

PERERA AND NINE OTHERS
v.
MONETARY BOARD OF THE CENTRAL BANK OF SRI LANKA
& TWENTY-TWO OTHERS

SUPREME COURT
AMERASINGHE, J.
WADUGODAPITIYA, J. AND
WIJETUNGA, J.
SC APPLICATIONS (F/R) NO. 246/93
16 NOVEMBER 1993 AND 26 JULY 1994

Fundamental Rights – Discrimination – Article 12(1) of the Constitution – Application of Government Circulars to Central Bank – Power of recruitment – Promotion – Criteria – Seniority, merit, academic or professional qualifications, general awareness, capacity to identify a problem and respond to it, analytical skills – Equal treatment – Scheme of Recruitment – Scheme of Promotion – Need to publish schemes – Adoption of ad hoc criteria – Section 10 of the Monetary Law – Right to recruit ancillary staff – Burden of proof.

The ten petitioner and the 11th to 22nd respondents are employees of the Central Bank of Sri Lanka. The petitioners alleged that their fundamental right to equality guaranteed by Article 12(1) of the Constitution was violated by the appointment of the 11th to 22nd respondents as Staff Class Grade 1 Officers. The 1st respondent is the Central Bank of Sri Lanka, a body corporate created by the Monetary Law, Act No. 58 of 1949. It had been decided that 84 officers were required in the lowest, staff grade class, namely Staff Class Grade 1. The selection was to be through two schemes: 26 persons through a scheme of recruitment applicable to rankers and 58 on a competitive accelerated scheme. The criteria in the Schemes of Promotion in the Central Bank and relevant salary scales were formulated by the Monetary Board and circularised but not two amendments to it of dates 10.01.89 and 16.01.90. There was no mention in the Scheme of criteria for the promotion of non-staff class officers in the higher grade, the highest grade in the non-staff class, namely Non-Staff Class (NSC) Grade 5. Four of the petitioners were in NSC 5 and were interviewed. The two amendments to the Scheme provided for the promotion of staff assistants with a stipulated minimum period of confirmed service to Staff Class Grade. Under this NSC Grades 4 and 5 were made eligible. But staff assistants were not mentioned in the original scheme and there was no decision of the Monetary Board in regard to the mode of their appointment.

Held:

(1) There was no general rejection of Public Administration Circulars by the Monetary Board.

(2) Institutions which require ancillary staff must be empowered by provisions such as section 10 of the Monetary Law Act to make recruitment. In the absence of such a provision, a statutory creature, such as the Central Bank, would not have the legal capacity to recruit ancillary staff at all. It is a necessary authority. It does not therefore follow, that the powers of recruitment are unlimited. The Central Bank, like any other institution or person, must comply with the law, including Article 12 of the Constitution, in the formulation of its schemes of promotion and in the selection process.

(3) Institutions, whether public or private are juristic persons created for the achievement of certain objects. Those who are entrusted with the obligation of ensuring that the objects of the institution are achieved, are empowered, as the Board was in this case by section 10 of the Monetary Law Act, to engage the services of ancillary staff to help them in fulfilling their duty.

(4) Those responsible for the achievement of the objects of the institution, particularly a sizeable institution, would classify its ancillary staff according to some method or system founded on intelligible differentia which distinguish persons grouped together from others left out of each group, the attributes which distinguish those grouped together having a rational relation to the object sought to be achieved by the recruitment to each class. At whatever level, it would be expected that persons whose services are engaged in each group or sub-group are, in terms of knowledge, skills and aptitude, suited to the circumstances of employment in each class. The search for such persons is ordinarily likely to be most successful if there is an opportunity of choosing from several persons who possess the requisite minimum qualities and qualifications. Eligible persons could offer themselves for consideration only if they have an opportunity of doing so – usually by public advertisement or personal notification to eligible persons. Usually, either in the document calling for applications, or in a separate instrument to which a prospective applicant has access, such as a published scheme of recruitment, there would be information with regard to the nature of the duties to be performed, the minimum knowledge, skills, experience expected, and how these qualities and qualifications are to be established. Among other things it will give legitimate grounds for rejecting an unqualified applicant, provided of course, the criteria of eligibility were rational. The announcement of the way in which the eventual selection will be made will also serve as an assurance that the selection process is not a false, outward show, but an honest attempt to select the best person for the post. Unless negotiable and so announced, usually the terms and conditions of employment would also be announced so that, on the one hand, persons who are eligible may apply with a clear understanding of what they may expect if they are selected, and on the other that the contractual obligations are identified and provided for.

(5) Recruitment – whether to create a new class or to add to or keep up the number of a class of employees – may be either by way of promotion of persons

already in employment in other classes or by the addition of others who are not already serving the institution. There may well be more than one scheme of recruitment even within a class of employment, reflecting the need to balance relevant factors in the recruitment process. Where several factors are to be considered e.g. seniority, merit, academic or professional qualifications, no hard and fast rules can be laid in advance as to what is adequate weightage for this factor or that. It is a matter to be decided having regard to the exigencies of each case.

(6) Eventually the guiding factor is the achievement of the goals of the institution within the framework of the law, and at every stage of the selection process, from the determination of the need for the services of a particular type of officer and numbers in each class, through the determination of the relevant qualifications for eligibility, to the selection of a candidate; those who are entrusted with the task of the achievement of the goals of the institution must necessarily have a discretion because it is they who are responsible and accountable for the success or failure of the institution. In the exercise of their discretion, they have both a right and a duty to discriminate so that the objects of the institution as set out in the instrument of creation may be achieved: Distinctions are regarded as permissible because they are necessary to select those who are necessary and best suited for the performance of specific tasks. On the question of cadre they may decide that different numbers of officers are required for each post. On the question of eligibility they may distinguish between the various qualifications and qualities.

(7) The use of description involves discernment: Selection is not a mere matter of fancy, whim or caprice. Distinctions must not be invidious or biased and there must be no favouritism or partiality. The selected person must be fit and suitable and qualify for appointment in terms of the formulated criteria and in accordance with the prescribed mode of verification of those criteria.

(8) And so, while the burden of proving that Article 12 of the Constitution was violated lies upon a petitioner, the burden of adducing evidence to show that the discrimination made was rational and justifiable lies on those who had the authority to do so, and made the distinctions. Decisions must be supported by evidence. If persons were appointed in terms of a scheme of recruitment the scheme must be produced and explained in terms of the need for the post and the nexus between the work to be performed and the criteria for selection. If the selections were based on an examination the marks must be produced, if on interview on a group basis the marks earned under each criterion of selection must be produced. If at the interview the marking was on an individual basis the marks given by each member of the panel to each candidate under each of the selection criteria should be made available.

(9) Transparency in recruitment proceedings would go a long way in achieving public expectations of equal treatment. In order to ensure that justice is done and seen to be done, it is at least desirable that cadres, the criteria for selection – for instance by the publication of marks obtained – be made known to those concerned.

(10) Equal treatment is a fundamental right guaranteed by the Constitution. For example those who were both able, by reason of their demonstrable fitness to perform the functions of the post, and willing to serve in accordance with the job description formulated in accordance with the needs of the institution, and in accordance with the terms and conditions of employment, but were not provided with the opportunity of offering their services, are entitled to complain that they were not called upon to apply when other similarly – placed persons were called upon to apply. Persons are entitled to complain if they were unfairly disqualified because the scheme of recruitment was not based on intelligible differentia; the attributes prescribed for eligibility, having no rational relation to the object of recruitment; they are entitled to complain if they were invidiously or arbitrarily treated by or in the selection process. The essence of their complaint would be that their right to equality guaranteed by Article 12 of the Constitution has been violated.

Per Amerasinghe J:

"A scheme of promotion must be justifiable in its formulation and just in its application. The law insists on justice and this, among other things, means that in the exercise of authority or power there must be just conduct. In the exercise of the power of recruitment, just conduct entails the even – handed treatment of those who might be affected by the exercise of a power."

(11) Whether in the recruitment of Staff Class Grade officers or others, it is in the interests of the Bank, from the points of view of selecting the best available person, maintaining industrial peace and retaining public confidence to adhere to objective standards.

(12) The non-publication of the two modifications to the earlier publicized Schemes of Promotion was unsatisfactory. It was more than unsatisfactory that the selections were made by reference to *ad hoc*, undisclosed criteria which were not decided upon or at least ratified by the Monetary Board. The way in which the promotions were made by the respondents cannot be understood by examining the announced scheme read with the unannounced amendments made by the Board. How the final selection was made remains a mystery for the marks obtained at the interview were not disclosed. What was there was unintelligibility and obscurity, a lack of openness and candour, an effective *ad hoc* undoing of the directions of the Board.

(13) To have treated NSC Grade 4 and the higher grade NSC Grade 5 officers equally overlooked the fact that treating inequals equally was unjust and violative of Article 12 (1) of the Constitution. Grade 5 officers had a legitimate and reasonable expectation that, if they were not to be regarded as superior by reason of their Grade, they would at least be treated as equals of those in the lower grade. Grade 5 officers had come to the top of the non-staff class not as flotsam and jetsam of the non-staff class.

(14) The Bank had failed to show what criteria were adopted in the past by (a) the Preliminary Interview Committee (b) the Second Interview Committee, and (c) the Board at the third and final interview or that criteria existed at all.

(15) Having set its own standards *ad hoc*, the interview panel did not adhere to it but had to zig-zag its way, arbitrarily, avoiding its own criteria, to be able to appoint certain persons.

(16) If Grade 5 officers had been relegated to a class beyond which they could not ascend, they should not have been called for interviews. They were not aware of this. They were disappointed and perplexed by the selection of the 11th to 22nd respondents who were non-staff class grade 4 officers, persons comparatively inferior in rank, in preference to them. The exclusion of Grade 5 officers as a class was not mentioned until the Court proceedings. There was no rational basis for the exclusion of Grade 5 officers.

(17) The selection by a single interview Panel (and not on a final selection by the Monetary Board on second interview) was an *ad hoc* departure from the Board's own scheme which required three interviews. The duration of the single interview was five minutes and the questioning was haphazard and even sometimes irrelevant. The selections were therefore not made after sufficient and careful consideration but arbitrarily.

(18) Promotion is a reward which after careful consideration, for sufficient reasons is declared to be merited and earned. It is not simply a matter of good fortune.

(10) The criteria for evaluation at the interview were uncertain and vague and not announced.

