

REGISTERED

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE
* * * * ***

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 21 JAN 1988

APPLICATION NOS. 252, 437 & 448/87(F)

Applicants

Shri M.G. Halappanavar & 2 Ors

V/s

The Secy, M/o Personnel, Public Grievances
& Pension, New Delhi & 11 Ors

To

1. Shri M.G. Halappanavar
Controller of Weights & Measures
No. 1, Ali Asker Road
P.B. No. 175
Bangalore - 560 052
2. Miss R. Satyarthini Sujatha
Revenue Member
Land Reforms Appellate Authority
Bangalore District
3. Shri T. Thimme Gowda
Secretary
Bangalore Development Authority
(BDA)
Kumara Park Extension (West)
Bangalore - 560 020
4. Shri K.R.D. Karanth
Advocate
32, Mangalanagar
Sankey Road Cross
Bangalore - 560 052
5. Shri M. Narayana Swamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010

Respondents

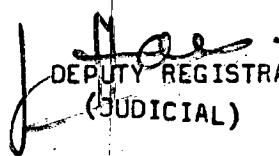
6. Shri R.J. Babu
Advocate
2/1, 1st Main Road
Gandhinagar
Bangalore - 560 009
7. The Secretary
Ministry of Personnel, Public
Grievances & Pension
(Department of Personnel & Training)
North Block
New Delhi - 110 001
8. The Chairman
Union Public Service Commission
Dholpur House
Shah Jahan Road
New Delhi - 110 011
9. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
10. The Commissioner & Secretary
to Government
Revenue Department
Karnataka Government Secretariat
Multi Storey Building
Bangalore - 560 001

11. The Development Commissioner
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
12. Shri Jayakar Jerome
Deputy Secretary
Dept. of Cabinet Affairs &
D.P.A.R (Protocol)
Vidhana Soudha
Bangalore - 560 001
13. Shri T.T. Patil
Commissioner City Municipal
Hubli-Dharwad Corporation
Hubli
Dharwad District
14. Shri K. Bala Naik
Member
Land Reforms Appellate Tribunal
Kodagu
Madikeri
15. Shri B.K. Vishwanathan
Chief Administrative Officer
Health & Family Welfare Directorate
Anandarao Circle
Bangalore - 560 009
16. Shri M.L. Nagaraj
Member
Land Reforms Appellate Tribunal
Chitradurga
17. Shri Aravind Rishbud
C/o The Chief Secretary
D.P.A.R (AR-II)
Vidhana Soudha
Bangalore - 560 001
18. Shri Ashok V. David
Deputy General Manager (P&A)
Mysore Paper Mills Limited
Bhadravathi
Shimoga District
19. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001
20. Shri S.V. Narasimhan
Government Advocate
C/o Karnataka Administrative Tribunal
B.D.A. Complex
Indiranagar
Bangalore - 560 038
21. Shri H.B. Datar
Advocate
C/o Shri K.S. Desai
Advocate
No. 191, 3rd Cross,
N.S. Iyengar Street, Seshadripuram
Bangalore - 560 020
22. Shri H.K. Vasudeva Reddy
Advocate
C/o Kesvy & Co.
Advocates
139, 5th Cross, Gandhinagar
Bangalore - 560 009
23. Shri Kusuma R. Muniraju
Advocate
8, 1st Floor, K.G. Road
Bangalore - 560 009
24. Shri M. Dasappa
Advocate
F-98, Krishna Buildings
Avenue Road, Bangalore - 560 002
25. Shri Basavanna Chary
Advocate
590, 3rd Cross, 7th Main
Vijayanagar, Bangalore - 560 040
26. Shri T. Nagaraj
Advocate
C/o Shri B.S. Keshava Iyengar
Advocate
5, Pampa Mahakavi Road
Bangalore - 560 004

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 20-1-88.

Encl : As above


DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 20TH DAY OF JANUARY, 1988.

PRESENT:

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

And:

Hon'ble Mr. L.H.A. Rego,

Member(A).

APPLICATIONS NOS. 252, 437 AND 448 OF 1987.

1. Sri M.G. Halappanavar, K.A.S.,
S/o G.M. Halappanavar,
Controller of Weights and Measures,
No.1, Ali Asker Road,
P.B.No.175,
Bangalore-560 052. Applicant in A.No.252 of 1987
Respondent No.13 in A.No.437/87
Respondent No.11 in A.No.448/87.

(By Sri K.R.D. Karanth, Advocate).

2. Miss R. Satyaarthini Sujatha,
D/o S. Rangayya,
Aged 38 years, Revenue Member,
Land Reforms Appellate Authority,
Bangalore District. Applicant in A.437/87

(By Sri M. Narayana Swamy, Advocate)

3. T. Thimme Gowda, K.A.S.,
Aged 42 years, S/o Dodda Thimmegowda,
Presently working as Secretary,
B.D.A, Kumara Park Extension (West)
Bangalore-560 020. Applicant in A.No.448/87

(By Sri R.J. Babu, Advocate)

v.

1. Government of India,
represented by its Secretary,
Ministry of Personnel,
Public Grievances & Pension
(Department of Personnel and Training),
North Block, New Delhi 110 011.

2. The Union Public Service Commission,
represented by its Chairman,
Dholpur House, Shah Jehan Road,
New Delhi-110 011.

3. The State of Karnataka,
represented by its Chief Secretary,
Vidhana Soudha,
Bangalore-560 001.

Respondents 1 to 3
in all Applications.

4. The Commissioner & Secretary to Government,
Revenue Department,
Karnataka Government Secretariat,
M.S. Building,
Bangalore-1.

Respondent-4 in A.No.437/87



5. The Development Commissioner,
Government of Karnataka, Vidhana Soudha,
Bangalore. Respondent-5 in A.No.437/87.
6. Jayakar Jerome,
Major, Deputy Secretary,
D.P.A.R.(Protocol), Vidhana Soudha,
Bangalore-560 001. Respondent-4, 6, and 5
in A.Nos.252, 437
and 448/87 respectively.
7. T.T.Patil,
Commissioner, Hubli Dharwad Corporation,
Hubli, Dharwad District. Respondent No.5, 8 and 6
in A.Nos.252, 437
and 448/87 respectively.
8. Bala Naik,
C/o D.P.A.R.(Services),
Vidhana Soudha,
Bangalore-1. Respondent No.6, 9 and 7
in A. Nos. 252, 437
and 448/87 respectively.
9. B.K.Viswanathan,
C/o D.P.A.R. (Services),
Vidhana Soudha,
Bangalore-1. Respondent No.7, 10 and 8
in A.Nos.252, 437
and 448/87 respectively.
10. M.L.Nagaraj,
C/o D.P.A.R.(Services),
Vidhana Soudha,
Bangalore-1 Respondent No.8, 11 and 9
in A.No.252, 437
and 448/87 respectively.
11. Aravind Rishbud,
M.B.A. Student,
University of Leeds,
L.S.29, J.T.(United Kingdom)
for Service through Chief
Secretary, DPAR, AR-II, Vidhana Soudha,
Bangalore-1. Respondent No.9, 7 and 4
in A.Nos.252, 437
and 448/87.
12. Ashok David,
Deputy General Manager,
Mysore Paper Mills Limited,
Bhadravathi,
Shimoga Dist. Respondent No.10, 12 and 10
in A.Nos.252, 437
and 448/87 respectively.

(By Sri M.S.Padmarajaiah, Central Government Stand-
ing Counsel for R1 & R2
Sri S.V.Narasimhan, Government Advocate for R3
to R5
Sri H.B.Datar, Advocate for R6 & R11

Sri H.K.Vasudeva Reddy, Advocate for R-7
Sri Basavannachar, Advocate for R-8
Sri B.S.Keshava Iyengar, Advocate for R9
Sri M.Dasappa, Advocate for R-10
Sri Kusuma R.Muniraj, Advocate for R-12)

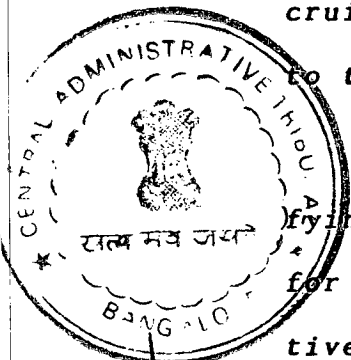
These applications having come up for hearing,
Vice-Chairman made the following:

O R D E R

As the questions that arise for determination
in these cases are common, we propose to dispose them
of by a common order.

