

PH : 2277700  
FAX : 2273991/ 2291945

E-mail : rpfcbglr@vsnl.net  
epf080@indiatimes.com



## EPF ORGANISATION

(Ministry of Labour, Govt. of India)  
#13, 'Bhavisnyanidhi Bhavan',  
Raja Ram Mohan Roy Road,  
PB No.25146, Bangalore - 560 025.

No. BN/PF/Adm I/2005-06 / 1603

Date : March 2, 2006

\*By name to:  
Sri N N Sharma  
RPFC (HRM)

To  
The Central PF Commissioner\*  
New Delhi

**'Court Matter'**  
**'By Speed Post'**

Sir,

Sub : Forwardal of orders of Hon'ble CAT in O A No. 517 & 664  
to 667/04 filed by Sri N K Ranganathan & Others - Reg.

\*\*\*\*\*

Please find enclosed a copy of court order in above said case. The relief given by the CAT is to redefine the placement in the Seniority List of Departmental Promotion Committee proceedings dated 14.06.03 by removing the names of Sri K Ramachandran, Sri Satish Premananda and Sri A K Mithrananda who have been allowed regular appointment in the cadre of EO/AAO w.e.f 03.03.90 by creating supernumery posts as ordered in OA No. 193 & 237 to 238/02 by the Hon'ble CAT, Bangalore Bench. It may also be recalled that while implementing the orders in OA No. 193, 237 to 238/02 the relief gained by the three applicants in the OA have also to be allowed to another three officials and in effect six officials were to be allowed appointment on regular basis w.e.f 03.03.90 under initial Constituted clause. Applicants in the present OA No. 517, 664 to 667/04 will therefore get the relief of elevation of six placements in the select list. As the CAT has ordered that no review DPC need to be conducted, we are drawing the select list and submitting for new select list for approval separately.

*Regional*

*15/3*  
*RECHAMPTI*  
*R. CHITRA*

*CATS*

*7/3/06*

*Sm-m*

2. I am of the view that decision do not warrant filing appeal. The Counsel who had conducted the case is also of the opinion that this is not a fit case to file appeal.

Yours faithfully,

  
(N A NAIR)

REGIONAL PF COMMISSIONER-I  
BANGALORE, KARNATAKA

**Encl :**

1. Order of CAT dated 15.02.06
2. Advocate's Opinion

**Copy to:**

1. The Addl. Central PF Commissioner  
South Zone  
Hyderabad – for information
2. Sri Megharam, RPFC (CAT) – for information
3. The Cadre File, EO/AAO – for information and to draw select list and submit the proposal to Head Office by 28.02.06

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

22 OF CAT  
) RULES

IInd floor,  
Commercial Complex,  
Indira Nagar,  
BANGALORE-5600 038.  
DATE

17 FEB 2006

1. ORIGINAL APPLICATION NO: 517 & 664 TO 667/04  
2. MISC APPLICATION NO:  
3. REVIEW APPLICATION NO:  
4. COMPETITION PETITION NO:

APPLICANTS(S) : Shri. N.K. Rungamathan, & 4 ORTs.

- V/s -

RESPONDENTS : The Secy. M/o Labour, N.D. El 1 & ORTs.

To,

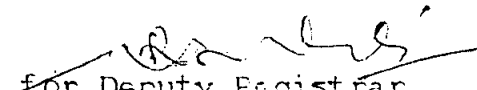
① Shri. M. Narayana Swamy,  
Advocate.  
No. 844, I Block, Rajajinagar, Bangalore 560010

② Shri. H. S. Holla. Advocate.  
34/3, II Floor, II Main Road.  
Cundhimmur, BANGALORE. 560009 } for R-2 & R-3.

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

A copy of the Order Passed by this Tribunal in the  
above said application(s) is enclosed herewith for your information  
and further necessary action.

The Order was pronounced on dated : 15-02-2006.

  
for Deputy Registrar.  
Judicial Branches.

\*T's.

Handwritten notes: "New up", "Amended", "Ref to"

Handwritten initials: "N.K."

