## BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE BENCH, BANGALORE

DATED THIS THE 27TH DAY OF OCTOBER, 1993

Present: Hon'ble Mr.Justice P.K.Shyamsundar ..Vice Chairman
Hon'ble Mr.V.Ramakrishnan ..Member(A)

## APPLICATION NOs.520/91 and 329/93

 Shri.M.G.Halappanavar, S/o G.M.Halappanavar, Deputy Commissioner, Bangalore District, BANGALORE.

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...Applicant in O.A.No.520/91

2. Shri.Ashok V. David,
S/o V.J.David,
Indian Administrative Service,
Presently working as
Deputy Commissioner,
Bellary District,
BELLARY.

...Applicant in O.A.No.329/93

(Shri.M.R.Naik, Advocate)

Vs.

- 1. The Government of India, represented by its Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi.
- 2. The State of Karnataka represented by its Chief Secretary, Vidhana Soudha, Bangalore.
- 3. Shri.H.Shivaramu, I.A.S.,
  Director of Information and Publicity,
  Government of Karnataka,
  Infantry Road,
  Bangalore.
- Shri.Gururaj, I.A.S., Commissioner for Religious & Charitable Endowments, Mahadeshwara Bhavan, A.V.Road, Chamarajapet, Bangalore - 560 010.

...Respondentsito 4 in 0.A.Nos.520/91 & in 329/93.

 Shri.Ramamchandra Bhadya, I.A.S., C/o D.P.A.R., Government of Karnataka, Vidhana Soudha, Bangalore.

- 6. Shri M. Narayana Rao, I.A.S., C/o D.P.A.R., Government of Karnataka, Vidhana Soudha, Bangalore.
- 7. Shri Raghavendra Rao, I.A.S.,
  C/o D.P.A.R., Government of Karnataka,
  Vidhana Soudha,
  Bangalore. ... Respondents 5 to
  7 in DA No.520/91

(Shri M.S. Padmarajaiah, Advocate)
(Sri. M.H.Motigi..Advocate for R-2)
This application having come up before this Tribunal
for orders, Hon'ble Mr. V. Ramakrishnan, Member (A) made
the following:

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As the issues that require determination in both these cases are common, we propose to dispose them off by a common order.

2. Both the applicants \$/Shri M.G. Halappanavar in O.A. No. 520/91 and Ashok V. David in O.A. No. 329/93 have challenged the order fixing 1982 as their year of allotment to the IAS on their promotion to that service in 1987 and contend that the year of allotment should have been determined as 1979. Both of them were direct recruits to the Karnataka Administrative Service Group 'A' Junior Scale and were appointed to this service in the year 1974. The recruitment to the Karnataka Administrative Service (KAS for short) including junior scale is governed by the provisions of KAS (Recruitment) Rules, 1957 promulgated by the Governor under the proviso to Article 309 of the Constitution of India. These rules inter alia prescribe a quota between direct recruits and promotees from Class II who had served for a certain minimum number of years at Class II level. There was protracted litigation among direct recruits and promotees regarding seniority.

Supreme Court in the case of V.B. Badami v. State of Mysore and Others - AIR 1980 SC 1561 dealt with the gradation list of junior scale officers as on 1.1.72 and confirming the Karnataka High Court's decision directed the Government of Karnataka to re-draw the gradation list setting out certain guidelines. State Government notified the revised gradation list of KSS - Group A (J.S.) keeping in view the number of substantive vacancies and allocating Them between the promotees and the direct recruits as per the quota laid down in the Recruitment Rules (RRs for short) and carried forward to subsequent years, the posts meant for direct recruitment in those years when such direct recruitment did not take place. This resulted in assigning higher weightage to the direct recruits over those promotees who were occupying posts in Group 'A' service in excess of their quota. Certain promotees aggrieved by the decision of the Government approached the High Court of Karnataka for relief claiming protection of their seniority. The High Court by its order in the case of M.G. Kadli v. State of Karnataka & ors. 1982 (2) KLJ 453 called upon the State Government to re-draw the gradation list on the basis that the carry-forward rule should operate for a maximum period of three years subsequent to 1.1.1972. Both the promotees and the direct recruits approached the Supreme Court against the decision of the High Court. When the SLPs were taken up, the Supreme Court by its order dated 23.7.84 granted special leave to appeal and stated that there will be no stay of operation of the judgement of the High Court but it will be open to the State Government to take appropriate steps for promoting the officers and appointing them to the IAS, if eligible and suitable. While finally disposing of

