u>	<u>Assessment.</u>
1.	Dr.(Mrs.) Radha Nayar	'Unfit'
2.	Shri S.N.Sharma.	'Very Good'
3.	Dr. V.V.Sriivasan.	'Good'
4.	Shri S.N.Sanyal.	'Very Good'
5.	Dr. M.D.Mehrotra	'Good'


On the basis of the above assessment, therefore, the committee recommended Shri S.N.Sharma, for officiating promotion

considered the order made by Government on 27-12-1985 and taken that into consideration for making an assessment of the applicant on 8-2-1986. We cannot on principle or authority hold that the DPC committed an error in evaluating the suitability of the applicant on the basis of the entries found for the calendar year 1983 as modified by Government in its order dated 27-12-1985.

31. But, for the year 1984 the CR of the applicant has not at all been written. When a CR for that year was not written the assessment made would be really in a vacuum. We will even assume that the applicant had not co-operated in getting the CR for that year written up or the reporting officer had even failed to discharge his duties. But, those facts can hardly be a ground to hold that the CR for that year should not be got written up by the reporting officer or some other officer as that becomes necessary and the entries completed and then an assessment made on the basis of the entries for that year.

32. Before the DPC considers the case of an official for promotion, that too for a senior selection post as in the present case, it is the bounden duty of the appointing authority to see that all relevant entries and materials are got written up and placed before the DPC for a proper evaluation. We have no doubt that the non-writing of the CR for the year 1984 completely vitiates the non-selection of the applicant for the post of SRO(SG)s on 8-2-1986.

33. We do not know whether the reviewing officer and the countersigning officer had made their entries on the CR of the applicant for the calendar year 1984 and had furnished them before the DPC considered the case of the applicant on 8-2-1986. But, if that had been done, then it would be a proper consideration. But, if the same had not been done, then it would be a wholly improper consideration.



34. As we have noticed earlier, the consideration on 8-2-1986 was at any rate partly vitiated viz., that the DPC had not the benefit of the CRs of the applicant for the calendar year 1984. On this view, we consider it proper to set aside the proceedings of the DPC held on 8-2-1986 in so far as it supersedes the applicant on that occasion and direct the DPC. to re-examine her case with appropriate directions to the appointing authority.

35. In the light of our above discussion, we make the following orders and directions:

1. We decline to examine the validity of the amended Rules and leave open the same.
2. We decline to examine the challenge of the applicant of her supersession to the post of HUR or the appointment of others on the ground that we have declined to examine the validity of the amended Rules.
3. We decline to examine the validity of the orders made by Government on or about 27-2-1982 (Annexure-B) imposing a warning and treating the period of absence as leave without allowance for the reasons we have set out earlier.
4. We quash the supersession of the applicant to the post of SRO(SG) on 29-10-1982 and 8-2-1986 and their acceptance by the appointing authority. We direct the appointing authority to get the CRs of the applicant written up in the first instance for all the years and then re-examine the case of the applicant for promotion to the post of SRO(SG) on 29-10-1982 and 8-2-1986 and promote her if she is found suitable for promotion to that post on any of those occasions extending all such consequential financial benefits as she is entitled to on such promotion.

36. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

37. Let this order be communicated to all the parties within ten days from this day.

Ms. P. Mahalingam
VICE-CHAIRMAN 23/2/1987.