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

O.A. No.517 & 664 TO 667/2004

WEDNESDAY THIS THE 15TH DAY OF FEBRUARY 2006

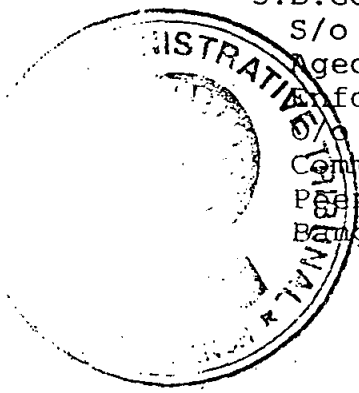
SHRI G.SHANTAPPA ..... MEMBER (J)

SMT. K.N.K. KARTHIAYANI ... MEMBER (A)

- 1.N.K. Ranganathan,  
S/o Krishnan,  
Aged about 48 years,  
Enforcement Officer,  
Opo the Regional Provident Fund  
Commissioner, Sub-Accounts Office,  
Peenya, 1<sup>st</sup> Cross, 1<sup>st</sup> Stage,  
Bangalore-58.
- 2.Smt.B.Prema Jayadev,  
Wife of Sri Jayadev,  
Aged about 53 years,  
Asst. Accounts Officer,  
O/o the Regional Provident Fund  
Commissioner, No.13, Rajaram Mohan Roy Road,  
Bangalore-25.
- 3.Syed Sadath Ahmed,  
Son of S.A.Jaleel,  
Aged 58 years,  
Enforcement Officer,  
O/o the Regional Provident Fund  
Commissioner, No.13, Rajaram Mohan Roy Road,  
Bangalore-25.
- 4.B.Srinivas,  
Son of late B.Tatacharya,  
Aged about 50 years,  
Enforcement Officer,  
O/o the Regional Provident Fund  
Commissioner, No.13, Rajaram Mohan Roy Road,  
Bangalore-25.
- 5.B.Govardhana,  
S/o Sri B.Shantha Naik  
Aged ab out 59 years,  
Enforcement Officer,  
O/o the Regional Provident Fund  
Commissioner, Sub-Accounts Office,  
Peenya, 1<sup>st</sup> Cross, 1<sup>st</sup> Stage,  
Bangalore-58.

Applicants

(By Advocate Shri M.Narayanaswamy)



vs.

1. The Government of India  
rep. By its Secretary to Govt.  
Ministry of Labour,  
Shrama Shakthi Bhavan,  
New Delhi.
2. The Central Provident Fund  
Commissioner, Bhavishya Nidhi Bhavan,  
Bikajikama Road,  
New Delhi.
3. The Regional Provident Fund  
Commissioner, Karnataka Bhavishya Nidhi  
Bhavan, Post Box No.2254,  
Bangalore-25.
4. P. Basheer, EO/AO,  
Office of the Regional  
Provident Fund Commissioner,  
10A, Saint Thomas Road, High Ground,  
Thirunulvely-627 001.
5. M. Gopalakrishnan, EO/AAO,  
Sub-Accounts Office,  
Employees' Provident Fund  
Organization, No.3, Rajaji Salai,  
Chennai-600 045.
6. Chandrakant Gadiyar, EO/AAO,  
Office of the Asst. Provident  
Fund Commissioner, Yashorama Complex,  
Ratnagiri Road,  
Employees' Provident Fund Orgn.,  
Chikmagalur-577 101.
7. P. Varadan, EO/AAO,  
Employees' Provident Fund organization,  
PB No.3875, Balasundaram Road,  
Coimbatore-641 019.
8. S. Shankarlingam, EO/AAO,  
Employees' Provident Fund organization,  
Venkataramana Iyer Street, Pollachi-641 001.
9. V. Cheese Daniel, EO/AAO, O/o the Regional  
Employees' Provident Fund Commissioner,  
Pottam, Tiruvanthapuram-695 004.
10. K. Aravindan, EO/AAO,  
Employees' Provident Fund organization,  
Sub-Regional Office, PB No.117,  
Fort Building, VK Complex,  
Fort Road, Kannur-670 001.

11. Raghunanda Alavandikar, EO/AAO,  
Office of the Asst.  
Provident Fund Commissioner,  
Madina Complex, Main Road,  
Gulbarga-585 102.
12. Prabhavati Joshi, EO/AAO,  
O/o the Regional Provident Fund  
Commissioner,  
No.13, Rajaram Mohan Roy Road,  
Bangalore-25.
13. Prabhakar Jadagoudar, EO/AAO,  
Employees' Provident Fund organization,  
SLV Towers, Ratnagiri Main Road,  
Bellary District,  
Bellary-583 101.

