

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 14 DEC 1988

APPLICATION NO.

707/88 (T)

W.P. NO.

9814/84

Applicant(s)

Dr. T. Thimmaiah
To

Respondent(s)
U.O.I. by Secy, Ministry of
Home Affairs, DPAR, New Delhi
& O.o.s.

1). Sh. Dr. T. Thimmaiah, IAS.

No: 18/2, II Cross,
Nandi Durga Extension,
BANGALORE.

(4) The Secretary
UPSC,
Dholpur House,
New Delhi.

2) Sh. M. Narayana Swamy,

Advocate,
No: 844 (UPSLAW)
Y Block, Rajaji Nagar,
Bangalore - 10.

(5) The Chief Secretary,
Govt. of Karnataka,
Vidhana Soudha,
Bangalore.

(3) The Secretary,
Ministry of Home Affairs,
DPAR,
New Delhi.

(6) Sh. M.S. Padmarajiah,
C.G. S. C.,
High Court Bldgs.,
Bangalore - 1.

(7) Sh. S. M. Babu
S. L. C. Court Advocate
c/o Advocate (General
(KAT Unit)
Indiranagar,

S. M. Babu
Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

15/10/88
Please find enclosed herewith the copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) u/s 14/12/88 Blore 38

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15.10.88

Encl : As above

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SECTION OFFICER
DEPUTY REGISTERS BDA
(JUDIC.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 14th day of December, 1988

Present

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

APPLICATION NO.707 OF 1988(T)

Dr.T.Thimmaiah, I.A.S.,
56 years,
No.18/2, II Cross,
Nandi Durga Extension,
Bangalore.

.. Applicant.

(By Sri M.Narayanaswamy, Adv.for the Applicant)

-vs.-

1. Union of India
by its Secretary
Govt.of India,
Ministry of Home Affairs,
DPAR, NEW DELHI.

2. Union Public Service Commission,
by its Secfetary,
Dholpur House,
New Delhi.

3. State of Karnataka
by its Chief Secretary,
Vidhana Soudha,
Bangalore.

.. Respondents.

(Sri M.S.Padmarajaiah, Sr.Standing Counsel for
Central Government, for R-1 and 2;
" S.M.Babu, Govt.Advocate for R-3)



This

This application coming on for hearing, the Hon'ble Mr.L.H.F.Rego, Member(A), made the following:

O_r_d_e_r

In this writ petition, transferred by the High Court of Judicature, Karnataka under Sec.29 of the Administrative Tribunals Act, 1985 and registered anew, as an application, before this Tribunal, the main prayer is, to quash the impugned Letter dated 17-5-1983 (Annexure-B) addressed by respondent(R) 1 to R-3, indicating, that the year of allotment (YOA, for short) assigned to the applicant, as 1969, to the Indian Administrative Service ('IAS') cadre of Karnataka, does not necessitate change and to assign 1959, as YOA to the applicant, with all consequential benefits.

2. The following is the salient background to this , with particular emphasis, on the service curriculum vitae of the applicant. He joined service as an Assistant Geologist, in the non-State Civil Service ('NSCS' for short) in the State of Karnataka on 7-3-1953. The applicant states, that he was appointed to a "senior post", since 15-2-1958, in the NSCS, when he was promoted as the Principal, School of Mines, Kolar Gold Fields and claims, that this

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post is equal to, if not higher than the post in the senior scale i.e., a "senior post", in the IAS cadre, in regard to the nature of duties and responsibilities involved.

3. The applicant was appointed to the IAS cadre, by "selection", under Regulation 3 of the IAS (Appointment by Selection) Regulations, 1956, ('ASR', ... for short), with effect from 29-10-1979 and allotted to the Karnataka State cadre of the IAS. He was assigned 1969, as the YOA in that cadre, in accordance with the provisions of Rule 3(3)(c) of the IAS (Regulation and Seniority) Rules, 1954, ("RSR", ... for short) in consultation with the Union Public Service Commission (UPSC, for short). He superannuated from the IAS, in the ordinary course, on 8-5-1982.

4. The applicant claims, that R-1 should have allotted to him, at least 1959, as his YOA, taking into account, that he had continuously served in a "senior post", right from 15-2-1958, which was equal to, if not higher than a "senior post", in the IAS cadre, from the point of view of the nature of duties and responsibilities, attached thereto. He states, that he had represented the matter to the concerned authorities, but to no avail, ~~as~~ on account of which, he was constrained to file a writ petition in the High Court of Judicature, Karnataka,

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which has since been transferred to this Tribunal and is now before us for consideration.

