

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01494/2018

DATED THIS THE 08TH DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

Smt. Renuka Chidambaram, I.A.S.
D/o Sri K.Chidambaram
Aged about 61 years
Retired as Principal Secretary,
Department of Public Enterprise,
& residing at No. 98, Defence Colony,
Indiranagar,
Bangalore-560 038.

.....Applicant

(By Advocate Shri M. Nagaprasanna)

Vs.

1. The State of Karnataka
Represented by its Chief Secretary
Vidhana Soudha,
Dr. Ambedkar Veedhi,
Bangalore-560 001.

2. Union of India
Represented by the Secretary
Department of Personnel and Training
Ministry of Personnel, Public Grievances,
Pensions and Training
North Block,
New Delhi-110 001.

.....Respondents

(By Shri R.B. Sathyanarayana Singh, Counsel for the Respondent No.1)

ORDER

DR. K.B. SURESH, MEMBER (J):

Decision-making

Four things belong to a Judge-

To hear courteously; to proceed wisely;

To consider soberly; and to decide impartially.

Socrates.

To cite a great Indian Jurist:

A good and sound decision is not possible unless the Judge has good and sound qualities – absolute integrity and impartially, sound knowledge of legal principles, deep understanding of human psychology and society’s problems and needs, keen perception of what is right and wrong and lastly readiness for hard works – to study and analyse the facts, apply the law and write well-reasoned judgements. Experience of course is an additional advantage. That is why Pluto said that knowledge, integrity, experience and wisdom lead to a correct and just decision. Felix Frankfurter, J, added “humility” as a

crucial factor for a Judge's functioning. He described that quality thus:

"...his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for outing his passion behind his judgement instead of in front of it. The attitudes and qualities I am groping to characterise are ingredients of what compendiously might be called dominating humility."

Hon'ble Justice R.V. Raveendran

2. Heard. The applicant challenges her non-inclusion for promotion to the level-17 in the DPC held. This OA is the consequence of an order passed earlier in O.A. No. 568/2016 dated 22.12.2016 which is produced herewith as Annexure-A1 which we will quote now so as to elucidate the facts of the issue till then:

"The applicant has filed this OA seeking the following relief:

"Issue writ or order quashing the impugned order dated 29/03/2016 bearing No.11019/08/2015-AIS-III issued by Respondent No.1 (Annexure-A14) and grant all consequential benefits to her, in the interest of justice and equity."

2. The applicant submits that she had initially joined Indian Audit and

Accounts Service in 1981 and thereafter joined the Indian Administrative Service (IAS) in 1985 and was assigned the Karnataka Cadre. In 2010, the applicant requested the State Government to permit her to go on deputation under Rule 6(2)(ii) of the All India Service (Cadre) Rules 1954 on a foreign assignment with the United Nations(UN). The 3rd respondent recommended her case and the 1st respondent accorded approval for the said deputation and accordingly 3rd respondent vide order dated 21.5.2010(Annexure-A1) issued a notification relieving her of her duties w.e.f. 21.5.2010 to allow her to take up the UN assignment at Monrovia (East Africa). The terms and conditions of deputation was also issued vide Government order dated 26.8.2010(Annexure-A2). On expiry of one year, the applicant intended to continue on deputation of foreign assignment for one more year and sent a request to 3rd respondent accordingly. The same was considered and the deputation was extended up to 26.5.2012(Annexure-A3). This was further extended on her request for one more year up to 30.6.2013(Annexure-A4). Thereafter, on the request of the applicant for further extension of the tenure for one more year, the 2nd respondent sent a proposal to the Govt. of India i.e. 1st respondent on 28.9.2013(Annexure-A5) recommending extension of tenure of foreign assignment for further period of one year up to 30.6.2014. Thereafter vide communication dated 17.6.2014(Annexure-A6), the State Government further requested the 1st respondent to consider the proposal for extension of tenure of assignment till 30.6.2014.

3. According to the 3rd respondent, though recommendation was sent to 1st respondent for extension of the applicant's deputation on Foreign Service for two years until 30.6.2015, despite several recommendations and reminders from the applicant, no decision was taken by the 1st respondent with regard to the extension of deputation period. At this juncture, the 3rd respondent issued a show-cause notice dated 5.10.2015 based on the direction of the 1st respondent seeking explanation of the applicant relating to initiation of action under Rule 7 (2) of All India Service (Leave) Rules, 1955(Annexure-A7). On receipt of the said show-cause notice, the applicant submitted a reply dated 11.10.2015(Annexure-A8) stating that she is under bonafide impression that her request for extension of period of deputation is under consideration and she has been remaining in touch with her Cadre Controlling Authorities and as such not violated any provisions of Rule 7 (2) of All India Service (Leave) Rules, 1955. The 3rd respondent again vide letter dated 19.11.2015 asked the applicant to report back for

duty stating that her request to regularize the extension period from 2013 would be considered after her return to the cadre(Annexure-A9).

4. *The applicant in her response dated 30.11.2015 requested the State Government to allow her to await the decision of the Govt. of India i.e. 1st respondent to consider her request for extensions on deputation as has been recommended by the State Government. In the meanwhile, the 3rd respondent was directed by the 1st respondent to formulate a proposal for the applicant's deemed resignation under Rule 7 (2) (c) of the All India Service (Leave) Rules, 1955 for forwarding the same to the 1st respondent(Annexure-A10). The 3rd respondent advised the applicant to return to the state cadre in the light of the 1st respondent's directions of 11.1.2016. The applicant further submitted a communication to the 2nd respondent on 24.3.2016 indicating her willingness to report back to duty(Annexure-A11). The applicant formally reported back to the State Government on 5.4.2016 and her joining report was accepted by the 3rd respondent and a communication sent by the State Government to the Govt. of India on 5.4.2016 that she had reported back to her duties and is awaiting posting. However, the Govt. of India i.e. 1st respondent had issued an order dated 29.3.2016 stating that the applicant is deemed to have resigned from the Indian Administrative Service w.e.f. 1.7.2013 in terms of rule 7(2) (c) of the AIS (Leave) Rules, 1955. Aggrieved by the said order, the applicant had approached this Tribunal seeking the relief as mentioned earlier.*
5. *The applicant further submits that before expiry of the deputation period, the applicant had submitted a request for further extension of deputation period. The State Government had made recommendation to the 1st respondent for consideration. The 1st respondent had neither taken any decision on the State Government's recommendation nor rejected the same. The applicant had been in constant touch with the State Government in the matter. Therefore, she cannot said to have been in unauthorised absence. The 3rd respondent directed the applicant to report back to the duty only on 19.11.2015. Thereafter, her request has to be allowed to join back on duty has been considered and agreed to on 24.3.2016 and her duty report has been accepted by the State Government. Moreover, in spite of directing the 3rd respondent to prepare and send a proposal for action under Rule 7(2)(c) of the AIS (Leave) Rules, 1955, the 1st respondent issued an order for deemed resignation dated 29.3.2016 without waiting*

for the 3rd respondent's proposal. Had the Govt. of India i.e. 1st respondent had declined/rejected the proposal of the State Government for extension of deputation period, then the question of any unauthorised absence or remaining on deputation without any authority would not have been arisen. When the State Government had recommended for consideration and no decision has been taken on it, it cannot be considered as absence without any authorisation. Further in spite of not taking any decision on the recommendation of the State Government, the order of the Govt. of India has been affected retrospectively from 1.7.2013 which is uncalled for.

- 6. The applicant further submits that it is clearly evident from the records that the applicant had always been in constant touch with the State Government and sent a request for her continuation which has not been refused. When the applicant is in touch with the Cadre Controlling Authority, to consider her as being unauthorised absence for taking recourse under the provisions of Rule 7(2) (c) of the AIS(Leave) Rules would not be fair. Therefore, the applicant prayed for setting aside the notification by which she has been deemed to have been resigned from service w.e.f. 1.7.2013.*
- 7. The respondent No.1 has filed reply statement in which they have mentioned that the cadre clearance was given by the Govt. of India to the applicant for taking up foreign assignment as Political Affairs Officer in the United Nations Peacekeeping Mission in Liberia for a period of one year vide letter dated 22.6.2010(Annexure-R1). Accordingly, she was relieved by the State Government. Subsequently, on being selected and reassignment by UN for the position of Senior Political Affairs Officer with the United Nation Mission in Sudan, she was permitted by the Government of India to hold the position for a period of one year w.e.f. 26.7.2010 vide letter dated 30.12.2010(Annexure-R3). Thereafter extension for deputation was allowed on two occasions granting deputation period up to 30.6.2013(Annexure-R5). No further extension of time was granted to the applicant beyond 30.6.2013. Thus she was on unauthorised absence w.e.f. 1.7.2013. Thereafter vide letter dated 10.7.2015(Annexure-R6), the Govt. of India, requested the State Government to direct the applicant to report back to the cadre immediately as she was overstaying on foreign assignment beyond permissible period without approval of the competent authority. The State Government vide their letter dated 24.11.2015(Annexure-R8) informed that they had issued show cause notice on*

5.10.2015(Annexure-R9) to the applicant to submit explanation within 30 days from receipt of the notice as to why she continued to be on foreign assignment beyond 30.6.2013 without the approval. The applicant was directed to report back to the cadre within 30 days from the date of receipt of the notice, failing which the State Government would be compelled to initiate proceedings of deemed resignation under Rule 7(2) (c) of the AIS (Leave) Rules, 1955. However, the applicant without reporting back to the cadre submitted reply to the show cause notice vide E-mails dated 9.10.2015(Annexure-R10), requesting her to allow her time to continue on foreign assignment till the competent authority takes a decision regarding extension of foreign assignment. Subsequently, the State Government on 19.11.2015(Annexure-R11) informed the applicant that she cannot be granted permission or time to continue on foreign assignment and directed her to report back in State Cadre within 30 days. But she did not report back, again intending to continue on foreign assignment. The Govt. of India on 3.11.2015(Annexure-R12) issued instructions/guidelines relating to deemed resignation under Rule 7(2) of the AIS (Leave) Rules, 1955 to initiate proceedings of deemed resignation accordingly. As per these guidelines, the State Government is required to complete the whole process of deemed resignation within three months. If the State Government fails to comply with these instructions and does not adhere to the aforesaid timeline, the Central Government shall initiate proceedings of deemed resignation under Rule 7(2) of the AIS (Leave) Rules, 1955.