P. S. Srinivasan
25/2/87
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 15-2-88

IA I IN APPLICATION NOS. 731 & 1842 /86(T)
W.P. NO. 4754/81 & 5740 / 85

Applicant

Dr (Mrs) Radha Nayar
To

Respondent

V/s The Secy, M/o Forestry & Environment & 4 Ors

- | | |
|--|--|
| <p>1. Dr (Mrs) Radha Nayar
Senior Research Officer(OG)
Sandal Research Centre
Bangalore - 560 003</p> <p>2. Shri P. Shankaranarayanan
Advocate
C/o Col V.K.K. Nair (Retd)
Advocate
16, Hospital Road
Shivaji Nagar
Bangalore - 560 001</p> <p>3. The Secretary
Ministry of Forestry & Environment
Department of Agriculture & Co-Operation
Krishi Bhavan
New Delhi - 110 001</p> <p>4. The Inspector General of Forests
Ministry of Forestry & Environment
Dept. of Agriculture & Co-Operation
Krishi Bhavan
New Delhi - 110 001</p> | <p>5. The President
Forest Research Institute & Colleges
P.O. New Forest
Dehradun (Uttar Pradesh)</p> <p>6. Shri K.R. Venkatesan (I.F.S.)
Co-Ordinator
Sandal Research Centre
Bangalore - 560 003</p> <p>7. Shri J.C. Jain
Head of Utilisation Research
Forest Research Laboratory
Bangalore - 560 003</p> <p>8. Shri M.S. Padmarajaiah
Central Govt. Sing Counsel
High Court Building
Bangalore - 560 001</p> |
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Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM~~ ORDER
by this Tribunal in the above said application on 2-2-88.

RECEIVED 8 copies 16/2/88
No. 1715/82/88
16-2-88
As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SECOND DAY OF FEBRUARY 1988

Present: Hon'ble Justice Shri K.S. Puttaswamy ... Vice-Chairman
Hon'ble Shri P.Srinivasan ... Member (A)

APPLICATIONS NO.731/86(T)
AND No.1842/86(F)

Smt. Radha Nayar ... Applicant

v.

Union of India and others ... Respondents

II.A. No.1 filed by the Respondents seeking for directions:

In this interlocutory application, Respondents 1 to 3 have sought for direction or a clarification to the effect that the final order made by us in the above cases, on 25.2.1987 in so far as the same relates to para 4 of para 35 of that order and its implementation, does not offend Office Memorandum No.21011/1/77-Estt.A dated 30.1.1978.

2. Sub-para 4 of para 35 of our order, which is material reads thus:

"35.4. We quash the supersession of the applicant to the post of SRO (SG) on 29.10.1982 and 8.2.1986 and their acceptance by the appointing authority. We direct the appointing authority to get the CRs of the applicant written up in the first instance for all the years and then re-examine the case of the applicant for promotion to the post of SRO(SG) on 29.10.1982 and 8.2.1986 and promote her if she is found suitable for promotion to that post on any of those occasions extending all such consequential financial benefits as she is entitled to on such promotion".

In issuing this direction we have held that the CRs of the applicant for different periods detailed in our order suffer from various infirmities and that the authorities should get them written up



for the relevant periods and then consider her case for promotion as on 29.10.1982 and 8.2.1986.

3. In Office Memorandum No.21011/1/77-Estt.A dated 30.1.1978 Government had inter-alia stated thus:-

"(ii) Where thereporting officer retires or otherwise demits office, he may be allowed to give the report on his subordinates within a month of his retirement or demission of office."

In this clause Government had directed the CRs to be got written up at least within a month of retirement or demission of office of the officer writing CRs.

4. Respondents 1 to 3, apprehend that if they were to carry out our directions, then they have necessarily to violate the aforesaid direction of Government. On this premise, in IA No.1 Respondents 1 to 3 have sought for clarification. In other words they seek for a direction that they are not required to comply with clause (ii) of the Memorandum dated 30.1.1978 which we have earlier reproduced.

5. The applicant has filed her objections to IA No.1 inter-alia contending that we cannot add to or detract from the whole or part of the final order made by us.


6. Shri M.S. Padmarajaiah, learned senior standing counsel appearing for Respondents 1 to 3 contends that it was necessary for us to clarify our order and declares that in implementing our directions they are not required to comply with clause (ii) of the OM dated 30.1.1978 of Government.

7. Shri P. Shankaranarayanan, learned counsel for the applicant contends that the OM dated 30.1.1978 and all other Memoranda issued by Government regulating the writing of CRs are 'law


that it was not open to the authorities to violate any of them for any reason and that being so, the one and only course now open to us was to declare that the applicant stood promoted from 29.10.1982 with all consequential benefits. In support of his very elaborate submissions made before us on this aspect, Shri Shankaranarayanan strongly relies on the ruling of Supreme Court in AIR 1984 SCC (L&S) 197, a ruling of this Tribunal in ATR 1984 1 CAT 114 and a ruling of Kerala High Court in 1985 (1) SLR 478. In the very nature of things it is necessary to examine this contentions of Shri Shankaranarayanan first and then deal with the prayer of Respondent No.1 to 3.

8. In IA No.1 Respondent No.1 to 3 have not sought for a review of our order, but have only sought for a clarification or direction to effectuate our main order.

9. In an IA made by the respondents, that too for a simple clarification it is not open to us to go beyond that application, annul our own order and on the top of all that grant what was not even granted by us in deciding the very original application. On this short ground we must reject what is prayed by the applicant.



10. We are of the view that however wide our powers are under the Act, it is not open to us to reexamine our own order and grant a declaration to the effect that the applicant stands promoted from 29.10.1982 with all consequential benefits. We are, therefore, of the view that the relief sought by the applicant ^{at all} on the hearing of this IA, cannot on any principle be granted by us. If that is so, then every one of the rulings relied on by Shri Shankaranarayanan, do not really bear on the point. We, therefore, do not propose to refer to



them in any detail, as it is wholly unnecessary to do so.

11. On the foregoing discussion we hold that the extreme relief sought by the applicant cannot be granted by us. We, therefore, decline to examine the same and grant also.

12. When we made our final order, we had not overlooked the various executive instructions issued by Government dealing with the writing of CRs including the OM dated 30.1.1978. The fact that we have not referred to them in our order, does not necessarily mean that we were not conscious of those orders and our order was in defiance of all or any of them.

13. Every one of the orders made by Government and in particular para 2 of OM dated 30.1.1978, which are all executive instructions and are not 'law' within the meaning of the term occurring in Article 13 of the Constitution cannot by any stretch of imagination be construed as violating our order and our order violating them also. They must all be read as consistent, subordinate and effectuating our orders only. We must not read them as being in conflict with our order at all. From this it follows that Respondent No.1 to 3 are bound to implement our order without reference to the time limit if any stipulated in OM dated 30.1.1978 or any other Memoranda on the subject. With this clarification, which also was not really necessary, we dispose of this IA. But in the circumstances of the case we direct the parties to bear their own costs.

TRUE COPY

[Signature]
DEPUTY REGISTRAR (JUL)
CENTRAL ADMINISTRATIVE bsv UNAL 18/27
BANGALORE

Sd/-
VICE CHAIRMAN
[Signature]

Sd/-
MEMBER (A)



Supd
9-11-88
Rajh
Shrik.

D. No. 3236/87/ Sec- IV.A

SUPREME COURT OF INDIA
NEW DELHI

Dated 26th October, 1988

From:

The Additional Registrar,
Supreme Court of India,
New Delhi

To

✓ The Registrar,
Central Administrative Tribunal,
B.D.A. Complex, Indira Nagar,
Bangalore - 560 038.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO S. 8289 ~~xx11308~~/87.

(Petition under Article 136 of the Constitution of India, for

Special Leave to Appeal to the Supreme Court from the ~~judgment~~

~~xx~~ Order dated 25.2.87 of the ~~High Court~~

Central Administrative Tribunal, Bangalore Bench, Bangalore, in
Applications Numbers 731 & ~~1842~~ of 1986.)

Dr. Mrs. Radha Nayar

.....Petitioner .

VS

Union of India & Ors.

.....Respondents .

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~~ Order of the
Central Administrative Tribunal, Bangalore
~~xx~~ noted above and that the same ~~was~~ were dismissed/

~~xx~~ by this Court on the 12th day of October.
1988.

Yours faithfully,

[Signature]
for ADDL. REGISTRAR.

ns/14.9.1988/iva*

AS|