

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-38.

Dated: 9 MAR 1994

APPLICATION NO(s) 489/93 and 260 and 261/1994.

APPLICANTS: M.K.Nagaraj, IPS.,  
and two others.

RESPONDENTS: Secretary, M/o Home Affairs,  
New Delhi and others.

TO.

1. Sri.K.R.D.Karanth, Advocate,  
No.32, Mangalanagar,  
Sankey Road Cross,  
Bangalore-560052.
2. Secretary, Ministry of Home Affairs,  
New Delhi-110001.
3. Chairman, Union Public Service Commission,  
Bholpur House, Shahjahan Road, New Delhi-11.
4. The Chief Secretary,  
Government of Karnataka,  
Vidhana Soudha, Bangalore-1.
5. Sri.M.S.Padmarajaiah,  
Sr.Central Govt.Stng.Counsel,  
High Court Bldg, Bangalore-1.
6. Sri.M.H.Motigi, Govt. Advocate,  
Advocate General's Office,  
KAT Unit, Indiranagar, Bangalore-38.

SUBJECT:- Forwarding of copies of the Orders passed by  
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the  
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal  
in the above mentioned application(s) on 03-03-1994.

Issued  
9/3/94

ofc

for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

gm\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE

APPLICATION NOS. 489/1993 AND  
260 & 261/1994

THURSDAY, DATED THE THIRD DAY OF MARCH, 1994.

Present: Mr. Justice P.K. Shyamsundar, Vice Chairman

Mr. T.V. Ramanan, Member (A)

1) Mr. M.K. Nagaraj, IPS  
Superintendent of Police  
Raichur.

2) Mr. S. Ramakrishna, IPS  
Superintendent of Police  
Bijapur.

3) M.R. Pujar, IPS  
Superintendent of Police  
Mangalore - 575 001.

.... Applicants

(By Advocate Shri K.R.D. Karanth)

Vs.

1) Union of India  
represented by Secretary  
Ministry of Home Affairs  
Govt. of India, New Delhi-110 001.

2) Union Public Service Commission  
represented by Chairman  
Dholpur House, Bahajahan Road  
New Delhi.

3) State of Karnataka  
represented by the Chief Secretary  
to Government (D.P.A.R.)  
Vidhana Soudha, Bangalore-560 001.

.... Respondents

(By Shri M.S. Padmarajaiah, S.C.C.S.C. for  
R-1 and Shri M.H. Motigi for R-3)

O R D E R

(Mr. T.V. Ramanan, Member(A))

In this application made under Section 19 of the  
Administrative Tribunals Act, 1985, the applicants have prayed

for the following reliefs:-

(a) For a Writ or Order in the nature of Mandamus directing the respondents 1 to 3 to constitute a Review Selection Committee for the years 1988 & 1989 and consider the case of the applicant for appointment by selection to the Indian Police Service and for an order in the nature of mandamus to grant the applicants the date of appointments notionally from the date of occurrence of vacancies for which the select list is to be prepared.

(b) Grant the applicants benefits such as seniority and pay consequential to the grant of relief as above.

2. The applicants were directly recruited as Deputy Superintendents of Police in the Karnataka State Police Service in July 1978 and were confirmed subsequently. The State Government had published a final gradation list of Deputy Superintendents of Police in July, 1980. The list was challenged before the Karnataka Administrative Tribunal in Application No.1344 to 1346/1986 by B.Y. Bhoole and Others and the said Tribunal vide its order dated 21.9.1987 quashed the list with the direction that the State Government prepare a fresh gradation list in accordance with the principles laid down by the Supreme Court in the case of Gopal Bheemappa Vs. State of Karnataka and Others (AIR 1987 SC 2359).