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the matter the Apex Court held that the rule in Badami's case was to be given full effect to and that the appeals and the writ petitions of the direct recruits had to succeed and those of the promotees had to fail (Gonal Bhimappa vs. State of Karnataka & ors - AIR 1987 SC 2359).

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The members of K.A.S./are eligible for 3. consideration for promotion to the Indian Administrative Service subject to fulfilment of certain conditions as in the case of any other State Civil Service recognised as feeder service to the I.A.S. in terms of the IAS (Appointments by promotion) Regulations, 1955. The judgement of the Supreme Court in Gonal Bhimappa's case was rendered on 11-8-1987. Frior to that date, on the basis of the earlier decision of the Karnataka High Court in Kakli's case, the State of Karnataka had re\_drawn the seniority list of the K.A.S. officers and had been sending proposals to the UPSC etc. for processing the case of promotion of the \$tate Civil Service officers to the IAS in terms of the IAS (Appointment by Promotion) Regulations. The Select Committee constituted under the promotion regulation met at Bangalore on 4-12-1986 and considered the case of State Civil Service officers for promotion to the IAS to fill up the vacancies arising for the succeeding calendar year 1987. It prepared a select list which in due course was approved by the UPSC. The Government of India by its notification dated 6-5-1987 made appointments to the #.A.S. according to the position of the officers in such select list. Meanwhile, the applicant in OA No.520/1991, Shri.Halappanavar and some others approached this Tribunal challenging the proceedings of the

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of.

Selection Committee and the UPSC on various grounds. The Tribunal after taking into account the orders of the Supreme Court in Gonal Bhimappa's case, by its order dated 20.1.1988 annulled the select list prepared by the Select Committee and approved by the UPSC as also the notification of the Government of India appointing certain persons to the IAS from such select list (ATR 1988 III C.A.T. 298). It directed the authorities to make fresh selection on the basis of the seniority list in the KAS to be drawn up anew. It further directed the Government of Karnataka to finalise the seniority list with all expedition and in any event not later than 31.3.1988.

- 4. The State of Karnataka filed a Special Leave Petition before the Supreme Court against this decision. The Supreme Court rejected the same on the ground that it found no merit in the contentions raised in the SLP.
- published a fresh seniority list by their notification

  No. DPAR 5 SKG 87 dated 5.7.1988 in which the applicants

  are shown senior to the private respondents. The applicants

  were also confirmed in KAS Group 'A' (JS) w.e.f. 1.1.86

  vide order dated 19.8.1988 (Annexure A-5). Based on

  rankings in this re-drawn gradation list, a fresh select

  list was prepared and approved for the vacancies in IAS for

  Karnataka State arising for the year 1987 where the names of

  both the applicants figured and Shri Halappanavar was appointed

  to the IAS w.e.f. 1.6.1987 and Shri Ashok V. David w.e.f.

  6.5.1987 and the year of allotment in both the cases was

determined as 1982 vide order dated 11.5.1990 (Annexure A-8).

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Shri. Ashok David approached this Tribunal by OA 535/90 and challenged the assignment of 1982 as his year of allotment and claimed that he should be assigned 1979 as the year of allotment with all consequential benefits. The Tribunal while disposing of his application on 24-12-91 directed that he may make a representation to the Government of India through the State of Karnataka which should forward the same to the Government of India with their comments, if any. On receipt of such representation, the Government of India should consider the same in accordance with law and if on such consideration it is found that the applicant was entitled to be assigned the year of allotment as 1979 instead of 1982 which was the year allotted to him, he would be entitled to all consequential benefits that arise from such allotment. Accordingly, Shri, David submitted representation dated 29-2-92 (Annexure A-9). The Government of Karnataka by their letter dated 8-9-1992 (Annexure\_A.10) informed him that the Government of India by their letter dated 24-7-1992 had turned down the representation. The Government of India's rejection was primarily based on the contention that it is only after the name of the officer was included in the select list by the Selection Committee, such ar officer becomes entitled for promotion to the IAS strictly in the order in which his name figures in the select list. Government of India also mentioned that there was no provision for review of the select list prepared in accordance with the promotion Regulations.

7. Both the applicants, Shri.David and Shri.Halappanavar have now challenged that fination of 1982 as the year of

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allotment is illegal and arbitrary in the light of the publication of the fresh final gradation list of KAS Group'A' (Junior Scale Officers) and have sought that they should be assigned 1979 as their year of allotment.

- 8. The main grounds they have urged in support of their contention are the following:
  - This Tribunal has directed that their netional appointment should be counted for all purposes in accordance with law, denying them only back wages. Hon'ble Supreme Court had confirmed this judgment and had observed that the officers where seniority may be adversely affected shall continue in the higher posts on an adhoc basis and if they are not selected they should be pushed down from the promotional posts. In view of this, Government of India was required to netionally fix the applicant's seniority above those officers who became junior to them in the revised gradation list of KAS Group'A' but who were appointed to IAS earlier. Such persons being admittedly junior to the applicants in the final gradation list in KAS ought to have necessarily come down and applicants pushed up to occupy the proper seniority and to be entitled to prior year of allotment.
  - b) The Hon'ble Supreme Court had held in Gonal Bhimappa's case that the rule in Badami's case had to be given full effect. As in the revised seniority list, the applicants occupy a much superior position in KAS Group'A' compared to the private respondents who were appointed to



the IAS on the basis of an earlier seniority
list in KAS Goupr'A' whoch was quashed,
they should necessarily go above those repondents.

- c) The determination of year of allotment has to be done with reference to seniority in KAS. The fixation of seniority and year of allotment by the Government of India was based on erroneous information furnished by the State Government.
- d) Shri.David has further contended that the rejection of his representation dated 29\_2\_1992 by the Government of India was without application of mind.
- 9. The respondents have submitted that the petitioners are not entitled to the reliefs sought, for the reason that the seniority in the State Civil Services has no direct bearing for appointment to the IAS. The applicants were confirmed only w.e.f. 1-1-1986 and were not eligible to be considered for promotion to the year prior to 1986. During the year 1984 promotion to the IAS was made on the basis of gradation list of KAS Group'A' officers prepared on the basis of directions of the High Court in Kadli's case. In that gradation list, the applicants were junior to the private respondents who were promoted to IAS.
- 10. We have heard Shri.M.R.Naik for the applicant and Shri.M.S.Padmarajaiah and Shri.M.H.Motigi for the official respondents.

Promotion of members of State Civil Service to the IAS is governed by the provisions of the IAS (Recruitment) Rules and the IAS (Appointment by Promotion) Regulations. The assignment of year of allotment of promotee officers is determined in terms of the IAS (Regulation of Seniority) Rules. Rule 4 of the IAS (Recruitment) Rules, provides for promotion to IAS of substantive members of the State Civil Service. Rule 8(1) empowers Central Government to recruit to the IAS persons by promotion from amongst the substantive members of the State Civil Service on the recommendations of the State Government concerned and in consultation with the UPSC and in accordance with such regulations made by the Central Government from time to time (presently these are the IAS (Appointment by Promotion) Regulations). Rule 9 of the RRs fixes the number of persons to be recruited under Rule 8. IAS (Appointment by Promotion) Regulations envisage constitution of a Select Committee, preparation of a list of suitable officers to be considered for promotion by the Select Committee, consultation with the UPSC and appointment to the IAS from the Select list. Regulation 9 provides that appointment of members of the State Civil Service to the IAS shall be made by the Central Government on the recommendations of the State Government in the order in which the names of the members of the State Civil Service appear in the select list for the time being in force. As regards the year of allotment, this is governed by Rule 3 of the TAS (Regulation of Seniority) Rules, 1987. Rule 3 (3) (ii) states that the year of allotment of a promotee officer shall be the same as the year of allotment of the junior most amongst the direct recruit officer who officiated continuously in a senior post from a date earlier to the date of appointment of the promotee officer to the service.

