

CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH
 * * * * *

Commercial Complex (BDA)
 Indiranagar
 Bangalore - 560 038

Dated : 12 OCT 1988

APPLICATION NO.

621

88(F)

W.P. NO.

Applicant(s)

Shri P. Madhavan

To

Received with
V/s
advocate's Copy also

B. Madhavan
(P. Madhavan)
13.10.88

1. Shri P. Madhavan
 405-A, 4th Cross
 7th Main, Gokul
 Yashwantpur
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2. Dr M.S. Nagaraja
 Advocate
 35 (Above Hotel Swagath)
 1st Main, Gandhinagar
 Bangalore - 560 009

3. The Director General
 Defence Estates
 Ministry of Defence
 West Block
 R.K. Puram
 New Delhi - 110 066

Respondent(s)

The Director General, Defence Estates,
 M/o Defence, New Delhi & 2 Ors

4. Shri I.P. Parashar
 Cantonment Executive Officer
 Chakrathla Cantonment
 Uttar Pradesh

5. Shri A.C. Ratan
 Cantonment Executive Officer
 Subathu/Jutogh
 Cantonment Board
 Subathu - 173 206
 District Solan
 Himachal Pradesh

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

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/JUDGMENT ORDER
 passed by this Tribunal in the above said application(s) on 29-9-88.

Encl : As above

*YK/Red
K. Arayya
13-10-88*

9.C.

J. Lee
 SECTION OFFICER
 REGISTRATION
 (JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

Dated the 29th day of September, 1988.

Present

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

APPLICATION NO. 621 OF 1988 (F)

Shri P. Madhavan
405-A, 4th Cross,
7th Main, Gokul,
Yeshwantpur,
Bangalore-22

.. Applicant

(Dr. M. S. Nagaraja, Adv. for applicant)

-vs.-

1. The Director General
Defence Estates, Ministry of
Defence, West Block,
R.K. Puram,
New Delhi-110 066
2. Shri I.P. Parashar,
Cantonment Executive Officer
Chakratha Cantonment, U.P.
3. Shri A.C. Ratan,
Cantonment Executive Officer
JUTOG & DHAKSHAI Cantonment,
Simla Dist. Himachal Pradesh. ... Respondents.

(Sri M.S. Padmarajaiah, Sr. Standing Counsel for
Central Govt. for respondent-1)

This application coming on for hearing,
Hon'ble Shri L.H.A. REGO, MEMBER(A), made the
following:



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order

ORDER

The applicant prays herein, mainly, that the Orders promoting Respondents (R) 2 and 3, to the post of Cantonment Executive Officer, Group 'B' (CEO 'B' for short) with effect from 14 and 17-9-1987 respectively, be quashed being illegal and violative of the quota rule; that R-1 be directed to promote him as CEO 'B' retrospectively, with effect from 16-7-1987, with consequential financial benefit; that R-1 be directed to rectify the Seniority List of Initial Constitution of the Defence Estates Service (SL, for short) drawn up as on 4-1-1988 under Rule 4 of the Defence Estates Service (Cantonment Executive Officer) (Group B) Recruitment Rules 1987 ('1987 Rules' for short) (Ann.A-3), by incorporating the name of the applicant therein, at the appropriate place, according to the quota rule; and that R-1 be directed to delete from the said SL, the names of those erroneously shown therein.

2. The following background, delineates the salient features, to help resolve the questions raised in this application. The applicant entered service as a Lower Division Clerk on 4-7-1961, in the General Reserve Engineering Service, in the Border Development Organisation, on 4-7-1961. After discharge from that Organisation, he joined in the same capacity, in the Office of the Assistant Director, Military Lands and Cantonments, Jammu and Kashmir, Udaipur, on 4-7-1964, his previous service in the Border Development Organisation being counted, for all purposes, in the latter Organisation. In course of time, he was promoted as

Upper Division Clerk and confirmed therein, with effect from 8-12-1969. He was promoted as Technical Assistant and posted in the Directorate General, Defence Lands and Cantonment, New Delhi, on 19-10-1979, in which capacity, he worked upto 31-7-1981. He was confirmed in this post, with effect from 2-9-1984. He was further promoted as Office Superintendent, Grade II and posted in the Office of the Deputy Director, Defence Lands and Cantonments, Bhatinda on 1-8-1981. On 6-6-1988, he was promoted as Office Superintendent, Grade I, in the All India Defence Estates Service^{as} in the Defence Estates Office, Karnataka Circle, Bangalore ^{as} post, which he is currently holding. He is due to retire on superannuation, on 30-9-1992.

3. According to SRO 65, the Union Ministry of Defence, by its Notification dated 11-2-1983, promulgated under Section 280 of the Cantonments Act, 1924, the Military Lands and Cantonments (Cantonment Executive - Officer) Service (Group 'B') Rules, 1983 ('1983 Rules', for short) (Annexure A-1). These Rules came into force, from the date of their publication in the Official Gazette i.e., with effect from 26-2-1983. They repealed the earlier Rules, known as The Military Lands and Cantonments Service (Group 'A' and Group 'B') Rules, 1951 ('1951 Rules', for short), as amended from time to time, (which were also promulgated under Sec. 280 of the Cantonments Act, 1924), in so far as they related to posts, to which the 1983 Rules, were applicable.



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4. The applicant states, that he was eligible according to the 1983 Rules, to appear for the common competitive examination prescribed therein, for eventual regular promotion as CEO 'B', in the Military Lands and Cantonment Service (MLCS, for short), within the quota stipulated under these Rules. He avers, that he appeared for the common competitive examination, held on 4th and 5th August, 1983 and passed the same.