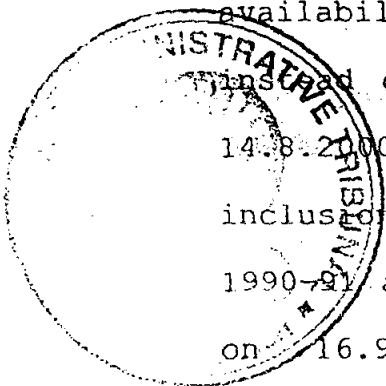
Respondents

(By Advocate Shri H.K.S. Holla ...  
Counsel for respondents 2 and 3)

ORDER

Smt. K.N.K. Karthiayani, Member (A) :

1. The applicants in this OA are working as Enforcement Officers (EO)/Assistant Accounts Officer (AAO) in the office of Regional Provident Fund Commissioner (Respondent No.3). They were promoted as EO/AAO during 1990-91 and 1991-92 on ad hoc basis. They had approached this Tribunal in O.A.No.227 and 254 to 257/02 with a prayer that they should be declared as regularized in the post of EO/AAO from the date of availability of vacancies during 1990-91 and 1991-92. It is stated of from 2.2.2000 as stated in the order dated 14.8.2000 with all consequential benefits arising upon inclusion of their names in the said list for the year 1990-91 and 1991-92. This Tribunal had passed an order on 16.9.2003 directing the respondents to take



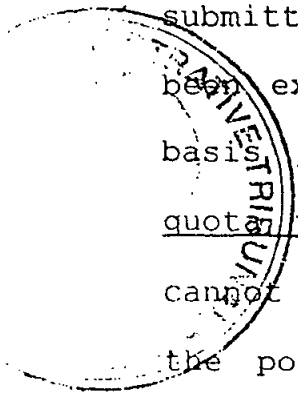
appropriate decision in accordance with law with regard to placement of the applicants in the seniority list of regular EO/AAO against the vacancies of the relevant years i.e., 1990-91 and 1991-92. The respondents had passed an order dated 10.6.2004 (impugned order at Annexure A-10) giving 10 reasons for not regularizing the applicants in EO/AAO cadre during 1990-91 and 1991-92. Instead, it was mentioned in the impugned order that the seniority of the applicants will be fixed based on the date DPC which had recommended them fit for promotion as EO/AAO on regular basis. Resultantly the applicants' names did not figure in the seniority list as on 31.3.1998 and further updated lists. The applicants have, therefore, prayed for quashing the impugned order at Annexure A-10 and to issue direction to the respondents to declare the applicants as deemed to have been regularly appointed in the post of EO/AAO from the date of availability of vacancies during 1990-91 and 1991-92 instead from 2.2.2000 as stated in the Office Order dated 18.8.2000 (Annexure A-4). The 10 points raised in the impugned order are contested by the applicants in the present OA mainly depending on the decision given by the Hon'ble Supreme Court in the case of DIRECT RECRUITS CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS V. STATE OF MAHARASHTRA reported in AIR 1990 1607 and AIR 1986 SC 638 NARENDRA CHADHA V. UNION OF INDIA.

2. In their reply, the respondents 1 to 3 have conceded that the five applicants have been promoted on ad hoc basis in the year 1991 to meet administrative exigencies. However, they could be regularized only with effect from the date of DPC which met on 2.2.2000 and considered their regularization after arriving at year-wise vacancies in the previous years. The delay in holding the DPC is attributed to the finalization of seniority list of UDCs and Section Supervisors(SS) because of various OAs filed in the Tribunals. As the initial promotion of the officials on ad hoc basis was done de hors rules, the officials became eligible only from the date on which they were found fit for promotion by the DPC. Though the vacancies were available in the years 1990-91 and 1991-92, the applicants cannot have a vested right to these posts until their immediate juniors were promoted. In the reply, the respondents have further stated that the DPC by its minutes dated 14.6.2003 found the applicants eligible for regular promotion against the year noted against their names as below:

(1) Shri N.K.Ranganathan	1991-92
(2) Smt. B.Prema Javadev	1993-94
(3) Shri Syed Saadath Ahmed	1993-94
(4) Shri B.Srinivas	1994-95
(5) Shri B.Govardhan	1993-94