2. The three applicants in these cases, respondents 4 to 10 in Application No.252 of 1987 who are respondents in the other cases also, but who will be hereafter referred to by their ranks in A.No.252 of 1987, 14 others whose details are not necessary to notice and several others were all members of the Karnataka Administrative Service ('KAS') (Class-I) (Junior Scale) ('JS') also designated as Assistant Commissioners ('ACs'). The recruitment to KAS including the Junior Scale is governed by the Karnataka Administrative Service (Recruitment) Rules, 1957 ('KAS Rules') promulgated by the Governor under the proviso to Article 309 of the Constitution. Among others, the KAS Rules provide for a quota between direct recruits and promotees to KAS-JS as amended from time to time.

3. The members of the KAS-JS possessing qualifying service and other requirements, are eligible for appointment by promotion to the Indian Administrative Service ('IAS') constituted under the All India

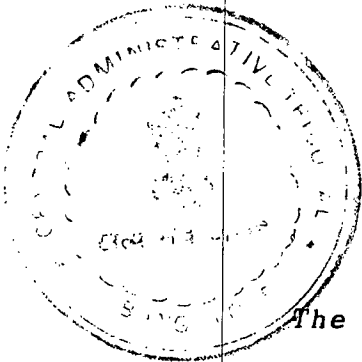


Services Act of 1951 (Central Act LXI/51) (1951 Act), the Rules and Regulations made thereunder. The selection and appointments from the State Civil Services to IAS is primarily regulated by the Indian Administrative Service (Appointment by Promotion) Regulations of 1955 ('Regulations') and other related provisions made under the 1951 Act.

4. A Selection Committee ('SC') presided over, by the then Chairman of the Union Public Service Commission, ('UPSC') constituted under the Regulations, met at Bangalore on 4-12-1986 and considered the cases of the applicants, respondents 4 to 10 and 14 others for selection for IAS from the KAS-JS, to the required number of posts, determined thereunder, namely 'eight' for the succeeding calendar year 1987. On an examination of their service records and all other relevant factors, the SC, in a 'Select List' prepared on the next day, included the applicant in A.No.252 of 1987 and respondents 4 to 10, in the following order with due regard to their gradings and seniority then available:

<u>Sl.No.</u>	<u>Names (S/Shri)</u>	<u>Date of Birth.</u>
1.	Arvind G.Risbud	8-9-1951
2.	Jayakar Jerome	22-3-1946
3.	T.T.Patil	28-5-1933
4.	K.Balanaik (SC)	5-15-1933
5.	B.K.Viswanathan	18-7-1935
6.	M.L.Nagaraj	1-5-1935
7.	Ashok V.David	8-9-1945
8.	M.G.Halappanavar	15-10-1945

The applicants in Applications Nos.437 and 448 of 1987 graded as 'Good', by the SC, have not been placed



in the Select List being junior in KAS-JS. In due course, the UPSC approved the Select List prepared by the SC.

5. On 14-4-1987, the applicant in A.No.252 of 1987 approached this Tribunal, under Section 19 of the Administrative Tribunals Act, 1985 ('the AT Act') with an interim order challenging the proceedings of the SC and UPSC, on diverse grounds. In the main application, this applicant sought that he should have been graded as 'Outstanding', with due regard to his service record and placed at the top of the Select List by the SC. On the same day, a Division Bench of this Tribunal consisting of one of us (Sri L.H.A. Rego) and Hon'ble Sri Ramakrishna Rao, Member(J) on admitting the application made an interim order on these terms:

'We do not deem it necessary to grant the interim prayer, as the ends of justice would be met by directing the respondents to make the appointments in question to the Indian Administrative Service subject to the result of this application.'

In its Notification No.F.14015/33/86-AIS(I) dated 6-5-1987 (Annexure-R1) the Government of India ('GOI') had appointed respondents 4, 5 and 9 to the IAS on probation with a clause that their appointments were subject to the result in A.No.252 of 1987.

6. On 4-6-1987 and 8-6-1987, applicants in A.Nos. 437 and 448 of 1987 respectively, have approached this Tribunal, under Section 19 of the AT Act, challenging on diverse grounds, their non-selection and



the selection of applicant in A.No.252 of 1987 and respondents 4 to 10.

7. On an interlocutory application made by the applicant in A.No.252 of 1987, this Tribunal by its order made on 9-10-1987, had restrained respondents 1 to 3 viz., GOI, UPSC and Government of Karnataka ('GOK') who are respondents 1 to 3 respectively, in that application, from making any further appointments from that date to the IAS, from the Select List, prepared by the SC on 5-12-1986 and that order had not been varied by us or by the Supreme Court. In pursuance of the same, no further appointments have been made from the 'Select List'.

8. In support of their respective cases, the applicants had urged such grounds as are necessary to advance their respective cases, which had been resisted by the respondents in their separate replies.

9. But, by the time, these cases were taken up for hearing, the Hon'ble Supreme Court had rendered its decision on 11-8-1987, in a batch of cases touching on the seniority list in the cadre of KAS-JS, prepared by GOK and that decision, to which we will make a reference in some detail later, is since reported as GONAL BHIMAPPA v. STATE OF KARNATAKA (ILR 1987 Karnataka 3127). We will hereafter refer to the same as Gonal Bhimappa's case.

10. On the basis of the decision in Gonal Bhimappa's case, the applicants have urged that the

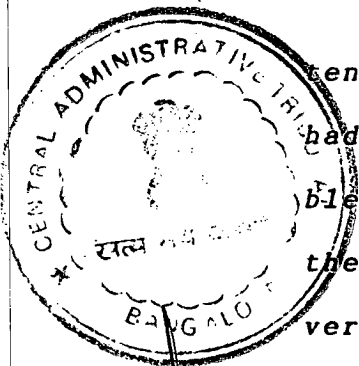


very basis of officers eligible for selection, the very first and primary step for considering their suitability and selection, vis-a-vis respondents 4 to 10, had disappeared and, therefore, it was necessary to annul the Select List and direct the GOK to first prepare a seniority list and then the SC and UPSC to make a fresh selection on the basis of that a seniority list.

11. In their replies or additional replies the respondents have resisted the new common ground urged by the applicants.

12. Sriyuths K.R.D.Karanth, M.Narayanaswamy and R.J.Babu, learned Advocates had appeared for the applicants in A.Nos.252, 437 and 448 of 1987 respectively. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel had appeared for respondents 1 and 2. Sri S.V.Narasimhan, learned Government Advocate had appeared for respondent-3. Sri H.B.Datar, learned Senior Advocate had appeared for respondents 4 and 9. Sriyuths H.K.Vasudeva Reddy, Basavannachar, B.S.-Keshava Iyengar, M.Dasappa and Kusuma N.Muniraju, learned Advocates had appeared for respondents 5,6,7,8 and 10 respectively.

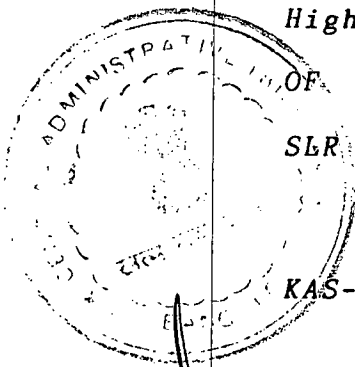
13. Learned counsel for the applicants have contended, that the decision in Gonal Bhimappa's case had nullified the very eligibility of officers available for selection and their ultimate selection on the basis of their earlier seniority and thus, the very first and primary step for making selection had



disappeared or had become non-existent and that some if not all, like respondents 5, 7 and 10, would even become ineligible for selection if a fresh seniority list is prepared in compliance with the directions in Gonal Bhimappa's case and that being so, it was inevitable to annul the 'Select List', direct GOK to first prepare a fresh seniority list and also direct the SC, UPSC and GOI to make a fresh selection and appointments on the basis of such seniority list in accordance with law.

14. Learned counsel for the respondents refuting the contention urged for the applicants, have urged that the earlier selection made on the basis of the then valid seniority list that was then in force, cannot be annulled on any ground, much less on the common and new ground urged and the same had necessarily to stand, without in any way being tinkered by this Tribunal. In support of their contention, counsel for the respondents, have strongly relied on the ruling of the Supreme Court in S.K.GHOSH AND ANOTHER v. UNION OF INDIA AND OTHERS (AIR 1968 SC 1385), a Full Bench ruling of the Punjab and Haryana High Court in Dr.SOHAN SINGH v. STATE OF PUNJAB AND OTHERS [1971(2) SLR 788] and a Division Bench ruling of the High Court of Karnataka in BHAGWANTH RAO v. STATE OF MYSORE AND ANOTHER [1969(1) Mys.L.J.169 = 1969 SLR 388].

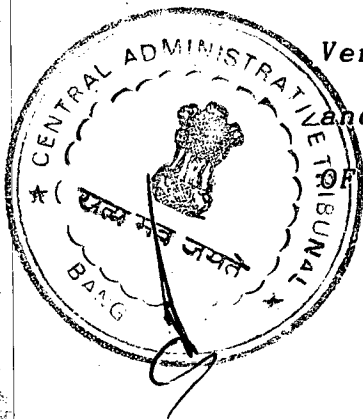
15. We have earlier noticed, that the cadre of KAS-JS or ACs consists of direct recruits and promotees



and that the KAS Rules as amended from time to time, provided for different quotas between them. The seniority lists prepared in that cadre, from time to time, by GOK as in the case of all other services of the Union or the States in the country has been the subject matter of perennial and endless challenges before Courts and Tribunals.

16. A seniority list published in the cadre as on 1-1-1972 by GOK, was the subject matter of challenge before the High Court of Karnataka in a batch of writ petitions and the decision rendered in those cases on 15-12-1972, since reported as V.B.BADAMI AND OTHERS v. STATE OF KARNATAKA AND OTHERS [1975(1)Mys.L.J.356] took exception to that seniority list on certain grounds and directed GOK to redraw the same and on appeals, that decision was affirmed by the Supreme Court on 17-9-1975 which is reported as V.B.BADAMI ETC. v. STATE OF MYSORE AND OTHERS (AIR 1980 SC 1561). We will hereafter refer to them as Badami's case.

17. In compliance with the directions in Badami's case, the GOK redrew the seniority list in the cadre upto 30-6-1973 and published the same on 10-8-1976 and the same was updated on different dates. All those lists were again challenged before the High Court in a batch of writ petitions. A Division Bench of the High Court consisting of Chandrasekhar, CJ and Venkatachala, J. disposed of those cases on 8-9-1982 and the same is since reported as M.G.KADALI v. STATE OF KARNATAKA AND OTHERS [1982(2)Kar.L.J.453]. The



decision in Kadali's case was challenged by the direct recruits and promotees before the Supreme Court in a batch of civil appeals and writ petitions which were disposed of by that Court on 11-8-1987 as Gonal Bhimappa's case. In Gonal Bhimappa's case, the Supreme Court upholding the challenge of the direct recruits rejecting the contrary challenge of the promotees to the cadre, reiterated the principles enunciated in Badami's case and did not approve the principles enunciated by the High Court in Kadali's case. In the course of its order, the Supreme Court observed thus:

"We have before us a batch of appeals by Special Leave and two Writ Petitions under Article 32. Both the Writ Petitions are by direct recruits; Civil Appeal Nos. 2906, 2910 and 2911 of 1984 are by promotees while Civil Appeal Nos. 2902 to 2905 to 2907 to 2909 of 1984 are by direct recruits. The promotees challenge the propriety of the direction of the High Court to modify the Gradation List by applying the quota rule while the direct recruits seek to have full application of the quota rule instead of the limitation of three years and have asked for consequential benefits.

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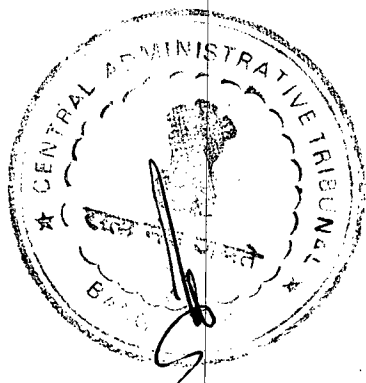
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Badami's case referred to several authorities of the Court and clearly drew out the judicial consensus on the point in issue by concluding that the quota rule had to be strictly enforced and it was not open to the authorities to meddle with it on the ground of administrative exigencies.

8. The scheme in force relating to the services for fixing inter se seniority take into account the filling up of the vacancies in the service from the two sources on the basis of the quota and, therefore, fixation of inter se seniority in the Gradation List has to be worked out on the basis of quota.

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Unless the 1957 Rules remained in force till 1977, there would have been really no necessity to refer to them for the purpose of amendment. Badami's case did proceed on the footing that the quota system in the Recruitment Rules continued till 1971-72. It is not Mr.Kacker's case that anything happened after 1972 which brought about dissolution of the quota. We reject the contention of Mr.Kacker that the quota system had been abandoned and confirm the finding of the High Court in that regard. It is, however, a fact that the ratio has been changed from time to time.

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11. The High Court in these cases has taken the view that the quota could be carried forward for a maximum period of three years and not beyond. This has been done by placing reliance on the Constitution Bench Judgment of this Court in the case of Col.A.S.Iyer & others vs. D.Balasubramanyam and others....

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Obviously nothing of general application was intended to be said and this Court did not certainly intend to lay down a time limit of general application.

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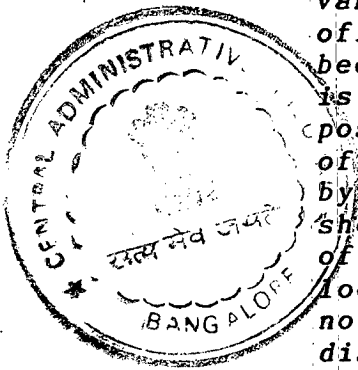
In the present batch of cases the law being clear and particularly the mandate in the rule being that when recruitment takes place the promotee has to make room for the direct recruit, every promotee in such a situation would not be entitled to claim any further benefit than the advantage of being in a promotional post not due to him but yet filled by him in the absence of a direct recruit. One aspect which we consider relevant to bear in mind is that the promoted officer has not the advantage of having been promoted before it became his due and is not being made to lose his promotional position. The dispute is confined to one of seniority only. The advantage received by the promotee before his chance opened should be balanced against his forfeiture of claim to seniority. If the matter is looked at from that angle there would be no scope for heart burning or at any rate dissatisfaction is expected to be reduced so far as the promotees are concerned.

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18. The net result of the discussion above requires that rule in Badami's case has to be given full effect. The Appeals and Writ Petitions of the direct recruits have to succeed and those by the promotees have to fail.

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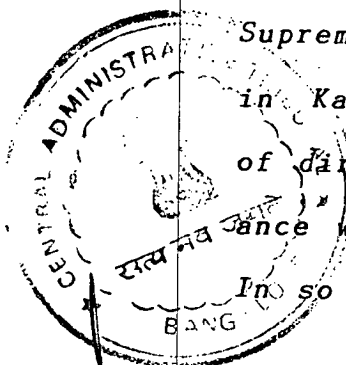
19. In course of arguments we had suggested to Learned Counsel for the parties to furnish recast Gradation List on the basis of claims advanced before us (1) showing how it would be when full claim of the promotees is granted and (2) how different it would look when the total claim of the direct recruits is allowed. Such charts have been prepared and furnished and we find that the process of pushing up and down would be inevitable but would be within reasonable limits and no irreparable prejudice was apparent.

20. The appeals and Writ Petitions of the direct recruits are allowed and the appeals by the promotees are dismissed. There shall be no order for costs throughout."

On the nature of this order itself, the parties are at variance. We must, therefore, clear this aspect first.

18. While the applicants have urged that the seniority list/s had to be redrawn, some of the respondents have urged that the earlier lists drawn in the cadre by GOK stand upheld by the Supreme Court.

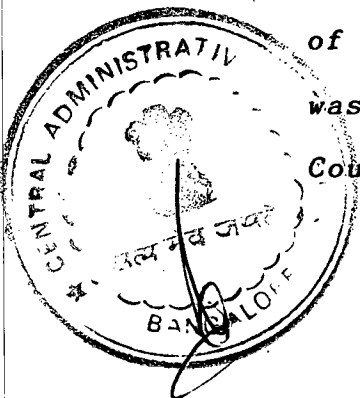
19. In Kadali's case the High Court on the view it expressed, on the various questions, directed the GOK to redraw the seniority lists. On appeal, the Supreme Court disagreed with the principles enunciated in Kadali's case and reiterated that the fitments of direct recruits and promotees should be in consonance with the principles enunciated in Badami's case. In so doing, the Supreme Court did not declare, that



the seniority lists drawn by GOK and in challenge either before it or the High Court stand upheld and that nothing more was required to be done by GOK. A careful reading of the order, in particular, the penultimate para of the order, only leads to the conclusion that the Supreme Court while laying down the principles or guidelines for the preparation of the seniority lists, left that matter to be examined and decided by GOK only. We, therefore, find it difficult to uphold the contrary contention urged before us for some of the respondents.

20. At the hearing and to a pointed question put by us, Sri Narasimhan informed us, that GOK was seized of the question and had not so far published either a provisional or a final seniority list in the cadre of KAS-JS and their preparation was before Government. We are of the view that this submission of Sri Narasimhan also supports our earlier conclusion.

