CHAPTER VI

PART A

APPEALS DIRECTLY FROM ADMINISTRATIVE TRIBUNALS

The Forty-Second Amendment of the Constitution\(^1\) which inserted article 323A in Part VI A, is the foundation stone of administrative tribunals in service matters. The provision was added to enable Parliament to constitute administrative tribunals to adjudicate disputes regarding recruitment and conditions of service of persons appointed to public service. For redressal of grievances of employees article 323A is very important. The Parliament by enacting Administrative Tribunals Act, 1985 provided for establishment of Central Administrative Tribunal and State Administrative Tribunals to adjudicate complaints and grievances relating recruitment and conditions of service of persons appointed to public services. The setting up of administrative tribunals for civil servants has been a novel exercise as no such tribunal exclusively for the civil servants exists anywhere in the world. The Administrative Tribunals Act, 1985 is an eye opener in the sphere of administering justice in service matters. The setting up of administrative tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with expertise would best serve the purpose.\(^2\)

The administrative tribunals are distinguishable from ordinary courts with regard to jurisdiction and procedure. They are free from the shackles of technicalities of ordinary courts. The objective of the tribunal is to provide speedy and inexpensive justice to litigants.\(^3\) Administrative adjudication, which is quasi-judicial in nature, is the main function of administrative tribunals. The basic objective of enacting the Act was believed

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\(^1\) The Constitution (Forty-second Amendment) Act, 1976.
\(^3\) *Ibid.* at para. 6.1.
to relieve conjunction in the ordinary courts and to provide for speedy disposal of disputes relating to service matters.\(^4\)

The Administrative Tribunals Act excluded the jurisdiction of all court except that of the Supreme Court under article 136. But in 1997 a seven judge Constitution Bench in *L. Chandrakumar v. Union of India*\(^5\) held that clause 2 (d) of article 323 A and clause 3 (d) of article 323 B, to the extend they exclude the jurisdiction of High Courts and Supreme Court under articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the ‘exclusionary clauses in other legislation enacted under the aegis of article 323 A and 323 B thus become unconstitutional. It also held that other courts and tribunals may perform a supplemental role in discharging the power conferred by articles 226/227 and 32. All decisions of such tribunals are subject to scrutiny by division bench of High Court within whose jurisdiction the concerned tribunal works. The tribunals will continue to act like courts of first instance in respect of areas of law for which they have been constituted. Prior to the decision the Supreme Court acting under article 136 was the only authority which could examine orders passed by them.

In exercise of its jurisdiction the Supreme Court interfered with many decisions of tribunals affecting the employees service matters relating to appointment, promotion, seniority, disciplinary proceedings, inquiry, punishment, violation of natural justice, malafide act etc. An attempt is made to analyze the cases in which the Court interfered with the orders of the tribunal till *L. Chandrakumar*.

**6.1 Jurisdiction**

In *Government of A.P. v. Narasimha Murth*\(^6\) the tribunal found that the order of dismissal was rendered on the basis of an inquiry conducted by the disciplinary authority which had no jurisdiction. The Court held that reference to disciplinary authority by the Government was competent. The Court set aside the judgment and the appeal was allowed.

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\(^4\) *Ibid. at* para. 28.1.
\(^5\) AIR 1997 SC 1125.
\(^6\) AIR 1991 SC 1732.
The main question in *Andhra Pradesh State Electricity Board v. M.A. Hai Azami*\(^7\) related to the jurisdiction of A.P. Administrative Tribunal to entertain claims of Government servants who were in deputation to the Electricity Board. The tribunal held that its jurisdiction extended to a public post and the conditions of the service of a person holding a public post. The respondent was a government servant though he was working on deputation in the board. The tribunal decreed the respondent’s claim. The Court did not accept the reasoning of the order. In the instant case respondent was seeking relief relating to the post occupied on deputation. The tribunal therefore had no jurisdiction to entertain the claim. The order was set aside.

In *Bach Sing v. Union of India*\(^8\) Central Administrative Tribunal directed the appellant to avail of the remedy under the Industrial Disputes Act. The dispute was between the trade union and the management. It was settled on agreement. The tribunal held that such settlement was not an order against which an application would lie. The special leave petition was dismissed with the observation that if petitioners were desirous of getting their claims referred under the Industrial Disputes Act, they might approach the concerned authority.

In *Madhya Pradesh v. Srikant chaphekar*\(^9\) promotion was denied to respondent on the basis of adverse remarks recorded against him. The tribunal observed that remarks were vague and of general nature. In the opinion of Court the tribunal exceeded its jurisdiction. It was for the DPC to evaluate the service record and make recommendation based on such evaluation. The Court thus set aside the order.

In *Sub Divisional Inspector of Post, Vaikam v. Theyyam Joseph*\(^10\) the tribunal held that appellant was an industry and respondent was a workman governed by Industrial Disputes Act. The Court held that employees were civil servants regulated by conduct rules. They do not belong to the category of workmen attracting the provisions of the Act. Hence the approach taken by the tribunal had resulted in non exercise of a jurisdiction vested in it by law.

\(^7\) AIR 1992 SC 1542.  
\(^8\) AIR 1993 SC 1161.  
\(^9\) AIR 1993 SC 1221.  
\(^10\) AIR 1996 SC 1271.
The question of jurisdiction was discussed in *Indermani Kirtpal v. Union of India*.\(^{11}\) A single member of the tribunal had dismissed the petition. The main issue was whether under section 5 of Administrative Tribunal Act, 1985 a single member had jurisdiction to decide a matter relating to promotion. The Vice Chairman of the tribunal under subsection (1) of section 5 had been empowered to classify classes of cases and make sitting arrangements of benches for convenient disposal. The Court held that it was not a case of initial lack of total jurisdiction and the order was upheld.

In *Govt. of Tamil Nadu. v. K. Rajaram Appasamy*\(^{12}\) the respondent did not choose to join duty for five years. The State Government had not prevented the respondent from attending to his duties. The tribunal directed the appellants to pay fifty percent of the back wages from the date of his absence till the date of filing of the application, and full back wages thereafter till reinstatement. The Supreme Court held that the tribunal was wholly wrong in its direction to pay fifty percent of back wages. The Court held that the direction to pay back wages was wrong since his absence was unexplained.

The appointment of clerks on regular basis under ‘kith and kin policy’ was challenged in *Himachal Road Transport Corporation v. Dinesh Kumar*.\(^{13}\) The tribunal directed the appellant to appoint the respondent as clerk on regular basis with immediate effect. The Court was of view that the tribunal acted without jurisdiction. It would be gross abuse of powers to appoint persons when vacancies were not available. If persons were so appointed and paid salaries it will be mere misuse of public funds. The Court held that if the tribunal found that a person was qualified to be appointed to a post under kith and kin policy, it should only give a direction to the appropriate authority to consider the case of the applicant.

The Court set aside the order in *Union of India v. V.A. Nagamalleswar Rao*,\(^{14}\) since the tribunal committed exceeded jurisdiction. The respondent was appointed as telephone operator and was called upon to produce his original certificate. Since he did

\(^{11}\) AIR 1996 SC 1567.

\(^{12}\) AIR 1997 SC 2439.

\(^{13}\) AIR 1996 SC 2226.

\(^{14}\) AIR 1998 SC 111.
not submit the same, an inquiry was made against him. It was revealed that he had scored only 48.6% of marks instead of 79.8% which was entered in the register at the time of appointment. The respondent was thus found to have obtained the employment wrongfully. After departmental inquiry he was dismissed. According to the tribunal the finding was not based on any evidence and order of punishment was set aside. The tribunal held that the extract which was produced from the register was not legal evidence and could not have been relied upon by the inquiry officer. The tribunal thought fit to examine the evidence produced before the inquiry officer as if it was a court of appeal and the Court reversed it.

In *Union of India v. B. S. Srivastva* the tribunal wrongly exercised jurisdiction setting aside the inquiry report and the order of dismissal. The respondent was cashier in the office of Controller of Defence Accounts (Pensions). The tribunal held that proper opportunity was not afforded to respondent by the inquiry officer. The report was not furnished to him. The Court held that the tribunal could not sit in appeal against the orders of disciplinary and appellate authorities in exercise of its powers of judicial review. In the opinion of the Court the tribunal wrongly exercised its jurisdiction.

### 6.2 Limitation

The Supreme Court set aside the order of the tribunal and remanded for fresh disposal on merits. The question was whether the tribunal was right in holding that the application was barred by time, under section 21 (2) of Administrative Tribunal Act, 1985. The Court observed that the cause of action arose in respect of such prayer every month in which the subsistence allowance was paid. The tribunal was reversed.

In *Bhoop Singh v. Union of India* no attempt had been made by applicant to explain why he did not challenge the order of dismissal earlier. The lapse of such longer unexplained period was a strong reason to deny his right. Inordinate and unexplained delay or laches was a ground to refuse relief irrespective of the merit of his claim. The order of the tribunal was upheld. The respondent did not avail of the opportunity when

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15 AIR 1998 SC 300.
17 *AIR 1992 SC 1414.*
twice it was available to him to have it corrected. It would clearly show that subsequent belated attempt was not bonafide. The Court held that the tribunal had not properly considered the matter in this perspective.

The only question in *Hukam Raj Khinvsara v. Union of India* was whether the application seeking implementation of the earlier order of the Tribunal was barred by limitation under section 27 of the Administrative Tribunals Act, 1985. It could be seen that the final order passed by the Tribunal was executable under within one year. According to the Court, the Tribunal was right in its conclusion that the application was barred by limitation.

**6.3 Question of law**

Interpretation of law by administrative tribunal was also interfered by the Supreme Court in several special leave appeals. Whether a candidate should secure minimum pass mark in each subject or in aggregate was in focus before the Court in *Director General, Tele communication v. T.N. Peethambaran*. The department took the view that candidate should secure minimum passing marks in each subject. The tribunal reversed and held that the Rule pertained to aggregate minimum marks. The Court observed that the tribunal overlooked that the rule did not employ the expression ‘aggregate’ and that it was impossible to interject the word in the guise of interpretation. The Court reversed the tribunal.

The short point that fell for determination in *Union of India v. Mohammad Ramzan Khan* was whether with the amendment of article 311 (2) under the Fortysecond Amendment of the Constitution, doing away with the opportunity of showing cause against the proposed punishment, had taken away the right to a copy of the report of inquiry. The Court held that it was mandatory to furnish the copy of the report. According to the Court the requirement was a part of the principles of natural justice. Appeals were allowed and the action of tribunal was set aside.

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18 *Chief Medical Officer v. Khadeer Khadri*, AIR 1995 SC 850.
19 AIR 1997 SC 2100.
20 AIR 1987 SC 162.
22 AIR 1991 SC 471.
The question in *Prithipal Sing v. Union of India*\(^{23}\) was whether ministry of surface transport was an “industry” or “work charged establishment”. Appellant was a staff car driver. His contention was that as per Fundamental Rule 56(b)\(^ {24}\) his age of superannuation was sixty years. His representation was rejected by the Government as well as by the tribunal. The Supreme Court wanted to give appellant fresh opportunity to produce the relevant material before the tribunal to show that the ministry of surface transport was an industry. The Court set aside the order and remanded the case.

In *Union of India v. E. Nambudiri*\(^ {25}\) the respondent was a section officer in the office of Chief Controller of Imports and Exports. The Director of office communicated adverse remarks to the respondent. The respondent made representation against adverse remarks and the same was rejected. Thereafter he made a memorial to the President of India, and as a result some of the adverse remarks were expunged. The respondent challenged the order on the ground that it did not contain any reason. The Tribunal quashed the order on the ground that those orders were vitiated in law in the absence of reasons. The Supreme Court held that in the absence of statutory rule or instruction the competent authority was not under an obligation to record reasons. The Court set aside the order. The observation made by the Court seems to be improper, since it amounts to violation of the principle of natural justice.

In *Orissa v. Bimal Kumar Mohanty*\(^ {26}\) serious financial irregularities were noticed and disciplinary proceedings were taken against the respondent. The suspension order was challenged before the tribunal. The tribunal directed the Government not to suspend him. The Court found it a fit case for interference. Serious allegations of misconduct had been leveled and the tribunal was held to be unjustified in interfering with the order of suspension. The interference of the Court was proper.

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\(^{23}\) AIR 1991 SC 915.

\(^{24}\) F.R. 56(b) read as follows : “A workman covered by these rules shall retire from service in the afternoon of the last day of the month in which he attains the age of 60 years.”

\(^{25}\) AIR 1991 SC 1216.

\(^{26}\) AIR 1994 SC 2296.
In *Sreedharan Kallat v. Union of India* 27 the facts show that the appellant was a ticket collector and had went on deputation as railway section officer. Later he was reverted to the parent department. After a long legal battle, railways fixed the seniority of the appellant. His seniority was questioned by the respondent before the tribunal. However, the matter had been taken before the High Court and the decision of the Court had been affirmed by the Supreme Court. The Court held that the tribunal could not pass an order which disturbed the finality of the order.

*Director General, ESI v. T. Abdul Razak* 28 was a case with regard to delegation of powers. The law was well settled that in accordance with the maxim *delegatus non potest delegare* a statutory power must be exercised only by the body in whom it had been conferred, unless sub delegation was authorized by express words or necessary implication. The respondent was an insurance manager. Disciplinary proceedings were initiated against him by the Regional Director and penalty of reduction - in - rank was imposed on the respondent. The competence of Regional Director to initiate disciplinary proceedings was challenged before the tribunal. The tribunal struck down the words ‘or any other authority specified in this behalf by a general or special order of the director general’ in Regulation 12(2) 29 and words “or any other authority empowered by him by general or special order” in Regulation 13(1) 30 on the view that they permitted further delegation. The Court reversed the tribunal.

In *Union of India v. S. S. Uppal* 31 Rule 2 of Indian Administrative Service (Regulation of Seniority) Rules was challenged as *ultravires* of articles of 14 and 16 of the Constitution. The respondent was a development officer under the Commerce and Industry Department. Later he was for absorbed into cadre. He was appointed only in February 1989. Meanwhile the Rules were amended. The tribunal viewed that question of validity of amended rules did not arise in the case because it was the law that the vacancy in promotional posts had to be determined according to rules which existed at the time the vacancy arose. The Court observed that the statement of law was inapplicable. The

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27 AIR 1996 SC 640.
28 AIR 1996 SC 2292.
29 Employees State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959.
31 AIR 1996 SC 2340.
Court held that seniority of the respondent had to be determined by the rules in force on the date of his appointment to IAS.

The Court did not interfere in the finding of the tribunal in *Karnataka v. D.S. Arjanagi*[^32] and opined that it did not commit any error of law in recording the finding that they could not have been promoted either in 1969, and could not be treated as seniors to respondents. The appellants were promotees in the cadre of inspectors in the department under factories and boilers. They were aggrieved by the decision of the tribunal in quashing the gradation list of 1975. The Government amended the recruitment rules retrospectively in 1984 and provided diploma as qualification to the post of assistant inspector. The Tribunal declared the amended rules violative of article 14 and 16.

In *Uttar Pradesh v. Girish Bihari*[^33] when the respondent was about to retire the Governor of Uttar Pradesh by an order under Rule 16 of All India Services (Death-cum-Retirement Benefits) Rules, 1958 extended his service for six months from the date of his retirement. But later the Governor cancelled the order, since the Election Commission announced elections to the State Legislature and issued instructions known as Model Guidelines. The tribunal held that the letter granting extension did not create any vested right. The tribunal, however, observed that principles of natural justice had not been observed before passing the order. The Court held that if the order of extension did not create any right, the cancellation order could not have withdrawn any such right. The Court set aside the order.

*Union of India v. C.K. Dharagupta*[^34] the question for consideration was whether the Defence Research and Development Organization (Junior Scientific Officer) Recruitment (Amendment) Rules, 1988, had the effect of nullifying the judgment dated March 17, 1987 of the tribunal in *R. P. Joshi v. Union of India*[^35]. The tribunal answered the question in the negative and held that Government was bound to comply with the judgment by granting promotions till 1987. The 1988 rules were only operative after

[^32]: AIR 1996 2518.
[^33]: AIR 1997 SC 1354.
[^34]: AIR 1997 SC 1357.
[^35]: O.A. No. 497/86.
1987. The Court was of view that in the facts and circumstances of the case no fault could be found with the impugned judgment of the tribunal.