(20) How seniority for which 25% of the marks were allocated, was assessed has not been established by the Bank and selections were not consistent with seniority. Nor was it clear that merit was taken into account. The supposed application of criteria namely academic/professional qualification, general awareness, capacity to identify a problem and responding to it, analytical skills, could not have been adequately evaluated by the Interview Committee in the time available to it and having regard to the questions asked at the interview.

(21) The selection of the 11th to 22nd respondents in preference to the petitioners was in violation of Article 12(1) of the Constitution and the appointments of the 11th to 22nd respondents to Staff Class Grade 1 were of no force or avail and null and void.

Application for relief for violation of Fundamental Right of equality guaranteed by Article 12(1) of the Constitution.

Faiz Mustapha PC with Dr. Jayampathy Wickreeratne for Petitioners

A. S. M. Perera DSG for 1st – 10th Respondents.

Cur adv. vult.

November 1st, 1994

AMERASINGHE, J.

(1) EXPLANATION OF THE DELAY IN DISPOSING OF THE MATTER

On 2nd April, 1993, in an application under Article 126 of the Constitution, the ten petitioners, alleged that the fundamental rights guaranteed to them by Article 12(1) of the Constitution were violated. The prayer of the petitioners that they be permitted leave to proceed was granted by this Court on 13th May, 1993. However, in the interests of the on-going relationship between the first respondent, as employer, and the petitioners as employees, the Court referred the matter to the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights to explore the possibility of the resolution of the matter by mediation. By its communication dated 10th August, 1993 the Commission reported a negative outcome. The matter was fixed for argument on 16th November, 1993. On that date a Bench of the Court comprising Amerasinghe, Wadugodapitiya and Wijetunga, JJ., heard the submissions of Mr. Faiz Musthapha, P.C., for the petitioners, and a part of the submissions of Mr. A. S. M. Perera, Deputy Solicitor-General, for the respondents, and due to the fact that the calendar of constituted Benches at that time did not enable the Court to resume the hearing during the current term, the resumption of hearing was postponed for 9th February, 1994. However, due to the ill-health of my brother Wadugodapitiya J. on that day, the matter could not be taken up and the Court ordered that the matter be

resumed on 13th May, 1994. On that date the matter was listed for hearing before G. P. S. de Silva, C.J. and Kulatunga and Ramanathan J.J. and it was ordered that the resumed hearing before the Judges who had heard a part of the matter should take place on 26th July, 1994. And so the hearing commenced on 16th November, 1993 was concluded only on 26th July, 1994.

(2) THE COMPLAINT AND THE PARTIES:

The ten petitioners and the 11th to 22nd respondents are employees of the Central Bank of Sri Lanka. The petitioners allege that their fundamental right to equality guaranteed by Article 12(1) of the Constitution was violated by the appointment of the 11th to 22nd respondents as Staff-Class Grade 1 Officers.

The first respondent is the Central Bank of Sri Lanka, a body corporate created by the Monetary Law Act No. 58 of 1949. The Chairman and Governor of the Bank is the second respondent. The third and fourth respondents are members of the Board. The fifth respondent is the Deputy-Governor of the Bank. The sixth, seventh, eighth and ninth respondents are Executive Directors of the Bank. The tenth respondent is the Director of Establishments of the Bank. The eleventh to the twenty-second respondents are persons who were selected in preference to the ten petitioners. The Attorney-General is named as the twenty-third respondent in terms of Rule 44 (1) (b) of the Supreme Court Rules, 1990.

(3) THE APPLICABILITY OF GOVERNMENT DIRECTIVES

The petitioners maintained that the Monetary Board was bound by the directives of the Government, and that had the guidelines set out in the Public Administration Circulars No. 15/90 dated 9th March, 1990, No. 5/90 (1) dated 25th March, 1990, 15/90 (ii) dated 15th June, 1990 and the communication of the decision of the Cabinet of Ministers on 12th June, 1991 by the Secretary, Ministry of Public Administration, Provincial Councils and Home Affairs dated 20th July, 1991 been followed, they, rather than the 11th - 22nd respondents, would have been selected.

In paragraph 22 of his affidavit Mr. Easparanathan, an Executive Director of the Bank who is the sixth respondent in these proceedings, firmly states that "Public Administration Circulars do not apply to the Central Bank in view of the provisions contained in Section 10 of the Monetary Board Act No. 58 of 1949 as amended."

According to P14 (Minutes of meetings the Governor had with the Central Bank Employees Union on 17th July, 1992), when the matter of promotions in accordance with the Public Administration Circular of 9th March, 1990 was raised, the Director of Establishments (the tenth respondent) had explained that it was "difficult" to apply the Circular retrospectively and that "clarifications" had been sought from the Ministry of Public Administration "as to the manner in which the provisions of the Circular should be implemented with retrospective effect and the Ministry of Public Administration has in turn consulted the Attorney-General for which no response has been received so far. It was agreed to review the matter."

When the Deputy-Governor, the fifth respondent, Mr. Easparanathan, the sixth respondent, and other representatives of the Bank on 2nd September, 1992 (see pp. 3-4 of P11), were requested by the Union's representatives to promote the candidates who were called for interviews on the basis of examinations held in 1989 under the accelerated promotions scheme to Staff Class Grade 1 in terms of Public Administration Circular dated 9th March, 1990, the position of the representatives of the Bank was not that Public Administration Circulars were inapplicable, but that the "Circular was not applicable to the issue in question in view of the fact that it was issued after the appointments were made." The process for those selections, it was pointed out, had been commenced towards the end of 1989, before the Circular was issued. The Deputy-Governor is reported to have "added that legal opinion was being obtained in this connection." (Vide P11 at page 4). The Union had referred to the meeting they had on 1st September, 1992 with the Governor of the Bank (the second respondent) on this matter when, according to the minutes recorded and issued by the Bank (P11 page 3), the Governor had said that "the request of the Union may be considered step by step."

And so there was no general rejection of Public Administration Circulars. The problem was merely with regard to the application of a

particular circular in the special circumstances of the case. As a Government institution, surely the Bank might be reasonably expected in the matter of recruitment to be guided by Government directives unless expressly exempted? It is not necessary for the determination of this matter and therefore I make no decision on that matter. I have referred to this because of the fact that it was raised by the petitioners as a matter of importance and dealt with by learned Counsel on both sides.

(4) LIMITATIONS ON THE POWER OF RECRUITMENT

The learned Deputy Solicitor-General submitted that the Bank had statutory authority in terms of section 10 of the Monetary Law to recruit staff and was free to determine what staff it required and the right to select staff according to its discretion in terms of its own schemes of recruitment. The power of recruitment was central to the issues in this case, and since it appears to have been misunderstood, some explanation is necessary.

Institutions which require ancillary staff must be empowered by provisions such as section 10 of the Monetary Law to make recruitments. In the absence of such a provision, a statutory creature, such as the Central Bank, would not have the legal capacity to recruit ancillary staff at all. It is a necessary authority. It does not therefore follow, that the powers of recruitment are unlimited.

The Central Bank, like any other institution or person, must comply with the law, including Article 12 of the Constitution, in the formulation of its schemes of promotion and in the selection process. No institution, no person, natural or juristic is above the law. Section 10 of the Monetary Law creates no exception.

Institutions, whether public or private, are juristic persons created for the achievement of certain objects. Since they are incapable of functioning unaided by human intervention, certain natural persons are entrusted with the obligation of ensuring that the objects of the institution are achieved. As it often happens, especially where the objects of the institution are complex or numerous or many-sided, as in the case of the Bank, it would be impossible for the few persons

entrusted with the task of achieving the institution's objects, such as the members of the Monetary Board in this case, to do all the work themselves. The assistance of other people may be necessary. And so, those who are entrusted with the obligation of ensuring that the objects of the institution are achieved, are empowered, as the Board was in this case by section 10 of the Monetary Law Act, to engage the services of ancillary staff to help them in fulfilling their duty. As the schemes of recruitment of the Bank (P1 and P4) show, various sorts of supportive staff, ranging from persons designated by the bank in P1 as "Minor Employees" and in P4 as "Labourers", to Heads of Departments in the Staff Class Grades, were required by the Bank.

What sorts of supportive staff are necessary, and the required numbers of each kind, are matters to be decided by the persons entrusted with the obligation of ensuring that the objects of the institution are achieved, for it is they who must plan a course of action for the achievement of the objects of the institution and be held accountable for its success or failure.

The work of ancillary staff may range from the performance of simple tasks, requiring little or no special knowledge or skills, to the services of persons whose esoteric knowledge and exceptional skills are appropriate to an inner circle of disciplines. Those responsible for the achievement of the objects of the institution, particularly a sizable institution, would classify its ancillary staff according to some method or system founded on intelligible differentia which distinguish persons grouped together from others left out of each group, the attributes which distinguish those grouped together having a rational relation to the object sought to be achieved by the recruitment to each class. At whatever level, it would be expected that persons whose services are engaged in each group or sub-group are, in terms of knowledge, skills and aptitude, suited to the circumstances of employment in each class.

The immediate object of obtaining assistance in the performance of certain functions with the view to the achievement of the ultimate purpose of the exercise of the power of employment, namely the achievement of the goals of the institution, is most likely to be achieved by choosing the best available person.

The search for such a person is ordinarily likely to be most successful if there is an opportunity of choosing from several persons who possess the requisite minimum qualities and qualifications.

Eligible persons could offer themselves for consideration only if they have an opportunity of doing so. Such an opportunity would usually be afforded by way of public advertisement or personal notification to eligible persons. In the case before us, eligible persons were by individual letters addressed to them, invited to present themselves at an interview.

Usually, either in the document calling for applications, or in a separate instrument to which a prospective applicant has access, such as a published scheme of recruitment, there would be information with regard to the nature of the duties to be performed, the minimum knowledge, skills, experience expected, and how these qualities and qualifications are to be established (e.g. a degree or diploma and/or work in a certain capacity and/or at a certain level of performance and/or for a minimum period of time and/or performance at an interview and/or at a written examination). The making known of these matters serve many purposes: Among other things, it will indicate whether a person is qualified and dissuade him from applying if he is not, and at the same time give legitimate grounds for rejecting an unqualified applicant, provided of course, the criteria of eligibility were rational. It will also serve to give notice to applicants as to what evidence of fitness they would need to adduce and what preparations they may need to make in proving their fitness. This may include the obtaining of certificates and/or the undertaking of studies, depending on the manner in which fitness is to be established. The announcement of the way in which the eventual selection will be made will also serve as an assurance that the selection process is not a false, outward show, but an honest attempt to select the best person for the post, for those who wish to apply might be reasonably expected to do so only if they feel confident that there is a genuine search for the fittest person and not a masquerade resulting in a waste of time and effort. It is also a constraint on those who have been empowered to employ ancillary staff to act in good faith and effectively in the discharge of their obligations towards the advancement of the objects of the institution

whose destinies have been placed in their hands by selecting the best available person. Unless negotiable and so announced, usually the terms and conditions of employment would also be announced so that, on the one hand, persons who are eligible may apply with a clear understanding of what they may expect if they are selected, and on the other that the contractual obligations of the institution are identified and provided for.