21. On the facts, there is no dispute that the names of 24 officers held eligible for selection and considered for selection to 8 posts determined for the calendar year 1987 or as on 1-1-1987 was on the basis of the rankings that they occupied or were entitled to occupy, in conformity with the decision of the High Court in Kadali's case or at any rate was not in conformity with the decision of the Supreme Court in Gonal Bhimappa's case.

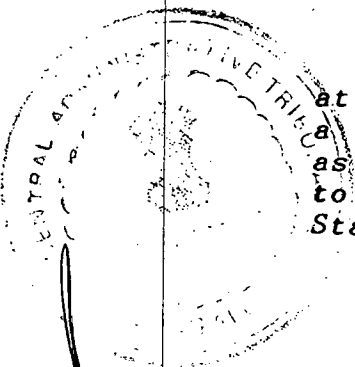


22. Whether those 24 officers considered eligible for selection and that 8 of them selected by the SC and approved by the UPSC, would have been first eligible for selection as and when a new seniority list in obedience to the order of the Supreme Court in Gonal Bhimappa's case is drawn or not, is a matter on which we cannot say anything at all. Speculation on the same is neither possible nor desirable. If anything, this should only await the seniority list to be drawn up by GOK. We must, therefore, proceed to examine the remaining questions on this and this basis only, which we now proceed to do.

23. Learned counsel for the applicants maintained that the promotee officers, considered eligible and selected, will not be within the range of selection and will not be even eligible for selection. We express no opinion on the same. We have noticed this only to highlight the consequence that flows from the order of the Supreme Court in Gonal Bhimappa's case.

24. Regulation No.5(1) and (2) of the Regulations omitting the provisos to sub-regulation (2) which are not material to decide the crucial question read thus:

(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service included in the list shall

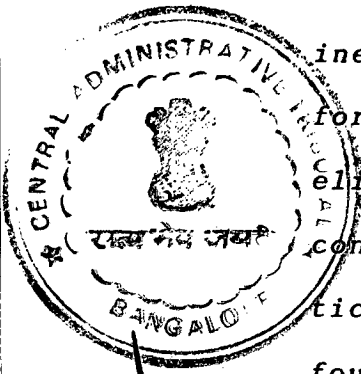


not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules, or 5 per cent of the Senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is grater.

(2) The committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).

Sub-regulation (2) inter alia directs that the number of officers that shall be considered for selection shall be that drawn or chosen in the order of their seniority in the State Civil Service. The eligibility criteria subject to the other provisions of the Regulations, the Rules and the 1951 Act, which are not necessary to refer, depends on the seniority of the officers in the concerned State cadre or the KAS-JS in the State of Karnataka.

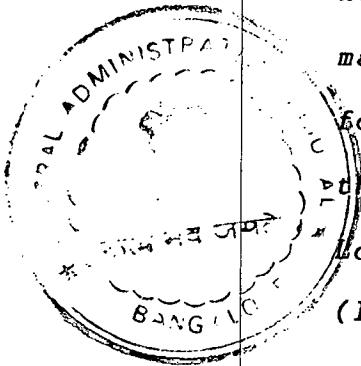
25. The eligibility of officers for consideration or the number of officers who are within the zone of consideration for selection, under the Regulations as in all other selections, is the very first and foremost step for selection for appointment to the IAS under the Regulations also. An officer who is ineligible for consideration is necessarily ineligible for selection. A person to be selected must be first eligible for consideration. A person eligible for consideration or selection cannot and does not automatically become suitable for selection. But, a person found suitable for selection must be a person eligible



for selection. An officer who is ineligible to be considered for selection cannot lay claim for selection under Regulation 5(2) of the Regulations, even if he is the most suitable person for selection, in the entire cadre. From this, it also follows, that an officer who is ineligible for selection when selected irrespective of his grading thereto, cannot hold on to his selection, only by reason of his selection.

26. What emanates from the above is, that an authenticated seniority of officers, in the cadre of KAS-JS as on the date of consideration of eligible officers, for selection under the Regulations was the first and the primary requirement for selection and that unfortunately must be held to have become unavailable by Gonal Bhimappa's case as on 5-12-1986 on which day the SC made its selection.

27. When the very basis for selection disappears or the very foundation on which the super-structure was built disappears, the edifice built thereon or the Select List prepared on the basis of a non-existent foundation or seniority of the eligible officers must necessarily fall to the ground. Even the well known maxim debile fundamentum fallit opus i.e., a weak foundation destroys the super-structure, fully supports this conclusion of ours vide page 114 on "Rules of Logic" in a selection of Legal Maxims by Herbert Broom (IX Edition, Fifth Reprint). If the eligibility list falls to the ground, then the Select List prepared



on the basis of such an eligibility list must necessarily fall to the ground. Logic and reason are not alien to law and justice. Reason is the life and soul of law and justice also. In our considered opinion this conclusion of ours being logical and inevitable, is also sound in law and justice.

28. On the facts of this case, we hold, that by reason of the order of the Supreme Court in Gonal Bhimappa's case and other developments noticed earlier, that the very eligibility of officers for selection under the Regulations by the SC did not exist or had disappeared. Unfortunately for us and those that are selected or not selected, such a list does not exist even to this day. In its absence, we cannot even attempt to decide that very question and all the other questions that arise also. In reaching these conclusions, we must ignore the consequences that ensue on the selected or non-selected persons and the inconvenience, if any, that is caused to the administration.

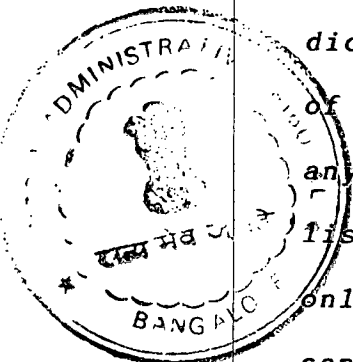
29. On the conclusions reached by us, we must without examining all other questions, annul the Select List prepared by the SC and approved by the UPSC, the appointments of respondents 4, 5 and 9 and issue appropriate directions to the authorities for the preparation of a seniority list for selection of officers for the very calendar year to the required number of posts then determined. From this it follows, that one of the directions to be made will have to



be to GOK to prepare a seniority list in the cadre of KAS-JS with expedition. But, whether such a direction and other directions can at all be issued or not is not free from doubt. We must now examine the objections raised thereto and the authorities relied on thereto for the respondents.

30. Learned counsel for the respondents have urged that this Tribunal had no jurisdiction and power to examine either the validity of the seniority list in the cadre of KAS-JS or issue any direction thereto to GOK for finalisation of the same within any time-limit, on the ground that being a State service matter this was within the exclusive jurisdiction and power of the Karnataka State Administrative Tribunal (KAT).

31. Under the very Act, this Tribunal and the KAT have been constituted and are functioning to exercise the powers conferred on each of them. Broadly, this Tribunal has jurisdiction and power to decide disputes of Central Government, civilian personnel and All India Services disputes and the KAT has jurisdiction and power to deal with the service disputes of Karnataka Government personnel. The disputes, if any, on the preparation and finalisation of a seniority list, in the KAS-JS which is a State service, can only be decided by the KAT and not by this Tribunal, can hardly be doubted. On facts our examining the seniority list in the cadre of KAS-JS or our trenching on the jurisdiction and power of the KAT does not



also arise. Even otherwise we are loathe to do that also.

32. There is no dispute that the dispute before us pertains to an All India Service and that we have jurisdiction and power to decide the validity of the selection that is in issue in these cases. The power to decide that dispute, comprehends in itself, all incidental and ancillary powers that are necessary to effectuate that power. The power to decide All India Services disputes comprehends in itself, the power to issue appropriate directions, at least to the extent they are necessary, for the determination of the questions that arise under the All India Services Act, the Rules and the Regulations made thereunder. We are of the view, that such a power is implicit in the very power conferred on this Tribunal under the Act. The power to decide a dispute, comprehends in itself all such ancillary and consequential powers that are necessary to effectuate the main and primary grant of power to this Tribunal. Without such a power this Tribunal cannot satisfactorily function at all. We are, therefore, of the view that in exercise of that power, we are competent to direct GOK to finalise the seniority in the cadre of KAS-JS with expedition and within a time limit also.

33. A new situation calls for a new solution. An extra-ordinary situation also calls for an extra-ordinary solution. On what little we know of law, jurisprudence and case law, the situation presented

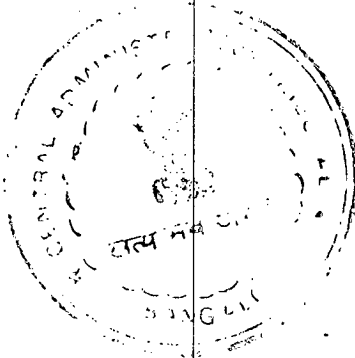


before us had not presented itself in any other reported case before any Court or Tribunal. In such a situation, searching for a precedent or a principle from other cases will be a vain effort.

