

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 30 MAR 1994

APPLICATION NUMBER: 1008 of 1993.

APPLICANTS:

RESPONDENTS:

Sri.K.S.Nagaraja v/s. Senior Supdt of RMS, BSD(TD), Bangalore &
To. Other.

1. Sri.V.V.Balan, Advocate,
No.75~~7~~, Muddappa Road Cross,
Maruthisevanagar, Bangalore-33.
2. The Asstt. Post Master General (Staff),
Karnataka Circle, Bangalore-560 001.
3. Sri.M.Vasudeva Rao, Addl. CESEC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 21st March, 1994.

Issued
30/3/94
R.

o/c

S. Shankar
for DEPUTY REGISTRAR 30/3
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL APPLICATION NO.1008/93

MONDAY, THE TWENTY FIRST DAY OF MARCH, 1994

Shri V.Ramakrishnan, Member (A)

Shri A.N.Vujjanaradhya, Member (J)

Shri K.S.Nagaraja,
Ex-EDMM
C/o Shri Satyanarayana Setty,
3808/3, 12th Cross,
Gayatri Nagar,
Bangalore-560 021.

...Applicant

Advocate by Shri V.V.Balan

Versus

The Senior Supdt., RMS,
Bangalore Sorting Division (TD)
Bangalore-560 026.

Head Record Officer,
Bangalore TD Sorting Division
Bangalore - 560 026

...Respondents

Advocate by Shri M.Vasudeva Rao, C.G.S.C.

O R D E R

Shri V.Ramakrishnan, Member (A)

We have heard Shri V.V.Balan for the applicant and Shri M.Vasudeva Rao for the respondents. Shri Vasudeva Rao contends that the applicant has not exhausted the normal remedy of filing an appeal to the Appellate Authority against the order of the Disciplinary Authority dated 18.8.93 as at Annexure A5.

He further submits that the applicant should be directed to file such an appeal and the same will be disposed of on merits by the department, by condoning the delay, if any. Shri Balan agrees to this suggestion.

2. In view of the above, we direct the applicant to file an appeal against the impugned order dated 18.3.93 as at Annexure A5 before 31.3.94 and if he files such an appeal, the same should be disposed of by the department on merit within a period of three months thereafter.

3. With the above observation, we dispose of the application finally, with no orders as to costs.

18W
Sd/-
(A.N.VUJJA NARADHYA)
MEMBER (J)

165
Sd/-
(V.RAMAKRISHNAN)
MEMBER (A)

Gaja

S. S. Sankar
30/3
SECTION OFFICER
GENERAL ADVERSE
ADDITIONAL
BANGALORE

Ann. A-1
(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE THIRD DAY OF AUGUST, 1993

Present: Hon'ble Shri S. Gurusankaran, Member(A)

Hon'ble Shri A.N. Vujjanaradhya, Member(J)

APPLICATION NO.403/1992

1. Smt. Leelamma Jacob
W/o. Jacob George
Section Supervisor
O/O D.E. (Bldg. Planning)
Amenity Block, Bangalore-1.
 2. Smt. A. Usha
Section Supervisor
Mat.II Section
O/O G.M.R. (AOTR-II),
No.1 A, Platform Road
Swathi Complex
Seshadripuram
Bangalore-20.
 3. Shri M.A. Govinda Raju
Section Supervisor (Supervisory)
Trunks Admn., Basaveswara Circle
Bangalore-1.
 4. Shri R. Nagaraja Rao
Major, Sector Supervisor
Commercial Section
O/O Area Manager (South)
No.127/3, Bull Temple Road
Bangalore-19.
 5. Smt. Padma Balaramu
Section Supervisor (S)
AOTR -I, O/O General Manager(R)
Platform Road, Seshadripuram
Bangalore-20.
 6. Smt. P.J. Geetha
Section Supervisor (Supervisory)
A&P, II-B (Leave) MGR&HQ
O/O General Manager
Telecom Dist. Bangalore-9.
- ... Applicants

(Shri M. Narayanaswamy, Advocate)

Vs.

1. The Union of India
rep. by its Secretary
Deptt. of Telecommunications
Ministry of Communications
Sanchar Bhavan, New Delhi-110 001.