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The main groundurged by the applicants for 12. advancement of year of allotment in the IAS is based on the observation of the Supreme Court in Gonal's case referred to supra that the rule in Badami's case has to be given full effect. Some of the officers of the State Civil service who subsequently became junior to the applicants consequent to revision of KAS Group'A' Gradation List in view of the Supreme Court decision had been promoted to the IAS and assigned years of allotment earlier than that assigned to the applicants. According to the applicants, the process of giwing full effect should necessarily result in the applicants going above the private respondents who are assigned 1979 as the year of allotment. Reliance is also placed on the interim orders dated 23-7-1984 of the Supreme Court which while refusing to stay the operation of the High Court judgement in Kadli's case observed:

"There will be no stay of operation of the judgement of the High Court but it will be open to the State Government to take appropriate steps in accordance with the relevant rules and regulations for confirming the direct recruits and promotees in their present posts or promoting or appointing them to the Indian Administrative Service cadre provided they or any of them are fround eligible and suitable for such confirmation, promotion or appointment".

13. It has been stated that the Supreme Court specifically dealt with the case of officers who subsequently became junior holding promotional higher post.

While rejecting the SLP of the State Government against the decision of the Tribunal in the case of M.G.Halappanavar v. Government of India and Ors - ATR 1988 (1) CAT 298

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the Supreme Court had held that there was no objection to allow those officers whose seniority may be adversely affected in the revised gradation list prepared in compliance with the directions given in Gonal's case to continue in the higher posts on ad hoc basis and that they can continue in the higher post in case they were selected and in case they were not selected, they shall be pushed down from the promotional post. The applicant's counsel further argues that the CAT in OA 252, 437, 448 or 1987 disposed off on 20-1-1988 (ATR 1988 (i) CAT 298) referred to supra had also directed that the applicants should be given the benefit of counting notional appointment for all other purposes in accordance with law, denying only back wages. In the light of these judgements, the applicants claim that they have a legal right to rank above those KAS officers who are promoted to the IAS on an earlier date but whose seniority in the KAS was brought down below the applicants in the revised gradation list. The learned counsel for the applicants submits during the hearing that the private respondents have since retired from IAS and all that is required at the present stage is to fit in the applicants in the promotional slots occupied by them and giving the applicants the same year of allotment.

of 1987 had quashed the proveedings of the Selection

Committee of the UPSC held on 5-12-1986 as also the
appointment to IAS of certain persons made by Government

of India notification dated 6-5-1987. The learned counsel
for the applicants submits that the applicants have not

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challenged the select list prepared and appointments made prior to 1987 and he argues that it is not necessary to do so. He asserts that in view of final reliefs granted by this Tribunal and Hon'ble Supreme Court, all other consequential benefits airsing out of the said judgements were available to the applicants. This should have been given affect to by notionally placing the applicants above the officers who became junior in KAS but who were promoted to the IAS earlier by assigning prior yerrof allotment. In other words, an earlier year of allotment should be assigned even without going through the process of preparation of selectilist etc. There is a further submission that Rule 3 (3) (ii) of the Regulation of Seniority Rules has to be read with the directions of the Tribunal which according to them directs that appointment to the TAS should be granted notionally from an earlier date. There is also a reference in the pleadings that in identical circumstances notional prior year of allotment was made in case of certain IAS officers like Shri. Sangameshwar without undergoing the exercise of review of selection.

15. Th learned Standing Counsel for the Government Shri.M.S.Padmarajaiah as also the learned counsel for the State of Karnataka Shri.M.H.Motigi have contended that the seniority in KAS is not the only criterion for fixation of year of albtment in IAS of State Civil Service Officers. They have also referred to the Supreme Court decision in S.K.Ghosh v. Union of India AIR 1968 SC 1985 where it was held that once an officer in a lower scale is selected for promotion to higher grade and given

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seniority over another officer selected later, the seniority so determined by selection cannot be made dependent on the seniority in the lower scale. They have also argued that the applicants joined the State Civil Service only in 1974 and they cannot be granted an year of allotment earlier than 1982 in IAS (ie) a minimum of 8 years later than their entry in KAS Grade 'A'. They were also not confirmed prior to 1-1-1986 and cannot be considered for promotion to the IAS prior to that date.