34. Before considering the cases relied on by counsel for the respondents, it is apt to recall the pregnant observations of Chinnappa Reddy, J. in AMAR NATH OM PARKASH AND OTHERS v. STATE OF PUNJAB AND OTHERS (AIR 1985 SC 218) on the law of precedents. On precedents and applying the ratio decidendi of a decided case, the learned Judge warned thus:

11. There is one other significant sentence in Sreenivasa General Traders v. State of A.P. (supra) with which we must express our agreement. It was said, "with utmost respect, these observations of the learned judge are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear". We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton, 1951 AC 737 at p.761 Lord Mac Dermot observed:

The matter cannot of course be settled merely by treating the *ipse dixit* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge. In Home Office v. Dorset Yacht Co. (1970) 2 All ER 294, Lord Reid said "Lord Atkin's speech..... is not to be treated as if it was a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1



WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J., as if it were an Act of Parliament". And, in *Herrington v. British Railways Board*, (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case".

Also see the passage under the caption "Judgements must be read in the light of the facts of the cases in which they are delivered" on pp.42 to 45 in "Precedents in English Law" by Rupert Cross (III Edition). Bearing the above, we will now examine the cases relied on, for the respondents.

35. In S.K.Ghosh's case, on which strong reliance was placed for the respondents, the facts in brief were these: (i) Sri S.K.Ghosh and A.M.Narula joined service as Postal Superintendents a Class-II service on 9-4-1947 and 11-2-1947 respectively on the basis of a competitive examination. (ii) On 24-5-1958, Government sanctioned creation of Indian Postal Service Class-I with four grades as hereunder:-

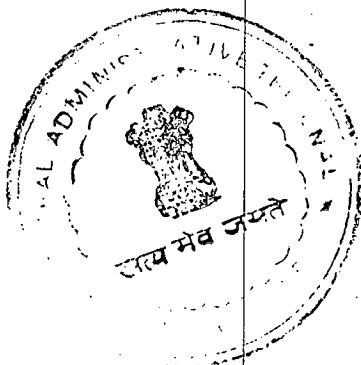
- (1) Directors of Postal Services, Grade-I;
- (2) Directors of Postal Services, Grade-II,
- (3) Senior Time scale, and
- (4) Junior Time scale.

The junior time scale grade was required to be filled by direct recruitment and promotion. In due course Ghosh and Narula were promoted to junior time-scale Class-I service, to which grade there was direct recruitment of others. On that basis they were promoted to higher grades of the service also. The relative



seniority of promotees and direct recruits to the junior time scale and determined in accordance with the Rules framed by Government on 22-6-1949. (iii) The rules of seniority fixed by Government on 22-6-1949 were substantially modified on 22-12-1958 and on the basis of that order the earlier seniority list prepared assigning higher ranks to Ghosh and Narula as also their promotions to Directors of Postal Services Grade-II were revised, assigning them lower ranks. Ghosh and Narula challenged the same before the Supreme Court under Article 32 of the Constitution. (iv) In upholding the challenge of Ghosh and Narula the Supreme Court observed thus:

8. The principles for appointment to the posts of Directors of Postal Services were initially laid down by the Home Ministry's Memorandum dated 24th May, 1948, to which we have already referred. As indicated earlier, it was laid down that appointments to Grade II of the Directors of Postal Services were to be made by promotion by selection of the best officers in the senior time scale of the Indian Postal Services Class-I, seniority being regarded only where other qualifications were practically equal. From the very first stage, therefore, appointments to the posts of Directors of Postal Services were to be made on the basis of merit and not on the basis of seniority. Seniority was to be taken into account only if other qualifications were practically equal. It appears that, after the two grades of Directors of Postal Services were amalgamated, some fresh rules were promulgated. The relevant Rules have been brought to our notice by placing before us extracts from Posts and Telegraphs Manual Volume IV, 4th Edition, in which paragraph 153 mentioned that the rules for recruitment to the grade of Directors of Postal Services in the Indian Postal Service Class-I in the Posts and Telegraphs Department are given in Appendix 6-A. A copy of Appendix 6-A has also been placed before us. The



Appendix bears the heading "Rules for recruitment to the grade of Directors of Postal Services in the Indian Postal Services, Class-I in the Posts and Telegraphs Department" Rule 2 in this Appendix lays down the scale of pay of the post in the grade which is admittedly Rs.1300-60-1600 Rule 3 prescribes the method of recruitment and is as follows:-

"Recruitment to posts in the grade shall be by selection from among the officers of the Senior Time Scale of the Indian Postal Service, Class I, one post being reserved for promotion of Presidency Postmasters, on the basis of selection".

This Rule also makes it clear that appointment to the grade of Directors of Postal Services is made by selection and not on the basis of promotion in accordance with seniority. The presumption exists that the promotion of the petitioners and respondents 3 to 7 to the grade of Directors must have been made in accordance with these instructions and rules, so that the appointment of all these concerned parties as Directors was based on merit to be taken into account at the time of selection and not on seniority in the time scale of Class I Service. Once a member of the Class I Service in the time scale was selected for promotion to the grade of Director and given seniority over another officer selected later, the seniority so determined as a result of selection could not be made dependent on the seniority in the time scale. It is clear that in these circumstances, even if there was justification for revising the seniority inter se of the petitioners and respondents 3 to 7 in the time scale of Class I Service that revision of seniority could not in any way affect their order of seniority in the grade of Directors to which they were promoted on the basis of selection in accordance with the rules. It is, therefore, clear that even if it be held that the order of the Government dated 5th June, 1965 revising the seniority of these officers in the junior time scale was valid, the order dated 17th January, 1966 revising the seniority in the grade of Directors of Postal Services is not valid and justified. The seniority in the grade of Director of Postal Services was not dependent on the inter se seniority in the junior time scale and any alteration in the seniority in the latter could not from the basis

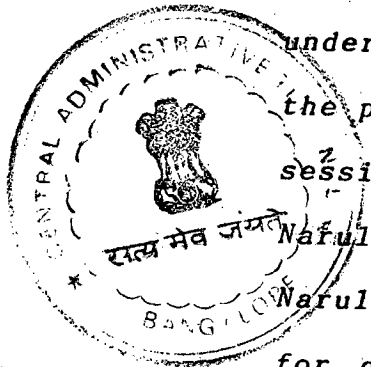


for revising the seniority in the former grade. No other justification for the revision of the seniority in the grade of Directors of Postal Services was put forward on behalf of any of the respondents. It is, thus, clear that the revision of seniority in the grade of Directors of Postal Services by the order dated 17th January, 1966 was not based on any rule or appropriate principle applicable to determination of seniority in that grade, and must, therefore, be held to be totally arbitrary. Such an arbitrary order, which affects the civil rights of the petitioners in respect of future promotion must therefore be struck down as violating Art.16 of the Constitution. Once this order dated 17th January, 1966 is quashed, the petitioners will no longer be affected in future by the revision of their seniority in the time scale of the Service by the order dated 5th June, 1965 and, consequently we have refrained from going into the question of the validity of that order. The petitioners are not claiming any relief on the basis of the invalidity of the order dated 5th June, 1965 which would give to them any additional benefit over and above the relief which they can obtain on the order dated 17th January, 1966 being quashed."



But, this is not the position in the present cases. What had been settled earlier, under the Rules then in force, was sought to be undone under the new Rules which had no application. On this fact-situation the Court made those observations. The Supreme Court nowhere had laid down, that if the very basis for selection disappears as in these cases, then also the Select List cannot be annulled and appropriate directions issued for making a fresh selection. The principles laid down on the facts and circumstances of that case, do not lay down the very broad proposition urged for the respondents. We are, therefore, of the view that Ghosh's case is not an authority for the position urged for the respondents.

36. In Sohan Singh's case, the facts in brief were these: (i) Dr. Sohan Singh, the petitioner and Dr. Harmel Singh, respondent-3 each with their own chequered career were promoted to the selection grade of P.C.M.S.I on 6-5-1966 and 21-5-1969 respectively. On this and other basis, the petitioner claimed that he was senior to respondent-3. (ii) On 21-5-1969, the Government of Punjab promoted respondent-3 as the Director of Health Services. After making a representation against his supersession, which was not decided one way or the other, the petitioner moved the High Court of Punjab and Haryana in a Writ Petition under Article 226 of the Constitution challenging the promotion of respondent-3 and his consequent supersession on diverse grounds, which came up before Narula, J. in the first instance. On 16-12-1971 Narula, J. referred that writ petition to a larger Bench for disposal. (iii) On that reference, the said case came up before a Full Bench consisting of Narula, Sodhi and Bal Raj Tuli, JJ. Bal Raj Tuli, J. while deciding some of the questions, directed Government, to dispose of the representation made by the petitioner, with which Sodhi, J. generally agreed, however expressing the view that the promotion of respondent-3 made on an evaluation of merit, did not call for interference, irrespective of their inter se seniority in the lower cadre. Narula, J. expressing his concurrence with Bal Raj Tuli, J. for directing Government to dispose of the representation of the petitioner,



"In *S.K.Ghosh and another v. Union of India and others* 1968 Services Law Reporter 741, it has been authoritatively laid down by the Supreme Court that even revision of seniority in the time scale cannot in any way effect the order of seniority in a higher grade to which a Government servant might have been promoted on the basis of selection in accordance with the Rules."