Recruitment – whether to create a new class or to add to or keep up the number of a class of employees – may be either by way of promotion of persons already in employment in other classes or by the addition of others who are not already serving the institution. No doubt, in the formulation of schemes of recruitment, due regard might be paid to various factors: For instance, the desirability of the injection of "new blood" to increase or re-invigorate the services of a class might need to be weighed against the value of the services of those who had already been occupied in the study and/or practice of the affairs of the institution as employees and were therefore experienced hands. As between serving officers, it might be necessary to decide whether one should be selected in preference to another as being senior by reason of earlier entrance to the service of the institution or earlier appointment to a Grade or post, and/or on account of the person concerned deserving well because of the excellence of his past performance and/or the worth the man's qualities and/or academic and professional qualifications. In order to encourage serving officers to better equip themselves, recognition may need to be given for the acquisition of additional skills and/or academic and/or professional qualifications while in service. There may well be more than one scheme of recruitment even within a class of employment, reflecting the need to balance relevant factors in the recruitment process. Where several factors are to be considered, e.g. seniority, merit, academic or professional qualifications, no hard and fast rules can be laid down in advance as to what is adequate weightage for this factor or that. It is a matter to be decided having regard to the exigencies of each case.

Eventually the guiding factor is the achievement of the goals of the institution within the framework of the law, and at every stage of the selection process, from the determination of the need for the

services of a particular type of officer and numbers in each class, through the determination of the relevant qualifications for eligibility, to the selection of a candidate, those who are entrusted with the task of the achievement of the goals of the institution must necessarily have a discretion, for, as I have said before, and say again for the sake of emphasis, it is they who are responsible and accountable for the success or failure of the institution.

In the exercise of their discretion, they have both a right and duty to discriminate so that the objects of the institution as set out in the instrument of creation may be achieved: Distinctions are regarded as permissible because they are necessary to enable those burdened with the responsibility of achieving the objects of the institution to select those who are necessary and best suited for the performance of specific tasks. On the question of cadre, they may decide that different numbers of officers are required for each post, depending on the type of work required to be performed, qualified by relevant factors such as the financial resources of the institution to engage the services of optimum numbers. On the question of eligibility, they may distinguish between the various qualifications and qualities that evidence the competence, aptitude and suitability of a person to do what he is expected to do. They must be related to the purpose or purposes of recruitment. As between persons satisfying the minimum prescribed conditions of eligibility, they may select only the best available.

The use of discretion involves discernment: Selection is not a mere matter of fancy, whim or caprice. Distinctions must not be invidious or biased: Persons who are excluded in a scheme of recruitment or in the selection process must not be excluded on account of their being looked upon with an evil eye. Persons who are selected should not be chosen on account of favouritism or partiality. A justifiable selection cannot be one that is accidental or fortuitous or directed *ad hoc* to the preference of a certain person, arbitrarily, dependent on the absolute exercise of the will and pleasure or mere opinion or humour of those who make the selections. The selected person must be fit and suitable and qualify for appointment in terms of the formulated criteria and in accordance with the prescribed mode of verification of those criteria.

And so, while the burden of proving that Article 12 of the Constitution was violated lies upon a petitioner, the burden of adducing evidence to show that the discrimination made was rational and justifiable lies on those who had the authority to do so, and made the distinctions; for if distinctions were drawn, it is they who can best explain why they were made in the discharge of their duties and in the exercise of their powers. If challenged in proceedings of this nature, they should account for their decisions and unfold the reasons for their decisions which must be plain and intelligible and understandable. Decisions must be supported by evidence. For example, if it is said that persons were appointed in terms of a scheme of recruitment, the scheme should be produced and explained in terms of the need for the post and the nexus between the work to be performed and the criteria for selection. If it is said that selections were made on the basis of an examination, the marks earned by each candidate should be produced. If persons were selected on the basis of an interview, there should be evidence of how many marks were earned by each candidate under each criterion of selection, if the marking was on a group basis; or if marking was on an individual basis, the marks given by each member of the panel to each candidate under each of the selection criteria should be made available.

From the point of view of the satisfactory performance of specific tasks, the implications of the failure of those in charge to discharge their responsibilities of ensuring the selection of the best person for a required task is obvious enough. But the matter does not end there. The failure to make justifiable selections may also frustrate the objects of the institution in other ways.

The achievement of the goals of an institution would partly depend on the existence of industrial peace, and contentment would, in a significant measure, depend on satisfaction that the employer was fair. As far as the Bank was concerned, the situation, it seems, was far from well. The minutes of the meeting held on 17th July between the Governor and Employees Union (P14) show that there was expressed dissatisfaction with regard to the failure of the Bank to publicize its schemes of recruitment, the Union alleging that promotions had been made "according to the whims and fancies of

the management" and that there had been a violation of the fundamental rights of employees in making certain promotions. The Governor had agreed that "there should be some transparency in Confidential Report markings" and that "the Confidential Report marking scheme should be reviewed" and that "the percentage system of marking employees should be done away with." The Governor had given the assurance that improvements of the schemes would take place "wherever possible" and that the "Union will be consulted before their implementation."

There are also civic responsibilities to be considered. For instance, if society is to be purged of and freed from the related evils of corruption, nepotism and favouritism, public institutions embarking on executive or administrative action in terms of Article 126(1) of the Constitution must be clear of inequalities and/or unevenness. Transparency in recruitment proceedings would go a long way in achieving public expectations of equal treatment. The selection of a person must be viewed as a serious matter requiring a thoroughgoing consideration of the need for the services of an officer, and a clear formulation of both the basic qualities and qualifications necessary to perform the services, and the way in which such qualities and qualifications are to be established. In order to ensure that justice is done and seen to be done, it is at least desirable that cadres, the criteria for selection, the method of selection and the eventual basis for selection – for instance by the publication of marks obtained – be made known to those concerned. Ideally, the whole process from the determination of the cadre to selection must be easily recognized and seen through, if not obvious. A selection process veiled in secrecy and not openly avowed and expressed is at least open to the suspicion of the existence of something evil or wrong. It is of a questionable character.

There is much more than a question of poor management; there is much more than a misuse of the power of recruitment and a disregard of civic responsibilities when schemes of recruitment or the process of selection are unconstitutional. Equal treatment is a fundamental right guaranteed by the Constitution. For instance, and these are only some examples, those who were both able, by reason of their demonstrable fitness to perform the functions of the post, and

willing to serve in accordance with the job description formulated in accordance with the needs of the institution, and in accordance with the terms and conditions of employment, but were not provided with the opportunity of offering their services, are entitled to complain that they were not called upon to apply when other, similarly – placed persons were called upon to apply; persons are entitled to complain if they were unfairly disqualified because the scheme of recruitment was not based on intelligible differentia, the attributes prescribed for eligibility, having no rational relation to the object of recruitment; they are entitled to complain if they were invidiously or arbitrarily treated by or in the selection process. The essence of their complaint would be that their right to equality guaranteed by Article 12(1) of the Constitution has been violated. Article 12(1) of the Constitution provides that "All persons are equal before the law and are entitled to the equal protection of the law."

For the reasons I have explained, while recognizing the need for those entrusted with the management of an institution like the Central Bank to have the power of recruitment of ancillary staff and a discretion in the matter of selection, I am unable to agree with the suggestion of the learned Deputy Solicitor-General that the power is absolute, uncontrolled and unlimited: The liberty or power must be exercised within the limits allowed by law. A scheme of promotion must be justifiable in its formulation and just in its application. The law insists on justice and this, among other things, means that in the exercise of authority or power there must be just conduct. In the exercise of the power of recruitment, just conduct entails the even-handed treatment of those who might be affected by the exercise of a power.

The learned Deputy Solicitor-General submitted that it was "not in the best interests of the Bank" to adopt objective criteria in the selection of Staff Class Grade Officers. The selection of such officers should, he submitted, be left in the hands of senior officers of the Bank who, as "responsible people", could be trusted in evolving their own standards of selection and in choosing the best persons. I am unable to agree with the learned Deputy Solicitor-General. Whether in the recruitment of Staff Class Grade Officers or others, it is in the

interests of the Bank, from the points of view of selecting the best available person, maintaining industrial peace and retaining public confidence to adhere to objective standards. Otherwise, the selection process is likely to degenerate into something akin to a lottery rather than being, as it should be, the exercise of sound judgment within the bounds of rational and justifiable criteria.

(5) CADRE AND METHODS OF SUPPLY WERE UNCERTAIN

The first step in a recruitment process is the decision that a certain number of persons are necessary to perform certain specific tasks. According to the learned Deputy Solicitor-General, it had been decided that eighty-four officers were required in the lowest, Staff Grade class, namely, Staff-Class Grade 1. It had also, he said, been decided by the Bank that the selection for those posts should take place through two schemes: Twenty-six persons would be chosen through a scheme of recruitment applicable to officers he described as "rankers", and fifty-eight in terms of a "competitive accelerated scheme."

Was this so?

In paragraph II of his affidavit, Executive Director Easparanathan states that 26 vacancies were to be filled by "Non Staff Class Officers who are promoted under the ordinary scheme of promotion ... the balance 58 vacancies were to be filled by those internal candidates who qualify under the accelerated scheme of promotions and externally qualified candidates."

The petitioners maintained that there were three schemes to fill 93 posts: 55 to be filled by "Direct recruitment", 12 in terms of the "Accelerated promotional Scheme" and 26 by "In-Service Promotions."

Neither the cadre of Staff Class Grade I officers nor the number of persons to be recruited through each of the several schemes can be ascertained from the Scheme of Recruitment P4 as amended by R1 and R2.