2. The General Manager
Bangalore Telecom District
Chamber of Commerce Building
K.G. Road, Bangalore-9.
3. The Chief General Manager
Karnataka telecom Circle
Maruthi Complex
O//: Tribhuvan Theatre
Gandhinagar, Bangalore-9.
4. Smt. C. Padmavathi
Section Supervisor (O)
O/O Asstt. Engineer
Ulsoor, O/D South
Bangalore-560 008.
5. Smt. Savithramma
Section Supervisor (O)
O/O Asstt. Engineer
Jayanagar Cables (South)
R.V. Road, Bangalore.
6. Shri N.P. Chandrasekharaiah
Section Supervisor (O)
O/O A.O.T.R.(R)
Swathi Complex
Bangalore-560 021.
7. Shri N. Hutchaiah
Section Supervisor (O)
M.M. Section,
O/O General Manager
Telecom District
Bangalore-560 009.
8. Shri V.V. Raghavendra Rao
Section Supervisor (O)
O/O C.O., AMR, Swathi Complex,
Bangalore-560 021.
9. Shri B.M. Krishniah
Section Supervisor (S)
O/O Asstt. Engineer
Trunks Admn.
Basaveshwara Circle
Bangalore-560 001.
10. Shri K. Abdul Jabbar Khan
Section Supervisor (O)
O/O Commercial Officer
New Lines, Cauvery Bhavan
Bangalore-560 009.

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11. Shri I. Sadasiven
Section Supervisor (O)
O/O Commercial Officer
New Lines
Cauvery Bhavan, Bangalore-9.

12. Shri K.M. Ulhas Rao
Section Supervisor (O)
Vigilance Cell
O/O General Manager
Telecom District
K.G. Road, Bangalore-9.

13. Shri Mohd. Samiullah
Section Supervisor (O)
O/O Asstt. Engineer
Building Planning
Amenity Block
C.M.X., Bangalore-1.

14. Shri P.B. Jagmohan
Section Supervisor (O)
O/O A.O.T.R.(R)
Swathi Complex
Bangalore-21.

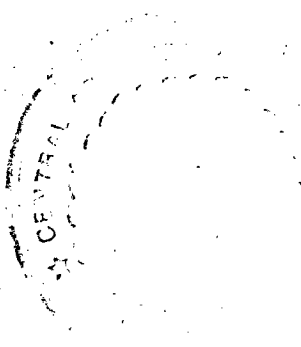
15. Shri G. Narasimha Holla
Section Supervisor (O)
O/O Asstt. Engineer
Trunks Admn. Basaveswara
Circle, Bangalore-1.

16. Shri D. Ananda Kumar
Section Supervisor (O)
O/O A.O.T.(R)
Swathi Complex
Bangalore-21.

17. Shri M. Subramanian
Section Supervisor (O)
O/O A.O.T.R.(C)
Mahaveer Complex
K.G. Road, Bangalore-9.

18. Shri K.M. Naziruddin
Section Supervisor (O)
Cash Section O/O General
Manager, Telecom District
K.G. Road, Bangalore-9.

19. Shri G. Pooswamy
Section Supervisor
O/O AOTR (R)
Swathi Complex, Bangalore-21.



- (13)
20. Smt. K. Vishalakshamma
Section Supervisor (O)
O/O Asstt. Engineer
Telex, OD-II,
46/E, Lalbagh Road
Sudhamanagar,
Bangalore-27.
 21. Smt. Indira Jayaraman
Section Supervisor (O)
General Section
Corporation Bank Building
S.C. Road
Bangalore-9.
 22. Shri C.S. Panduranga Vittal
Section Supervisor (O)
Works Accounts Section
Telecom Building
Bangalore-560 001.
 23. Smt. S. Vijayalakshmi
Section Supervisor (O)
O/O Asstt. Engineer
Jayanagar OD
Jayanagar Telephone Exchange
Bangalore-11.
 24. Shri N. Ethiraj
Section Supervisor (O)
Building Planning Section
Amenity Block
CMX Compound
Bangalore-1.
 25. Smt. M.R. Malathi
Section Supervisor (O)
Shankarapuram
O/O North
Shankarapuram Telephone Exchange
Bangalore-19.
 26. Smt. B.N. Nagarathanamma
Section Supervisor (O)
O/O Asstt. Engineer
CRW, Yeshwantapura
Bangalore-22.
 27. Smt. Shailaja Ramachandran
Section Supervisor (O)
C.S.C. Jayanagar
Jayanagar Shopping Complex
IV Block, Jayanagar, Bangalore-11.