The respondents have admitted that "the applicants were informed that they have been regularized against the vacancies during 1990-91 and 1991-92 and their seniority in the cadre of EO/AAO will be fixed at the appropriate

time." We further quote from the reply: "The placement of the applicants in the seniority list in the cadre of Section Supervisors has undergone change due to the reason that 4 senior officials have become eligible for consideration for regular promotion to the vacancies existing during the year 1991-92, instead of 1992-93 as have been recommended in the subsequent proceedings dated 11.12.2001. This has necessitated review of the proceedings which led to the issuance of regular appointment of officers against the vacancies of years 1990-91 to 1998-99 recommended vide proceedings dated 2.2.2000. Thus, the applicants were found to be eligible for promotion only against the vacancies for the year noted against their names as stated in para 4 (i) above." The respondents have further submitted that the fixation of the seniority of the applicants is governed by EPF Staff (Seniority) Regulations, 1989 published in the Gazette of India, Part-III, Section-4 on 9.12.1989. The seniority placement allowed to the applicants is strictly according to Rule 4 of the EPF Staff (Seniority) Regulation, 1989. It is further submitted by the respondents that "the applicants have been extended the benefit of promoting them on ad hoc basis against the Examination and Direct Recruitment quota vacancies on the basis of which the applicants cannot have a claim for any seniority or promotion to the post of EO/AAO on long term regular basis." The respondents have relied upon the decision in STATE OF



HARYANA V. HARYANA VETERINARY AHTS AND ANOTHER [2000(8) SCC 4] in which the Hon'ble Apex Court had held that the service rendered on ad hoc basis made de hors rules, although continued without interruption and followed by regular appointment cannot be included for computation of seniority. Another case law that has been relied upon by the respondents is "MOHAN KARAN V. STATE OF UP AND ANOTHER (1988)3 SCC 444 where the Apex Court had held that seniority had to be determined with reference to prescribed seniority rules." It is the contention of the respondents that the decision of this Tribunal in the case of K. Ramachandran and 2 others in O.A.No.193 and 237 to 238/02 is not applicable to the facts of the present case. While making the submission the respondents have also admitted that "all the EO/AAOs who were holding the post of EO/AAO on ad hoc basis as on 3.3.1990 are deemed to have been regularized w.e.f 3.3.1990 ie., the date on which recruitment rules came into force." (emphasis supplied) As the applicants were promoted after the recruitment rules for EO/AAO came into force they cannot claim the benefit of regularization of ad hoc promotion under the said clause which was applicable to such of those officers who were holding the post of EO/AAO as on 3.3.1990.

3. The applicants have filed M.A.No.87/05 adding the names of 10 private respondents to the OA. Though notice was served on the private respondents, no

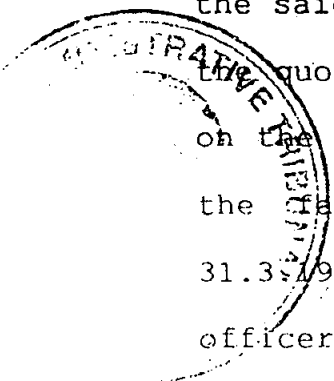
reply/objections have been filed by them. They have not appeared in person or through a lawyer.

4. In the rejoinder to the reply, the applicants have further asserted that the promotions made during 1990-91 and 1991-92 were against clear vacancies which arose in those years as is clear from the office order dated 18.8.2000 (Annexure A-4). In fact Annexure A-4 indicates that the applicants are appointed on regular basis as against the vacancies of the said years i.e., 1990-91 and 1991-92. The proposition put forth by the respondents that regularization will come into effect only from the date on which DPC recommends and not from the date of initial promotion on ad hoc basis de hors the rules is wholly misconceived and without authority of law, as the said proposition is not supported by any rules or authoritative judicial pronouncements. It is an admitted fact that the DPC met on 2.2.2000 and considered the applicants for regularization taking into account the year-wise vacancies of the previous years on the basis of existence of vacancies. Thus it is clear that promotional vacancies against 50% seniority quota were available during the said years. The respondents cannot now contend that seniority can be granted only from 2.2.2000 in view of the Hon'ble Supreme Court decision in the case of DIRECT RECRUITS CLASS-II ENGINEERING OFFICERS' ASSOCIATION supra. The proposition that regularization will be effected from

the date of recommendation of the DPC runs counter to the aforesaid decision. The applicants assert that their case squarely comes within the clause (B) in para 44 of the judgment of the Apex Court\* in the above case, quoted as below:

"(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continued in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."