8. The respondent No.1 further submits that vide D.O. letter dated 2.12.2015(Annexure-R13) the State Government was informed that the applicant is liable to be deemed to have resigned from service under Rule 7(2) (c) of the AIS (Leave) Rules, 1955 for being unauthorisedly absent since 1.7.2013 and requested State Government to forward the deemed resignation proposal of the applicant. This was followed by communication dated 23.12.2015, 11.1.2016, 21.1.2016 and 17.2.2016(Annexure-R14) requesting the State Government to forward deemed resignation proposal urgently by 29.2.2016 failing which the Govt. of India shall initiate deemed resignation proceedings in respect of the applicant. Since, there was no reply received from the State Government, in pursuance of the guidelines issued on 3.11.2015, the applicant was deemed to have resigned from service under Rule 7(2) (c) of the AIS (Leave) Rules, 1955 for unauthorised absence of about 2 years 8 months vide notification dated 29.3.2016(Annexure-15). The applicant was deemed to have resigned from service under

Rule 7(2) (c) of the AIS (Leave) Rules, 1955. A copy of the notification was issued to the State Government to apprise the applicant. The notification was also published on the website of the respondents. It is also mentioned by the respondents that the State Government had contacted the applicant telephonically to report back to the cadre with reference to the department's letter dated 11.1.2016 but she had not reported for duty till 29.3.2016 when notification issued confirming deemed resignation of the applicant. Only thereafter, the applicant reported from foreign assignment on 5.4.2016. The notification dated 29.3.2016, is absolutely in order as per the law prescribed under Rule 7(2) of AIS (Leave) Rules, 1955 and the ibid rules have been framed under AIS Act, 1951(Annexure-R17). Hence, the contention of the applicant is devoid of any merit.

- 9. The respondents further submitted that the applicant did not report back in spite of several communications but intending to continue on foreign assignment unauthorisedly for personal gains. Thus, she had not only violated provisions of Rule 7(2) (c) of the AIS (Leave) Rules, 1955 but also disobeyed the directions of Government, wherein she was directed to report back. The contention of the applicant that she had reported for duty before passing of order/notification dated 29.3.2016 is devoid of any merit and not maintainable.*
- 10. The State Government i.e. respondents No.2 & 3 have filed their reply statement wherein they have also highlighted that the applicant with due approval from the Govt. of India was relieved by the State Government w.e.f. 21.5.2010 to enable her to take up the assignment with the United Nations at Monrovia. Thereafter based on the request made by the applicant for extension of foreign assignment, a proposal was sent to Govt. of India on two occasions and she was allowed extension initially up to 26.5.2012 and then an extension up to 30.6.2012. The applicant had again requested for extension of tenure of foreign assignment for a period from 30.6.2013 to 30.6.2014 and a proposal was sent to the Govt. of India vide letter dated 22.6.2013. The Govt. of India, DoPT in its letter dated 10.7.2013 requested the State Government to furnish certain documents/information and the same was also furnished. The Govt. of India letter dated 10.7.2015 detailing the case of the officer asked the State Government to direct the applicant to report back to the cadre as she was overstaying on Foreign Assignment beyond the permissible period without the approval of the competent authority. According to the State*

Government, the officer has stated that her contract will be extended another year i.e. until 30.6.2016 and during the course of the year, she also expect to be promoted to the very senior D2 level and as she is an IAS officer, this will be a matter of professional recognition and appreciation for the Government of Karnataka and Government of India. The officer also states that she would like to continue to work in United nations for just one more year in order to avail of the opportunity of being seriously considered for another promotion after which she is committed to return to the cadre and has requested to extend the tenure of foreign assignment under Rule 6(2)(ii) All India Services (Cadre) Rules for a final period of one year up to 30.6.2016 as an exception, vide E-mail dated 1.5.2015.

11. *The State Government further submits that in view of the specific direction by Government of India and the provision contained in Rule 7(2) (c) of the AIS (Leave) Rules, 1955 and instruction/guidelines of Government of India vide letter dated 8.9.2015 to process the applicant's case for deemed resignation, the officer was directed to show cause as to why she continued to be on foreign assignment beyond 30.6.2013 without the approval of the Competent Authority within 30 days of receipt of notice. The applicant was directed to report back in the cadre within 30 days from the receipt of the notice and if the officer does not comply with the above instructions within the time line prescribed, the State Government would be compelled to initiate proceedings of the deemed resignation under Rule 7(2) (c) of the AIS (Leave) Rules, 1955 and submit a proposal to Government of India accordingly, vide show cause notice dated 5.10.2015. The applicant in her E-mail dated 9.10.2015 has responded to the show cause notice and has denied the allegation that she continued on Foreign Assignment without the approval of the competent authority and the she overstayed beyond five years in violation of Rule 7(2) (c) of the AIS (Leave) Rules, 1955. The officer has stated that she has regularly submitted the proposals for extension of the tenure of foreign assignment prior to expiry of the tenure and had pursued the matter with the State Government and Central Government at regular intervals. Based on the proposal of State Government the extension of tenure of foreign assignment of the officer for a period beyond 30.6.2013, the Government of India had requested for additional information/documents to consider the proposal. The officer continued on Foreign Assignment beyond 30.6.2013 without the approval of the Competent Authority as the matter was in correspondence between the State Government and Central*

Government.

12. *The State Government further submits that the applicant has stated that she has not violated any rules and has not stayed on Foreign Assignment without the approval of competent authority. The officer has also sought permission to continue on Foreign Assignment till the competent authority takes a decision. The State Government has informed the applicant that the State Government cannot grant permission or time to continue on Foreign Assignment till the competent authority takes a decision and the officer was again requested to report back to the cadre within 30 days from the date of receipt of the show-cause notice dated 5.10.2015 as has already been directed. The officer was also informed that the non-compliance in the matter would entail initiation of proceedings of the deemed resignation under Rule 7(2) (c) of the AIS (Leave) Rules, 1955 without any further notice. It was also made clear that the proposal regarding regularisation of foreign Assignment will be examined only after she reports back in the Cadre, vide letter dated 19.11.2015. In response to this, the Officer while referring to her E-mail dated 5.10.2015 has stated that at no point has the Government of India rejected the recommendation of the State Government and the proposal was pending before the Government of India and that she did not overstay without permission and that the Govt. of India and Govt. of Karnataka until recently had not asked the applicant to return from Foreign Assignment and therefore, she did not disobey the Government orders. Since the case is pending for orders of Govt. of India, Department of Personnel and Training, she may be continued on foreign assignment till Govt. of India takes a decision in the matter and has further stated that her contract with United Nations will end in the end of June 2016 and she has to give sufficient notice if she has to unilaterally break the contract and resign and will require at least 60 days to complete the obligatory formalities of resignation from the United Nations. The officer requested to allow her to continue on foreign assignment awaiting Government of India's decision in the matter. In her E-mails dated 14.10.2015 and 24.10.2015, the officer had requested to allow her to continue on Foreign Assignment till the Government takes a decision on the show cause notice, before taking further action regarding foreign assignment and return to cadre.*
13. *The State Government stated that it had informed the officer once again, to report back in the State Cadre within 30 days from the date of receipt of show-cause notice dated 5.10.2015. The*

applicant has also been informed that non-compliance of the direction would entail initiation of proceedings of deemed resignation under Rule 7(2) (c) of the AIS (Leave) Rules, 1955 without any further notice. In the meantime, the Govt. of India on 11.1.2016 had requested the State Government to take necessary action in this regard and forward proposal for deemed resignation. In the light of these developments and in view of the severe shortage of IAS officers in the rank of Super time Scale and above, the Government contacted the applicant over telephone and advised her to report back to the cadre as early as possible. The applicant in letter dated 24.3.2016 indicated her willingness to join back in the State Government when the State Government gives her posting order. She was again advised telephonically to report back in the cadre and await for further orders on posting. The applicant has reported to duty on 5.4.2016 and her duty report has been accepted. In view of the previous correspondences with the Government of India in this matter, this has been brought to the notice of the Government of India that the applicant has joined back in the cadre and is waiting for posting vide letter dated 5.4.2016(Annexure-R1).

14. *Heard the Learned Counsel for the parties. The Learned Counsel for the applicant reiterated the submission made in the OA and placed emphasis on the fact that for continuation on deputation beyond 30.6.2013, the applicant duly approached the State Government who in turn had submitted a recommendation to the Govt. of India. But the Govt. of India did not take any decision on the same. If the Govt. of India had refused to allow extension of deputation period, then the issue of any disobedience of the order or question of remaining on deputation unauthorisedly would have arisen. When the applicant has been in constant touch with the State Government who has been in correspondence to consider her case, to presume that she has been deliberately remaining in unauthorised absence is not correct. In all correspondences, the applicant had expressed her willingness/intention to report back to cadre and only wanted a decision of her request for continuation on deputation. But no such decision was communicated to her. Therefore, considering her continuation on deputation as unauthorised absence and taking recourse to deemed resignation in terms of Rule 7(2) (c) of the AIS (Leave) Rules, 1955 is completely unjustified. The applicant had served more than 30 years with the Government in different capacities and there is no occasion or any ground for disobedience of the order of the Government. Therefore, the matter needs to be considered*

sympathetically and moreover when the applicant had joined back to the cadre, she should not be penalised with such an order. Therefore, she pleaded that the order of deemed resignation may be set aside and relief may be granted as prayed for.