5. R-1 and R-3 have filed their reply before the High Court of Judicature, Karnataka, countering the writ petition.

6. Shri M.Narayanaswamy, learned Counsel for the applicant, endeavoured to unfold the case of his client, with reference to relevant provisions of the rules/regulations relating respectively to recruitment, appointment by selection/promotion to the IAS and regulation of seniority, governing his case. These are reproduced below to facilitate reference at a glance:

(1) The IAS (Recruitment) Rules, 1954
('RR' for short):

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre,--(1)
The Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service.

(2) The Central Government may, in special circumstances and on the recommendation of the State

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Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the service any person of outstanding ability and merit serving in connection with the affairs of the State Civil Service or that State but who holds a gazetted post in a substantive capacity."

(2) The IAS (Appointment by Promotion) Regulations, 1955 ('APR' for short):

"5. Preparation of a list of suitable officers.- (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 greater.

(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):

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Provided also that the Committee shall not consider the case of a member of the State Civil Service unless, on the first day of January of the year in which it meets he is substantive in the State Civil Service and

has



has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government."

(3) The IAS (Appointment by Selection) Regulations, 1956 ('ASR' for short):

"3. Eligibility, mode of selection and appointment to the service.-

(1) In accordance with the provision contained in sub-rule(2) of rule 8 of the Recruitment Rules, the State Government may, from time to time, consider the cases of persons not belonging to the State Civil Service but serving in connection with the affairs of the State or States in the case of Joint Cadres, who -

(i) are of outstanding merit and ability; and

(ii) have completed not less than 8 years' of continuous service under the State Government or in the case of a Joint Cadre, under any one of the State Governments constituting the Joint Cadre, in a gazetted post involving duties comparable in importance and responsibility to that of the State Civil Service, and who is holding that post in a substantive capacity and propose the name of officers suitable for appointment to the Service.

Provided that the State Government shall not ordinarily consider the cases of persons who have attained the age of 52 years.

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(4) On their being finally approved by the Commission, appointments of such officers to the Service shall be made by the Central Government."

(4) The IAS(Regulation of Seniority) Rules, 1954 ('RSR' for short):

"3. Assignment of year of allotment.—

(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

xxx xxx xxx
xxx xxx xxx

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be—

(a) where the officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held;

(b) where the officer is appointed to the Service by promotion in accordance with sub-rule(1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of those rules who officiated continuously in a senior post for a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date



earlier than the date on which any of the officer recruited to the Service in accordance with Rule 7 of these rules so started officiating, shall be determined ad hoc by the Central Government in consultation with State Government concerned:

Explanation 1.— In respect of an officer appointed to the service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later:

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xx xx xx

Rule 3(3)(c): where the officer is appointed to the Service by selection in accordance with sub-rule(2) of rule 8 of the Recruitment Rules, such year as may be determined ad hoc by the Central Government on the recommendation of the State Government concerned and in consultation with the Commission:

Provided that he shall not be allotted a year earlier than the year of allotment of an officer appointed to the Service in accordance with sub-rule(1) of rule 8 of the Recruitment Rules, whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State."

7. He then evolved the strategy of his argument resourcefully, around Letter dated 6-10-1980 (Ann.A) addressed by R3 to R-1, recommending 1959, as the YOA to his client. This is a

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crucial

crucial document, the contents of which are reproduced below, in so far as it relates to the applicant, as it is the coping stone, on which Shri Narayanaswamy, seeks to build the edifice of his case:

"Government of India

No.DPAR 76 SAS 80 Karnataka Govt. Secretariat, Vidhana Soudha, Bangalore, dt. 6th Octr. 1980.

From

The Chief Secretary to the Government of Karnataka Bangalore.

To

The Secretary to Govt. of India, Ministry of Home Affairs, Department of Personnel & A.R., New Delhi.

Sir,

Sub: IAS - Karnataka - Seniority of S/shri Dr.T.Thimmaiah, L.B.Mannikatti and K.M.Koti- Non-S.C.S. Officers appointed to Indian Administrative service by selection.