(6) THE "RANKERS" – "IN-SERVICE" – "ORDINARY" – SCHEME ONLY RELEVANT IN THIS CASE

Whether there were three types of recruitment, namely, (a) Direct recruitment, (b) accelerated promotion and (c) "in-service" or 'ordinary' promotions, as suggested by the petitioners, or two as the learned Deputy Solicitor-General submitted, needs no further consideration: It was acknowledged on all hands that the complaint in the matter before us related only to the so-called "rankers" scheme – the "in-service" "ordinary" promotions to twenty-six posts. I shall assume that the twenty-six recruitments of "rankers" were based on a demonstrable need determined by the Bank for good, though undisclosed, reasons. This is of importance to the order I make with regard to the filling of vacancies, for I so do holding the bank as being committed to its decision on the question of cadre.

(7) WHICH "RANKERS" – "IN-SERVICE" – "ORDINARY" – SCHEME?

There was one advertised scheme dated 15th February 1973 (P4) and another advertised scheme dated 03 February 1993 (P1).

The petitioners submit that, since the Monetary Board on 12th January 1993 (Vide P1 at page 11, General, 1) said that, "where the existing promotional schemes are changed, the effective date under the revised scheme will be 01/01/93", the selections announced on 15th March, 1993 (P8), which they challenge in these proceedings, were, and ought to have been in terms of P1, since the existing promotional scheme set out in P4 as amended was changed by P1.

On the other hand, the respondents say that the selections in question, although **announced** on 15th March, 1993, were made in terms of P4. Mr. Easparanathan, an Executive Director of the Bank, in paragraph 6 of his affidavit, explains that the selection of officers in the recruitment in question was based on P4 as amended by the decisions of the Monetary Board dated 10th January 1989 and 16th January 1990, since the selection process in question was commenced in 1992: The eligibility of candidates he says had been determined by the Establishments Committee on 30th July, 1992 and

that their recommendations had been approved by the Monetary Board on 4th September, 1992; letters inviting eligible candidates for interview had been issued on 28th December, 1992. The interviews were held prior to the date on which the new scheme was approved by the Board, namely, 12th January 1993, although the selections were announced after that date.

Although the petitioners challenge the validity of the promotion of the eleventh to the twenty-second respondents in preference to them, assuming that the effective scheme of recruitment was set out in P1, and indicating infirmities in the scheme set out in P1 and its applicability and application, they state that even if the applicable scheme was that set out in P4 as amended by R1 and R2, it was irrational, and in any event not adhered to, and that the selections were arbitrary and violative of Article 12(1) of the Constitution. It is sufficient for me to dispose of this matter on the basis of the respondents' position that the recruitments were in terms of P4 as amended, although in view of the Bank's announcement that the effective date of operation of P1 was 1st January 1993, in the absence of the explanation made by the Bank in these proceedings, they had, at the time of filling the petition in the matter before us, a very good reason to suppose that appointments made on and after that date were governed by P1.

(8) THE RELEVANT PROVISIONS OF THE APPLICABLE SCHEME

Document P4 (as amended), which the respondents depend upon, sets out "criteria" in the "Schemes of Promotion in the Central Bank" and the relevant salary scales at various levels.

Before we consider the amendments brought about by R1 dated 10th January, 1989, and R2 dated 16th January 1990, let us see what P4 contained in its original form with regard to the promotion of Non-Staff Class Officers to Staff Class Grade 1. It is as follows:

(10) NON-STAFF CLASS GRADE 4 TO STAFF CLASS GRADE 1

Criteria - (a) In the case of Clerks and Cashiers after a minimum of four years service in the Grade, and on receipt of a

consolidated salary of not less than Rs. 700/- if vacancies exist in Staff Class Grade 1.

- (b) In the case of stenographers and typists (provided they acquire a level of competence in shorthand adequate for the requirements of the Bank) in the Non-Staff Class Grade 4, the service qualification for consideration for promotion to Staff Class Grade 1 be of an excellent record of 4 years' service in Non-Staff Class Grade 4. On promotion to Staff Class Grade 1 they may be categorized as "Personal Secretaries".
- (c) Officers who had been recruited to the Non-Staff Class as stenographers, typists, accounting machine operators, comptometer machine operators and other machine operators but who have with Bank approval ceased to perform such functions for a number of years and who have since been performing supervisory or senior clerical or senior cashier functions, will, on completion of 6 years' very good service in the Staff Assistants Grade, be eligible for consideration for appointment to the Staff Class, subject to the usual requirements of suitability.

Salary scales :

Accelerated Promotion from Non-Staff to Staff Class

(1) Promotions to Staff Class on the basis of high academic qualifications (as distinct from promotions in the normal course on minimum service qualifications in the Staff Assistants' Grade (viz. a minimum of 4 years)).

(a) Promotions to Staff Class would not be automatically considered on the acquisition of a post-graduate qualification or of a first degree with at least a second lower even where the University is recognized and the field of study is useful to the Bank.

(b) All such cases would be considered along with outside recruits.

(c) Candidates who do not have a good first degree would still be eligible for consideration if they had in addition to an ordinary pass degree in the special field of study useful to the Bank, a post-graduate degree from a University recognized by the Bank and in a field of study deemed to be useful to the Bank.

(d) All candidates will be interviewed by the Board before promotion to Staff Class can be considered.

(2) Non-Staff Class Officers with a Degree in a special subject, useful to the Bank or the A.I.B. (London) qualification or the Final Examination conducted by the Bankers' Training Institute (Ceylon) and who had at least 10 years' experience are eligible for consideration for Staff Class appointments with outside candidates.

(3) (i) Officers in the Non-Staff Class who have completed 7 years' service in the Bank, and who pass the Final Examination of A.I.B. or B.T.I. with distinctions in two subjects, with an excellent record of service during the previous five years; and

(ii) Officers in the Non-Staff Class who have completed 7 years' service in the Bank and who obtain a Degree in a special subject useful to the Bank, with a very good record of service during the previous five years;

will be eligible for consideration for Staff Class Grade 1 appointment in competition with outside candidates.

(4) Non-Staff Class Officers who obtain a Second Class lower degree or a higher degree in subjects useful to the Bank while in the service of the Bank, would be eligible for consideration by the Board (independently of outside recruitment) for appointment to the Staff Class after Five years' good Service in the Bank.

(9) THE AMENDMENT OF THE SCHEME IN P4 BY R1

According to document R1, dated 10.01.1989, on the question of "recruitment of officers to Staff Class I (on probation) and promotion to Staff Class Grade 1", the Monetary Board at meeting No. 1/89 "approved of the following":

(a) the requirements pertaining to the recruitment of officers to Staff Class Grade 1 viz.,

- (i) Special Degree with First or Second Class (Upper Division) Honours from a recognized University in either Economics, Commerce, Business Administration, Accountancy, Mathematics, Statistics, Computer Science, Engineering, Sociology, Political Science, Law, Agriculture, Geography, History, Physics or Chemistry.

OR

- (ii) General Degree with First or Second Class (Upper Division) Honours from a recognized University with Economics, Commerce, Accountancy, Mathematics, Statistics, Computer Science, Sociology, Political Science, Geography, History, Physics or Chemistry.

OR

- (iii) A Post-graduate Degree from a recognized University in any of the subjects referred to at (i) above;

OR

- (v) Graduates with progressively responsible experience of not less than five years in an executive post in a Commercial Bank;

OR

- (vi) All parts of the Examination of the Chartered Institute of Cost and Management Accountants;

OR

- (vii) All parts of the Examination of the Institute of Chartered Accountants.

(b) the procedure relating to promotions of Staff Assistants to Staff Class Grade 1 is set out below.

- (i) The Establishments Committee to take into consideration the record of service, work, conduct, attendance and punctuality of officers who have completed 4 years confirmed service in Non-Staff Class Grade 4 and of officers in Non-Staff Class Grade 5 and to recommend candidates for interview by a Preliminary Interview Committee nominated by the Governor for the purpose.
- (ii) A Second Interview Committee nominated by the Governor interviewing those recommended by the Preliminary Interview Committee and recommend candidates for interview by the Monetary Board.
- (iii) The Monetary Board to interview those recommended by the Second Interview Committee and selecting those who are considered fit for promotion to Staff Class.

(10) THE AMENDMENT OF THE SCHEME IN P4 AND R1 BY R2

According to R2, dated 16.01.1990, the Monetary Board at its meeting 2/90,

"In modification of its decision taken at Meeting No. 1/89 of 1989.01.10 as set out at Paragraph (b) (i) of Item 6, approval of the Establishments Committee taking into consideration the record of service, work, conduct, attendance and punctuality of officers who have completed 6 years confirmed service in Non-Staff Class Grade 4 and Non-Staff Class Grade 5, and to recommend candidates for interview by a Preliminary Interview Committee nominated by the Governor for the purpose."

(11) AMENDMENTS IN R1 AND R2 NOT PUBLICIZED

Although P4 was said by the Respondents to be the applicable scheme, R1 and R2 which significantly modified P4, were not publicized. They were filed in these proceedings by the respondents and stamped as "Confidential" documents on "Minute" papers of the Monetary Board communicating Board decisions to the Director of Establishments. On the other hand P4 and P1 were circulated to

Heads of Departments and Regional Managers who were directed to bring the contents of P4 and P1 to the notice of all employees in their respective departments or regional offices.

If a Scheme of Recruitment is publicized, it is to be expected as a matter of reasonableness and fairness that the modification of such a scheme should also be publicized. Otherwise the known scheme would be misleading. The respondents failed to explain why R1 and R2 were not publicized, and exposed the Bank to the criticism that the modified recruitment procedures were kept secret because they were irrational, *ad hoc* and arbitrary, resulting in the disqualification and exclusion of the petitioners unfairly in contravention of their constitutional right to equality of treatment in the selection process. The only response of the learned Deputy Solicitor-General was that it would have been "fairer" to have publicized the scheme of recruitment, but, he submitted, "that was not the test". Admittedly, there are other ways also for judging fairness, but publicity would, among other things, have enabled the petitioners and anyone concerned, to see for themselves how justifiable was the modified scheme and how just was its application.

(12) PROMOTIONS NOT EXPLICABLE BY REFERENCE TO P4, R1 AND R2 ALONE

For the reasons I have given, it was unsatisfactory that the modifications of P4 by R1 and R2 by the Board were not publicized. It is more than unsatisfactory that the selections were made by reference to *ad hoc*, undisclosed, criteria which were not decided upon or at least ratified by the Board. It is the Monetary Board that is statutorily empowered to employ ancillary staff. If the schemes of recruitment determined by the Board required modification in the light of discussions the representatives of the Bank had with the Unions, or in the opinion of the Governor, or other officers of the Bank, the modifications should have been made, or at least ratified, by the Board which formulated the scheme in P4 in pursuance of its power of recruitment. The Board did not, and could not, abdicate its responsibility, and there was no authority and no justification for others to usurp its functions.

