

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: **17 APR 1995**

APPLICATION NO. 622 and 792 of 1994.

APPLICANTS: **S/Sh.M.S.Kulkarni, and S.C.Uppal,**

V/S.

RESPONDENTS: **The Secretary, Ministry of Defence,
New Delhi and others.,**

To

1. **Sri.M.Narayanaswamy, Advocate,
No.844,Upstairs,17th-G-Main,
Fifth Block,Rajajinagar,
Bangalore-560 010.**
2. **Sri.M.S.Padmarajaiah, Senior Central
Govt.Standing Counsel, High Court Bldg,
Bangalore-560 001.**
3. **Sri.K.H.Jagadish, Advocate,
No.7, 'Thalanki Villa'
Third Floor, Walton Road,
Bangalore-560 001.**

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 31-03-1995.

*Issued on
17/04/95*

9/4/95

*DEPUTY REGISTRAR
JUDICIAL BRANCHES.*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore - 560038.

Dated: 17 APR 1995

To

1. Sri.Sanjeev Malhotra,
All India Services Law
Journal, No.22, Tagore
Park, Near Model Town,
D E L H I - 110 009.
2. M/s.Administrative Tribunal
Reporter, No.90, Bhagat Singh
Market, NEW DELHI - 110 001.
3. The Administrative Tribunals
Judgements, No.3857, Sector-32D,
C H A N D I G A R H - 160047.
4. The Editor, Administrative
Tribunal Cases, C/o.Eastern
Book Company, No.34, Lalbagh,
L U C K N O W - 226 001.
5. M/s.Services Law
Reporter, No.108,
Sector-27-A,
C H A N D I G A R H.
6. The Chief Editor,
Weekly Law Notes,
Khanda Falsa,
J O D H P U R
7. The Dy.Secretary,
Indian Law Academy,
Rajajipuram,
L U C K N O W - 226017.
8. The Manager,
Swamys Publishers(P)
Ltd., P.B.N.2468,
No.164, R.K.Mutt Road,
Sandhya Mansions,
Raja Annamalaipuram,
M A D R A S - 600 028.
9. The Secretary,
The Karnataka Law Reporting
Council, Old KGD Building,
Bangalore-560 001.

Sir,

I am directed to forward herewith a copy each of
the undermentioned Orders passed by a Bench of this Tribunal
with a request for publication in the journals.

APPLICATION NUMBER.

DATE OF THE ORDER.

1. O.A.No.622 and 792 of 1994..dated.31-03-1995.

-x-x-x-

Yours faithfully,

DEPUTY REGISTRAR
JUDICIAL BRANCH.

gm*

Copy, for information is forwarded to the following Benches:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, N E W D E L H I - 110 001.
2. The Registrar, Central Administrative Tribunal, Fifth Floor, B.D. Patel House, Near Sardar Patel Colony, Navjivan Post, Naranpura, Ahmedabad-380014.
3. The Registrar, Central Administrative Tribunal, No.23-A, P.B.No.13, Thorn Hill Road, Allahabad-211001.
4. The Registrar, Central Administrative Tribunal, Gulistan Bldg, 4th Floor, Near Bombay Gymkhana, Opp.B.M.C.ENT Hospital, Prescot Road, Bombay-400001
5. The Registrar, Central Administrative Tribunal, C.G.O.Complex, 234/4, A.J.C.Bose Road, Nizam Palace, Calcutta-700 020.
6. The Registrar, Central Administrative Tribunal, S.C.O., No.102/103, Sector-34-A, Chandigarh-22.
7. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, M.G.Road, Opp:Maharaja College, Ernakulam, Cochin-682 001.
8. The Registrar, Central Administrative Tribunal, 4th Floor, Rajaswa Bhavan, Cuttack-753 002.
9. The Registrar, Central Administrative Tribunal, Rajgarh Road, Bhangagarh, PB No.58, GPO, Guwahati-781005.
10. The Registrar, Central Administrative Tribunal, No.5-10-193, 1st Floor, H.A.C.A.Bhavan, Opp:Public Gardens, Hyderabad-500 004.
11. The Registrar, Central Administrative Tribunal, No.C-12, Civil Lines, Bhat Vatika, Jaipur.
12. The Registrar, Central Administrative Tribunal, No.69, Patta, PB.No.619, Jodhpur-342 006 (Rajasthan).
13. The Registrar, Central Administrative Tribunal, Caravas Complex, No:15, Civil Lines, Jabalpur-482001.
14. The Registrar, Central Administrative Tribunal, No.2, Moti Mahal, Rana Pratap Marg, Lucknow.
15. The Registrar, Central Administrative Tribunal, First Floor, Additional City Civil Court Building, High Court Campus, Madras-600 104.
16. The Registrar, Central Administrative Tribunal, No.B-8-A, Sri Krishna Nagar, Patna-800 001 (Bihar).