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28. Smt. Vijaya S. Murthy
Section Supervisor (0)
C.S.C. Jayanagar
Jayanagar Shopping Complex
Jayanagar, Bangalore-11.

29. Shri H. Nagarajan
Section Supervisor (0)
Welfare Section
D/O General Manager
Telecom District
K.G. Road, Bangalore-9.

30. Shri R.S. Murule
Section Supervisor (0)
Cable Planning Section
Amenity Block
CMX Compound
Bangalore-9.

31. Smt. G. Prabhavathi
Section Supervisor (0)
Ulsoor, O/D South-I
Ulsoor Telephone Exchange
Bangalore-560 008.

32. Smt. K. Sharada
Section Supervisor (0)
Jayanagar Telephone Exchange
(Indoor), Bangalore-11.

33. Smt. K. Sharada
Section Supervisor (0)
Works Accounts Section
Telecom Building
Bangalore-560 001.

34. Smt. Sharada R. Bhatt
Section Supervisor (0)
Malleswaram O/D West
15th Cross, Sampige Road
Bangalore-55.

35. Smt. Suvarna Seshagiri
Section Supervisor (0)
Stronger Plg., Amenity Block
CMX Compound, Bangalore-1.



36. Shri G. Nagaraja Rao
Section Supervisor (O)
O/O Asstt. Engineer
Central Outdoor, CMX Bldg.,
Bangalore-1.
37. Shri D. Muddaiah
Section Supervisor (O)
O/O AOTR(R) Swathi Complex,
Bangalore-21.
38. Smt. N.S. Uma
Section Officer (O)
O/O AOTR (R),
Swathi Complex
Bangalore-21.
39. Shri N.K. Krishnappe
Section Supervisor (O)
A&P II B-Section
O/O General Manager
Telecom District
Bangalore-9.
40. Shri S.N. Bhagavan
Section Supervisor (O)
Recruitment Section
O/O General Manager
Telecom District
Bangalore-9.
41. Mrs. K. Krishnamurthy
Section Supervisor (O)
O/o D.T.I.C 11th Cross
Malleswaram, Bangalore-3.
42. Smt. K.S. Prema
Section Supervisor (O)
O/O C.O. (Central)
Mahaveer Complex
K.G. Road, Bangalore-9.
43. Smt. Shanthakumari
Section Supervisor (O)
O/O Asst. Engineer
SHA-II, Shankarapuram
Telephone Exchange
Bangalore-19.
44. Shri T. Padmanabhan
Section Supervisor (O)
Cash Section
O/O General Manager
Telecom District
K.G. Road, Bangalore-9.

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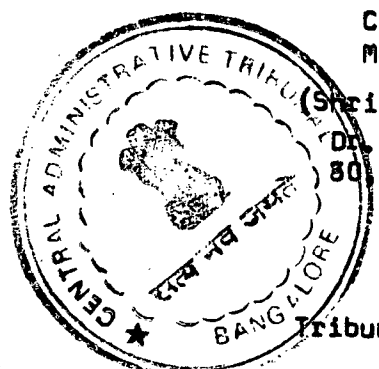
45. Shri B.V. Sreenivasa Rao
Section Supervisor (O)
O/O AOTR(R)
Swathi Complex
Bangalore-21.
46. Shri V.V. Chandabai
Section Supervisor (O)
O/O AOTR(R) Swathi Complex
Bangalore-21.
47. Shri Dharmam Srinivasan
Section Supervisor (O)
Works Accounts Section
Telecom Bldg., Bangalore-1.
48. Shri S. Santhanam
O.A. TBP/O/O C.O. (Central)
Mahaveer Complex, K.G. Road
Bangalore-9.
49. Shri N.S. Halemani
O.A., TBP, O/O the C.O.(C)
Mahaveer Complex
K.G. Road, Bangalore-9.
50. Shri M. Jagannathan
Section Supervisor (O)
Carrier and V.F.T. Installation
II Floor, Corporation Bank Bldg.,
S.C. Road, Bangalore-9.
51. Shri V.K. Pandurangan
Section Supervisor (O)
O/O C.G.M.T., O.A. Circle
61, Cockburn Road
Bangalore-51.
52. Shri P.V. Ramachandran
Section Supervisor (O)
O/O C.O., New Lines
Cauvery Bhavan, Bangalore-9.
53. Shri G.S. Krishnamurthy
Section Supervisor (O)
O/O C.O. New Lines
Cauvery Bhavan, Bangalore-9.
54. Shri M.A. Raghavaiah
Section Supervisor (O)
M.M. Section, City Telephone
Exchange, Sampangiramnagar
Bangalore-560 027.