Even at this stage one can only understand the recruitment process in question with difficulty and without special accuracy, albeit sufficiently, for the purposes of determining this matter. The way in which the promotions were made by the respondents cannot be understood by merely examining the announced scheme in P4 read with the unannounced amendments made by the Board in R1 and R2. One may only have a sufficient understanding of the selection process by additionally considering P7, a letter dated 3rd March 1993 addressed by the petitioners to the Bank and P15 the reply dated 12th April 1993; the minutes of meetings between the representatives of the Unions and the Bank; the affidavit of the Executive Director of the Bank, the petition and affidavits of the petitioners; the written submissions of the Attorney-at-Law on behalf of the 1st to 10th respondents; the written submissions of the Attorney-at-Law for the petitioners; the summary of submissions made on behalf of the petitioners; and the oral submissions of Counsel for the petitioners and respondents. How the final selection was made remains a mystery, for the marks obtained at the interview were not disclosed by the Bank which has chosen to make a secret of the justification for its preference of the 11th to 22nd respondents to the petitioners. There was certainly a lack of what the Governor, at his meeting with the Unions on 17th July 1992 (P14) felicitously described as 'transparency'. What we have instead is unintelligibility and obscurity, a lack of openness and candour, an effective *ad hoc* undoing of the directions of the Board, and the thwarting and frustration of the expressed good intentions of the Governor on the question of transparency.

(10) P4 DID NOT REFER TO NON-STAFF GRADE OFFICERS IN GRADE 5

While paragraph 10 of P4 sets out the "criteria" for the promotion of Non-Staff Class Officers in Grade 4 to Staff Class Grade 1, P4 makes no mention at all of criteria for the promotion of Non-Staff Class Officers in the higher grade, the highest Grade in the Non-Staff Class, namely Non-Staff Class (NSC) Grade 5. In paragraph 17 of his affidavit the Executive Director admits that all the petitioners, and these include the NSC Grade 5 Officers, "were summoned to present

themselves for an interview.” In paragraph 5 of his affidavit the Executive Director refers to “letters inviting the eligible candidates for interviews” which had been issued on 28th December 1992. Four of the petitioners – G. F. L. Perera, K. M. P. Wijekoon, R. S. Liyanage and T. H. Wickramasinghe were NSC Grade 5 officers. (See paragraph 2 of the affidavit of the first and tenth petitioners dated 2nd April 1993). Executive Director Easparanathan, in paragraph 3 of his affidavit dated 16th August 1993, admits that four of the petitioners were in NSC Grade 5. There is no denial of the fact that G. F. L. Perera, Wijekoon, Liyanage and Wickremasinghe were interviewed and that they were the NSC Grade 5 Officers referred to by the Executive Director.

If, as the respondents maintain, P4 was the applicable scheme which sets out ‘criteria’, then by reference to what criteria were the NSC Grade 5 officers summoned for interview when P4 does not mention NSC Grade 5 Officers at all?

(14) POSSIBLY NSC GRADE 5 OFFICERS WERE ELIGIBLE IN TERMS OF THE AMENDMENT OF P4 BY R1 AND R2, BUT WHO WERE ‘STAFF ASSISTANTS’?

Although P4 does not refer to officers in NSC Grade 5, paragraph (b) of R1 provides that in the matter of the promotion of “Staff Assistants” to Staff-Class Grade 1, the Establishments Committee should recommend for interview non-staff grade officers in Grade 4 as well as Grade 5 who had completed four years of confirmed service, taking into consideration their record of service, work, conduct, attendance and punctuality. R2 modified that procedure to the extent of stipulating that NSC Grade 4 and 5 officers should have completed six, instead of four years of confirmed service, recognizing again the eligibility of NSC Grade 5 officers for promotion to Staff Class Grade 1.

There is no mention of “Staff Assistants” as a separate class in the hierarchical scheme set out in P4. However, they did exist at the time P4 was formulated and continued to exist at the time of the promotions in question. P4 in paragraph 10(c) refers to the eligibility

of persons in the "Staff Assistants Grade" (sic.) for promotion to Staff Class Grade 1. Reference is made to the designation and appointment of Staff Assistants at a meeting held on 24th October 1992 between representatives of the Trade Unions and the Governor, Deputy Governor, Executive Director Easparanathan, and others representing the Bank. (See P10).

Who were they? No decision of the Monetary Board was submitted with regard to the mode of appointment of Staff Assistants. In terms of paragraph 10(c), Non-Staff Class Officers who had been recruited as stenographers, typists, accounting machine operators, comptometer machine operators and other machine operators but who, with the approval of the Bank, had ceased to perform such functions for a number of years and who had since been performing "supervisory or senior clerical or senior cashier functions" would "on completion of 6 years very good service in the Staff Assistants Grade, be eligible for consideration for appointment to the Staff Class, subject to the usual requirements of suitability." It would seem that at one time Staff Assistants would have been performing **either** supervisory functions or senior clerical or senior cashier functions.

"Staff Assistants" were, in terms of a discussion between the employee Unions and representatives of the Bank (See P10), only non-Staff Grade IV officers entrusted with **supervisory**, as distinguished from clerical functions, selected on the basis of 50% seniority and 50% performance. The Selection criteria agreed to at an earlier meeting between the representatives of the Union and the Deputy Governor, Executive Director Easparanathan and other representatives of the Bank on 2nd September 1992 (See P11) had been 50% for length of service in the Grade, 40% for performance, 10% for educational qualifications (i.e., Degree, BTI, AIB). The Governor removed the 10% weightage for educational qualifications. The removal of the 10%, it is explained in the Minutes, was to obviate a duplicated consideration of educational qualifications, which had already been taken into account in earlier promotions.

The position of "Staff Assistant" conferred advantages in the matter of promotion to the Staff Class Grade I. Paragraph 10 (C) of P4

made "completion of 6 years very good service in the Staff Class Grade" (meaning Staff Assistant, and recognizing, perhaps, that they were performing staff grade functions?) as a criterion of eligibility for promotion from Non-Staff Class Grade 4 to Staff Class Grade 1. It had been agreed at the meeting on 24 October (P10) that in the matter of promotions of NSC Grade 4 officers to Staff Class Grade 1, "in the computation of marks for seniority additional marks for seniority (one point per year) will be given to the experience gained in the post of Staff Assistant."

Presumably, since all persons summoned for interview in terms of the promotional scheme P4 as modified by R1 and R2 were deemed to be "eligible", as the Executive Director says in his affidavit, in accordance with the criteria laid down by the Monetary Board in R1 (b) and R2, they ought in the first place to have been "Staff Assistants". Otherwise P4 as modified by R1 and R2 which related to the promotion of "Staff Assistants" to Staff-Class Grade 1 Staff Grade serving in either Grade 4 or 5 of the non-Staff Class (see especially R1(b) has no relevance at all to the recruitments in question.

The first, second, fifth and seventh petitioners were NSC Grade 5 officers, whereas the 11th to 22nd respondents were in NSC Grade 4. The view expressed by the Union that NSC Grade 5 officers should be separately treated and promoted was rejected by the Bank's representatives. Non-Staff Class Grade 4 and 5 officers were to be considered together. The view of the Bank, expressed by the Deputy Governor at the interview with the Union on 2nd September 1992, was that the promotion of NSC Grade V officers could be considered under "existing criteria", meaning presumably the criteria set out in R1 and R2. Assuming that the 11th – 22nd respondents were 'Staff Assistants', it does not follow that all Staff Assistants were in the same Grade. The reference to "Staff Assistants Grade" in paragraph 10(c) of P4 was a misnomer. It was not a "Grade" but a work related **designation** of persons who may have belonged to either Grade 4 or 5 of the Bank's classification of employees. Persons in Grade 5 were officers promoted from Grade 4 if they had completed 25 years of service in the Bank with at least 10 years of "very good" service in Grade 4. (See paragraph 7 of Mr. Easparanathan's affidavit). Four of the petitioners were in NSC Grade 5 while the other petitioners and

each of the 11th – 22nd respondents were in NSC Grade 4. The Minutes of the meeting between the Governor and other representatives of the Bank and the Trade Unions on 24 October 1992 (P10) confirms the fact that NSC Grade 4 officers may have been designated as "Staff Assistants."

In my view a procedure in terms of which all Staff Assistants were to be judged by the same criteria was flawed, for NSC Grade 5 officers were, in terms of the Bank's hierarchical classification of Non-Staff Class officers, as explained by the Executive Director in paragraph 7 of his affidavit, superior in rank to NSC Grade 4 officers; and, therefore, to have treated NSC Grade 4 and NSC Grade 5 officers equally overlooked the fact that treating unequals equally was unjust and violative of Article 12(1) of the Constitution.

(15) WAS BELONGING TO NSC GRADE 5 A DISQUALIFICATION ?

Strange as it may seem, the position of the respondents was that NSC Grade 5 officers were not superior, but for the purposes of promotion, deemed to be inferior to NSC Grade 4 officers.

The learned Deputy Solicitor-General said that NSC Grade 5 officers were persons who were beyond the pale; they were placed in NSC Grade 5, which was in terms of gradation admittedly higher than NSC Grade 4, but simply because they were people who could no longer "develop and progress". They were, he suggested, permitted as a matter of tolerance to vegetate at the top of the non-staff class level, physically present, but leading more or less, a useless life as far as the Bank was concerned.

Learned Counsel for the petitioners responded that "if they are not eligible to be in service, their services should be terminated."

I do not agree with learned Counsel for the petitioners. The services of the NSC Grade 5 officers may have been adequate to perform the services they were called upon to perform in NSC Grade 5. There is no dispute with regard to that; and therefore the conclusion that if they were unfit, their services should have been terminated is unwarranted. The question is with regard to their

eligibility to perform other functions at a higher level, and why G. F. L. Perera, Wijekoon, Liyanage and Wickramasinghe – who were NSC Grade 5 officers – were summoned for interview as being, as the Executive Director says, "eligible", if they did not deserve to be considered as fit and proper or desirable or suitable to be chosen for service in the next higher group, namely, the staff-class? The fact that, having regard to the available vacancies, only the best of those who were eligible were selected, is another matter.

