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IN THE CENTR[illegible] TIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.Nos. 118/94, 542/94 & 543/94.

Dt.of Decision : 26-8-1994

O.A. 118/94.

BETWEEN

1. Sutirtha Chattacherya
2. Harish Kumar
3. Debabrata Kantha
4. Ms. I. Rani Kumudini .. Applicants.

AND

1. The Secretary to Government of India, Department of Personnel and Training;
2. The Union Public Service Commission rep. by its Secretary, Dholpur House Shahajahan Road, New Delhi.
3. State of Andhra Pradesh, rep. by its Chief Secretary, Secretariat, Hyderabad.
4. Sri B. Rajalingam
5. Sri B. Sudhakar Rao
6. Sri A. Madhusudhan Reddy
7. Sri M. Tukaram
8. Sri D.R.K. Sharma
9. Sri P. Sunder Kumar
10. Sri K.V. Ramana Chary
11. Sri B. Krupanandam
12. Sri D.C.Rosaiah
13. Sri G. Rajendra Mohan
14. Sri I.Venkateswarlu
15. Sri K. Ram Reddy
16. Sri C.S.Ramachandra Murtty
17. Sri K. Sukhender Reddy
18. Sri.K.R.V.Yesu Das
19. Sri G. Kishan Rao
20. Sri P. Krishnaiah
21. Dr.C.Uma Malleswar Rao
22. Sri C. Umamaheswararao
23. Sri M.Veerabhadraiah
24. Sri T. Satyanarayana Rao
25. Sri B.Venkatramaiah
26. Sri K. Ambarish
27. Sri V.M.Manohar Prasad
28. Sri G. Nageswara Rao
29. Sri K.V. Subbarao
30. Sri Ch. Sree Ramachandra Murty

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2. The Union Public Service Commission, rep. by its Secretary, Dholpur House, Shahjehan Road, New Delhi.
3. State of Andhra Pradesh, rep. by the Chief Secretary, Secretariat, Hyderabad.
4. K. Ram Reddy
5. C.S.Ramachendramurthy
6. K. Sukender Reddy
7. M.R.K. Sharma
8. K.R.W. Yesudas
9. G. Kishen Rao
10. C. Umamaheshwar Rao
12. M. Veerabhadraiah
13. T. Satyanarayana Rao
14. B. Venkatramaiah
15. K. Ambarish
16. V.M. Manohar Prasadm
17. G. Nageshwar Rao .. Respondents.

APPEARANCE: ~~(as in~~ OA.116/94)

Counsel for the Applicants : Mr. G. Raghuram

Counsel for the Respondents : Mr. N.R.Devaraj,Sr.CGSC (R-1&2)

Mr. D.Pandurenga Reddy, Spl. counsel for A.P. (R-3)

Mr. GVLN.Murthy (R-8)

Mr. ~~G. Srinivasa Rao~~ (R-20)

Mr. G. Vedantha Rao (R- 21, R-39(applicant in OA.542/94) & R-41(applicant in OA.543/94).

Mr. M. Pandurenga Rao (R-22,23 & 26)

Mr. D.Chalamesher Rao (R-25)

Mr. VVS. Rao (R-43)

~~Mr. M. Surender Rao~~

OA.542/94 & 543/94

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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2. The Union Public Service Commission, rep. by its Secretary, Dholpur House, Shahjehan Road, New Delhi.
3. State of Andhra Pradesh, rep. by the Chief Secretary, Secretariat, Hyderabad.
4. K.Ram Reddy
5. C.S.Ramachandramurthy
6. K.Sukender Reddy
7. M.R.K.Sharma
8. K.R.W.Yesudas
9. G.Kishen Rao
10. P.Krishnaiah
11. C.Umamaheshwar Rao
12. M.Veerabhadriah
13. T.Satyanarayana Rao
14. B.Venkatramaiah
15. K.Ambarish
16. V.M.Manohar Prasadm
17. G.Nageshwar Rao .. Respondents.

APPEARANCE:

Counsel for the Applicants : Mr. G.Raghuram

Counsel for the Respondents : Mr. N.R.Devaraj,Sr.CGSC for R-1)&2.
for R-3 Mr. D.Pandurange Reddy, Spl. counsel for A.P.
for R-8 -Mr.GVLN.Murthy
for R-20 -Mr.M.Surender Rao
for R-21, -Mr.G.Vedantha Rao
31 & 41.
for R-22 -Mr. [illegible]
for R-25 -Mr.J.Chalamesher Rao
for R-28 -Mr.K.Ram Mohan Rao
for R-43 -Mr. VVS.Rao

O.As.542/94 & 543/94.

Counsel for the Applicants : Mr. G.Vedantha Rao

Counsel for the Respondents :
for R-1&2 : Mr. N.R.Devaraj,Sr.CGSC.
for R-3 : Mr. D.Pendurange Reddy,Spl. counsel for A.P.
for R-11,12& 15 : Mr. M.Pandurange Rao

CORAM:

THEHON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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Services (Conditions of Service - Residual Matters) Rules 1960 (for short 'Residual Matters Rules') and to quash the same, and for a ~~consequential~~ direction to commence their probation of the applicant in IAS cadre from 16-12-88 assigning the year of allotment as 1984.

O.A. 543/94

4. Respondent No.41 in O.A. 118/94 preferred this O.A. claiming reliefs similar to the reliefs claimed in O.A. 542/94.

5. For the sake of convenience, the parties will be referred to as they are arrayed in OA 118/94.

6. While the four applicants are directs of 1985 to 1988 batches, Respondents ~~4 to 42~~ 4 to 28, 30, 31, 34 and 36 to 42 and the impleaded respondents were recruited to the IAS under Rule 8 of the I.A.S. (Recruitment) Rules, 1954 (for short 'Recruitment Rules') being promoted/selected from A.P.State Civil Service/non-Civil Service and for short they can be referred to as 'promotees'.

7. Under Rule 9(1) of the Recruitment Rules, the number of promotees recruited under Rule 8 in each State at any time shall not exceed 33 1/3 per cent of the number of posts shown against items 1 and 2 of the cadre in relation to that State in the Schedule ~~to~~ to the I.A.S. (Fixation of Cadre Strength) Regulations, 1955 (for short 'Cadre Strength Regulations'

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OA Nos.118/94, 542/94 & 543/94

JUDGEMENT

(as per Sri Justice V.Neeladri Rao, Vice-Chairman)

It will be convenient to ~~refer to~~ dispose of all the three O.As. by common order.

O.A. 118/94

2. Four direct recruit I.A.S. officers filed this O.A. praying for quashing of notifications bearing reference Nos.11031/10/93-AIS(II) dated 15-12-93 and F.No.14015/31/91-AIS(I) dated 16-12-93 and for direction to Respondents 1 to 3 to forbear from including in the select list of 1987 the officers in excess of 26 from out of the members of the A.P.State Civil Service and from appointing them to I.A.S. by the method of appointment by promotion of officers in excess of 13 for the year 1987 and from increasing the number of posts allocable to the category of officers other than direct recruits of the I.A.S. cadre of Andhra Pradesh for the said year.

O.A. 542/94

3. Respondent No.39 in O.A.No.118/94 preferred this O.A. praying for declaring the above ~~two~~ referred to notifications as illegal and unconstitutional, malafide and ultra vires of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (for short 'Promotion Regulations') and I.A.S.(Cadre) Rules 1954 (for short 'Cadre Rules') and All India

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8. As already observed, that even though 65 were to be in the zone of consideration, only 26 officers were considered on being stated by the A.P.State Government that ~~only~~ 26 had the eligibility period of service. But it may be noted that R.21 viz. Dr. C.Umamaheswara Rao, ~~and R.19,~~ R.20, ~~and R.23 to 28~~ and four others were direct recruit Dy.Collectors, and all of them were appointed as Deputy Collectors as per order dated 28.12.78 Revenue (W) Department and they were posted to various districts. As R.21 was posted to Rangareddy district, he could be able to report for duty on 30-12-78 while the rest of ~~their~~ batch of direct recruit deputy collectors reported on varying dates in January 1979. G.O.~~Rt.No.443~~, Revenue (W) Dept., dated ~~7-3-79~~ was issued regularising the services of the above deputy collectors ~~with effect from the~~ varying dates in January 1979. As the services of the junior cannot be regularised from a date earlier to the date of regularisation of the senior, the date of regularisation of the junior was given as the same date from which the services of the senior ~~were~~ was regularised even though the junior joined earlier. As R.21 was at Sl.No.4 and as Sri R.Sunder Singh who was at Sl.No.2 joined on 18-1-79, the services of R.21 were regularised with effect from 18-1-79 even though he joined on 30-12-78. Then R.21 ~~again~~ filed Representation Petition No.9173 of 1987 on the file of A.P.Admn. Tribunal, praying for declaration that "he completed 8 years of service for inclusion of his name for

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The ... of the officers referred to under items 1 and 2 of Cadre Strength Regulations in regard to A.P.State for 1987 was ~~212~~ 216 and on that basis the posts to be filled by promotion and selection under Rule 8 of the Recruitment Rules ~~were~~ was arrived at ~~74~~ 72. The anticipated vacancies for 12 months ~~in~~ with ~~regard~~ reference to selection committee which ~~met~~ had to meet in 1987 were found to be 13 in regard to A.P.State. As per the extant rules, the officers who have to be considered were 5 times the number of vacancies and hence 65 officers ~~have~~ had to be considered for that year. The officers who are eligible for consideration for promotion/selection under Rule 8 of the Recruitment Rules have to complete 8 years of service in the category of Deputy Collector as on 1st January of ... in which the selection committee meets. As only 26 officers completed the eligibility period, all of them were included in the zone of consideration and as the select list has to be prepared as per extant rules for twice the number of the vacancies all the 26 were included in the select list and their rankings were given on the basis of the gradings and seniority in the category of Deputy Collector. On the basis of the rankings in the said select list, R.4 to ~~R.14 and R.21~~ R.10 were appointed ~~with varying~~ on various dates earlier to 16.12.88 and the appointments of R.11 to R.14 and R.21 were with effect from 16-12-1988. As there was some enquiry against the officer who was at serial No.13 in the ~~panel~~ select list, he was not appointed. Sri Ch.Sriramachandra Murthy who was at Sl.No.14 filed O.A. 223/89 seeking his appointment on the basis of his empanelment by ~~for the 13th vacancy~~ alleging that the vacancies were already ~~after~~ ~~exceeded~~, and absorbing those at S.No. 5 to 16, ~~and~~ he was appointed with effect from 16-12-88 in pursuance of the orders in the said O.A. ~~The appeal there on~~ SLP 6772/90 against the said order was dismissed by the Supreme Court.

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observed therein that it is open for the applicants to challenge the selections made in the event of their succeeding in the representation petitions filed before the A.P.Admn. Tribunal and they are, thereby declared to have 8 years of service of the category of Dy. Collector as on 1-1-87 and/or that the rules are relexed in their favour by the State Government.

10. By order dated 22-3-88, R.P. 7193/87 filed by R.2 herein was allowed and thereby his name was also considered for inclusion in the select list of 1987 and he was empanelled at Sl. No. 12 as already referred to.

11. R.Ps. 7194 and 7311 of 1987 were also disposed of alongwith R.P. 7193/87 by common order. It was held therein that G.O.Ms.No.493 Revenue (W) Department dated 8-4-82 regularising the services of the petitioners, from the date of their appointment therein is illegal and accordingly it was set aside and it was held that the seniority of the direct recruit deputy collectors had to be reckoned from the date of their appointment (i.e. the date of order of appointment). The respondents therein were directed to consider relaxation of the rules in favour of petitioners in RP Nos.7194/87 and 7311/87 ~~and~~ for inclusion of their names in the select list of IAS for 1987. Thereupon GO.Ms.No.500, revenue (Services-I) Dept. dated 31.5.90 was issued regularising their services with effect from the date of issue of their appointment order viz., 29-12-78.

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preparation of [illegible] for appointment to Indian Admn. Service for the year 1987". R.20 and R.22 to 28 and ~~same~~ others, filed R.Ps. ~~7194/87 and~~ 7311/87 praying for declaration that "they were deemed to have completed 8 years of service for inclusion of their names for preparation of the select list for appointment to I.A.S. for the year 1987". By way of interim orders, the A.P.Admn. Tribunal directed that the cases of all in the select list of 1987. But the same was vacated when it was argued for the respondents that the A.P.A.T. had no jurisdiction to issue such a direction.

9. ~~R.28~~ R.28 and two others filed O.A. 788 of 1987 on the file of this Tribunal praying for a declaration that the action of the respondents in not considering their names for inclusion in the select list of I.A.S. for the year 1987 is illegal, arbitrary and for further declaration that if for any reason it is considered that they do not have 8 years of service, they are entitled to the same benefit that has been extended to similar others in the years 1983, 1984 and 1985, whereby the government has granted exemption of rules for being considered in the respective select lists duly relaxing the relevant service rules. The same was dismissed as pre-mature by order dated 16-12-87. But it was also

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meet. R-17 and R-42 were said to have been included in the 1991 list. They were appointed to the I.A.S. on the respective dates on which the vacancies had arisen for promotees.

14. As per the extant rules, the year of assignment to be allotted to the promotees is four years prior to the year of appointment. In view of the revised select list for 1987, these respondents claimed that they have to be given the date of their appointment as 16-12-1988 as they were placed above Sri Ch.Sriramachandra Murthy (R.30) who was given 16-12-88 as the date of appointment. If it were to be so, the year of allotment for them is 1984, while on the basis of their actual dates of appointment for IAS as per the later select lists, they have to be assigned 1985 or later year depending upon the year of appointments. When revised orders of appointment were not issued to them in pursuance of the revised select list of 1987, they made representations. But as there were only 13 vacancies for which 1987 list was prepared, and as all those vacancies were filled up from amongst the first 12, and 14 in the original list, this Tribunal was moved for clarification in MA.958/93 in RP.128/93 in OA.354/92. As per common order dated 20-12-93 in the above and CP.71/93 in OA.20/91, a Bench of this Tribunal observed as under:

> of the direct recruits and 14 individuals who were promoted as a result of the judgement of the Tribunal, it is for the concerned authorities to examine the same in accordance with the extant rules and take a fair and just decision as deemed fit. It will not be proper for this Tribunal to give directions on such matters particularly when all the concerned parties are not before us."
> (The said order was passed after the impugned notifications dated 15-12-93 and 16-12-93 were issued).

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12. Then Respondents [illegible] pondents 22 to 28 and some others of their batch filed O.As.20/91, 206/91, 354/92 and 386/92 before this Bench praying for convening review D.P.C. for consideration of their cases for inclusion ~~in~~ of their names in the 1987 select list as they were all eligible by 1-1-87 ~~for~~, their services being regularised with effect from 29-5-78. When the services of R.15, ~~R.17, R.18~~ to and R.19 were also regularised in the category of deputy Collector from a date earlier to 1-1-79, R.15 filed O.A. 1026/90, R.18 and R9 filed OA 840/92 and R.17 filed OA 847/92 praying for convening the review DPC for consideration of their names for inclusion in the 1987 select list. In pursuance of the orders therein, the review select commitee met on 25-9-92. When R.42 filed O.A. 913/92 [illegible] risation in the cadre of Dy.Collector was fixed on a date earlier to 1-1-79, the same was allowed on 13-11-92. Then the review committee met on 16-4-93. Basing on the gradings and the seniority in the cadre of [illegible] and Rys above R.21, and R.22 to R.28 were placed above R.30 in the revised list prepared on the basis of the assessment at the review commitees meetings. (Revised Select list after inclusion of name of Rys was not filed)

13. It may be noted that R.15, and R.16, R.20 and R.22 were selected as per 1988 select list, R.23 to R.25 were selected as per 1989 list, and R.18, R.19 and R.26 to 28 were selected as per 1990 list. When they were considered for respective years, as by then the review select committees did not

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heading "Andhra Pradesh" the number of posts shown against item number 3 to ~~be~~ be filled by promotion and selection in accordance with rule 8 of the Indian Administrative Services (Recruitment) Rules, 1954 shall be deemed to have been increased by twelve for the following periods:

Post No.	From	To
1	16-12-88	22-08-90
2	16-12-88	27-11-90
3	16-12-88	10-06-93
4	16-12-88	30-06-93
5	16-12-88	04-06-93
6	16-12-88	02-12-90
7	16-12-88	19-12-90
8	16-12-88	19-12-90
9	16-12-88	29-08-91
10	16-12-88	06-11-91
11	16-12-88	13-11-91
12	16-12-88	10-03-92
13.	16-12-88	10-03-92
14	16-12-88	15-03-92

The total authorised strength of the Indian Administrative Service Cadre of Andhra Pradesh be deemed to have been increased correspondingly for the above periods."

In those 14 supernumerary posts, R.15 to 20 and R.22 to 28 and R.42 were appointed to the IAS with effect from 16-12-88 (vide notification dt. 16-12-93). The above two notifications are assailed in these O.As.

17. The contentions for the applicants are as under:

(i) The State Government has no power to relax the rules for ~~regularising~~ regularising the services of the Deputy Collectors with effect from a date earlier to the date of entry into the service of Dy.Collector. The notifications whereunder the dates of regularisation were given to the concerned respondents from a date earlier to the date of entry into the cadre of Deputy Collector, have to be held as void on the ground that the applicants and other similarly situated officers were not given notice ~~and hence they are vitiated~~.

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15. When the direct recruit IAS officers allocated to A.P.State apprehended that the respondents referred to above were going to be given appointments for IAS with effect from 16-12-88, they made representations to Respondent No.3 on 29-4-93 praying that without hearing them no such order of appointment should be given. Some of the direct recruit IAS officers filed O.A. 457/93 praying for a declaration that R.3's decision contained in letters dated 9-3-93 and 26-3-93 to the effect that those who were included in the revised select list over andabove Sri Ch.Sriramachandra Murthy ~~would~~ have been given appointments with effect from 16-12-88, ~~are~~ is illegal and for a direction to R.1 to R.3 to limit the recruitment of promotee officers of 1987 select list to 13 and for other consequential reliefs. The said O.A. was disposed of by order dated 5-5-93 with a direction to R.3 to ~~consider~~ dispose of the representations of the applicants therein in accordance with law. Then again, representations dated 12-5-93 were made to R.3 by direct recruit IAS officers.

16. It is stated in notification dated 15-12-93 (Annexure-I) that it was issued in exercise of powers conferred under section 3(1) of All India Services Act, 1951 read with Rule 4(2) of IAS Cadre Rules and Rule 3 of All India Services (Conditions of Service Residual Matters) Rules 1960. Para 2 therein is relevant and it reads as under:

> "In the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955, as amended from time to time, under the

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(ii) Sri Ch.Sreeramachandra Murthy (R.30) was given appointment with effect from 16-12-88 in pursuance of order of this Tribunal in O.A. 223/89 and the appeal thereon was dismissed by the Supreme Court. It is not open to this Tribunal to review either the judgement in the said O.A. or the other O.As. or Representation Petitions referred to.

(iii) It is not necessary to issue notice to the applicants and other similarly situated officers because issual of notifications dated 15-12-93 and is an act of subordinate legislation. No notice needs be issued to them before issual of notification dated 16-12-93 for it is a case of giving order of appointment on the basis of their empanelment in the revised select list for 1987.

19. It is submitted for Respondent No.3 that this Tribunal was approached for clarification in regard to the implementation of judgments in ~~O.A.N.A. Nos. 71 and 72 of 1993~~ No 955/93 in RP 122/93 in OA 354/92 and it has become necessary for the Central Government, after consultation with the R.3, the State Government, to issue the impugned notifications dated 15-12-93 and 16-12-93. It was stated in reply for Respondent.3 as under:-

for implementing the judgments in OA 710/89, 1011/90 etc.

> "Both thepetitioners and therespondents are serving in the affairs of the State, and as such, the State Government are equally interested in the prospects of both the groups of officers. However, it is a fact that on account of creation of supernumerary posts, the number of persons allotted to the year 1984 from the State Civil Services has far exceeded the number of vacancies available then. Even though the Central Govt. have the power to create supernumerary posts, creating a large number of supernumerary posts which is likely toadversely affect theinterests of the direct recruit officers, maynot be appropriate solution to settle the inter-se seniority disputes

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(ii) The orders in the Representation Petitions Nos. 7194/87 and 7311/87 of the A.P.Admn. Tribunal and the orders in O.As. of this Tribunal are not binding upon them as they were not parties to the said proceedings.

(iii) As per notification dated 15-12-93 the strength of only promotees was increased and as such it is violative of Rule 9(1) of the Recruitment Rules. There cannot be any relaxation of recruitment rules in exercise of power under Rule 3 of Residual Matters Rules. As there were only 13 vacancies for the relevant period for which 1987 select list was prepared, more than 13 cannot 14 more were appointed as per notification dated 16-12-93 besides 13 who were already appointed for those 13 vacancies as per the original list, notification dt.16-12-93 is violative of Rule 9(1) of the Recruitment Rules.

18. It is urged for Respondents 1 and 2 as under:

(i) As per notification dated 15-12-93 while [illegible] 14, there is corresponding increase in total strength and it means that the strength under items 1 and 2 and 4 of the Schedule to Cadre Strength Regulations in regard to A.P.State is also correspondingly increased and thus it is not violative of Rule 9(1) of the Recruitment Rules. The issual of the notifications dt.15-12-93 and 16-12-93 cannot be held as arbitrary for they were issued for implementing the judgments of this Tribunal in OAs. 750/88, 1026/90, etc. referred to above.

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for the vacancies pertaining to 1988 select list and accordingly they were not appointed in the said year and these two applicants were appointed with effect from 28-12-1989 and 4-1-90 respectively while those who were included in the notification dated 16-12-93 were considered for later years and they were given appointments with effect from later dates. It cannot be stated that this Tribunal as per the judgements in various OAs ... consider their cases without reference to Recruitment Rule 9 and Cadre Strength Regulations with reference to A.P.State. These applicants are not bound by the judgement therein as they were not parties to the same. As admittedly the officers at Sl.Nos 7 to 14 in the notification dated 16-12-1993 in R-20 and R-22 to R-28 are juniors to these applicants in the category of Deputy Collector, and as they could not be absorbed in vacancies pertaining to select list of 1987 even though their gradation was given as 'very good', while in regard to these two applicants it ... select list, and R-20 and R-22 were actually included in 1988 select list below these two applicants and hence prejudice will be caused to these applicants if their appointments are also not advanced to 16-12-88.

The above are the sum and substance of the pleas and contentions from these two applicants. The learned counsel for the applicants

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among the promotee officers. We pray the Tribunal to decide thecase in the light of the above background and with reference to the rules on the subject."

20. The learned counsel for the applicants in OAs 542/94 and 543/94 submitted that the officers whose names were included in the notification dated 16-12-93 cannot claim any benefit over and above the benefit which they could have if their cases were considered in 1987. Because [illegible] were eligible for consideration for select list of 1987 and even if their names were included in the select list of 1987, they could not claim appointment over and above the vacancies which existed for that year. As there were only 13 vacancies for that year and as there was no controversy in regard to the first 11 of the list, two more vacancies only [illegible] existed and hence the first two in the list of 14 in notification dt.16-12-93 could be absorbed for that year provided the appointment of R.21 and R.30 could be set aside. Then the remaining 12 have to be considered for the vacancies in the later year. But as these two applicants were also given gradings as 'Very good' for the later year viz. the select list of 1988 and as ~~the remaining 12~~ Rule 12 referred to in the notification dated 16-12-93 are admittedly juniors to the two applicants in the cadre of Deputy Collector, and even assuming that the gradings of those 12 for 1988 even can be held as very good, they could not be [illegible]

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considered by review committees and as the gradings of all those 14 was 'very good' and as the grading from Sl.No.13 in the original select list of 1987 was found to be 'good', the names of these 14 were inserted above serial number 13 in revised select list. Rule 6 of them were placed above R.21 who was at Sl.No.12 in the original list.

22. The main contention for the applicants in O.A. 118/94 is that as only 13 vacancies were there for promotees in the relevant year, even the revised select list should not contain more than 26 and the names of the excess should have been deleted from the revised list, and only 13 should have been appointed from ~~the date~~ out of the revised list for the said year and the rest should be considered for the later years so as to be consistent with Rule 9(1) of the Recruitment Rules. The appointment of 27 promotees for that year caused prejudice to the 1985 direct recruits as there will be 27 promotee officers instead of only 13 promotee officers.

23. The first and foremost contention for the applicants in OAs 542 and 543 of 1994 is that as they too were considered and empanelled in the original list for 1987 and ~~as from~~ they were not given appointments for want of vacancies in the said year, and if the government could create supernumerary posts to accommodate these 14, they can even create supernumerary posts to accommodate them also, and in any case applicants in O.A 542/94 and 543/94

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in OAs 542 and 543 of 1994 and R.2 also urged that the judgments in R.Ps. and O.As. are per incurium as they are not in accordance with the rules, and they are not bound by the above judgments as they are not parties to the same.

21. It is not in controversy in regard to the following position on the basis of the extant rules.

Rule 9(1) of the Recruitment Rules lays down that the number of persons recruited under Rule 8 in any state or group of states shall not at any [illegible] per cent of the number of those posts that are shown against items 1 and 2 of the cadre in relation to that state in the Schedule to of the Cadre Strength Regulations. On that basis the posts to be filled by promotion and selection as per the Recruitment Rules in regard to A.P.State during the relevant year was ascertained as 72. Basing on the same the vacancies available for promotees for that year were fixed at 13. There could be 65 within the zone of consideration but as only 26 A.P.State officers (SCS and non-SCS) were found to be eligible as on 1-1-87, the cases of all those officers were considered for inclusion in the 1987 select list. As the number of officers that could be included in the select list was twice the number of vacancies, all the 26 were included [illegible] as per the directions of this Bench in various O.As., the cases of all the 14 referred to in notification dated 16-12-93

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Now if at [illegible] point of time this limit is exceeded, direct recruits may have a just cause for complaint and it may perhaps be held that to the extent of the excess appointments by promotion are invalid and confer no right for seniority over the direct recruits." As already observed, the vacancies which were ascertained for promotees in the relevant year were only 13 and on the basis of the above observation in the judgement of the Supreme Court, the promotees in regard to the excess appointments cannot claim right of seniority over the direct recruits. As per extant rules the year of allotment for the direct recruits is the year following the year in which the competitive examination was conducted for recruitment, while the year of allotment for promotees is by assigning the year four years earlier to the year of appointment, and weightage is also provided in case the length of service of the promotee in the cadre of Deputy Collector is more than 12 years. Thus, if a promotee with service of less than 12 years is appointed in 1988, his year of allotment will be 1984. If there is excess in appointments in regard to the promotees, the excess have to be considered for later year/years and then their year of appointment will not be 1988 and it will be 1989 or later year depending upon the number of vacancies in the later year and the grading they may get in the later year, and they may not even have the chance of promotion in the later year if seniors in the

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Thus the increase in the cadre strength can be in exercise of power under Rule 4(1) of the Cadre Rules. Rule 4(1) of the Cadre Rules reads as follows:

> "The strength and composition of each of the cadres constituted under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made shall be as in force immediately before the commencement of these rules."

Rule 4(2) empowers the Central Government to alter the strength and composition of each such cadre in consultation with the State [illegible]. Such assessment has to be made once in three years, but and it does not debar the Central Government to assess the strength and composition of each such cadre and alter if necessary even before the expiry of three years as can be ~~noted~~ seen from Rule 4(2) of the Cadre Rules, which is as follows:

> "The Central Government shall, at the interval of every three years re-examine the strength and composition of each such cadre in consultation with the State Government or the State Government concerned and may make such alterations therein as it deems fit:
>
> Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:
>
> Provided ... ...

27. Item 1 in the Schedule to Cadre Strength Regulations refers to the number of senior posts in the concerned State while item 2 therein is Central deputation which is at 40 per cent of the senior posts. One third of the items 1 and 2 are available for promotees while the remaining 2/3rd out

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grade of Deputy Collector get ~~the same~~ later grading in the later year. The inter-se seniority between the direct recruits and promotees of the same year of allotment shall be fixed by placing thepromotees below the direct recruits. Thus, if appointments of excess promotees ~~are appointed~~ in 1988 ~~and if their appointments~~ are held as valid, then they have to be assigned 1984 as the year of allotment, and they will be naturally senior to 1985 batch direct recruits, while such excess promotees would be juniors to 1985 batch direct recruits ~~when~~ if their appointments to the extent of excess are not in accordance with Rule 9(1) of the Recruitment Rules, and if they are appointed in the later years they would be juniors to direct recruits of 1985 batch. The same follows in regard to the direct recruits of the later years also for IAS for promotee vacancies in the later years. Hence the question arises as to the validity of appointment of these 14 in the relevant year when those appointments are said to be in excess of the vacancies available for promotees.

26. It is urged for these 14 promotees that it is not a case of excess promotion in 1988 as they were accommodated in the supernumerary posts created by increasing the cadre strength from 1988 till they are absorbed. But the preamble to cadre Strength Regulations reads as under:

> "In pursuance of sub-rule (1) of rule 4 of IAS (Cadre) Rules 1954, the Central Government in consultation with the Governments of the States concerned hereby makes the following regulations, ... "

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merely referred to the vacancies available for promotees and direct recruits from out of posts covered by items 1 and 2. Hence it is reasonable to hold that in exercise of power under Rule 4(1) of Cadre Rules, the ~~ratio in~~ number of vacancies available cannot be altered without either amending Rule 9(1) of the Recruitment Rules or without altering the posts referred to in items 1 and 2 of the schedule to Cadre Strength regulations. Thus, it means that the ratio between the promotees and direct recruits from out of the posts referred to in items 1 and 2 in the schedule to the Cadre Strength Regulations ~~is~~ cannot be altered without amending Rule 9(1) of the Recruitment Rules.

29. The impugned notification dated 15-12-93 does not refer to Rule9(1) of the Recruitment Rules. Hence it is a case where the impugned notification dated 15-12-93 was issued without amending Rule 9(1) of the Recruitment Rules.

30. It is a case of alteration ofthe number of posts referred to in items 1 and 2 also, and so it is a case of total increase of 42 posts in items 1 and 2 and if so read, there is corresponding increase of direct recruits also, and thus, it is a case of increasing the cadre strength as per the impugned notification dated 15-12-93 without affecting the ratio of 1 : 2 as between the promotees and direct recruits in regard to posts in items 1 and 2, contended

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of the items 1 and 2 and the posts at items 5 to 8 are available for direct recruits. The total of items 1 to 8 is referred to as total authorised strength. The number of posts ~~for~~ available to promotees is shown at item 3, while the number of posts out of items 1 and 2 available to direct recruits ~~are~~ shown at item 4.

28. Rule 4(1) of the Cadre Rules refers to strength and composition of each state cadre or joint cadre. The ratio between direct recruits and promotees is as per Rule 9(1) of the Recruitment Rules. The strength referred to in Rule 4(1) of the Cadre Rules is the total authorised strength and the composition referred to therein can only be held as distribution amongst the various items referred to. But ~~when~~ items 3 and 4 are separately referred to in Schedule to the Cadre Strength Regulations just to indicate the number of posts available for promotees and direct recruits respectively from out of items 1 and 2 above, and it is not a case of showing posts over and above the posts referred to under items 1, 2 and 5 to 8. The total authorised strength is the total of items 1, 2 and 5 to 8 of the Schedule. Hence when 4(2) refers to the alteration of composition, it refers to alteration of items 1, 2 and 5 to 8 of the said schedule and it cannot be stated that it refers to alteration of items 3 and 4 also, for items 3 and 4 do not refer to creation of posts, and they

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31. It was stated for these 14 promotees that when it is susceptible of two interpretations, the interpretation which makes it valid or the interpretation which advances the object of the notification/legislation has to be preferred and as such the same has to be read as corresponding increase ~~regard to items 1, 2~~ and 4 also of the said schedule. But it may be noted that it is a case of amendment giving retrospective effect. Of course Section 3(1)(A) of the All India Services Act, 1951 ~~give~~ makes it clear that the power to make rules conferred by Rule 3(1)(A) shall include the power to give retrospective effect from a date not earlier than the date of commencement of that Act. But it also states that no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. It is already noticed that ~~dated 15-12-93~~ prejudicially affects the direct recruits as it affects their seniority for they will go down below their junior promotees who are now brought above them by the impugned notifications. It also affects the interests of the applicants in OAs542 and 543 of 1994 as but for the impugned notification, ~~12~~ 12 of these promotees ~~if not all the 14 promotees who were~~ who were appointed ~~in the years~~ later to the date ~~the year~~ of appointment of these two applicants are being brought above them, Hence the impugned notification which

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and 1, 6Rg.

the learned counsel [illegible] 14 promotees. It is convenient to refer to the relevant portions (para 2) in the said notification to advert to thesaid contention.

> "In the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 as amended from time to time, under the heading "Andhra Pradesh" the number of posts shown against item number 3 to be filled by promotion and selection in accordance with rule 8 of the Indian Administrative Services (Recruitment) Rules, 1954 shall be deemed to have been increased by twelve for the following periods:
>
> xx xx xx
> xx xx xx
>
> The total authorised strength of the Indian Administrative Service Cadre of Andhra Pradesh shall be deemed to have been increased above (emphasis supplied)

The arguments for these 14 promotees, thus, is that when the figure ~~74~~ 72 in item 3 of the Cadre Strength Schedule is enhanced to ~~86~~ 86, the corresponding increase in item 4 by 28, and 30 in item 1 and 12 in item 2, ~~have~~ has to be inferred and the corresponding increase in total authorised strength by 42 also has to be inferred. But the contention for the applicants is that it refers to corresponding increase in the total authorised strength, and so it is a mere case of increase of total authorised strength by 14 and thereby it cannot be inferred that it is a case of ~~implied~~ by implication increase of 30 in item 1, 12 in item 2, 28 in item [illegible] total authorised strength. It is clear from the wording of the relevant portion in notification dated 15-12-93 that the corresponding increase ~~is~~ has referred to with regard to the total authorised strength only, and there is not even a whisper in regard to the increase in items 1 and 2 and 4 of the Schedule to Cadre Strength Regulations.

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34. The Supreme Court held in 1994 SCC(L&S) 84 (Syed Khalid Rizvi Vs. UOI) that in exercise of power under Rule 3 of the Residual Matters, conditions of Service Rules, the rules which are having a bearing in regard to recruitment cannot be relaxed though the conditions of service which accrue subsequent to appointment to the service can be relaxed. But for the amendment as per 15-12-93 notification, these 14 promotees cannot be appointed to IAS in 1988. Thus this notification is having a bearing in regard to conditions of service. Hence it cannot be held that the notification dated 15-12-93 is by way of relaxation in exercise of power under Rule 3 of the Residual Service Matters rules.

34-A. The learned counsel for these promotees relied upon para 20 of the judgment of the Supreme Court in 1994 SC 1727 (M.V.Krishna Rao Vs. UOI) to contend that it is even open to the Central Government to invoke Rule 3 of the residual matters rules even for ~~xxxxxxx~~ relaxing the rules having a bearing in regard to recruitment. In the above case this Tribunal ~~xxxx~~ held that strict application of ~~xxxx~~ explanation (1) to Rule 3(3) of Seniority rules ~~xx xx~~ would result in grave injustice to Sri R.C.Venkateswarlu and therefore ~~had recommended~~ held that a relaxation ~~may~~ be granted to him so as to ~~xxxxxx~~ enable him to treat 4th November 1981 that is the date of the select list in which his name was included as the relevant date in determining the year of allotment, and the same was confirmed by the Supreme Court as can be seen from para 20 referred to above. On a perusal of the judgment of the Tribunal which was referred to in the said para, it is seen that Sri Venkateswarulu

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is given retrospective effect is prejudicial to the interests of the direct recruits from 1985 batch and the direct recruits of some of the later years and also the applicants in OAs 542 and 543 of 1994 and those who are similarly situated to them. ~~As such~~ The notification dated 15-12-93 has to be held as illegal as it is in excess of the power conferred under Section 3(1) (A) of the All India Services Act, 1951. Thus, if the interpretation that is sought to be put forth for these 14 promotees is going to be accepted, then the impugned notification dated 15-12-93 has to be held as violative of Section 3(1)(A) of All India Services Act, 1951. But if the interpretation that is advanced for [illegible] accepted then it will be illegal as it is in contravention of Rule 9(1) of the Recruitment Rules. Thus, in either ~~any~~ case the validity of the notification dated 15-12-93 cannot be upheld.

32. The notification dated 15-12-93 is one of subordinate legislation for it is done in exercise of the powers under Rule 4(1) of the Cadre Rules and it is a case of amendment of Cadre strength Regulations.

33. Of course, Rule 3 of All India Services (Conditions of Service Residual Matters) Rules, 1960 is also referred to in notification dated 15-12-93. If it is a mere relaxation of rule in exercise of power under Rule 3 of the Residual Matters Rules, it is a mere administrative act.

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effect from 16-12-88 in pursuance of the order of this Tribunal in OA 223/89 and the SLP thereon was ~~dismissed~~ whose 14 promotees were above the ~~said~~ Sri Ch.Sriramachandra Murthy ~~and for~~ on per revised select list of 1987. Can it then be stated that the placement of these 14 above Sri Ch.Sriramachadramurthy be challenged without challenging the order in O.A. 223/89? These O.As. cannot be treated as review petitions to challenge the order in OA 223/89 as there is no such

Then a question also arises as to whether this Tribunal can review the order therein when the appeal thereon was dismissed by the Supreme Court. Anyhow as we held that the impugned notification dated 15-12-93 is illegal and thereby the notification dated 16-12-93 falls, there is no need to consider for the disposal of these O.As. as to whether the applicants can challenge the orders in the various O.As. on the basis of which the cases of these 14 promotees were ~~reviewed~~ contd by Review selection committee, collaterally. For the same reason we feel it not necessary to consider the contention that G.O.Ms.No.500 dt. 31-5-90 whereby the period of probation ~~x~~ is deemed to have been commenced with effect from 29-12-78 in regard to the direct recruit deputy collectors of 1978 batch ~~and thereby the period~~ or probation of promotee deputy collectors viz. R.15 to R.19 and 41 were advanced ~~x~~ have to be held as per incurium on the

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officiated in the cadre post from 198[illegible] and junior officiated from 1982 in such a [illegible] explanation (1) to Rule 3(3) is not relaxed [illegible]gard to Sri Venkateswarlu, later year has to be assigned to him as the year of allotment while earlier year has to be assigned as year of allotment to his junior. The said point has come up for consideration in the context that as per rule, the officiating period from or subsequent to the date of inclusion in the select list has to be considered for determining the year of allotment. Thus, the relaxation in the said case is not in regard to the rule having bearing for [illegible] it is a case of only a relaxation of rule having a bearing in regard to assignment of year of allotment and thus in regard to seniority. Hence it cannot be stated that the Supreme Court in the above case differed from the judgment in Syed Khalid Rizvi's case in regard to the principle that the power under Rule 3 of the residual matters rules cannot be exercised for relaxation of any rule having bearing with regard to recruitment.

35. It is urged for the applicants that they are not bound by thejudgements in the Representation Petitio and the O.As. referred to as they are not parties to the same. But Full Bench of Central Admn. Tribunal held in ATR 1987(1) CAT 612 (John Lucas & anr. Vs. Addl.Chief Mechanical Engineer, SC Rly. & Ors.) that the remedy of officers/employees who are not made parti is either to prefer a review application or an appeal. The Supreme Court also held in a later judgement in 1994(2) SLJ P.5(SC) (Ram Janam Singh Vs. State o that the remedy of such officer/employee is by way of a review or appeal. The question then arises is as to whether these OAs can also be treated as Review Applications in OAs filed by these 14 promotees. But it is already noted that Sri Ch.Sreerama-chandra Murthy (R.30) was appointed [illegible]

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exercise and in either case such action has to be held as illegal, relied upon for the applicants in OA 118/94.

38. It is also urged for the applicants in O.A. 118/94 that evenif notification dated 15-12-93 has to be held as illegal, still the notification dated [illegible] has to be set aside on the ground that show cause notice was not issued to the affected parties for even in administrative matters show cause has to be issued if it results in civil consequences and in support of it, AIR 1978 SC 597 (Maneka Gandhi Vs. UOI) is cited. As we held that the notification dated 15-12-93 is illegal and thus the notification dated 16-12-93 falls, we need not advert to this contention also for disposal of these O.As.

39. The learned counsel for some of the 14 promotees urged that as the grounds on the basis of which the notification dated 15-12-93 are not stated in OA 118/94, it has to be held that there was no challenge to notification dated 15-12-93. But ground No.(vi) (on page xxiii in the OA) is as under:

> "The Hon'ble Supreme Court had occasion to consider Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960. As interrogate can be invoked and relaxation given only on objective satisfaction and not subjective caprice. Further, the relaxation should result in a just and equitable solution and in the context such justice and equity will have to be judged not merely qua the beneficiary of the relaxation but the service as a whole including the class of direct recruits and at any rate should subserve public interest. Under the garb of the said rule, the first respondent is not free to do that he likes and ths Hon'ble Tribunal can certainly interfere and invalidate any arbitrary exercise. It is further submitted that the Government of India has issued a ruling under the said rule that the provisions of the 'Recruitment Rules' cannot be relaxed under Rule 3 of the 1960 rules. In the above circumstances, the first respondent's notification dt.15-12-93 (Annex.I) is unconstitutional, ultra vires and void. "

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ground that no notice was given to these applicants and other similarly situated officers before the said G.Os. were issued. Thus there is no need to discuss 1967 SLR 465 (SC) (State of Orissa Vs. Dr. (Miss) Binapani Dei), AIR 1978 SC 597 (Maneka Gandhi Vs. Union of India) and AIR 1985 SC 167 (Prabodh Varma & ors. Vs. State of U.P. & Ors.) referred to in this context for disposal of these OAs.

36. The contesting respondents are right in urging that there is no need to issue any notice to direct recruits or the other affected promotees before issuing notifications as it is a case of subordinate legislation. It is held in 1990 SC 1277 (Shri Sitaram Sugar Co. Ltd. & anr. Vs. UOI & ors.) that principles of natural justice are not applicable in regard to legislative act.