In *Jubeda Mohammad Iqbal v. Union of India*\(^\text{36}\) the widow of an employee applied to the tribunal seeking a declaration that termination of service of her late husband was unlawful and should be quashed. Thereupon, she also prayed that the period between 28-8-1984, the date of termination of service and 16-4-1989, the date of death might be treated as period on duty. A prayer was also made for all consequential reliefs. The tribunal dismissed the application after going into the merits of the case. Therefore, it was not necessary to examine the right of a legal representative to raise the question of wrongful dismissal after the death of employee. The Court dismissed the appeal.

In *A.K. Jadhav v. Madhya Pradesh*\(^\text{37}\) the facts show that appellant was Tehsildar and was trapped for accepting an illegal gratification. The Commissioner suspended the appellant pending investigation. Suspension was challenged before the tribunal without success. The Court did not interfere with the order.

In *Himachal Road Transport Corporation v. Kewal Krishan*\(^\text{38}\) the tribunal had held that the Assistant Manager had no jurisdiction to initiate disciplinary proceedings against respondent. K. N. Uppal, the Assistant Manager who had suspended respondent had been designated under statutory rules as Head of the Office. As a consequence, the action initiated by him for disciplinary proceedings against the respondent was within the parameters of law. The order of the tribunal was set aside. In *Arun Tewari v. Zila Mansari Shikshak Sang*\(^\text{39}\) tribunal struck down amendments relating to criteria and procedure for selection of assistant teachers. The Court reversed the Tribunal and held that there was no excessive delegation of powers and qualification prescribed was proper. It seems that the above mentioned cases, the interference of Court was unwarranted.

\(^{36}\) AIR 1997 SC 2184.

\(^{37}\) AIR 1997 SC 2394.

\(^{38}\) AIR 1997 SC 2667.

\(^{39}\) AIR 1998 SC331.
In *Union of India v. N Chandra Shekaran*[^40] the fact was that promotion to the post of assistant purchase officer was based on written test, interview and assessment of confidential report. The respondent’s plea was that the departmental promotion committee manipulated the results by giving unduly disproportionate marks to interview. The tribunal held that the spread of marks allotted under the head of interview were unreasonable and marks were given for interview arbitrarily. It quashed the selection list. Looking into the composition of selection committee the court held that there was no room for arbitrary exercise of selection or favoritism. Though malafides was raised, nothing was established. And hence the importance given to the interview cannot by any means be termed as arbitrary or violative of Article 14 or 16 of the constitution.

The Court did not interfere with the order of the tribunal in *C. Krishna Gowda v. Karnataka*.[^41] The dispute germinated about three decades and three years ago between two groups of employees in Karnataka administrative service. The seniority list of direct recruits and promotees was published by the Government. The list was challenged before the tribunal. The tribunal dismissed the petitions upholding the correctness of the order. The Court was of opinion that since the tribunal considered all the issues in the above cases there was no room for further discussion. The Court upheld the judgment and dismissed the appeals. The Court confirmed the order in *C. Navaneeswara Reddy v. Government of Andhra Pradesh*.[^42] The tribunal quashed the order of the government on the ground that it was hit by section 19 (4) of the Administrative Tribunal Act. It is submitted that the Court could have dismissed the appeal at the admission stage itself.

The dispute over fusing the cadres of fitters and jig borers and for getting equal pay was not successful before the Court in *Shiba Kumar Dutta v. Union of India*.[^43] The tribunal refused to go into the question and dismissed the petition. The Court held that unless the action was arbitrary or there was invidious discrimination between persons similarly situated, it would be difficult for courts to go into the question of equation of posts into a particular scale of pay. They must be left to be decided by expert committees.

[^40]: AIR 1998 SC 795.
[^41]: AIR 1998 SC 857.
[^42]: AIR 1998 SC 939.
[^43]: AIR 1998 SC 2911.
of the government. The tribunal was justified in refusing to going into the question. Though the interference of Court in all these cases were very limited, it is suggested that in order to avoid the delay in getting justice, the Court ought to have disposed cases at the admission stage itself.

6.4 Principles of natural justice

The Supreme Court applied principle of natural justice diligently in administrative process to protect the rights of government servants. The Court interfered for noncompliance, and which led to absurd and unjustified results. In *Baidyanath Mahapatra v. Orissa*\(^44\) the review committee assessing the overall performance of appellant’s conduct had bonafide recommended that appellant’s retention in service was not in public interest. Accordingly, the Government had retired the appellant prematurely. The tribunal held that the order of premature retirement did not suffer from any legal infirmity. According to Supreme Court there was a disturbing feature which vitiated the matter. Shri. Gian Chand, Chairman of the tribunal was a member of the review committee which recommended premature retirement. The principles of natural justice, fair play and judicial discipline required that he should have abstained from hearing the case. The order of the tribunal was vitiated on that ground. In this case, the interference of Court by applying the principle of natural justice is justified.

The question involved in *Karnataka PSC v. B.M. Vijaysakar*\(^45\) was whether rule of right to hearing had any exception. The tribunal directed the answer books of candidates to be evaluated again. The candidates had written roll numbers not only on the front page of the answer book, it, but also at other places in disregard of the instruction issued by the Commission. Basis for the direction was failure to afford any opportunity to candidates to explain. The tribunal ignored vital distinction that there might be cases were right to hearing was excluded by the very nature of the power or absence of any expectation that the hearing be afforded. The tribunal in issuing directions approached the matter technically. The Court held that it would have been better part of discretion to the refuse to interfere. The tribunal completely misdirected itself in this regard.

\(^44\) AIR 1989 SC 2218.

\(^45\) AIR 1992 SC 952.
In *M/S Debri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur*[^46] the Chandigarh Administration had cancelled the select list of candidates for appointment as conductors prepared by the selection Board was challenged on the ground that the order had not been made after affording opportunity of hearing to the members of the selection board. The tribunal set aside the order. On appeal the Court held that no member of the selection board acquired any vested right or interest in sustaining the list. The Court held that the tribunal was wholly wrong in setting aside order.

In *Bhagwan Sukhala v. Union of India*[^47] the appellant questioned the order reducing his basic pay with retrospective effect before the Central Administrative Tribunal, Patna. The justification furnished by respondents was that the same had been wrongly fixed initially and that the position had continued due to administrative lapses for about twenty years. The tribunal dismissed the petition. The Court held that there had been a flagrant violation of the principles of natural justice. The appellant had been made to suffer huge financial loss without being heard. Fair play in action warranted that no such order could be made without putting the concerned to notice and giving him a hearing in the matter. The tribunal erred in dismissing the petition. The proper intervention of the Court was justified because the appellant even after a long battle was successful.

In *Union of India v. Anand Kumar Pandey*[^48] the railway recruitment board made an investigation and found that unfair means were adopted by candidates at certain centers in the examinations. The question was whether in such a situation the railway authorities could cancel the selection. The tribunal quashed the order for absence of hearing. In appeal the Court opined that the tribunal fell into patent error in interfering with the order. The rules of natural justice should not be put in strait-jacket and it depended upon the facts and circumstances in a given situation.

[^46]: AIR 1993 SC 796.
[^47]: AIR 1994 SC 2480.
[^48]: AIR 1995 SC 388.
Application of principles of natural justice was discussed in Madhya Pradesh v. V.R.P. Sharma. In a dispute regarding correction of date of birth the tribunal was of view that before correction an opportunity of hearing should have been given. According to the Court principles of natural justice should not be stretched to ridiculous edge of opportunity at every stage. Respondent got an opportunity before the Lokayukta, who was a public authority. The tribunal was grossly in error in directing that he should be given another opportunity. It is respectfully submitted that proper guidelines for the application of principles of natural justice could prevent the improper usage of such doctrines.

6.5 Appointment & regularization

There are circumstances in which Central Administrative Tribunal insisted for the strict compliance of law which was quashed by the Supreme Court. In Union of India v. A.I.R. Shinde appeal was against the order made by the CAT, holding the order extending appointment of respondent as Director General of All India Radio invalid. The Court held that the tribunal was in error in taking such a view. The Court allowed the appeal and set aside the judgment.

Andhra Pradesh Administrative Tribunal issued direction to the State Government to refrain from making direct recruitment against temporary vacancies in the cadre of assistant engineers under the A.P. Panchayat Raj Engineering Service (Special) Rules as this was challenged before the Supreme Court. The tribunal had erred in applying the amended service rule to a situation before the amendment. Hence the Court set aside the order and remanded for fresh disposal.

In Dr. P.K. Jaywalk v. M/s. Debi Mukherjee the Court was of opinion that decision reached by the tribunal did not require any interference. Here the tribunal had rightly held that when the PSC issued an advertisement and thereafter called a candidate for interview, the candidate had only a right to be considered for selection and a right to be selected or appointed.

49 AIR 1996 SC 2665.
50 AIR 1987 SC 1004.
52 AIR 1992 SC 749.
In *Madhya Pradesh* v. *A.K. Rajoriya* \(^{53}\) the Court was of view that the impugned order of the tribunal was unsustainable in law. The tribunal held that the fifty percent of the vacancies on every occasion should be filled in by direct recruits and promotes respectively. On plain reading of rule 6 (2) it is clear that it pertains to the maintenance of proportion between direct recruits and promotes. Hence the Court set aside the decision.

The Governor of State of Karnataka framed special rules in 1985 to bring representation of Schedule Castes and Schedule Tribes in certain civil services in the State to a prescribed limit. The rules had overriding effect on Karnataka State Civil Service (Direct Recruitment by Selection) Rules, 1973. Under the new rules a selection board was constituted to conduct of oral interview. Selection was questioned by unsuccessful candidates. The tribunal held that non-observance of provisions of 1973 rules vitiated the entire process of selection and directed the board to conduct the interview afresh. The Court observed \(^{54}\) that the oral test under the Rule was a special process. The non obstante clause in Rule 3 gave overriding effect to the provisions of new rules to the extent of the inconsistency. The Tribunal was reversed.

The issue involved *Orissa* v. *Sukanti Mohapatra* \(^{55}\) was whether illegal appointment of candidates made dehors the Orissa Ministerial Service (Method of Recruitment to Posts of LD Assistants in the Offices of Head of Department) Rules, 1975 could be regularized in exercise of the power of relaxation conferred on the Government by Rule 14. The tribunal held that Rule 14 merely permitted relaxation in public interest, not the total shelving of rules. The Supreme Court upheld the Tribunal. Rule 14 did not confer blanket power to validate illegality. Since irregular recruits had crossed upper age limit the tribunal did not to quash regularization. It declared regular recruits to be senior to irregular recruits.

\(^{53}\) *AIR* 1992 SC 2074.


\(^{55}\) *AIR* 1993 SC 1650. On regularization, see *Mukesh Bhai Chhotabhai Patel* v. *Jt. Agriculture and Marketing Advisor*, *AIR* 1995 SC 413. The Court held that regularization had to be done in the light of the screen framed by government. The order of the Tribunal was upheld; *Dr. Arundhati* v. *Maharashtra*, *AIR* 1995 SC 962 a claim for regularization of appointment to a temporary post was rejected by the Tribunal and upheld by the Court.
The appeal by special leave in *Dr. H. Mukherjee v. Union of India*\(^{56}\) involved the question whether the tribunal was justified in taking the view that events subsequent to the representation made to UPSC could be taken into consideration to decide suitability of candidate for appointment. The tribunal had directed the appointment committee of the Cabinet to reconsider suitability of the respondent for appointment to the post of chief controller of explosives. The Court held that the function of UPSC being advisory, the Government might for valid reasons to be recorded, discard advice. The Court reversed the tribunal.

In *Union of India v. S. Dharmalingam*\(^{57}\) the question was whether the benefit of addition to qualifying service under Rule 30 of the Central Civil Services (Pension) Rules, 1972 could be availed by respondent. The tribunal directed to give respondent benefit of addition of computed number of years to qualifying service as permissible under Rule 30 (1). During the period from 1956 to 1960 the respondent was investigator and that was to be added to the qualifying service of the respondent. The Supreme Court confirmed the order of tribunal.

In *Madhya Pradesh v. Sharma*\(^{58}\) the respondent on compassionate ground moved the tribunal for a direction to the State to appoint him APP, Grade II. The Court reversed the tribunal as it erred in distinguishing law and equity.

Rules 4(1) and 8(2) of the Indian Administrative Services Recruitment Rules, 1954, empowered state governments to make recruitment if there existed special circumstances. In *P. M. Bayas v. Union of India*\(^{59}\) the Court was satisfied that “special circumstances” existed enabling the State Government to make recruitment. The Court observed that it was the state government which had to be satisfied regarding existence of special circumstances. The State Government had demonstrated before the tribunal that vacancies were available for appointment. The Court allowed the appeal and set aside the order.

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\(^{56}\) AIR 1994 SC 495.

\(^{57}\) AIR 1994 SC 592.

\(^{58}\) AIR 1994 SC 845.

\(^{59}\) AIR 1994 SC 1281.
The Special Leave appeal in *Karnataka v. K.B.Vrushbabendra Kumar*[^60^] was against the order of Karnataka Administrative Tribunal, Bangalore. The PSC rejected the candidature of the respondent on the basis that he did not fulfill the income criteria. His natural family had income Rs. 10,000 per annum which made him ineligible, though his adoptive family had income less than Rs. 10,000 per annum. The tribunal took the view that since the adoption was valid there had been a severance of relationship of respondent from his natural family and only the income of his adoptive family could be taken into consideration. The tribunal remitted to the Commission directing to examine the claim of the respondent for selection to the post. The view to accept income of the adoptive family of respondent was questionable. But the law provided otherwise and the Court upheld the order.

The Court in *T.K. Ponnuswamy v. Government of Tamil Nadu*[^61^] interfered with the order of the tribunal. The Court observed that six years experience as deputy collector in the case of direct recruit and little experience as deputy collectors in the case of promotees bring about an anomalous situation leading to undue frustration among officers. Therefore six years experience as deputy collector irrespective of the fact whether the officer a Deputy collector by reason of direct recruitment or on account of promotion was held valid by the Court.

In *Union of India v. M Bhaskaran*[^62^] respondent secured appointment on the basis of bogus and forged casual labourer service cards. Under Rule 3(1) of Railway Service (Conduct) Rules, 1966 every railway servant should maintain absolute integrity, devotion and maintenance of law and order in the service. The tribunal held that the misconduct did not fall within the rule and directed the authorities to reinstate respondent. The Court held that the tribunal had committed patent error of law in directing reinstatement and allowed the appeal.

[^60^]: AIR 1994 SC 1528.
[^61^]: AIR 1994 SC 2775.
In *Union of India v. Mhathung Kithan*\(^63\) respondent was selected for appointment to the Indian Administrative Service. The home state of respondent was Nagaland and he gave preference for allocation to his home state cadre. There were two seats which were available for such allocation. Both these seats were earmarked for outsiders and respondent was allocated to the State of Haryana. He challenged the allocation. The tribunal allowed the application of the respondent and directed the Union of India to consider his transfer from Haryana to Nagaland in the manner set out in the order. Union of India challenged the order of the tribunal under Rule 5 of the Cadre Rules, under which a selected candidate had no right to be allocated to a cadre of his choice or to his home State. Allotment of cadre was an incidence of service; and a member was under duty to serve in any part of India. The Court reversed the tribunal.

In *Dhanna Ram v. Union of India*\(^64\) the tribunal dismissed the application on the ground of delay. The Supreme Court, however examined the matter on merits. The facts show that appellant was selected on the general quota, but transferred to the reserved quota as he was a member of the Scheduled Castes. He was not appointed on the ground that there existed no vacancy in the reserved quota. The list had expired by efflux of time, and the Court did not interfere. Grave injustice had been inflicted on the appellant and one sees a helpless Court.

In *Dilip Kumar Tripathy v. Orissa*\(^65\) the tribunal held that the list was vitiated since selection committee had not been duly constituted. However, appointments were made from the list. Though no vacancies existed, a second list was prepared and some persons were appointed. The tribunal directed the rest of the candidates from second list to be appointed in remaining vacancies. The aforesaid direction was questioned. The Court held that the arbitrary decision of the errant officers had brought the entire police administration in the State to disrepute. The Court quashed the second list and ordered fresh selection. The Court thus subverted the contrivance of the administration to make appointments illegally.