5. A meeting of the Departmental Promotion Committee ('DPC', for short), was held on 2-12-1983, for considering promotions to the grade of CEO 'B', under the 1983 Rules, from amongst the eligible Group 'C' employees, of the erstwhile Military Land and Cantonment Organisation (now designated as the Defence Estates Organisation), who had passed the common competitive examination, held on 4th and 5th August 1983. However, before the recommendations of the DPC, could be implemented, after due approval by the competent authority, the Department is said to have received, a spate of representations from such of the employees, who were already holding the posts of CEO 'B', on an ad hoc basis, by virtue of their having passed the common qualifying examination, from time to time, as prescribed under the 1951 Rules. They could not however be promoted as CEOs 'B' on a regular basis, on account of pendency of writ petitions filed by some of them, in the High Courts and due to the relevant SL having been struck down, by the High Court of Judicature Delhi, in 1975. The above CEOs 'B', were earlier directed by the Department, to appear for the competitive examination

prescribed under the 1983 Rules, to merit regularisation in that post. The Department examined the matter in its entirety, in the light of the above representations and felt, that the ^{same} required reconsideration and therefore, with the approval of the competent authority, decided to amend the 1983 Rules suitably, to safeguard their interests. It also took a decision, with the approval of the competent authority, to defer consideration of the recommendations of the DPC (which met on 2-12-1983), under the 1983 Rules, till the employees who were eligible for regularisation as CEOs 'B', under the repealed 1951 Rules were duly regularised.

6. Consequently, a new set of rules, known as The Defence Estates Service (Cantonment Executive Officer) (Group 'B') Recruitment Rules, 1987 (1987 Rules, for short) (Ann. A-2), came to be promulgated as SRO 65, under Article 309 of the Constitution, by the Union Ministry of Defence, according to its Notification dated 11-2-1983. These were published in the Official Gazette, on 26-12-1987, with effect from which they came into force.

7. The following officers, appointed as CEOs 'B' on an ad hoc basis, under the 1951 Rules, since as long back as 1974, who were aggrieved at their not having been regularised in that post, even though they had passed the qualifying examination prescribed under the 1951 Rules, moved the various High Courts and obtained orders, to stay their reversion from the posts of



CEOs 'B', until their cases were finally decided. As they had already passed the common competitive examination prescribed in the 1951 Rules, to be eligible for promotion to the posts of CEOs 'B', on a regular basis, and as their cases could not be considered in that regard, as the DPC meetings could not be convened at the proper time, owing to pendency of their writs in the various High Courts, these officers in respect of whom the relevant details are furnished below, chose not to appear for the competitive examination, held under the 1983 Rules:

S.No.	Name of the Officer	Service to which belonged	The High Court in which he had filed the Writ Petition in 1983.
(1)	(2)	(3)	(4)
S/Shri:			
(i)	M.S.Sharma ..	MLCs	Delhi
(ii)	B.K.Gupta ..	MLCs	-do-
(iii)	K.I.Singh ..	MLCs	Allahabad
(iv)	A.H.Ramesh ..	MLCs	Bombay
(v)	P.V.Sathaye ..	CBS	-do-
(vi)	B.R.Dharmadhikari ..	CBS	-do-

NB: CBS means, Cantonment Board Service.

8. The applicant alleges, that the recommendations of the DPC, which met on 2-12-1983, were not acted upon by the respondents, for wholly unjustified reasons. However, he adds, that in reply to Unstarred Lok Sabha Question No.1895, the then Union Minister of State for

Defence, had stated, that the recommendations of the said DPC were being processed. He states, that he hopefully awaited the outcome but his hopes were belied and in the meanwhile, the 1987 Rules, came to be promulgated.

9. He further states, that soon thereafter on 4-1-1988, a SL (Ann.A-3) of CEOs 'B', came to be published under Rule 4 (Initial Constitution) of the 1987 Rules, showing therein, the names of the employees regularised in accordance with those Rules. He alleges, that statutory rules were violated and the assurance given by the then Union Minister of State for Defence, as above, was ignored, while drawing up this SL and a series of irregularities were also committed, in the apportionment of vacancies, between the original two distinct streams, namely the MLCS and the CBS, in gross disregard of the quota prescribed, under the 1983 Rules.

10. The 1983 Rules were in operation, from 26-2-1983 to 25-12-1987. According to the applicant, all employees appointed as CEOs 'B', in the erstwhile MLCS and CBS on a regular basis, on the date of promulgation of the 1983 Rules, should have been deemed to have been appointed to the service, under Rule 6 of those Rules, relating to "initial constitution" of the service and thereafter, the remaining vacancies, either unfilled or arising in the future, should have been filled in, by promotion from amongst Gr. 'C' employees of designated categories, in equal proportion between the two original streams viz., the MLCS and the CBS, in accordance with Rule 6 ibid, relating to "future maintenance" of the service.



11. The applicant complains, that even after promulgation of the 1983 Rules, the vacancies were not properly apportioned, between the above two streams, under Rule 6 ibid, but were filled in arbitrarily.

12. The applicant refers to the case of one Shri P.V. Raghavan, belonging to the CBS, who had appeared for the competitive examination held on 4th and 5th August, 1983 under the 1983 Rules, and had passed therein like the applicant. But, as he was not considered and recommended by the DPC and was not promoted on a regular basis, to the post of CEO 'B', he filed an application (O.A.No.241 of 1986), before the Hyderabad Bench of the Central Administrative Tribunal. The applicant avers, that this application was decided by that Bench on 1-12-1986 (Ann.A-5) in favour of Shri Raghavan. He further states, that earlier, in its interim order dated 12-11-1986 (Ann.A-4), that Bench had directed the respondents, to appoint Shri Raghavan, on an ad hoc basis, to one of the vacant posts of CEOs 'B' and continue him therein, as long as his juniors continued in these posts. This interim order of the Bench, he states, became absolute, when it finally decided the application on 1-12-1986 (Ann.A-5), in favour of Shri Raghavan, who was deemed to have been regularly appointed as CEO 'B', with effect from 3-2-1987, in the "initial constitution" of the service and consequently, his name, he says, was shown at S.No.39/22 of the SL at Ann.A-3. The applicant asserts, that his case is similar to that of

Shri Raghavan and therefore, he was under the hope, that his case too, would be favourably considered by the respondents, as in the case of Shri Raghavan, but he alleges, that this hope was belied, for reasons best known to them and he was thus discriminated against.

13. The applicant points out, that subsequent to the regularisation of Shri Raghavan as CEO 'B', as above, two more vacancies in the post of CEO 'B' occurred, which were filled in, with effect from 14-7-1987 and 17-7-1987 by appointing R2 and R3 therein respectively (Ann. A6 and A7, respectively). He alleges, that these appointments were made arbitrarily, disregarding the apportionment of vacancies, in the ratio of 50%:50% between the respective two streams, viz., the MLCS and the CBS, as specified in the 1983 Rules.