15. *The Learned Counsel for Government of India i.e. respondent No.1 reiterated the submission made in the reply statement and stated that the applicant did not report back in spite of being asked to do so in categorical terms and continued to remain on deputation. Even when show cause notice was issued and a direction was issued for reporting back on 11.1.2016, she did not pay any heed to the said direction and continued to remain on deputation. The State Government also did not submit proposals for deemed resignation in spite of specific time frame and therefore, the Government forced to initiate action and issued order accordingly. On being asked as to why the Government did not communicate any decision on the proposal of the State Government for extension of deputation period, he mentioned that not taking any decision by the Govt. of India does not entitle the applicant to continue on deputation period without any specific approval. Moreover when the State Government had issued show cause notice asking her to report back to her cadre, there is no scope for making any further plea and continue to remain on deputation ignoring the direction of the State Government. The impugned order has been passed in terms of the relevant rules and the contention of the applicant does not merit any consideration.*
16. *The Learned Counsel for the State Government also highlighted the submission made in the reply statement and admitted that the State Government did forward the proposal for continuation of the applicant on deputation to the Govt. of India. However, based on the direction of the Govt. of India, they issued show-cause notice asking the applicant to report back to the cadre. After having corresponding to the State Government all along, the applicant finally informed the State Government on 24.3.2016 that she is willing to join back to the cadre and reported to duty on 5.4.2016. The State Government had accepted her joining and informed the Govt. of India on the same day. Since the matter was under consideration on correspondence, the State Government did not formally send any proposal to the Govt. of India for deemed resignation.*
17. *We have carefully considered the facts of the case and submissions made by the parties. It is evident from the facts as*

submitted by the applicant and the respondents that the applicant with the due approval from the Govt. of India and relieved by the State Government had taken up the UN assignment at Monrovia (East Africa) w.e.f. 21.5.2010. Thereafter, she was allowed extension on two occasions and was permitted to continue with the assignment up to 30.6.2013. Thereafter, the applicant's request for further extension of tenure of her assignment up to 30.06.2014 was sent by the State Government to the Govt. of India. Thereafter, there were several correspondences between the Govt. of India and State Government. However, no clear cut decision in regard to the proposal for extension of tenure was taken by respondents. Only in July, 2015, the Govt. of India asked the State Government to ask the applicant to report back to the cadre. Then a show cause notice was issued to the applicant in Sept, 2015 and the applicant was directed to report back to cadre within 30 days. The applicant responded to the show cause notice and requested for time and also to consider her extension of tenure up to 2016. Thereafter, the Govt. of India asked the State Government to initiate proceedings for deemed resignation. There were correspondences between the State Government and the applicant but no proposal was sent by the State Government to the Govt. of India. Thereafter, the Govt. of India on his own issued a notification indicating that the applicant is deemed to have resigned from service w.e.f. 1.7.2013 in terms of Rule 7(2) (c) of the AIS (Leave) Rules, 1955. The applicant returned and reported back to the State Government on 5.4.2016 which was accepted by the State Government and they informed to the Govt. of India of the fact of the applicant's reporting back to the cadre. In the above circumstance, the issue under consideration is whether in the light of the various correspondences between applicant, the State Government and the Govt. of India, the notification dated 29.3.2016 relating to deemed resignation of the applicant from the Indian Administrative Service w.e.f. 1.7.2013 stands justified or not.

18. Rule-7 of the All India Service(Leave) Rules 1955 reads as follows:

- 7. Maximum period of absence from duty** – (1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.
- (2) A member of the Service shall be deemed to have resigned from the service if he –
- (a) is absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission, or

(b) is absent from duty for a continuous period exceeding five years even if the period of unauthorised absence is for less than a year, or

(c) continues of foreign service beyond the period approved by the Central Government:

Provided that a reasonable opportunity to explain the reason for such absence or continuation of foreign service shall be given to the member of the Service before the provisions of this sub-rule are invoked.

19. *The Govt. of India notification dt. 29.3.2016 indicates that the applicant remain continued in foreign service beyond the period approved by the Central Government i.e up to 1.7.2013 and hence deemed to have resigned from service from that date. The rule position stated above refers to unauthorised absence and also indicates that the person concerned has to be given reasonable opportunity to explain the reason for continuation in the Foreign Service before the provision of the said sub rule is invoked. So the key element for invoking the said provisions is the issue of unauthorised absence and opportunity to be given for explaining the reason for such absence.*
20. *From the records submitted by the Learned Counsel for the respondents subsequent to hearing it appears that the proposal of the Govt. of Karnataka to Govt. of India for extension of assignment period from 1.7.2013 to 30.6.2014 was submitted for consideration of the Screening Committee of the Secretaries in its meeting held on 27.10.2014. The Committee considered the proposal and decided to get a self-certificate regarding the applicant's whereabouts during the EOL period i.e. from 11.10.2006 to 30.03.2010. Then the State Government was asked by the Govt. of India vide letter dated 10.11.2014 to obtain a self-certificate from the applicant and to furnish the same to the department. But no clarification was furnished by the State Government despite the reminder dated 4.12.2014, 6.12.2015 and 25.5.2015. The State Government in their subsequent document mentioned that the letter of November, 2014 was written by the Govt. of India to the applicant with copy to the State Government and the information sought by Govt. of India was furnished by the applicant on 25.11.2014 by e-mail. They further mentioned that the State Government further issued a communication to the applicant to furnish the self-certificate as asked by the Govt. of India.*
21. *It is quite apparent from the records that the applicant has been in*

correspondence with the State Government as well as with the Govt. of India on a regular basis requesting for extension of her tenure. But the Govt. of India neither rejected the proposal for extension of tenure nor approved the same. Till the show-cause notice was issued on 5.10.2015 asking the applicant to return back, the State Government or Govt. of India never informed that her request for extension of tenure had not been approved. On receipt of show-cause notice, the applicant immediately replied to the same and again requested for extension of her tenure. The applicant submitted that she was awaiting the decision of the Central Government in good faith and hence her absence cannot be considered as unauthorised. It also appears that the communication dated 24.11.2014 written by the State Government to the Govt. of India forwarding reply to the show-cause notice submitted by the applicant mentioned that the officer has requested to allow her time to continue and requested to take a decision regarding extension of her assignment. The State Government also did not initiate the proposal for deemed resignation of the applicant. Therefore, it could logically give an impression to a person that the case for extension of tenure may be considered. The State Government has also informed that the applicant vide communication dated 24.3.2016 i.e. prior to issue of notification terminating her services on 29.3.2016 has indicated her willingness to report to duty in the cadre immediately on getting posting order. Therefore, the contention of the applicant that she has always shown willingness to report back to the cadre and her absence should not be treated as unauthorised appears to us as logical. Hence treating her case as a case of unauthorised absence and resulting in termination of her service which in turn would forfeit benefits of all the past services rendered in the government clearly appears to us as quite harsh and not justified.

- 22. Further it appears that when the applicant returned back and reported for duty, the State Government accepted the joining report and also sent a communication to the Govt. of India on 5.4.2016 indicating of the position. All the various correspondences as mentioned earlier tend to indicate that there was an indication by the respondents in regard to considering the request for extension of tenure which might have resulted in a misgiving in the mind of the applicant to continue with the foreign assignment in anticipation of approval. It cannot be denied that on getting show-cause notice the applicant should have returned back to the State Government as indicated within 30 days since the show-cause notice given a clear indication that further extension of assignment tenure would*

not be considered. Thus there was some infraction on the part of the applicant but that was after issuance of the show-cause notice and not prior to that. Even after issuance of show-cause notice, there were several correspondences and the entire matter was allowed to remain in an indecisive state. Even before the notification terminating services the applicant requested for a posting order saying that she would return immediately. Therefore, on this account, to treat the applicant as deemed to have resigned from service would not be reasonable.

23. *We note that the applicant has been in Govt. service for more than 30 years. When the issue of continuation of deputation was under correspondence as evident from various correspondences and the applicant has also expressed her willingness to return back to her cadre, invoking Rule 7(2) (c) of the AIS (Leave) Rules, 1955 by respondents and therefore nullifying the entire period of her service appears to us as quite unreasonable and unjustified. Therefore, we hold that the notification dated 29.3.2016 whereby the applicant was deemed to have resigned from the Indian Administrative Service w.e.f. 1.7.2013 in terms of Rule 7(2) (c) of the AIS (Leave) Rules, 1955 is unjustified and cannot be sustained. Therefore, the said notification is set aside. However, the respondent authorities shall take appropriate decision regarding the period of absence beyond the formal period of approval of her assignment till her resumption of duty in the State Government on 5.4.2016 as per extant rules.*
24. *The OA is allowed accordingly in terms of above directions. No order as to costs."*

3. After that we note that vide Annexure-A3 Dr. Sandeep Dave, IAS, Joint Secretary in the Department of Expenditure, Ministry of Finance, Government of India who is on deputation to Government of India has been granted promotion vide order dated 25.03.2017 with effect from the date of promotion of his junior Shri M. Lakshminarayana, i.e., 25.03.2017. This, according to the applicant, illustrate the issue of things that on deputation the service of an incumbent does not necessarily diminish as

from the day one service is considered as one only. The respondents replies that this may probably not be the case in the case of foreign deputation and that too on a deputation that had not been approved by the concerned authority. To this issue, the learned counsel for the applicant would submit that on the issue of order in O.A. No. 568/2016 which we had quoted above the question of approval of concerned authority now no longer is necessary. The respondents counsel counters it by saying that a judicial review had been filed by the 2nd respondent in this matter before the Hon'ble High Court of Karnataka with No. 25716/2017 and it is still pending. We would therefore come to this aspect a little later on as the chronological events of issues need to be stated before that.

4. Apparently in the interregnum applicant had sought for her promotion on 23.12.2016 but disregarding this certain officers who were juniors to the applicant were promoted to the cadre of Additional Chief Secretary vide order dated 31.12.2016. Applicant had filed a representation against this on 09.01.2017 but disregarding this two more officers were again promoted who were juniors to the applicant according to the Civil List at Sl. No. 44 and 47 vide order dated 25.03.2017. The claim of the applicant seems to be that she is eligible for promotion in accordance with the normal rationale in view of the State Government accepting her on duty on 05.04.2016. She would say that one more

vacancy arose on 10.12.2017 with the central deputation of one Shri Pradeep Singh Kharola at level 17 which would further show with the deputation to Government of India of Shri Subash Chandra on 07.03.2018 one other vacancy, i.e., four vacancies as of now, has arisen whereas she had been eligible for promotion or to be considered for promotion with effect from 05.04.2016 onwards the date on which the applicant had returned to Karnataka cadre service.

5. When this was not forthcoming, she filed OA No. 63/2018 which was disposed off vide order dated 27.03.2018 which we quote:

“Heard. The matter relates to the legitimate expectation of a Government Servant to be fulfilled or not. The applicant claims that on the basis of total service from 26.8.1985, she may be granted her next enhancement in her career. The State Government has filed a detailed reply. The State Government indicates certain issues:

(1) *She stayed in foreign assignment from 01.07.2013 to 04.04.2016 without due approval.*

(2) *Prior concurrence of the Central Government sought on the number of vacancies in each grade.*

(3) *DoPT, GOI vide Notification dated 29.03.2016 has declared that the officer deemed to have resigned from the IAS w.e.f. 01.07.2013 in terms of Rule 7(2) (c) of All India Service (Leave) Rules, 1955.*

2. *But then, in OA.No.568/2016 dated 22.12.2016, we had passed a final order, which the State Government had noted in para 9 of the reply, which is quoted below:*

“We note that the applicant has been in Government service for more than 30 years. When the issue of continuation of deputation was under correspondence as evident from various correspondences and the applicant has also expressed her willingness to return back to her cadre,

invoking Rule 7 (2) (c) of the AIS (Leave) Rules, 1955 by respondents and therefore nullifying the entire period of her service, appears to us as quite unreasonable and unjustified. Therefore, we hold that the notification dated 29.03.2016 whereby the applicant was deemed to have resigned from the Indian Administrative Service w.e.f. 01.07.2013 in terms of Rule 7(2)(c) of the AIS (Leave) Rules, 1955 is unjustified and cannot be sustained. Therefore, the said notification is set aside. However, the respondent authorities shall take appropriate decisions regarding the period of absence beyond the formal period of approval of her assignment till her resumption of duty in the State Government on 05.04.2016 as per extant rules.

The OA is allowed accordingly in terms of above directions. No order as to costs.”

3. *Apparently, on this, the State Government had taken the advice of learned Advocate General, who has opined as follows:*

“Keeping in mind, the Judgement of the CAT and the fact that, the Union of India has not determined the issue with regard to her period of absence, Smt. Renuka Chidambaram, has to be considered for promotion, in terms of the prevailing guidelines and rules, subject of course to the ultimate decision of the Union of India with regard to her period of absence and, the final result of the Writ Petition (W.P. 25716/17), pending before the High Court of Karnataka.”

4. *We are in agreement with the view of learned Advocate General. There cannot be any doubt that the promotion, if any to the applicant, must be subject to the result of W.P. No.25716/17 pending before the Hon'ble High Court of Karnataka. Advocate General has also noted that there is no interim order against our order. Therefore, there is no need to deny the rightful benefit, which is due to the applicant.*

5. *Therefore, there will be a mandate to the State Government to immediately constitute the necessary DPC and pass appropriate orders within the next two weeks.*

6. *OA closed as above. No order as to costs.”*

6. Apparently the Constitutional advisor for the State Government had advised thus “keeping in mind, the judgment of the CAT and the fact that, the Union of India had not determined the issue with regard to her period of absence, Smt. Renuka Chidambaram has to be considered for promotion, in terms of the prevailing guidelines and rules, subject of course to the ultimate decision of the Union of India with regard to her period of absence and the final result of the Writ Petition No. 25716/17 pending before the High Court of Karnataka.” Therefore, we had mandated that subject to the result of this Writ Petition applicant may have to be promoted as no other issues were seen pending against her.

7. But then since it did not materialize in concrete benefits, applicant filed yet another OA No. 458/2018 which was disposed off vide order dated 13.06.2018 which we quote:

“The applicant aggrieved by non-consideration of her promotion to the apex scale of the IAS in the rank of Additional Chief Secretary has filed the present OA seeking the following reliefs:

- a. *Issue a writ in the nature of mandamus to the 1st respondent/State Government to promote the applicant to the apex scale of the IAS in the rank of Additional Chief Secretary carrying the pay scale of level-17 with effect from the date of her eligibility or from the date on which respondents 2 and 3 were promoted i.e., on 25.03.2017 and grant all consequential benefits.*
- b. *Issue such other appropriate writ, order or direction as this Hon’ble Tribunal deems fit to grant in the interest of justice and equity, including the award of costs of this original application.*

2. *According to the applicant, she belongs to the 1985 batch of the*

Indian Administrative Service and is eligible for promotion to the Apex Scale. In the civil list of the IAS officers working in the State as on 2014 (Annexure-A2) the applicant is at Sl. No. 31 whereas the private respondents are at Sl. No. 44 and 47 respectively. Both the Respondent No. 2 and 3 belong to 1987 batch. While the Respondent No. 3 was promoted to officiate in the apex scale, Respondent No. 2 was given proforma promotion. They were given promotion vide order dated 25.03.2017 (Annexure-A3) when the representation of the applicant seeking promotion was pending with the Government. The applicant submitted representation on 01.12.2017 and 05.02.2018 (Annexure-A4) regarding her promotion. The applicant has also mentioned that another officer Shri P.S.Kharola who was working in the State Government in the Additional Chief Secretary grade was relieved on 10.12.2017 (Annexure-A5) pursuant to his going on central deputation and a vacancy is thereby created in the State Government.

3. *The applicant had referred to an earlier case wherein the applicant was permitted to take up an assignment in United Nations with effect from 23.05.2010 and the deputation was extended from time to time and the request for further extension on the State Government's recommendation was pending consideration before the Union Government. Though the applicant indicated her intention to join State Government and actually joined back the duties in the State on 05.04.2016, the Government of India by an order dated 29.03.2016 invoked sub-rule (2) of Rule 7 of the All India Service (Leave) Rules 1955 and issued a communication treating the applicant as deemed to have been resigned from service. The applicant then filed OA No. 568/2016 against the said termination and this Tribunal vide order dated 22.12.2016 set aside the order of deemed resignation issued by the Government of India (Annexure-A1). Against the said order, Government of India has preferred Writ Petition No. 25716/2017 which have been admitted by the Hon'ble High Court of Karnataka on 19.04.2018. However the Hon'ble High Court declined to grant any interim order sought by the petitioners. The applicant has been continuously working with the State Government after reporting back to duty on 05.04.2016 following an initial interim order and then the final order passed by the Tribunal quashing the deemed resignation order of Government of India.*
4. *For non-consideration of the case of the applicant for promotion*

in the apex scale and not holding DPC, the applicant again approached this Tribunal in OA No. 63/2018 and the Tribunal vide order dated 27.03.2018 directed the State Government to immediately constitute necessary DPC and pass appropriate order within a week. According to the applicant the DPC met on 16.04.2018 and apparently had decided that the applicant though entitled and eligible cannot be considered for promotion in the light of the fact that there is no vacancy existing in the State of Karnataka to give promotion to the applicant. The plea that there is no vacancy existing is because of the fact that both the private respondents were given promotion stealing a march over the applicant and the vacancy occurred ought to have been given to the applicant who is senior to the private respondents. Though the applicant has not received a copy of the minutes of the DPC, on learning that the DPC refused to consider her case, she has approached this Tribunal in the present OA seeking the reliefs as mentioned earlier.

5. *The respondents have filed a reply statement in which they have referred to the earlier order of the Government of India declaring the applicant to have deemed to have been resigned from the IAS with effect from 01.07.2013 in terms of Rule 7 (2) (c) of the All India Service (Leave) Rules, 1955, the order of this Tribunal dated 22.12.2016 in OA No. 568/2016 setting aside the said notification and Writ Petition filed by the Government of India before the Hon'ble High court of Karnataka. The respondents submits that as per the guidelines issued by the GOI, DoPT, for promotion of members of the Indian Administrative Service to various grades vide letter No. 20011/4/92-AIS-II, dated 28.03.2000, the zone of consideration for promotion to the Apex Scale of IAS carrying pay of Rs.2,25,000/- (Fixed) would consist of all the members of the service who have completed 30 years of service and appointment in this grade would be made from amongst the officers thus cleared, at any time during the relevant year and subject to the provisions of Rule 12 (7) of the IAS (Pay) Rules, 2016. It is further submitted that the DoPT, GOI vide letter dated 19.02.2018 has stated that the applicant was deemed to have resigned from service vide notification dated 29.03.2016, DoPT has filed the Writ Petition No. 25716/2017 before the Hon'ble High court of Karnataka against the order dated 23.12.2016 of the Hon'ble CAT and the matter is sub-judice, considering promotion of the officer to the Apex Scale would lead to legal complications. Further, the DoPT opined that it would not be*

advisable to consider her for promotion at this stage. It is submitted that the period of unauthorized absence is yet to be decided by the DoPT, Gol and the order of the Hon'ble Tribunal in OA No. 568/2016 has been challenged by the DoPT, Gol by filing Writ Petition No. 25716/2017 before the Hon'ble High Court of Karnataka. The Writ Petition has been admitted.