Only vacancies falling on or after 3.3.1990, the date of coming into force of the recruitment rules are required to be calculated and apportioned among the three streams, as all appointments made to the cadre of EO/AAO upto 3.3.1990 are deemed to have been regularized irrespective of availability of vacancies in the cadre as on 3.3.1990 as per the Gazette Notification dated 14.9.1991 (Annexure A-11). It is further submitted that as the recruitment rules 1990 are held prospective in nature from 3.3.1990 and vacancies arising on or after the said date only are required to be apportioned as per the quota, vacancies to the extent of 50% are available on the basis of seniority from 3.3.1990. If that is so the fact that the list of EO/AAO prepared as on 31.3.1998 (Annexure A-3), does not contain a single officer belonging to 50% seniority quota and having the names of officers appointed either from examination or



direct recruitment quota from 15.7.2002 is not understandable. The subsequent action of the respondents in issuing the order dated 18.8.2000 (Annexure A-4) promoting the applicants against the vacancies belonging to 1990-91 and 1991-92 clearly establishes that the applicants are entitled to be placed in the seniority list between 4.3.1990 and July 1992. The decisions of the Apex Court mentioned in the reply statement have no application to the case on hand as the respondents have admitted that the recruitment rules of EO/AAO were not in existence before 3.3.1990. Therefore, taking into account the vacancies that existed prior to 3.3.1990 for applying the provisions of this rule is curious. The decision of K.Ramachandran and others of this Tribunal is relevant to the extent that the recruitment rules of 1990 which came into force from 3.3.1990 is only prospective in nature and vacancies arising on or after the said date are alone liable for classification as per quota prescribed therein.

5. On 23.6.2005 the respondents have filed a memo enclosing a seniority list prepared by them in which the applicants are said to have been given seniority from the date of occurrence of the vacancies. It was prayed that the OA has become infructuous and may be dismissed.

6. The applicants have filed a further reply objecting

to the memo pointing out that the applicants except V. Srinivas are included in the list prepared as on 31.3.1998, giving them seniority from the year 1995 onwards and not from the year of occurrence of vacancy as prayed for by them which happened to be in the year 1991-92; the applicant V. Srinivas who claims seniority from 1991-92 is totally excluded from the list. The applicants have prayed that the memo should, therefore, be rejected and the OA should be posted for hearing. We agreed to this proposal.

7. When the case came up for hearing on 8.11.2005 the applicants had requested for a copy of the proceedings of the DPC dated 14.6.2003. The same was produced by the respondents by filing memo dated 18.11.2005.

8. We have heard the learned counsel from either side and perused the pleadings.

9. Though there is a mention of the DPC of 2.2.2000 in the reply statement, Annexure A-4 does not mention that the order dated 18.8.2000 giving regular promotion to the applicants in the cadre of EO/AAO from 2.2.2000 is based on any DPC proceedings. In fact, the authority quoted is Head Office letter No.HRM-II/53(4) 99/KN/Reg./40616 dated 14.8.2000. Again in the reply statement there is a mention of the subsequent DPC proceedings dated 11.12.2001 and the minutes of the same

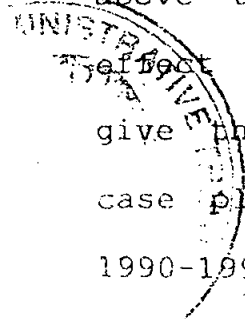
also have not been produced along with the reply statement. By their admissions about availability of vacancies during 1990-91 and 1991-92 for promotional quota the averment made in the reply statement that the applicants have been extended the benefit of promoting ~~them~~ on an ad hoc basis against direct recruitment and examination quota vacancies is proved wrong. We agree with the applicants' submission in the rejoinder, that the Hon'ble Supreme Court's verdict in the case of State of Haryana supra. Laying down that "certain years of regular service was necessary for placing the Engineers in Selection Grade of the pay scale is not applicable to this case." The case before us is only with respect to the seniority vis a vis officers subsequently appointed against direct recruitment quota examination quota. The Hon'ble Supreme Court's decision in Direct Recruits Engineers Association case has a direct application to the present case. Though the case of Mohan Karan has been quoted in the reply, we could not trace any such decision by the Hon'ble Supreme Court. It is interesting and also very relevant to note that the respondents have themselves admitted in their reply that all the EO/AAO who were holding the post of EO/AAO on ad hoc basis as on 3.3.1990 are deemed to have been regularized on 3.3.1990 i.e., the date on which the recruitment rules came into force. In fact this will result in the very same relief that the applicants are praying for as will be discussed below in paragraph 12

below.