Ref: The G.O.I., MHA,DPARs Letter No.14015/60-79 AIS(I) dated 16-8-1980.

The years of allotment of the above mentioned non-SCS Officers appointed to the I.A.S. have to be determined in accordance with the provisions of Rule 3(3)(c) of the Indian Administrative Service(Regulation of Seniority) Rules, 1954 read with the H.M.A., DPARs Circular No.14014/48/79 AIS(I) dated 6th June 1978.

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Dr.



Dr.T.THIMMAIAH:

2. As the Government of India are aware, the year of Allotment and Seniority of an officer not belonging to the State Civil Service appointed to the Indian Administrative Service by selection in the promotion quota have to be determined on ad hoc basis. In taking on ad hoc decision each case will have to be considered on merit as the conditions of service of officers not belonging to the State Civil Service will vary from department to department, as such it would not be possible to bring them in any general category to conform to a set of guideline for determining the year of Allotment and seniority under the Indian Administrative Service Regulations and Seniority Rules. However, for the purpose of determining the relative positions, the continuous length of Government Service of an officer appointed by selection and the length of service in the State Civil Service of the officer promoted from the category of State Civil Service are only relevant as per the provision of Clause 'C' of Rule 3(3) of the Rules, Dr.Thimmaiah commenced Government Service on 7-3-1953 while Shri R.Thippoji Rao who has since retired from service, started officiating in the state Civil Service on 18-10-1954. Alloting Dr.Thimmaiah to an year earlier to 1969 to which Shri R.Thippoji Rao was allotted does not therefore offend the proviso to the above said Rule.

3. In this connection, I would point out that an officer not belonging to the State Civil Service is appointed to the IAS by selection only when he is considered to be an officer of outstanding ability vide Rule 3 of the Indian Administrative Service(Appointment by Selection) Regulations 1956. While in the case of State Civil Service Officers who are graded 'very good' and 'Good' also get promotion vide sub-rule 5 of Rule 5 of the

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IAS(appointment by Promotion) Regulations, an officer not belonging to State Civil Service, is invariably one of outstanding merit and ability. The higher merit in respect of such officer should necessarily be reflected in determining his year of allotment and seniority. From this point of view, the State Government's proposal to allot Dr.Thimmaiah to an year earlier to that of Shri Thippoji Rao, who had even otherwise commenced his State Civil Service late than Dr.Thimmaiah's Government Service is justified.

4. Dr.Thimmaiah was specially sponsored by the State Government to ensure that the Karnataka Cadre of the Indian Administrative Service is enriched by his technical and managerial expertise. He is at present doing duty as Deputy Commissioner of a District and acquitting himself very creditably in the job. Any discouragement to the officer by way of down grading his Year of Allotment and Seniority will only act as a damper to him, possibly resulting in his opting out of the IAS, as he is still on probation. The State Government are very particular that such a contingency should not be allowed to happen.

5. I would further point out that Dr.Thimmaiah started service in a senior duty post right from 15-2-1958. The positions held by him from that day are either equal to or higher than the duties and responsibilities attached to any post one on the IAS Cadre in the senior scale. He should therefore, be considered to have discharged duties and responsibilities equal to those in the posts of IAS Senior Scale from 15-2-1958, and as a result, he would be entitled to be allotted to an year much earlier to 1959. The State Government have, however, restricted its proposal to the year 1959 as reasonable. Any further lowering of the Year of allotment may not be considered as fair for the officer.

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6. Taking all these factors into consideration, the State Government strongly reiterate that Dr.Thimmaiah be allotted to the year 1959 as already recommended and his seniority fixed on that basis.

Yours faithfully,

Sd. xx xx
Chief Secretary
to the Government of Karnataka,
Bangalore."

8. In order to complete the picture, it is relevant to extract below, Letter dated 17-5-1983 (Ann.B) addressed by R-1 to R-3, in the matter, explaining the rationale of assigning 1969, as the YOA to the applicant. The following is the extract:

"No.14014/58/79-AIS(1)

DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS,
MINISTRY OF HOME AFFAIRS,
NEW DELHI, the 17th May, 1983.

To

The Chief Secretary to
Government of Karnataka,
Bangalore.

Sub: IAS- Karnataka- Seniority of Dr.T.Thimmaiah, Non-State Civil Service Officer appointed to IAS by selection.