That in the selection process certain individuals who happened to be in a higher grade were found for good and established reasons to be less suitable is understandable, assuming that it was proper to treat them alike in determining eligibility. But there must be rational criteria for differentiating between NSC Grade 5 officers **as a class** and other eligible candidates. By reference to what criteria were they excluded from promotion as a class? There is nothing in the schemes of promotion P4 or R1 and R2 indicating that NSC Grade 5 officers as such were unsuitable. There is nothing in the reply of the Bank R3 dated 12th April 1993, in response to the protest of the petitioners P7 dated 3rd March 1993, indicating that NSC Grade 5 officers were to be shut out of consideration. Were they informed that although they had been summoned merely because they had crossed the threshold of eligibility as determined by the Establishments Committee and approved by the Board, there was no hope of success? They were not. On the other hand, at the interview on 2nd September 1992 (P11), when the Union suggested that NSC Grade 5 be scrapped and that the officers in NSC Grade 5 be promoted to Staff Class Grade 1, the Deputy-Governor had said that "the request cannot be acceded to and promotion of the above officers could be considered under existing criteria". At the interview on 24th October 1992 (P10) it was recognized that "All NSC officers who have completed 4 years in NSC Grade IV and officers in NSC Grade V will be eligible for consideration for promotion to Staff Class Grade 1 on the decision of a Committee or by an interview." Grade 5 officers therefore had a legitimate and reasonable expectation that, if they were not to be regarded as superior by reason of their Grade, they would at least be treated as the equals of those in the lower Grade.

As we shall see, those who were recommended by the Establishments Committee for interview and accepted as 'eligible' by the Board, and these included the Grade 5 officers, were selected because they achieved a very high standard of excellence at the five annual evaluations preceding the date on which their eligibility was determined. They were summoned because they were, as we shall see, rated by the Establishments Committee as "Outstanding" officers.

In paragraph 7 of his affidavit, the Executive Director of the Bank states that "the criteria for promotion from Non-Staff Class Grade 4 to Non-Staff Grade 5 is 25 years of service in the Bank with at least 10 years of very good service in Non-Staff Grade 4. The promotions are effected subject to availability of cadre vacancies."

Grade 5 Officers were certainly not as it were the flotsam and jetsam of the Non-Staff Class as suggested by the learned Deputy Solicitor-General.

Moreover, NSC Grade 5 officers, G. F. L. Perera, K. M. P. Wijekoon, R. S. Liyanage and T. H. Wickramasinghe were Staff Assistants. Presumably, like the other Staff Assistants, they were so designated because they deserved in terms of seniority and merit to be placed above other Non-Staff Class Grade officers. That is what the discussions between the representatives of the Bank and the Unions suggest. (Cf. P11.)

The petitioners in their affidavit dated 5th October 1993, in response to the Executive Director's affidavit, deny that there was a cadre in respect of Grade 5 officers. No evidence has been placed before us by the respondents to support the position of the Executive Director that there was a complement of officers determined by the Board to serve in Grade 5 within the framework of a scheme. There was certainly no cadre for Non-Staff Class Grade 4 (See the Minutes of the Meeting between the Deputy-Governor and other representatives of the Bank, including Executive Director Easparanathan, with the Employees' Union on 2nd September 1992, P11). One may, in the absence of evidence to the contrary, assume that there was no cadre in respect of Grade 5 employees as well. It is

not a necessary inference, but one that is reasonable. Such an inference is further evidence in support of the petitioners' position that the Bank was acting arbitrarily in the matter of recruitment. However, the more important matter with regard to the question presently under consideration is that the Executive Director does not support the view of the learned Deputy Solicitor-General that persons were placed in Grade 5 because they were undeserving of further consideration. The evidence indicates that they were promoted to Grade 5 because they deserved well, both on account of length of service and excellence of their performance and worth of their qualities.

(16) THE FAILURE AT PREVIOUS INTERVIEWS AS A CRITERION FOR ELIMINATION

Were Grade 5 officers regarded as "chronic" cases for other reasons? In paragraph 31 of the affidavit of the Executive Director of the Bank, it is stated that "All the petitioners were persons who had been considered at similar interviews for promotion from Non-staff Grade to Staff Grade on several prior instances but had not been promoted on those occasions. A list setting out the number of occasions on which these several petitioners had faced interviews earlier is annexed herewith marked R6."

The document referred to is R7 and not R6.

What does the Executive Director mean by "similar interviews"? The Scheme of Promotion relied upon by the respondents required three interviews. The selections in question were based on a single interview. "Similar" to which of the several interviews? It was certainly not similar to the final interviews held earlier where the interview panel was differently constituted.

The interview was not 'similar' in the way in which the interview panel was constituted. In what other way was it 'similar'?

The Executive Director, in paragraph 8 of his affidavit, states that "where more than one interview was held for the purpose of promotions there was a process of elimination of candidates at each interview."

What were the criteria adopted in the past by (a) the Preliminary Interview Committee (b) the Second Interview Committee and (c) the Board at the third and final interview, in deciding on elimination and selection? The Bank has failed to show that such criteria were announced or that they existed at all. In the circumstances, there is no way of ascertaining whether, if at all, and in what respects the latest interview was "similar" to those held earlier.

If the latest interview led to arbitrary selections because of the absence of certain criteria to guide the interview committee, or if the criteria were irrational, or if the criteria were arbitrarily departed from and the selections were made on the basis of subjective considerations, as it was the case in this matter for reasons I will state later on, then if previous interviews were "similar", the results of those interviews would be of no value at all and ought not to have been taken into consideration.

If the decisions of previous interview committees was a determining factor, what was the role of the latest Interview Committee?

If failure at previous interviews was a negative factor in assessing performance at the latest interview, it was not made known to the candidates.

The number of unsuccessful appearances of each petitioner is stated to be as follows:-

1. Mr. F. G. L. Perera 5
2. Mr. K. M. P. Wijekoon 4
3. Mrs. W. D. P. M. Samaratunge 4
4. Mrs. D. Jayasuriya 4
5. Mr. R. S. Liyanage 4
6. Mr. J. Gurugamage 4
7. Mr. T. H. Wickremasinghe 4
8. Mr. W. R. de Alwis 4
9. Mr. M. G. W. Karunaratne 3
10. Mr. K. N. W. Fernando 2

If Perera, Wijekoon, Liyanage and Wickremasinghe were disqualified as 'chronic' NSC Grade 5 cases, why were Samaratunge, Gurugamage, de Alwis, Karunaratne and Fernando, who were NSC Grade 4 officers, disqualified? Because they had been unsuccessful at previous interviews? If failure at previous interviews was a decisive factor, why were respondent 14 Miss S. P. Mendis, and respondent 16 W. A. Sirisena, who had, like petitioner 9 Karunaratne, failed three times at previous interviews, promoted? Having set its own standards *ad hoc*, the interview panel did not adhere to it but had to zigzag its way, arbitrarily, avoiding its own criteria, to be able to appoint certain persons.

Having regard to the submissions of the learned Deputy Solicitor-General, NSC Grade 5 officers were in a category superior to NSC Grade 4 officers. There was no rational basis to say, as the learned Deputy Solicitor-General ventured to do so in his astounding revelation, that NSC Grade 5 officers had been relegated to a class beyond which they could not ascend. Banished to some limbo, were NSC Grade 5 Officers tormented from time to time by the hope held out to them by being called for interviews, that they had, after all, been redeemed and crossed the border of eligibility? Assuming that they were aware that NSC Grade 5 officers as such had been disqualified from eventual selection, that would have been the case. However, the situation is much worse, since they were not aware of this fact at all. On the contrary, at meetings with the Bank's representatives, they had been given the assurance that they would be considered for promotion with Grade 4 officers; and so, hopefully and confidently, they presented themselves for interview whenever summoned. The learned Deputy Solicitor-General maintained that the petitioners were persons who had faced earlier interview committees and therefore knew all about the recruitment procedures and criteria. I am unable to agree with him. They may have certainly suspected that something was seriously amiss, for at the meeting of the Governor with the Central Bank Employees Union on 17th July 1992 (P14) the Union had expressed its dissatisfaction with the manner in which promotions had been made. But that was not all. They were once again disappointed and perplexed by the selection of the 11th to the 22nd respondents who were non-staff class Grade 4 officers, persons comparatively inferior in rank, in preference to them. And so

they wrote on 3rd March 1993 (P7) objecting to the latest selection. However, they could not have been aware of what was exactly the problem, for the Bank's methods of promotions, including the fact that Grade 5 officers were not as a class persons grata and not acceptable came to be revealed only in these proceedings. The reply to P7 by the Bank R3 setting out the criteria which were supposed to have been adopted was dated 12th April 1993. This petition was filed on 2nd April 1993. In any event, exclusion of Grade 5 officers as a class was not mentioned in R3. In the light of the learned Deputy Solicitor-General's explanation, the NSC Grade 5 officers must not only feel disappointed that they were not selected, but also greatly astonished and distressed that they were excluded because they were, albeit secretly, despised as a class and looked upon with an evil eye. Grade 5 officers were "eliminated" on the preconceived opinion that they should not be selected and not on the basis of their performance at the interview. They were excluded on account of prejudice. There was no rational basis for their exclusion. In fact, the evidence points in the opposite direction.

(15) THE RECOMMENDATIONS OF THE ESTABLISHMENTS COMMITTEE

All those who were summoned as "eligible", whether NSC Grade 4 or NSC Grade 5 officers, were selected for interview on the recommendations of the Establishments Committee on 30th, July, 1992 as approved by the Monetary Board on 4th September, 1992. (Vide paragraphs 5 and 6 of the affidavit of the Executive Director of the Bank). According to the Executive Director of the Bank, the Establishments Committee in recommending candidates for interview "followed the practice" of recommending for the interview only those candidates who had an excellent record (average of 86% and over) during the five years immediately preceding the date on which eligibility was determined, and taking into consideration the criteria laid down by the Monetary Board as set out in documents marked R1 and R2. The "eligibility" of the petitioners and 11th - 22nd respondents was considered as at 6th March 1992. (See paragraphs 9, 10, 12, 13, 14 and 15 of the affidavit of the Executive Director).