16. We shall first examine the arguments of the learned counsel for the respondents. The seniority in the State Civil Service is certainly relevant while considering officers for promotion to the IAS, as is clear from Regulation 5 (2) of the Bromotion Regulations. However, the fixation of year of allotment is a subsequent even after selection to the IAS and promotion thereto, following the relevant statutory provisions. The facts in the case of S.K.Ghosh v. UOI are different as compared to the present application and the principle laid down in that case is not directly relevant to the present situtation. Presumably the counsel had relied on the 3rd proviso to Regulation 5 (2) of the promotion Regulations while making the statement that the year of allotment has to be 8 years or later than their year of entry into the State Civil Service. This argument lacks substance as the proviso aforesaid refers only to eligibility of State Civil Officers for consideration for promotion to the IAS. Once such

officers are considered, selected and appointed to the IAS

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their seniority will be fixed in terms of Rule 3 (3) (ii) of the Regulation of Seniority Rules and their year of allotment need not mecessarily be 8 years or later from the year of entry into State Civil Service. There is, however, force in the submission that they could not have been considered prior to their confirmation in the State Civil Service. The relevant rules provided for appointment of only substantive members of the State Civil Service to the IAS. The applicants were admittedly confirmed only w.e.f. 1-1-1986 by the Karnataka Government's order dated 19-8-1988 and it has also not been brought out that they had moved the State Government for confirming them in the State Civil Service from an earlier date. In view of this, they are not eligible to be considered for promotion to the IAS in any year prior to 1986. Their contention that they ought to have been considered in 1983 for the purpose of appointment to the IAS is therefore not legally sustainable.

learned counsel for the applicants. It is contended that the revision of seniority of the applicants in KAS in 1988 consequent to the decision of the Supreme Court in Gonal's case will automatically entitle the applicants to be promoted to the IAS and assigned the same year of allotment given to those promotees who became junior to them in the revised gradation list of KAS Group'A' and that this can be done disregarding all the statutory rules governing promotion to the IAS and assignment of year of allotment. We are unable to accept this contention.

The directions of the Supreme Court in its interim orders

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dated 23-7-1984 called upon the State Government inter alia to take appropriate steps in accordance with the relevant rules and regulations for confirming the direct recruits and promotees in their present posts or promoting them or appointing them to the IAS provided they or any of them are found eligible and suitable for such promotion, confirmation or appointment (emphasis supplied). It also made it very clear that there will be no stay of the operation of the judgement of the High Court. the Supreme Court passed final orders in Gonal's case, the State Government had acted on the basis of the gradation list prepared in compliance with the directions of the High Court in Kadli's case. It was not possible for the State Government to revise the gradation list then in force when there was no stay of operation of the judgement of the High Court. The State Government was sending proposals for promotion to the IAS in the light of the gradation list then in force. There is. therefore, no substance in the contention that the State Government submitted erroneous information to the Central Government. When finally disposing of Gonal's case, the Supreme Court observed that the rule in Badami's case had to be given full effect. This was in the context of the Karnataka High Court judgement that carry forward of difect recruit vacancies cannot extend beyond 3 years whereas no such restriction was laid down explictly by the Supreme Court in Badami's case. The direction of the Supreme Court in Gonal's case that the rule in Badami's case had to be given full effect is obviously not intended to make promotions of State Civil Service Officers to the IAS, otherwise than in accordance

twith the relevant rules and regulations.

18. We also do not see how the observation of this Tribunal in OA No.252/88 referred to supra that counting the applicants notional appointment for all other purposes in accordance with law can be taken as a sanction for automatically assigning an earlier year of allotment. While quashing the select prepared by the Selection Committee on 5-12-1986 and as also the notification dated 6-5-1987, of the Government of India appointing certain State Civil Service officers to the IAS from the said select list in respect of vacancies for the year 1987, the Tribunal had stated in para 40 as follows:

"From the above, it also follows that we must necessarily direct the authorities to make a fresh selection on the basis of the seniority list, to be drawn up anew, for the number of posts available for that very year and notionally regulate the appointments for vacancies that arose thereafter, from time to time, in accordance with the Regulations necessarily denying monetary benefits for those who had not actually performed their duties".

The operative portion of the order is contained in para 42. which reads as follows:

- "(1) We quash the proceedings of the Selection Committee of the UPSC in File No.F.6/8(1)/86\_AIS dated 5\_2\_1986 to the extent they make selections of applicant in A.No.252 of 1987 and respondents 4 to 10 only from the State Civil Service and not from the other State Service referred to at paras 7 and 8 of those proceedings.
- (2) We quash Notification No.F. 1415/33/86\_AIS(I) dated 6-5-1987 (Annexure\_RI) of Government of India appointing respondents 4,5, and 9 to the IAS on probation.

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- We direct the Government of Karnataka respondent-3 to prepare and publish the seniority list of KAS\_JS updated till 3-12-1986 in accordance with law and the order of the Supreme Court in Gonal Bhimappa's case with all such expedition as is \*possible in the circumstances of the case and in any event on or before 31-3-1988. As and when that is done by Government of Karnataka and on the basis of the same, the Selection Committee constituted under the Regulations for the State of Karnataka is directed to make a fresh selection to the posts determined as on 4-12-1986 for the calendar year 1987 with all such expedition as is possible in the circumstances of the case and in any event within a period of 2 months thereafter and then submit the same to the UPSC, which is directed to deal with the same in accordance with law.
- (4) We direct repondents 1 and 2, GOI and GOK respectively to make appointments to IAS from the fresh Select List to be prepared in pursuance of directions in para 42(3) supra for the very vacancies that existed from time to time from 1-1-1987 and onwwards, 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.

was that promotions to IAS should take place in accordance with the relevant regulations and that this will apply to vacancies which existed from time to time from 1-1-1987 and onwards. This is certainly not a blanket authority for disregarding the various statutory provisions and for assigning to the applicants the same year of allotment to the IAS which was allotted to those colleagues who became

junior to them in KAS in the revised gradation list. The

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Selection Committee held on 5-12-1986 and directed the Selection Committee to make a fresh selection makes it abundantly clear that the relief given to the applicant was to be granted strictly in accordance with the statutory rules and regulations. The Tribunal had explicitly directed the revised gradation in KAS Group 'A' shall be used for preparation of Select List and for making appointment to the IAS for the vacancies that existed from time to time from 1-1-1987 and onwards. In other words, 1987 has been taken to be the cut off year for this purpose. There was no direction to quash the Select List and accordingly, no such exercise was undertaken.

In the light of the directions issued by the 19. Tribunal in OA No.252/1988 referred to supra which was affirmed by the Supreme Court, the Government of Karnataka prepared a fresh gradation list in respect of KAS Group'A'. Based on the rankings in this re-drawn list, the officers in the zone of consideration were considered for promotion and Government of India prepared a fresh Select List for appointment to the IAS in compliance with the directions of the Tribunal. The applicants were considered in terms of the relevant regulations by the appropriate authorities and they were appointed to the IAS on 1\_6\_1987 (in the case of Shri.Halappanavar ) and 6-5-1987 (in the case of Shri.David) and their year of allotment has reightly been determined in terms of Rule 3 (3) (ii) of IAS (Regulation of Seniority) Rules.

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20. We also find that Sangameshwar's case does not helpt the applicants. Shri Sangameshwar was a non-State Civil Service Officer and the year of allotment of such officers appointed to the IAS is determined ad hoc under Rule 3 (3) (iii) read with the proviso thereto to the Regulation of Seniority Rules which is not the case in respect of State Civil Service Officers. The facts of that case and the issues raised therein are very different from those of the present applications.

21. In the light of the foregoing discussions, we hold that the applicants cannot get the reliefs sought for by them. The applications are accordingly dismissed with no order as to costs.

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(V. RAMAKRISHNAN) MEMBER (A)

(P.K. SHYAMSUNDAR) VICE CHAIRMAN

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