14. He explains, that the SL referred to above, clearly reveals, that out of the total number of 24 posts, in the cadre of CEOs 'B', only 10 posts were allotted to the MLCS, as against 14 to the CBS, instead of apportioning them equally. He alleges, that as a result, undue favouritism was shown to the employees in the CBS, at the ^{costs} of those in the MLCS. He states, that the Department admitted before the Hyderabad Bench of the Central Administrative Tribunal, at the time of the hearing of the aforesaid O.A.No.241 of 1986, that 2 vacancies were available to the MLCS for promotion to the grade of CEO 'B'. R-2 and R-3, who belong to the CBS, he alleges, were irregularly appointed, against the two vacancies



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in this grade of CEO 'B', meant for the MLCS, on account of which, his promotion to that grade, on a regular basis, was affected, which was illegal.

R-2 and R-3 appear at S.Nos.40/23 and 41/24 respectively, in the aforementioned SL.

15. The applicant states, that in the panel drawn up by the DPC, at its meeting held on 2-12-1983, his name was next to that of Shri P.V. Raghavan, and therefore, asserts, that he ought to have been appointed regularly as CEO 'B', against the quota earmarked for the employees in the MLCS. According to him, Shri Raghavan belonging to the CBS, has been adjusted against the 10th post earmarked for the MLCS. He, further states, that Shri K.I. Singh of the MLCS (S.No. 16/1 of the SL), who is on long leave, and Shri M.S. Chauhan of the CBS (S.No.37/20 of the SL) and Shri M. Sellamuthu of the MLCS (S.No.18/3 of the SL), have been appointed against the 10 posts (out of the 12 posts earmarked for the MLCS).

16. The applicant avers, that he had requested R-1 in writing, on 20-1-1988 and 3-2-1988 (Anns. A8 & A9 respectively) to reexamine the matter in its entirety and rectify the error in regard to apportionment of vacancies, according to the 1983 Rules and to appoint him as CEO 'B' regularly, in a suitable vacancies earmarked for the MLCS. As he waited for a reasonably long period but there was no response thereto, he states, that he was constrained to approach this Tribunal, through his present application for redress.

17. Appearing for the applicant, Dr. M. S. Nagaraja learned Counsel, submitted, that prior to the 1987 Rules, the following Rules were in operation, for the period shown against them:

	<u>Period</u>
(i) The 1951 Rules ..	Upto 25-2-1983
(ii) The 1983 Rules ..	From 26-2-1983 to 25-12-1987.

18. He invited attention specifically, to Rule 5(b) of the 1951 Rules, which had a crucial bearing on the case before us, he said. The relevant portion of this Rule is extracted below:

"5(b) Appointment to group B Cadre of the Service, other than to the post of Assistant Military Estates Officers (Technician) shall be made in the following manner, namely:

(1) Upto 20% of the vacancies in Group B, by promotion from among the serving Group C staff of the Military Lands and Cantonments Service, having service and educational qualifications specified in sub-rules (c) and (e);

(2) Upto 20% of vacancies by direct recruitment made by a selection from among serving employees of Cantonment Boards having service and educational qualifications specified in sub-rule (d) and (e).

(3) The remaining vacancies from among the candidates who qualify at the examination and are recommended by the commission but who fail to secure Group A appointment in any of the Central services."

19. According to Rules 5(c) and (d) ibid, Group 'C' employees of the designated category, in the MLCS and the CBS respectively, have to put in 15 years of continuous service, as specified therein,



and are required to possess the minimum educational qualification viz., Matriculation or its equivalent and shall pass the common qualifying departmental test, as prescribed in Rule 5(e) ibid to be eligible for promotion to the Group B cadre of the service. The said Rule 5(e) reads as under:

"5(e) (1) A person who belongs to Group C staff of the Military Lands and Cantonment Service or who is an employee of a Cantonment Board and who fulfils the conditions prescribed in sub-rules (c) and (d), as the case may be, shall pass a common qualifying departmental test, before he can be considered,

(i) in the case of Group C staff of the Military Lands and Cantonments Service, by a duly constituted Departmental Promotion Committee, for promotion to Group B cadre of the Service, and

(ii) in the case of employees of any Cantonment Board by the Commission for appointment to Group B cadre of the service by selection on the basis of records and interview.

(2) No person shall be permitted to appear for the common qualifying test under this sub-rule, more than four times. A candidate shall be required to obtain 50 per cent of the total marks in Hindi Paper and 66 per cent in each of the other Papers for a pass in that Paper. A candidate who fails to obtain the pass marks in any Paper shall be required to sit again only in the Paper in which he has failed."

20. Dr.Nagaraja pointed out, that according to the recommendations of the Administrative Reforms Committee of the Government of India and the III Central

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Pay Commission, direct recruitment to Group 'B' of the Central Service, including the MLCS, was stopped since 1976. He submitted, that all substantive vacancies, as also long-term temporary vacancies, could be filled in under Rule 5(b) of the 1951 Rules. According to him, short-term vacancies were to be filled in, by promotion on ad hoc basis, from among employees of the MLCS and CBS or by transfer on deputation of Group 'B' officers, of the Central and the State Governments.

21. He then invited our attention to Rules 6 and 7 of the 1983 Rules, in so far as they were relevant to the case before us. The relevant portion is extracted below:

"6. Initial constitution of the Service.-

(1) All Officers appointed to the posts of Cantonment Executive Officers (Group B) in the erstwhile Military Lands and Cantonments Service on regular basis on the date of commencement of these rules shall be deemed to have been appointed to the Service.

Note:- The regular continuous service of officers mentioned in sub-rule (1) prior to their appointment to the Service shall count for the purposes of qualifying service for promotion, confirmation and pension in the Service.

(2) To the extent the authorised regular strength in the service is not filled at the time of the initial constitution, it shall be filled in accordance with rule 7.

7. Future maintenance of the Service.-(1) After the initial constitution of the Service has been completed by the appointment of officers in accordance with rule 6 vacancies shall be filled in the manner as hereafter provided.

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(2) 50 per cent of the vacancies in the Service shall be filled by promotion from Office Superintendent Grade I, Office Superintendents Grade II and Technical Assistants, who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years of total regular service. The selection shall be made on the basis of the examination held by the Director General, Military Lands and Cantonments in accordance with the scheme of examination as may be prescribed by the Government from time to time. The maximum number of chance which would be availed of by a candidate will be restricted to three.