3. As the State Police Service is a feeder service for promotion to the Indian Police Service, even before the final seniority list was quashed by the Karnataka Administrative Tribunal on 21.9.1987 the Selection Committee constituted under the I.P.S (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as Regulations) met and prepared a select list on 5.12.1986 for promotion of the Karnataka State Police Service Officers to IPS

against vacancies which were likely to arise during the calendar year 1987. The Selection Committee prepared a select list of 6, which was twice the number of vacancies for the year 1987, in accordance with the Regulations. Shri K.C. Ramamurthy whose name appeared at the top of the select list was also appointed to IPS by a notification issued by the Central Government on 26.6.1987. Finding that they had been excluded from the select list, S/Shri M.F. Pasha and N. Somasekar, State Police Service Officers who were senior to Shri K.C. Ramamurthy, filed Application No.567 and 634/87(F) before this Tribunal. The Tribunal by its order dated 25.5.1988 quashed the select list prepared by the selection committee on 5.12.1986 and approved by the respondents 1 to 3 herein. The Tribunal made the following orders and directions:-

\*(i) We quash the proceedings of the Selection Committee of the UPSC in File No.F-7/8/86-AAS (AIS) Dated 5.12.1986 to the extent they make selections of respondents 4 to 9 only from the State Police Service.

(ii) We quash the Notification No.I-14013/12/87/IPS dt. 26.6.1987, produced as Annexures-'A' and 'L' in Applications 567 and 634 of 1987 respectively. But notwithstanding this we permit respondent 4 to continue to hold the post in IPS cadre on an ad hoc basis till a fresh selection is made by the UPSC.

(iii) We direct the Government of Karnataka to prepare and publish the seniority list of DSPs updated till 31.12.1986 in accordance with law and the order of the Karnataka Administrative Tribunal in Applications No. 1344 to 1346 of 1986 dated 21st September, 1987 with all such expedition as is possible in the circumstance of these cases and in any event on or before 31.7.1988. As and when that is done by Government of Karnataka and on the basis of the same, the Selection Committee constituted under the Regulations, the State of Karnataka is directed to make a fresh selection to the posts determined as on 4/5/6.12.1986 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.

(iv) We direct the Government of India and Government of Karnataka to make appointments to IPS from the fresh selection list prepared in pursuance of the directions contained herein 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."

The Tribunal gave the above orders and directions after having considered the decision rendered by it in *Malappanavar Vs. Govt. of India* (AIR 1988(1)CAT-298) which was affirmed by the Hon'ble Supreme Court on 5.5.1988 in SLP nos. 3437 to 3439 of 1988 and 4125 to 4127 of 1988.

4. Although this Tribunal had directed the State Government to prepare and publish a new seniority list of Deputy Superintendent of Police on or before 31.7.1988, the State Government could issue the same only on 1.3.1989. Thereafter, on being moved by the State Government, a Selection Committee was constituted and it met on 2.9.1989. The Selection Committee took into account the vacancies for the calendar year 1987 which were 3 in number and so, in accordance with the Regulations, prepared a select of 6. The select list, after approval, was operated on and the first three officers of the list were appointed retrospectively against the three vacancies of 1987 in the promotion quota. The next two officers were appointed against 2 vacancies of 1988, also retrospectively. All these appointments were made in accordance with para-<sup>(iv)</sup>4 of the order/direction given by this Tribunal in O.A. no.567 & 634/87(F). Subsequently, the selection committee met on 16.2.1990 for preparing a select list for the year 1989-90. Incidentally, the Regulations were amended on 7.11.1988 on the basis of which select lists are to be prepared on the basis of the <sup>actual</sup> final year and not the calendar year as was the case earlier. The size of the select list was to be 8 in accordance with the provisions contained in the Regulations. The Selection Committee after considering all the eligible officers

found only 7 officers as suitable and accordingly it prepared a select list of 7 in which all the 3 applicants, inter alia, figured. The applicants were appointed to IPS by a notification issued by the Government of India on 24.9.1990 and later were assigned for seniority purpose, ~~the year~~ 1986 as their year of allotment.

5. We have heard the learned counsel for the applicants and also the learned Senior Central Government Standing Counsel for respondent no.1 as well as Shri M.H. Motigi for respondent no.3, the State of Karnataka, perused the record of the case and also the relevant files made available by counsel respondent no.3.

6. Learned counsel for the applicants contended that those figuring at sl. nos. 4 & 5 of the Select List prepared by the Review Selection Committee, which was duly approved subsequently, were appointed against 2 vacancies of 1988 and this was contrary to the directions made by this Tribunal in its order in Applications no.567 and 634/87(F). According to him if the Selection Committee which met on 2.9.1989 was the Selection Committee for the calendar year 1988 also, then it was required to consider the preparation of a Select List for all the vacancies which had occurred or were to occur in the year 1988. Learned counsel for the respondents argued that the Review Selection Committee did not take into account the vacancies relating to 1988 but confined itself to preparation of a Select List for the year 1987. Further, the appointment of the officers figuring at sl.nos. 4 & 5 of the Select List so prepared to IPS against 2 vacancies relating to 1988 was not only in consonance with the provisions contained in the Regulations but also in conformity with the direction given by this Tribunal in the aforesaid applications.