*W. V. DEPUTY REGISTRAR
JUDICIAL BRANCH.*

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 622 & 792/ 1994

FRIDAY, THE 31ST DAY OF MARCH, 1995

SHRI V. RAMAKRISHNAN ... MEMBER (A)

SHRI A.N. MUJJANARADHYA ... MEMBER (J)

1. Shri M.S. Kulkarni,
S/o Shri Mahadeva SeshaGiri
Rao Kulkarni, aged 54 years,
Chief D'man,
Aeronautical Development Establishment,
New Thippasandra, Bangalore-75.

2. Shri S.C. Uppal,
S/o Shri Roopchand Uppal,
aged about 47 years,
Chief D'man,
Gas Turbine and Research Ett.,
C.V. Raman Nagar,
Bangalore - 93.

... Applicants

(By Advocate Shri M.N. Swamy)

Vs.

1. The Union of India,
rep. by its Secretary to Govt.,
Ministry of Defence,
South Block, New Delhi-11.

2. The Scientific Advisor to Raksha
Mantri & Director-General,
R&D, Sona Bhawan, New Delhi-11.

3. The Director,
Aeronautical Development Ett.,
New Thippasandra Post,
Bangalore - 75.

4. The Director,
Gas Turbine & Research Ett.,
C.V. Raman Nagar,
Bangalore-93.

5. Shri R. Sathyanarayana Rao,
Junier Scientific Officer,
Aeronautical Development Ett.,
New Thippasandra Post,
Bangalore - 75.

(By 1. Senior Standing Counsel for Central Govt.,
Shri M.S. Padmarajaiah for R1 to 4)

2. Shri K.H. Jagadish for R-5)

...2/-

O R D E R

Shri V. Ramakrishnan, Member (A)

The applicants have challenged the memorandum dated 23.8.93 from D.R.D.O., Bangalore (Annexure A-19) which confirmed the seniority list earlier prepared by the Aeronautical Development Establishment (ADE for short) and circulated on 27.7.1981 (Annexure A-7) where the applicants are shown as junior to Shri R. Sathyanarayana Rao (R.5).

2. The facts of the case and the background leading to the present application are narrated as follows:

We may first touch on some of the salient features pertaining to the service structure and rule position which are relevant in the context of the present application. There are a set of instructions called Rules for departmental promotion committee (di) which regulated all promotions/ confirmations in Class-III (selection) posts (non-gazetted) in Establishment/ Laboratories under Defence Research & Development Organisation. Copy of the rules as they existed prior to 1979 are at Annexure to the Ministry of Defence letter dated 19.5.64. There were originally 5 groups and the various establishments in these 5 groups were re-grouped into 7 groups in 1968 and the employees of each group were assigned to distinct subjects called the "serrated pyramid subjects" and the promotion of employees assigned to a particular subject had to be worked out and confined within that subject and no inter-subject promotions were permissible. On 18.6.79 the rules were amended by which the subjects within the groups were abolished and promotions had to be effected on group basis and again no inter-group promotions were permissible. On 19.12.79 the rules were further amended. The effect of this amendment was that whoever was found in a particular establishment as on 19.12.90 was entitled to have his

services and seniority reckoned in the group to which that establishment belonged. Para 11 of the 1964 rules provided that promotions to scientific/ technical non-gazetted selection grades would be made on the basis of the SP subject allotted to the individual and inter-subject promotions should not be made. Para 10 of these rules stipulated that an individual in a particular SP subject will not normally be eligible for transfer to another SP subject excepting in public interest. The amendment to the rules effected on 18.6.79 deleted para 9 of the 1964 rules which laid down 17 serrated pyramid subjects. It also deleted para 10 of the 1964 rules referred to earlier. Para 11 of the 1964 rules were amended to the effect that there would be 7 groups and promotions had to be made on group basis and no inter-group promotions could be made. Para 11 was further amended again on 19.12.79 which set up 17 groups including Aeronautic Group and the Electronic Group instead of 7 groups set up by the 18.6.79 amendment. Para 17 of the 1964 rules was also amended to ^{state} that seniority would be determined with reference to the grading assigned by the departmental promotion committee and the seniority in the grade from which promoted.