This opinion expressed by Narula, J. is not shared by the other two learned Judges who neither refer to the ruling of the Supreme Court in Ghosh's case nor express their opinion on its true ratio and its applicability to the question if any that arose in the case before them. This opinion is only the opinion of Narula, J. and not of the Full Bench. We are of the view that the observations made by Narula, J. do not really flow from the ruling of the Supreme Court in Ghosh's case. Even assuming that those observations flow from the ruling of the Supreme Court in S.K.-Ghosh's case as held by Narula, J. then also for the very reasons stated by us in dealing with Ghosh's case, we hold that those observations also do not really bear on the precise question that arises before us. We are also of the view that the principles enunciated by Narula, J. in Sohan Singh's case, do not really bear on the precise question that arises before us.

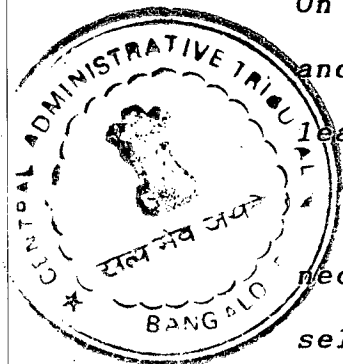
37. In Bhagwantha Rao's case, Bhagwantha Rao who was earlier working as an Assistant Master was appointed as a direct recruit to the post of Special Officer in Hindi. But, notwithstanding the same, he was reverted, as if he was a promotee to the lower

post, on the basis of his seniority in the lower grade which was challenged by him before the High Court. The High Court quashed the reversion on the ground that the very basis for reversion was non-existent and illegal. But, that is not the position in the present cases. The question that arose and was decided in Bhagwantha Rao's case, does not bear on the precise question that arises before us.

38. On the foregoing discussion, we hold that all the three rulings relied on for the respondents, do not really bear on the point and do not persuade us, to take a different view from the one, we have earlier expressed.

39. On our earlier conclusion, it necessarily follows, that we have to quash the Select List prepared by the Selection Committee on 5-12-1986 and approved by the UPSC. If so, then the Notification dated 6-5-1987 of GOI appointing respondents 4, 5 and 9 from the said Select List, which is also subject to the result of these cases, is also liable to be quashed. We cannot on any principle uphold the same. On this and even otherwise, all other questions cannot and do not require our examination. We, therefore, leave them open.

40. From the above, it also follows that we must necessarily direct the authorities to make a fresh selection on the basis of the seniority list, to be drawn up anew, for the number of posts available for that very year and notionally regulate the appointments

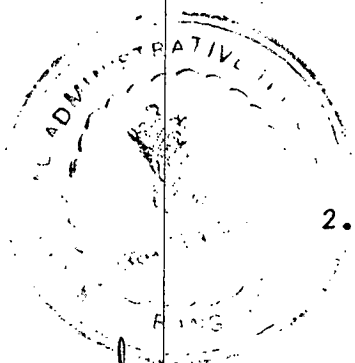


for vacancies that arose thereafter, from time to time, in accordance with the Regulations necessarily denying monetary benefits for those who had not actually performed their duties.

41. The decision of the Supreme Court in Gonal Bhimappa's case was rendered on 11-8-1987. We have no doubt that by this time, the Government of Karnataka has collected all the necessarily material and is in a position to finalise the seniority list in the cadre with expedition. Even otherwise, expeditious preparation of the same is called for with due regard to all facts and circumstances. We consider it proper, to direct the Government of Karnataka to finalise the seniority list with all such expedition as is possible in the circumstances of the case and in any event not later than 31-3-1988 and the Selection Committee of the UPSC to complete fresh selection thereafter, with all such expedition as is possible in the circumstances of the cases and in any event within 2 months from the above date.

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

1. We quash the proceedings of the Selection Committee of the UPSC in File No.F.6/8(1)-/86-AIS dated 5-12-1986 to the extent they make selections of applicant in A.No.252 of 1987 and respondents 4 to 10 only from the State Civil Service and not from the other State Services referred to at paras 7 and 8 of those proceedings.
2. We quash Notification No.F.14015/33/86-AIS(I) dated 6-5-1987 (Annexure-R1) of Government of India appointing respondents 4, 5, and 9 to the IAS on probation.



3. We direct the Government of Karnataka - respondent-3 to prepare and publish the seniority list of KAS-JS updated till 3-12-1986 in accordance with law and the order of the Supreme Court in Gonal Bhimappa's case with all such expedition as is possible in the circumstances of the case and in any event on or before 31-3-1988. As and when that is done by Government of Karnataka and on the basis of the same, the Selection Committee constituted under the Regulations for the State of Karnataka is directed to make a fresh selection to the posts determined as on 4-12-1986 for the calendar year 1987 with all such expedition as is possible in the circumstances of the case and in any event within a period of 2 months thereafter and then submit the same to the UPSC, which is directed to deal with the same in accordance with law.
4. We direct respondents 1 and 2, GOI and GOK respectively to make appointments to IAS from the fresh Select List to be prepared in pursuance of directions in para 42(3) supra for the very vacancies that existed from time to time from 1-1-1987 and onwards, till that Select List was and is in operation in accordance with the Regulations, however, denying them backwages only till they are actually posted for duties, but counting their notional appointments for all other purposes in accordance with law.
43. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.
44. Let this order be communicated to all the parties within 3 days from this day.

Sd/-
VICE-CHAIRMAN

Sd/-
MEMBER(A). 20.1.88

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 15 JUN 1988

IA II IN

APPLICATION NO.S.

252, 437 & 448

/ 87(F)

W.P. NO.

Applicant(s)

Shri M.G. Halappanavar & 2 Ors
To

V/s

Respondent(s)

The Secy, M/o Personnel, Public Grievances,
& Pension, New Delhi & 11 Ors

1. Shri M.G. Halappanavar
Controller of Weights & Measures
No. 1, Ali Asker Road
P.B. No. 175
Bangalore - 560 052

2. Miss R. Satyrthini Sujatha
Revenue Member
Land Reforms Appellate Authority
Bangalore District

3. Shri T. Thimme Gowda
Secretary
Bangalore Development Authority
(BDA)
Kumara Park Extension (West)
Bangalore - 560 020

4. Shri K.R.D. Karanth
Advocate
32, Mangalanagar
Sankey Road Cross
Bangalore - 560 052

5. Shri M. Narayana Swamy
Advocate
844 (Upstairs), Vth Block
Rajajinagar
Bangalore - 560 010

6. Shri R.J. Babu
Advocate
2/1, 1st Main Road
Gandhinagar, Bangalore - 560 009

7. The Secretary
Ministry of Personnel, Public Grievances
& Pension (Dept of Personnel & Training)
North Block
New Delhi - 110 001

8. The Chairman
Union Public Service Commission
Dholpur House, Shah Jahan Road
New Delhi - 110 011

9. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha, Bangalore - 560 001

10. The Commissioner & Secretary
Revenue Department
Karnataka Govt. Secretariat
Multi Storey Building, Bangalore - 1

11. The Development Commissioner
Govt. of Karnataka
Vidhana Soudha, Bangalore - 560 001

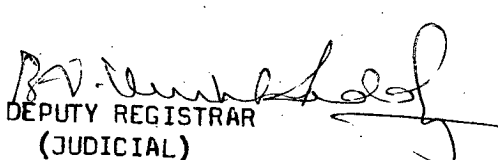
Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 7-6-88.

12. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Encl : As above

13. Shri S.V. Narasimhan
Government Advocate
C/o Advocate General (KAT Unit)


DEPUTY REGISTRAR
(JUDICIAL)

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

ORDER SHEET

Application No. 252, 437 & 448 of 1987(F)

Applicant

Respondent

M.G. Halappanavar & 2 Ors

V/s The Secy, M/o Home Affairs, New Delhi & Ors

Advocate for Applicant

Advocate for Respondent

K.R.D. Karanth, M. Narayana Swamy
& R.J. Babu

M.S. Padmarajaiah
S.V. Narasimhan

Date	Office Notes	Orders of Tribunal
		<p>KSPVC/PSM(A) 7.6.1988.</p> <p><u>Orders on I.A.No.2 (Application for extension of time):</u></p> <p>In this I.A., respondents 3 to 5 (R3 to 5) have sought for extension of time for complying with the directions issued by this Tribunal on 20.1.1988 in A.Nos. 252, 437 and 448 of 1987 (since reported in ATR 1988 (1) CAT 298 M.G. HALAPPANAVAR v. GOVERNMENT OF INDIA) (Halappanavar's case, for short). In our order, we directed the Government of Karnataka to redraw the seniority list in the cadre of Karnataka Administrative Service Class I Junior Scale on or before 31-3-1988, and the Selection Committee of the U.P.S.C. (SC) to make a fresh selection within a period of two months thereafter. In the Special Leave Petitions, the Supreme Court by its Judgment dated 5.5.1988, had affirmed our Judgment, however, reserving liberty to the authorities to move this Tribunal for extension of time.</p> <p>2. In I.A.No.2, respondents 3 to 5 have asserted that the provisional seniority seniority in the cadre had already been published, the objections received thereto are being processed and the same will be finalised and published with expedition, and that to comply with all the directions issued in HALAPPANAVAR's case, they require another five months.</p> <p>3. Shri S.V. Narasimhan, learned Government advocate, appearing for respondents 3 to 5, highlighting the facts and circumstances stated in I.A. No.2, urges for extending the time as sought in I.A.No.2.</p> <p>4. Sriyuths K.R.D. Karanth, M. Narayana-swamy and R.J. Babu, learned Counsel for the applicants, oppose the grant of five months sought in I.A.No.2.</p> <p>5. We have earlier noticed that the matter itself had been taken in SLPs before the Supreme Court and that Court finally disposed of them only on 5.5.88. We are of the view that this fact itself justifies this Tribunal to grant a reasonable time for complying with the directions issued in these cases. Even otherwise, everyone of the developments alluded to in I.A.No.2 also justifies us to grant a reasonable time for complying with the directions issued by this Tribunal. On a consideration of all the facts and circumstances, it is reasonable to extend time for publication of the seniority list till 15.7.1988 and for making a fresh selection by another two months thereafter. But, notwithstanding</p>

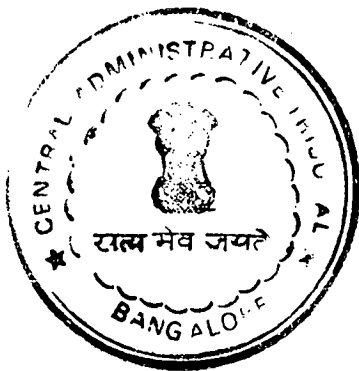


**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**


Order dated 7.6.1988 continued.

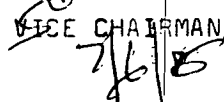
Order Sheet (contd)

Date	Office Notes	Orders of Tribunal
		<p>this, it is necessary to impress upon the authorities that it is in the interests of all the parties and interests of justice that the matters are processed with all such expedition as is possible in the circumstances of the cases.</p> <p>6. In the light of our above discussion we allow I.A. No.2 in part and direct that for complying with the first part of our directions, viz., preparation and publication of the seniority list, we extend time till 15.7.1988 instead of on or before 31.3.1988, and that the other time schedules in our order shall stand and shall be regulated on that basis.</p> <p>7. I.A.No.2 is disposed of in the above terms.</p>



TRUE COPY


 DEPUTY REGISTRAR (JUL 15/88)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE

Sd/-
 VICE CHAIRMAN
 dms. 

Sd/-
 MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

22 SEP 1988

IA III IN APPLICATION NO.S

252, 437 & 448

/ 87(F)

W.P. NO.

Applicant(s)

Shri M.G. Halappanavar & 2 Ors

To

Respondent(s)

V/s The Secy, M/o Personnel, Public Grievances,
& Pension, New Delhi & 11 Ors

1. Shri M.G. Halappanavar
Controller of Weights & Measures
No. 1, Ali Asker Road
P.B. No. 175
Bangalore - 560 052
2. Miss R. Satyrthini Sujatha
Revenue Member
Land Reforms Appellate Authority
Bangalore District
3. Shri T. Thimma Gowda
Secretary
Bangalore Development Authority
(BDA)
Kumara Park Extension (West)
Bangalore - 560 020
4. Shri K.R.D. Karanth
Advocate
32, Mangalanagar
Senkey Road Cross
Bangalore - 560 052
5. Shri M. Narayana Swamy
Advocate
844 (Upstairs), Vth Block
Rajajinagar
Bangalore - 560 010
6. Shri R.J. Babu
Advocate
2/1, 1st Main Road
Gandhinagar, Bangalore - 560 009
7. The Secretary
Ministry of Personnel, Pension &
Public Grievances
(Dept of Personnel & Training)
North Block
New Delhi - 110 001
8. The Chairman
Union Public Service Commission
Dharmapuri House, Shahjahan Road
New Delhi - 110 011
9. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha, Bangalore - 560 001
10. The Commission & Secretary
Revenue Department
Karnataka Govt. Secretariat
M.S. Building, Bangalore - 560 001
11. The Development Commissioner
Govt. of Karnataka
Vidhana Soudha, Bangalore - 560 001

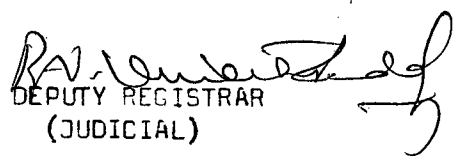
Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 19-9-88.

12. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Encl : As above

13. Shri S.V. Narasimhan
Government Advocate C/o Advocate General (KAT Unit), BDA Commercial Complex
Bangalore - 560 038


DEPUTY REGISTRAR
(JUDICIAL)

**IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL ADDITIONAL BENCH,
BANGALORE**

M. G. Halappaiah & 2 Ors v/s The Secy, M/o Personnel & Pension, IND
A.No. 252/87 c/w 437/87 & 448/87 & 11 Ors

Order Sheet (contd)

M. S. Padmarajiah &
S. V. Narasimha

K. D. Karanth, M. Narayana Swamy

Order Sheet (contd)

Date of entry in Office Notes

Orders of Tribunal

**ORDERS ON I.A.No. 3 - APPLICATION
FOR EXTENSION OF TIME**

In this I.A. respondents 3 to 5 viz. the State of Karnataka and its subordinate authorities have moved this Tribunal to extend the time for complying with the directions made by us on 20.1.1988 and affirmed by the Hon'ble Supreme Court on 5.5.1988.

2. I.A. 3 is opposed by the applicants.

3. In I.A.3 respondents 3 to 5 have asserted that in compliance with our directions in sub-para 1 to 3 of Para 42 of our order, a Final Seniority List in the cadre of K.A.S. Group A Junior Scale Officers has been published on 5.7.1988 and that thereafter the Government of India (GOI) and the Union Public Service Commission (UPSC) have been moved to comply with our directions in sub-para 4 of para 42 but they directed them to seek extension of time.

4. We are distressed at the levity with which the GOI and the UPSC have treated our directions. If the GOI and the UPSC genuinely felt that extension of time was essentially required in the matter they should have in the fitness of things themselves sought for this extension, rather than leave the matter to the Karnataka State Government. But notwithstanding the same, we must now examine whether the request made by respondents 3 to 5 is reasonable or justified.

..... p.t.o.



Date	Office Notes	Orders of Tribunal
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from over-leaf

5. Whatever be the position there is imperative that they should comply with our order with the utmost expedition. Nevertheless taking into account all the circumstances we deem it reasonable to grant as a final chance extension of time till 30.10.1988 to comply with our orders in their entirety.

6. In the light of our above discussion we allow I.A. No. 3 in part and grant extension of time to the authorities to comply with the directions made by us in A.Nos. 252/87 and 437/87^{448/87} as a last and final chance.