7. We have carefully considered the rival submissions of the learned counsel. We have perused the relevant record and find that the Review Selection Committee which met on 2.9.1989 confined itself to preparation of a Select List by taking into account the vacancies that had occurred during 1987 only which were 3 in number. In accordance with regulation 5 of the Regulations a select list was to be prepared containing 6 names and accordingly a Select List was prepared. This was also in consonance with the directions of the Tribunal vide cl.(iii) of the direction reproduced in para-33(supra). After the Select List so prepared was approved, the Central Government, after adjusting by appointment the 3 officers figuring at sl.nos. 1,2&3 of the Select List against the 3 vacancies of 1987, appointed the officers figuring at sl. nos. 4 & 5 of the Select List against the 2 vacancies which had occurred in the year 1988 on 3.1.1988 and 30.4.1987. The appointment to IPS of the officers figuring at sl.nos. 4 & 5 against the 2 vacancies of 1988 cannot be said to be irregular. Regulation 7 of the Regulations provides that the select list prepared is valid until it is reviewed and revised. Thus, in the course of operation of an existing select list the officers figuring therein can be appointed to any vacancy which has arisen or will arise. In fact, this is what exactly has been stated in cl.(iv) of the directions issued by this Tribunal in its order dated 25.5.1988 reproduced in para 3 (supra). In the aforesaid direction it was made amply clear that appointments to IPS from the fresh Select List prepared should be made "for the vacancies that existed from time to time from 1.1.1987 and onwards till the Select List was and is in operation, <sup>(emphasis ours)</sup> in accordance with the regulations." In view of this position, to say that the officers figuring at sl.nos. 4 & 5 of the select list prepared on 2.9.1989 were appointed against 2 vacancies of 1988 and as such the Review Selection Committee which met on 2.9.1989

should have considered all the vacancies for the year 1988 and if that had been done, the applicants herein should also have been considered, is totally unacceptable to us. The Select List was correctly prepared taking into account the vacancies of 1987 and appointments to IPS were also made by operating the Select List in accordance with law and the directions given by this Tribunal in Applications no.567 & 634/87(F).

8. Learned counsel for the applicants herein then contended that just as those who were found suitable for appointment to IPS on the basis of the Select List prepared by the Review Selection Committee which met on 2.9.1989 were appointed to IPS, the applicants too should have been appointed retrospectively against the vacancies available from time to time. That would have entitled them to a higher seniority in the form of an earlier year of allotment. Learned counsel for the applicants further argued that the Selection Committee which ought to have met every year mandatorily could not meet to make selection during the years 1988 onwards until 16.2.1990 and as such the applicants should not suffer by not being appointed to IPS retrospectively. In this regard he cited the case of Syed Khalid Rizvi and Others Vs. Union of India and Others (1993(1)SLR 89), in which the Supreme Court has observed that preparation of the Select List every year is mandatory.

9. Both the Senior Central Govt. Standing Counsel and Shri Motigi appearing for the respondents rebutted the submissions made by the learned counsel for the applicants and stated that there is no provision in the Regulations under which appointment to the Indian Police Service can be made with retrospective effect. Further, the Regulations prescribe that appointments to IPS can only be made from the date of approval of the Select List or a date subsequent to that date but not the date



of occurrence of vacancies as contended by the applicants, i.e., no retrospective appointments can be made. They further argued that the mandatoriness of holding meetings of the Selection Committee every year was not quite relevant to this case because the Selection Committee could not have met in 1987 or 1988 as the seniority list of Deputy Superintendents of Police of Karnataka came to be finalised only on 1.3.1989 in pursuance of the direction given by this Tribunal in O.A. 567 and 634/1987(F). In fact, even the Review Selection Committee for the year 1987 could not have met earlier than 1.3.1989 for the reason stated above. In view of this, the observation made by the Supreme Court that the Selection Committee should meet every year would not apply to this case, because there were extraordinary reasons for not holding the Selection Committee meetings during 1987 and 1988. They further contended that the Regulations do not provide for holding yearwise Selection Committee meetings where such meetings could not take place during the relevant years.