\(^{63}\) AIR 1997 SC 25.
\(^{64}\) AIR 1997 SC 126.
\(^{65}\) AIR 1997 SC 440.
The petitioner claimed the status of regular employee w.e.f. the initial date of his appointment on par with other candidates in *Ram Lal v. Union of India*. Under Rule 3511 (C) of Indian Railway Establishment Manual, unless the candidate was sent before the medical board, and selected by a regular selection committee, he had no right to the post. The report of the medical examination was not part of the record, and he was asked to appear for medical examination in 1987. Subsequently, he was appointed on regular basis, but w.e.f. September 14, 1971. The Court held that the tribunal was right in observing that unless the petitioner had undergone the medical test and was properly selected he had no right to claim benefits of a regular employee. Accordingly the Court left the order intact.

The question involved in *Baliram Prasad v. Union of India* was whether appointment of respondent as extra department branch post master, by passing the appellant was legally justified. The Court observed that tribunal was patently in error in dismissing the application of the appellant on the ground of limitation as well as on merits. The appellant has secured high marks. The appellant was denied admission as his cousin brother was working in the same post office. But refusal to appoint a meritorious candidate only on the ground that his cousin was working in the same office was, according to the Court, totally an arbitrary exercise of power and violative of article 14 of the Constitution. The tribunal was reversed.

In *A.P. Public Service Commission v. M.Goverdhan Rao* the tribunal held that the applicant was not given a fair treatment and his merit was not assessed objectively. It directed the appellant to appoint him as assistant motor vehicles inspector. Fact, show that applicant was asked to wait as there was doubt about his eligibility and the equivalence of the degree possessed by him. He was interviewed at the end. The Court held that it could not be denial of fair and objective assessment. There was nothing on record to show that performance of the applicant at the interview was adversely affected. The Court reversed the order.

66 AIR 1997 SC 453.
67 AIR 1997 SC 637.
68 AIR 1997 SC 1048.
The only controversy in Flag Officer Commanding-in-Chief v. Mrs. M. A. Rajani\(^69\) was whether the respondent was entitled to appointment by direct recruitment to a reserved vacancy. Rule 1(a) of the Ministry of Defence Recruitment of Stenographers, (Grade III) Rules, postulated appointment by promotion; failing which, by transfer; and failing both, by direct recruitment. The respondent was eligible for promotion. The tribunal directed promotion of the respondent and the Court upheld the order. In Sanjoy Bhattacharjee v. Union of India\(^70\) the petitioner had been put in the list, and the Tribunal held that he did not get any vested right to appointment. It is the law that inclusion of a name did not confer any right to be appointed. Only when any person lowers down in the list is appointed he becomes aggrieved. The Court dismissed the appeal.

In Tamil Nadu v. S. Thangaval\(^71\) the tribunal was of the view that Rule 4(a) of Tamil Nadu State and Subordinate Service Rules did not empower the Government to make supplementary list. The Court held view to be incorrect. Rule 4(a) only contemplated that all first appointments to service should be made from a list of approved candidates. If new posts were created the Government was competent to make a fresh list instead of making temporary promotions. The Court reversed the Tribunal.

In Kuldip Chand v. Himachal Pradesh\(^72\) the Court observed that the tribunal, fell into complete error in judging comparative merit of candidates and finding fault with the award of marks in viva voce examination. The tribunal exceeded jurisdiction in entering into the field exclusively reserved for the selection committee. The tribunal was reversed. It is the law\(^73\) that, decision of a selection committee could be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection.

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\(^69\) AIR 1997 SC 2099.
\(^70\) AIR 1997 SC 2179.
\(^71\) AIR 1997 SC 2283.
\(^72\) AIR 1997 SC 2606.
\(^73\) Dalphal Abasaheb Solunke v. Dr. B.S. Muhajan AIR 1990 SC 434. The Court reversed the Tribunal. See also Durga Devi v. Himachal Pradesh, AIR 1997 SC 2618, where the Tribunal was reversed on this score.
In **Mrs. Anil Katiyar v. Union of India**\(^{74}\) appellant as well as the respondent was graded as "very good" by the DPC. Since the respondent was senior to appellant he was selected and was appointed as deputy government advocate. The tribunal held that it was not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC which had been accepted by the Government. Having regard to the confidential procedure followed by the Union Public Service Commission, Court was unable to hold that the decision of the DPC in grading the appellant as "very good" instead of "outstanding" be arbitrary. The tribunal dismissed the application and the Court upheld the order.

In **Union of India v. S. K. Bhargava**\(^{75}\) the respondent was appointed on *ad hoc* basis, but was found unfit for regularization by the Union Public Service Commission. The respondent did not avail of three successive chances to get himself qualified through examinations for his regular appointment. He was found not suitable for regularization and the services were terminated. The tribunal directed that the case of the respondent should be considered *de novo* only on the basis of service record and he should be retained in service if found fit on a regular basis. The leniency was not approved in the Court and the tribunal was reversed.

In **Rashtriya Chaturth Shreni Railway Majdoor Congress (INTUC) v. Union of India**\(^{76}\) the appellant moved the tribunal for regularising services of its members on the ground that they were engaged on contract for several years as parcel porters. The tribunal, declined to entertain the issue on the ground that appellant had an alternative remedy. The Court held that since interests of labourers were involved, it would have been appropriate for the tribunal to decide the question itself instead of directing to avail the alternative remedy. The Court set aside the order and remanded the matter.

In **Maharashtra Public Service Commission v. Dr. Bhanumati Purushottam Rathod**\(^{77}\) the qualification for appointment to the post of deputy medical superintendent was post-graduation in medicine and fifteen years’ experience. The respondent had only

\(^{74}\) AIR 1997 SC 2656.
\(^{75}\) AIR 1997 SC 2845.
\(^{76}\) AIR 1997 SC 3492.
\(^{77}\) AIR 1997 SC 3719.
For the condition of fifteen years' experience. The tribunal held that the condition of fifteen years' experience was vague, and that respondent was wrongly excluded. Since selection had already taken place, the tribunal granted exemplary costs and compensation to the respondent. The Court held that it was not a case of wrongful rejection, but rejection in accordance with Rules. Further tribunal had no jurisdiction to grant relief by way of damages.

In *Union of India v. Subir Mukharji* the appellants challenged the correctness of judgment passed by the Central Administrative Tribunal. The respondent were labourers since 1988 in the press of Eastern Railway. They claimed that they were entitled to be absorbed and regularized in Group D category. The Contract Labour (Regulation and Abolition) Act was enacted to ameliorate the grievances of contract labourers. The tribunal upheld the claims of the respondent and directed the appellants to absorb the employees. The Court found the order quite fair and did not interfere with the order.

### 6.6 Seniority

In *Puranjit Singh v. Union Territory, Chandigarh Administration*, the appellant working as assistant engineer in Punjab PWD was transferred and absorbed as sub-divisional engineer in Chandigarh Administration. The seniority list was challenged before the tribunal on ground of violation of public service. The tribunal held that he should be placed at the bottom of the list since seniority started only from the date of absorption to the Chandigarh administration. The Court held that for the question of determining seniority, Rule 12(5) provided that any person appointed to a post in service in question by transfer could be assigned seniority as of date earlier than the date of absorption provided it is done in the interest of public service. The Court held that the tribunal completely failed to notice Punjab Service Rules relating to seniority and hence reversed the tribunal. A blatant error of the tribunal stands rectified by interference of the Court.

In *S.L. Kaul v. Secretary to the Government of India, Ministry of Information & Broadcasting, New Delhi* the appellants were working as monitors in All India Radio.

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78 AIR 1998 SC 2247.
79 AIR 1988 SC 2106.
The Government decided to revise pay scale of monitors and brought it at par with Grade IV of Central Information Service. While fixing inters seniority of the monitors, the appellants’ seniority was counted from the date on which the pay scale of the post was brought at par with grade IV of CIS. The tribunal missed the most crucial fact that the posts of monitors Class 11 in All India Radio had become equivalent to grade IV post in the CIS (Central Information Service) with the revision of the pay scale and redesignation of posts. The Court reversed the tribunal insofar as it directed that seniority of appellants should be computed from the dates the posts held by them were included in Grade IV of the CIS. The Court upheld impugned notification granting seniority to monitors with effect from June 29, 1968.

The Supreme Court in Balkishan v. Delhi Administration held that there could be only one norm for confirmation or promotion of persons belonging to the same cadre. Balkishan was a constable and was later promoted as Inspector General as per the directions of the High Court. As a result of these promotions, he jumped over several of his seniors. They complained against the injustice. The authorities realized the error and reverted and refixed his seniority. The order was challenged and the tribunal held that refixation of appellant’s seniority and consequent reversion was not arbitrary. It was in accordance with Punjab Police Rules. Court held that no junior should be confirmed or promoted without considering the case of his senior. Any deviation from the principle would have demoralizing effect in service apart from being contrary to article 16 (1) of the Constitution and thus confirmed the view taken by the tribunal. Non interference of the Court in fixing seniority is highly appreciated.

Supreme Court considered a dispute regarding seniority amongst officers who were promoted from Class B to Class A in Union of India v. M.P. Singh. The Court considered the correctness of directions issued by tribunal to redetermine seniority. According to the Court the order of the Tribunal cured the injustice perpetrated owing to absence of exercise of power by the Government. On this score the order was left intact.

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81 AIR 1990 SC 100.
82 AIR 1990 SC 1098.
In *Union of India v. Prof. S. K. Sharma*\(^{83}\) the Court held that the respondent was not entitled to claim seniority in the post of professor senior scale from 1969 onwards with the aid of *ad hoc* service. Seniority should be reckoned from the date of regular appointment only. This was what the authorities had done. The tribunal was wrong by granting seniority taking into account *ad hoc* appointment. The order was modified. It was also held that if the initial appointment was not in accordance with rules, subsequent regularization of service would not help an employee.

In *Baquar Hussain v. Zilla Parishad*\(^{84}\) the appeals raised identical questions involving interpretation of Andhra Pradesh Panchayat Samithis and Zilla Parishads Ministerial Service Rules, 1965. The appellants were lower division clerks and promoted as upper division clerks before 1963. The respondents were promoted thus in 1965. The seniority list placed appellants above respondents and they challenged it. The tribunal held that persons who were not qualified before 1967 had to be treated juniors. The Court did not agree that passing of the account test automatically resulted in regularization of appointment. The appellants who had been temporarily promoted and granted concession to get qualified, and when they acquired such qualification they stood in the same position as those who passed the test earlier. The regularization, it was held, was not with reference to date of passing the test but with effect from the date of first promotion.

It is the law that in the absence of any specific service rule seniority among persons holding similar posts in the same cadre has to be determined on the basis of the length of service and not on any other fortuitous circumstances\(^{85}\). The tribunal wrongly directed determination of seniority from date of acquiring degree in engineering. The Court set aside the order.

The appeals in *Union of India v. G.K. Sangamashwar*\(^{86}\) related to fixation of seniority of three offices in the Indian Administrative Service. The question involved was whether there should be a depression of year of allotment of non-state civil service

\(^{83}\) AIR 1992 SC 1188.
\(^{84}\) AIR 1992 SC 2028.
\(^{86}\) AIR 1994 SC 612.
officer. This is on account of the fact that he had been rejected earlier by selection committee in consultation with the UPSC. The tribunal in this case quashed the order of the government assigning the year 1981 as the year of allotment as per rule (3) (c) of the seniority rules. The court held that the orders passed by the tribunal in relation to three officers were to be set aside. The orders passed by the Union government with regard to the assignment year of the allotment to the officers in the Indian administrative service were upheld.

The Court partially upheld a decision of the tribunal in *Ishwari Kumar v. Himachal Pradesh*. The Court upheld the part which related the appellants but found fault with the order which related to legality of continuance in service of other persons who had failed in the departmental examination.

The Supreme Court confirmed the order of the tribunal which dismissed the application challenging the order confirming seniority on the ground that respondent was not accorded seniority on the basis of past service from 1968. The tribunal dismissed his application holding that he was not entitled to his past service being counted. The Court observed that seniority had to be counted in the parent department which was the engineering department of the Chandigarh administration and he had also to earn his promotions in the said department according to the rules and as and when the appointments were made to the vacancies which became available in that department. It is the law that he can neither count his seniority on the basis of his service prior to his fresh career as a direct recruit, nor can he claim promotion on the basis of any post held on deputation.

In *Union of India v. C N Ponnappan* the question was whether the service of employee, transferred on compassionate ground and posted in another unit in the bottom of seniority list, could be counted for seniority. The Court agreed with the view of the tribunal and held that though he lost seniority, his past service could be considered for pension.

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87 AIR 1994 SC 2173.
88 *Puranjit Singh v. Union Territory of Chandigarh*, AIR 1994 SC 2737.
89 AIR 1996 SC 764.
The decision of tribunal was not interfered in *Akhil Barathiya Soshit Karmachari Sangh v. Union of India*.\(^{90}\) It was held that if vacancies existed after following the roster for reserved category, they could be filled up from candidates in the general category or even by a candidate belonging to the reserved category if the candidate was entitled to the same on the basis of general seniority.

In *Pilla Sitaram Patruda v. Union of India*\(^ {91}\) the tribunal, without deciding the inter se seniority in the cadre of asstt. executive engineers, had directed the Railway Administration to consider the petitioner for promotion as executive engineer for the years 1984, 1985 and 1986 and if found fit for promotion in any of the posts, to give him promotion for that year and to fix seniority accordingly. Pursuant thereto, the respondent was considered and promoted as executive engineer. According to the Court once he was found eligible then his seniority was required to be determined as per the procedure prescribed in the rules. The tribunal had recorded a finding that two years period was relaxable in the case of reserved candidates. Since he was selected by direct recruitment, he was entitled to be appointed. His appointment was delayed for no fault of his and he came to be appointed only in 1981. He was, therefore, entitled to the ranking given in the select list and appointment made accordingly. Under these circumstances, the Court did not find any illegality in the order of tribunal.

The appellant challenged the order of the tribunal in *Narayan Singh v. Bihar*.\(^ {92}\) The Union Government and the Central Administrative Tribunal had concluded that it was the date of factual inclusion of the appellant’s name in the Select List and their appointments to the Indian Police Service Cadre which would govern the year of allotment. But the Court came to the conclusion that the Union Government has committed error in treating the appellants to have been included in the Select List only from the year 1986 which was the factual year of inclusion. The Union Government was directed to re-determine the year of allotment.

\(^{90}\) AIR 1996 SC 3534.  
\(^{91}\) AIR 1997 SC 3.  
\(^{92}\) AIR 1997 SC 595.
In *I. K. Sukhija v. Union of India* a provisional seniority list of assistant engineers was challenged and the tribunal quashed it insofar as it determined seniority between direct recruits and promotee assistant engineers. The Department was directed to prepare a fresh seniority list. The new seniority list was prepared. The appellants were not satisfied with the new seniority list and challenged it. The appellants sought a direction to determine their seniority by taking into consideration their uninterrupted and continuous *ad hoc* service. The tribunal, came to the conclusion that the appointments of the appellants were not only *ad hoc* but also by way of stop-gap arrangement in order to meet the exigencies of service due to heavy constructional activity undertaken by the P&T (Civil Wing) at the relevant time and were not entitled to the benefit of continuous officiation for the purpose of considering seniority.

The Court held that the promotions of the appellants as assistant engineers were not contrary to any statutory recruitment rules. They were promoted after they were found suitable by the DPC and their promotions were made according to their placement in the merit list and not according to their seniority. When the appellants were promoted, though on *ad hoc* basis, clear vacancies were available in the promotion quota. The only reason for making their appointments temporary was that the Draft Recruitment Rules was not be finalized till 1975. The Court disagreed that appointments of the appellants were stop-gap arrangements. The Court therefore reversed the tribunal and held that the appellants were entitled to seniority counted from the dates they were initially promoted assistant engineers. This enormous power under article 136 is often exercised by the Court to remedy grave injustice.

In *Union of India v. Onkar Chand* the respondent belonged to Himachal Pradesh State Police Service and was promoted to the rank of assistant central intelligence officer. His grievance was that seniority was considered from 1-1-1985 and not from 11-10-1977, the date on which he was promoted. The appellants opposed the claim contenting that seniority of transferees was determined from the date they were appointed on transfer in the department. But the tribunal held that when a person had

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93 AIR 1997 SC 2714.
94 AIR 1998 SC 945.
been allowed to function in a higher post for many years on *ad hoc* basis it would be unjust to hold that he had no claim to such post. And it counted the seniority from 2-1-1978 and directed the appellants to refix the seniority. The Court observed that in the matter of fixing seniority the tribunal had misdirected itself. The services rendered by the respondent on deputation could not be reckoned, and order was set aside. It is submitted that the Court ought to have be considered the service rendered by the employee while fixing seniority.