55. Smt. H.M. Savithri
Section Supervisor (O)
C.R. Section
O/O General Manager
Telecom District
Bangalore-560 009.
56. Shri B. Prakash Kaur
Section Supervisor (O)
Works Accounts Section
Telecom Bldg., Bangalore-1.
57. Shri B. Mahabhoobjan
Section Supervisor (O)
O/O C.O., New Lines
Cauvery Bhavan,
Bangalore-560 009.
58. Smt. V.R. Rajeshwari
Section Supervisor (O)
O/O C.O., New Lines
Cauvery Bhavan
Bangalore-9.
59. Smt. H. Radhamma
Section Supervisor (O)
M.M. Section, City
Telephone Exchange
Bangalore-27.
60. Shri S.K. Narayana Rao
Section Supervisor (O)
O/O C.R.O.(C), Mahaveer Complex
K.G. Road, Bangalore-9.
61. Shri K. Srinivasan
Section Supervisor (O)
O/O Asstt. Engineer, Central
O/O West, K.G. Road Post Office
Bldg., Bangalore-9.
62. Smt. K. Kalavathy
Section Supervisor (O)
Ulsoor Telephone Exchange (Indoor)
Bangalore-560 008.
63. Shri T. Gopal
Section Supervisor (O)
O/O General Manager
Telecom District, Bangalore-9.
64. Shri M. Narayana
Section Supervisor (O)
O/O D.E. Coasall Cable Project
28, 27th Cross, Banashankari II Stage
Bangalore-20.

65. Smt. Santhu Peters
Section Supervisor (O)
O/O D.E. Rural
B.V.K. Iyengar Road
Bangalore-9.
66. Shri H.M. Puttamadaiah
Section Supervisor (O)
O/O D.E. Rural
BVK Iyengar Road, Bangalore-9.
67. Shri P.S. Balachandran
Section Supervisor (O)
O/O Chief General Manager (T)
D.A. Circle, No 61,
Cockburn Road,
Bangalore-51.
68. Shri Mohammed Hussain
Section Supervisor (O)
O/O D.E., M.M. City Telephone
Exchange, Sampangiramnagar
Bangalore-27.
69. Smt. K. Kanakavalli
Section Supervisor (O)
A&P II, B. Section
O/O General Manager
Telecom District, Bangalore-9.
70. Smt. G. Bhagirathy
Section Supervisor (O)
General Section, Corporation
Bank Building, S.C. Road
Bangalore-9.
71. Smt. Malini G. Iyengar
Section Supervisor (O)
O/O A.D.T.R. (C)
Mahaveer Complex
K.G. Road,
Bangalore-9.
72. Shri C. Lakshminarayana Rao
Section Supervisor (O)
O/O D.M., S.T.S.R., Infantry Road
Bangalore-560 001.
73. Shri N. Govindaraghavan
Section Supervisor (O)
Circle Telegraph Store Depot
Magadi Road, Bangalore-23.
- Respondents.
- (Shri M.S. Pedmarajaiah, S.C.G.S.C. for R-1 to R-3 &
Dr. M.S. Nagaraja, Advocate for R-9, 11 to 15, 20, 24, 25,
80, 35, 37, 48, 68)

This application having come up for Orders before the
Tribunal today, Hon'ble Shri S. Gurusankaran, Member(A), made the
followings:



O R D E R

In this application filed under Section 19 of the Administrative Tribunal Act, 1985 the applicants are at present working as Section Supervisors Grade-II in scale Rs 1400-2300 after having been promoted against 1/3 merit quota as per the recruitment rules against vacancies available as on 15.2.1981. They are aggrieved by the fact that the respondents who are junior to them in the grade of Section Supervisors Grade-II, have been promoted to Grade-III in scale Rs 1600-2660 under the scheme of Biennial Cadre Review (BCR scheme for short) introduced under letter no.27-4/87-TE-II(1) dated 16th October, 1990 (Annexure-E) overlooking their claim for promotion to Grade-III based on their seniority. They have prayed for a declaration that the BCR scheme is void, illegal and discriminatory as also the fixation of pay of the contesting respondents as void and illegal or in the alternative directing the respondents (R for short) 1 to 3 to consider the case of the applicants for extending to them also the higher scale of Grade-III from the respective dates their juniors were promoted with all consequential benefits including seniority, arrears of pay etc.