10. Agreeing partly with the rejoinder of the applicants we find the wording of Annexure A-4 is ambiguous inasmuch as it states that the "competent authority has approved the appointment of the following EO/AAO on regular basis against the vacancies belonging to 1990-91 and 1991-92 and in the same breath mention that it will be with effect from 2.2.2000. As per the decision in Direct Recruits' Engineers' case the seniority also has to be assigned from 1990-91 and 1991-92 as the case may be.

11. The submission of the respondents now brought out in the memo dated 23.6.2005 that the OA may be dismissed as infructuous is also incorrect. In Union of India vs. Narender Singh [(2005) 6 SCC 106] the Apex Court has, in passing, explained the meaning of the word "infructuous" - expression derived from the Latin word "fructuous" (fruit) - means ineffective, unproductive and unfruitful. At the most, it could be said that the memo, has the effect of "Nolle Prosequi", as the applicants have, henceforth, no "cause of action". We agree with the submission of the learned counsel for the applicants in the reply to the memo, that the view entertained by the respondents in the memo is wholly incorrect.

12. During the hearing, the learned counsel for the applicants had produced a decision of the Principal Bench of this Tribunal dated 14.3.2001 involving the Central Provident Fund Commissioner and Regional Provident Fund Commissioner, New Delhi, wherein it is clearly laid down that as the recruitment rules of EO/AAO came into effect only from 3.3.1990 "the persons who were already holding the post either by redesignation or by promotion on earlier dates cannot be described as constituting the promotion quota. Promotions of departmental examination and direct recruitment quotas could have been worked out only with reference to vacancies arising after the recruitment rules ...". Relying on this principle the learned counsel for the applicants submitted that the DPC held on 14.6.2003 has erred inasmuch as it has placed K.Ramachandra, Satish Premanand and A.K. Mithrananda against the vacancies of 1990-91. The three persons mentioned above are the applicants in O.A.No.193, 237 and 238/02 and in the decision rendered on 26.6.2003 this Tribunal had directed the respondents to treat the above applicants as regularly appointed EO/AAO with effect from 3.3.1990 against supernumerary posts and give them all consequential benefits. That being the case placing them again against the vacancies during 1990-1991 (from 1.4.1990 to 31.3.1991) was not in accordance with the directions of this Tribunal. The respondents have to adjust the three applicants in the



above OA against supernumerary posts and the resultant vacancies of 1990-91 and subsequent years are to be thrown open to persons from Shri N.R.Seshagiri mentioned at Sl.No.4 (Seniority No.98) in DPC minutes of 14.6.2003. Obviously the position of the applicants also will move up in the seniority list.

13. The respondents are, therefore, directed to recast the seniority of officers mentioned in the DPC proceedings of 14.6.2003 assigning them appropriate seniority as per the availability of vacancies as reflected in the above mentioned DPC minutes. To illustrate the matter, against the 7 vacancies of 1990-91 officials from Sri N.R. Seshagiri to Govindappa will be shown [assigning appropriate place to Sri S.Rachaiah (SC)], Sri N.K. Ranganathan will move to Sl.No.1 in the 1991-92 list and so on. The DPC having found them fit for promotion there is no need to convene any Review DPC and the competent authority can issue necessary orders assigning appropriate seniority for the applicants among other officials mentioned in the list prepared by the DPC on 14.6.2003. This exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

14. It was submitted by the learned counsel for the applicants that the applicant at Sl.No.1, Sri N.K. Ranganathan has since been promoted to the next higher

post and the applicants at Sl.No.3 and 5, Sri S.S. Ahmed and Sri B.Govardhana respectively, have retired on superannuation. Irrespective of this fact, the applicants, if found suitable by the appropriate DPC, for promotion to the next higher post with effect from certain dates, as per their seniority in list prepared in accordance with the directions in para 13 above, shall be deemed to have been promoted to the said higher post from such dates. While they will get the benefit of pay fixation from the "deemed date of promotion", and consequential increments, the higher pay and arrears, if any, will be drawn only from the date of assuming charge in the higher post. If any of the applicants is found eligible for such "deemed promotion" as above, the same should be granted within four months from the date of receipt of a copy of this order.

15.The OA is disposed of in terms of the above directions. There will be no order as to costs.

(K.N.K. KARTHIAYANI)  
MEMBER (A)

bsv

सत्य प्रति  
TRUE COPY

(G. SHANTHAPPA)  
MEMBER (J)

REGISTRAR (11/11/06)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE