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CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD.

O.A. NO.428 OF 1994
AND
M.A. NO.533 OF 1997.

O.A. NO.428/94.

BETWEEN

1. A. Ramakrishna Rao,
aged about 49 years,
Son of Late Mahalakshmaiah,
Doordarshan Kendra,
Hyderabad.
2. C.G.K.Murthy, aged about 47 years,
Son of Late Satyanarayana,
Editor, Yojana Telugu,
Publications Division,
Hyderabad.



... APPLICANTS.

Counsel for Applicants : Mr. Y. Suryanarayana.

AND

1. The Government of India,
represented by Secretary,
Ministry of Information &
Broadcasting, Sastry Bhavan,
New Delhi-110 001.
2. Jai Gopal, aged 37 years,
Son of Shri Nanku Das,
Occupation-Govt. Service,
Campaign Officer, D.A.V.P.,
Government of India,
New Delhi.
3. Rajendra Ray, Campaign Officer, DAVP,
Ministry of Information and Broadcasting,
3rd Floor, PTT Building, Parliament Street,
New Delhi.
4. Allah Buksh, Campaign Officer, DAVP,
Ministry of Information and Broadcasting,
3rd Floor, PTT Building, Parliament Street,
New Delhi.

... RESPONDENTS.

Counsel for Respondent No.1- Mr.N.R.Devaraj, Sr.C.G.S.C.

Counsel for Respondent No.2- Mr.N. Ram Mohan Rao.

Counsel for Respondent No.3- Party in person.

Counsel for Respondent No.4- N. Briz Mohan Singh.

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22/8/97

महबूब/ALLAH BUKHSH

अभियान अधिकारी

Campaign Officer

प्र.नि.सू. एवं प्र. मंत्रालय

D. A. V. P. M/O I&B

नई दिल्ली, New Delhi

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M.A. No.533/97

BETWEEN

K. Syama Prasad, aged 34 years,
Son of K. Venkateshwara Rao,
News Editor, All India Radio,
New Delhi-1.

... APPLICANT

(3rd Party proposed
Respondent.)

Counsel for Applicant - Party in person.
AND

1. A. Ramakrishna Rao

2. C.G.K.Murthy. (Applicants in OA) - Respondents.

Counsel for Respondents- Mr. Y. Suryanarayana.

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CORAM :

RAJENDRA PRASAD, MEMBER (ADMN.)
HONOURABLE MR. B.S. JAI PARAMESHWAR, MEMBER

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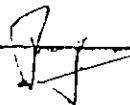
O R D E R.

(ORDER AS PER HONOURABLE MR. B.S. JAI PARAMESHWAR, MEMBER

Heard Mr. Y. Suryanarayana, learned
counsel for the applicants and Mr. N.R. Devaraj,
learned counsel for the respondents 1 and 2. Respondents
3 and 4 remained absent. When this application was
taken up for hearing, Mr. N. Ram Mohan Rao appeared
and argued for the respondent No.5.

2. The applicants have filed this O.A. for
a direction to the respondent No.1 to review and
prepare yearwise panel in Grade II officers of the
Central Information Service (redesignated as
Indian Information Service) from 1974 onwards,
consequent upon the judgment of the Central Administrative
Tribunal in S.C. Kakatwana and others v. Union of
India (reported in ATR 1978(2) 22(ND) and in
P. Parameshwaran and others v. Union of India
(W.P.No.1888 of 1978 dated 5.12.1986 of the Hon'ble

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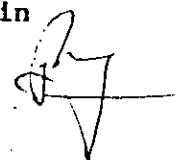
Supreme Court of India and assign seniority on the basis of promotions made on yearwise panel basis till 31.12.1980 and after 31.12.1980 interse vis-a-vis direct recruitees on the basis of year of recruitment/ promotion and consequently to revise the seniority list of Gr.II officers of India Information Service published on 9.3.1993 and for other consequential reliefs.

3. The facts giving raise to this Original Application may, in brief, be stated thus :

(a) There are two applicants in this O.A. They were recruited in 1969 as Field Publicity Officers in the Department of Information and Broadcasting. They joined their duties on 6.7.1970. The Field Publicity Officer is a Gr.IV post in the Information and Broadcasting Department. The applicants were promoted to Gr.III effective from 1.10.1975 on ad hoc basis. Their services in Gr.III were regularised effective from 13.2.1978. Further the applicants were also promoted Gr.II in the Information service effective from 26.4.1985. Applicant No.1 also had the promotion to Gr.I (Gr.A service.) in the Information department on ad hoc basis effective from December, 1988. However, both the applicants were promoted to Gr.I (Gr.A) on 15.12.1989. On the date of filing of this petition, both the applicants were Grade A officers in the Central Information Service (now redesignated as Indian Information Service.).