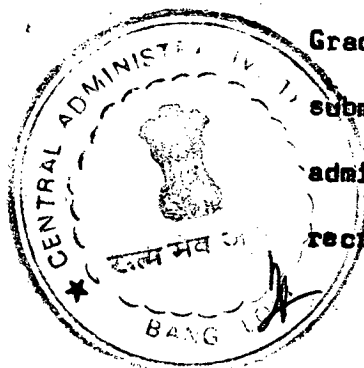
2. The facts of the case are not in dispute. The applicants were promoted under 1/3 merit quota in the year 1981 against the vacancies existing in Grade-II in scale Rs 1400-2300 and they have been doing supervisory duties till date. With the introduction of the BCR scheme under order dated 16.10.1990 (Annexure-E), a second time bound promotion on completion of 26 years of service in the basic grade was introduced. With the introduction of this BCR scheme, R-4 to 73, who were juniors to the applicants in Grade-II, were promoted to Grade-III by virtue of their

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having completed 26 years of regular service in the basic in the grade. This has resulted/situation that the applicants, who were senior in Grade-II and were doing supervisory duties till now, are made to work in the same grade-II without supervisory duties, while their juniors who have completed 26 years of service in the basic grade have been promoted to Grade-III in scale Rs 1600-2600. The applicants had also prayed for an interim order directing the R-1 to 3 to maintain status quo in the matter of safeguarding the supervisory duties being discharged by the applicants over and above the contesting respondents during the pendency of the above application. However, this interim relief was not granted. Subsequently, the applicants filed Civil Contempt Petition No. 53/1992 alleging that the interest of the petitioners in the C.P. which stood protected during the pendency of this application as per orders dated 10.8.1992 came to be disturbed by the issue of a further order dated 14.10.1992. C.P. 53/1992 was rejected at the admission stage itself vide order dated 28.10.1992.

3. We have heard Shri M. Narayanaswamy for the applicants, Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel for the respondents 1 to 3 and Dr. M.S. Nagaraja for some of the impleaded respondents.

4. The first point made out by Shri Narayanaswamy was that the recruitment rules dated 5.6.1979 (copy of which was produced by the counsel for R-1 to 3) made under the proviso to Article 309 of the Constitution provide for promotion from Grade-II to Grade-III on the basis of the recommendations of the departmental promotion committee. He also pointed out that Grade-III is a non-selection post. Shri Narayanaswamy therefore, submitted that the BCR scheme, which has been introduced through an administrative circular cannot substitute the provisions of the recruitment rules framed under proviso to Article 309 of the



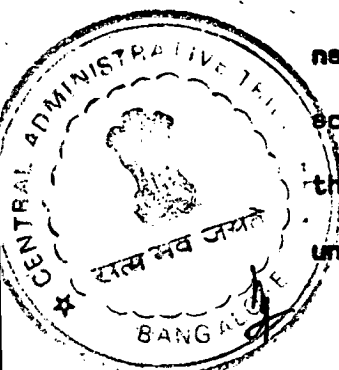
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Constitution. We asked Shri Padmarajaiah to produce before us any orders which have been issued modifying the recruitment rules referred to above and he could not produce any such orders. It is by now well established that administrative instructions cannot modify the provisions made in the recruitment rules framed under proviso to Article 309 of the Constitution and the recruitment rules will prevail. As per the recruitment rules the applicants who are senior to R-4 to 73 in Grade-II, have to be considered first for promotion to Grade-III before the latter are considered for such promotion. Thus, on the material placed before us we are normally bound to direct the respondents 1 to 3 to stop the implementation of the BCR scheme until the recruitment rules are also modified accordingly and the anomalies which have been brought out by the applicants are also considered and removed. However, we find from the circular dated 16.10.1990 that the BCR scheme has been introduced due to the staff unions pressing for acceptance of the demand for a second time bound promotion scheme on completion of 26 years of service in the basic grade and the scheme is to provide relief to a very large number of staff stagnating without a second promotion even after 26 years of service. In view of this, we are not inclined to strike down the BCR scheme or direct the respondents to stop the implementation of the scheme till the recruitment rules are modified and the anomalies that have arisen due to the introduction of the BCR scheme are considered and removed. However, we are pained to see that R-1 to 3 are not seized of this position even after nearly 2½ years after the introduction of the BCR scheme and even after more than a year of filing this application in July, 1992. Some of the applicants have also submitted representation dated 7.10.1991 followed by a reminder dated 29.4.1992 (Annexure-A) pointing out the anomalies that have arisen due to the introduction of the BCR scheme. These

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representations have also not been disposed off fully except for the clarificatory^{order}/no.27-4/87-FEII (Part-I) dated 30.11.992 by which the seniority of the applicants and other similarly situated officials promoted against 1/3 quota has been protected in Grade-II. It has also been pointed out in this order that such a provision is already available in para 22(b) (iii) of the One Time Bound Promotion (OTBP for short) scheme introduced under letter dated 17.12.1993.