We may now turn to the facts pertaining to the parties to the OA. The 1st applicant (Shri M.S. Kulkarni) was promoted to the level of Draughtsman Gr.I (DM-GI for short) in the ADE on 20.12.73 and the 2nd applicant Shri S.C. Uppal was promoted as Draughtsman Gr.I in ETRE with effect from 1.2.73. They were both allotted the Serrated Pyramid (SP for short) subject "Flight Science". Shri Sathyanarayana Rao - RS, was promoted to the level of Draughtsman Gr.I with effect from 26.5.71 in Defence Electronics Research Laboratory (DLRL for short), Hyderabad in the SP subject of Electronics. (Shri D.K. Rajen was initially impleaded as the 6th respondent, but, on his retirement and at the

request of the applicant, R-6 was deleted from the application and as such it is not necessary to go into the details regarding his case). R-5 made a request for transfer to Bangalore on compassionate grounds. The ADE, Bangalore in October, 1973, stated that they were agreeable to take R-5 against a vacancy of Draughtsman Gr.I subject to the condition that he did not change his SP subject while on the strength of ADE. Accordingly R-5 reported for duty at ADE on 3.4.74. The ADE, initially circulated the seniority roll of Draughtsmen Gr.I where the 1st applicant was shown at Sl.No.11, the 2nd applicant at Sl.No.8 whereas Shri Sathyanarayana, Rao, R-5 was shown at Sl.No.14. R-5, filed a writ petition No. 6126/81 before the Hon'ble High Court of Karnataka for reckoning his seniority from the date he was promoted as Draughtsman Gr.I at DLRL, Hyderabad. While, the case was pending, the department filed a memo dated 20/25.2.82 which stated that it had been agreed to place R-5 at Sl.No.1 in the cadre of Draughtsman Gr.I with retrospective effect and to give him the consequential benefits. It may be stated here that in the writ petition, R-5 had also sought for retrospective promotion to the level of Chief Draughtsman from a date not later than the promotion of S/Shri C.B. Srinath and S.P. Singh Saini, who were given such promotion in August, 1979, and who, according to R-5 should be his juniors if his seniority in Gr.I is reckoned from the date of his appointment to Gr.I in DLRL, Hyderabad. On submission of the memo by the department conceding the claim of the applicant, the learned single judge disposed of the writ petition in terms of the aforesaid memo and gave 3 months time to Respondents to comply with the memo. He also made it clear that this order should not be taken to affect the interests of persons who were not parties to the writ petition. After filing the memo before the High Court, the department seems to

have gone into the question again and did not give retrospective promotion to R-5, who moved a contempt petition before the High Court (CCC Civil) No. 162/1982). The department, in the contempt petition, took the stand ^{that} R-5 (complainant) in that case became eligible for higher seniority only with effect from 19.12.79 and he could not get promotion in August, 1979 when Shri Srinath and Shri Singh Saini were promoted. The department contended that the restructuring effected in June, 1979 meant that as R-5 was holding SP subject of Electronics, he should be deemed to be brought over to Electronics group with effect from 18.6.79 and his prospects of promotion had to be worked out in the Electronics group. The further amendment to the Rules on 19.12.79 which amended para 11 further creating 17 groups as against 7 groups as per 18.6.79 and which defined Aeronautics group to include the entire ADE was referred to and the department brought out that the effect of this amendment was that whoever was found in a particular establishment as on 19.12.79 would have his services and seniority reckoned in the group to which that establishment belonged. The 1979 amendments called for preparation of an integrated seniority list by bringing together officials from different seniority units.

The department contended that on and from 19.12.79, R-5 was entitled to have his seniority considered in the Aeronautical group and accordingly subsequent to 19.12.79, his seniority as Draughtsman Gr.I in the Aeronautical group was recognised and promotion accorded accordingly as Chief Draughtsman. In view of the ^{fact} the department did not promote R-5 from the same date in August 1979 as S/Shri C.B. Srinath and S.P. Singh Saini referred to earlier. The High Court however held that as per its earlier orders, the seniority of R-5 had to be fixed in the cadre of Draughtsman Gr.I in the Aeronautical group on and subsequent to 18.6.79 and his case for promotion considered retrospectively from



the dates on which his juniors, viz., C.B. Srinath and S.P. Singh Saini were promoted. The department complied with these directions of the High Court and promoted R-5 as Chief Draughtsman retrospectively with effect from 8.8.79.

In the meanwhile the department had revised the seniority of Draughtsman Gr.I in ADE which seniority list was circulated by the same dated 27.7.81 as at Annexure A-7. In this seniority list, the first applicant Shri Kulkarni was shown at Sl.No.13 and the 2nd applicant at Sl.No. 10 while R-5 Shri Sathyanarayana Rao was shown at Sl. No.2. The 1st applicant, Shri Kulkarni filed Writ Petition No. 4480/84 before the High Court of Karnataka against the seniority assigned to R-5 whereas Shri Uppal, the second applicant herein was also impleaded as a respondent. With the constitution of the CAT in 1985, there was some debate as to whether the High Court or the Tribunal should deal with the petition. The matter went upto the Supreme Court which ordered the transfer of the writ petition back to High Court. This writ petition No. 4480/84 was finally disposed of by the High Court by its order dated 12.1.93 which recalled the order made by the High Court on 25.2.82 in Writ Petition No. 6126/81 and the respondents including ADE were directed to reconsider the matter relating to the seniority of the applicant vis-a-vis the private respondents in the writ petition which included Shri Sathyanarayana Rao and thereafter determine the appropriate seniority and to give promotional benefits accordingly. The High Court did not consider the other contentions raised in the writ petition, but observed that it would be open to the petitioner to raise these grounds later, if necessary in an appropriate proceeding. The department reexamined the matter and issued the impugned order dated 23.8.93 (Annexure A-19) which confirmed the earlier seniority list prepared by ADE and circulated on 27.7.81 as

at Annexure A-7. The applicants have challenged in the present application this order at Annexure A-19 alleging the same as without authority of law and contrary to the provisions of the Recruitment Rules and the seniority rules and seek a direction that the official respondents should be directed to delete the name of R-5 from the seniority roll of Draughtsman Gr.I dated 27.7.81 (Annexure A-7) or in the alternative to place R-5 below the applicants and to grant the applicants the benefit of higher promotion with effect from the date R-5 was promoted as Chief Draughtsman.

3. We have heard Shri M.N. Swamy for the applicants and Shri M.S. Padmajaiah, the learned Senior Central Government Standing Counsel.

4. Shri M.N. Swamy, the learned counsel for the applicants forcefully argues that the action of the department is contrary to the relevant rules and instructions. Shri Sathyamayana Rao, R-5 reported for duty at ADE, Bangalore on 3.4.74. It is not in dispute that the transfer to Bangalore was on compassionate grounds. The learned counsel refers to para 10 of the 1964 rules and says that under this para, an individual in a particular SP subject will not normally be eligible for transfer to another SP subject except in public interest. The transfer of R-5 to Bangalore was at his request and not in public interest. In view of this position, he should take his seniority as Gr.I Draughtsman only from the date of his reporting in ADE, Bangalore, which was April, 1974. The applicants have become Gr.I Draughtsman on 20.12.73 and 1.2.73, i.e. earlier to the date on which R-5 reported in ADE, Bangalore. As such, R-5's seniority should be below that of the applicants. Shri MN Swamy argues that this position was correctly reflected in the seniority statement initially brought out by the department and circulated by their letter dated 5.9.80 as at Annexure A-6. The department altered the



seniority list by their subsequent letter dated 27.7.81 as at Annexure A-7 only because they entered into a compromise with R-5 and reckoned his seniority in Gr.I with effect from 26.3.71 when he got promotion as Gr.I in Hyderabad. They then filed a memo before the High Court in February 1992 informing the High Court that they had agreed to the request of R-5. Such a compromise between the department and R-5 cannot adversely affect the interest of the applicants. In fact, the learned single judge had observed that it was not made known to the Court whether the interest of persons who were not made parties to the writ petition would be affected by the reason of the order passed in terms of the memo and had made it clear that the order should not be taken to affect the interest of persons who were not parties to the writ petition.

Shri M.N. Swamy further argues that the department had been taking inconsistent stand in the matter of seniority. He states that when R-5 filed a contempt petition before the High Court in CCC 162/92, the department took the line that R-5 was in the Electronics group and his prospects of promotion had to be worked out only in that group. The department further stated that his case was considered for promotion in the Electronics group and he by comparative merit was not selected for promotion and he was not promoted. The learned counsel argues that it is not open to the department to go back on this stand and claim that R-5 is now in Aerodynamics group and that he would rank senior to the applicants.

5. Shri M.S. Padmarajaiah resists the application and contends that the department's action had been entirely in conformity with the relevant rules and instructions. He submits that the impugned order

as at Annexure A-19 is a detailed order which brings out clearly that as R-5 was promoted to Grade-I with effect from 26.5.71 whereas the applicants were promoted to Gr. I only in 1973, R-5 should rank as senior in the Gr.I cadre. The standing counsel further states that on transfer to Bangalore, it was laid down as a condition that R-5 will continue to be in the same SP subject which was Electronics. The applicants, at that time were in the Flight Science SP group. There were different seniority lists for these SP subjects and there was no question at that time of having any inter-as seniority between the applicants and R-5 as they were in different SP subjects. On the restructuring of the organisation in 1979, the 17 SP subjects as laid down in 1964 rules were reorganised. The letter dated 19.12.79 provide for setting up of 17 groups which were different and distinct from the 17 SP subjects. Aero-
nautics group is shown as Sl.No. 12 ^{for} to this re-organized group and this group includes ADE and all persons who are serving in ADE will form part of this group. The 1979 amendment had also gone into the question of integrating seniority of persons coming under different seniority streams and para 17 of the 64 Rules was amended to provide that seniority will, inter alia, be fixed on the basis of the seniority from the grade from which promoted. As such, for promotion to Chief Draughtsman, the seniority will be determined on the basis of entry into the Grade I. R-5 was promoted to Grade-I on 26.5.71 much earlier to the applicants.

The learned standing counsel also does not agree that on reporting for duty in Bangalore in April, 1974 on transfer on compassionate grounds, R-5 has lost his seniority. He refers in this connection to the DRDO letter dated 26.6.80 which stipulates that after the date of decentralisation, i.e. after 19.12.79 transfers from one DPC II to another DPC II on compassionate grounds will be allowed with loss of seniority, i.e.

such individuals will reckon their seniority from the date of reporting to the new DPC II Establishment/ Laboratory. He says that this letter makes it clear that the loss of seniority has to be enforced in respect of transfer on compassionate grounds only after the date of decentralisation, i.e., 19.12.79. R-5 reported for duty in Bangalore after a transfer on compassionate grounds in April, 1974. There was no rule at that time which resulted in loss of seniority on compassionate transfer. Shri M.S. Padmarajaiah asserts that prior to June, 1979 the seniority of Draughtsmen Gr.I was maintained on an All Indie seniority basis and as such there was no question of loss of seniority on transfer to new Laboratory/ Establishment. R-5 at no time had stated that he was agreeable to forgo seniority on his transfer to Bangalore on compassionate grounds. The only condition which was imposed was that he would not change his SP subject which was Electronics. R-5 thus continued to be in Electronics subject ^{while} ~~which~~ the applicants were holding SP subject Flight Science till 1979 when the reorganisation took place. The standing counsel further submits that the final directions of the High Court were that the department were to re-examine the whole matter relating to seniority according to the rules and instructions and thereafter determine the appropriate seniority and give promotional benefits accordingly. The High Court had recalled their earlier orders made on 25.2.82 in Writ Petition No. 6126/81 and whatever might have been the stand by the authorities in the earlier High Court case, the position now is that the department is duty bound to reconsider the matter in accordance with the rules and instructions. They have done so ^{as} after careful consideration and ¹⁷ following from such examination, have informed the applicants of the actual position by their memo dated 23.8.83 as at Annexure A-19.

The learned counsel says that for these reasons this application should be dismissed.

6. We have carefully considered the submissions of both sides.

Shri Narayana Swamy, learned counsel for the applicants bases his case essentially on the following grounds:

(i) According to him as per the 1964 rules transfer on compassionate ground results in loss of seniority. He submits that Shri R. Sathyanarayana Rao, R-5 can claim seniority as Draughtsman, Gr.I only from April, 1974 when he reported for duty in Bangalore and not from 26.5.71 when he was actually promoted to Grade-I in Hyderabad. Learned counsel further submits that some rules have been amended in 1979 on account of reorganisation of the department but these amendments have only prospective effect. Once R-5 had lost seniority as per 1964 rules he cannot regain higher seniority on reorganisation.

(ii) Shri M.N. Swamy contends that the seniority list circulated by the department on 27.7.81 (Annexure A-7) modifying the earlier seniority list circulated on 5.5.90 was done on the basis of a compromise between the department and R-5 when the latter had approached the High Court challenging the earlier seniority list. The applicants who were adversely affected by the 1981 seniority list were not given any opportunity to state their case before its modification on 27.7.81. After such revision of seniority, the department filed a memo before the High Court stating that the claim of R-5 for higher seniority had been conceded. The learned counsel terms this as a compromise and argues that it cannot bind the applicants if it is not done in accordance with the rules and instructions.



(iii) Shri Narayanaswamy also submits that the department while resisting the contempt petition (CCC No. 162/82) in High Court of Karnataka disposed of on 12.1.83 (Annexure A-10) had argued that R-5 belonged only to the Electronics Group and was not in the Aeronautics Group. Shri Swamy states that it is not open to the department now to change their stand and claim that R-5 has come into Aeronautics Group and is entitled to promotion ahead of the applicants.

7. As regards the first ground, the learned counsel seeks to draw support from para 10 and 11 of the rules for departmental promotion committee promulgated in 1964. These paras read as follows:

"10. The allotment of one of the 17 SP subjects mentioned in para 9 above will be done on the basis of the recommendations of the Head of the Estt. where an individual is employed, keeping in view the academic qualification, experience etc. of the individual concerned. An individual in a particular SP subject will not normally be eligible for transfer to another SP subject except in public interest.

11. Promotion to scientific/ technical non-gazetted selection grades will be made on the basis of the SP subjects allotted to the individual and no inter-subject promotion will be made."

It is seen from the above that under para 10, an individual in a particular SP subject was not normally eligible for transfer to another SP subject except in public interest. Para 11 barred inter-subject promotion. In the present case, respondents contend that when R-5 reported back in Bangalore on 3.4.79 he was continued as DM Grade-I in Electronics SP subject itself and he was not transferred to Flight Science SP subject held by the applicant. The department, therefore, submits that there has been no deviation from para 10. The amendment on 18.6.79 deleted para 9 providing for 17 serrated pyramid subjects and para 10 which debarred in the normal course transfer of an officer from

one SP subject to another. It also amended para 11 to provide for 7 groups instead of 17 SP subjects and which restricted promotion only within the same group. On 19.12.79 this was further amended to provide for 17 groups which included Aeronautics group and Electronic group. Aeronautics/group was shown at Sl.No. 12 as follows:

"Aeronautics Group : Gas Turbine Research Estt., Aeronautics Development Estt., Chief Resident Engineers (at Engines, Aircraft, Hyderabad, Kannur, Lucknow, Nasik, Sunabeda, Kirkee) and Head Quarters posts."

Electronic Group was shown at Sl.No.6 to include Defence Science Laboratory, Defence Laboratory, Solid State Physics Laboratory and Defence Electronics Application Laboratory. Shri Padmarajaiah submits that from Sl. No. 12 it is clear that all persons working in the ADE which included R-5 would become part of the Aeronautics Group and the earlier allotment of SP subject is no longer relevant. As R-5 was in ADE on 19.12.79, he had come over to the Aeronautics group on that date though earlier he was allotted to Electronic subject. The 1979 reorganisation required integration of seniority of persons in the same group even if they were allotted to different SP subjects and were earlier in different seniority units. The learned standing counsel submits that for such integration, the date of entry into the relevant grade is relevant. R-5 had entered in Grade-I on 26.5.71 whereas the applicants were promoted to this grade only in 1973. Shri Padmarajaiah further asserts that R-5 had not lost seniority on his coming over to Bangalore on compassionate transfer. He refers to the reply statement of the respondents. We may extract the relevant portion from para 6 of the reply statement as follows:

"It is clarified here that the seniority of Draughtsman Gr.I prior to June, 1979 was maintained on All India Seniority basis and as such there was no question of losing seniority on transfer to a new lab/estt even on compassionate grounds. However, since seniority was maintained on SP subjectwise the individuals on compassionate transfer were not allowed to change their subject."

He also contends that transfer from one group to another on compassionate grounds would entail loss of seniority only after 19.12.79. He refers in this connection to the Ministry's letter dated 26.8.80 (Annexure R-6) which is reproduced below:

" Subject:- RULES FOR CLASS III (SELECTION) POSTS

Reference this HQ letter of even number dated 29 Dec. 79.

2. With the decentralisation of DPC-II a doubt has been raised by some of the establishments about fixing the seniority of individuals who were posted to them on compassionate/ administrative grounds. In this connection it is clarified that all such individuals have to seek their promotion/ confirmation in the DPC-II of the establishment where they were in position at the time of decentralisation i.e. on 19 Dec 79.

3. After the date of decentralisation, transfer from one DPC-II to another DPC-II on compassionate grounds, will be allowed with loss of seniority i.e., such individuals will reckon their seniority from the date of reporting to the new (DPC-II) establishment/ laboratory. However, in the case of individuals who are transferred on administrative grounds, they will be allowed to carry forward their seniority in the new DPC-II. "

He, therefore, urges that the applicants' case that R-5 would count his seniority in Grade-I only from April, 1974 on his reporting at ADE, Bangalore is without any merit.

The applicants had filed a detailed rejoinder to the reply statement of the respondents. They have not rebutted the stand of the respondents that prior to 1979 there was no question of losing seniority on transfer to another establishment even on compassionate grounds. In particular para 6 of the reply statement and the contention of the department based on the letter dated 26.8.80 (Annexure R-6) have gone unchallenged. The reference ^h paras 10 and 11 of 1964 rules does not help the applicants as nowhere it has been mentioned in these paras that as per the 1964 rules transfer on compassionate grounds resulted in loss of seniority. The applicant have not shown any rule or

instructions to substantiate their stand. In the light of the categorical statement made by the department that prior to 1979 transfer on compassionate grounds did not result in loss of seniority for which they have produced ^{some} materials in support, we have to hold that R-5's seniority in Grade-I should date back to 26.5.71 when he got the promotion in Hyderabad and cannot be restricted only from 3.4.74 when he reported for duty in ADE, Bangalore.

8. We also do not find much force in the contention^s that the revised seniority list circulated on 27.7.81 was on the basis of a compromise between the department and R-5 and the same is not binding on the applicants. R-5 had filed a writ petition No. 6126/81 before the Hon'ble High Court of Karnataka where on the basis of a memo filed by the Govt. agreeing to the relief sought for by R-5 the writ petition was disposed of in terms of the aforesaid memo. The learned single judge in para 5 of the order had made it clear that the order should not be taken to affect the interests of persons who were not parties to the Writ Petition.

After protracted litigation and after the matter was remitted back to the High Court as per the Supreme Court's directions, the High Court in WP No. 4480/84 filed by the present applicant observed in its order dated 12.1.93 that the directions contained in para 5 of the High Court's order in WP No. 6126/81 had still to be complied with. The High Court recalled the order made on 25.2.82 in WP No. 6126/81 and directed the department to reconsider the matter of seniority of the present applicants vis-a-vis R-5 and others and thereafter determine the appropriate seniority and give promotional benefits accordingly.

The department implemented the directions of the High Court and issued



the memo dated 23.8.93 as at Annexure A-19 which is the impugned order. It is thus clear that whatever might have transpired earlier, the present position is that the department after re-examining the matter of seniority had come to the conclusion that the seniority list prepared by AOE and circulated on 27.7.81 allotting a higher seniority to R-5 as compared to the applicants was in order and confirmed such seniority list.