4. At the time of their recruitment they were governed by the rules called Central Information Service Rules, 1959 (hereinafter referred to as ^{the} 1959 Rules). In para-(e) at page-4 of the petition, the applicants have explained the Rule 6(C) of the Rules, 1959 wherein the method of recruitment to certain posts in the

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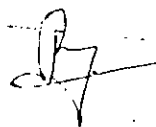
Indian Information Service has been enumerated. They relied upon Rule 6(c) of the Rules, 1959 which provided the method of filling the posts in Grade II. According to the said rule, the method of recruitment is in the ratio of 50:50. The temporary vacancies in Grade II were to be filled up by selection of officers holding duty posts in Grade III. Rule 2(c) of the Rules, 1959 defines "duty post". The qualifying service for promotion to Grade III was at least five years. According to Rule 6(c) (2), no Grade III officer was eligible for promotion to Grade II permanent vacancy unless he was initially appointed to the temporary vacancy by selection. The Rules 1959 is enclosed to the O.A. at Annexure-A.

5. The Rules 1959 was substituted by the Rules called Indian Information Service (Group A) Rules, 1987 (hereinafter referred to as "the Rules, 1987"). The Rules, 1987 came into force from 18.2.1987. The said rules underwent amendment in 1991. The original rules and the amended rules are at Annexures- B & C. to the O.A. It is stated that Grade II is now redesignated as Junior Grade and Grade I as Senior Grade. It is also stated that the Rules 1987 reduced the period of qualifying service for eligibility for promotion from Grade I from 5 years to 3 years.

6. It is stated that between 1.1.1974 and 31.12.1980 the sanctioned strength of the I.I.S. was 218 and further it is submitted that a number of vacancies arose between the said period. The vacancies filled up during the said period were as follows :

- (a) 28 posts in 1974
- (b) 32 posts in 1978
- (c) 73 posts in 1980
- (d) 91 posts in 1981

That during all these years a number of vacancies in Grade II posts were left unfilled, that they were promoted to Grade III during October, 1975; that in accordance with



the recommendation of the Third Pay Commission, their scale of pay was implemented retrospectively from 1.1.1973; that therefore in case the scale of pay is taken as a basis, they submitted that they became eligible promotion to ^{that} for Grade II during the year 1976; ^{that} even otherwise they became eligible at least by 1978; that ~~the~~ D.P.C. was not held inter alia that no D.P.C. was held for Grade II posts from the years 1975 to 1979, and 1982 to 1984; that the respondent No.1 deliberately kept the Grade II posts unfilled and thereby affected their career prospects; that Rule 6(c) was amended and the process of recruitment by direct method was suspended from 1.1.1974 to 31.12.1980; that during this period the Grade II posts ought to have been filled up only by promotion; that the said suspension was intended to encourage the professionalism and create proper career opportunities to the professionals; that respondent No.1 acted in a manner against the spirit of the special rules; that after 31.12.1980 direct recruitment to the Grade II posts was held every year; that promotions to the Grade II posts were not made between 1982 to 1984; that all the available vacancies existing for a long time were bunched together and the DPC was convened in the year 1985; that during the year 1985, 92 vacancies were filled up; that the said 92 vacancies ^{over} pertain to previous panel years spreading ^{over} from 1974 to 1980 and 1982 to 1984; that D.P.C. was not conducted for a long time; that therefore, the posts in Grade I fell vacant and none of the officers in Grade II posts was qualified for promotion to Grade I having regard to the length of service required for promotion from Grade II to Grade I; that, consequently, the respondent No.1 opted for deputation and issued a notification in the Employment News inviting applications ^{to Grade I} on deputation; that the applicants along with others protested against the manner of appointment to Grade I posts; that the decision of

the Hon'ble Supreme Court of India in the A. K. Bhatnagar's case; that after completion of fixation of direct recruits, the remaining 1980 batch promotees and 1981, 1985, 1987 promotees were placed in the year of their original seniority; that the provisional seniority list has been communicated and the same is annexed to this O.A. as Annexure- D; that the said seniority list has not been prepared properly taking into consideration the promotions which were to be made between 1.1.1974 and 31.12.1980; that the final seniority list had been prepared by the respondents but the same had not been shown in the seniority list; that the applicant No.2 is making promotions of 25 officers on the basis of the said seniority list in 1993 and another 60 officers are likely to be promoted; that the applicants have described certain discrepancies found in the seniority list (Annexure-D); that during the year 1971 persons worked as Sub-Editors and Information Assistants in the Directorate of Public Relations, Ministry of Defence, were inducted to Grade-IV and were assigned seniority with effect from 29.6.1968; that then the inservice Grade IV officials who were similarly situated like the applicants filed a Writ Petition i.e. C.W. No.637 of 1976 in the Hon'ble High Court of Delhi; that they contended that the inducted persons were not entitled to be assigned seniority over and above them; that the said matter was pending for a long time; that the said writ petition came to be transferred to the Principal Bench of this Tribunal at Delhi and was renumbered as T.A.No.237 of 1985; that the Principal Bench of this Tribunal decided the said application on 11.9.1987; that this Tribunal accepted the contention of Grade IV officials; that against the said judgment, the respondents preferred an appeal before

the Hon'ble Supreme Court of India; that however, the Hon'ble Supreme Court of India accepted the appeal and conferred seniority on the inducted persons with effect from 29.6.1968; that the Hon'ble Supreme Court delivered its judgment on 31.10.1988; that in 1987 the applicants had submitted a detailed representation contending that the vacancy position for every panel year in Grade II of the service must be announced and all backlog vacancies in Grade II must be filled up on panel year basis before proceeding further; that they have not received any reply to the said notice; and that therefore they have constrained to file this O.A.