The Court observed that the tribunal illegally interfered with the fixing of inter se seniority of appellants in *Premkumar Verma v. Union of India*[^95]. The tribunal altered the seniority fixed by Railway on the basis of a rule which was not in existence on the date of vacancy. The Court set aside the order.

### 6.7 Senior Scale

The permanent way inspectors of Indian Railways sought enhancement of pay scale in *Indian Railway Permanent Way Inspectors Association v. Union of India*[^96]. They were working in the pay scale of Rs. 1400-2300/- .They sought the pay scale of 1600-2660/-, which was rejected by the tribunal. The *Report of the Vth Pay Commission* was accepted by the Government and that was the basis for the order. Hence the order did not warrant any interference and the Court dismissed the appeal.

The Court interfered with the order passed by the tribunal in *Vijayakumar I.A.S. v. Maharashtra*[^97]. The facts show that Vijayakumar was denied senior time scale by the Government which was offered to his juniors. The grievance of appellant was that the confidential report relied upon to deny senior time scale had not been communicated to him. The tribunal rejected the claim. The Court observed that the conclusion was very curious. It was the law that uncommunicated adverse report should not form the basis to deny benefits. The Court directed the State of Maharashtra to grant the appellant senior time scale with effect from the date on which his juniors were given. It was not proper on

[^95]: AIR 1998 SC 2854.
[^96]: AIR 1998 SC 2348.
[^97]: AIR 1988 SC 2060.
the part of the Court to direct the State Government to grant senior scale instead of complying with the principles of Natural Justice.

In *Union of India v. Sushil Kumar Paul* 98 the tribunal directed the appellant to step up the pay of respondent to make it at par with the pay of a junior getting higher pay. Under Fundamental Rule 22-C if a junior officer drew a higher pay in the lower post either because of advance increments or on any other account then the provision of stepping up should not apply. The principle of stepping up was applicable only when other things were equal. This was overlooked by the tribunal and the Court set aside the order.

Special leave appeal was directed is against the order of A. P. Administrative Tribunal in *T. Narasimhacharyulu v. Andhra Pradesh* 99. Appellants belonged to education department and were deputed to engineering colleges as lecturers. This happened on account of serious shortage of non technical teachers in technical institutions. All India Council for Technical Education later recommended revision of pay scale. The teachers on deputation also claimed revised scales. The tribunal held that it was not intention of the State Government to apply revised pay scales to non technical teaching staff. The Court upheld the order.

The short question that arose in *Union of India v. P. Jagdish* 100 was whether the tribunal was justified in directing the appellant to fix up the pay of respondent in the cadre of Head Clerk by notionally holding that he was also eligible to receive the special pay of Rs. 35/- per month in the lower post though factually was not receiving special pay. The tribunal directed that the salary of the respondent should be stepped up, so that, it would not be lesser than juniors. According to the Court a special pay of Rs. 35/- per month was attached to certain identified posts in the category of Senior Clerks and, only those who would be posted against those identified posts could claim special pay and thus reversed the tribunal’s order.

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99 AIR 1994 SC 770.  
100 AIR1997 SC 1783.
In *Indian Council of Agricultural Research, v. A.N. Lahiri*\(^{101}\) the Court held that the tribunal had not committed any error in directing the appellant to make the same pay scale of Rs. 4500-7300 available to respondent as was made available to a similarly situated employee.

The Court dismissed the appeal in *Indian Railways SAS staff association v. Union of India.*\(^{102}\) The appellants were aggrieved by the order of the tribunal rejecting their claim for pay scale of the Group ‘B’ states. The tribunal considered reports of the earlier pay commissions before rejecting the claim. The Court was of opinion that the tribunal had taken correct view. The classification of posts in gazetted or non-gazetted could not be done merely on the basis of scales of pay. There were many criteria like administrative, procedural which had to be taken into consideration by authorities concerned before determining classification. Thus, the simplistic solution to classification merely based on the scales of pay might lead into various complications and might lead to administrative hierarchical imbalances in particular organization. The Court upheld the order.

### 6.8 Promotion

The disputes relating to promotion of civil servants were questioned before the Central as well as State Administrative Tribunals. Many of their orders were challenged before the Court under article136.

The Supreme Court affirmed the order of Central Administrative Tribunal in *R. Prabhadevi v. Government of India.*\(^{103}\) The question was whether the service rule requiring eight years of approved service as section officer both for direct recruits as well as for promotees was arbitrary being in contravention of articles 14 and 16 of the Constitution. The tribunal held that amendments made in the proviso to Rule 12 (2) of 1962 was not discriminatory or arbitrary or unconstitutional. The rule in question which prescribed a uniform period of qualified service could not be said to be arbitrary or unjust or violative of articles 14 and 16. The Court upheld the order and observed thus:

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\(^{101}\) AIR 1997 SC 2259.

\(^{102}\) AIR 1998 SC 805.

\(^{103}\) AIR 1988 SC 902.
In any event, the appropriate rule making authority is the best judge in this regard. The rule making Authority is certainly competent to amend the rule and extend the period from 6 years to 8 years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the rule making authority.

In *Assam v. Union of India*\(^{104}\) the tribunal held that the selection committee committed an error in taking into account adverse remarks made against respondent. This was on the ground that remarks had not been communicated to him till the date of selection. Moreover, the adverse remarks had been subsequently set aside by the State Government. The Court held that the legal effect of setting aside of adverse remarks would be that the remarks must be treated as nonexistent. The selection committee had therefore erred in taking into account the adverse remarks. But here the tribunal had ordered promotion of the civil servant. That part of the order was set aside on the ground that the tribunal could not exercise a jurisdiction vested in the selection committee. The Court directed the selection committee to reconsider the matter. The Court dragged the case back to the selection committee on technical grounds. The strategy will definitely deny justice to the party waiting promotion.

In *P.Mahendra v. Karnataka*\(^{105}\) the tribunal committed an error of law. The facts show that the State Public Service Commission had invited the applications to the post of motor vehicles inspector in 1983. At that time diploma holders in mechanical engineering were eligible to apply. In 1987 the service rules were amended and diploma holders were made ineligible to apply. The issue involved was whether the select list prepared in accordance with the law at the date of the application was invalid. The tribunal quashed the list and directed the Commission to invite fresh applications. The Court reversed the tribunal and directed the appointments on the basis of the select list.

The Court did not interfere with the order of tribunal in *Council of Scientific & Industrial Research v. K.G.S. Bhatt*.\(^{106}\) The respondent was a civil engineer and had

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\(^{104}\) AIR 1988 SC 1069.

\(^{105}\) AIR 1990 SC 405.

\(^{106}\) AIR 1989 SC 1972.
suffered stagnation for about twenty years in the same scale from inception owing to the
defective promotional policy. The Court declined to interfere with the relief granted by
the Tribunal.

In *K. Jagadeesan v. Union of India*\(^{107}\) the facts show that recruitment to the post
of superintending mechanical engineer was by promotion, and failing which by direct
recruitment. For direct recruitment the prescribed qualification was degree in mechanical
or automobile engineering, and for promotion the requisite qualification was five years of
service in the grade of mechanical engineer. The appellant had become eligible for
promotion in 1978. The qualification was later amended to include any degree in
engineering. Appellant challenged the validity of the amendment on the ground that it
affected his chances of promotion or alternatively his right to be considered for
promotion. The contention was rejected by the tribunal on the ground that it was for the
Government to prescribe qualifications and the tribunal could not go into the question.
The Court held that the only effect was that his chance of promotion or his right to be
considered for promotion was adversely affected. It was held that a court could interfere
only when the prescribed qualification was totally irrelevant or unreasonable. The non
interference is highly appreciated.

In *A. Sagayananthan v. Divisional Personal Office, S.B.T. Division, Bangalore*\(^{108}\)
appeellant complained that his seniority was overlooked and their juniors were promoted.
Promotion to higher post was governed by rule of seniority. The tribunal found that there
was delay on the part of the appellant in raising the grievance. The Court reversed and
directed the tribunal to rehear the parties after giving them an opportunity to implead
necessary parties.

The common question involved in *Union of India v. K.V. Jankiraman*\(^{109}\) related
to “sealed cover procedure”. The ‘sealed cover procedure’ is adopted when an employee
is due for promotion, increment etc. but disciplinary proceedings are pending against
him. The findings on his entitlement are kept in a sealed cover to be opened only after the

\(^{107}\) AIR 1990 SC 1072.

\(^{108}\) AIR 1991 SC 424.

proceedings are over. A full bench of tribunal struck down two provisions of the memorandum. The Court held that if there was penalty, the findings of sealed cover should not be acted upon. According to the Supreme Court, tribunal had erred in holding that when an officer was found guilty in the discharge of his duty, imposition of penalty was all that was necessary to improve his conduct and to enforce discipline and to ensure purity in administration. An employee found guilty of misconduct could not be placed on par with other candidates and his case had to be treated differently. The Court set aside the order.

The issue involved in *N. Suresh Nathan v. Union of India* 110 was whether a diploma holder junior engineer, who obtained a degree while in service, could avail the period as diploma holder to complement the three years’ service prescribed for promotion to the post of assistant engineer. The tribunal held that service as diploma holder could be counted. On appeal the Court reversed holding that service in the grade as diploma holder prior to obtaining degree could not be counted. The Court rightly interfered by giving weightage to merit prescribed for promotion.

The issue involved in *Union of India v. Kewall Kumar* 111 was whether *Janakiraman* 112 was correctly applied. In the present case, first information report was registered by CBI and the competent authority had decided to initiate disciplinary proceedings against him. The order for promotion by the tribunal was reversed.

The question regarding promotion to specialized posts was discussed by the Court in *Union of India v. Dr. P. Rajaram*. 113 Since the posts were specialized, it was unthinkable that promotions could be based on the principle of seniority cum fitness. The word ‘suitability’ was interpreted as seniority cum merit. Otherwise it would be liable to struck down as unconstitutional being violative of articles 14 and 16. The tribunal had adopted the principle of seniority. The Court set aside the impugned order.

110 AIR 1992 SC 564.
111 AIR 1993 SC 1585.
112 AIR 1991 SCW 2276.
113 AIR 1993 SC 1679.
In *Tamil Nadu v. P. Bose*\(^{114}\) the tribunal interfered with the exclusion of the name of the respondent from the list for promotion. The exclusion was based on the ground that he was visited with three minor punishments. The Court observed that punishments related to failure to attend duty to restore law and order. Though visited with minor penalties it was held to be a relevant matter in promotion to the post of inspector of police. The Court is vigilant in matters affecting the law and order and maintaining a decorum in police department.

The promotion to the post of statistical inspector was challenged in *T.N. Government Statistics Ministerial Staff Association v. Commissioner of Statistics*.\(^ {115}\) The appointment was governed by Rule 13 of T.N. General Subordinate Service Special Leave Rules. The appellant was an association of ministerial staff who joined after 1960. Meanwhile the State Government passed orders promoting directly recruited assistant statistical investigator as statistical inspectors. The appellant approached the Tribunal challenging the orders. The Tribunal dismissed the matter as it became in fructuous for the reason that the applicant had already been promoted to the next higher post of statistical inspector and had joined duty. The Court set aside the order passed by the tribunal to the extent that the next 35 vacancies on the post of statistical inspector to be filled by recruitment by transfer from amongst assistants and other ministerial non technical staff who entered service after 1968. The decision shows that delay in getting justice makes many orders in fructuous.

In *Secretary to the Govt. of Orissa v. Laxmikanta Nanda*\(^ {116}\) involved two cadres, viz. the teachers in homeopathy colleges and other officers of the homeopathy department. The officers of the department were eligible to be appointed as deputy director. The exclusion of teachers was the subject matter of challenge before the Tribunal. The Tribunal set aside the exclusion of teachers. On appeal the Court reversed on the ground that the cadres were separate and differential treatment was not otherwise illegal. The Court unnecessarily interfered with the decision of the tribunal. The teachers were also eligible to the post of deputy director on the basis of qualification.

\(^{114}\) AIR 1993 SC 1981.
\(^{115}\) AIR 1993 SC 2552.
\(^{116}\) AIR 1994 SC 569.
The Supreme Court rejected the view of the tribunal in Union of India v. Rajiv Yadav that principles of allocation called rooster system were not notified and because of that they were *non est* and could not be followed. The fact that rooster system had been followed for years was itself a sufficient publication of its principles.

The eligibility criteria to the post of chief engineer was the question involved in *Punjab v. K. K. Jerath*. The Tribunal quashed the appointment of a person on deputation from Punjab Service as being violative of statutory rules and directed fresh DPC to be constituted. The order directing the Supt. Engineer (Electrical) to be considered for promotion to the post of chief engineer was challenged before the Court. The Court directed the authorities to open the sealed envelope containing the proceedings of DPC and to proceed in accordance with the law as directed by the tribunal.

In *Assam v. P.C.Mishra* the Court expunged the adverse remarks contained in the order of the tribunal while dealing with the promotion issues. Shri. P. C. Mishra was the Chairman of Assam Board of Revenue. The Government conveyed its displeasure to him for his conduct towards a lady officer. He approached the tribunal for quashing the said order. The impugned order was quashed by the tribunal with adverse remarks against Shri H.N. Das, Chief Secretary of the state. The State filed special leave appeal for expunging the adverse remarks made by the tribunal. The Court observed:

It is incumbent for each occupant of every high office to be constantly aware that the power invested in the high office he holds is meant to be exercised in public interest and only for public good, and that it is not meant to be used for any personal benefit or merely to elevate the personal status of the current holder of that office. Constant awareness of the nature of this power and the purpose for which it is meant would prevent situations leading to clash of egos and the resultant fall out detrimental to public interest.…

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118 AIR 1995 SC 299.
119 AIR 1996 SC 430.
The question which arose for consideration in *Sudha Shrivastava v. Comptroller and Auditor General of India*120 was whether the heir of a deceased civil servant, who was prosecuted but was ultimately acquitted, could be permitted to continue the proceedings before the court and claim the grant of retrospective promotion of the deceased and consequential monetary benefits. The Tribunal had denied the claim. The Tribunal’s order was reversed by the Court.

In *Maharashtra v. Engineering College Teachers’ Association*121 the Supreme Court held that tribunal had not properly considered the resolution passed by the government in dealing with promotion matters. It was held that service rendered in class III could not be considered as service in class11. The Court held that service as assistant/associate lecturer could not be considered as service as lecturer for granting respective scales. The view of tribunal was illegal and reversed.

In *Nutan Arvind v. Union of India*122 notice was issued to the Government to submit whether promotion was on merit and ability or seniority cum merit and to state the principle followed in grading officers by DPC. In this case the DPC considered the merit of candidates and the appellant was not considered. The Court observed that the DPC was a high level committee and had exercised its duty and found the appellant not fit for promotion. Hence the Court did not find any manifest error of law.

The special leave appeal in *M. Jayakumar v. Tamil Nadu*123 was against the order of the State Administrative Tribunal. Employees of other units approached the Tribunal claiming promotion on the premise that it was common unit. The Tribunal directed that they were to be treated as part of the unit of the Board of revenue and they were to be considered for promotion. The Court reversed and held that it could not supplant equity to sway over statutory rule. When assistants in Board of Revenue were available for promotion, consideration of assistants in other units was unwarranted. It was held that only if such assistants were not available, persons from other sources could be considered. Equity operates where law is silent. It will be for the rule-making authority to

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120 AIR 1996 SC 571.
121 AIR 1996 SC 2581.
122 AIR 1996 SC 3352.
decide the unit for the purpose of recruitment or promotion. The Government did not agree to integrate all the three units as one. Hence the Court reversed the tribunal.

The special leave appeal in *Goel v. Union of India* 124 related to promotion of assistant engineers to the post of executive engineer in the Central Public Works Department. The assistant engineers were appointed by direct recruitment as well as by promotion from the cadre of junior engineers. The cadre of assistant engineers consisted of graduates holding a degree in engineering as well as holders of diploma in engineering. The Central Engineering Service Group A Recruitment Rules, 1954 were applicable. The Rules did not provide for promotion of diploma holder to the post of executive engineer. In 1956 executive instructions were issued for promotion of diploma holder assistant engineers as executive engineers on *ad hoc* basis. The practice continued for a considerable time. The Tribunal held that administrative instructions could not override rules and promotions made on the basis of administrative instructions were invalid. During the pendency of the petition, a proviso was inserted in sub-rule (3) of Rule 21 of the Rules to validate promotions where diploma holder candidate was of ‘outstanding merit’ and record. The Tribunal held the proviso to be arbitrary. The Court held that in service jurisprudence 'outstanding merit' was a well recognized concept for promotion to selection post on the basis of merit. Assessment of outstanding merit was made by DPC on the basis of record of performance of an employee. The Court reversed the Tribunal.