- 6. During the hearing, the learned counsel for the State Government mentioned that the applicant does not fulfill the condition of 30 years of service as the period of unauthorized absence from 01.07.2013 to 04.04.2016, i.e., during the foreign assignment, is yet to be decided. Moreover there is no vacancy, and as such, the case of the applicant could not be considered by the DPC. Since a copy of the DPC meeting held on 16.04.2018 has not been enclosed along with the reply statement, the Learned Counsel for the respondents has provided a copy of the same on being asked to. The respondents have also subsequently provided a copy of the DOPT communication dtd.19.02.2018 & 13.04.2018 and also the proceedings of the DPC meeting to consider the promotion of IAS officer of 1985 batch held on 31.01.2015 and DPC meeting held to consider the promotion of IAS officer of 1987 batch on 20.12.2016.*
- 7. The applicant in person contended that the CAT order in OA.No.568/2016 had provided for the Union Government to take appropriate decision regarding the period of absence beyond the formal period of approval of the applicant's assignment till her resumption of duty in the State Government on 05.04.2016 as per the extant rules. However, the Union Government has not even initiated any steps to take appropriate decision in this regard over the last 17 months. Since the order relating to deemed resignation has been quashed, the period from 01.07.2013 up to 04.04.2016 continues to be an integral part of her years of service and is to be counted as such. Secondly she submitted that conducting DPC and promoting Officers to State Cadre posts is the sole jurisdiction of the State Government in its capacity as Cadre Controlling Authority and by quoting DOPT communication to deny the benefit has hardly any justification. Regarding vacancy, the applicant contended that in several similar cases in the past, the officers have been promoted to the Apex Scale and Grade even in the absence of clear vacancies. She has been repeatedly petitioning the State Government vide her letters dtd.26.12.2016, 09.01.2017,*

01.12.2017, 05.02.2018, 02.04.2018 and 05.06.2018 to grant her promotion to the Apex Scale. It is learnt that an officer of 1987 batch was promoted w.e.f. 25.3.2017. If there is no clear vacancy, then how he was promoted. More over two further vacancies arisen thereafter. The first against the Central Deputation posting of Sri.Pradeep Singh Kharola of 1985 batch on 10.12.2017 and another vacancy arose due to the Central Deputation posting of Sri Subhash Chandra of 1986 batch on 07.03.2018. Therefore, it is clear that the applicant is being denied her deserved promotion in the Apex Scale in spite of promotions granted to several junior officers in her own batch and several batches below her.

8. We have gone through the proceedings of the Departmental Promotion Committee meeting held on 16.04.2018 to consider the case of promotion of the applicant to the Apex Scale of IAS. The committee has referred to the DoPT notification dated 29.03.2016 declaring that the officer deemed to have been resigned from service with effect from 01.07.2013 in terms of Rule 7 (2) (c) of All India Service (Leave) Rules, 1955, the order of the Tribunal in OA No. 568/2016 setting aside the said order and the Writ Petition No. 25716/2017 filed by the DoPT before the Hon'ble High Court of Karnataka. It mentions that the period of unauthorized absence from 01.07.2013 to 04.04.2016 when the applicant was in the foreign assignment is yet to be decided by the DoPT. The committee have also indicated that the DoPT had informed vide letter dated 13.04.2018 that before consideration of promotion of the applicant to the Apex Scale, the State Government may ensure that it fulfills the pre-condition for seeking concurrence of vacancy against permissible posts from Government of India. They have also indicated that there were 8 sanctioned posts at Apex level in addition to 8 ex-cadre posts which can be operated. Therefore there has been total 16 posts at the Apex level of IAS and at present all the 16 posts of the Apex scale are filled. Therefore the committee had stated that in view of all these facts based on DoPT letter of 13.04.2018 and as per Rule 12(7) and 3 (2) (ii) of IAS (Pay) Rules, the committee does not find it appropriate at this stage to recommend the case of the applicant for promotion to the Apex Scale of IAS.
9. The DPC has referred to the DOPT communication dtd.13.04.2018. The DOPT has sent two communications in this regard first one on 19.02.2018 in which they have referred to

the CAT's order quashing the deemed resignation notification and WP filed by them in Hon'ble High Court of Karnataka and saying that since the matter is sub-judice, considering promotion of the officer to the Apex Scale would lead to legal complications. In a subsequent letter of 13.04.2018, they mentioned that the State Government should ensure that it fulfills the pre-condition for seeking concurrence of vacancy against the permissible posts, from the Government of India. We have also gone through minutes of two earlier DPCs which was provided by the State Government. In the DPC held on 31.01.2015 to consider the promotion of IAS officers of 1985 batch, it was decided to consider promotion of the present applicant to Apex Scale of IAS as and when the officer returns to the cadre. In the proceedings of the DPC held on 20.12.2016 to consider the promotion of IAS officer of 1987 batch to the Apex Scale of IAS, the following was noted regarding vacancy:

"The Committee noted that State Government have addressed to Government of India, DoPT vide letter No.DPAR 527 SAS 2016, dated: 22.11.2016, seeking concurrence for availability of vacancies in various grades as per Rule 3(2)(ii) of the IAS (Pay) Rules, 2016. The concurrence of DoPT is still awaited from Government of India, DoPT. The Committee also noted that as per rule 3(2) (iii) of IAS (Pay) Rules, 2007, if the Government of India does not accord concurrence within a period of 30 days, the concurrence on availability of vacancies shall be deemed to have been accorded."

The said DPC had recommended several officers of 1987 batch as fit for promotion to the Apex Scale of IAS.

- 10. In the DPC meeting held on 16.04.2018 two issues were raised. The first one is regarding pending litigation before the Hon'ble High Court of Karnataka and the fact that the absence period from 01.07.2013 to 04.04.2016 is yet to be decided by the DOPT. The second issue relates to availability of vacancies. On the first issue regarding required qualifying service for promotion to the Apex Scale which is 30 years, the order on deemed resignation issued by the DOPT was quashed by this Tribunal vide order dtd.22.12.2016 in OA.No.568/2016. No doubt the Government of India had approached the Hon'ble High Court of Karnataka in WP.No.25716/2017. However, the fact remains that the applicant is continuing in her service since*

her joining back in the State Government on 04.04.2016. The earlier period on foreign deputation unless decided by the Govt. of India cannot be ignored. Therefore, the applicant cannot be deprived the service rendered by her unless High Court decided to the contrary in the WP.No.25716/2017. Hence, the State Government could have considered the said period towards qualifying service. Therefore, it would have been logical on the part of the DPC to take into consideration the matter subject to further order of the Hon'ble High Court of Karnataka in WP filed by Govt. of India.

11. *On the other issue regarding availability of vacancy, it is seen from the proceedings of 22.11.2016 when the State Government had addressed to Government of India regarding seeking concurrence for availability of vacancies in various grades as per Rule 3(2)(ii) of the IAS (Pay) Rules, 2016, the Govt. of India did not accord the concurrence within a period of 30 days and hence it was taken as deemed concurrence. Thus raising of this issue by DOPT does not seem very relevant. Further the issue here is not availability of vacancy at this moment but the availability of vacancy when the applicant was already due for promotion to the Apex Scale. It has been submitted by the applicant that she has been representing to the State Government from 20.06.2016 onwards for considering her promotion and a 1987 batch officer Shri M.Lakshminarayana was promoted on 25.03.2017. It was presumed that on 25.03.2017, a clear vacancy was definitely available and hence the State Government could have considered the applicant for promotion at that point of time. Since she was senior to Shri M.Lakshminarayana, it may also be noted that till that time, the Government of India have not yet decided to file Writ Petition against the order of CAT quashing the deemed resignation order. It has also been mentioned by the applicant and which has not been denied by the respondents that two further vacancies have arisen following central deputation of Shri Pradeep Singh Kharola and Shri Subhash Chandra. Therefore, it is clear in addition to a clear vacancy being available on 25.03.2017 when Sri M.Lakshminarayana was promoted and two more vacancies have been arisen on account of two officers in Apex Scale going on central deputation. It has been pointed out that in several cases officers have been sent on leave to create vacancies and giving promotion to officers in the so called available vacancies. However, without going into that aspect in detail, it is clear that vacancies are available when*

DPC considered the case of applicant on 16.04.2018.

12. *Therefore in view of the position outlined in the preceding paras, it is clear that on both accounts about the applicant's qualifying length of service as well as availability of vacancies, the stand taken by the DPC in not recommending the case of the applicant for promotion to the Apex Scale of IAS does not appear to us as justified. We also note that the DPC has not recorded anything adverse against the applicant in the said minutes. Hence it can be presumed no other issue is involved regarding eligibility of the applicant to the Apex Scale except for the issues raised by the DPC regarding qualifying service and availability of vacancy for not recommending the case of the applicant for promotion to the Apex Scale of IAS.*
13. *Therefore, on detailed consideration of the facts and circumstances of the case, we hold that the applicant is eligible for promotion to the Apex Scale of IAS and the stand taken by the Departmental Promotion Committee in its meeting held on 16.04.2018 not to recommend the applicant for promotion to apex scale is erroneous and unjustified. Therefore, we allow the OA and direct the respondent No.1 i.e. State Government to promote the applicant to the Apex Scale of IAS in the rank of Addl.Chief Secretary carrying the pay scale of level-17 w.e.f. 25.03.2017 i.e. the date from which the respondents No.2 & 3 were promoted. This shall be done within a period of ten(10) days from the date of receipt of copy of this order. However, this shall be subject to the outcome of WP.No.25716/2017 pending before the Hon'ble High Court of Karnataka. No order as to costs.*

8. When this order of the Tribunal was taken in judicial review, two elements appear. One is Annexure-A11 which is the proceedings of the Departmental Promotion Committee held on 16.04.2018. In view of the importance of this issue, we quote from this in full:

No. DPAR 150 SAS 2018
PROCEEDINGS OF THE DEPARTMENTAL PROMOTION
COMMITTEE MEETING HELD ON 16.04.2018 TO COMNSIDER
THE PROMOTION OF MS. RENUKA CHIDAMBARAM, IAS
OFFICER OF 1985 BATCH TO THEAPEX SCALE OF IAS.