Sir,

I am directed to refer to this Department Notification No.14815/26/78-AIS(I) dated 29-10-1979 appointing Dr.T.Thimmaiah, a non-State Civil Service Officer of Karnataka, to IAS by selection and to say that the question of fixation of his year of allotment in accordance with the provisions

of Rules 3(3)(c) of the IAS (Regulation of Seniority) Rules, 1954 read with this Department letter No. 14014/48/77-AIS(I) dated 6-6-1978, has been examined in consultation with the Union Public Service Commission, New Delhi.

2. According to the information furnished by the Government of Karnataka, Dr. T. Thimmaiah had held the following posts prior to his appointment as IAS:

		Non-Gazetted Class I or Class II.
	Rs.	
1. Principal, i) 500-700 School of Spl. pay Mines, KGF. Rs. 75/-		15-2-1958 Class-I to 14-6-1978.
ii) 600-1000 Spl. pay Rs 75/- from 1-1-1951		
iii) 700-1100 from 1.1.1978		
2. Director i) 1300-1800 of School Spl. pay of Mines Rs. 200/- p.m. K.G.F. from 1.1.1970		15-6-1970 Class-I to 28.9.1972
3. Officer on i) 1300-1800 Special - +SP. Rs. 200/- Duty, Edn. from 1.1. & Youth 1970. Service Dept. ii) 2000-100- 2500* S.P. Rs. 200 p.m. from 1.1.1977		26.8.1972 Class-I to 18.1.1973
4. On deputation as Managing Director, Mys. Minerals Ltd.	-do-	11.1.1973 Class-I to 23-9-1975
5. Director of Mining Edn. School of Mines, KGF.	-do-	24-9-1975 Class-I to 26-9-1975
6. On deputation as Chairman-cum-Managing Director, Mys. Minerals.	2000-10- 2500* Spl. pay Rs. 200 p.m. from 1.1. 1977.	27-9-1975 Class-I till appointment to IAS.



It is found that Dr.T.Thimmiah has been held a post equivalent to or higher than senior scale of the IAS with effect from 15.6.1970(i.e. Director of School of Mines, KGF) only in the scale of pay of Rs.1300-1800+Spl. pay of Rs.200/- p.m. The crucial date for determination of his year of allotment on the analogy of Rule 3(3)(b) of the Seniority Rules, is therefore 15-5-1970. Since Smt.K.Bhavani(RR:1966) is the junior most direct recruit who started officiating in senior duty post with effect from 29-5-1970 that is, from a date earlier than 15-6-1970, Dr.Thimmiah is entitled to 1966 as his year of allotment on the analogy of Rules 3(3)(b) of the Seniority Rules, Dr.T.Thimmiah, however cannot be assigned a year of allotment higher than 1969 under the proviso to rule 3(3)(c) of the Seniority Rules, because Shri R.Thippoji Rao(SCS:1969) is the Junior most State Civil Service Officer, who has rendered longer length of service in the State Civil Service than the Gazetted service rendered by Dr.T. Thimmaiah in connection with the Affairs of the State. Dr.Thimmiah was not considered earlier by the Selection Committee for appointment to IAS and, therefore, his year of allotment is not to be further depressed in accordance with para-2 of our letter dated 6-6-1978. Dr.Thimmaiah occupies the first place amongst the non-State Civil Service Officers in the List and, therefore, his year of allotment is also not required to be depressed in accordance with para 3 of the said letter. Dr.Thimmaiah is therefore assigned 1969 as his year of allotment in the IAS cadre of Karnataka and for the purpose of inter-se seniority, he shall be placed below Shri S.S.Rao(RR:1969) and above Smt.Malathi Das(RR:1970) in the gradation of IAS Officers borne on the cadre of Karnataka.

Yours faithfully,
Sd. P.C.Agrawal,
Desk Officer.

Copy to:

1. Secretary, Union Public Service Commission, Dholpur House, New Delhi, with reference to their letter No.2/24/81-S-II dated 18-9-1981.
2. EO(MM)/ED(PR)/AIS(III)/Guard File.

Sd. P.C.Agrawal,
Desk Officer."