In *Bhakta Rame Gowda v. Karnataka* 125 the appeals by special leave arose from the order of the Karnataka Administrative Tribunal holding that guidelines had not been framed and reservation quota provided was ultra vires. The Court reversed the Tribunal. The Court held that rules framed under the proviso to article 309 could be retrospective in nature. 126 It was held that the Government was required to formulate guidelines as to the manner in which the back log vacancies were to be filled up.

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124 AIR 1997 SC 729.
125 AIR 1997 SC 1038.
126 See the earliest case, *R.L.Bansal v. Union of India*, AIR 1993 SC 978 and *V.K.Sood v. Secretary, Civil Aviation*, AIR 1993 SC 2285; *Supreme Court Employees’ Welfare Association v. Union of India*, AIR 1990 SC 334; *P.D. Aaggarwal v. Uttar Pradesh*, AIR 1987 SC 1676; followed in *Chief Secretary to
In Dr. Ramulu v. Dr. S. Suryaprakash Rao 127 the issue involved was whether the omission on the part of the Government to prepare and finalise the panel for promotion of the assistant veterinary surgeons to the post of assistant director was vitiated by inaction and violative of Rule 4 of the service rules. The Tribunal directed the Government to prepare the panel.128 The Court held that the respondent had not acquired a vested right to be considered for promotion in accordance with the repealed rules and in view of the policy decision taken by the Government, which seemed justifiable on the material available from the record placed before the Court.

In Superintending Engineer, Public Health, U. T. Chandigarh v. Kuldeep Singh129 the respondent, a Scheduled Caste candidate, was eligible for promotion as head-draftsman. The post was meant for Scheduled Tribes, but inter-changeable between Scheduled Castes and the Scheduled Tribes. Since he was not considered, the legitimate right to promotion was denied to him. The Tribunal directed his promotion retrospectively. The Supreme Court on appeal did not interfere.

In Hari Shamrao Nimje v. Union of India130 the appeal arose from the order of the Central Administrative Tribunal, Bombay Bench. The appellants were promoted from data processing assistants to data processing supervisors. However, they were put in data processing assistants grade 'A' in the scale of pay Rs. 1600-2600/- which was an entry grade. The appellants claimed that having been promoted as supervisors from data processing assistants, putting them into Grade 'A' was unjust and they should have been fitted into the data processing assistants grade 'B' which was a promotional grade in the scale of pay of Rs. 2000-3300/-. The Court gave three months time for reconsideration. In view of the fact that respondents had not shown any progress made or the steps taken, the Court declined to extend time. The order of the Tribunal was set aside. The respondents

127 AIR 1997 SC 1803.
128 It is the law that if decision of government,if supported by valid reasons,would prevail.See Union of India v. K.V. Vijesh, (1996) 3 SCC 139; Bihar v. Md.Kalimudin, 1996 2 SCC121; Shankarsan Dash v.Union of India, (1991) 3 SCC 47.
129 AIR 1997 SC 2133.
130 AIR 1997 SC 2137.
were directed to fit them in Grade 'B' Data Processing Assistant with all consequential benefits.

In the *Chief General Manager, Telecom, Kerala Circle, Trivandrum v. G. Renuka*\(^{131}\) the respondents challenged the promotion of certain scheduled caste candidates as invalid. The Tribunal held that the Government could carry forward the vacant posts for future recruitment, but could not review the selection and make the appointments. A committee of three senior officers had considered the suitability by considering previous records and performance in the examination and qualified them by granting relaxation of marks and grace marks. This was done on consideration of their overall confidential reports and their performance in the examination. Under these circumstances, it was held that the Government was within their power to review selection and declare the candidates belonging to Scheduled Castes/Scheduled Tribes as eligible for promotion. The necessity to carry forward vacancies would arise only in cases where the committee considered and found them not qualified for three recruitment years. Hence it was not necessary for the Government to carry forward the unfilled vacancies and fill up the vacant posts with the general candidates.

In *K. Manickaraj v. Union of India*\(^{132}\) the question involved was whether the number of upgraded posts from Grade-III to Grade-II meant for sports personnel could be taken into account to determine the number of reserved posts available for Scheduled Caste in Grade-II. The Tribunal held that such posts should not be taken into account. The Court held that while computing the number of posts available for reserved category, there was no justification to exclude upgraded posts.

The appeal in *Himachal Pradesh v. Surinder Kumar Mohindra*\(^{133}\) was directed against the order of Himachal Pradesh Administrative Tribunal. The Tribunal ordered the State to consider promotion of respondent No. 1 to the post of Joint Director along with others as on 15-6-1979 and if found suitable to give notional promotion to him by

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\(^{131}\) AIR 1997 SC 2138.  
\(^{132}\) AIR 1997 SC 2419.  
\(^{133}\) AIR 1997 SC 2449. Except where promotion is on the basis of seniority, a Court should not order promotion. See *ICAR v. Satish Kumar*, AIR (1998) SC 1782. Such a direction by the Tribunal was set aside.
creating supernumerary post with all consequential benefits without reverting the persons already promoted. It is the law that a civil servant has no right to promotion but only on right to be considered for promotion. The Court found that a committee had considered fully the case of the respondent and rejected the claim. The Court reversed the Tribunal.

In *D. Stephen Joseph v. Union of India*\(^ {134}\) the Central Administrative Tribunal, Madras Bench held that the respondents holding the post of junior engineers and having three years' regular service in the grade and with a degree in electrical engineering would be entitled promotion to 50% reserved quota and their experience of three years was not to be reckoned from the date of acquisition of the degree in electrical engineering. The Court did not find any reason to interfere with the decision and dismissed the appeal.

The dispute between direct recruits and the promotees surfaced in *Surjit Singh v. Union of India*\(^ {135}\). Under Rule 13(1) one-sixth of the substantive vacancies in the section officers' grade in any cadre should be filled by direct recruitment by the Union Public Service Commission. The unfilled spilled over vacancies had to be filled up with promotees from the select list. The Rule was amended and two years' limitation was introduced. If sufficient number of candidates were not available in a cadre, in any recruitment year, either by direct recruitment or by promotion unfilled vacancies should be carried forward for not more than two recruitment years. The remaining vacancies should be transferred for the other mode of recruitment. According to the Tribunal preceding the date of amendment, the Government was devoid of power to carry forward unfilled vacancies.

In *Madhya Pradesh v. Mahesh Kumar*\(^ {136}\) the Tribunal held that since the empanelled candidates were not heard before withdrawal of grace marks, it was violative of principles of natural justice. The question that arose in the appeal was whether the action taken by the DGP in granting relaxation to head constables was correct. The DGP had later withdrawn the relaxation granted. The Court held that the power to relax would include the power to withdraw on valid grounds and the principles of natural justice were

\(^{134}\) AIR 1997 SC 2602.

\(^{135}\) AIR 1997 SC 2693.

\(^{136}\) AIR 1997 SC 2710.
not violated. The Tribunal was reversed. It is respectfully submitted that the Court have no power to deny the principles of natural justice. Once a candidate acquires a right it is mandatory that opportunity of being heard should be offered to him.

In *Union of India v. O. P. Saxena*¹³⁷ the issue related to the stepping up of the pay of the respondent on promotion. The Tribunal directed stepping up. The principle of stepping up of pay was contained in Rule 1316 of Indian Railway Establishment Code, Vol. II which also contained conditions to be followed while ordering stepping up. Since the conditions were not fulfilled the Court set aside the tribunals’ order.

In *Union of India v. Madhav Gajanan Chaubal*¹³⁸ the tribunal set aside the promotion, since the post of Secretary was single point post and no reservation could be granted. The question before the Court was whether the application of roster to the successive vacancies in the post of Secretary violated article 16 (1) of the Constitution. Since the Government had decided that when in a single post vacancy arises as per roster point and when candidates belonging to Scheduled Castes or Scheduled Tribes were available, reservation may be made. In the absence of their availability, the vacancy was to be carried forward. Therefore, the principle of rotation applied to a single post was not violative of the Constitution.

In *Jacob Yahannan v. H. P. Vora*¹³⁹, the respondent was aggrieved by the final gradation list. He approached Central Administrative Tribunal, Bombay praying that the said gradation list be quashed. The tribunal held that posts of Assistant Engineers and Assistant Surveyors of Works (Civil) formed distinct cadres and could not be equated with the cadre of Deputy Engineers. The tribunal directed the exclusion of appellants from the zone of consideration to the post of Executive Engineer. The Court held that tribunal had committed an error in holding that the Assistant Engineer and Assistant Surveyor of Works (Civil) did not belong to the cadre of Deputy Engineers. Thus tribunal was reversed.

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¹³⁷ AIR 1997 SC 2978.
¹³⁸ AIR 1997 SC 3074.
¹³⁹ AIR 1997 SC 3078.
In *I.C.A.R. v. T. K. Suryanarayan*\(^{140}\) the fact showed that the appellant had allowed large number of employees to get promotion on the basis of educational qualification, violating service rules. The tribunal found such laxity in the case of petitioner also. The Court held that the appellant could go only by the service rules. The respondent could not claim irregular promotion on the ground that in some earlier case, such promotions had been made. The tribunal was reversed.

In *K. Ajit Babu v. Union of India*\(^{141}\) the application filed by appellants was rejected by the Central Administrative Tribunal as not maintainable. The tribunal had earlier held that *ad hoc* promotions were valid as they did not affect seniority of other employees. According to the tribunal any person affected by the decision and who was not party to it could not maintain a fresh application but only apply for a review. The Court reversed holding that the application had to be dealt with according to law.

In *Union of India v. R. Swaminathan*.\(^{142}\) the employees belonged to the Departments of Posts and Telegraph and Telecommunications. They belonged to Accounts stream and to Engineering stream. The question raised related to pay fixation on promotion. The promotees, respondents in the appeal claimed that they were getting lesser pay in promotional post than their juniors who were subsequently promoted. This was an anomaly which should be removed by stepping up their pay to the same level as their junior from the date he was promoted. The junior employees who got higher pay on promotion had officiated in the promotional post for different periods on account of local *ad hoc* promotions granted to them. This had happened because Department of Telecommunications was divided into a number of circles within the country. The regular promotion was on the basis of All India seniority. The Court held that respondents were not entitled to have the pay stepped up because the matter was not a result of any anomaly. The appeals were allowed and orders of Tribunal were set aside.

\(^{140}\) AIR 1997 SC 3108.
\(^{141}\) AIR 1997 SC 3277.
\(^{142}\) AIR 1997 SC 3554.
In *Tech. Executive (Anti Pollution) Welfare Association, v. Commissioner of Transport Dept.*\(^{143}\) the Court observed that the tribunal was right in rejecting the application. The members of the appellant Association were technical anti-pollution level test inspectors. Under the Motor Vehicles Act, the cadre of motor vehicles inspectors had statutory base and therefore, distinct from the former. They could claim parity with statutory cadre officers. It was a matter for the appropriate Government to take policy decision and tribunal was not competent to give directions to create promotional avenues. The appeal was accordingly dismissed.

The controversy involved in *Union of India v. N. R. Banerjee* \(^{144}\) related to promotion to the post of Senior General Manager in the Indian Ordnance Factories under India Ordnance Factories Services Rules. The tribunal directed the DPC to consider the cases of all eligible candidates. The direction given was clearly in accordance with the procedure prescribed. The Court did not find any error of law warranting interference. The appeals were accordingly dismissed.

In a dispute relating to the promotion the tribunal relied on quota basis which was not interfered by the Court in *Secretary-cum-Chief Engineer v. Hari Om Sharma.*\(^{145}\) The tribunal set aside the Income Tax Department Recruitment (Amendment) Rules, 1986 in *Chief Commissioner (Admn) & Commissioner of Income Tax, Delhi v. K.C. Sharma*\(^{146}\) insofar as they dealt with promotions to the post of inspectors. The two lists prepared were challenged on the ground that preparation was carried out violating fair play and principle of natural justice. The Court set aside the order and held that lists were valid.

### 6.9 Allotment of quarters

The appellant approached the Supreme Court for permitting her to occupy in the quarter as well as for employment of one of her three sons in the printing press in which her deceased husband was employed.\(^{147}\) The tribunal had dismissed her application on the ground that after her husband’s death, she could not retain the quarter allotted to her

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143 AIR 1997 SC 3662.  
144 AIR 1997 SC 3761.  
146 AIR 1998 SC 2991.  
147 *Smt. Phoolwari v. Union of India* AIR 1991 SC 469.
husband while in service. The Court directed the respondent to take immediate steps for employing the second son of the appellant in a suitable post commensurate with his educational qualification within a period one month from the date of the order and not to dispossess the appellant.

In *Central Railway Audits Staff Association v. Director of Audit, Central Railway*\(^{148}\) the grievance of employees belonging to the office of Controller and Auditor General of India was considered. These employees on deputation in railways got promotion and were designated as officers group B gazetted. On recommendation of the fourth Pay Commission the pay scale was revised. The grievance of the officers was that Railways should not have denied to them benefits such as issue of railway travel passes or allotment of railway quarters accommodation in rest house, taking of family members while on tour etc. The tribunal rejected the application. The Court was of opinion that the contention raised on behalf of assistant auditor was unacceptable as Railways could not confer privileges upon persons belonging to foreign department while their own servants holding equivalent post were denied such privileges.

In *Director, Central Plantation Crops Research Institute, Kasargod v. Purushotham*\(^{149}\) the question related to HRA. The employees were offered official accommodation but refused to occupy the same. The tribunal held that employees could not be compelled to occupy the quarters and thus deny the benefit of HRA. The Court set aside the order and directed the appellant to deduct HRA from the salary of respondent for the period the quarter was offered to the employee and remained vacant.

The tribunal’s order did not warrant any interference in *Amitabh Kumar v. Director of Estates*.\(^{150}\) According to the Court the employee in unauthorized occupation could be required to pay penal rentals. The entitlement to which the son was eligible was different from the entitlement to which the father was eligible. An application had been made for *ad hoc* allotment on the basis that son was in government service. The first

\(^{148}\) AIR 1993 SC 2467.

\(^{149}\) AIR 1994 SC 2541.

\(^{150}\) AIR 1997 SC 1308.
petitioner was in unauthorized occupation. Hence he was required to pay the penal rentals.

6.10 Alteration of date of birth

The tribunals order for correction of date of birth was challenged in *Union of India v. Mrs. Saroj Bala.* The view taken by the tribunal was unjustified and obviously illegal. The court held that since respondent was born in an educated family and it was after 18 years she discovered that her date of birth was wrong, the order of the tribunal to be reversed.

The Court did not interfere with the decision of A.P Administrative Tribunal in which application for alteration of date of birth had been allowed. The Court gave direction to the appellant that respondent should on the basis of the relief granted to her by the tribunal be entitled to be called back to service for the remainder of the period on the basis of the changed date of birth.

The tribunal had directed correction of date of birth in *Union of India v. Harnan Singh.* There was inordinate and unexplained delay on the part of the respondent in seeking correction of date of birth. In the case of Central Government employees it was the law that request for correction was to be made within five years of entry into service. The tribunal had therefore fell into error in issuing the direction to correct date of birth.

Another appeal from Tamil Nadu also involved alteration of date of birth. According to the date of birth recorded in service register respondent was to superannuate on 8-8-1992. The tribunal by an interim order directed the Government to allow the respondent to continue in service and recorded a finding that the date of birth of the respondent was 9-8-1936. T.N. Service Manual, Rule 49 provided that an application to alter date of birth be entertained only if such an application was made within five years of such entry in service. The Court observed that an application for alteration of date of birth

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151 AIR 1996 SC 1000.
153 AIR 1993 SC 1367.
154 Secretary and Commissioner HomeDepartment v. R. Kirubakaran.AIR 1993 SC 2647.
on the eve of superannuation should require strict explanation from employee. The Court held that it was not possible to uphold the finding of the tribunal and set aside the order.

In the *Commissioner of Police, Bombay v. Bhagwan V. Lahane*\(^\text{155}\) reversing the tribunal the Court held that the employee should demonstrate that the entry was made owing to want of care on the part of some person other than the employee or that it was an obvious clerical error. The tendency of the employees to correct their date of birth towards the fag end of the career should be curbed by the authorities. Strict guidelines should be formulated by the Court to restrict such types of anomalies.

### 6.11 Equal pay for equal work

The principle of “equal pay for equal work” enshrined in part IV of the Constitution was wrongly interpreted by tribunals to grant benefits to two distinct sets of employees doing similar functions. The Court interfered in such situations by examining the qualifications, nature of responsibilities and functions carried on by the employees. In *Purna Chandra Nand v. Orissa*\(^\text{156}\) facts disclose that the appellant’s claim was he was entitled to equal pay for equal work. Tribunal had pointed out in the order that the Farm Manager was an inter-changeable post, The farm manager post was held by both Class II and Class I officers depending upon the exigencies of the post. In the counter-affidavit the Government had pointed that holders of the post were having different scales of pay. Mere exigency of holding the post as farm manager did not entitle the incumbent to the same scale of pay. According to the Court the tribunal was right in refusing to grant the same scale of pay to the appellant.

In *Tamil Nadu v. M. R. Alagappan*\(^\text{157}\) the tribunal held that both categories of employees performed same type of work and carried out same type of duties. The tribunal ordered payment of equal pay retrospectively. The Court upheld the order. On appeal the Court held that deputy agricultural officers and the agricultural officers could not be said to form an identical class who must be given the same pay scales. It was true that respondent was substantially discharging the same type of duties and their place of


\(^{156}\) AIR 1997 SC 7.

work was interchangeable. But the special quality of work which the directly recruited agricultural officers had to put in substantially differed from the quality of work which could be entrusted to respondent. The Court reversed the tribunal.

In *Union of India v. Makhan Chandra Roy*\(^{158}\) the tribunal took the view that the respondent was not entitled to any higher pay-scale only on the principle of equal pay for equal work. That a higher pay-scale given to laboratory assistants both in the Ministry of Defence and Railways could not automatically be given to the respondent as he was a mere matriculate having only five weeks' training in the Central Laboratory of Indore, while other laboratory assistants were having better educational qualification. On the aforesaid finding, the tribunal ought to have dismissed the application. Instead, the tribunal ordered fixation or another pay scale. The Court held the order wrong.

*E. S. I. Corporation v. P. K. Srinivasmurthy*\(^{159}\) was an appeal against the order directing appellant to step up the pay of the first respondent on a par with the second respondent. The Court held that since the respondent did not work as UDC in-charge at any point of time before his promotion as head clerk, he was not entitled to have his pay stepped up on the basis of the pay fixed under Fundamental Rate 22-C in respect of second respondent on his promotion as head clerk. The Court reversed the tribunal.

In *Union of India v. S.K. Sareen*\(^{160}\) the fact show that the respondent was private secretary to the Vice-Chairman of the Tribunal and claimed the scale of pay as drawn by the private secretaries to ministers and judges of the High Court. The matter could be decided only by considering the modes of recruitment, qualifications, responsibilities attached to the offices, promotional opportunities etc. The respondent had not furnished any material in this regard. The tribunal put the burden wrongly on the Government to substantiate the point. On the other hand, it was for the petitioner to substantiate the point by giving materials. In the *State of Madhya Pradesh v. Pramod Bhartiya*,\(^{161}\) the Court held as follows:

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\(^{158}\) AIR 1997 SC 2391.
\(^{159}\) AIR 1997 SC 2983.
\(^{160}\) AIR 1997 SC 3951.
\(^{161}\) AIR 1992 SCW 3142.
….It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish that right to pay, or the plea of discrimination as the case may be.

Since the respondent was absorbed with effect from 1-11-1989 only, there was no justification for allowing him the scale of Rs. 3000-4500 with effect from 7-10-1987. The Court set aside the order of the tribunal and remitted the matter for fresh disposal in accordance with law.

In *Union of India v. Ramgopal Agarval*\(^{162}\) the tribunal allowed the claim primarily on the principal of “equal pay for equal work”. It was not accepted by the Supreme Court since the case did not fall under the category. The nature of work, spear of work, duration of work and other special circumstances should be taken into consideration to apply these principles. Treating unequal to be equal was also discriminatory. The Court held that there was clear distinction in the terms and conditions of service, the nature of work between combatised and non-combatised personnel. The Court reiterated that it was neither a case of “equal pay for equal work” nor a case of discrimination or violation of Articles 14 and 16 of the Constitution. Hence error of law had been committed by the tribunal and thus set aside the order of the tribunal.

### 6.12 Compensation & allowances

In *Raj Bahadur Sharma (deceased) through LR’s v. Union of India*\(^{163}\) the crucial question was whether the respondents justified in depriving the appellant the salary for the period from 20-2-81 to 17-5-88. The tribunal held that a minor punishment imposed by authority could not be interfered with. According to the tribunal the appellant was not entitled to pay and allowances for the period during which he did not work. Since there was no fault on the deceased, to meet the ends of justice the Court directed respondents to pay 50% of the salary and allowances for the period in question to legal representatives.

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162 AIR 1998 SC 783.
163 AIR 1998 SC 2393.
The Supreme Court while dealing with issues relating to compensation and allowances had taken the view that employees are not entitled to claim monetary benefits as of right. It was purely in the discretion of the employer to provide compensation depending upon risk factors. In *Union of India v. Executive officers, Association*\(^\text{164}\) the appeal was directed against the judgment of the tribunal, Guwahati. It held that respondents were entitled to special duty allowance and directed appellants to pay the allowance. That was not accepted by the Court because the allowance was to provide incentive to competent officers belonging North Eastern region. The tribunal was reversed.

The Court interfered with the order of the tribunal in *Rajana v. Union of India*.\(^\text{165}\) Facts show that respondent was a special protection group personnel. He met with an accident before he joined the particular duty. The question was whether he was entitled to the ex-gratia payment, of Rs. 50,000/-. The tribunal rejected appellant’s claim, since injury occurred in a motor accident before he joined actual duty. According to the Court the principle under the Workmen’s Compensation Act for determining whether an accident arose out of and in the course of the employment should be applied. The tribunal was in error in making an unduly strict and narrow construction of the expression used in the circular.

In *Union of India v. B. Prasad, B. S. O.*\(^\text{166}\) appeals involved the issue of entitlement to special allowance in border areas. The view taken by the tribunal was that civilians in defence service were entitled to both allowances. The Court was of view that civilian personnel deployed in border area for support of operational requirement, alone were entitled to double payment, since they were facing imminent hostilities in hilly areas. Those who were deployed in areas of lesser risk were not entitled to double payment.

\(^{164}\) AIR 1995 SC 1746.


\(^{166}\) AIR 1997 SC 1920.
In *Union of India v. Guru Charan Dass*\(^{167}\) the facts show that consequent upon the closure of the Hirakud Project, offer was given to several persons for alternate employment. The respondent was inducted into Dandakarnya Project. He was appointed temporarily as publicity organiser. Since deputation allowance was not paid to him, he approached the tribunal. The tribunal held that his continuance in Hirakund as U.D.C. was on permanent basis and therefore he was entitled to deputation allowance. The Court, on appeal, did not interfere.

In *V. Gangaram v. Regional Joint Director*\(^{168}\) the appellant was appointed as teacher in a private aided school. The appellant went on improving his qualifications and he was given advance increments as and when he acquired the qualifications. Later an order was passed to recover the amounts paid to him on the premise that he was entitled only to two advance increments. The tribunal dismissed the challenge. He was holding the post of junior lecturer which required the M.A. qualification. He was entitled to two additional increments, viz. for acquiring M.A. and M.Ed. degrees. The Court directed that arrears paid prior to 1985 was not to be recovered, and excess amount from 1985 was to be recovered from the pension payable to him. It was directed that installment should be proportionately distributed so as not to cause any undue hardship to the appellant.

The question that arose for determination in *Union of India v. Rabia Bikaner*\(^ {169}\) was whether the widow of a casual labourer in Railway Establishment was entitled to family pension under the 1964 Family Pension Scheme? He had died after six month's service and before appointment to temporary post after screening. The Court held that the view taken by the tribunal denying the pension was wrong.

In *M. V. Srinivasa v. Andhra Pradesh*\(^ {170}\) a common question regarding entitlement of employees serving under a project but not within the project area to get project allowance as well as other amenities arose for consideration. The Government sanctioned project allowance and other amenities to officers and staff who were stationed at the work spot. The tribunal dismissed the claim. The nature of duties discharged by those posted

\(^{167}\) AIR 1997 SC 2605.
\(^{168}\) AIR 1997 SC 2776.
\(^{169}\) AIR 1997 SC 2843.
\(^{170}\) AIR 1997 SC 3008.
within a project area as well as non-availability of several basic amenities of life, the Government would be well within its power to grant some incentives like project allowance and other amenities. The Court did not find any infirmity in the order of the tribunal.

In *K. C. Sharma v. Union of India*\(^\text{171}\) the facts show that the appellants were guards in the Northern Railway and retired during the period between 1980 and 1988. They were affected by a notification which reduced the allowances from 75% to 45% retroactively. They quashed the notifications insofar as it gave retrospective effect to the amendments. The Railway did not carry out the order. The appellants again approached the tribunal. The application was dismissed by the tribunal on the ground of limitation. The Court was of the view that the tribunal ought to have condoned the delay in the filing of the application and the appellants should have been given relief. The appeal was, therefore allowed.

The Court allowed the appeal in *Harkant Hiralal Vohra (dead) by LR’s v. Union of India*\(^\text{172}\) and set aside the order of tribunal which denied four advance increments to the appellant. The tribunal had wrongly dismissed the application. A conjoint reading of relevant documents showed that the appellant was exempted from appearing in the examination not only for the purpose of seniority but also for the purpose of getting four advance increments. The appeal was allowed.

The Supreme Court liberally exercised the extraordinary appellate jurisdiction under article 136 to correct the orders of Central and State Administrative Tribunals. On many occasions the Court interfered and reversed the orders of Tribunals on the ground that they lacked or exceeded the jurisdiction. The Court also indulged when the tribunal erred while interpreting the questions of law. Violation of principles of natural justice is another area in which the Court reversed the decisions of tribunals. Employees very often challenge the defects in promotions, seniority, appointment and regularizations before the Administrative Tribunals. They approach the Supreme Court from every unfavourable order. Most of them are interfered and reversed. Very often it is found that the employer

\(^{171}\) AIR 1997 SC 3588.

\(^{172}\) AIR 1998 SC 3143.
approaches the Supreme Court for getting favourable orders. This practice could be avoided by constituting a well equipped Administrative Tribunals with experts both from administrative and judicial category which could prevent injustice that perpetuates. Such bodies should also strictly comply the guidelines formulated by the Supreme Court.
PART B

APPEALS DIRECTLY FROM ADMINISTRATIVE TRIBUNALS

6.13 Disciplinary committee

The tendency of tribunals to order stay of disciplinary proceedings was criticized by the Supreme Court in many instances. In *Union of India v. A.N. Saxena*[^173^], the appeal was directed against the interim order of stay of disciplinary proceedings. The respondent, Income tax officer, was charged for assessing in an irregular manner designed to confer undue benefit on the assessee. The tribunal stayed the proceedings. The Court expressed astonishment at the impugned order passed by the tribunal and held that it ought to have been very careful before granting stay in a disciplinary proceeding.

In *Profulla Chandra Mohapatra v. Orissa*[^174^] the appellant was nizarat officer and was involved in the case of missing of certain amount from office. Disciplinary proceeding was initiated against him for the charges of misappropriation of cash and negligence in performance of duty. A criminal case under section 409, I.P.C was instituted against him, but the appellant was acquitted by trial court. The appellant was reinstated and later retired from service. A fresh disciplinary proceeding was initiated. He approached the tribunal. The tribunal refused to quash the disciplinary proceedings. The Court did not find any justification for restarting the proceedings and reversed the tribunal.

The question that arose in *Union of India v. K.K.Dhawan*[^175^] was whether an authority enjoyed immunity from disciplinary proceedings with respect to in exercise of quasi-judicial functions. The respondent was an income-tax officer. The charge clearly mentioned that nine assessments were completed in irregular manner, in undue haste, and apparently with a view to conferring undue favour upon the assessee. The respondent preferred an application before the tribunal. The tribunal held that action taken by the officer was quasi-judicial and should not have formed the basis of disciplinary action. The Court did not agree with the view and the appeal was allowed.

[^175^]: AIR 1993 SC 1478.
In *Haryan v. Hariram Yaduv*\(^\text{176}\) a suspension order pending disciplinary proceedings was quashed on the score that it did not mention the satisfaction of the Governor. The Court did not agree and held that the mere fact that the impugned order did not mention that the Governor was satisfied did not render the order invalid. The appeal was allowed.

The order of suspension was challenged in *Madhya Pradesh v. L. P Thiwari*\(^\text{177}\) on the ground that disciplinary proceedings were initiated after the expiry of ninety days and therefore suspension was without jurisdiction. In fact the respondent had evaded the charge sheet for ninety days. The tribunal set aside the order of suspension and thus the special leave appeal was preferred. The respondent had not given his address or whereabouts and thus evaded service of the charge sheet. Supreme Court observed that non service *per se* did not render the initiation proceedings against the delinquent officer illegal after the expiry of ninety days. The order was set aside.

The tribunal quashed the charge memo in *Secretary to Govt. of T.N. v. D. Subramanian Rajadevan*\(^\text{178}\) on the ground that charges were not formulated by the disciplinary authority as mandated by Rule 17 of the Civil Service Rules. The issue was whether Civil Service Rules or Disciplinary Proceedings Rules, which was applicable to cases of corruption, was the provision to be followed. The Supreme Court observed that it being a case of corruption, Rule 17 of Civil Service Rules did not apply to the matter.

In *Karnataka v. V.B. Hiregowdar*\(^\text{179}\) respondent was reduced in rank. Tribunal dismissed the application on merits upholding the order. He sought review of the order on the ground in *Union of India v. Mohd. Ramzan Khan*,\(^\text{180}\) the Supreme Court held that supply of the report of the Inquiry officer was mandatory. The decision was later to the decision of the tribunal. However, the tribunal reviewed the decision and quashed the punishment imposed. On appeal the Court pointed out that no review was possible on the

\(^{176}\) AIR 1994 SC 1262.  
\(^{177}\) AIR 1994 SC 2 175.  
\(^{178}\) AIR 1996 SC 2634.  
\(^{179}\) AIR 1997 SC 9.  
\(^{180}\) AIR 1991 SC 471.
ground that a later decision of a superior court had taken a contrary view. The Court reversed the tribunal.

In *S. K. Vaish v. Union of India* 181 question raised was whether appellant had crossed the efficiency bar. The tribunal had found that the DPC had considered the case and held him not fit to cross efficiency bar. The Court on appeal held that appellant was facing disciplinary proceedings, and the question of crossing efficiency bar became relevant only if he was reinstated. The Court upheld the tribunal.

In *Govt. of Andhra Pradesh v. C. Muralidhar* 182 the facts show that respondent was motor vehicle inspector was prosecuted under the Prevention of Corruption Act, 1947 for holding assets disproportionate to his known sources of income. Disciplinary proceedings were also initiated against him. The tribunal observed that if the criminal case had already been disposed of and the judgment had become final, a departmental enquiry cannot be held for the very same charge. Since other charges such as acquiring the assets without permission of the department were not part of the criminal case, tribunal directed the authorities to proceed with those charges. The Supreme Court allowed the appeal and set aside the order of the tribunal. Since this matter had been pending for a long time, the disciplinary authority was directed to conclude the disciplinary proceedings preferably within a period of one year.

In *Government of Tamil Nadu v. K.N. Ratnavelu* 183 the respondent’s name was not included in the panel for promotion. The Government had considered his case including the fact that disciplinary proceedings were pending against him. The tribunal allowed the petition and ordered inclusion of his name in the panel for promotion. The respondent had only a right to be considered for promotion and the right was not denied. It was held that tribunal committed the mistake of not reading the whole of the counter affidavit. The order was set a side.

182 AIR 1997 SC 3005.
183 AIR 1998 SC 3037.
6.14 Inquiry

Interference by tribunals with inquiry reports and reversing of the order made by the authorities by reappreciating the evidence was considered by the Supreme Court. In many instances the Court set aside the order passed by the tribunals. The question involved in *Union of India v. V.E. Bashyan*\(^ {184}\) was whether failure to supply a copy of report of inquiry would constitute violation of article 311 (2). The order was set aside by the tribunal on this score. The order was challenged before the Supreme Court. The Court observed that the matter required careful consideration and have referred the matter to a larger bench.

The Supreme Court affirmed that the tribunal could not sit as a court of appeal over a decision based on the findings of inquiry authority in *Govt. of Tamil Nadu v. A. Rajapandian.*\(^ {185}\) The tribunal quashed the dismissal order by reappreciating the evidence.

In the *General Manager, Telephones, Ahmedabad v. V.G. Desai*\(^ {186}\) the respondent was a telephone operator and was promoted as an inspector. Later when he was transferred, he went on leave and sought retirement on medical grounds. Since vigilance case was pending, his request was not accepted. After departmental inquiry punishment of censure was imposed on him. The tribunal was of view that after the award of punishment there was no reason why authorities could not have decided on the request for retirement. Tribunal also had given the benefits to fix pension under Rule 48A as if he had retired on June 1972 on the basis of his qualifying service. On appeal the Court held that Rule 48(A) was inserted by notification in 1978 with effect from 1977. If respondent was treated to have been retired on 1972 he could not claim pension on the basis of Rule 48(A) which was not in existence at that time. The Court allowed the appeal.

In *Rajasthan v. B. K. Meena*\(^ {187}\) the order of the tribunal which stayed the departmental inquiry till conclusion of the criminal trial was challenged. The Court held that there was no legal bar for both proceedings to go on simultaneously. The staying of

\(^{184}\) AIR 1988 SC 1000.  
\(^{185}\) AIR 1995 SC 561.  
\(^{186}\) AIR 1996 SC 2062.  
disciplinary proceedings, was a matter to be determined having regard to the facts and circumstances of a given case. No hard and fast rules could be enunciated in that behalf. A valid ground for staying the disciplinary proceedings was that defence of the employee in the criminal case could be prejudiced.

The approach and objective in criminal proceedings and disciplinary proceedings are distinct. In disciplinary proceedings, the question is whether respondent is guilty of such conduct which would merit his removal from service or a lesser punishment. In the criminal proceedings the question is whether offences under Prevention of Corruption Act were established and what sentence be imposed upon him. The standard of proof, mode of inquiry and rules governing inquiry differ. For the above reasons, Court held that the tribunal was in error in staying the disciplinary proceedings pending criminal proceedings.

In *Secretary to Government v. A. C. J. Britto*[^188] respondent was dismissed from service. Respondent challenged his dismissal before the tribunal. The tribunal set aside the order of dismissal. The Court was of the opinion that the inquiry officer was right in rejecting the request for certain documents because the respondent had not suffered any injury thereby. The Court allowed the appeal, and set aside the judgment.

*Narayan Dattatraya Ramteerthakhar v. Maharashtra*[^189] the Court did not find any illegality in the order passed by the tribunal warranting interference, since the finding was that the petitioner had committed misappropriation of public money and his removal from service was appropriate. According to the Court the preliminary inquiry had nothing to do with regular inquiry conducted after the issue of charge-sheet. The former was to assess whether disciplinary proceedings should be initiated against the appellant.

### 6.15 Malafide act

Transfers based on governmental norms or guidelines are seldom interfered by apex court. Violation of law or malafide acts are seriously viewed by the Court. In

[^188]: AIR 1997 SC 1393.
[^189]: AIR 1997 SC 2148.
Rajendra Roy v. Union of India the Court held that unless the order was passed mala
dife or in violation of the rules and guidelines for transfer without any proper
justification, tribunal should not interfere with an order of transfer. The Court was in
agreement with the CAT that the appellant had not been able to lay any firm foundation
to substantiate the case of malice or malafides against the respondents in passing the
impugned order of transfer. The court was unable to draw any inference of mala fide
action transferring the appellant.

In N.K. Singh v. Union of India the appellant was transferred from CBI to BSF.
The appellant filed an application before Central Administrative Tribunal challenging the
transfer on the ground of malafides. The appellant urged that transfer from CBI was
prejudicial to public interest since it was with a view to scuttling a sensitive investigation.
The appellant was in charge of special team investigating the St. Kitts affair wherein
there was allegation of forged documents and involvement of persons having political
patronage. The tribunal rejected appellant’s application without even requiring counter
affidavits by respondent. This indeed was unusual when appellant had alleged malafides
on the basis of certain facts. The tribunal did not appreciate permissible extent of scrutiny
in such a matter and the grounds on which a transfer was judicially reviewable. The Court
however, dismissed the appeal stating that his personal rights were unaffected by the
transfer. According to Court the litigation was ill advised.

Rajasthan v. Gurcharan Singh involved appeals directed against the judgment
of the tribunal. The respondents who were employees of Rajasthan Government were
transferred on deputation to the Pias Construction Board. The State by an order denied
certain allowance paid to them earlier. The tribunal quashed the order of denial of
allowance holding that these orders were discriminatory and violative of the principles of
natural justice and articles 14 and 15. The Court, on appeal, did not interfere.

190 AIR 1993 SC1236.
191 AIR 1995 SC 423.
192 AIR 1990 SC 1760.
In *Union of India v. N.P.Thomas* the correctness of the order of Central Administrative Tribunal was challenged. The respondent was a Kerala based permanent employee in the department of Telecommunication. The tribunal quashed the order of transfer from Kerala Circle to another Circle. The Court, on appeal held the transfer not violative of any statutory rule. The respondent had no vested right to remain in Kerala. The order was set aside.

In *Laxmi Narain Mehar v. Union of India* petitioner was transferred from Kota to Mumbai on administrative grounds. Though he might have been transferred on compassionate grounds, in view of the express indication in the order giving reasons for the transfer, i.e. need to have experienced staff at the respective places, the transfer order could be said to be arbitrary. It was true that as far as possible, the convenience of the officer belonging to Scheduled Castes and Scheduled Tribes might be considered and be posted near home town, but the authority had power to transfer him when the administrative exigencies arose. The Court upheld the order.

### 6.16 Punishments

The Supreme Court exercised its special leave jurisdiction in many cases to correct the orders of the administrative tribunals which reversed or reduced the gravity of punishment imposed by government based on report of disciplinary committee. In *Union of India v. Parmananda* the question was whether the tribunal had the power to modify the penalty awarded when the findings recorded as to his misdemeanor was supported by evidence. The Union of India had appealed for enhancement of penalty. It was held that he was a party to fraudulent act and had thus proved himself unbecoming and unworthy to hold the post. The Court held that the jurisdiction of the tribunal to interfere in disciplinary matters or punishment was not similar to an appellate forum. The tribunal had no power to interfere with the findings of inquiry officer when they were supported by evidence or not perverse. The adequacy of penalty unless it was malafide was not a matter for the tribunal to concern with. The Court reversed the tribunal.

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193 AIR 1993 SC 1605.
194 AIR 1997 SC 1347.
195 AIR 1989 SC 1185.
In *P. Anbalagan v. District Educational Officer*\(^\text{196}\) the appellant was a noon-meal organizer in a government high school. He had to face departmental inquiry for misappropriation of clothes meant for school children. An order of punishment of dismissal was passed against him after a departmental inquiry. The tribunal upheld the order of punishment. Before the Supreme Court, the appellant urged that he was not afforded proper opportunity to meet the charge. According to the Court the action against appellant seemed to be well deserved requiring no interference.

The main question involved in *B.C. Chaturvedi v. Union of India*\(^\text{197}\) was whether a dismissal order was invalid for non-supply of inquiry report. The appellant was income tax officer and was charged for possessing of property disproportionate to his known source of income. After giving reasonable opportunity and conducting inquiry he was dismissed from service. The tribunal after appreciating the evidence upheld all the charges, but substituted the order of dismissal by one for compulsory retirement. It is the law that punishing authority alone had the power and jurisdiction to impose punishment. The tribunal in this case had found that the appellant had brilliant academic record and was successful in the competitive examination and had been selected as class 1 officer. He had earned promotion after disciplinary proceedings was initiated. That it would be difficult to get a new job after fifty years was the reason given for substituting the punishment of dismissal from service to one of compulsory retirement. Supreme Court held that the reasons given were wholly unsupportable. In view of the gravity of the misconduct the interference with the imposition of lesser punishment was held to be wholly unwarranted.

In *Tamil Nadu v. S. Subramanian*\(^\text{198}\) the respondent, was a deputy tahasildar and was charged for accepting illegal gratification for effecting mutation in revenue records. The disciplinary authority came to the conclusion that the charge was proved and the respondent was removed from service. The tribunal appreciated the evidence and came to the conclusion that the charge had not been proved. It was settled law that the tribunal had only power of judicial review and order was reversed.

\(^{196}\) AIR 1994 SC 1276.  
\(^{197}\) AIR 1996 SC 484.  
\(^{198}\) AIR 1996 SC 1232.
The Court in *Shri. Najamal Hussain Mehandi v. Maharashtra*\(^{199}\) castigated high police officials for illegally harassing a honest police officer to protect the interest of a wealthy hotelier. The appeal was directed against the order of the tribunal wherein the legality of government order transferring appellant and direction to vacate the quarter was under challenge. The appellant apprehending dispossess from the quarter challenged the order on the grounds of malafides. The tribunal without going into the merits of the case dismissed the application. The Court directed the Government to enter the condemnation in the respective character-rolls of the senior police officers. The Court did not interfere with the order of tribunal since three years had elapsed after the order of transfer. But the Court recommended the Government to provide a residential quarter to the appellant near the place of his new posting.

In *Union Territory, Chandigarh v. Mohinder Singh*\(^{200}\) a sub-inspector of police was dismissed from service by the senior superintendent of police. Inquiry was dispensed with invoking proviso (b) to cl (2) of article 311.\(^{201}\) His appeal was dismissed by the Inspector General of Police. The tribunal found that the ground of dispensation to be unsustainable. The tribunal quashed the order of dismissal and ordered reinstatement. From the facts and circumstances of the case the Court found that power of dispensation was exercised on the ground that witnesses were not willing to depose against respondent. The Court reversed the tribunal holding that it was a valid ground.

In *Krishnakant Raghunath Bibhavnekar v. Maharashtra*\(^{202}\) the question involved was whether the civil servant when acquitted in a prosecution was entitled to get all benefits he would have received during the period of suspension. The tribunal took the view that all benefits had to be given. On appeal, the Supreme Court held that such a case was possible only when the acquittal was based on a positive finding that the accused had not committed the offence. In this case, it was held that the appropriate authority had power to limit such benefits.

\(^{199}\) AIR 1996 SC 2691.

\(^{200}\) AIR 1997 SC 1201.

\(^{201}\) Article 311 cl(2) proviso(b) reads thus “…..where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing it is not reasonably practicable to hold such inquiry.”

\(^{202}\) AIR 1997 SC 1434.
In *Govt. of A.P. v. B. Ashok Kumar*\(^{203}\) the Court reiterated that award of penalty was a discretionary power of the disciplinary authority to be exercised taking into consideration the magnitude of the misconduct imputed and the evidence in support thereof. The respondent, a police officer, was charged for demanding and accepting illegal gratification for not registering a complaint against whom criminal prosecution was to be initiated. The tribunal accepted that the charge had been proved, but took the view that Government should reconsider the penalty. The Court held that the observation of the tribunal that it shook its conscience was unsustainable. The Court in *B.C. Chaturvedi v. Union of India*\(^{204}\) held that the tribunal had the power to direct the punishment imposed by the disciplinary committee.

In *Secretary to Government v. K. Munnappan*\(^{205}\) the respondent was suspended and the order was challenged before the tribunal. It held that Rule 17 of the Tamil Nadu Civil Services (CCA), Rules did not empower the appellant to suspend the respondent pending such an inquiry and, therefore, the action taken was illegal. The question before the Court was whether the view taken by the tribunal was correct in law? Rule 17(e) (1) postulated that an officer could be kept under suspension where inquiry into grave charges was contemplated. The Court held that the view of the tribunal was erroneous. Pendency of disciplinary proceeding was not a precondition to suspend an officer.

In *Mohammed Rahmat Ali v. Inspector of Registration and Stamps, Andhra Pradesh*\(^{206}\) the facts show that appellant was initially convicted by the trial Court but the High Court acquitted him. In the meanwhile appellant was dismissed from service. The tribunal set aside the order and directed the government to consider his promotion according to rules. Since the appellant had not passed the departmental tests, he was not considered for promotion. He retired on attaining the age of superannuation. He was entitled to be considered for promotion according to rules from the date on which his immediate junior was promoted. But he was not promoted as he had not passed the registration and accounts tests. That order was challenged before the tribunal. The

\(^{203}\) AIR 1997 SC 2447.
\(^{204}\) AIR 1995 SCW 4374.
\(^{205}\) AIR 1997 SC 2559.
\(^{206}\) AIR 1997 SC 2684.
petition was dismissed, on the ground that he did not pass the test. However, the State Government had accepted employees, who were formerly in the Hyderabad service, from passing the tests if they had attained the age of 45. In view of the above exemption he was entitled to be considered for promotion. Thus the Court declared the view of the tribunal as not correct in law.

The order of Tamil Nadu Administrative Tribunal was questioned in *Tamil Nadu v. M. Natarajan*[^207^]. The respondent had misbehaved with ladies and outraged their modesty by taking them in lock up in the earlier hours, i.e., at 02.00 am. When two neighbours intervened, they were beaten. Inquiry was held and a criminal case was also instituted against the respondent. Due to his non-appearance, the inquiry officer was constrained to record the findings and recommended imposition of the punishment of stoppage of three increments with cumulative effect. The competent authority imposed the punishment of removal from service. The tribunal allowed the application on the ground that the disciplinary authority did not consider the evidence to justify the findings and violated the principles of natural justice. But the Court was of view that no procedural illegality was committed in conducting the inquiry. On the facts and circumstances of the case, the Court set aside the order of removal from service. The disciplinary authority was directed to impose the punishment of stoppage of four increments with cumulative effect.

Order passed by the Central Administrative Tribunal, New Delhi was challenged in *Union of India v. Ramesh Kumar*[^208^]. The respondent, while serving as Inspector in Food & Civil Supplies Department of the Delhi Administration, was arrested by anti-corruption branch for accepting illegal gratification. Consequently respondent was placed under suspension. The trial Court convicted him under section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo imprisonment. Later the Disciplinary Authority dismissed him from service. The High Court suspended the execution of the sentence pending the appeal. The respondent filed an application before tribunal.

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[^207^]: AIR 1997 SC 3120.
[^208^]: AIR 1997 SC 3531.
The tribunal allowed the application, on the ground that by suspension of the execution of sentence the conviction was not in existence and the dismissal order based on it also lost efficacy and the respondent was to be treated as under suspension till the final judgment of the High Court. The Court held that the conviction continued and was not obliterated. Hence the order of dismissal based on it also was valid the tribunal was rightly reversed.

In *Govt. of Tamil Nadu v. K.N. Ramamurthy*\(^{209}\) the order of the tribunal setting aside the punishment was challenged. The respondent was Deputy Commercial Tax Officer. Displinary proceedings were taken against him and punishment of stoppage of increment for three years with cumulative effect was imposed. The Court held that the tribunal had no jurisdiction to go into the correctness of the charges, and could not arrogate the functions of the disciplinary authority.

### 6.17 Termination of service

The attempt of the Court was to distinguish termination of service from dismissal under article 311. On many occasions the Court interfered with orders passed by tribunals. The termination order of an assistant surgeon grade I was dealt with in *Dr. Mrs. Sumati P. Shere v. Union of India.*\(^{210}\) The authorities were not satisfied with the performance of the appellant and reappointment after the expiry of the term was not recommended. Since the removal was not by way of penalty, the tribunal dismissed the application. But the Court observed that timely communication of assessment of work in such cases might have put the employee on the right track. Without any such communication it would be arbitrary to give movement order to the employee on the ground of unsuitability. The Court allowed the appeal setting aside the impugned order terminating the service of the appellant.

The Court did not find any error in the order of the tribunal in *Union of India v. Basantlal*\(^{211}\). The tribunal held that the applicants before them had worked for more than one hundred and twenty days and would be deemed to have acquired temporary status.

\(^{209}\) AIR 1997 SC 3571.
\(^{210}\) AIR 1989 SC 1431.
\(^{211}\) AIR 1993 SC 188.
They had been given casual labour cards. The termination of service without giving
notice was in violation of the provisions of Rule 2304 of the Indian Railway
Establishment Manual. The tribunal thus set aside the termination orders and directed
reinstatement.

In *Andhra Pradesh v. Rahimuddin Kamal* \(^{212}\) appeal was filed by the State of
Andhra Pradesh challenging the legality and correctness of the order passed by the State
Administrative Tribunal. According to the appellant, the respondent was absent for more
than five years. The only question that fell for consideration was whether the tribunal was
right in setting aside the order of removal solely on the ground that the Government did
not consult the Vigilance Commission. The view of the Court was that the word "shall"
appearing in Clause (2) of Rule 4 was not mandatory and consequently non-consultation
would not render the order of illegal. Thus the order was set aside. The interpretation of
the word (shall) given by the Court could not be accepted.

**6.18 Compulsory retirement**

The Supreme Court substituted the order of dismissal of a police officer with one
of compulsory retirement in *Director General of Police v. G. Dasayan*.\(^{213}\) The respondent
was a police constable and was charged for demanding jewellery under coercion. Inquiry
was held by deputy superintendent of police and the disciplinary authority imposed the
punishment of dismissal from service. The order of dismissal was set aside by the
tribunal on the ground that inquiry report was not furnished to the respondent. The Court
found that punishment of compulsory retirement would meet the ends of justice, and
altered the order.

The Supreme Court dismissed the appeal in *Jayanthkumar Sinha v. Union of
India*\(^ {214}\) and held that the tribunal rightly came to the conclusion that the order of
compulsory retirement was not ordinarily open to challenge. In *Union of India v. Shaik
Ali*\(^ {215}\) the tribunal by its order held that the Divisional Railway Manager Railway

\(^{212}\) AIR 1997 SC 947.
\(^{213}\) AIR 1998 SC 2265.
\(^{214}\) AIR 1989 SC 72.
\(^{215}\) AIR 1990 SC 450.
Secunderabad was not competent to pass the order of compulsory retirement. The Court upheld the order on another ground, viz. that impugned order of premature retirement was punitive in nature and was passed in flagrant violation of the principles of natural justice.

In *Madhya Pradesh v. Hari Datt Sharma*\(^{216}\) the case was that since initially the respondent was appointed for the purpose of teaching in an educational institution run by the government, he was entitled to continue in service up to the age of sixty, although later he was holding in non teaching post. The tribunal allowed the claim of the respondent to continue in service up to the age of sixty years. The Court examined the provisions closely and was of view that the duties were supervisory in nature and not teaching and set aside the order of tribunal.

In *Union of India v. P. Seth*\(^{217}\) the government compulsorily retired the respondent at the age of 50. The tribunal upheld the challenge on the ground that certain adverse remarks made in the confidential report had not been communicated to him. He has contended that earlier adverse remarks in connection with his integrity stood eclipsed by subsequent promotion. The Court held that an order of compulsory retirement was not subject to this rule of *audi alteram partem* since the order of was not penal in nature. The tribunal was reversed.

It is submitted that the view of the Court is wrong. It is the law that an order of compulsory retirement should be based on some material. Here there was no material for the order to stand because the earlier adverse remarks had been obliterated by later promotion, and new adverse remarks could not be acted upon owing to nondisclosure to the party. The Court erred in treating the challenge as mere violation of principles of natural justice.

The Supreme Court also discussed the aspect of compulsory retirement and interfered with the order in *S. Ramachandra Raju v. Orissa*.\(^{218}\) The challenge was dismissed by the tribunal. It did not call for his service record. The Court opined that for

\(^{216}\) AIR 1993 SC 1312.
\(^{217}\) AIR 1994 SC 1261.
\(^{218}\) AIR 1995 SC 111.
compulsory retirement the government should peruse the entire record of service and thus remanded the case.

In K. Kandaswamy v. Union of India\textsuperscript{219} appeal arose from the order of Central Administrative Tribunal, Madras. The government had decided to compulsory retire appellant from service. The tribunal did not interfere with the government order. The question before the Court was whether the government order was justified in doubting integrity of the officer, and whether it was based on any material. Government through appropriate committee reached the conclusion that in view of doubtful integrity it would not be desirable in public interest to retain appellant in service. The Court was of the view that decision could not be held to be arbitrary, or based on any material and hence did not interfere with the order.

The respondent was ordered by the government to compulsorily retire from service in Union of India v. Ajoy Kumar Patnaik\textsuperscript{220} on charge of doubtful integrity and in public interest. The tribunal set aside the order on the ground that there was no adverse entry in the character rolls on “doubtful integrity” of the respondent. By interfering with the order the Court held that they were concerned with the integrity of the officer in the decisionmaking process. When the authorities had sufficient material to doubt the integrity, that authority was the best person to form an opinion whether continuance of such officer was in the public interest.

The Government compulsorily retired the respondent in Orissa v. Ram Chandra das\textsuperscript{221} in public interest. Rule 71 (a) of Orissa Service Code empowered the Government to compulsory retire and it was not a punishment. He was entitled to all the pensionary benefits. But the tribunal set aside the order. Supreme Court held that the tribunal was wholly unjustified in interfering with the decision.

In Union of India v. Major R. N. Mathur\textsuperscript{222} the appeal arose from the order of the Central Administrative Tribunal, Jaipur. Admittedly, the respondent was granted, a

\textsuperscript{219} AIR 1996 SC 277.
\textsuperscript{220} AIR 1996 SC 280.
\textsuperscript{221} AIR 1996 SC 2436.
\textsuperscript{222} AIR 1997 SC 2569.
permanent NCC Commission. Clause (5) of the appointment letter read that the officers, if otherwise not found unfit, would be eligible to serve till 55 years. It was clear that the appointment was made fixing the age of superannuation of 55 years. The Court held that the tribunal was in error in directing the appellants to retain the respondent till 57 years.

In *Orissa v. Sadhu Charan Pradhan*\(^{223}\) the Orissa Administrative Tribunal held that the respondent, who was a mason, could be in service till the age of 60 years and not 58 years. The Court after considering the relevant provisions came to the conclusion that an artisan in the circumstances should retire on his completion of 58 years of age.

The Court did not interfere in the order of the tribunal in *Ministry of Finance v. S B Ramesh*\(^{224}\). The tribunal considered the evidence and found that the findings were based on presumptions only. There was no evidence to establish adulterous life. It set aside the compulsory retirement order since departmental inquiry was unsatisfactory. According to the Court the findings were justified.

The dispute in *Union on India v. V.K Balakrishna Nambiar*\(^{225}\) related to death cum retirement gratuity. The respondent had retained the government accommodation after his retirement. The tribunal directed the appellants to pay the amount of gratuity with interest. The Court modified the order by deleting the interest portion since the respondent kept the government accommodation.

The order of compulsory retirement\(^{226}\) was confirmed by CAT, Delhi and was challenged before the Court. The Court observed that appellant was a very efficient officer who conducted many raids while working as director of Anti Evasion Wing and they had became the enemy of many. The order was held to be vindictive by the Court and the order was set a side. Except a few, most of the cases dealing with compulsory retirement were reversed by the Supreme Court. Though the Court could not lay down any hard and fast rule, their should be some uniformity in determining such issues.

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223 AIR 1997 SC 3533.
225 AIR 1998 SC 2958.
6.19 Pension and Retirement Benefits

In *Secretary to the Government, Harijan and Tribal Welfare Department, Bhuvaneswar v. Nityananda Pati* 227 the Court was not satisfied with the judgment of the tribunal. The adverse entries against the respondent were not communicated for the purpose of his early retirement. The tribunal held that the non-communication of adverse entries vitiated the order of retirement. According to the court it appears that the respondent was subjected to several departmental enquiries from time to time and had been under suspension for more than nine years and large sum of money were recovered from him. The Court found that the tribunal was not justified in interfering with the impugned order of the retirement of the respondent.

The question involved in *Union of India v. All India Service* 228 was whether the members of all India services, who had retired prior to 1973, were entitled to payment of gratuity as per the notification of 1975. The appeal was against the decision of the Central Administrative Tribunal declaring that the rule 28 (6) of the All India Services (death-cum-retirement benefits) Rules, 1958 insofar as it tended to restrict pensioners the retirement benefits to which they were entitled on the date of the retirement was violative of articles 16 of the Constitution. The order had further directed that all members of all India services would be entitled to liberalized pensionary benefits including gratuity under the notification irrespective of whether they had retired prior to 1973 or not. The Court held that the tribunal was in error in holding that the gratuity was payable to those who had retired prior to 1973. The Court reversed the tribunal.

Interpretation of Rule 39 (5) of the Leave Rules was in issue in *K.I. Thakkar v. The Chief Commissioner of Income Tax, Gujarat*. 229 The Supreme Court dismissed the appeal stating that the view taken by the tribunal was correct. For calculating the benefit for 180 days referred to in the Rule, deduction of pension was not taken into account and

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227 AIR 1993 SC 383.
228 AIR 1988 SC 501.
229 AIR 1988 SC 1027.
only in respect of half pay leave period of pension was deductible. The Court upheld the order.

The Supreme Court held that there was no scope for interference with the order of Karnataka Administrative Tribunal in *Karnataka v. K.Vasudeva Mayya*.\(^{230}\) The tribunal granted the benefit of revised pensionary rules to the respondents.

Reversion of appellant from the post of director of fisheries to joint director was based on the policy decision of the government. The Court held that his reversion was perfectly legal and valid. The appellants were directed to pay pensionary benefits as if he voluntarily retired as director.\(^{231}\)

The Supreme Court could see no ground to interfere with the findings of fact reached by the departmental authorities and agreed with the reasoning and the conclusions reached by the tribunal in *Sita Ram Yadava v. Union of India*.\(^{232}\) CAT upheld the order of President of India under Rule 9 of Central Civil Service (pension) Rules, withholding the entire monthly pension and also denying the death-cum retirement gratuity.

In *Himachal Pradesh Horticultural Produce Marketing and Processing Corporation (HPMC) v. Suman Hehari Sharma*\(^{233}\) the tribunal held that under para 5 of the bye-law the employee had a right to retire after giving three months notice and there was no question of acceptance of such request by HPMC. The Supreme Court held that the view taken was incorrect.

*S. R. Bhanrale v. Union of India*\(^{234}\) was rather an unfortunate case. The Union of India, which was under statutory obligation to settle and decide retiral benefits failed to discharge the obligation. The tribunal rejected the application and awarded interest on delayed payment of death cum-retirement gratuity and G.P.F. The Court held that it was improper on the part of the Union of India to plead the bar of limitation against claims of

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\(^{230}\) AIR 1995 SC 126.


\(^{232}\) AIR 1996 SC 920.

\(^{233}\) AIR 1996 SC 1353.

\(^{234}\) AIR 1997 SC 27.
The appellant, who had served the department for almost forty years before his superannuation, was made to run from pillar to post to get his legitimate dues. The Court directed the Union of India to pay a sum of Rs. two lakhs towards interest, compensation, litigation expenses etc. for the amount wrongly withheld from appellant for more than twelve years within two months. The Court set aside the order of the tribunal.

In *Govt. of Tamil Nadu. v. K. Jayaraman* the government servant was required to put in thirty years of qualifying service for pensionary benefits. The rules were amended in 1972 providing for compulsory retirement. The respondent voluntarily retired on March 20, 1970. The tribunal held that he was entitled to pension on completing 25 years of service applying the amended rule retrospectively. The respondent had rendered two years of temporary service and there was a short-fall of three years to complete thirty years. The Court directed the Government to consider whether he was eligible in accordance with appropriate procedure to pensionary benefits or relaxation might be given and pass appropriate orders.

The order of the tribunal was set aside in *Union of India v. A. J. Fabian*. The tribunal in the impugned order, had allowed the application. The Pension Scheme having been formulated and options having been given to the retired employees. Since the employees failed to avail the option they were not further entitled to come back for the benefit of pension. The Court held that it was not violative of article 14 of the Constitution. Anomally in fixing pension and other retirement benefits were often brought before the Administrative Tribunals. Since the decisions effect the employees, they approach the Supreme Court for interference.

### 6.20 Remands

Sometimes tribunal fails to decide relevant issues or decides them on the basis of wrong interpretation of law involved. In such cases the Court lays down the law and remands the case for fresh disposal according to law. In *Chandigarh Administration v.*

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235 AIR 1997 SC 1332.
236 AIR 1997 SC 1921.
Ajit Singh\textsuperscript{237} the respondent was directed to retire at the age of 58 years. The order of Chandigarh Administration was challenged before the tribunal on the ground that respondent was a 'workman' under Fundamental Rules 56(b) and his retirement could occur on completion of 60 years. Tribunal assumed that all employees working in an industrial or work charged establishment was qualified as workman within the meaning of R. 56 (b) of Fundamental Rules so as to get the benefit of retirement on completion of 60 years unlike other government employees whose age of retirement was 58 years. On the scope of clause (b) of the Fundamental Rules the Court held that the nature of work was to be construed with reference to the Note appended to the Rules. The Note says that a workman who is an artisan employed on a monthly rate of pay in an industrial or work charged establishment qualified for the purpose of Cl. (b). It did not matter whether the workman was skilled or semi-skilled or unskilled artisan. All artisans, who are workmen, whether skilled or otherwise, qualify for the benefit of Cl. (b), provided they are employed on a monthly rate of pay in an industrial or work charged establishment. However, he must be both workman and an artisan of some kind. Whether the employee in question was both workman and an artisan was not decided. The Court allowed the appeal and remanded the matter.

In Union of India v. Rajendra Sharma\textsuperscript{238} the facts disclose that respondent was a causal labourer (peon) in the postal department. His services were terminated in 1988. He approached the tribunal against the order. He claimed three reliefs: he must be paid even for intervening saturdays, sundays and holidays at the same rate at which he was paid on working days; termination of his service without complying with the requirements of section 25 F of Industrial Disputes Act was void; and his service must be regularized. The tribunal granted all the three reliefs. The Court observed that having regard to the importance of issues involved it would have been better if the tribunal had discussed the issues on merits. The order was set aside, and matter was remanded.

The question whether secretary of panchayat was a government servant amenable to the jurisdiction was considered in R.N.A. Britto v. Chief Executive Officer.\textsuperscript{239} The

\textsuperscript{237} AIR 1992 SC 1586.
\textsuperscript{238} AIR 1993 SC 1317.
\textsuperscript{239} AIR 1995 SC 1636.
tribunal rejected the application on the ground that it had no jurisdiction, since the
appellant was not in civil service of the state. The Court held that panchayat secretary
was government servant and remanded the case.

In *M R Gupta v. Union of India* 240 the appellant joined state service in 1967 and
joined railways in 1978. He claimed re fixation of his pay. Appellants claim was rejected.
He filed another application before the tribunal in1987 for fixation of pay. The tribunal
held that initial pay fixation was in 1978 and the matter was barred by time. The Court
on appeal held that appellant’s pay fixation was not in accordance with the rules and it
was a continuing wrong against him. That gave rise to a recurring cause of action when
he was paid salary every month. The claim to be paid the correct salary was a right which
subsisted during the entire tenure of service. The Court remanded the matter.

In *Tamil Nadu v. Thiru K.V. Perumal*241 the respondent was removed from
service. The order of removal was challenged before the tribunal. The tribunal set a side
the order. On appeal the Court found that the tribunal had wrongly appreciated evidence.
The Court set a side the order and remanded the matter.

In *Madhya Pradesh v. Sadashiv Zamindar*242 the facts disclose that respondent
was an upper division teacher and claimed the status as a lecturer. Late after retirement
respondent claimed arrears before the tribunal. Initially, the tribunal dismissed the
petition on the ground that claim was belated. Subsequently, the review petition was
allowed on merits. According to the Court in view of the fact that the claim was not
adjudicated on merits in the first instance, the tribunal should have gone into the merits
by giving opportunity to the State. Hence the matter was remanded.

In *H.P. Housing Board v. Om Pal* 243 the respondent’s were terminated of
services, without complying the requirements of the said Act. The respondent claimed
that the appellant was an ‘industry’. The tribunal ordered regularization. The Court found
that the tribunal had given directions without examining the legality of the termination

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240 AIR 1996 SC 669.
241 AIR 1996 SC 2474.
242 AIR 1997 SC 115.
243 AIR 1997 SC 2685.
order. The order was set aside and the case remitted for consideration of the question regarding validity of the termination order. The Supreme Court remands many cases for fresh disposal with a view to lessen its burden. Such a procedure will affect the employees by getting delayed justice which eventually is a denied justice.