The Establishments Committee made its selections from those who had obtained "near excellent" gradings on the basis of assessments

made in terms of very detailed annual personnel evaluation reports in a prescribed form (P12) of those who had obtained a "near excellent grading". P12 contained fifteen main headings relating to specific aspects of performance and ability. In addition there was a special assessment of "Negative Qualities". The evaluation required the consideration of eighty-two options, ranging from four to seven options under each of the sixteen main heads, in the process of forming notions with regard to the performance, abilities and qualities of each employee. "Near Excellent" may, in terms of the affidavit of the Executive Director, have been 81% (para. 25 (b) of his affidavit) or 76% (para. 25(d) of the affidavit). There is no criterion to determine "near excellent". The "Classification and Descriptive Code" in P12 refers to "over 85%" as "outstanding" and 76% to 85% as "Excellent". The Executive Director states in paragraph 14 of his affidavit that "all officers who were invited for the interviews held on 5th, 6th and 7th January were officers who had excellent ratings during the 5 year period immediately preceding the date on which their eligibility was considered ..." In paragraph 25(d) of his affidavit, the Executive Director explains that "To achieve an excellent grading an officer should get a minimum average of 86% of the total marks given, after adjustment for late attendance and negative qualities." In paragraph 25(g) of his affidavit the Executive Director said that in recommending the names to the interview panel "the Establishment Committee also took into consideration the work, conduct, attendance and punctuality of the officers concerned." In terms of the Descriptive Code in P12, those who obtained an overall rating of over 85% were classified as A+ and merited the descriptive standing "Outstanding", and not merely "Excellent" as the Executive Director explains in paragraph 25(d). The petitioners maintain that all of them were classified as "Outstanding".

If, as the respondents maintain, some of those who were summoned for interview had obtained higher ratings than others and were therefore superior, that fact has not been established by evidence. Who were those who obtained more marks? Why was this information suppressed? The inference I draw is that the disclosure of that information would have been adverse and unfavourable to the respondents' selection of the 11th – 22nd respondents in preference to the petitioners.

(18) THE SELECTION BY A SINGLE INTERVIEW PANEL WAS AN AD HOC DEPARTURE FROM THE BOARD'S OWN SCHEME

After the Establishments Committee at its meeting held on 30th July 1992 had recommended the eligible candidates for interview, the recommendations were approved by the Monetary Board on 4th September 1992 and letters inviting the eligible candidates to present themselves for interviews were issued on 28th December 1992 and the interviews were held on 5th, 6th and 7th January, 1993.

The petitioners maintained that in terms of Public Administration Circulars, it was Government policy that promotions should not be made on the basis of an interview but on the basis of merit and seniority and an examination. The Bank, as we have seen, took up the position that the Circulars did not apply to the Bank and that the Bank was "empowered to lay down the manner in which promotions are to be conducted." Was the scheme laid down by the Bank in the exercise of its powers adhered to by the Bank?

The Scheme of Recruitment set out in P4 does not mention an interview as a part of the selection process. However, in terms of R1, the Board had at its meeting 1/89 decided on the following "procedure relating to promotions of Staff Assistants to Staff Class Grade 1":

- (i) The Establishments Committee to take into consideration the record of service, work, conduct, attendance and punctuality of officers who have completed 4 years confirmed service in Non-Staff Class Grade 4 and of officers in Non-Staff Grade 5 and to recommend candidates for interview by a **Preliminary Interview Committee** nominated by the Governor for the purpose
- (ii) **A second Interview Committee nominated by the Governor interviewing those recommended by the Preliminary Interview Committee** and recommended candidates for interview by the Monetary Board.

(iii) The Monetary Board to Interview those recommended by the second Interview Committee and selecting those who were considered fit for promotion to Staff Class.

The emphasis is mine.

R1 was modified by the Board at its meeting 2/90 on 16th January 1990 with regard to the criteria the Establishments Committee should apply in recommending candidates "for interview by a **Preliminary** Interview Committee nominated by the Governor." (The emphasis is mine.) It did not modify the provisions of R1 regarding the need for three interviews.

The Executive Director of the Bank in paragraphs 6 and 9 of his affidavit accepts the fact that the Establishments Committee, taking the prescribed criteria into account, was to "recommend candidates for interview by a **Preliminary** Interview Committee nominated by the Governor for the purpose." (The emphasis is mine.)

The petitioners in paragraph 12 of their affidavit stated that "prior to the present scheme of Promotions (P1) coming into force, it was the practice at the Central Bank to conduct 2 or 3 interviews for the promotion of Non-Staff Class Officers to Staff Class Grade 1. The final interview was conducted by the Governor or by the Monetary Board."

Responding to that, the Executive Director in paragraph 8 of his affidavit states as follows: "Answering paragraph 12 of the affidavit of the petitioners, I admit the several averments contained therein and I further state that where more than one interview was held for the purpose of promotions there was a process of elimination of candidates at each interview."

Obviously the purpose of having several interviews is to eliminate less suitable candidates at each stage. However, the respondents fail to explain why.

(1) a final selection was made at the first and only interviews, whereas the procedure approved by the Monetary Board as set out in

R1, which the respondents say was the procedure applied, required three interviews, and when that was the established practice?;

(2) the final selection was made by senior officers of the Bank and not by the Board itself as prescribed by the Monetary Board in R1, and in accordance with practice, except when, if the petitioners were right, the Governor, departing from the scheme in R1, held the third interview.

It should be mentioned that even in the selection of serving officers in terms of the scheme of "accelerated promotions", when serving officers competed with outsiders, the Scheme of Recruitment in P4 specified that "All candidates will be interviewed by the **Board** before promotion to Staff Class can be considered." (The emphasis is mine.) Importance was attached to the Board itself selecting Staff Class officers, irrespective of which scheme was used.

In paragraph 19 of his affidavit, the Executive Director of the Bank states that the object of the single interview was "for the purpose of **ascertaining finally** "(the emphasis is mine)" the suitability of candidates for promotion to the Staff Class of the Central Bank ...". How was this justifiable in the light of the decision of the Board embodied in R1 that the final selection would be by the Board itself after candidates had been screened at two previous interviews? Why was a departure from the Bank's scheme made *ad hoc*?

Obviously, several interviews, with the final selection being made by the Board itself, was intended to minimize arbitrariness and ensure a fair evaluation of the candidates. In terms of paragraph 12 of the Executive Director's affidavit, 65 officers were invited for interview, but five of them did not present themselves for interview. If as the Executive Director explains in paragraph 8 of his affidavit, the interviews sorted out the candidates, it is to be expected that by the time of the final interview by the Board a much smaller number of candidates than interviewed earlier would have presented themselves, giving the Board the time and the opportunity to carefully assess the candidates. As it happened, the final selections were made in a hurry, and therefore, as a matter of reasonable inference, inconsiderately, without due deliberation.

In paragraph 21 of their affidavit the petitioners state that "each candidate was interviewed for a maximum of five minutes, the 10th respondent (The Director of Establishments) making an announcement that the time was up at the end of five minutes." In paragraph 17 of his affidavit, the Executive Director states that the interviews were "not restricted to five minutes and that the candidates were interviewed for as long as it was necessary." If the Executive Director's version is to be preferred, he should have adduced evidence to support it. For how long were each of the 11th – 22nd respondents and the petitioners interviewed? Why was one interview longer than another? Why was it "necessary" in the one case but not in the other? At least what was the total time spent on all the interviews? No evidence has been placed before us on these matters. "Five minutes" is not in this case a less distasteful way of saying that the Interview Committee was making its evaluations too quickly, for specific reference is made to the role of the Director of Establishments acting as a time-keeper. "Five Minutes" was much more than an euphemism.

The members of the Interview Committee were said by Executive Director Easparanathan in paragraph 29 of his affidavit to have had the bio-data and service records of the candidates. each candidate was supposed to have been assessed "independently by the members of the Board." Taking "Board" to mean Interview Committee, for the one and only interview was by a group of senior officials who made the selection and not, as required by R1, by the Monetary Board, what kind of assessment of capability could have been made in five minutes after perusing the bio-data and service records? In terms of paragraph 17 of Executive Director Easparanathan's affidavit, the "Interview Board" consisted of the 5th to 10th respondents. "However", he explains that "the 8th Respondent was present as a member of the Interview Panel only in the morning of the 5th January 1993 and he was not present and did not function as a member of the Interview Panel thereafter." Those who were interviewed on the morning of 5th January would have been worse off than the others who were interviewed when the 8th respondent was absent, for six rather than five persons would have been perusing the bio-data and service records in five minutes. Assuming, as we must if each member of the Interview Committee,

as the Executive Director says, acted "independently", each member would have had a single minute to peruse the bio-data and service record of a candidate to assess "capability" and/or "experience." The service records spanned many years: 27-34 years in the case of the petitioners, and 22-27 years in the case of the 11th to 22nd respondents. There was even less, if not no time for this at all, for time was spent questioning the candidates. What was the estimate that could have been made even if "five minutes" was an euphemism for 'a short time'?

In the circumstances, one is compelled to conclude that the selections were not made after sufficient and careful consideration, but arbitrarily. The respondents maintained that the petitioners and those selected were treated alike. It is a superficial and worthless submission. Perhaps, both the petitioners and the 11th to 22nd respondents were treated alike in that they each had five minutes at a single interview. At best they were as equal as are the purchasers of lottery tickets. Whereas the purchasers of lottery tickets are randomly selected and the losers do not complain because they consider themselves to be more deserving, promotion is a reward which after careful consideration, for sufficient reasons is declared to be merited and earned. Selection for promotion is not simply a matter of good fortune. There was not even a random selection, for, as we have seen, a group of persons, namely those who were in Grade 5, were disqualified as a class, and it was pretended that those who had failed at previous interviews were also disqualified. Moreover, as we shall see, the equal time spent was used very differently, both with regard to the questions asked and with regard to what was done in the making of decisions within that time.

(18) THE COMPOSITION OF THE INTERVIEW COMMITTEE/ PANEL/BOARD AND THE INTRUSION OF SUBJECTIVITY INTO THE SELECTION PROCESS

In paragraph 27 of his affidavit, the Executive Director states that the interview panel consisted of "several senior officers of the Central Bank who had worked in the Bank in different capacities over a long period", and filed a document (R5) entitled "Career of each member of the Interview Panel", giving the name, designation and positions

held by each member of the panel. In paragraph 29 of his affidavit, the Executive Director states that "In addition to the members of the Interview Panel being aware of the capabilities of the various candidates who presented themselves for said interview, their service records were also made available to the said members and each candidate was assessed independently by the members of the Board."