On re-organisation in December, 1979, the seniority of R-5 and the applicants had to be integrated and this had ^{been} done by the department following the principle of date of entry in Grade-I of the concerned officials. We, therefore, do not uphold the contention that the 1981 seniority list is based only on a understanding between the department and R-5 ^{and} was not in conformity with the rules. 12

9. Shri Narayanaswamy also complains that the department had been taking inconsistent stand. When R-5 filed a contempt petition before the High Court in CCC 162/82 the department had said that R-5 continued to be in the Electronics group and his prospects for promotion had to be worked out only in that group. The learned counsel further states that the department had said that R-5's case was considered for promotion in the Electronics Group and as he, by a comparative merit, was not selected for promotion, he was not promoted. Shri M.N. Swamy submits that the department now cannot say that R-5 is in the Aeronautics Group.

The learned standing counsel does not agree with Shri M.N. Swamy. He submits that whatever might have been the stand of the department earlier, the High Court by its order dated 12.1.93 had directed the department to conduct a de novo examination of the seniority in question and this according to Shri Padmajaish has been done. 13

properly by the department and communicated as per Annexure A-19. Apart from this contention it is also noticed that the context in which the contempt petition was filed by R-5 was different. In the earlier writ petition R-5 had asked for higher seniority over two persons namely, Shri C.B. Srinath and Shri S.P. Singh Saini who he claimed were juniors to him in Grade-I. These two were promoted by the department to the next higher grade of Chief Draughtsmen with effect from August 1989 whereas the applicant was not so promoted. The department in W.P. No. 6126/81 had conceded the claim of the applicant and filed a memo to the effect that he had been ranked higher in seniority as compared to Shri Srinath, etc. and the petitioner's case for promotion on the basis of the revised seniority would be considered retrospectively in accordance with the relevant provisions. The department later on took the view that para 11 as amended on 18.6.79 did not result in bringing him over ^{to} Aeronautics group and R-5 continued to be in the Electronics group. The department however went on to say that with effect from 19.12.79 when the rules were further amended, R-5 was entitled to have his services and seniority reckoned in Aeronautics group as he was actually working in ADE, Bangalore as on 19.12.79. The department clearly stated before the High Court that subsequent to 19.12.79 the seniority in the DM Grade-I in the Aeronautics group was recognised and promotion to the higher level of Chief DM was accorded. The High Court however held that in terms of memo filed by the department earlier, R-5 was entitled to get promotion in August 1979 itself when Shri C.B. Srinath was promoted and not only after 19.12.79.

In any case it is seen that the department had taken the stand that R-5 is entitled to get higher seniority with effect from

19.12.79 and had promoted him as Chief DM soon after 1979 whereas the applicants in the present OA received such promotion much later. The department therefore had been holding even in January, 1983 that R-5 was senior to the present applicants. We may also refer to para 6 of the High Court's order in the contempt petition dated 12.1.83 which reads as below:

"The controversy on this point is really in a short compass. According to Shri Ullal it was on 18.6.79 that complainant became entitled to be considered in Aeronautical group. According to Shri Bhatt it is only on and after 19.12.79 the complainant became so entitled. Promotion on the latter basis has been accorded to him."

It is clear from this that the department had not taken the stand earlier that R-5 continued to be only in Electronic group even after 19.12.79. They had not stated anywhere nor even implied before the High Court that in their view the present applicants should be given higher seniority as compared to R-5. In compliance with the directions of the High Court, R-5 was promoted retrospectively as Chief DM with effect from 8.6.79. This contention of the applicants that the Department had taken a stand in their favour before the High Court while resisting the CCC (Civil) 162/82 and that they had now changed their position is not borne out by facts.

10. We therefore hold that none of the grounds urged by the applicants has been established.

11. In the light of the foregoing discussions, we find no merit in the present applications which are dismissed with no order as to costs.

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11/1/93
Section Officer
Central Administrative Tribunal CV
Bangalore Bench
Bangalore

(A.N. VUJJANARADHYA)

MEMBER (J)

Sd/-

Sd/-

(V. RAMAKRISHNAN)
MEMBER (A)