10. paragraphs 34 and 35 of the judgement in Rizvi's case reads as follows:-

"para-34 : It is next contended by non-preparation of the select list, the promotees had lost their chances of promotion to get into super time scales of pay and so on. Preparation of the annual seniority list is, therefore, mandatory and that by its non-preparation the rules have been collapsed. The argument ex-facie is alluring but lost validity close scrutiny. The contention bears two facets: firstly preparation of the seniority list and secondly the consequences flowing from the omission to prepare the seniority list. It is already held that the committee shall prepare the seniority list every year and be reviewed and revised from time to time taking into account the expected or anticipated vacancies during the year plus 20 per cent or two vacancies whichever is more. It is already held that the wide distinction exists between appointment by direct recruitment and one under Regulation 9 of Promotion Regulation and Rule 9 of Recruitment Rules on the one hand and under Regulation 8 thereof read with rule 9 of cadre rules on the

other hand. Their consequences are also distinct and operate in different areas. Prior approval of the Union Public Service Commission and prior concurrence of the Central Govt. are mandatory for continuance of temporary appointment under Regulation 8 beyond six months and three months respectively together with prompt report sent by the State Government supported by reasons therefor. In their absence it is not a valid appointment in the eye of law. Unless an officer is brought on the select list and appointed to a senior cadre post and continuously officiated thereon he does not acquire right to assignment of the year of allotment. Eligibility age for consideration was only upto 52 years and presently 54 years. If the list was not prepared though for the succeeding year the age barred officers may be considered but was made to compete with junior officers who may eliminate the senior officer from the zone of consideration. Suppose in 1980 the senior officer was not qualified though the list was made, but in 1981 he could improve and become eligible. Non-preparation of the select list for 1980 disables the officer to improve the chances. In Sehgal's case, this Court held that chances of promotion and the aspiration to reach higher echelons of service would enthuse a member of the service to dedicate assiduously to the service with diligence, exhibiting expertise, straight forwardness with missionary zeal, self-confidence, honesty and integrity. The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, sloven and a mediocre. Equal opportunity is a fertile resource to argument efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would produce harmony with accountability to proper implementation of government policies. Unless the select list is made annually and reviewed and revised from time to time, the promotee officer would stand to lose their chances of consideration for promotion which would be a legitimate expectation. This Court in Mohan Lal Kapoor's case held that the committee shall prepare every year the select list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Govt. concerned and this court takes serious note of wanton infraction.

para 35: The question then is whether the failure to prepare the select list could give rise to an inference that rules have been collapsed and the State Govt.'s local arrangement shall be given legitimacy as regular appointments? After giving our anxious consideration of the end resultants, we find it hard to accept the contention. The reasons are manifold. The appointment by promotion to the Indian Police Service and as a fact to any All India Service and determination of inter se seniority bear vital effect to the higher echelons of super time scale of pay and the above. The State Govt. and the Central Govt. should strictly comply with the provisions in making recruitment by promotion from the State Service to the All India Services. If laxity has been given legitimacy and deemed relaxation is extended it would not only upset smooth working of the rules but also undo the prescribed between promotee officers and direct recruits. It would also produce adverse effect at the All India level. Moreover, the concept of All India Services introduced to effectuate the national integration by drawing persons from different regions by direct recruitment into concerned States cadre would be defeated by manipulation. National integration would be disturbed and frustrated. Smooth implementation of the rules would be deflected and distortions in service would gain legitimacy and acceptability. While the Central Government remain statutory appointing authority the State Govt. gets into saddle and would become de facto appointing authority. The junior-most and unqualified or unfit would be pushed from back door and pumped up into higher echelons, eroding efficiency and honesty. We, therefore, hold that for failure to prepare select list every year, rule 3(3)(b) of the Seniority Rules, Rules 5 and 9 of the Recruitment Rules and Regulation 9 of Promotion Regulations have not been broken down and the appointment by local arrangement by the State Govt. under Regulation 8 of the Promotion Regulation and Rule 9 of Cadre Rules are not valid and legal. The promotee officers are not entitled to count their whole officiating period towards their seniority.

