

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 7 DEC 1988

APPLICATION NOS

675 & 687

/87(F)

W.P. NO.

Applicant(s)

Dr V. Kuppusamy & another
To

Respondent(s)

V/s

The President, Forest Research Institute
& Colleges, Dehra Dun & 10 Ore

1. Dr V. Kuppusamy
Research Assistant Grade - I
Forest Research Laboratory
Malleswaram
Bangalore - 560 003
2. Shri K.H. Shankaranarayana
Research Assistant Grade - I
Sandal Research Centre
Forest Research Laboratory Campus
Malleswaram
Bangalore - 560 003
3. Shri G.R. Ramachandrappa
Advocate
C/o Shri U.L. Narayana Rao
Advocate
581, 3rd Main Road
Sadashivanagar
Bangalore - 560 080
4. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

5. The President
Forest Research Institute & Colleges
P.O. New Forest
Dehra Dun - 248 006 (Uttara Pradesh)
6. The Secretary
Ministry of Environment, Forest & Wildlife
C.G.O. Complex, Phase - II
5th Floor, 'B' Block
Lodi Estate, New Delhi - 110 003
7. Shri S.M.H. Kozmi
8. Shri J.B. Singh
9. Shri J.K. Jain
10. Smt Uma Singh
11. Dr B.G. Karira
12. Shri S.C. Pant
13. Shri N.K. Jaiswal
14. Shri M.P. Dimri
15. Shri R.C. Saxena
16. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Research Officers
C/o The President
Forest Research
Institute & Colleges
P.O. New Forest
Dehra Dun - 248 006
(Uttara Pradesh)

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 30-11-88.

Encl : As above

SECTY
DEPUTY REGISTRAR
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 30th day of November, 1988

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. L.H.A. REGO .. MEMBER(A).

APPLICATIONS NOS.675 & 687 OF 1987(F)

In A.675/87:

Dr.V.Kuppusamy S/o L.Venu Naidu,
43 years, Research Assistant
Grade-I, Forest Research Labora-
tory, Malleshwaram, Bangalore-560 003.

.. Applicant

(Sri G.R.Ramachandrappa, Adv. for applicant)

-vs.-

1. The President,
Forest Research Institute
and Colleges,
P.O. New Forest,
Dehra Dun-248 006.

2. Sri S.M.H.Kozmi)

3. Sri J.B.Singh)

4. Sri J.K.Jain)

5. Smt. Uma Singh)

6. Dr.B.G.Karira)

7. Sri S.C.Pant)

8. Sri N.K.Jain)

9. Sri M.P.Dimri)

10. Sri R.C.Sexena)

C/o President,
Forest Research
Institute and
College,
New Forest P.O.
Dhara Dun(U.P.)

.. Respondents.

(By Sri M.S.Padmarajaiah, Sr. Standing Counsel for
Central Government, for R-1)



8. Both the applicants are seen to have been aggrieved, by the above order dated 22-6-1987 of R-2, at not having been promoted to the posts of ROs by selection, despite their long and meritorious service, in the post of RA-1.

9. A-687, is said to have submitted written representations, on 25-6-1987 and 2-7-1987 ⁱⁿ R-1 to to which he has cited reference, to Annexures A8 and A9 respectively, but has not furnished copies thereof, along with his application. He states, that he has not received a reply thereto, so far.

10. F-675, does not seem to have submitted any written representation, to the concerned authority, in this respect.

11. Both the applicants have therefore approached this Tribunal, through their present applications, for redress.

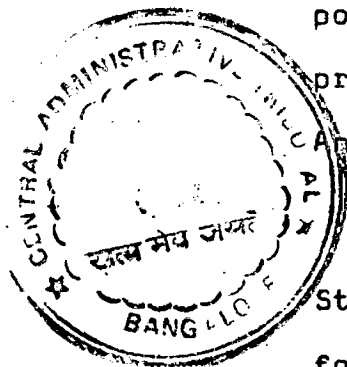
12. R-1 has filed a reply in Application No. 675, resisting the application, while the private respondents Nos. 2 to 10 have not filed their reply. They were neither present nor represented by ~~the~~ Counsel, at the time of hearing of the said application.