5. The next point urged by the learned counsel for the applicant is the alternative relief prayed for by the applicants, that is, to direct the respondents 1 to 3 to consider the case of the applicants for extending to them also the higher scale of pay of Rs 1600-2660 with effect from the respective dates their juniors were extended the said scale of pay with all consequential benefits including arrears of pay, seniority etc. He drew our attention to the OTBP scheme introduced under letter dated 17.12.1983 (Annexure-D). As per the clarifications issued under para 22(b) (iii) of the above letter promotion to the LSG 1/3rd on the basis of the departmental examination will be abolished on introduction of the scheme. However, vacancies falling under LSG 1/3rd quota upto 31.12.1982 will be filled in accordance with the instructions. It was further clarified that the introduction^{of}/scheme will not affect officials, who have already been promoted on regular basis from the basic grades to the next higher grades before 30.11.1983 under the existing rules and they will rank en-block senior to the officials, who are placed in the next higher scale in pursuance of the new scheme. Shri Narayanaswamy pointed out that in the BGR scheme introduced under letter dated 16.10.1990 (Annexure-E) these safeguards provided for the seniors like the applicants under the OTBP scheme have not been provided. He further submitted



That R-1 to 3 have stated, as already indicated in their reply and has clarified in their letter dated 30.11.1992 (supra), that the officials, like the applicants, who are already promoted to the pay scale of Rs 1400-2300 in the 1/3rd quota of LSG will rank senior to those who are placed in the scale of Rs 1400-2300 under the DTBP scheme as already provided for in para 22(b)(iii). R-1 to 3 have also clarified in the same letter that while such officials will retain the seniority even if their juniors have been placed in the pay scale of Rs 1600-2660, that is, from Grade-III on completion of 26 years of service, will be eligible for promotion to Grade-IV in scale Rs 2000-3200 based on the seniority as stated above. He, therefore, contended that the BCR scheme is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution in that the applicants, who are senior, are not being placed in the higher scale of Rs 1600-2600, that is, Grade-III, above their erstwhile juniors.

6. Shri Padmarajiah submitted that the officials like the present applicants did not question the validity of the DTBP scheme since their positions were safeguarded. However, they are now challenging the BCR scheme. He further argued that the BCR/scheme ^{promotion} is based on length of service and not under any quota or percentage. He strongly argued that seniority and eligibility for promotion are 2 entirely different matters and since the applicants have not completed 26 years of service, they are not eligible to be placed in Grade-III. Dr. M.S. Nagaraja, appearing for some of the private respondents argued that since the BCR scheme has been evolved in consultation with the staff unions for giving benefits to a very large number of staff, who have been stagnating without a second promotion even after 26 years/service, the officials like the applicants who form a small minority and who are not getting the benefit of the BCR scheme cannot challenge the validity of the scheme.

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Dr. Nagaraja contended that in any such scheme, only the interest of the majority of the staff can be protected and the interest of a few may be affected. We are not impressed with the arguments of the respondents. We are aware that in the case of R. Prabhadevi Vs. Union of India reported in AIR 1988 SC 902, the Supreme Court have held that the seniority in a particular cadre does not entitle a public servant for promotion to higher post unless he fulfills eligibility conditions prescribed by the relevant rules. They have also stated that seniority will be relevant only among persons eligible and seniority cannot be substituted for eligibility nor it can override in the matter of promotion to the next higher post. However, this decision will not come to the help of the respondents in the present case since we have already held that the recruitment rules have not been amended and the recruitment rules do not provide for the eligibility of condition of 26 years/service in the basic grade for promotion from Grade-II to Grade-III. Similarly, Dr. Nagaraja's submission that in any such scheme a few individuals may be affected cannot be appreciated since under the BCR scheme, the officials like the applicants are deprived of the right for promotion to Grade-III based on their seniority in Grade-II as per the existing rules, which have not yet been amended. As pointed out by Shri Narayanaswamy, the anomaly has arisen due to the fact that the BCR scheme has not provided for any relief to the officials like the applicants, who are seniors in Grade-II. We are of the view that since the scheme is mainly meant to provide the relief of giving^a second promotion after 26 years of service, the small number of staff, who have already been officiating in Grade-II for a large number of years before the contesting respondents were promoted to that grade, can also be given the relief by considering their cases for promotion to Grade-III as per their seniority in Grade-II, irrespective of the fact whether they had