It is significant to note that the Supreme Court has very clearly stated that the dereliction of the statutory duty of not preparing select list every year, which is mandatory, must satisfactorily be accounted for by the State Government concerned. In this regard, as submitted by the learned counsel for the respondents, the annual meetings of the Selection committee for promotion to the Karnataka cadre of IPS could not take place until the Review Selection Committee met on 2.9.1989 owing to non-finalisation of the

seniority list of Deputy Superintendents of Police of Karnataka State which ~~was~~<sup>is</sup> a must for holding the selection committee meetings for considering promotion to IPS. In view of this position and also because the Regulations do not provide for yearwise preparation of select lists where the Selection Committee could not meet on an earlier year(s), it will not be correct to accept the arguments of the learned counsel and hold that the Selection Committee which met on 16.2.1990 should have prepared year-wise select lists. Further, <sup>as</sup> according to the Regulations, appointments to IPS is possible only after the select list has been prepared and approved, the question of retrospective appointment to IPS and as a consequence assignment of year of allotment on that basis is not proper or legal unless, of course, there is direction from a court of law that retrospective promotions should be given on the basis of availability of vacancies together with consequential benefits in the matter of seniority. In the case of those who were placed on the select list prepared by the Review Selection Committee on 2.9.1989 there was a direction of this Tribunal (Applications no.567 and 634/87(F) for giving retrospective appointments and <sup>so</sup> ~~no~~ such benefit was allowed to them. This Tribunal had given such a direction because the Karnataka Administrative Tribunal had quashed the seniority list of Deputy Superintendents, based on which a ~~Select~~ list had been prepared for promotion to IPS on 5.12.1986 and since the seniority list in the cadre of Deputy Superintendents of Police is the very basis for selection to IPS, this Tribunal had to quash the Select List prepared and also direct making of fresh appointments to IPS from the fresh Select List to be prepared for the 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. It was as a sequel to this direction that appointments had to be made retrospectively to those who figured in the Select List which was prepared by the Review Selection Committee. It is relevant to point out there that the next Selection Committee after the Review Selection Committee could have met only after 2.9.1989 and it did meet on 16.2.1990. As there was no <sup>any</sup> direction by/court of law for preparation of yearwise select list, the vacancies available upto and including 1989-1990 (by virtue of an amendment to the Regulations, the calendar year became financial year from 1989-90) were clubbed and a Select List was prepared on 16.2.1990, in accordance with the Regulations. We, therefore, see no reason for interfering with the Select List prepared, approved and operated upon in accordance with the Regulations.

11. Learned counsel for the respondents argued that but for applicant, Shri M.R. Pujar, who approached the Central Government with a representation which was rejected, the other 2 applicants had not exhausted all the remedies before approaching the Tribunal. Learned counsel for the applicant contended that the representation made by Shri Pujar to the Central Government (Annexure-A5) showed that it was not only in respect of applicant no.3 but also the others as well and no non-representation by the other two applicants should not affect their case in the present application. We are of the view that the objection raised by the learned counsel for respondents in this context is not tenable because even if the other 2 applicants had represented to the Central Government individually the result would not have been different. A reply similar to the one sent by the Central Government (Annexure-A8) disposing of the representation made by applicant no.3

would have been received by the State Government.  
We, therefore, overrule this objection made by the  
learned counsel for the respondents.

12. Learned counsel for the applicants  
then made a plea that without prejudice to his earlier  
arguments, he would request us to direct the Central  
Government to give relief to the applicants by invoking Rule 3  
of the All India Services (Conditions of Service - Residuary  
Matters) Rules, 1960. In this regard, he cited the case  
of K.S. Aralikatti & Nagaraj Hampole in O.A. 953/1990  
& 13/1992 decided by this Tribunal on 29.12.1993. Learned  
counsel for the respondents did not object to this plea.