PRESENT:

1.

Smt K. RatnaPrabha, IAS
Chairman
Chief Secretary to Government

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2.

Shri T.M. Vijay Bhaskar, IAS
Additional Chief Secretary to Government.

-Member
3.

Dr.Amita Prasad, IAS,
Additional Secretary, Ministry of Statistics
& Programme Implementation, Government
Of India.

-Member

The Committee took up the case of Ms. Renuka Chidambaram, IAS (KN.1985) to consider the promotion to Apex Scale of IAS as per Hon'ble CAT, Bengaluru Bench, order dated 27.03.2018, in which Hon'ble Tribunal has directed that there will be a mandate to the State Government to immediately constitute the necessary DPC to consider the case of promotion of Ms.Renuka Chidambaram, IAS to the Apex scale of IAS and pass appropriate orders within the next two weeks.

The Committee noted that as per the guidelines issued for promotion of members of the Indian Administrative Serviced to various grades vide Letter No.20011/4/92-AIS-II, dated 29.03.2000 of the Government of India, the zone of consideration for promotion to the Apex Scale of IAS carrying pay of Rs. 2,25,000/- (Fixed) would consist of all the members of the service who have completed 30 years of service and appointment in this grade would be made from amongst the officers thus cleared, at any time during the relevant year and subject to the provisions of Rule 12(7) of the IAS (Pay) Rules, 2016.

The Committee took note of the fact that as per the guidelines, those officers who have completed the service of 30 years of service are eligible for promotion to Apex Scale of IAS. As per the Service Records, the committee took note of the following details in respect of Ms.RenukaChidambaram, IAS (KN: 1985)

(a) Date of entry into IAS cadre	-26.08.1985
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(b) <i>Total EoL availed from 11.10.2006 to 30.04.2010*</i> <i>*(This period of EoL has been reckoned as qualifying service for the promotion to HAG Scale in terms of Note 2 below rule 3(1) read with rule 5(4) of IAs Pay Rules, 2007 vide Govt. Order No. DPAR 512 SAS 2009, dated 20.12.2010 & corrigendum dated 29.01.2011)</i>	- 3 years 7 months
(c) <i>Total period of unauthorized absence (stayed in foreign assignment from 01.07.2013 to 04.04.2016 without the approval of competent authority)</i>	- 2 years 9 months

The Committee noted that the DoPT, Gol vide Notification dated 29.03.2016 has declared that the officer deemed to have resigned from the iASw.e.f 01.07.2013 in terms of rule7(2)(C) of IAS (Leave) Rules, 1955. The officer reported back to State Government on 05.04.2016 and her duty report was accepted even though the officer was deemed to have resigned from the IAS w.e.f 01.07.2013 in terms of rule 7(2)(C) of AIS (Leave) rules, 1955 vide DoPT, Gol Notification dated 29.03.2016.

The Committee noted that the Officer filed an OA.No. 170/000568/2016 in Hon'ble CAT, Bengaluru Bench, challenging the Government of India Notification dated 29.03.2016.

The Hon'ble Tribunal in its final order dated 22.12.2016 have set aside the Notification dated 29.03.2016 of Government of India regarding deemed resignation. The operative portion of the order is extracted below:

"We note that the applicant has been in Govt. service for more than 30 years. When the issue of continuation of deputation was under correspondence as evident from various correspondences and the applicant has also expressed her willingness to return back to her cadre, invoking Rule 7(2) (c) of the AIS (Leave) Rules, 1955 by respondents and therefore nullifying the entire period of her service appears to us as quite unreasonable and unjustified. Therefore, we hold that the notification dated 29.3.2016 whereby the applicant was deemed to have resigned from the Indian Administrative Service w.e.f. 1.7.2013 in terms of Rule 7(2) (c) of the AIS (Leave) Rules, 1955 is unjustified and cannot be sustained.

Therefore, the said notification is set aside. However, the respondent authorities shall take appropriate decision regarding the period of absence beyond the formal period of approval of her assignment till her resumption of duty in the State Government on 5.4.2016 as per extant rules.

The OA is allowed accordingly in terms of above directions. No order as to costs.”

The committee noted that the period of unauthorized absence is yet to be decided by DoPT, Gol and the order of the Hon'ble CAT in O.A. No. 170/00568/2016 has been challenged by the DoPT, Gol by filing Writ Petition No. 25716/2017 before the Hon'ble High Court of Karnataka. The Writ Petition has been admitted.

The committee noted that DoPT, Gol vide letter dated 19.02.2018 has stated that Ms. Renuka Chidambaram, IAS was deemed to have resigned from service vide notification dated 29.03.2016, DoPT has filed the Writ Petition No. 25716/2017 in the Hon'ble High Court of Karnataka against CAT order dated 23.12.2016 and the matter is sub-judice, considering promotion of the officer to the Apex Scale would lead to legal complications. Further, the DoPT opined that it would not be advisable to consider her for promotion at this stage.

The Committee further noted that the DoPT, Gol vide letter No. 11030/15/2008-AIS-II dated 13.04.2018 has stated that before the consideration of promotion of Ms. Renuka Chidambaram, IAS (KN:85) to the apex scale, the State Government may ensure that it fulfills the pre-condition for seeking concurrence of vacancy against permissible posts, from Government of India.

The Committee further noted that as per Rule 12 (7) of the IAS (Pay) Rules, 2016, at no time the number of members of the Service appointed to hold posts, other than cadre posts referred to in sub-rule (1) and sub-rule (4), which carry pay of Rs.225000/- per mensem and which are reckoned against the State Deputation Reserve, shall except with the prior approval of the Central Government, exceed the number of cadre posts at that level of pay in a State cadre or, as the case may be, in a Joint cadre.

The Committee noted that as per Rule 3 (2) (ii) of the IAS (Pay) Rules, 2016, Appointment of a member of the Service in the Level of Selection Grade and above shall be subject to availability of vacancies in these grades and for this purpose, it shall be mandatory upon the State Cadres or the Joint Cadre Authorities, as the case may be, to seek prior concurrence of the Central

Government on the number of available vacancies in each grade and any appointments made without obtaining the prior concurrence of Government of India shall be liable for cancellation.

The Committee noted that there are eight sanctioned posts at the Apex level. As per Rule 12 (7) of the IAS (Pay) Rules, 2016, eight ex-cadre posts can be operated. Thus, total 16 posts can be operated at the Apex level of IAS. The Committee further noted that at present all the 16 posts at the Apex scale are filled.

The Committee considered the case of promotion of Ms. Renuka Chidambaram, IAS to the Apex scale of IAS as per Hon'ble CAT order, and in view of all the above, based on the DoPT, GoI letter No. 11030/15/2008-AIS-II, dated 13.04.2018, and as per Rule 12 (7) and 3(2) (ii) of the IAS (Pay) Rules, 2016, the Committee does not find it appropriate at this stage, to recommend the case of Ms. Renuka Chidambaram, IAS for promotion of Apex Scale of IAS.

(K. RATNA PRABHA)

(T.M. VIJAY BHASKAR)

(Dr. AMITA PRASAD)"

9. The Departmental Promotion Committee calculated and found that even though the applicant has more than 32 years and 7 months service and thus eligible for consideration, the unauthorized absence for the period in foreign assignment from 01.07.2013 to 04.04.2016 without the approval of the competent authority of 2 years and 9 months has not been regularized and therefore they felt that in view of the reported reluctance of the 2nd respondent who had filed Writ Petition before the Hon'ble High Court the benefit claimed by the applicant cannot be granted.

10. When the matter reached the Hon'ble High Court in Writ Petition it was contended by the respondents that, even though the Tribunal had passed an order in her favour, she has not specifically challenged this

Departmental Promotion Committee decision and therefore there seems to be a lacunae in her case. The applicant would say that she therefore filed a memo requesting that the matter may be remanded back for fresh consideration on this aspect also which was apparently allowed by the Hon'ble High Court and permitted her to file a fresh OA without the bar of *res judicata*.

11. Therefore the matter has come before us once again. When the matter had come before us on 18.09.2018 we have passed the following order:

“Heard. It appears that the Hon'ble High Court had entrusted us with the duty of looking into the matter once again. Therefore issue notice by dasti to the respondents. Applicants to take out notice and have it served on the respondents within 7 days next and produce appropriate evidence for having done so.

The respondents will file a short affidavit explaining the eligibility criteria and the issues concerned in the promotion of the applicant to the apex scale of the IAS in the rank of Additional Chief Secretary carrying the current payscale level of 17 with the date of her eligibility and apparent objections of the State Government to it particularly in the light of the continuation of service granted by the State Government to the applicant at an earlier stage. This they shall do so within the next two weeks. The other respondents are also directed to file a short affidavit explaining their views on the matter in respect to the matters pro opposed as such.

They can also file a detailed reply within four weeks and in that case applicant can file a rejoinder within two weeks thereafter.

In the interregnum, there will be an interim order not to promote anyone else to the post which could have been occupied by the applicant at the appropriate point of time. One post must be kept vacant.

Post the matter for further hearing on 03.10.2018.”

12. But we note with regret that the 2nd respondent had not filed a reply but the learned counsel for the applicant relies on the judgment of the Hon'ble Apex Court in **Ramadhar Pandey Vs. State of UP and others** reported in 1993 (4) SLR which we quote:

JUDGMENT

Mohan, J.-- Leave granted.

2. Both these appeals arise out of the dismissal of Civil Misc. Writ Petition Nos. 24720/ 92 & 32100/92 filed by the appellant herein before the High Court of Allahabad.