(3) The remaining 50 per cent vacancies in the Service shall be filled by transfer from among the employees of the Cantonment Boards drawing a basic salary of not less than Rs. 425 per month who have passed the Matriculation Examination from a recognised University/Board/School or equivalent and have rendered 20 years continuous service in the Cantonment Board. The selection shall be made on the basis of the examination held by the Director General Military Lands and Cantonments in accordance with the scheme of the examination as may be prescribed by the Government from time to time. The maximum number of chances which could be availed by a candidate will be restricted to three.

Note: While computing 20 years' of qualifying service, experience of an employee in any other Department of the Central Government will be taken into account, provided he has been permanently absorbed in the Military Lands and Cantonments Service/Cantonment Board, as the case may be."

22. According to Rules 6 and 7 ibid, Dr.Nagaraja asserted, that all officers appointed on a regular basis as CEOs 'B' under the 1951 Rules, were to be deemed to have been appointed by way of "initial constitution" of the service, on the date of commencement

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of the 1983 Rules and thereafter, the vacancies either unfilled or arising in the future, were to be apportioned equally, among designated category of Group 'C' employees, between the two streams viz., the MLCS and — the CBS.

23. Dr.Nagaraja argued, that all vacancies in Group 'B', which arose upto 25-2-1983 (i.e., a day prior to the promulgation of 1983 Rules) fell in three broad categories viz., (i) substantive vacancies (ii) long-term temporary vacancies and (iii) temporary short-term vacancies. According to him, in the first two categories, the vacancies were to be filled in, with reference to the quota specified in Rule 5(b) of the 1951 Rules, while in respect of category (iii), no such quota was prescribed and the vacancies were required to be filled in exclusively, from among Group 'C' staff available or by transfer on deputation. He alleged, that the Department did not adhere to this statutory requirement and thus violated the 1951 Rules. Even after the 1983 Rules came into force, this irregularity continued, he said, as the vacancies were filled in, in a fancy-free manner.

24. The 1983 Rules, he said, were being processed since 1975 and until they actually came into effect, on 26-12-1983, promotions to the post of CEO 'B', he stated, were granted on an ad hoc basis, during the intervening period. There was thus no regular appointee to the post of CEO 'B', after 1974 he contended. Substantive vacancies however occurred



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in the meanwhile, he said, owing to reasons such as: promotion of certain employees to Group 'A', demise of some and retirement of others. 24 posts of CEOs 'B' he pointed out, were available to be filled in, under the 1983 Rules, as indicated in Rule 4 thereof. These posts he claimed, ought to have been equally apportioned, between the MLCS and the CBS, direct recruitment to Group 'B' having ceased since 1974.

26. He asserted, that the natural corollary was, that the employees promoted to the posts of CEOs 'B', on an ad hoc basis, had to make place for those empanelled by the DPC on 2-12-1983. In this context, he contended, that the argument of the Department, that no posts of CEOs 'B' were vacant, as on the date of empanelment by the DPC was specious, considering that no employee was promoted to this post on a regular basis, from the year 1974.

27. Even assuming for the sake of argument, (without however conceding the claim of the applicant) Dr. Nagaraja contended, that the employees promoted to the posts of CEOs 'B', on an ad hoc basis, were to be considered for regularisation under the 1983 Rules, there were yet two posts lying vacant, against one of which he asserted, his



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client could be considered. Elaborating his contention, he explained, that out of the 24 posts of CEOs 'B', shown as available to be filled in under Rule 4 of the 1983 Rules, MLCS was entitled to 12 posts, by way of equal apportionment between the MLCS and the CBS. As against these posts, he contended, that only 10 posts were filled in, on an ad hoc basis, from among the MLCS, leaving thereby, a remainder of 2 posts, against one of which, his client could have been easily accommodated.

28. R2 and R3 (at S.Nos.40/23 and 40/24 of the SL at Ann.A-3 respectively) he said, were appointment to the post of CEOs 'B' on an ad hoc basis, as late as on 14-7-1987 and 17-7-1987 respectively and both of them belonged to the CBS. They had thus usurped he said, the vacancies meant for the MLCS, which was in flagrant violation, of the quota apportioned equally between the two streams, even though in their letters of appointment (Anns A-6 and A-7 respectively) it was categorically stated, that their appointment was temporary and purely on ad hoc basis for a period of six months. Strange enough, he averred, they were regularly inducted into the service, by way of "initial constitution", under the 1987 Rules, in violation of the statutory requirement.

29. He further submitted, that Anns.A-6 and A-7 referred to above, had specified that R2 and R3 respectively, would be governed by the 1983 Rules. As both of



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them had not passed the common competition examination, prescribed under the 1983 Rules, to become eligible for regular promotion to the post of CEO 'B', he urged, that they could not have been rightly promoted as CEO 'B', on a regular basis and instead, such of the employees of the MLCS (for whom the vacancies in question were earmarked) who had passed the said competitive examination under the 1983 Rules, should have been considered for regular promotion to these posts. The 1987 Rules had come into effect on 26-12-1987 and therefore, R2 and R3 could not have been regularised in the post of CEO 'B', on 16-7-1987 and 17-7-1987 respectively, with reference to the 1983 Rules, he argued.

30. Inviting our attention to Rules 4(2) and (3) of the 1987 Rules, Dr. Nagaraja pleaded, that they were violative of the provisions of the Constitution of India, on the premise, that according to the General Law, provisions of a rule framed under an Act, were to be construed, as if the provisions of the rule were contained in the principal Act itself. Rule 4 of the 1987 Rules, is extracted in full below, to help examine its implication in its entirety:

"4. Initial Constitution.—(1) All officers appointed to the posts of Cantonment Executive Officers (Group 'B') in the erstwhile Military Lands and Cantonments (Cantonment Executive Officers) Service (Group 'B') on regular basis on the date of commencement of these rules shall be

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deemed to have been appointed to the Service.

Note: The regular continuous service of officers mentioned in sub-rule(1) prior to their appointment to the Service shall count for seniority, confirmation, promotion and pension.