completed 26 years of service in the basic grade or not. To this extent the BCR scheme as envisaged without any amendment to the existing recruitment rules is arbitrary, illegal and violative of Articles 14 & 16 of the Constitution.

7. Dr. Nagareja also brought to our attention the judgement of the Principal Bench of this Tribunal in the case of Smt. Santosh Kapur & Others Vs. Union of India & Ors. (O.A.1455/1991) decided on 7.7.1992. However, we find that the question considered in the application is with regard to the filling up of 10% of the posts in scale Rs 1600-2660, which are placed in 2000-3200 under the BCR scheme, whereas the question involved in the present application is regarding promotion from Grade-II in scale Rs 1400-2300 to Grade-III in scale Rs 1600-2660. Even in that case while directing that the promotion to 10% of posts in scale Rs 2000-3200 would have to be based on seniority in basic cadres subject to fulfillment of other conditions in the BCR scheme, the respondents were given discretion to consider the promotion of the employees who may be senior to the applicants in that case in scale Rs 1600-2660 and who may have already been given the scale of Rs 2000-3200, instead of being reverted by suitable adjustments in the number of posts by upgradation as necessary. The full judgement in that case has not been produced before us. Further, we observe that the other important questions raised in this application like modification to the recruitment rules through administrative instructions and promotion from scale Rs 1400-2300 to Rs 1600-2660 have not been considered in that case. Hence, the decision in Santosh Kapur's case cannot help the respondents.

8. On the other hand, Shri Narayanaswamy drew our attention to the judgement of the Supreme Court in the case of

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Dr. S.M. Ilyas Vs. ICAR reported in 1993 (1) SLR(SC)60.

In that case the applicants, who were senior in the grade of S-II and S-III scientists, ^{& not} were given the higher pay scale as per the impugned notification, since they had not completed the required length of service in ARS. Shri Nayayanaswamy argued that the ratio laid down by the Supreme Court in Ilyas' case will squarely apply to the present case. We observe that in para-6 of the judgement in Ilyas's case the Supreme Court has observed as under:

"Para-6: We have considered the arguments advanced by the learned counsel for both the parties and have thoroughly perused the records. It is no doubt correct that while introducing the new scheme of pay scales and fixing new grades of posts, some of the incumbents have to put to less advantageous position than others, but at the same time, the granting of new pay scales cannot be allowed to act arbitrarily and cannot create a situation in which the juniors may become senior or vice verse".

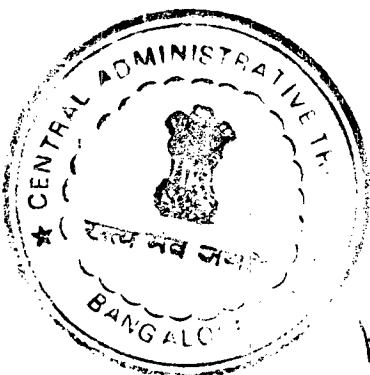
In the present case also the applicants, who are senior in Grade-II and were doing supervisory duties, are allowed to continue in Grade-II, while their juniors have been promoted to Grade-III as a result of their having ^{& completed} 26 years of service in the basic grade and have also been given supervisory duties while withdrawing the supervisory duties from the applicants. At the same time, we observe that in Ilyas' case the admitted position was that such posts of S-II and S-III were also filled by direct recruitment from public as well as by merit-cum-seniority from amongst the members of the ARS. In the present case, even though there was no direct recruitment to Grade-II, the officials like the applicants were promoted to that grade even before the introduction of the OTBP scheme against 1/3 rd merit quota. Thus, the applicants have become senior by establishing their merit and have been doing supervisory duties also. Thus, the introduction of the new scheme of promotion after 26 years of