3. The short facts are as under:

In terms of G.O. No. 2626/30-2-84-32-G.E./72 dated 17.9.1984 the post of Additional Transport Commissioner in Uttar Pradesh Government Services is to be filled in by promotion from among the senior most Deputy Transport Commissioners who have completed five years continuous service as such. Initially, the senior most Deputy Transport Commissioner is appointed ad hoc and promoted to the post of Joint Secretary (Transport) which is an ex-cadre post in the Secretariat. Thereafter, he is posted as Additional Transport Commissioner. In accordance with this procedure, the appellant who was the senior most Deputy Transport Commissioner was promoted to the post of Joint Secretary (Transport). He continued on that post till 11.9.1990. The post of Joint Secretary is a secretarial post while the post of Additional Transport Commissioner is a departmental post.

4. During the tenure of the appellant as Joint Secretary, one Shri. R.D. Mishra was the Additional Transport Commissioner. Admittedly, the said Shri R.D. Mishra was senior to the appellant. Shri R.D. Mishra retired in August 1990. In that vacancy, the appellant was appointed as Additional Transport Commissioner by an order dated 11.9.1990. He continued to work as Additional Transport Commissioner. However, by an order dated 8.7.1992, he was again posted back to the post of Joint Secretary. On 10.7.1992, Shri O.S. Gahalaut was appointed as Additional Transport Commissioner.

5. These two orders were challenged in Civil Misc. Writ Petition Nos. 24720/92 & 32100/92 respectively. The challenge was on two grounds. One the appellant would not oblige Dr.

Om Parkash, the Transport Commissioner who wanted an officer of his own choice as Additional Transport Commissioner. The said Om Parkash ever since the day, he became the Transport Commissioner was trying to oust the appellant from the post of Additional Transport Commissioner as he did not yield to the pressures exerted by Dr. Om Parkash to do illegal works particularly in relation to appointment of the subordinate staff. When the appellant refused to make these illegal appointments which were recommended by Dr. Om Parkash, he was warned of dire consequences.

6. The second ground of challenge was that it was a demotion though parity of pay might have been maintained. Accordingly, the writ of certiorari was sought for in Civil Misc. Writ Petition No. 24720/92.

7. In Civil Misc. Writ Petition No. 32100/92, the challenge was by means of quo warranto restraining the Respondent No. 4 from functioning as Additional Transport Commissioner. According to the appellant, the respondent No. 4 was junior to him. Therefore, he could not be posted as Additional Transport Commissioner. The fact that the order of transfer of the appellant came to be passed on 8.7.1992 and on 10.7.1992, in that vacancy, the respondent No. 4 was appointed as Additional Transport Commissioner will clearly establish that the Selection Committee had no occasion to meet and consider the case of the respondent No. 4 for promotion as Additional Transport Commissioner. This was done in undue haste in clear violation of service rules with a view to accommodate the respondent No. 4. The Transport Commissioner also did not obtain orders from the Governor in this behalf and he himself passed the orders in favour of the respondent No. 4.

8. The High Court of Allahabad dismissed the Civil Misc. Writ Petition No. 24720/ 92 on the ground that by the impugned order of transfer of the appellant, there was no demotion. In any event, the Governor had the requisite power under Clause 2(b) of the Uttar Pradesh Fundamental (Second Amendment) Rules, 1981 to transfer a government servant in public interest to a post of another cadre or to an ex-cadre post. Further according to the Government Order dated 14.9.1988, the pay scale for the post of Joint Secretary is same as is admissible to the post of Additional Transport Commissioner. Besides, there is a special pay of Rs. 250/- for a Joint Secretary. In this

view, the writ petition was dismissed. Following this, the other writ petition No. 32100/92 was also dismissed.

9. Before us, Shri R.K. Jain, learned Counsel for appellant would urge that the so called order of transfer is nothing but a demotion and it has come to be passed only to accommodate the respondent No. 4.

10. No doubt the appellant could be transferred to an ex-cadre post. However, it must be in public interest and no such public interest is involved in this case. These are two submissions made before us.

11. Though notice was ordered on 29.1.1993 returnable within four weeks, the Government of Uttar Pradesh had not chosen to file the counter-affidavit. As a matter of fact, service has been effected on all the respondents as early as on 4.2.1993 and yet not any respondent has filed counter-affidavit. When the case was taken up on 15.3.1993, the learned Counsel Ms. Kamini Jaiswal appealed for the Government of Uttar Pradesh and sought time to file counter-affidavit which we had to decline as it has become the regular practice with all the Government agencies taking it for granted that the time would be given to suit their convenience. Therefore, she was directed to proceed with the case.

12. She would submit that by order dated 1.4.9.1988 of Government of Uttar Pradesh, the ex-cadre post of Joint Secretary has been created. The G.O. further says that a suitable officer of the level of Additional Transport Commissioner may be appointed to the aforesaid post. A special pay of Rs. 250/- is provided for. Therefore, it is incorrect on behalf of the appellant to state that there is a demotion. As per Clause 2(b) of the amended Rules that a government servant can be transferred to a post of another cadre or to an ex-cadre post in public interest by an order of the Governor. Clause 27 of the Rules with regard to persons appointed to the Uttar Pradesh Transport Service clearly postulates that wherever Rules do not specifically govern a case, the general Rules applicable to a government servant could be made applicable. Hence, no exception could be taken to the order of dismissal of the appellant's writ petition. Consequently, it would follow the other writ petition questioning the posting of respondent No. 4 as Additional Transport Commissioner is also liable to be dismissed.

13. In order to appreciate the above contentions we will first extract in full the impugned orders. The order dated 8.2.1992

read as follows:

**Nirmal Chandra
Special Secretary**

**D.O. Letter No. 40742.1.92
Government of Uttar Pradesh
Appointment Section -1
Lucknow dated 8 July, 1992**

Dear Sir,

I have been directed to say that Shri Ramadhar Pandey "Transport Services" Additional Transport Commissioner is being appointed on the post of Joint Secretary, U.P. Government Transport Department Lucknow.

You may please direct Mr. Pandey to take charge of the new post without delay.

With regards,

**Yours
Signed
Nirmal Chandra"**

14. Further, order dated July 10, 1992 read as follows:

"Govt. of Uttar Pradesh

Department of Transport-3

No.2522/30-3-2-42 G.E.-88

Dated July 10,1992

Appointment/Transfer

Shri Om Pal Singh Gahalaut Joint Secretary Transport U.P. Government is hereby transferred and appointed as Additional Transport Commissioner H.qs. in the pay scale of Rs. 3700-125-4700-150-5000.

**Surendra Mohan
Principal Secretary"**

15. The post of Joint Secretary came to be created by G.O. dated 14.9.1988 on the pay scale of Rs. 1840-60-1900-75-2200-100-2400 Rs. 250/ special pay. Paragraph 3 of the G.O. read as follows:

"A suitable officer of the level of Addl. Transport Commissioner from the Transport Commissioners Organisation may be appointed on the aforesaid post."

16. Therefore, the appellant could be transferred as Joint Secretary since there is equation of pay as well as status as is found by the High Court. More importantly, what is to be considered is whether there is any public interest involved in the transfer of the appellant as Joint Secretary. We have

already extracted the order by which the appellant came to be transferred. Clause 2(b) of the Fundamental Rules as amended by Uttar Pradesh Fundamental (second amendment) Rules, 1981 provides that notwithstanding anything to the contrary contained in these Rules, the Governor may in public Interest transfer a government servant to a post in another cadre or to an ex-cadre post. The order dated July 8,1992 does not recite any public interest. We are also not in a position to discover from the other records available before us whether the transfer of the appellant was in public interest. In the absence of a counter-affidavit or even the relevant records, we are left with no option than to conclude that no public interest is involved. It cannot be gainsaid that transfer is a necessary concomitance of every service; but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, "the public interest" being absent, the impugned order of transfer cannot be supported.

17. We are informed by the learned Counsel for the appellant that appellant is due to retire in another few months. That being the position, we do not think that he should be transferred as Joint Secretary, more so in the absence of any public interest involved. Accordingly, we set aside the impugned judgment dated 23.11.1992 passed by the High Court and the impugned order of transfer dated 8th July, 1992.

18. Since, the appellant is more interested in his retention as Additional Transport Commissioner, we do not think we should adjudicate upon the validity of posting of the respondent No. 4 as Additional Transport Commissioner in the writ of quo warranto. Of course, it is for the Government of Uttar Pradesh to implement our order and consequently accommodate the claims of respondent No. 4 in any suitable post. The appeals will stand allowed in the manner indicated above.

13. This judgment is to the effect that, if the concerned government department or authority will not file a reply to justify its stand, an adverse presumption as provided under the statute can be taken and justifiably so. Court is then held operational to issue consequential orders as well. In spite of time being granted, the 2nd respondent had not chosen to file a

reply even though we would have liked to hear them also on the question of deputation and whether if the deputation is extended for some period and if in the absence of specific input to justify that extension what will happen to the deputation as such. This the DoPT could have answered but they did not choose to assist the Court in this regard.

14. Therefore, we have now to examine whether there was sufficient reason for the Departmental Promotion Committee to take negative stand regarding the absence of the applicant during the period mentioned.