(2) Thereafter, all vacancies, which remained unfilled upto 25th February 1983 including vacancies falling in the quota of direct recruits as per rule 5(b) of the Military Lands and Cantonments Service (Group A and Group B) Rules, 1951, shall be filled by appointment of such of the employees, as were found suitable for such appointment on the basis of the examinations held under Rule 8 of the Military Lands and Cantonments (Class I and Class II) Rules, 1951 but were not appointed to the post of Cantonment Executive Officer (Group B) on regular basis.

(3) All vacancies becoming available due to promotions of the officers of the Service to Junior Scale of Group 'A' under rule 6(2) of the Indian Defence Estate Service (Group A) Rules, 1985, upto 25th February 1983 shall also be filled in the manner as provided in sub-rule(2) above.

(4) Thereafter vacancies shall be filled in appointment of such of the employees, as were found suitable or such appointment on the basis of the examination held in August, 1983 under rule 7 of the Military Lands and Cantonments (Cantonment Executive Officers) Service (Group 'B') Rule, 1983.

(5) To the extent the authorised regular strength in the service is not filled at the time of the initial constitution it shall be filled in accordance with the Schedule."



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31. Developing his point further, he contended, that according to Section 6 of the General Clauses Act, repeal or amendment of an Act, cannot affect any right or privilege acquired or obligation or liability, devolving under any enactment, which is repealed or amended. Furthermore, he argued, that the amendment to a Rule or Act, could only be prospective and not retrospective in effect. Besides, he contended, that the 1983 Rules, could not have been left in a state of "suspended animation", till the promulgation of the 1987 Rules i.e., for a period of nearly 4 years, solely to accommodate certain employees, to the detriment of his client, who had fully qualified himself and was eligible under the 1983 Rules, to be regularly promoted to the post of CEO 'B'. He cited the ruling of the Hyderabad Bench of the Central Administrative Tribunal in O.A. No. 241 of 1986 (vide para 12 above), in respect of Shri Raghavan, in support of his client, whose case he affirmed, was on all fours, with that of Shri Raghavan.

32. Dr. Nagaraja also sought to highlight the distinction, between the nature and the importance of the examination prescribed in the 1951 Rules, vis-a-vis the 1983 Rules, for promotion to the

post of CEO 'B', on a regular basis. While in the case of the former, it was a mere qualifying examination, in the case of the latter, it was a competitive examination, he asserted. The competitive examination, he argued, entailed greater rigour and strain and a higher degree of assessment of an employee's performance and therefore he pleaded, that the passing of the competitive examination, should be viewed as of greater merit, as compared to the qualifying examination. On this ground, he said, his client had a valid claim to be considered for regular promotion to the post of CEO 'B', under the 1983 Rules, on the basis of empanelment by the DPC, at its meeting held on 2-12-1983. R2 and R3, he pointed out, had not passed the competitive examination and therefore, could not be regularly promoted as CEO 'B', stating that ^{they} were governed by the 1983 Rules.

33. Dr. Nagaraja relied on the following rulings, to buttress the claim of his client:

- (1) 1983 SCC(L&S)382(Y.V.RANGAIAH & ORS. v. T.SREENIVASA RAO & ORS.);

In this case, the State of Andhra Pradesh had delayed drawing up of the panel for promotion from the post of Lower Division Clerk (LDC) to that of Sub Registrar Grade II, by a year, after the pertinent rules were amended. The amendment precluded LDCs, from being considered along with the Upper Division Clerks, for promotion to the grade of Sub Registrar, Grade I.

This affected adversely the prospect of promotion of eligible LDCs, who were superseded by their juniors, in the panel drawn up, according to the amendment. It was held by the Supreme Court that the vacancies in the promotional posts, occurring prior to the amendment should have been filled in, in accordance with the rules prior to their amendment.

(2) II(1988) ATLT(CAT) DE(SN) 29 DELHI
(PURNENDRA KUMAR SHARMA v. U.O.I. & ORS.):

The petitioner herein, worked on ad hoc basis since 1978 and was holding the post of a Drama Producer since 12-6-1976 and continued upto 10-3-1981. He claimed regular appointment with effect from 19-12-1976 i.e. on expiry of 6 months, under the 1980 Recruitment Rules. The Rules were revised in 1981 which were detrimental to the applicant. The Tribunal held, that the 1980 Rules should apply to vacancies occurring prior to the 1981 Rules.

(3) 1988 III SVLR(L) 136 (P.GANESHWAR RAO AND ORS. -v.- ANDHRA PRADESH & ORS.):

This case related to filling in, the vacancies among Assistant Engineers in the Andhra Pradesh Panchayat Raj Engineering Service(Special) Rules, 1963 as amended by a G.O.M. on 28-4-1980. The Supreme Court held in the case, that it would not be legal to undertake direct recruitment, to the post of Assistant Engineer

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under the amended Rules, against temporary vacancies even if they were, at an earlier date, earmarked for the direct recruits.

34. Dr.Nagaraja urged in the light of the above rulings, that his client could not be deprived of one of the vacancies, in the posts of CEOs 'B', which were available under the 1983 Rules, to him, prior to promulgation of the 1987 Rules.

35. Respondent No.1 has filed his reply resisting the application.

36. Private respondent, ~~Respon~~ R-3 who was ~~he was~~ duly served, ~~neither~~ present nor represented by Counsel. Notice was issued to private respondent, ~~Respon~~ R-2 as early as on 28-4-1988, to which there has been no response. For the reasons stated by us in our Order dated 14-9-1988, we have in the light of Rule 11(8) of the Central Administrative Tribunal (Procedural) Rules, 1987, dispensed with the service of notice on him.

37. Shri M.S.Padmarajaiah, learned Senior Standing Central Government Counsel appearing for R-1, iterated the background, to the promulgation of the 1987 Rules, as narrated in paras 5 to 7 above. He stated, that the SL of the CEOs 'B', was published on 4-1-1988(Ann.A-3), strictly in accordance with the 1987 Rules. The 1951 Rules, he said, had to be replaced

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by the 1983 Rules, consequent to the decision taken by the Government of India, to stop direct recruitment to Group 'B' i.e., to the cadre of CEOs 'B', in this case. Under the 1951 Rules, he submitted, 60% of the total vacancies in the cadre of CEO 'B', was earmarked for direct recruitment. The 1983 Rules were promulgated, he said, to provide for filling in of those additional vacancies which became available to the employees, both in the MLCS as well as the CBS. Until such time, the 1983 Rules came into force, he said, the posts of CEOs 'B', had to be filled in, on an ad hoc basis, in administrative interest, from among those eligible in Group 'C', both in the MLCS, as well as the CBS. He affirmed, that the vacancies in the post of CEO 'B', which occurred from 1974, inclusive of those earmarked for direct recruitment, under the 1951 Rules, were filled in, as prescribed by Rule 4 of the 1987 Rules, relating to "Initial Constitution".

38. While drawing up the SL of the CEOs 'B' as a consequence, which was pending on 4-1-1988 (Ann.A-3), he said, that the quota apportioned between the MLCS and the CBS, was strictly adhered to. He stated, that the applicant had erroneously computed the vacancies, apportioned between the MLCS and the CBS, on the basis of the SL at Ann.A-3. He clarified, that such of the officers who had died/resigned/left service or retired, during the period 1974 to 1987, did not appear in the above SL.

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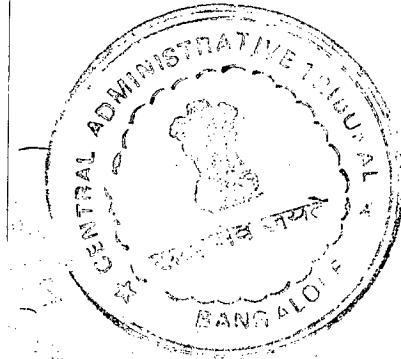
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39. According to Rule 4 of the 1987 Rules (vide para 30), he submitted, all vacancies in the cadre of CEO 'B', were to be filled in, first from amongst the employees found eligible, for promotion, on the basis of passing the common qualifying examination under the 1951 Rules, and thereafter, the vacancies either unfilled or arising in future, were to be filled in, from amongst employees found eligible for promotion, on their passing the common competitive examination held in August 1983, under the 1983 Rules. All persons who have been shown in the SL, as published on 4-1-1988 (Ann. A-3), he said, were appointed against the vacancies, which became available upto 25-2-1983 i.e., a day prior to the 1983 Rules, coming into force. No clear or substantive vacancy was available, he stated, on and from 26-2-1983, so as to help accommodate the remaining employees who were eligible under the 1951 Rules, e.g., Sarvashri P.L.Sharma, K.K.Raj and O.P. Mishra. The applicant, he pointed out, had passed the competitive examination under the 1983 Rules, but not the qualifying examination under the 1951 Rules.

40. Shri Padmarajiah pointed out, that the matter was discussed in its entirety by the Director General, Defence Estates, New Delhi, with the authorities concerned, and directed, that the Defence Estates Service (DES, for short) be "constituted initially" under the 1987 Rules, on the following guidelines:

"(i) All the available vacancies upto 25.2.83, be first apportioned as per quota prescribed under the 1951 Rules;

(ii)



(ii) Thereafter, the vacancies of DR quota available upto 25-2-1983 be apportioned in the ratio of 1:1, as provided in the 1983 Rules;

(iii) The officers so filled against the quota vacancies available from (i) and (ii) above be assigned seniority from the date of occurrence of vacancies or from the date of appointment, whichever was later;

(iv) Where vacancies could not be filled in, either as per quota or as per the ratio mentioned at (i) and (ii) supra, they be filled in, in terms of Rule 4(2) of the 1987 Rules i.e., all the remaining officers who had qualified under the 1951 Rules be regularised; and

(v) Any vacancies which were still left after the exercise as above, be filled in by the candidates who had qualified under the 1983 Rules.

41. Shri Padmarajaiah then gave an analysis of the occurrence of permanent vacancies and explained the manner in which they were filled in. He indicated, that in all, there were 29 permanent posts in Gr. 'B' upto 21-10-1982, which were reduced to 24 from 22-10-1982 onwards, 28 vacancies arose during the period from 18-12-1965 to 10-11-1980 out of the above 29 posts, which remained to be filled in, on a regular basis. Out of these 28 vacancies, 16 were allotted to the Direct Recruit(DR) quota and the rest 12, to the promotion quota (DP).

42. Shri S.R.Nayyar of the CES(S.No.11 in the ~~SLT~~ was appointed on 11-6-1976, in one vacancy, in the DR quota, leaving a remainder of 15 vacancies, as on 21-10-1982.

RD

43. As a result of reduction in the strength of Group 'B' posts, with effect from 20-10-1982, from 29 to 24, 3 posts were deducted from the DR quota and one each from the MLCS and CBS quota.

44. Consequent to reduction in strength of the posts as above, two officers viz., Shri B.S.Verma from the CBS (S.No.12 in the SL) and Shri B.K.Gupta of the MLCS (S.No.17/2 of the SL), came to be adjusted within the 15 DR vacancies. Shri Padmarajaiah informed us, that out of the remaining 11 vacancies in the DR quota, 6 were allotted to the employees of the CBS and 5 to those of the MLCS (vide Table 3 in para 17 of the reply of R-1). From the details furnished by Shri Padmarajaiah, it appears, that out of the 16 vacancies in the DR quota, 8 were allotted to the CBS and 6 to MLCS i.e., in all 14 vacancies. It is not clear to us, as to what happened to the remaining 2 vacancies earmarked initially for the DRs.

45. Dr.Nagaraja questioned the accuracy of the details of the apportionment of vacancies, furnished by the R-1, in Table 6, in para 20 of the reply of R-1. According to him, the vacancies at S.Nos.4, 5, 7 and 11 therein, were allotted to the employees of the CBS and not to the MLCS, as shown in that statement. Shri Padmarajaiah could not enlighten on this matter.

46. Shri Padmarajaiah refuted the statement of Dr.Nagaraja, that the case of Shri P.V.Raghavan in O.A. No.241 of 1986 (vide para 12 above) was on all fours



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to that of his client. He clarified, that Shri Raghavan was promoted to the post of CEO 'B', on the basis of the common qualifying examination passed by him under the 1951 Rules and not on the basis of the competitive examination held in August 1983 under the 1983 Rules in which too, he had passed. The applicant he asserted, had passed only the competitive examination under the 1983 Rules, but not the qualifying examination under the 1951 Rules and therefore, he could not be considered eligible for any of the permanent posts of CEO 'B', which had occurred prior to 26-12-1983 i.e., the date on which the 1983 Rules came into force. Besides, no substantive vacancy had occurred to date, in the ^{44 of} post/CEO 'B' he affirmed, after 26-2-1983.