7. Let this order be communicated to all the parties concerned with expedition.

Sd/-
(K.S. Puttaswamy)
Vice Chairman

Sd/-
(L.H.A. Rego)
Member (A)

TRUE COPY

Rajivendra Reddy
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 11 NOV 1988

IA IV IN APPLICATION NO.S 252, 437 & 448 /87(F)

W.P. NO. _____

Applicant(s)

Respondent(s)

Shri M.G. Halappanavar & 2 Ors
To

V/s

The Secy, M/o Personnel, Public Grievances
& Pension, New Delhi & 11 Ors

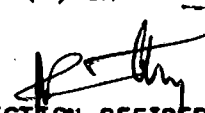
1. Shri M.G. Halappanavar
Controller of Weights & Measures
No. 1, Ali Asker Road
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Bangalore - 560 052
2. Miss R. Satyarthini Sujatha
Revenue Member
Land Reforms Appellate Authority
Bangalore District
3. Shri T. Thimma Gowda
Secretary
Bangalore Development Authority(BDA)
Kumara Park Extension (West)
Bangalore - 560 020
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32, Mangalagar
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844 (Upstairs), Vth Block
Rajajinagar
Bangalore - 560 010

6. Shri R.J. Babu
Advocate
2/1, 1st Main Road
Gandhinagar, Bangalore - 560 009
7. The Secretary
Ministry of Personnel, Pension &
Public Grievances (Department of
Personnel & Training)
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New Block - 110 001
8. The Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi - 110 011
9. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
10. The Commissioner & Secretary
Revenue Department
Karnataka Govt. Secretariat
M.S. Building, Bangalore - 560 001
11. The Development Commissioner
Govt. of Karnataka
Vidhana Soudha, Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 3-11-88.

12. Shri M.S. Padmarajash
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001


SECTION OFFICER
~~RECEIVED~~
(JUDICIAL)

Encl : As above

13. Shri S.V. Narasimhan
State Govt. Advocate, C/o Advocate General (KAT Unit), BDA Commercial Complex
Indiranagar, Bangalore - 560 038

(25)

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

M.G. Halappanavar & 2 Ors

V/s The Secy, M/o Personnel, Public Grievances &
Order Sheet (contd) Pension, New Delhi & 11 Ors

K.R.D. Karanth, M. Narayana Swamy & R.J. Babu

M.S. Padmarajiah & S.V. Narasimhan

Date	Office Notes	Orders of Tribunal
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A.NOS.252/87 c/w 437 & 448/87

(KSP)VC/(LHAR)M(A)
NOVEMBER 3,1988.

ORDER ON I.A.NO.IV
FOR EXTENSION OF TIME

In this application, respondents 3 to 5 have sought for extension of time granted by us on 20-1-1988 which has been later extended till 30-10-1988 by another two months from 1-11-1988.

Sri S.V.Narasimhan, learned Government Advocate appearing for respondents 3 to 5 urges for granting the requisite extension.

3. Sriyuths M.Narayanawamy and M.S.Bhagwath, learned counsel for the applicants pray that this application be kept pending till the Hon'ble Supreme Court decides on the continuance or otherwise of the ex-parte interim order made in Writ Petition Nos. 850, 890 and 889 of 1988.

4. In the order made by us on 20-1-1988 we directed the authorities to comply with various directions within the time allowed in that order which has later been extended till 30-10-1988. But, even before the expiry of that time, on the very issues involved in these cases, the Hon'ble Supreme Court in Writ Petitions Nos. 850, 889 and 890 of 1988 had made an interim order on 27-9-1988 which reads thus:

Issue notice. Counter affidavit may be filed within four weeks. List the petition for further hearing after the decision in the case which has been referred to the Constitution Bench wherein it is alleged that similar points as involved in the present case are under consideration.



Date

Office Notes

Orders of Tribunal

Pending notice, returnable, in the 2nd week of November, 1988, status quo as on to-day will be maintained.

On the terms of this order, the question of our extending time does not at all arise. On this, we consider it unnecessary to keep this application pending as prayed for by Sriyuths Narayanaswamy and Bhagwath.

5. In the light of our above discussion, we hold that this application is liable to be rejected. We, therefore, reject this application.



Sd/-

VICE-CHAIRMAN.

Sd/-

MEMBER (A)

TRUE COPY

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

D.No. 1808-10/88 IVA

SUPREME COURT OF INDIA
NEW DELHI

Dated 26.7.88

From:

The Additional Registrar
Supreme Court of India
New Delhi

To

~~XXXXXXXXXXXX~~ The Central Administrative Tribunal
~~XXXXXXXXXXXX~~ Bangalore (Karnataka)
xx

3437-39, 4125-27/88
2540-42/88 & 3462-64/88

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS.

(Petition under Article 136 of the Constitution of India

for Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated the 20th January, 1988 of the ~~xxxx~~
~~XXXXXXXXXX~~ Central Administrative Tribunal, Bangalore in Appln.
Nos. 437 & 448 of 1987(F)

State of Karnataka & Ors

....Petitioner^s.

Vs.

M.G.Halappanavar & Ors

....Respondents.

Sir,

I am to inform you that the Petitions above-mentioned for
Special Leave to Appeal to this Court was filed on behalf of the
Petitioner above-named from the Judgment and Order of the
High Court noted above and that the same was dismissed/

~~XXXXXXXXXX~~ ----- by this Court on the 5th
day of May, 1988.

Order

A certified copy of this Court's ~~XXXXXXXXXX~~ dated
the 5th May, 1988 is enclosed herewith for your

information and necessary action.

Yours Faithfully,

for ADDITIONAL REGISTRAR

239/Ind/11
Date 3/8/88

130245

Certified to be a true copy
[Signature]
Assistant Registrar
22.6.1988
Supreme Court of India

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NOS. 3437-39, 4125-27 OF 1988

State of Karnataka & Ors. etc.

... Petitioners

Versus

M.G. Halappanavar & Ors. etc.

... Respondents

(WITH SLP (C) Nos. 2540-42/88 & SLP (C) 3462-64/88)

O R D E R

Heard learned counsel for parties in support and in opposition in this group of special leave petitions which are directed against the decision of the Central Administrative Tribunal, Bangalore. We find no merit in the contentions raised in these petitions as the direction given by the Tribunal is on the basis of the decision of this Court in Gonnal Bhimappa's case (1987 Suppl. SCC 206) where a direction was given to prepare a fresh seniority list and we have been told that the same has already been circulated and objections have been invited with a view to finalising the list.

Dr. Y.S. Chitale, counsel appearing for the State concedes that the implementation of our decision in Bhimappa's case required a total redrawing of seniority list and at this point of time it is difficult to say as to which particular officer will figure at which place in the seniority list. In that view of the matter, in principle, the Tribunal is right in directing that the entire process has to be redone.

Two questions which have been raised before us are :

(1) In regard to some of the officers holding promotional or higher posts who in the event of the seniority list being

redrawn may be adversely affected, may be allowed to continue on their higher posts. Since it appears that the process of finalisation may take some time, there is no objection to allow these officers to continue in the higher posts on ad hoc basis. In case they are selected, certainly they shall continue in the higher posts and in case they are not selected, certainly they shall be pushed down from the promotional posts.

(2) The second point is in regard to the time required for redrawing the seniority list. In this regard the Tribunal has given time till 31st March, 1988 for redrawing seniority list. In case it is felt necessary that there should be extension of time, the State is at liberty to approach the Tribunal for extension of time and we hope that the Tribunal will give necessary direction in that event. We express no opinion at present regarding the fresh seniority list.

Special leave petitions are disposed of accordingly.

.....J.
(Ranganath Misra)

.....J.
(Murari Mohon Dutt)

New Delhi;
May 5, 1988.

All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name
Telegraphic address :—
"SUPREMECO"

*Recd. by post
2/8/00*

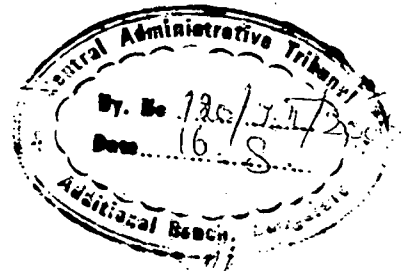
**SUPREME COURT
INDIA
NEW DELHI**

D.No. 1808-10/88/ SC/IV-A

Dated: 24.7.2000

From:

Assistant Registrar,
Supreme Court of India,
New Delhi.



To

The Central Administrative Tribunal
Bangalore (Karnataka)

OA 252/87

C.M.P. No. 29003-29005/88

(Application for Direction)

And

C.M.P. No. 31244-31246/98

(Application for initiating contempt proceedings)

IN

Special Leave Petition No. 3437-3439 of 1988

State of Karnataka

..Petitioners

- Versus -

M.G.Halappannavara & Ors.

.. Respondents

Sir,

I am to inform you that the Interlocutory Applications above mentioned have been disposed of by this Hon'ble Court, on 17.7.2000.

This is for your kind information. Yours Faithfully,

[Signature]
ASSISTANT REGISTRAR

AT, Blore

*SLP Nos. 3437 to 3439/88 and 3440/88 were disposed of
dt. 2.1.88 in C.A.S. 252437 & 448/87 were disposed of
on 5.5.98. Present letter is only about CMPS. disposed of
Hence add present to file of C.A. 252/87 & copies to other files
A Add copy of S.C. of killing of 26.7.88 to other files
also a note. Present disposal of CMPS
need not be taken for
purposes of
12/8/00*