37. In view ~~of the decision~~ which we have already taken there is no need to discuss AIR 1953 SC 375 (K.C.Gajapati Narayan Deo & ors. Vs. State of Orissa) referred to in regard to colourable legislation, AIR 1958 SC 578 (Express Newspapers Ltd. Vs. UOI) ~~to consider~~ referred to for consideration as to whether the authority is having executive, legislative and judicial powers in order to ~~consider~~ determine whether the particular act is any one of them or combination of more than one, and AIR 1986 SC 872 (Express Newspapers Pvt. Ltd. & ors. Vs. UOI & ors.) relied upon for considering whether it is a case of exercise of power in good faith ~~in a case~~ where there is no power at all or misuse in bad faith

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41. The learned counsel for R.21 and the applicants in OAs 542 and 543 of 1994 urged that these 14 promotees were not eligible for consideration for inclusion in 1987 select list as they had not actually worked for eight years by 1-1-87, the cut off date, as envisaged under Rule 5(2), third privoso of I.A.S. (Appointment by Promotion) Regulations 1955 (for short promotion regulations). The contention is that it contemplates actual service but not notional service and to emphasise the same, 4th proviso is also referred to. Provisoes 3 and 4 to Rule 5(2) are as follows:

> "Provided also that the Committee shall not consider the case of a member of the Service unless on the first day of January of the year in which it meets he is substantive in the State Civil Service and has completed notless than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any otherpost or posts declared equivalent thereto by the State Government.
>
> Provided also that in respect of any released Emergency Commissioned or short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the proceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year in which the committee meets, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government."

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The Supreme Court judgement referred to therein is 1994(1) SLR 245 (J&K Public Service Commission, etc. Vs. Dr.Narinder Mohan & ors.). It is also evident by r[illegible]ing the other grounds in the O.A. that the [illegible] also. Hence it cannot be stated that the grounds were not specifically stated for attacking notification dated 15-12-93. In the above view, there is no need to discuss 1974 SC 1 (The State of J&K Vs. Triloki Nath Khosa & ors.), 1979 SC 1459 (State of U.P. & ors.Vs. Hindustan Aluminium Corpn. & ors.) and 1982 SC 1126 (A.V.Nachane & anr. Vs. UOI & anr.) referred to in this context.

40. The question of break down of quota rule does not arise in this case atleast in regard to the direct recruits for recruitment in regard to the vacancies available for direct recruits is being done every year. In fact there was also a case of preparation of select list for 1987 for 1988 [illegible] vacancies in regard to the vacancies available for the promotees. Thus there is no question of break down of any quota rule. As such even ATR 1990(2) SC 113 (Class II Engg. Officers Assn. & ors. Vs. State of Maharashtra & ors.) referred to in regard to the same also need not be discussed for disposal of these O.As.

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42. Admittedly six of these 14 promotees were placed above R.21 who was appointed to I.A.S. with effect from 16-12-88 and theremaining ~~eight~~ five were placed above R.30 who was also appointed with effect from 16-12-88. It is submitted for R.1 to R.3 that it is necessary to appoint these 14 promotees with effect from 16-12-88 as their juniors viz. R.21 and R.30 were also appointed with effect from 16-12-88. It is also submitted that when a difficulty was experienced in implementing the judgments in the various OAs filed by these 14 promotees, a Bench

said Bench) was approached and the Bench expressed that it is not for the Tribunal to give clarifications especially when all the affected parties are not before them. As already observed R.3, the State Government expressed andrightly so in the interest of direct recruits and promotees, that a method by which the judgments in the above O.As. can be implemented, may be suggested. In fairness to the direct recruits it has tobe stated that their grievance is not in regard tothe appointment of these 14 promotees w.e.f. 16-12-88 but they are concernedonly with their seniority. In fact it is even pleaded for the applicants in O.As. 542 and 543 of 1994 that if they too are given appointment with effect from 16-12-88, they cannot have any grievance in regard to appointment of 14 promotees with effect from 16-12-88. Hence during the course of arguments, the learned counsel had come up with various suggestions for resolving the matter in issue.

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It is true that while third proviso referred to 'continuous service' whether officiating or substantive, proviso 4 refers to deemed date of ~~xxx~~ appointment as a starting point for reckoning ~~of~~ 8 years of continuous service. But it was held by A.P. High Court in 1986(3) SLR 234 (G.Hanumanth Reddy V. ...) ... indicate that it does not include notional service. Hence it is, held that it is just and proper to include notional service also for determining 8 years of service referred to. It may be noted that actual continuous service is referred to in the last limb of 4th proviso while it is merely referred to as 'continuous service' in third proviso. Hence we respectfully agree with the judgment of the A.P.High Court referred to above, ~~When~~ when it is stated that continuous service referred to in third proviso need not necessarily be actual service and it includes notional service also. ~~Hence~~ So we cannot accept the contention ~~of~~ for the applicants inOAs 542 and 543 of 1994 & 241 that these 14 promotees have not completed eight years of service as on 1-1-87 even after their probation was advanced to a date prior to 1-1-79.

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45. The said observations were made while dealing with the claim of direct recruits recruited under Rule 4(2) of the Indian Forest Service (Recruitment) Rules for seniority over those who were recruited later under Rule 4(1) by way of initial recruitment. Forest Service officers who completed 8 years/4 years of service were eligible for initial recruitment as on 1-10-66 for the senior posts/junior posts in the Indian Forest Service. It was noticed that the Board which recruited the officers for the initial recruitment was found to be not properly constituted and hence all the exam at the second time, or third time also in some cases, the recruitment for the vacancies under initial recruitment was ~~also~~ resorted to. Then the question had arisen as to whether the direct recruits can claim seniority over those who were recruited under initial recruitment. Though the appointment of direct recruits was earlier to the date of appointment of those recruited by way of initial recruitment, it was held that in view of the rules those who were recruited by way of initial recruitment will have precedence over direct recruits. Thus it is a case of later appointees being held as seniors to those who were appointed earlier.

46. Even Central Government incorporated Rule 4(3)A the IFS Recruitment Rules for providing notional date of appointment from earlier date when ~~circumstances warranted~~ earlier appointments were set aside by ~~Supr~~ Court.

47. ~~In view of the relevant rules, the interse seniority~~ of direct recruits and promotees depends upon the ... or allotment. If any are promoted in excess of the

43. Normally the tribunal/court observed that the matter has to be considered in accordance with law, when impugned notification is set aside. But in view of submissions for R-3 in para 19 of the reply, and as it is so stated to give a quietus in regard to issue between direct recruits and promotees, we feel like referring to the matters highlighted at the arguments.

44. As admittedly 13 vacancies only were available for the relevant year for promotees from AP State, it [illegible] out amending the recruitment rules, for the Supreme Court held in ~~1994 (1) SLR 246~~ that there cannot be any relaxation of recruitment rules by invoking Rule 3 of residuary matters rules. But even an amendment of a rule with retrospective effect cannot be made if it is going to affect the interests of any other officer. As such it is stated during the course of arguments that ~~in regard to these 14 promotees, and the other promotees if any, if their appointments are to be disturbed,~~ year of allotment can be assigned by following the pushing down rule for the purpose of seniority, while allowing them to have the year of allotment on the basis of date of appointment in 1988 for other purposes. It may at first flash appear to be unusual. But extraordinary situations require extraordinary solutions. In fact, the Supreme Court observed as under

> "Where all such persons are entitled to back dating of their appointments to 1-10-1986 or not, they are certainly entitled to contend that their appointments will be given precedent over the appointments of recruits under Rule 4(2) of the recruitment rules".
>
> (Para 32 at page 556 in AIR 1988 SC 535)

selection committee met for that year, requesting for direction for consideration of their cases for the select list of 1987 pending disposal of R.Ps. 7194 and 7311 of 1987 filed by them before the A.P. State Admn. Tribunal. If the State Admn. Tribunal and the [illegible] constituted by then, they could have approached the High Court and then the High Court would have considered as to whether it would be proper to pass an interim order as prayed for. But in view of the constitution of these Tribunals, it was held that it was not open for the State Tribunal to give a direction in regard to recruitment for I.A.S. as it is within the purview of the Central Admn. Tribunal and the latter felt by judgement dated 16-12-87 in O.A. 788/87 that the same was premature and till their R.Ps. are ~~not~~ disposed of by the State Tribunal the relief as prayed for could not be granted and it was ~~o~~ observed that in case they succeed in the State