47. We have examined the rival contentions carefully and have also gone through minutely, the relevant record placed before us. The case was heard by us at length for two full days namely, on 14-9-1988 and 16-9-1988.

48. After we concluded the hearing of this case, on 16-9-1988, Shri Padmarajaiah, on our direction, produced some days later, a statement showing the dates of occurrence of vacancies, in the cadre of CEO 'B' upto 25-2-1983, furnishing a copy thereof to the Counsel for the applicant. Shri S.K.Srinivasan ^{on behalf of} appearing ^{on}/Dr.M.S.Nagaraja, Counsel for the applicant, requested, that the case may be recalled for being "spoken to", as he desired to make some submissions,



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on the aforesaid statement furnished by Shri Padmarajaiah. Accordingly, the case was posted on 27-9-1988 for being "spoken to". Sri Srinivasan appearing for Dr.M.S.Nagaraja, urged on 16-9-1988, that R-1 had not correctly depicted the apportionment of vacancies, in Table 6 in para-20 of his reply, in that, the vacancies at S.Nos.4, 5, 7 and 11 therein, were actually allotted to the CBS and not to the MLCS, as shown in the Table. Shri Padmarajaiah could not enlighten us, as to the correctness or otherwise of this submission of Sri Srinivasan (vide para-45 above).

49. Sri Srinivasan further submitted, that it was clearly specified in the order of appointment issued by R-1 on 23-6-1987, that the appointment of R2 and R3 to the posts of CEOs 'B' (Ann.A6 and A7 respectively), would be governed by the 1983 Rules, as amended from time to time. He urged, that his client was entitled to the vacancies in the posts of CEOs 'B', which were available to be filled in, according to the 1983 Rules, by virtue of having passed the common competitive examination held under those Rules, and having been empanelled for the post of CEO 'B' by the DPC, at its meeting held on 2-12-1983. He stressed, that R2 and R3 were not eligible to be considered for appointment as CEOs 'B', under the 1983 Rules, as they had not appeared for the competitive examination prescribed under those Rules. He further submitted, that the 1981 Rules could not take retrospective effect, to give



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undue advantage to R2 and R3.

50. Shri Padmarajaiah refuted the above contentions of Sri Srinivasan, asserting that both R2 and R3 were regularly appointed to the post of CEO 'B', by way of "initial constitution" of the service, strictly in accordance with the provisions of the 1987 Rules.

51. At the request of Sri Padmarajaiah, the matter was adjourned by us to 28-9-1988, for being further "spoken to", to enable him to examine the matter in depth, in the light of the submissions made by Counsel for the applicant on 27-9-1988, when the case was first recalled and "spoken to", at the latter's request.

52. Accordingly, we heard both the sides on 28-9-1988 at length. Sri Padmarajaiah could not, however, yet enlighten us, on the discrepancies pointedly brought to his notice, when the case was "spoken to", in regard to filling in of vacancies earmarked for direct recruitment. He could not also reconcile the disparities pointed out by the Counsel for the applicant, in regard to allotment of vacancies to S.Nos. 4, 5, 7 and 11, in Table 6, of para-20, of the reply of R-1 (vide para 45 above).

53. On a specific query by us, as to whether R2 and R3 were appointed as CEOs 'B', in July 1987 under "initial constitution" of the service, only



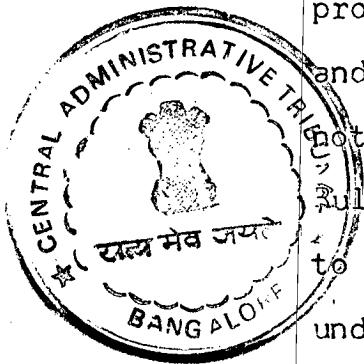
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by virtue of their having passed the common qualifying examination prescribed under the 1951 Rules, without having been duly assessed by a competent DPC, as required under those Rules, Shri Padmarajaiah confirmed that they were not so assessed by the DPC.

54. It is therefore apparent, that quite some discrepancies in the entire case, have yet remained unreconciled, despite the case having been recalled twice, by both sides, for being "spoken to" and as a result, the entire picture seems to be nebulous.

55. In our view the main factors that have given rise to the problem in the instant case are:

The Department took as long as nine years or so, to repeal the 1951 Rules, after the Government of India, decided some time in 1974, to stop direct recruitment to Group 'B' posts, including that of CEO 'B'. Then again, the operation of the 1983 Rules, which repealed the 1951 Rules, subject to Rule 15 of the former Rules was virtually set at naught, owing to a spate of writ petitions filed, in the various High Courts, by some of the employees, who had passed the common qualifying examination under the 1951 Rules, and were promoted to the post of CEOs 'B' on an ad hoc basis and were working therein for a long spell, but were not regularised in that post. And lastly, the 1987 Rules, did not take into account the posts of CEO 'B' to which such employees were legitimately entitled under the 1951 Rules.



56. Once the Government of India took a conscious decision some time in 1974, to discontinue direct recruitment to the Gr. 'B' posts, inclusive that of CEO 'B', none of the employees either in the MLCS or the CBS, were legitimately entitled to 60% of the posts earmarked for direct recruitment under the 1951 Rules, according to Rule 5(b)(3) to such of the candidates who qualified at the examination and were recommended by the Union Public Service Commission, but who failed to secure Grade 'A' appointment in any of the Central Services. It is not clear from the 1951 Rules, as to whether this qualifying examination, was the same, as that prescribed for the employees of the MLCS and the CBS, according to Rule 5(c) ibid. Besides, according to the said Rule 5(c), the employees in the MLCS, who acquit themselves in the qualifying examination, are to be considered by a duly constituted DPC, while their counterparts, on so passing that examination, are to be considered by the Union Public Service Commission.

57. Once the Government of India took a decision, to stop direct recruitment to 60% of the posts of CEO 'B' (according to Rule 5(b) of the 1951 Rules), sometime in 1974, these vacancies could not ipso facto, go to the employees, either in the MLCS or the CBS, until by a proper statutory repeal/amendment to the 1951 Rules. This, ⁴ the Department did, as long as after nearly 9 years. It is a well known maxim, that law dislikes delay - lex reprobat moram.