13. In the above cited case, ~~Shri~~ Shri Aralikatti  
and Shri Nagaraj Hampole, both of the Indian Forest Service  
of the Karnataka cadre had sought a direction from this  
Tribunal that the Select List made in 1986 and published  
on 12.1.1987 for promotion of State Forest Service Officers  
to the Indian Forest Service should be reviewed and that  
the Union Government should appoint them to the IFS on the  
date when substantive vacancies had occurred in the promotion  
quota of IFS of Karnataka cadre and that they should be  
assigned the year of allotment to which they would have been  
entitled if they had been appointed in the year 1986 instead  
of 1989 when they were actually appointed to IFS. In a way  
Aralikatti's & Hampole's case is similar to the present  
case in so far as the directions sought. In that case the  
Tribunal ruled that the applicants did not acquire any legal  
right for getting higher seniority and earlier year of  
allotment in the Indian Forest Service. However, looking to

certain special features of the case such as not holding of a Selection Committee meeting every year resulting in the State Forest Officers not getting their promotion to IPS in time and losing their seniority as a result thereof and also lapse of considerable time between the date of publication of the revised gradation list followed by confirmation of the applicants in the State Forest Service and the date of their actual appointment to the Indian Forest Service, this Tribunal disposed of that case as per observation and direction given below:-

"para:20(1): We cannot uphold the contention of the applicants that the official respondents should review the Select List made for 1986 and published on 12.1.1987 and appoint them to the IFS on the date when the Select List for 1986 was originally made. We also do not agree with their stand that they have a legal right for getting higher seniority and earlier year of allotment in the IFS.

(2): We direct the Central Government, Respondent No.1 that they should take into account all the relevant facts and circumstances and come to an objective finding as to the need for invoking Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960 in respect of the applicants before us and on the basis of such finding take appropriate steps as per law. This exercise should be completed within six months from the date of receipt of a copy of this order. "

Taking up the case before us, here too, as in Aralikatti's case there had been no Court direction whatever as regards the Selection Committee meeting which took place on 16.2.1990. Subsequent to the Review Selection Committee for 1987 which was held on 2.9.1989 and based on which, as per this Tribunal's directions in O.A.567 and 684/1987(F) dated 27.5.1988, the officers selected were appointed with effect from the dates on which the vacancies had arisen in the promotion quota of the Indian Police Service of the Karnataka cadre.

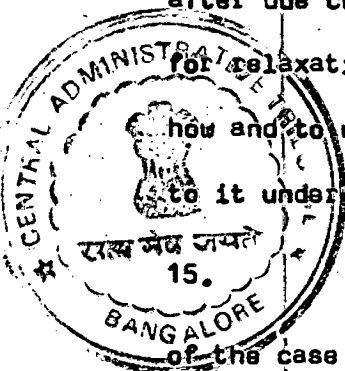
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Secondly, if there had been in existence a correct seniority list of Deputy Superintendents of Police of Karnataka, the applicants, who became eligible for consideration for promotion to IPS as on 1.1.1987, would have been considered for selection against the vacancies in the IPS promotion quota of 1988 in 1987 itself and appointed much earlier to their date of appointment to IPS, i.e., 25.9.1990 and this would have entitled them to an earlier year of allotment than 1986, which is their present year of allotment.

14. Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960 reads as follows:-

- Rule-3: Power to relax rules and regulations in certain cases - where the Central Government is satisfied that the operation of -
- (i) any rule made or deemed to have been made under the All India Services Act, 1951(61 of 1951), or
  - (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. "

We are well aware that it is for the Central Government to invoke this rule and exercise the powers available thereunder after due consideration of the facts and circumstances of a case for relaxation. We cannot direct the Central Government as to how and to what extent it should exercise the powers available to it under this rule.



Looking, however, to the facts and circumstances of the case as also considering the law relating to appointments by promotion and fixation of seniority in IPS, we cannot hold



that the applicants herein have a legal right for retrospective appointment to IPS and a higher seniority. However, for the reasons given by us, we consider it appropriate for the Central Government to consider the case of the applicants and arrive at a finding as to whether rule 3 of the Rules referred to above should be invoked in their case and any relief be given to them.

15. In the light of the above discussion, we dispose of the present application with the following observation and direction:-

- (1) We cannot grant the reliefs sought by the applicants as in the present application for the reasons already given by us in this order.
- (2) We direct the Central Government, respondent-1 to take into account the relevant facts and circumstances and come to a well considered finding as to the need for invoking rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960 in respect of the applicants before us and on the basis of such a finding take appropriate action. This exercise may be completed within a period of six months from the date of receipt of a copy of this order.

16. We make no order as to costs.

TRUE COPY

*Sd-*  
(T.V. RAMANAN)  
MEMBER (A)

*Sd-*  
(P.K. SHYAMSUNDER)  
VICE CHAIRMAN

*SECTION OFFICER*  
9/3