48. The ~~very~~ right that accrues on the basis of seniority is that the case of eligible juniors cannot be considered for promotion without considering the cases of eligible seniors. If there are no chances of promotion, the question of seniority has no significance at all. Then a question arises as to whether the case of a junior for promotion can be considered on the ground that he completed the eligibility period of service while the seniors had not completed the eligibility period. Cases may arise where for no fault of the seniors, a junior will

vacancies available in 1988, those excess ... cannot claim seniority over the direct recruits of relevant batch batches. It is seen that if these promotees have not approached the tribunal, the appointments of R.21 and R.30 in 1988 are valid as they were appointed within the vacancies available in 1988. All these 14 were admittedly placed above R-30 and the first six out of these 14 were placed even above R.21. Even R.20 was senior to R.21 in the category of Deputy Collector. While R.21 could join on 30-12-1978 on his appointment as Deputy Collector by way of direct recruitment, as he was posted at Rangareddy district which adjoins Hyderabad R.20 could join only on 5-1-1979 as he was posted in East Godavari District, which is far away from Hyderabad The learned Member of the A.P.State Tribunal by judgement dated 22-3-88 in R.Ps. 7194 and 7311 of 1987 held as inequitable if a senior cannot be held as eligible for consideration for inclusion in 1987 select list while his junior that is R.21 was found eligible for the same and hence it was held that it was a fit case for exercising the power of relaxation. Accordingly the G.O.Ms.No.500 Revenue (Ser.I) Dept. dated 31-5-90 was issued for advancing the date of probation to 29-12-78 ~~to others~~ in the 1978 batch of direct recruit deputy collectors and thereby this Bench held that they too were eligible for consideration for inclusion in the 1987 select list. In fact there were not even laches on the part of the direct recruit deputy collectors from amongst these 14 promotees for they even approached this Tribunal by filing OA. 788/87 even before the

R.30 was ~~only~~ in pursuance of the order of this Tribunal which was confirmed by the Supreme Court. It is stated that R.30 already retired. If R.30 could not get appointment in 1988 his case could not be considered for ~~[illegible]~~ name could not be within 26 of 1987 revised list and hence he could not have been considered for the later year as he crossed 54 years by the cut off date for the following year. A question naturally arises as to how the case of R.30 has to be set-aside for absorbing the R.15 and R.16 who are admittedly entitled to the appointment in 1988 in view of their gradings as per the revised select list. It is also stated that as R.30 just like any other promotee officer appointed to I.A.S. had given up his lien he cannot now be treated as an employee of State.

50. The Courts/Tribunals are ~~directing~~ giving directions for convening of review DPCs to consider the cases for promotion if the adverse remarks of the relevant years when questioned in time are set-aside subsequent to the selection or when ~~[illegible]~~ finalised by the Court/Tribunal or other authorities after the finalisation of the selections. It may also be noted that ~~sealed cover procedure is adopted~~ if there is any disciplinary action pending against an officer at the time of consideration for promotion ~~and if~~ ultimately he is exonerated and if his name is included in the list, he has to be

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the eligibility period by cut off date while the seniors could not complete it. The same-thing happened in the case of R.20 and R.21, that is while R.21, the junior, could complete the eligibility period by 1.1.1987, the senior that is R.20 could not complete it. R.20 could not complete it as he was posted to a distant place on the initial appointment as Deputy [illegible] complete it as he was posted to a nearby place. So it is naturally felt that it is imprudent to submit the report if a junior is promoted for I.A.S. in the earlier year, while the senior was not promoted in that earlier year, for no fault of his. It is thus on the basis of equity G.O.Ms.No.500 dated 31.5.1990 was issued.

49. The G.Os on the basis of which the promotee Deputy Collectors from amongst these promotees that is R.15 to R.19 and R.20 were also given advanced date of probation, were not filed. But there is nothing to indicate that the same were issued for extraneous reasons. If those G.Os. were issued in time or alteast if they had got the interim order even before selection committee met for preparation of 1987 selec list, their cases also would have been considered the itself. In view of the gradings, the names of the R.15 and R.16 could have been included even in the original list and they could have got the appointments in 1988 within the vacancies available for promotees. But as the G.Os. in their favour were not issued by then, their cases and the cases of others out of these 14 promotees were not considered then and hence R.21 and R.30 got the chance. As already observed, [illegible]

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followed, the case of [illegible] could not be considered for later year as he crossed the age of 54 years by then and as his name could not be in revised list for 1987. So, in the circumstances, we feel that combination of both the methods, that is creation of supernumerary posts and the principle of pushing down have to be adopted to meet the situation in the special circumstances in this case.

If Rule 9(1) of Recruitment Rules is amended [illegible] of supernumerary posts, for the relevant year for implemantation of the judgements of this Bench, whereby the 14 will have the same year of allotment as R-30 had, and another provision for the purpose of their seniority by adopting the pushing down principle for assignment of year of allotment whereby the interests of the direct recruits in regard to seniority are protected, it will not affect the interests of these 14 promotees or the direct recruits.

But at the same time the interests of the applicants in OAs 543 and 544 of 1994 and those who are similarly situated have also to be safe-guarded. Hence selection has to be made in accordance with rules from select list year 1987 onwards on the basis that these 14 promotees were eligible on 1-1-87. Hence zone of consideration, limit in regard to select list and placement on the basis of gradings and seniority have to be followed gradings already given to these 14 have to be treated as gradings for the later years, if their cases have to be considered for later years. Similarly gradings given to applicants in OAs 543/94 and 544/94 and similarly treated officers in the year of appointment have to be treated as their gradings for later years if they have to be considered for later years.

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given promotion. But till then the vacancy will not be kept unfilled and it is necessary to either create an additional post to accommodate the officer who was later exonerated or to push down the last promotee. In all such cases, either of the two following principles is followed:

(i) Creation of super-numerary post; or

(ii) pushing down.

If the recruitment is only from one source, then the creation of supernumerary post does not create problems. When the recruitment is from two or more sources, if supernumerary posts are created to meet the contingency referred to above, then the question of interse seniority between the officers recruited from the various sources will arise. If pushing down principle is followed in such a case, then the question of seniority may not arise. Generally in the case of pushing down, the promotee will lose some places in the seniority and in some cases he even will be reverted to lower post. But even after reversion, his case will be considered for promotion as and when next vacancy for promotees arises. But promotion regulation rules for I.A.S. prescribed the maximum age limit for consideration for promotion, and if he crosses the maximum age by the following year and ~~in case of pushing down,~~ he will not again be eligible for consideration for promotion for IAS. In fact, ~~if~~ the principle of pushing down is going to be

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54. The unusual situation that had arisen in this case would not frequently arise. Once in a way, the State officers will come within the zone of consideration immediately on completion of the eligibility period of 8 years. The first 11 in the select list of 1987 were of earlier years, and hence that question had not arisen for them. Further the number of vacancies that are available for promotees in that relevant year was also unusually high. It is noticed that on the basis of the figures supplied for the later years, the vacancies available for promotees in each of the later years were less than 10. Hence even if the necessary provision as referred to is going to be made, it will be to meet an unusual situation that may arise once in a way and it is not a case of invoking it frequently.

54.A. It is also noticed on the basis of the arguments as to whether it is not a case of simplifying the rules whereby it may not be even necessary to invoke the provision, if it is going to be incorporated as referred to, in some of the cases. If a provision is made in Rule 5 of the Promotion Regulations to the effect that the 8 years of service has to be reckoned from the date of order of appointment, then the question of a junior stealing a march over the senior does not arise.

But the case of R-30 also has to be considered for the later years as and when his turn comes even though he crossed 54 years. If on that basis the applicants in OAs 542/94 and 543/94 and other promotees who were appointed in 1989 or the later years have to be placed above R-30 they too should be given 16-12-88 as the date of appointment for assignment of year or allotment for benefits other than seniority. The same rule of pushing down has to be followed even in regard to them for assigning the year of allotment for the purpose of seniority. Thus the necessary amendment in regard to recruitment rules in regard to applicants in OAs. 543 and 544/94 and similarly situated officers also has to be made. Such amendments will not affect the interest of any.

9. Of course, Rule 5 of the Recruitment Rules is applicable to all the States and it may take time if suitable amendment is made so as to make it applicable for all the States. Hence such an amendment is to be made for A.P. State in the first instance whereby the exercise can be done at an early date. Of course after consultation with all the states, the Central Government can consider the desirability of having such an amendment applicable for all the States. We feel it necessary to observe as above, since such situations might have arisen or may arise in other states also and hence desirability of having such an amendment for all the States has to be considered.