7. Therefore, the main grounds are as under :

(A) All the vacancies arising between 1.1.1974 and 31.12.1980 were to be filled up by promotion only and all these posts could not be carried forward.

(B) The applicants were entitled to be promoted to the vacancies in Grade II posts prior to 31.12.1980 and consequently their seniority must be above the direct recruits of 1981. Even otherwise, it is submitted that they

are entitled to fixation of seniority atleast from the year 1981 in the ratio of 1:1.

(C) All the vacancies after 31.12.1980 have to be filled up in the ratio of 1: 1 between the direct recruits and promotees of panel officer and the seniority should also be fixed in the same ratio. The vacancies could not be filled up in a bunch and allotted the year in which actual promotions were to be made. But the persons so promoted have to be fixed with seniority inter se with the batch of direct recruits.

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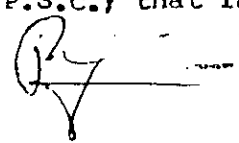
(D) The inter se seniority list prepared vide Annexure-D is contrary to the special rules and Government India instructions on the subject. They have to maintain the quota-rota rule even for seniority.

(E) The unpublished seniority list contains several lapses and since no opportunity was given to them, promotions from Grade I to Junior Administrative Grade should be given only after giving out justice to them.

On 8.1.1981 this Minister passed an order to the effect that in case respondent No.1 feels that there was necessity to fill up the remaining 65 posts of J.A.G. pending disposal of this O.A., the same could be filled up on adhoc basis and it will be subject to the result of this O.A. The appointment should be made by following the date of entry into Grade II (redesignated as Junior Grade) for the purpose of reckoning the seniority in Grade I for consideration for promotion to the post of J.A.G. on ad hoc basis in pursuance of the said order.

admitting the service particulars of the applicants but contending that under the Rules 1987 the qualifying service for eligibility for promotion from Grade II to Grade I was reduced from 5 years to 4 years and not 3 years as contended by the applicants; that the Rules 1987 are the rules and that it is not the formulated ^{any} special rules as alleged by the applicants; that as on 1.1.1981 the sanctioned strength of Grade II posts in the Central Information Service was only 160 and not 218 as urged by the applicants; that there were 137 permanent posts and 23 temporary posts; that the D.P.C. meetings for promotion to Grade II to fill up the said vacancies during the period 1973 to 1981 were held in 1978, 1980 and 1981 respectively in the U.P.S.C.; that in

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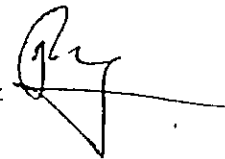
accordance with Rule 6(c)(ii) (1) of the Rules, 1959 50% of permanent vacancies in Grade II have to be filled up through open competitive examinations to be held by the U.P.S.C.; that the 50% permanent vacancies and 50% of temporary vacancies in Grade II have to be filled up by selection among the officers holding duty posts in Grade III or any higher grade, on the recommendation of the D.P.C.; that Rule 6A provided the qualifying service for an officer for promotion to Grade II; that the D.P.C. held in 1978 in the U.P.S.C. took into account the vacancies that arose between 1973 and 1977 against the promotion quota; that accordingly the vacancies were 58 and the D.P.C. recommended a panel of 58 officers for promotion; that during March, 1978 and March, 1980 the D.P.C. met and recommended for promotion to 126 posts against the promotion quota since the last-met D.P.C.; that D.P.C. in 1980 held for 126 vacancies, but as there were only 84 eligible officers within the zone of consideration, the D.P.C. recommended a panel of 83 officers for promotion; that the next D.P.C. was held in July, 1981; that it took into account the vacancies unfilled by the previous D.P.C. in 1980 as well as the vacancies upto 1981; that upto 1981, the posts against promotion quota were only 24; that therefore, the D.P.C. drew up a select panel for 1980 and 1981 separately and recommended 80 and 24 officers, respectively, for promotion to Grade II of CIS; that till December, 1980 in accordance with the instructions of the Department of Personnel and Administrative Reforms (DP&AR), the D.P.C. was required to take into consideration all the vacancies those existed and anticipated at the time of holding the D.P.C. for the purpose of drawing one select panel;