in the basic grade cannot be allowed to act arbitrarily and create the situation in which the seniors will be in lower scale, while their juniors will be placed in the higher scale and will also do supervisory duties of their seniors. In our opinion, this is an unacceptable position and the BCR scheme has been introduced arbitrarily without looking into the possible adverse effects on officials like the applicants. Even the clarification dated 30.11.1992 issued by the respondents brings out this anomalous position very clearly. They have clarified that the officials like the applicants promoted to Grade-II against 1/3rd quota will continue to rank senior to those who are promoted to Grade-II under OTBP scheme. However, overlooking such seniority the BCR scheme grants promotion to ~~and~~ ^{the} junior officials promoted under the OTBP scheme solely on the basis of having completed 26 years of service in the basic grade without modifying the statutory recruitment rules. We do not find any justification at all in such senior officials also not being promoted to Grade III as per the seniority, while granting the promotion to others based on their length of service.

9. Further, para-3 of letter dated 30.11.1992 reads as under:

"Para-3: Such officials will retain their seniority even if their juniors had been placed in the pay scale of Rs 1600-2660, that is, Grade-III on completion of 26 years of service. It is further clarified that the promotion of such officials to Grade IV, that is in the pay scale of Rs 2000-3200 will also be governed by their seniority as stated above."

We are unable to understand the real purport of the above clarification. If the senior officials, who had been promoted to grade-II in the 1/3 rd merit quota, are to be denied promotion to grade-III due to the fact that they have not completed 26 years of service in the basic grade, it is not clear as to how they could be promoted to Grade-IV in scale Rs 2000-3200 based on their seniority in Grade-II, when they have not been even promoted



to Grade-III in the first instance. If the clarification means that the promotion to Grade-III is based on length of service, but promotion to Grade-IV is based on seniority in Grade-II, the position has not been made very clear and further this will lead to an anomalous situation. In this connection, Dr. M.S. Nagaraja had already drawn our attention to the decision of the Principal Bench of this Tribunal in O.A. 1455/1991 decided on 7.7.1992, wherein the Tribunal has held that the promotion to 10% posts in scale Rs 2000-3200 would have to be based on seniority in basic cadre subject to fulfillment of other conditions in the BCR scheme. The clarification dated 30.11.1992 has been issued after the Principal Bench had delivered the judgement dated 7.7.1992 in O.A.1455/1991 and still it does not make any reference to the same. However, we are not going further into this question regarding promotion to Grade-IV as this question has not been raised before us. However, we would commend to the respondents to look into this aspect also and take appropriate action as deemed fit.

10. Finally, Shri Padmarajaiah prayed that the respondents may be directed to look into this anomaly and take suitable action to remove the same. In our opinion, this would not be proper since more than 2½ years have been passed after the introduction of the BCR scheme vide order dated 16.10.1990 and inspite of the representations dated 7.10.1991 and 29.4.1992 and the filing of this application more than a year back, the respondents have not come forward before us suggesting any steps to remove these anomalies.

11. In the light of the above, we allow this application with the following directions to respondents 1 to 3:

- (1) In implementing the BCR scheme, the case of the applicants who are senior in Grade-II, by virtue of their promotion



against 1/3rd merit quota, compared to the other officials like R-4 to 73 promoted to Grade-II under OTBP scheme, should be considered for promotion to Grade-III in scale Rs 1600-2660 in their turn as per their seniority, whenever their erstwhile juniors in Grade-II are considered for promotion to Grade-III by virtue of their having completed 26 years of service in the basic grade, without insisting on the applicants completing the minimum prescribed years of service in the basic grade. All other conditions of BCR scheme except the length of service will however, be applicable while considering their promotion to Grade-III.

- (ii) Consequently, in case the applicants are found suitable for such promotion, they shall be promoted to Grade-III with effect from the date their erstwhile juniors were promoted from Grade-II to Grade-III with all consequential benefits including seniority and arrears of pay and allowances from such dates. They should also be put on supervisory duties depending on their seniority.
- (iii) The BCR scheme should be modified suitably to protect the interest of the officials like the applicants for their promotion from Gr.II to Gr.III.
- (iv) The above directions shall be complied within a period of 4 months from the date of receipt of a copy of this order.
- (v) In the conspectus and circumstances of the case the request of the applicants for grant of interest on the arrears of payment as due and cost of application is rejected.



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11.

The application is disposed of accordingly.

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL (A.N. VIJANARADHYA)
ADDITIONAL MEMBER
BANGALORE
MEMBER(J)

(S. GURUSANKARAN)
MEMBER(A)

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21/9/93