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resignation or any casuality of the promotee or ~~in the case of~~ increase in the cadre. The possibility of manoeuvring in regard to the same does not arise. However, it is also one of equity as one should not be deprived of his chance of getting promotion on the date on which it is due. Rule 4(3)(A) of the Recruitment Rules for Indian Forest Service was incorporated to give notional promotion for initial recruits with effect from [illegible] list was quashed in view of the judgment of the Supreme Court in AIR 1970 SC 150 (A.K.Kraipak Vs. UOI). Hence provision was made for notional promotion in regard to initial recruitment of the Indian Forest Service. Thus in order to avoid the feeling on the part of the promotees that they were not getting promotions from the date on which the vacancies arose due to the ~~late~~ delay in meeting of the selection commitee, the desirability of considering of making a provision for giving notional promotion from the date of the vacancy has to be considered.

56. The ratio between the direct recruits and the promotees is only in regard to the posts referred to in items 1 and 2 of Schedule to the Cadre Strength Regulations, and it is not a case of ratio between [illegible] direct recruits in the vacancies that arise in each year. ~~As~~ promotees have to be considered for the vacancies which arise in each year in regard to the promotees, and similarly direct recruits have to be considered for vacancies arising for direct recruits in regard

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55. The grievance, and it cannot be stated that it is not genuine, of the promotee IAS or IPS, is that for one reason or the other, the selection committee is not meeting every year and as such they are not only losing seniority as in such cases they are promoted long after the dates on which the vacancies for them had arisen. So the desirability of amending the rules suitably has to be considered, so as to give notional promotion from thedate on which the permanent vacancy had arisen for the promotees so that they can have the benefit of the year of allotment to which they would have get if the selection committee met in the year in which the vacancy had arisen instead of [illegible] year. In such a case the direct recruits cannot have any grievance for as per rules the selection committee has to meet every year for consideration of the vacancies for promotees referable to that year and in giving notional promotion by amending the rules the promotees would get the places to which they are entitled to if selection committee meets in each year as envisaged in the rules. In such a case there cannot be any feeling on the part of promotees and at times mistaken one, that someone purposely manipulated to push them down to the later year. There will not be any dispute in regard to the date of permanent vacancy available to promotees for the vacancy arises due to retirement.

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15.12.1993 in exercise of the said power, the same cannot be challenged.

iii) As R-43 is senior to all the 14 that were included in the notification dated 16.12.1993, he (R-43) should be appointed with effect from the same date on which those 14 were appointed for IAS.

The above contentions were raised by the learned counsel for R-43 today. It is submitted that he could not appear earlier for hearing of these OAs as his name was not i & ii referred to by Sri VVS Rao and as such, they need not be again discussed.

For the purpose of empanelment in the select list, mere seniority in the category of Deputy collectors alone is not the criterion. Gradings will be given for all the officers who are within the zone of consideration. All those who are 'outstanding' will be placed above those who are assessed as 'very good'; and those who were given the grading 'very good' are placed above those who were given the grading 'good.' Further, as amongst each grading, the seniority is fixed on the basis of their seniority in the category of Deputy Collector. Thus, a junior in the category of Deputy Collector may have a ranking higher to the ranking of a senior as per Select List, if the grading of the former is higher to the grading of the latter. It is stated that the case of R-43 was considered for 1987 select list and he was given ranking lower than that of R-12 because the grading of R-43 was less than the grading of R-12. But R- was shown as Senior to R-43 in the original select list of 198 as R-30 is senior to R-43 in the category of Deputy Collectors and in both of them had the same grading i.e. 'good'. As such, this contention is not tenable.

to each year, the same ratio will not arise in the vacancies available for direct recruits and promotees in each year. It may be possible that the vacancies for promotees in a particular year may even exceed the vacancies available for direct recruits in the said year for the ratio is only in regard to the number of posts but not in regard to the vacancies. It may even happen that there may not be even a single vacancy for a promotee in a particular year. Be that as it may, the Rule 9(1) of the Recruitment Rules makes it clear that the promotees in any particular year cannot be appointed over and above the vacancies available to promotees which have to be determined on the basis that the promotees referred to in items 1 and 2 in the Schedule to the Cadre Strength Regulations. As the appointment of these 14 are in excess of the vacancies available for promotees in the relevant year we held that the notification dated 15-12-1993 is illegal.

57. Sri V.V.S. Rao, learned counsel for R-43 submitted as under :

i) As the notification dated 15-12-1993 was issued for implementation of the judgements of this Tribunal in the various OAs referred to which R-1 and R-3 are bound to implement the same, the said notification cannot be assailed on any ground;

ii) The Central Government is having power to increase the cadre strength of any State in consultation with the State Government in exercise of power under Rule 4(2) of the Rules and when the cadre strength of AP State was increased for the periods referred to as per notification dated

who was already appointed on the basis of his grading and on the basis of availability of vacancies, and if in view of the revision of select list, the said officer cannot be even included in the revised select list and as such, he has to be considered in the following year, he has to be considered inthe following year/years even if he has crossed 54 years by the crucial date [illegible].

On that basis, the year of allotment has to be assigned for those who are appointed in pursuance of the Judgement of the Courts/Tribunals and also for those promotees who are appointed in the later years, if it is necessary to assign later year of allotment, for the purpose of seniority onthe basis of this provision. If on the basis of fixation of seniority as per this provision, it is found that if any of the junior promotees was accommodated in the supernumerary posts created, then the promotees who are appointed in the years later to the years in which the supernumerary posts were created, such of the promotees appointed in later years also should be given the date of promotion that was given to the junior promotee who was appointed in supernumerary post in implementation of the Judgement.

If similar amendment is felt necessary for other States also, the desirability of making an amendment in regard to other States also has to be considered.

While considering about the p[illegible]ion for resolving the issue, Sri VVS Rao submitted that when it is necessary to create supernumerary posts for implementation of the Judgement of the Tribunal/Courts, it is proper and just to have a deeming provision for creation of supernumerary posts.

58. On the basis of the arguments advanced, and the discussion of Judgement of this Tribunal in the various OAs in regard to the concerned 14 promotees covered by notification dated 16.12.1993 i- by way of incorporating the provision for amending Rule 9 (1) of Amendment Rules in the lines referred to as below and the same has to be incorporated below Rule 9(1).

"Notwithstanding anything contained in this Sub-Rule, in relation to the State of AP, supernumerary posts are deemed to have been created in the relevant year for appointing the persons recruited under Rule 8 in excess of 33 1/3% referred to therein for appointing promotees notionally from a date on which the junior in revised list was appointed for implementation of the Judgement of the Tribunal/Court, subject to the condition that the supernumerary posts have to be absorbed in the vacancies arising after the date of creation of these supernumerary posts. The year of allotment has to be assigned on the basis of the notional date of appointment for those who are appointed in the supernumberary posts, for all purpose other than for seniority. But for the purpose of seniority as amongst the promotees and interse between the promotees and the direct recruits the appointments for promotees have to be made as and when the vacancies arise for promotees on the basis of Rule 9(1) i.e, by ignoring the supernumerary posts, but by following the other recruitment rules."

For the above purpose, the gradings that were already given in the earlier years as per the revised list or the original list have to be adopted if the same is not adverse to the concerned officer without again considering on the basis of the ACRs of the later years, if the case of such officers has to be considered for the later year for want of vacancy in the earlier year. If an officer

59. The above is referred to as mod[illegible] for resolving the issue on the basis of [illegible]nts advanced for the applicants and the respondents, and if judgments in these OAs referred to can be ~~followed~~ implemented by adopting any other methods, it is needless to say that the same may be followed.

60. In the result, the notifications No.11031/10/91-AIS(2) dated 15-12-1993 and F.No.14015/31/91-AIS(I) dated 16-12-1993 of Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi, are quashed. The OAs are ordered accordingly. No costs.

To

1. The Secretary to the Government of India, Department of Personnel & ~~Xxxxx~~ Training, North Block, New Delhi.
2. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
3. The Chief Secretary, Secretariat, State of A.P., Hyderabad.
4. One copy to Mr. G.Raghuram, Advocate, CAT.Hyd.
5. One copy to Mr.G.Vedanta Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
7. One copy to Mr.D.Panduranga Reddy, Spl.Counsel for A.P.Govt. CAT.Hyd.
8. One copy to Mr. M.Panduranga Rao, Advocate, CAT.Hyd.
9. One copy to Mr.C.Srinivasa Babu, CAT.Hyd.
10. One copy to Mr.G.V.L.N.Murthy, Advocate, CAT.Hyd.
11. One copy to Mr.J.Chalameshwar Rao, Advocate, CAT.Hyd.
12. One copy to Mr.V.V.S.Rao, Advocate CAT.Hyd.
13. ~~One copy to Mr.M.Surender Rao, Advocate, CAT.Hyd.~~ [illegible]
14. One copy to Library, CAT.Hyd.
15. One spare copy.
16. Copy to All Reporters as per standard list of CAT.Hyd

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