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that the said O.M. was issued to avoid D.P.C. meeting frequently; that filling up of vacancies by selection method was revised by the DP & AR vide their O.M. dated 24.12.1980 (Annexure-R.5); that the D.P.Cs. held during 1978, 1980 and 1981 were therefore convened as per the C.I.S. Rules, 1959 and the instructions of the DP & AR; that, incidentally, the respondent No.1 had made out a case for holding the D.P.C. for vacancies available for the years 1973 to 1977 and 1978. But however, the U.P.S.C. was not agreeable for the said suggestion as the instructions of the DP & AR did not provide for preparation of select list on yearwise basis and the zone of consideration for promotion was three times the number of vacancies; that on 5.12.1986 the Hon'ble Supreme Court of India in the case of P. Parameswaran & others v. Union of India granted the petitioners in that SLP the higher scale of pay in Grade III with retrospective effect from 1.1.1973 in accordance with the recommendations of the Third Pay Commission; that the applicants herein were similarly placed with those of the applicants before the Hon'ble Supreme Court; that accordingly the applicants were granted higher scale of pay of Rs.650-1200/- with effect from 1.1.1973 as personal to them on 8.10.1991; that the applicants were promoted to Grade III of CIS on 1.10.1975 and 10.10.1975 respectively on ad hoc basis; that they were thus eligible for consideration for promotion to Grade II posts in the CIS only with effect from 13.2.1981; that therefore, the applicants were not considered as they were ^{too} juniors in the Grade III posts and they did not fall within the zone of consideration against the vacancies for which the D.P.C.s met in 1978 and 1980; that the D.P.C. held in 1981 considered the applicants for the vacancies of 1980 but they could not

be empanelled for want of sufficient vacancies; that the contentions of the applicants that yearwise panel should have been drawn up from 1974 till 1980 and should have been considered their case against those vacancies in Grade II posts are unfounded; that at the material point of time, the applicants had not come within the zone of consideration for promotion against the vacancies for which the D.P.Cs. were held in 1978 and 1980; that the number of vacancies filled in Grade II posts as a result of the D.P.Cs. held in 1978, 1980, 1981 were 58, 83, and 102 respectively; that none of the vacancies which occurred during the said period remained unfilled; that as per the O.M. dated 25.11.1992 the direct recruitment to the post of Grade II was suspended since a separate scheme of syllabus for recruitment through a competitive examination was being worked out; that the said scheme, however, did not materialise; that therefore, direct recruitment to Grade II posts of the CIS was resumed from 1981 onwards through Civil Service Examination; that accordingly, the Rules 1959 were amended vide notification dated 25.1.1982; that with a view that the direct recruits coming through CSE 1981 onwards may not get unintended seniority under quota-rota system of fixation of seniority over the departmental promotees who were regularly appointed to the Grade II posts prior to 31.12.1980, it was specifically provided that these departmental promotees would rank en-bloc senior to the direct recruits appointed through CSE after 31.12.1980; that Rule 6(C)(ii)(2) was further amended on 25.1.1982 in order to clarify the earlier provision for recruitment; that the clarification was as under:



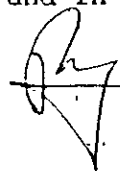
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- "(2) 50% of the permanent vacancies shall be filled by substantive appointment of temporary Grade II officers in the order of their seniority subject to the rejection of the unfit.
- (3) Temporary vacancies in Grade II shall be filled by selection from amongst officers holding duty posts in Grade III."

that after 31.12.1980 direct recruitment was made against the accumulated vacancies available under the direct recruitment quota from 1974 onwards and these vacancies were reported to U.P.S.C. and filled up in a phased manner through the Civil Service Examination from 1981 onwards and that during 1985 D.P.C. was held for 96 posts which arose only in 1984 mainly on account of promotions made to Grade I; that if there had been any earlier vacancies in 1982 and 1983, the D.P.C. met in 1985 would have drawn up a yearwise select panel for all the years as per the instructions dated 24.12.1980; that the D.P.C. held in 1985 hence took into account only those 96 vacancies for the year 1984 and recommended a panel of 102 officers since six officers were working on deputation in ex-cadre posts; that as a result 96 officers were promoted including the applicants to Grade I effective from 26.4.1985; that there has been no bunching of vacancies of previous years by the D.P.C.; that during the year 1986 and 1987, the number of vacancies existed in Grade I was estimated to be 68; that the eligible officers for promotion to Grade I were not available and hence a proposal to relax the provisions of the Rules was under consideration but the same was not materialised; that hence it was decided to fill up those Grade I posts under Rule 8 of the CIS Rules, 1959 which provided for filling up of 10% of the sanctioned strength by deputation; that the vacancies were circulated on 24.12.1985 and again on 9.1.1987; that the U.P.S.C.