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58. Reading the three sets of Rules viz., the 1951, 1983 and the 1987 Rules conjointly, taking duly into account their context, the object, their collocation and their general congruity, with the concept or the object, they sought to articulate and other relevant considerations, in our view, the Department should have taken recourse to the following course of action, in regularising the appointment to the posts of CEOs 'B' at the respective stages of implementation, of the above three sets of Rules:

- (i) All employees, both in the MLCS as well as in the CBS, should have been regularised in the posts of CEOs 'B', within the quota of 20% each, allotted to them under the 1951 Rules, subject to fulfilment of Rule 5(c) to (e) thereof, and availability of substantive vacancies;
- (ii) On the implementation of the 1983 Rules, with effect from 26-2-1983, the employees both in the MLCS and the CBS, who were regularly appointed to the posts of CEOs 'B', under the 1951 Rules, should have been deemed to have been regularly appointed, by way of "initial constitution" of the service, under Rule 6 of the 1983 Rules;
- (iii) Such of the substantive vacancies meant and available, for both the MLCS and CBS employees, in the posts of CEOs 'B' under the 1951 Rules, but which for one reason or the other,



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were not filled in, even though these employees were eligible according to Rules 5(c) and (d) respectively, should have been apportioned between these employees, according to Rule 7 of the 1983 Rules, relating to "future maintenance of the service";

(iv) Such of the vacancies (60%) in the posts of CEOs 'B', earmarked for direct recruitment under Rule 5(b)(3) of the 1951 Rules, (but which was stopped from 1974 or so), and in which, some of the employees, both in the MLCS and the CBS were appointed on an ad hoc basis, should have been filled in, under the 1983 Rules, in accordance with Rule 7 thereof.

59. The 1987 Rules are said to have been brought into effect, to safeguard the interests of such of the employees who had passed the common qualifying examination under the 1951 Rules, and who were working in the posts of CEOs 'B' on an ad hoc basis for long, but could not be ~~be~~ regularised therein, for one reason or the other. These employees could have been considered for regularisation, in the post of CEO 'B', only within the quota earmarked for them under Rule 5(b)(1) and (2) of the 1951 Rules, provided the posts were substantive and they had fulfilled the pre-requisites specified in Rules 5(c) to (e) ibid and not otherwise. They had no legitimate claim in regard to the 60% posts of CEOs 'B', earmarked for direct recruitment under Rule 5(b)(3), even though they had passed the common qualifying examination under the 1951 Rules.

60. The very preamble of the 1987 Rules, shows, that it saves action done or omitted to be done, before the 1987 Rules superseded the 1983 Rules. It is not indisputable, that the common competitive examination, for regular promotion to the post of CEO 'B', was held under the 1983 Rules, on 4 and 5.8.1983 and that the DPC met on 2-12-1983, to consider empanelment of candidates, according to Rule 7 of the 1983 Rules. But, the entire matter seems to have been ~~left~~ kept in limbo, instead of taking to its logical conclusion, ostensibly because, some of the employees who had successfully undergone the common qualifying examination, prescribed for the post of CEO 'B' under the 1951 Rules, and were appointed in that post on an ad hoc basis, for quite long, under those Rules, but were not subsequently regularised, had represented their case to the Department, to regularise them in the posts of CEOs 'B', in preference to those, who had only passed the common competitive examination, as prescribed for this post, under the 1983 Rules, but not the common qualifying examination prescribed under the 1951 Rules. In our view, this contention of the employees was ill-founded, for the reasons aforementioned (vide paras 56 to 59), if they were aspiring for promotion, on a regular basis, as CEOs 'B', in the 60% posts, earmarked for direct recruitment under Rule 5(b)(3) of the 1951 Rules, consequent to discontinuance of direct recruitment since 1974 or so, for which they had no legitimate claim under the 1951 Rules.



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61. The Department has not been able to present to us a factual and coherent picture, of the occurrence of substantive vacancies in the cadre of CEO 'B', yearwise upto 25-2-1983 i.e., a day prior to the promulgation of the 1983 Rules.

The Guidelines given by the Director General, Defence Estates, New Delhi, for "initial constitution" of the Defence Estates Service, under the 1987 Rules (vide para 40 above), seem to be at variance, with the course of action indicated by us, in para-58 which, in our view, is the right and legal course to be followed, by a true and harmonious construction of all the three sets of Rules, read conjointly. Besides, Shri Padmarajaiah could not reconcile the discrepancies, in the filling in of posts as pointed out by Dr.Nagaraja (vide para 45). As such, we are of the considered view, that the Department has to redetermine, apportionment of substantive vacancies in the cadre of CEOs 'B' in question, in the light of the course of action suggested by us, in para 58 subra.

62. In the light of what we have discussed above, the rulings relied upon by Dr.Nagaraja (vide paras 33 and 34 above) to strengthen his case, seem apposite.

63. In the result, we make the following orders and directions:

(1) We set aside the Order promoting R2 and R3, to the posts of CEOs 'B', with effect from 14-7-1987 and 17-7-1987, respectively.

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(2)

(2) We direct R-1, to redetermine apportionment of substantive vacancies in the cadre of CEO 'B', in accordance with the course of action outlined by us in para 58 above.

(3) We further direct, that the Seniority List drawn up as on 4-1-1988 (Ann.A-3), be re-drawn in keeping with the course of action indicated by us, in para 58 above.

(4) We grant a period of 4 months for compliance with this Order, until which, R2 and R3 may be continued in their present posts, treating their apportionment as fortuitous.

(5) If the applicant succeeds as a result of implementation of this Order, he may be given notional benefit of promotion to the post of CEO 'B', from the date he was actually due (without however giving him the benefit of arrears, not having shoul- dered responsibility in that post) fixing his pay to date, appropriately, with due regard to the accrual of increments.

64. The application is disposed of in the above terms. No order as to costs.



Sd/-
(K. S. PUTTASWAMY)
VICE CHAIRMAN

TRUE COPY

29/11/1988

Sd/-
(L. H. A. REGO)
MEMBER (A)
29.11.1988

SECTION OFFICER
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ADDITIONAL BENCH
BANGALORE