15. The Tribunal, as noted earlier, had passed detailed order explaining the conditions under which the absence of the applicant would not have led to a deemed resignation and more so in the light of precedent offered. That being so, there was no reason for the Departmental Promotion Committee to feel that there is an unexplained part of it, a part of an order which remains unfulfilled, as we had already explained the matter. The reason that it was challenged by the DoPT in the Hon'ble High Court could not have enured to loss for the applicant for the simple reason that the Hon'ble High Court had refused to grant a stay in the matter. Therefore, as held by the Hon'ble Apex Court in several instances, merely because an order is under challenge would not mean that the order had become inoperable. It is particularly pertinent that our order only spoke of granting a promotion if she is qualified, subject to the

result of the Writ Petition. Apparently the Writ Petition was filed after time and the Hon'ble High Court in Union of India Vs. A Durairaj reported in AIR 2011 SC 1084 have held that **“even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.”**

16. Even assuming that the 2 years 9 months period remain unanswered, it must be borne in mind the applicant had, on the admission of the 1st respondent, 32 years and 7 months of service to her credit. The Hon'ble Apex Court in Mr. 'X' vs. Hospital 'Z' reported in AIR 1999 SC 495 have held that **“where there is a clash of two Fundamental Rights, the right which would advance the public morality or public interest would alone be enforced through the process of Court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit mute but have to be sensitive.”** Therefore, since the Tribunal as adjudicator has already spoken on this matter and the Hon'ble High Court had not granted a stay, the determination of the Tribunal holds good for the State Government. It is also to be noted that in spite of specific invitation the DoPT had not clarified its stand and not explained the precedence noted in the earliest judgment but had kept silent on the consideration of this period as an unauthorized absence. While it was brought out that when a person offers to return pending a specific order and in the lack of specific

order has to stay put at a place in greater national interest, the applicant seeks that how could the upholding of greater national prestige be held to be detrimental to national interest. In this particular case it is not be noted that applicant was a representation of the Union of India in a United Nations forum. If for any reason which is not explainable applicant leaves her post while her application for extension is still pending, it will definitely mean diminishment of national prestige. We had invited the learned counsel for the respondents to address us on these aspects also but none was forthcoming. We, therefore, regret to note that since the lacunae had already been filled by judicial pronouncement and since their own Advocate General had opined that promotion is a due necessity, they had no reason to hold on that this period is still in a cloud of suspicion as held by the King's Bench in **Board of Education Vs. Rice** in as early as **1911 AC 179** "**But there is a minimum standard to be observed by anyone who decides anything.**" We regret to note that the Departmental Promotion Committee had latched on to an imaginary lacunae which is not existing as the lacunae had already been explained and decided by a competent forum of law. The next competent forum of law which is the Hon'ble High Court of Karnataka had not stayed the operation of this order, that being so, and on the multiple grounds that the State Government had not challenged that order at all it was not open to the Departmental Promotion Committee to hold that there is a

lacunae which is only in their imagination. The Hon'ble Apex Court in Union of India vs. E.G. Nambudiri reported in 1991 (3) SCC 38 said that **“the principle of natural justice are applicable even to administrative enquiries.”** It means that even where the nature of function does not require the hearing of the person affected, the authority must nevertheless observe the requirement of reasonableness and fairplay.

17. The DPC could not have held that the matter is still open as regards the lacunae which it mentioned. In Shrilekha vs. State of Uttar Pradesh reported in AIR 1991 (1) SCC 212 the Hon'ble Apex Court held **“Where an administrative action is prima facie unreasonable because there is no discernible principle justified the burden is shifted to the state to show that the impugned decision is an informed action and in such case if the reasons are not recorded the decision will be struck down as violative of Article 14 of the Constitution.”** Since the DPC could not have taken a view that such a lacunae exist flying against the Tribunal's order and the proceedings of the Hon'ble High Court, there is no great difficulty in holding that the action of the DPC was unreasonable and a violation of natural justice.

18. When we had taken up this matter and asked for illustration of the proceedings of DPC, the learned counsel would submit that the question is not whether the DPC was right or wrong, but it had discretion vested

in it. The applicant submits that this may not be so, as is clearly enunciated by the decision of **Associated Provincial Picture Houses Limited vs. Wednesbury Corporation** reported in **1948 1 Kings Bench at 229**, when Lord Greene stated;

“The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account or conversely have refused to take into account, or, neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever come to it. In such a case, again, I think the court can interfere. The power of the court in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority had contravened the law by acting in excess of their powers which Parliament has conferred in them”

19. Therefore whether or not there was lacunae, it had been answered by the adjudicator earlier, the pendency of the matter before the Hon’ble High Court is not for the DPC to determine especially since the order had been made after the decision of the Hon’ble High Court. If they try to re-enter the scene once again, it will be intrusion into the jurisdiction of the Hon'ble High Court or the Tribunal as the case may be. Therefore, the DPC seem to have taken into account the alleged unauthorized absence which had already been answered and held against the Government.

20. At this time, learned counsel submits that the DPC has only exercised its own discretion. Therefore, what is discretion? Discretion is

the right to act prudentially and correctly as held by the Hon'ble Apex Court in **Satwant Sing vs. Assistant Passport Officer** reported in **AIR 1967 SC 1836**:

“...in the case of unchannelled arbitrary discretion, discrimination is writ large on the face of it. Such a discretion patently violates the doctrine of equality, for the difference in the treatment of persons rests solely on the arbitrary selection of the executive.”

21. The learned counsel for the respondent suggests that perhaps the finding made in the IA OA 568/2016 filed by the applicant may perhaps stepped aside some crucial points. He submits that since the applicant had joined service in 1985 she would have normally completed 30 years service in 2015 but he raises these elements:

- 1) Can it be said that the deputation period is also to be calculated as qualifying service?

Yes. The answer would be in the affirmative as the deputation was with the approval of the Government. Besides the term deputation itself will indicate its positive terms. The terms are also in these lines.

- 2) He submits that the overstayal of the applicant had negatively accessed the qualifying service. So what is the effect?

It is the admitted case of all that applicant had explained the

circumstances and had requested for extension, which the Government of Karnataka had sponsored. The silence of the Union Government, in this circumstance, need not be taken into account as clothing the applicant with any special rights.

22. But the applicant contends that there are several issues to the matter:

- 1) The United Nations deployment was at a critical juncture.
- 2) It does not behove well for the nation if an incumbent in a position leaves suddenly in the middle of a project
- 3) The Union Government was apprised of all these matters and therefore had a responsibility to consider all these matters and give guidance
- 4) Their continued silence, coupled with the acceptance of the Karnataka Government had given rise to a feeling that, at least the Union Government has not rejected the request
- 5) Others also, in similar circumstances, were granted this exemption.
- 6) When continuously and consecutively requests for extension and guidance were made and no reply was forthcoming, it was assured that the Union of India may not have much objection and the delay is only normal

Governmental delay.

23. The applicant also points out that in view of Article 309 to 311 of the Constitution of India, there is no question of abandonment of a position. **“Even a deemed resignation must be accepted after giving due notice.”** Such an element has not been there in their consideration at all.

24. So, the applicant contends that the required positive acts from the Union Government cannot rest on mere assumption, especially in the face of meaningful silence and active precedents, which are in her favour.

25. She contends that after having bestowed certain benefits on several others and working in a particular stream, without adequate and significant notice, there cannot be a turn around as it will defeat her legitimate expectation. She would further submit that elements of promissory estoppels binds the Union Government. Their continued and consistent silence in the face of the acceptance of the Karnataka Government can only mean significant acceptance of extension.

26. Applicant would further contend that she had completed 32 years and 9 months of service and the DPC formed by the Karnataka Government is stopped to contend against it by operation of acceptance into cadre vide 05.04.2016

27. The applicant would contend that, even otherwise, she had only

upheld National pride and she points out to encomium won by Ministry of External Affairs.

28. Thus, all in all, she would say that this is much ado about nothing. At least nothing very significant. If what has been granted to others are denied to her, Constitutional rights under Article 14 of the Constitution will be negated, submits she.

29. Thus the applicant would say that the provision of a deemed resignation is an anathema to fair procedure, especially in the light of her continued and consistent requests for extension and guidance. She avers that Natural Justice thus stands defeated. The Hon'ble Apex Court in Sangram Singh Vs. Election Tribunal held **“There must ever present to our mind, that the Laws of Procedure are grounded on a principle of Natural Justice..... that decisions should not be reached behind their backs.”**

30. In State of Orissa Vs. Dr. Binapani Dei, the Hon'ble Apex Court held **“A compulsory retirement order based on an alleged wrong date of birth, made without enquiry and an opportunity of being heard will be struck down.”**

31. House of Lords in the celebrated case Ridge Vs. Baldwin reported in 1942 AC 208 held **“The dismissal would be struck down on the ground of failure to observe Natural Justice by informing the appellant of the charges made against him and giving him an**

opportunity of being heard.”

32. Thus the applicant would say that the DPC findings are vitiated.

33. Therefore, on a cumulative conspectus, we hold that pursuant to the return on 05.04.2016 and the acceptance of the Karnataka Government to her return, applicant obtained a right to be considered for the next arising vacancy to the level 17 of that of an Additional Chief Secretary. We further declare that the proceedings of the DPC held on 16.04.2018 are vitiated by grave error and illegality and therefore quash the same. We further declare that applicant is eligible to be considered and posted to any one of the 4 vacancies which have arisen as shown above and would therefore direct the 1st respondent to immediately convene a Review DPC and consider the applicant for the post of Additional Chief Secretary with effect from the earliest date possible after 05.04.2016.

34. The OA is allowed as above. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/01494/2018

- Annexure-A1: Copy of the order dated 22.12.2016
- Annexure-A2: Copy of the civil list of IAS officer 2014
- Annexure-A3: Copy of the notification dated 25.03.2018
- Annexure-A4: Copy of the representation dated 01.12.2017
- Annexure-A5: Copy of the representation dated 05.02.2018
- Annexure-A6: Copy of the notification dated 10.12.2017
- Annexure-A7: Copy of the notification dated 07.03.2018
- Annexure-A8: Copy of the order dated 27.03.2018 passed by the Tribunal in O.A. No. 63/2018
- Annexure-A9: Copy of the representation dated 02.04.2018
- Annexure-A10: Copy of the order dated 13.06.2018 in O.A. No. 458/2018
- Annexure-A11: Copy of the DPC meeting dated 16.04.2018

Annexures with reply statement

Nil