It was of the opinion that the eligibility criteria should be

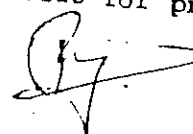
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5 years service in posts in the scale of pay of Rs.700-1300/- and 8 years regular service in the scale of pay of Rs.650-1200/-; that some of the Grade II officers made representations for being considered them against these vacancies in Grade I but the same could not be acceded to as the Department of Personnel & Training (DP&T) was of the firm view that those officers were in the feeder grade for promotion to Grade I and hence ineligible for deputation within the cadre; that the number of applications received in response to the circular despite wide circulation was poor and ^{was} only 7; that therefore, the idea of filling up those posts by deputation was dropped; that the draft seniority list circulated in I.D.No.A. 23020/1/92-CIS dated 17.9.1992 was prepared as per CIS Rules, 1959 amended from time to time and in accordance with the general principles for determination of seniority of the Rule 6(C) of the Rules, 1959 and the amendment notified on 25.1.82; that accordingly the departmental officers regularly appointed to Grade II posts prior to 31.12.80 were placed enbloc above the first direct recruits appointed to Grade II of CIS after 31.12.80; that the first direct recruit candidate was appointed on 1.9.82 (Serial No.407 in the provisional list), that the inter se seniority list of the departmental officers regularly appointed to grade II posts on 7.7.81 and direct recruits of 1982 batch were fixed in the ratio of 1:1 as per the C.I.S. Rules; that several representations were received against the provisional seniority list which were carefully examined; that some of the aggrieved officers of the C.I.S. had earlier moved the Principal Bench of the C.A.T. in the case of S.C.Kakatwan and others vs. Union of India and others and in the case of



V.K.Arora and others and A.K.Roy and others praying the for fixation of their seniority in all grades of CIS by taking into account their ad hoc service rendered by them in each grade prior to their regular appointment in the said grade; that the Hon'ble Tribunal had accepted their contention; that in another set of judgments of against the judgments of appeals the Hon'ble High Court of Madras and the Principal Bench of this Hon'ble Tribunal in the matter of A.K.Bhatnagar and others, T.Kannan & others vs S.K.Nayyar and others, the Hon'ble Supreme Court has reversed the decision of the Hon'ble Tribunal and the judgments of the Hon'ble High Court of Madras and has held that the ad hoc service rendered in the lowest category i.e. Grade IV in the service should not be reckoned for the purpose of seniority in Grade IV; that this judgment necessitated further revision of the seniority list and therefore, a fresh revised seniority list dated 17.9.92 of the Grade II Officers was drawn up and circulated; that in view of the judgments in the above cases of the Principal Bench, Grade II officers promoted on 7.7.81 were given retrospective effect from 27.3.80; that as their promotions were deemed to be regular from 27.3.80, - a date prior to 31.12.80 as per the amendment of the CIS Rules, 1959 and in view of the proviso to Rule 6 of the Rules, 1959, they were enbloc placed above the direct recruits who joined after 1.1.81; that fixation of seniority as per quota-rota system was made applicable only in respect of those who were appointed to Grade II posts after 1.1.81; that the seniority list circulated on 17.9.92 was finalised and final seniority list was published on 9.3.93 (Annexure-R). that, thereafter, the draft seniority list of Grade I officers was drawn up and circulated on 8.4.93; that the seniority list of Grade I officers finalised on 8.4.93 formed the basis for promotion to the next higher

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grade of J.A.G. on ad hoc basis; that as per the seniority list of Grade I officers, the applicants figured at serial Nos. 664 and 672 respectively; that the respondents relaxed the eligibility conditions in favour of promotees on four occasions for the D.P.C. held in February, 1982, April, 1982, December, 1983 and April, 1986 and the D.P.C. held in 1986 relaxed the eligibility conditions for the direct recruits along with the departmental promotees; that the direct recruits who were appointed to the Service were required to undergo Foundational Training Course in one of the Training Academies like LBSNAA, Mussourie followed by 11-month Orientation Course in the Indian Institute of Mass Communication for professional training and were required to pass such tests as may be prescribed from time to time as per Rule 7(4) of the Rules, 1959; that the termination of the probation period of those probationers had been effected taking into account the work, conduct and performance; that there have been cases where the probation period of the officers had been extended. Hence the allegations made in the O.A. are unwarranted; that in accordance with Rule 6B of the CIS Rules, the Government is empowered to include and exclude from Service any post and fix the seniority of the officers so included along with the posts in consultation with the U.P.S.C.; that the inclusion of the posts of Sub-Editors and Information Assistants of the Department of Public Relations, Ministry of Defence in 1971 and fixation of their seniority was done by the Government in Grade IV posts. Hence the Hon'ble Supreme Court in the judgment referred to above has upheld the action of the Government and that therefore, the applicants cannot have any grouse against those officers. Hence the applicants are not entitled to any relief claimed in this O.A. and the O.A. be dismissed with costs.

10. The respondent No.2 has filed a counter more or less on the lines of the counter filed by

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the respondent No.1. Respondent Nos.3 and 4 have also more or less adopted the reply filed by the respondent No. 11.

During the pendency of this application, Sri K. Syama Prasad, News Editor, All India Radio, New Delhi has filed M.A.No.533/97 seeking permission to come on record as a party to the O.A. It is stated that the pendency of the O.A. and also in view of the interim order dated 8.4.94 passed in the O.A. his promotional prospects have been affected and therefore, he prayed to be impleaded as a Respondent to the above O.A.