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13. R-1

13. R-1 and 2, in Application No.687, have filed their reply, countering the application, while the private respondents 3 to 5 have not filed their reply. Neither were they present nor represented by their Counsel, at the time of the hearing of Application No.687.

14. Appearing for A-687, Dr.M.S.Nagaraja his learned Counsel, alleged at the outset, that persons who were ineligible, according to the 1979 Rules, were arbitrarily appointed by R-1, on 22-6-1987(Ann.A-6) to the posts of ROs by promotion. He pinpointed the conditions of eligibility prescribed, for these posts, for promotion extracted in para-5 above and laid emphasis in particular, on the pre-requisite of regular service(emphasis added) in the post of RA-I, as specified therein. Referring to Ann.A-6(dated 22-6-1987), he submitted that Smt.Uma Singh (R5 in Appln.No.687) and Sri S.C. Pant (R-4 in Appln.No.687) appearing respectively, at S.Nos.4 and 6, therein, were not regularised in the post of RA-I and therefore, were ineligible for promotion to the post of RO, as was borne out by Ann.A-13(dated 21-5-1968), he asserted.



15. Shri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government, appearing ~~and~~ refuted this contention, stating, that R-1, ~~as~~ for R-1, in his Memo dated 19-2-1985, had directed,

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that the candidates appointed on an ad hoc basis as RA-I, on the recommendations of the DPC, as communicated in his Memo dated 29-4-1967 may be deemed(emphasis added) to have been appointed on regular basis. Shri Padmarejaiah stressed, that by virtue of this retrospective regularisation of RAs-I appointed on an ad hoc basis, Smt.Uma Singh and Shri S.C.Pant, were ipso facto regularised similarly, as RAs-I. He further submitted, that Dr.Nagaraja, not having challenged the aforesaid Memo dated 19-2-1985 of R-1, in the written pleadings, ^{de}he could not do so now, in the course of the hearing of the case. The said Memo dated 19-2-1985, was shown to Dr.Nagaraja, who could not develop his argument further, except for stating, that he might be given liberty to challenge the validity of the aforesaid Memo, in a separate application.

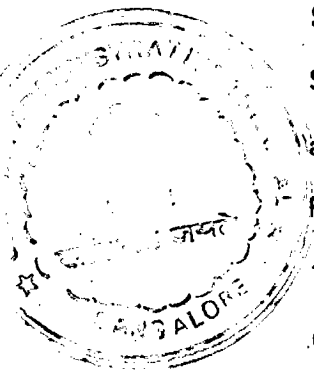
15. We have given due thought, to the averments of both sides, on this question. The aforesaid Memo dated 29-4-1987 of R-1 clearly shows, that among others, Smt.Uma Singh and Shri S.C.Pant were regularised as RAs-I, albeit retrospectively. In the absence of a challenge by the applicant in his written pleadings, to the validity of this Memo, it is not proper for us, to go into this question. The contention of Dr. Nagaraja therefore, falls to

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ground and we therefore reject the same, with liberty to the applicant to challenge the validity of the said Memo in a separate application, if he ^{is} ~~so~~ advised.

16. The other limb of the contention, on grounds of ineligibility, advanced by Dr. Nagaraja was, that according to the 1979 Rules, only RAs-I with regular service, were eligible to be promoted as ROs, subject to the other conditions specified in these Rules. According to these Rules, he averred, computers formed a separate and distinct cadre, which was a feeder, to the avenue of promotion as Head Computers. They were not eligible for promotion to the cadre of RA-I and RO, he asserted. Yet, inviting our attention to Anns. A7 (dated 25-7-1986) and A-11 (dated 1-12-1971), he pointed out, that computers were shown in the Seniority List of RAs-I. In particular, he referred to S.Nos. 53, 55, 58, 62, 67, 78, 71, 73, 75 and 77 of Ann. A-7, who he said were recruited as Computers. He submitted, that Sarvashri J.B. Singh, M.P. Dimri and R.C. Saxena at S.Nos. 2, 8 and 9 respectively in Ann. A-6, who were all recruited as Computers, were first promoted as RAs-I and later as ROs, in contravention of the 1979 Rules, ignoring the claims of the eligible candidates, as in the case of the applicant, as they belonged to a cadre, which was not a feeder, to that of ROs.



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17. Dr.

17. Dr.Nagaraja was vociferous in alleging, that R-1 and R-2, in their counter-affidavit, filed by them before the Supreme Court, in Writ - Petition No.43 of 1976 (Ann.A-12), had admitted that the cadre of Computers was distinct and apart from that of RAs Grade II and that each of these cadres, had an exclusive avenue for promotion.

18. Dr.Nagaraja emphasised, that the action of the DPC, in considering ineligible candidates from the cadre of Computers, for promotion to that of ROs, despite these two cadres being disparate, led to vitiation of its proceedings.

19. In rebutting the above contention, Shri Padmarajaiah stated, that Dr.Nagaraja had flagrantly overlooked the rules viz., the FRI and Colleges, Dehra-Dun and its outlying centres (Group 'C' Technical Posts) Recruitment Rules 1983 (1983 Rules), framed by the Government of India, under Article 309 of the Constitution, in supersession of the Recruitment Rules mentioned in Schedule I to the 1983 Rules, relating to Group 'C' technical posts, subject to what was stated in the preamble to these Rules. The above 1983 Rules, he submitted, were notified by the Government of India on 23-6-1983 (Ann.R-1 to Appln.No.675) and they applied to all the posts specified in column(2) of Schedule II

to

to these Rules. Consequently, Shri Padmarajaiah asserted, the cadre of Head Computers was equated as RA-I(vide S.No.7 of Schedule II ibid) and thus, it became a feeder, for the cadre of ROs. The averment of R-1 and R-2, before the Supreme Court, in W.P.No.43 of 1976 referred to by Dr.Nagaraja, was quite in accord with the facts as they stood then, as the 1983 Rules came to be promulgated seven years later, in changed circumstances, Shri Padmarajaiah submitted. Besides, he stated, ~~that~~ Dr.Nagaraja could not question the validity of the 1983 Rules, as his client had not impugned them in his application.

20. There is substance, in the above submission of Shri Padmarajaiah. Dr.Nagaraja ^{de}~~could~~ in this background discern ^{-ed} that he was on fragile ground and fairly, did not pursue the matter further, except to seek liberty, to agitate the same in a separate application. It is clear, that with the promulgation of the 1983 Rules, the second limb of the contention of Dr.Nagaraja on grounds of ineligibility, is ill-founded. We, therefore, negative the same, reserving liberty to his client, to agitate the matter in a separate application, if he is so advised.

21. Dr.Nagaraja next alleged, that R-1 and R-2 did not circulate to all concerned, including the ~~present~~, the Seniority List of RAs-I, integrated on


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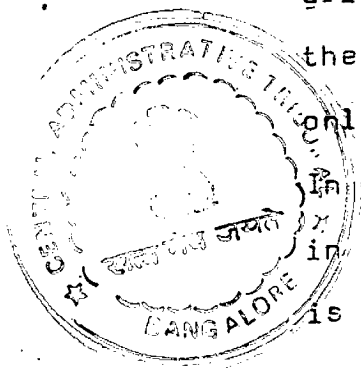
the All-India canvas, to consider promotion to the posts of ROs. This was a serious omission he contended, as thereby, his client was kept in the dark as to whether he was included within the "zone of consideration" for promotion as RO. This, he said, was violative of natural justice.

22. Shri Padmarajaiah repelled this contention on the score, that, the cadre of RAs-I, was not ~~was~~ an All-India one, but was confined to the ancillary regional forestry research units. Unitwise Seniority Lists of RAs-I, he affirmed, were regularly drawn up and circulated to all concerned, on a provisional basis, for their representation if any, thereon and were finalised, after considering such representation. The All-India Seniority List of RAs-I, referred to by Dr. Nagaraja, he explained, was not a Seniority List, in the true sense but was only an Eligibility List, circumscribed by the "zone of consideration", for promotion to the next post of RO, for the guidance of the DPC. It was thus not imperative, he urged, to circulate this Eligibility List to all concerned. Shri Padmarajaiah stressed, that the objection raised by Dr. Nagaraja in this regard, was only an academic exercise, considering the fact, that both the applicants, were duly considered by the DPC, for promotion to the post of RO. but, these applicants could not make the grade, for this "selection post", on account of lower positive merit, as compared to their seniors.

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23. We have examined the rival pleadings on this aspect. There is ample merit in what Shri Padmarajaiah has argued, to negative the contention of Dr. Nagaraja. It cannot be gainsaid, in the light of the facts placed before us by Shri Padmarajaiah, that the Seniority Lists of RAs-I, borne on unitwise cadres, dispersed all over the country, according to the location of the ancillary forestry research units, were regularly updated and finalised under proper procedure. The applicants do not seem to have any grievance on this score. The Combined Seniority List of RAs-I, referred to by Dr. Nagaraja, is in fact, an Eligibility List, restricted to the "zone of consideration", for the guidance of the DPC, while considering promotions to the post of RO, as rightly explained by Shri Padmarajaiah. We agree with Shri Padmarajaiah, that once the constituent Seniority Lists, of the respective forestry research units, in respect of RAs-I, are finalised under proper procedure and the applicants have no grievance thereon, it is not obligatory to circulate the Eligibility List to all concerned, as this would only tend to delay avoidably, the DPC proceedings. In our view, this is not an imperative necessity in ~~the~~ overall administrative interest and in fact, is a superfluity, as it cannot be said, that the service interests of the employees are severely jeopardised thereby, leaving no remedy for them

whatsoever



whatsoever, for redress. In this connection, we must not be oblivious of the maxims, that equity abhors superfluous things - aequitas supervacua odit and that, which necessity compels, is justified - quid est necessarium cogit dependat. We are of the view, that such a circumstance or imperative, does not exist, in the case pleaded before us by Dr. Nagaraja and therefore, we are not persuaded by his contention. Even then, as rightly pointed out by Shri Padmarajiah, the applicants should not have made a fetish of this so called grievance, after it was made known to them, that their case was duly examined by the DPC, at its meeting held on 28-5-1987, for promotion to the post of RO.

24. We were informed, that in the past, R-1 had published, for the benefit of RAs-I, the Seniority List of the constituent research units, in a common brochure. Dr. Nagaraja averred, that this was a salutary practice, which enabled the RAs-I, to know their overall seniority on an All-India canvas, but unfortunately this practice was since discontinued, thereby keeping them in the dark. We would commend to R-1, to consider as to how best this practice could be revived, in administrative interest.

25. As an ancillary argument, Dr. Nagaraja questioned the veracity of the Seniority List of RAs-I, on page 25, in Ann. P-7, and referred ^{to} the criterion of

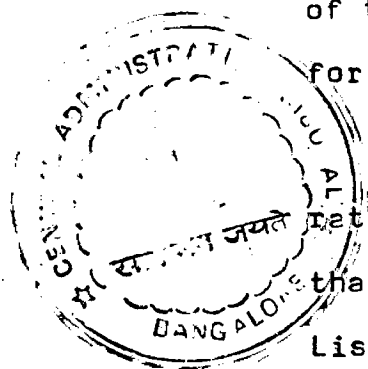
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date of confirmation for the purpose of seniority, stipulated in para 5.3, under the sub-head, "Seniority in Civil Posts", in Chapter XVII on "Seniority", of the Handbook for Personnel Officers ("Handbook" for short) published in 1987, by the Union Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training). This he said, was at variance with the principle in Rule 7-A, of the Karnataka Government Servants' (Seniority) Rules, 1957 which prescribed, that seniority inter se, of persons included in the Statewise list of seniority, consequent upon posts in the districtwise cadres, being included in the Statewise cadre, shall be determined, by the total length of continuous service of the official, in the districtwise cadre, from the date of appointment to such cadre. He sought to elaborate this contention, on the score, that the date of confirmation in the post, would not be an equitable criterion, for the purpose of determination of seniority as RA-I, for promotion to the post of RO, as the prospect of confirmation as RA-I, varied from unit to unit, depending upon the size of the cadre, in each unit and the vacancies available for confirmation in that unit.

26. We find this argument of Dr. Nagaraja rather far-fetched and laboured, apart from the fact that he has not specifically challenged the Seniority List in question. We therefore find no merit in this contention of Dr. Nagaraja.

27. Dr.



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27. Dr.Nagaraja then referred to Item No.7(c),on "Seniority List",in the printed proforma at Annexure-III (for referring proposals for promotion to the Union Public Service Commission) on page 270,of the aforesaid Handbook,to show,that the Seniority List,ought to have been circulated to all concerned,before finalisation. This was not done in the case before us, he alleged, on account of which,the DPC proceedings in question, were vitiated, he alleged.

28. We have examined the said Annexure-III, along with Ann.I ibid, Dr.Nagaraja is apparently mistaking the Seniority List,for the Eligibility List, as explained by us in para-23 above, and in doing so, he skirts the real issue on account of insufficient comprehension of the rules. This contention of his too, is therefore equally meritless.

29. Lastly, Dr.Nagaraja questioned the very assessment,of the merit of his client,by the DPC, on the basis of his ACRs. According to him, his client should have been graded as "Outstanding", considering the distinction he had attained in forestry research,as RA-I, and particularly in meriting the coveted Howard Gold Medal.

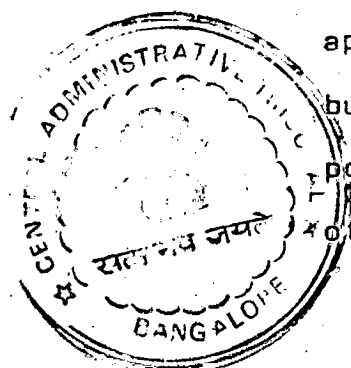
30. Shri G.A.Ramachandrappe, learned Counsel for A-675, appearing on behalf of his senior Shri U.L.Narayana Rao, fell in line with Dr.Nagaraja, in arguing his case. On the question of assessment of merit of his client, ~~by~~ referring to Ann.'C', which outlines the procedure to be adopted by the DPC, he alleged, that the DPC exercised uncanalised and arbitrary power, in the discretion allowed to it, to grade the officers on its own, without necessarily depending on the ACRs. This was evident in the case of his client, he asserted, who should have been graded as "Outstanding", considering the excellence of his performance as RA-I.

31. Shri Padmarajaiah refuted the above allegations of both Dr.Nagaraja and Shri Ramachandrappe, maintaining that the DPC, had objectively assessed the ACRs, of the two applicants, for the quinquennium immediately preceding the date of its meeting viz., 28-5-1987 and had graded them accordingly. Both the applicants he affirmed, were graded as "Very good" but they could not be promoted to the "selection" post of RO, ~~and~~ ^{as} their merit being inferior to that of their seniors.

have ^{to}

32. We ^{have} perused the ACRs of both the applicants, as well as of the 9 persons promoted as ROs (Anns.B and C-6 respectively), for the said quinquennium

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in the presence of the Counsel, for both the applicants. We were satisfied, that the DPC had assessed them on the material available, with the desired objectivity. However, we noticed by a test-check, that the ACRs of S.Nos. 2, 3, 6, 7, 8 in Anns. B and A-6 respectively, were incomplete, for the reason, that the countersigning authority had not assessed the officers, and signed in token thereof, for certain years. In the case of S.No. 7 (Shri N.K. Jain), we noticed this omission, for the entire quinquennium.

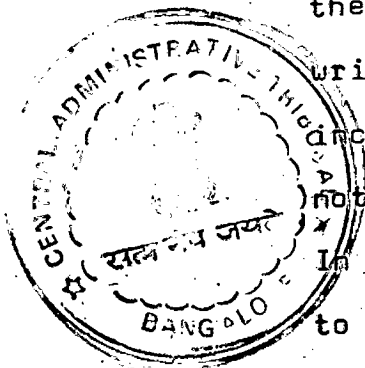
33. As to the validity of grading of the officers by the DPC, on the basis of their ACRs, the dicta of the Supreme Court in AIR 1987 SC 593 (R.S. DASS & ORS. -vs.- UNION OF INDIA & ORS.), is very clear and is apposite to the case before us. The Supreme Court observed in that case, that the DPC was not free to categorise officers at its sweet will, as according to the pertinent regulation, it had to grade the officers, into 4 different categories viz., "Outstanding", "Very good", "Good" and "Unfit", on overall relative assessment of their ACRs. The Supreme Court further observed, that such categorisation by the DPC was objective, as based on the material available in the ACRs of the officers and conducted to uniformity of procedure. As a result, the Supreme Court remarked, there was

scarcely

scarcely any scope for the DPC, to apply different standards or criteria, at different times, while categorising the officers as above, as their ACRs indicated their grading, as adjudged by the competent authority, recording his remarks therein.

34. A test-check of the pertinent ACRs undertaken by us in the cases before us, in the presence of Counsel for both sides, revealed, that the DPC graded the officers concerned, into the respective categories, on the basis of their ACRs, strictly in accordance with the above procedure commended by the Supreme Court, as a sound one. The contention of Sri Ramachandrappa therefore, that the DPC exercised uncanalised and arbitrary power, in its discretion, to grade the officers to the detriment of his client, is patently without basis.

35. In the case of A-675, we noticed, that the ACRs for the years 1982 and 1984, have not been written at all and that for the year 1986, is incomplete, as the countersigning authority has not assessed the applicant and signed in token thereof. In our view, these are serious infirmities, which tend to vitiate the proceedings of the DPC and therefore,



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the DPC would have to meet again and consider anew, the cases of all eligible candidates, from among RAs-I, for promotion to the posts of ROs (as envisaged at its earlier meeting held on 28-5-1987) after ensuring, that their ACRs, are duly updated and the various defects/omissions therein, are rectified, in the light of the decision rendered by this Tribunal on 25-2-1987, in Applications Nos. 731 and 1842 of 1986 Dr. (Smt.) Radha Nayar -vs.- Union of India & others. Counsel for the applicants proposed, that a period of 3 months, would be adequate for the purpose. Shri Padmarajaiah, however pleaded, that at least 6 months would be necessary, considering that the research units, were widely dispersed.

36. Shri Ramachandrappa, did not dwell on the aspect of violation of the "zone of consideration", as alleged in the application. We have not gone into this aspect, in the background, that the DPC would need to reassess the eligible candidates, for promotion to the posts of ROs, in the light of what we have remarked in para 35 above. Nevertheless, we direct R-1 and R-2 to ensure, that the DPC, when it meets again, ~~to~~ ^{to} consider the case of eligible RAs-I, for promotion to the "selection" posts of ROs, takes due care to ensure, that the prescribed "zone of consideration", is not transgressed.

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37. In the result, we make the following
order:

ORDER

- (i) We set aside the impugned Orders dated 22-6-1987(Anns.B and A-6, respectively), passed by R-1.
- (ii) We direct R-1 and R-2, to convene a Special Review DPC meeting and reassess all eligible RAs-I, for promotion to the "selection" posts of ROs(as envisaged at the earlier meeting of the DPC held on 28-5-1987) after rectifying all omissions/defects in their ACRs, in the light of our above observation, ~~and~~^{do} adhering strictly, to the "prescribed" zone of consideration".
- (iii) We direct, that ~~this~~^{do} order be complied with, expeditiously, but not later than 30-6-1989.
- (iv) The incumbents promoted as ROs, in the meanwhile, shall continue in those posts till then.
- (v) In the event, the applicants are considered ~~suitable~~, for promotion to the posts of ROs, as on 28-5-1987, they would only be entitled to notional promotion as ROs, from that date, and will not be entitled to arrears of salary on that account, not having shouldered higher responsibility in those posts.



[Signature]
(vi)



(i) The applications are disposed of, in the above terms, with no order, however, as to costs.

Sd/-

(K.S. PUTTASWAMY) / 1
VICE CHAIRMAN

Sd/-

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

TRUE COPY

[Signature] 9/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

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