9. Relying on Ann.A (dated 6-10-1980), as the bulwark of his case, Shri Narayanaswamy laid accent on the recommendations of the State Government of Karnataka i.e., R-3, and urged, that these were binding on the Union of India (U.O.I.) i.e., R-2. He sought to make a distinction between the present application and Application No.82 of 1988 (F) Shri P.G. NAIK v. U.O.I. & ANR., decided by this very Bench recently, on 11-11-1988, in that, no recommendation was made to the U.O.I. in the case of the latter, in regard to assignment of the YOA. That recommendation, he avowed, was well-reasoned, and was within the framework of the relevant rules and therefore, R-3 was bound to accept the same and assign 1959 as the YOA to his client.

10. Shri Padmarajaiah, Senior Central Government Standing Counsel, appearing for R-1 and R-2, refuted persuasively, the above contention of Shri Narayanaswamy, on the score, that it was self-contradictory, as the very lexicographic meaning of the word "recommendation", namely, "presenting something worthy ^{of} acceptance", could by no stretch of imagination, make it peremptory, absolute and binding on the U.O.I. The Indian Administrative Service, he averred, like the Indian Police Service, the Indian Forest Services and other such services, was one of the All India Services, on which the U.O.I., within



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the framework of the rules and in the scheme of things, exercised superintendence and check, as the overall, cadre-controlling authority of the All India Services. The very connotation and character of these services, of which, the IAS was a part, with countrywide implication, he asserted, should not lead to an inference, that the constituent States/Union Territories, could impose their will, in any manner they like, under the guise of recommendation, on the U.O.I. in relation to any matter, pertaining to these Services, be it recruitment, appointment and regulation of seniority, of which the year of allotment was an inseparable facet. Otherwise, Shri Padmarajaiah, argued with vehemence, overall supervision and control over these All-India Services, which are so essential, would go berserk and be detrimental, to administrative interest and discipline.

11. We have examined the rival contentions on the above aspect, carefully. Prima facie, taking into account, the All-India character of the IAS, the contention of Shri Narayanaswamy, that the recommendation of the State Government (R-3), to the U.O.I. (R-1), through its Letter dated 6-10-1980 (Ann.A) to assign 1959 as the YOA to the applicant, is absolute and binding, on the U.O.I. (R-1), regardless of the relevant rules and in particular, the

IAS cadre rules and regulations, is ill-founded, as this would only tend to undermine gravely, the very structure, homogeneity, discipline and morale of that service. Let us examine the implications more deeply, with reference to the IAS(Cadre)Rules, 1954 ['Cadre Rules' for short] and the IAS(Fixation of Cadre Strength) Regulations, 1955 ['Cadre Regulations' for short]. The cadre rules and regulations refer to crucial facets of the service such as: determination of the cadre strength for each State/Union Territory; triennial meetings to be initiated by the U.O.I. as the cadre-controlling authority, to review the Cadre Strength, according to the administrative needs/exigencies, of each State/Union Territory, during the period intervening; vigilant monitoring of the rate of recruitment to the service, with due regard to administrative interest; maintaining a judicious balance, between the direct recruits and appointees by promotion, on selection. Besides, the cadre rules and regulations, refer to various components of the cadre strength of each State, such as the Central Deputation Quota, Deputation Reserve, Training Reserve etc. The Central Deputation Quota, fixes the share of the U.O.I. out of the State cadre, for the various requirements of the Centre. The Deputation Reserve is aimed at providing a leeway to the State, to meet its short-term and unforeseen needs of ex-cadre posts, being manned by the cadre officers in administrative exigency. Under Rule 3 of the Cadre Rules, cadres



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have been constituted for each State or group of States. The strength and composition of each of these cadres, are determined by the Cadre Regulations. The power to alter the strength and composition of a cadre, vests in the U.O.I. according to Rule 2(1) of the Cadre Rules. Rule 6 of the Cadre Rules, specifies the manner, in which a cadre officer is to be deputed to the Central Government or elsewhere, with mutual concurrence. Rule 9 ibid, stipulates, the manner in which a non-cadre officer can be appointed temporarily, to cadre posts, for a specific period, in consultation with the U.O.I. and in certain cases, even the UPSC has to be consulted.

12. It is abundantly clear from the foregoing, that the U.O.I. has a dominant role to play, as a cadre-controlling authority in respect of the IAS, as in the case of the other All-India Services. It is bizarre for Shri Narayanaswamy, to yet claim, that the recommendations of the State Government of Karnataka, in regard to assignment of the YOA, to the applicant, have a binding effect on the U.O.I. as this is not only far-fetched but is indeed preposterous, as it is like the disciple dictating terms to the master, by imposing its will! Such a proposition can emanate only from an inadequate comprehension, nay erroneous interpretation of the relevant rules and regulations, which have to be read harmoniously, in their proper collocation in their

entirety,

entirety, as aptly stated in the well-known maxim - Lege totum si non scire totum - read all, if you are to know all. Besides, for the reasons aforementioned, the above contention is contrary to reason and therefore to law - nihil quid est contra rationem est licitum. In an All-India Service of the like, as the IAS, for the reasons aforementioned, there has to be complementarity between the States and the Union of India, and the State, cannot remain an island, whole and entire, by itself but has to be an organic part of the whole, as a branch is to the tree. We have therefore no hesitation in rejecting the above contention of Shri Narayanaswamy, outright.

13. Shri Narayanaswamy next relied on the dicta of the Supreme Court in 1972 SLR 373 R.P.KHANHA v. S.A.F.ABBAS, laying emphasis on its observation, that the State Government was competent to declare retrospectively, a post in the State Civil Service, as equivalent to a "senior post", in the IAS cadre, and that in the scheme of things, such a declaration was rational and feasible, the underlying object being, to strike a balance between competing claims of direct recruits and appointees by promotion/selection. Shri Narayanaswamy highlighted, the observation of the Supreme Court, that harmonious construction of the term "senior post", as defined in the Cadre Rules with Rule 3(3)(s) of the RSR, would confer on the promotees by legal fiction, the advantage of service



rendered in the "senior post", first by declaration and then by approval of the Central Government in consultation with the UPSC, and that it is not the declaration but the approval which introduces legal fiction. In the context of this judgment, Shri Narayanaswamy asserted, that his client was entitled to his service in a "senior post", in the NSCS, being reckoned from 15-2-1958, as proof of which, he strongly relied on Ann. 'A' (dated 6-10-1980), addressed by R3 to R1, on the basis of which R-3, had recommended that the applicant be assigned 1959, as his YOA.

14. We have perused carefully the said Ann. 'A', which we have reproduced in para 7 above, in so far as it relates to the applicant. Para-4 thereof in particular, is revealing as to the extraordinary interest, evinced by the State Government in the applicant, in inducting him into the IAS, even if he was inclined to opt out of it. This is reminiscent of the satire, of the biblical quote in reverse, that "man is made for sabbath and not sabbath for man!"

15. We have also gone through Ann. 'B', reproduced in para-8 above, in toto. We notice, that R-1 has analysed therein cogently and in fair detail, the reasons, as to why the applicant has been assigned 1969, as the YOA. R-1 categorically states, that the applicant actually held a

post, equivalent or higher than the "senior post" in the IAS, namely, that of Director of School of Mines, Kolar Gold Fields, in the pay scale of Rs.1300-1800 plus Special Pay of Rs.200/- per mensem, only with effect from 15-8-1970. We have no reason to disbelieve this assertion, in the absence of concrete evidence to the contrary.

16. R-1 has also plausibly explained in Ann. 'B', that the YOA to be assigned to the applicant, had to be suitably modulated, with reference to the YOA assigned to one Shri R.Thippoji Rao, who was the juniormost officer in the Karnataka State Civil Service, appointed by promotion to the IAS under the APR and had a longer length of gazetted service to his credit, in the State Civil Service ('SCS' for short), as compared to that of the applicant in the NSCS, in connection with the affairs of the State.

17. Shri Narayanaswamy contended, that R-1 ought to have taken into account, the entire length of service, both gazetted and non-gazetted, rendered by his client in the NSCS or at least, the service put in by him, in a "senior post" in the NSCS, with effect from 15-2-1958.

18. Shri Padmarajaiah countered the same, on the score, that the service of an officer in the SCS, commenced from a gazetted rank and



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therefore

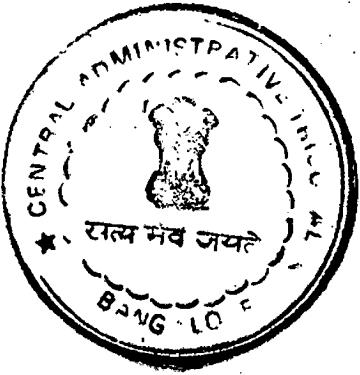
therefore, it was logical, for the sake of parity, that his entire length of gazetted service in the SCS, was compared likewise, with that of his counterpart in the NSCS, for the purpose of determination of their respective YOA, on induction into the IAS, under the relevant rules. This was also borne out, he said, by Rule 8(2) of the RR, inter alia stipulated, the pre-requisite of a gazetted post, being held in a substantive capacity, by an incumbent to be inducted into the IAS and also by Rule 3(ii) of the RSR, which specified, that an incumbent should have completed not less than 8 years of service in a gazetted post, involving duties and responsibilities comparable to that of the SCS.

19. There is ample merit in the above rebuttal of Shri Padmarajaiah, so as to convince us, that R-1 has on the above basis correctly determined the YOA of the applicant as 1969, in accordance with Rule 3(3)(c) of the RSR. We, therefore, reject this contention of Shri Narayanaswamy, as devoid of merit.

20. Shri Narayanaswamy next contended, that the YOA of his client, should have been determined exclusively, in terms of Rule 3(3)(c) of the RSR, without drawing an analogy with Rule 3(3)(b) ibid, relating to those appointed by promotion, to the IFS, under the APR.

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21. We have dwelt on this aspect, at length, in P.G.NAIK's case, referred to in para 9 above, as also on the question of determination of YOA of that applicant, to the IAS, according to Rules 3(3)(b) and (c) of the RSR, read along with the proviso thereto. The very same ratiocination by us, on these questions, as in P.G.NAIK's case, applies equally to the applicant, in the case before us. For the reasons stated therein, ad hoc determination of the YOA, appears to be inevitable, in the peculiar circumstances of each case, for which no set or hard and fast, stereotype norms, are feasible. Yet, we notice, that there is some method in this ad hocism (for the purpose), as stipulated in the aforesaid Rules 3(3)(b) and (c), read along with their proviso. It is futile, for Shri Narayana-swamy to contend, that the YOA of his client, should be determined exclusively, according to Rule 3(3)(c) ibid, without drawing an analogy from Rule 3(3)(b) ibid, as the very proviso to the former Rule, has a nexus with the latter, on account of reference to an officer in the SCS, appointed to the IAS, under Rule 8(1) of the RR. The reality of this nexus becomes obvious, when an officer in the SCS vis-a-vis that in the NSCS, have the same length of continuous gazetted service, in their respective parent department and a question arises, as posed by us to



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Shri Narayanaswamy, in the course of the hearing, as to how the matter has to be resolved.

22. Appearing for R3, Shri S.M.Babu, learned Counsel, reiterated the grounds urged, in the reply filed on 6-7-1985 in the High Court of Judicature, Karnataka.

23. In fine, all the contentions/painstakingly urged by Shri Narayanaswamy, fail. We, therefore, dismiss this application as bereft of merit, with no order however, as to costs.



Sd/-

(K.S.PUTTASWAMY)
VICE CHAIRMAN

14/12/88

Sd/-

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

14-XI-1988

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14/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 5 JAN 1989

To

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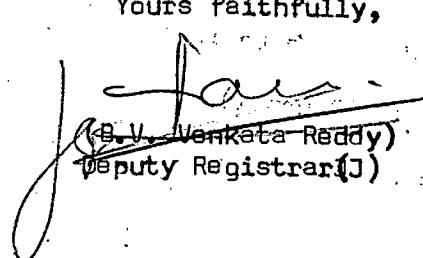
Sir,

"I am directed to forward herewith a copy of the undermentioned order passed by a Bench of this Tribunal comprising of Hon'ble

Mr Justices K.S. Puttaswamy Vice-Chairman/Member (A)
and Hon'ble Mr L.H.A. Rego Member (A) with a request
for publication of the order in the journals.

Order dated 14-12-88 passed in A. No. 707/88(T).

Yours faithfully,


(B.V. Venkata Reddy)
Deputy Registrar(J)

*Issued
R.N. Iyer
6.1.89*

9c

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1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
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10. The Registrar, Central Administrative Tribunal, 88-A, B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, G/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmadabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 009 (Orissa).

Copy with enclosures also to:

1. Court Officer (Court I)
2. Court Officer (Court II)

(B. V. Venkata Reddy)
Deputy Registrar (J)

YK/ed
R. N. M.
6-1-88