12. After considering the various contentions of the learned counsels for the parties, the following points have been formulated for consideration:-

(a) The applicants have made out a case for directing the respondents to prepare yearwise panel of the promotees in the Grade II officers of the Indian Information Service ?

(b) Whether the seniority list published on 17.9.97 and finalised on 9.3.93 requires revision ?

(c) To what order ?

12. Our findings :-

(a) - No.

(b) - No.

(c) As under :

REASONS :-

(a) The applicants are the departmental promotees. Their service particulars furnished in the O.A. are not at all seriously disputed by the respondents. We are concerned with the seniority list of Grade II officers in the Indian Information Service.

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The applicants claim to have become eligible from the year 1978 after completing the qualifying service for promotion to Grade II. Earlier, they were working in Grade II on ad hoc basis from 1975. The respondents dispute the eligibility of the applicants for promotion to Grade II in the Indian Information Service. According to them, the applicants became eligible only during 1981.

13. The applicants were governed by the Rules, 1959. It is not in dispute that between 1.1.74 and 31.12.80 no direct recruitment to the posts of Grade II was made. It is stated by the respondents that they were analysing the procedure and qualification for the candidates and there was some delay in finalising the procedure and the syllabus for the direct recruits to the Indian Information Service. According to them, it is under those circumstances they could not fill up the direct recruitment posts till 31.12.80. However, the respondent No.1 has protected interest of the departmental promotees between 1.1.74 and 31.12.90 by adding a proviso in the Rules, 1959 which reads as under :

"6(C) GRADE II

(1) Pay x x

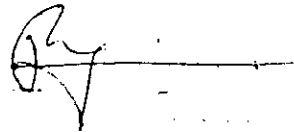
(ii) Recruitment :

(1) x x x

Provided that direct recruitment to Grade II shall remain suspended from the 1st January to 31st December, 1980.

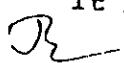
Provided further that persons regularly appointed to this grade by promotion during the period from the 1st January, 1974 to 31st December, 1980 shall be en bloc senior to the first direct recruit to this grade appointed to this grade after the 31st December, 1980."

13. The applicant's main contention is that the respondent No.1 had not taken timely action to fill up the posts in Grade II and had not prepared the yearwise panel to fill up the posts and the D.P.Cs. were not held regularly.



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14. The respondents have stated in their counter that between the years 1973 and 1977 the posts against the promotion quota were 58. The D.P.C. met in 1978 and recommended a panel of 58 officers; that there were 126 vacancies under the promotion quota since; that the last D.P.C. which was held in 1978 and the next D.P.Cs. met in March, 1978 and March, 1980. The D.P.C. met in 1980 considered for promotion to 126 posts. It is stated that at that time only 84 officers were eligible as having put in qualifying service and therefore, the D.P.C. recommended for promotion of only 83 officers. Thus, the 43 officers against promotion quota were left unfilled. That D.P.C. met in July, 1981 and took into account the unfilled vacancies i.e. 43 and also the vacancies. It is stated that upto December, 1981 the posts against promotion quota were 24. Thus the D.P.C. drew up a yearwise panel for 1980 and 1981 and recommended 80 and 24 officers respective for promotion to Grade II. It is to be noted that Grade III is a feeder category for promotion to Grade II in the Service. Further, the respondent No.1 has stated that till December, 1980 the D.P.C. was required to take into account all the vacancies existed or anticipated at the time of holding the D.P.C. for the purpose of drawing a single select panel so that the D.P.C. would not require to meet frequently. It is submitted that this procedure was adopted in accordance with D.M. No.22011/3/76-Estt(D) dated 24.12.80; a copy of the O.M. is at Annexure-R.5. Thus the respondent No.1 submitted that the D.P.Cs. held in 1978, 1980 and 1981 were convened in accordance with the CIS Rules, 1959 and in accordance with O.M. dated 24.12.80 (Annex-R.5). It is also stated by the respondent No.1 that he




had sent a proposal to the UPSC for holding the deemed DPCs for the vacancies for 1973 to 1977 and 1978, but the UPSC did not agree for the said proposal on the ground that the D.P.A.R. did not provide for preparation of select list on yearwise basis; occurrence of vacancies and the zone of consideration for promotion was three times the number of vacancies. These are the legitimate reasons putforward by the respondent No.1 for not drawing up the yearwise panel from the year 1974 to 31.12.1980. As already observed, the respondent No.1 had protected the interest of the promotee officers by inserting the proviso to Rule 6 of the Rules, 1959 to the effect that the departmental promotees should be placed enbloc senior to the direct recruits. Thus the D.P.Cs held in 1978, 1980, 1981 recommended to fill up 58, 83 and 102 posts respectively. The respondent No.1 has further specifically stated that none of the vacancies which occurred during the said period and fell under the promotion quota was left unfilled. By this the respondent No.1 categorically admitted that no injustice has been done to the departmental promotees.

15. The respondents in their reply statement specifically denied the existence of vacancies in the Grade II posts and they attempted to make out a case that all the posts against the promotion quota were filled up and therefore, the applicants could not have been given promotion earlier than they were actually promoted.

16. The Rules 1959 came to be repealed in so far as Grade II posts were concerned effective from 18.2.87. They were replaced by the Rules, 1957 which

came into force on 18.2.1987. The Rules provided for quota-rotta rules. That means, the direct promotee must be placed above the departmental promotee in the ratio 1:1. However, in view of the proviso added effective from 25.1.82, the departmental promotees upto 31.12.80 were enbloc placed above the direct recruits. The first direct recruit appointed after 1981 is on 9.7.81.

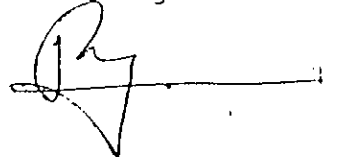
The applicants rely on Parameshwaran's case in support of their contention. They have furnished a copy of the judgment in the said case. In the said case, officers of Grade II were given the monetary benefit and grade retrospectively from 1.1.73 basing on the recommendation of the Third Pay Commission. Conferring the scale of pay and grade in the Parameshwaran's case does not in any way confer on the applicants any undeserved seniority. By the said judgment, the applicants and others were given certain grade on monetary benefits respectively from 1.1.73.

In *Kakatiya* and moved the Hon'ble High Court of Delhi for certain benefit of seniority from the dates of their appointments in the respective grades vis-a-vis direct recruits. The said writ petition came to be transferred to the Principal Bench of this Tribunal. The Principal Bench relying upon the principles enunciated by the Hon'ble Supreme Court of India in the case of *Narendra Chadda vs. Union of India* (reported in A.I.R.1986 S.C.638) and *K.N.Mishra vs. Union of India* (reported in A.I.R. 1986 (2) S.C.272) directed the respondents that the seniority of the petitioners should be revised within a period of next four months by taking into account the entire period of continuous ad hoc officiation preceding to their regular appointments to that grade for the purpose of seniority. They should be given all consequential benefits on promotion, arrears of pay and allowances

and the increased retirement benefits on the basis of the revised seniority with reference to the pay and post held by those who would be immediately junior in the respective grades in accordance with the revised seniority list.

18. We are not persuaded to accept the version of the applicants with regard to the vacancy position in Grade 'A' post in the Service. We have no reasons to disbelieve the statistical data of the vacancy position given by the respondents in their reply. We feel that the applicants have exaggerated the vacancy position only to show that they could have been promoted much earlier. There are no reasons why the respondents deny the promotional benefits to the applicants or any other official of the department when they were considering for promotion only the ~~the Service~~. Admittedly, between 1.1.74 and 31.12.80 only the departmental ~~officers~~ were considered for promotion. There were no reasons for them to deny the benefits at the risk of accumulation of work of the department. Therefore, their version has to be accepted.

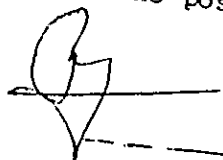
19. It is the case of the applicants that the respondents have failed to conduct the D.P.Cs. annually. An explanation has been given by the respondents to this. Even they have stated that at that time as per Annexure-A.5 the D.P.C. was asked not to meet frequently, and the D.P.C. was convened to consider the existing as well as anticipated vacancies in the promotional grade. In fact, the respondents had submitted a proposal to the UPSC for convening the deemed DPCs for the vacancies arose during the years 1973 to 1978, but the UPSC did not agree for the



said proposal as the instructions, then in force, of the DPAR did not provide for preparation of the select list on yearwise occurrence of vacancies and the zone of consideration for promotion was three times the number of vacancies. In these circumstances, the department cannot be blamed for not conducting the DPCs annually and for not preparing the yearwise panels. Since the only departmental officials were considered for promotion between 1.1.74 and 31.12.80, the applicants cannot have any grievance. It is not their case that any of the juniors were placed above them. It is also not their case that they had become eligible for promotion during the said period. When that is so, it is, in our humble opinion, an exercise in futility to direct the respondents now to prepare yearwise panels right from year 1974 to 31.12.1980 and then onwards depending upon the quota.

Further we feel that an employee cannot claim promotion as a matter of right. Promotion, generally, is an appointment to a post carrying higher pay scale provided such appointment has been made after screening the eligible persons. Determination of vacancies is primarily the administrative or secretarial task, while the D.P.C. is required to make recommendations about the candidates' suitability. The object of the applicants in demanding for preparation of yearwise panel from 1.1.74 to 31.12.80 is only to claim promotion from an earlier date. We feel that it is the discretion of the department for taking steps to fill up the promotional posts. In the instant case, the departmental promotee gained advantage in view of the proviso to Rule 6 of the Rules, 1959. Further the respondents have categorically stated that no post against the promotion

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quota which arose between 1.1.74 and 31.12.80 was left unfilled. The applicants have not disputed this portion of the reply of the respondents. When that is so, there is no justification on the part of the applicants to demand for preparation of yearwise panels etc. Further the applicants have not been put to any kind of disadvantage by not holding DPCs annually. The respondents have offered an explanation as to why they could not convene the DPCs regularly.

21. Hence, in the circumstances explained above, we feel that the direction as prayed by the applicants for preparation of the yearwise panels right from the year 1974 is not justified and not warranted. Thus we hold Point No.(a) against the applicants.

22. By 1993 how the department had to prepare the seniority list was determined by the Hon'ble Supreme Court of India and other High Courts. A.K.

Bhatnagar's case arose from the department officials. It is not known as to why the applicants — — — — —

the principle enunciated by the Hon'ble Supreme Court in the said case is not attracted to them. In Parameshwaran's case, Kakatwana's case, V.K.Arora and others' case and A.K. Ray's case, the officials of the department had moved the judicial forums for preparing the seniority list by the department. The Hon'ble Supreme Court had held that the service rendered in Grade IV post need not be taken into consideration for preparing the seniority list in Grade II, III and I.

23. Following the directions given by the Courts in the cases cited above, the respondents prepared the revised provisional seniority list. The applicants were fully aware of the said fact. Suppressing the real facts, the applicants in para-(e) at page-11 of the O.A. have contended that the respondents were about to make promotions on the basis of the unpublished seniority list.

Or

[Signature]

This averment persuaded this Bench to make the interim order dated 8.4.94. In the interim order, this Bench directed that in case the respondent No.1 feels that there is necessity to fill up the remaining 65 posts of J.A.G. pending disposal of this O.A., the same can be filled up on ad hoc basis, which will be subject to the result of this O.A., by following the date of entry into Grade II (redesignated as Junior Grade for the purpose of reckoning the seniority in Grade I for considering for promotion to the post of J.A.G. on ad hoc basis in pursuance of this order. Thus for nearly 3½ years, 65 posts of J.A.G. have been held by the officers on ad hoc basis. The applicants filed this O.A. on 4.4.94. The provisional ^{seniority} list prepared by the respondents was circulated on 17.9.92. Some of the officers submitted their objections to the provisional seniority list. The department considered the objections and finalised the same on 9.3.93. The finalised seniority list is at Annexure-R.1. In the counter they have specifically stated that as per the final seniority list, the name of applicant No.1 is at serial No.664 and the name of the applicant No.2 is at serial No.672 respectively. The applicants though filed a lengthy rejoinder disputing the various averments could not say as to where actually they could stand in the final seniority list. They stated certain mistakes crept in the seniority list. The said mistakes could have been rectified by the department. They have not submitted any representation to rectify the said mistakes. Admittedly ^{the} respondents 3 and 4 were ^{the} ~~respondents~~ ^{respondents}. The respondents 3 and 4 and Sri K. Syama Prasad, (the applicant in M.A.No.533/97) are not claiming seniority over the applicants. In fact, the applicants became eligible for promotion for the vacancies of 1980, but they could not be empanelled

for want of sufficient number of vacancies. They were regularly appointed to Grade II post on 7.7.81. By then no direct recruit appointee was posted. Even though they were promoted to Grade II posts on 7.7.81, their promotions were deemed to have taken place on 23.7.80 i.e. earlier to 31.12.80 and were placed above the direct recruits. The first direct recruit appointment was made on 7.9.82.

24. The seniority list published by the respondent is in accordance with the principles enunciated in Kakatwana's case and in the cases of A.K.Bhatnagar and V.K.Arora and others. The applicants cannot have any grievance over the seniority list. They misled this Bench and obtained the interim order. It is not as if they were not aware of the finalisation of the seniority list

this O.A. suppressing certain material facts and contending that the respondents were acting on the unpublished seniority list. In our humble view, the conduct of the applicants is not proper. They have not approached the Tribunal with clean hands. They can have no grievance over the seniority list prepared and finalised on 9.3.93.

25. It is stated that they had submitted a detailed representation in 1987. The provisional seniority list was prepared on 17.9.92. Even if they have any grievance as to any mistake in the finalised seniority list, they may submit a detailed representation to the respondents within a month from today. If such a representation is received, the respondents shall consider the same impartially and send a suitable reply to the applicants.

26. For the reasons stated above, we find no justifiable grounds to grant any relief to the applicants. Therefore, the O.A. is devoid of any merits and the same is liable to be dismissed.

27. Accordingly, (a) the O.A. is dismissed; (b) No order as to costs; and (c) the applicants, if they are so advised, may submit a detailed representation against the finalised seniority list to the respondents within thirty days from today. In case such a representation is received within the stipulated time, the respondents shall consider the same and send a suitable reply within four months from the date of receipt of the representation.

M.A.533/97 is accordingly disposed of, without any directions.

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प्रशासनिक अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

अल्लाह बुक्कश/ALLAH BUKHSH

अभियान अधिकारी

Campaign Officer

वि.वृ.प्र.नि. मू. एवं अ. प्रशासनिक

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