The learned Deputy Solicitor-General submitted that the interview was conducted by "responsible" officers of the Bank. They decided on the criteria to be adopted and made their selections. No doubt they were estimable people about whom even the petitioners probably entertained a favourable opinion, for no objection has been taken to the composition of that panel on personal grounds. What they object to is the role of that panel as the final selecting authority. They maintain, justifiably, that in terms of the scheme of promotion relied upon by the respondents, the final selection should have been made by the Monetary Board after a second interview.

In the matter before us, as we shall see, the interview panel was not even guided by criteria laid down by the Board, and, therefore, the Board in making the final selections may well have selected other persons. Moreover, if, as the Executive Director says, the members of the Interview panel were equipped to assess the candidates because, among other things, they were already "aware of the capabilities of the various candidates", subjectivity was introduced into the selection process. Each candidate, the Executive Director said, was assessed "independently" and not, therefore, after his opinion was discussed and moderated by the panel as a whole. And so, in the process of assessing the worth of each candidate exclusively through the medium of one's own mind or individuality, having regard to one's own experience, a member of the panel may well have entertained erroneous opinions. Objective, and not subjective standards, must be used at every stage of a recruitment process so that selection may be determined by actual facts and not be coloured by irrational or prejudicial feelings, or by fanciful opinions or misguided notions. Were each of the sixty persons interviewed personally known to each of the five members of the panel? If not, how was it possible for each member to act "independently" on the basis of his personal knowledge? What was

the nature and extent of contact between the persons interviewed and each member of the panel? The Bank has not adduced any evidence in that regard. The Bank, as we have seen, placed reliance on the personal knowledge the members of the interview had of the candidates. Had the selection been made by the Monetary Board, is it not likely that objective, rather than subjective considerations based on personal knowledge, would have been taken into account? Even well-formed interview panels are not infallible and can sometimes produce strange results; but their composition can be crucial, as it was in this case.

(20) THE UNEVENNESS OF THE QUESTIONS ASKED AT THE INTERVIEW

The petitioners state that the questions asked were haphazard, and sometimes irrelevant, and that the selections were fortuitous and therefore resulted in the elimination of the petitioners and the selection of the 11th to 22nd respondents unfairly. In paragraphs 23–32 of their affidavit they set out the questions asked of each of the petitioners.

The first petitioner had been questioned on the definitions of management and financial audit; whether he had read a certain newspaper article on international accounting standards; and about the work he had done thirty-two years earlier in the Exchange Control Department.

The second petitioner had been questioned on the air route to Madagascar; the present name for what was once known as Congo; the present name for Burma and its capital; and about his current and previous work.

The questions put to, and the answers given by the third petitioner were as follows:

Q. What is the subject you are doing at present?

A. I am attached to the Administration Division of the Public Debt Department.

Q. Why are you doing administration?

A. I was posted there by my Head of Department.

Q. Who was the tall boy who was doing administration earlier?

A. The tall boy in the Department did not do administration, he did treasury bills.

Q. Where is he now?

A. He is at the Anuradhapura Branch.

The fourth petitioner was questioned about the functions of the Central Bank, re-finance, EPF refunds and Bank re-financing.

The fifth petitioner was questioned as to whether salaries could be paid before the 25th of the month, and what disadvantages there were in such payment.

The sixth petitioner was questioned on the differences in the EPF Department in the 1960s and at the present time; the names of the Superintendent of EPF then and now; how an employee of a firm comes to know whether EPF contributions are made on his behalf; and on suggestions for the better functioning of the EPF Department.

The seventh petitioner was questioned on his work in the Bank Supervision Department; what the BASLE agreement was; and the subject of visas for expatriates attached to foreign Banks. There was also an aborted question: The seventh respondent Executive Director Nagahawatte, asked the seventh petitioner, Wickramasinghe, about the number of EPF account holders, and before petitioner Wickramasinghe could answer, the Executive Director G. M. P de Silva, the eighth respondent, interrupted and asked "Why do you ask that question?" Nagahawatte stated that he was not able to answer the question.

The eighth petitioner was questioned as to the number of departments of the Bank in which he had worked and which was the best department; how the genuineness of gold is tested; who was the

famous Oxford-educated anthropologist; who is the Prime Minister of Pakistan; and who was the person responsible for obtaining independence for Pakistan.

The ninth petitioner was questioned about the technical defects in the Mahaweli Scheme.

The tenth petitioner was questioned about the Collection Division of the EPF Department and the functions of the Banking Department.

Although he was himself a member of the interview panel (See R5), Executive Director Easparanathan in paragraph 19 of his affidavit states that he "cannot at this stage recall all the questions that were asked from each of the candidates..." Personal amnesia may be understandable or even excusable. However, why was no record kept of the questions and answers when the interview was a matter of paramount importance in the selection process? The recording of interviews has the salutary effect of keeping interviewers within the bounds of propriety and relevance in addition to providing evidence of fairness. The failure to do so disabled the Bank in refuting the allegation of the petitioners that the questions were irrelevant and uneven, generally or specifically, in relation to the petitioners. Surely, especially with the assistance of modern technology, the recording of an interview and transcribing it, should be a very simple matter ?

The evidence adduced by the petitioners certainly supports their claim that the questioning was uneven and therefore resulted in unequal treatment. Moreover, the exchange between the seventh and eighth respondents during the interview of the seventh petitioner shows that the members of the Interview Committee were not always, if at all, certain as to what the purpose of interview was, in the sense of what they were supposed to be ascertaining.

(21) THE SUPPOSED CRITERIA FOR EVALUATION AT THE INTERVIEW WERE UNCERTAIN

In the written submissions filed by Attorney-at-Law S. Abeyswickrama on behalf of the 1st to 10th respondents, while

rejecting that no interview ought, in terms of Public Administration Circular No. 30/91, to have been held at all, it is stated in paragraph 2.2 that "in any event the Public Administration Circular prescribes **merit and seniority** as the criteria that should be applied for the purposes of promotions. **The Central Bank has applied these criteria in selecting the candidates for promotion.** This position is apparent considering the criteria that were adopted at the interview for the purpose of selecting." The emphasis is that of the Attorney-at-Law.

Apparent from what? The Scheme of Recruitment in P4 as amended by R1 and R2 do not, as they should have, specified the criteria to be taken into account for evaluation at the interviews. And as far the evidence before us is concerned, the variously expressed positions of the Bank cannot be reconciled.

That which is stated in the Bank's written submissions is different to what the petitioners were told in P15 by the Bank, namely, that the selections were made on the basis of performance at the interview, seniority, experience, and general capability in their work.

In paragraph 19 of his affidavit, Executive Director Easparanathan states as follows:

"...I state that the interview was conducted for the purpose of ascertaining finally the suitability of candidates for promotions to the Staff Class of the Central Bank where the responsibilities and the qualities that an officer is called upon to bear are vastly different to the responsibilities and qualities that an officer is called upon to bear in the class to which the candidates belonged, namely, the Non-Staff Class. With a view to achieving this objective at the interview, the questions were asked for the purpose of ascertaining the knowledge of the candidates with regard to the work handled by them, the knowledge of the functions of the Department in which they worked, the functions of the Central Bank, general knowledge and awareness, ability to identify a problem and respond to it and their analytical skills in answering a question."

(22) THE SUPPOSED CRITERIA FOR EVALUATION AT THE INTERVIEW WERE VAGUE

The promotions in question related to the promotion of "Staff Assistants". "Staff Assistants" were persons who were expected to exercise "supervisory functions". In what ways were the "responsibilities and qualities" of "Staff Assistants" different to those of Class I Staff Grade Officers? Being not only different, but "vastly different", one might reasonably expect an explanation of what were the differences in the tasks to be performed and some rational explanation of the character, and nature of the qualities including those of excellence, good natural gifts and capacity, ability, skill and disposition that were expected of a Staff-Grade Class I Officer, and how the interviews were structured and conducted to select the best persons in the light of the tasks to be performed. We had no satisfactory explanation of these matters. The inexactness of the couching of criteria, and the inability of members of the interview panel therefore to think with clearness in the formulation of their questions appear from the application of the criteria.

(23) CRITERIA FOR EVALUATION AT THE INTERVIEW NOT ANNOUNCED

How was it decided by the Interview Committee that the candidates selected were better than the others who were not selected, and especially the ten petitioners?

The criteria that were supposed to have been applied were first revealed by the Director Establishments in R3, after the selections were made and after these proceedings were commenced. Moreover, the criteria set out in R3 are not only inconsistent with what was said by the respondents themselves in the written submissions and through Executive Director Easparanathan to have been done but also, as we shall see, inconsistent with what they did.

(24) THE APPLICATION OF THE SUPPOSED CRITERIA – (A) THE CRITERION OF SENIORITY

Seniority was supposed to have been a criterion. In terms of the information contained in paragraphs 13 and 15 of the affidavit of the

Executive Director, albeit not in the exact manner in which he sets out the information, the position with regard to the seniority of the petitioners was as follows as at 6th March 1992:

Petitioner No.	Name	No. of Years in Bank	No. of Years in Non-Staff Class Grade 4	No. of Years in Non-Staff Grade 5	No. of Years in Non-Staff Class Grades 4 & 5
1.	G. A. L. Perera	34	10 1/2	5	15 1/2
2.	K. M.P. Wijekoon	33	10 1/2	2 (6) mths.	11
3.	W. D. P. M. Samaratunge	31	10	Nil	10
4.	D. Jayasuriya	30	10	Nil	10
5.	R. S. Liyanage	30	10 1/2	6 mths.	11
6.	J. Gurugamage	30	9	Nil	9
7.	T. H. Wickramasinghe	30	10 1/2	6 mths.	11
8.	W. R. de Alwis	27 1/2	10	Nil	10
9.	M. G. W. Karunaratne	27	10	Nil	10
10.	K. N. W. Fernando	27	11	Nil	11

The position with regard to the 11th – 22nd respondents was as follows:

Respondent No.	Name	No. of Years in Bank	No. of Years in Non-Staff Class Grade 4	No. of Years in Non-Staff Grade 5	No. of Years in Non-Staff Class Grades 4 & 5
11.	D. J. Wansapura	27	06	Nil	06
12.	N. Z. Musaffer	27	06	Nil	06
13.	K. M. B. Ranasinghe	24	06	Nil	06
14.	S. P. Mendis	25 1/2	08 1/2	Nil	08 1/2
15.	S. Peris	25	06	Nil	06
16.	W. Sirisena	25	10	Nil	10
17.	S. R. Gnanamuttu	24	06	Nil	06
18.	G. Gamage	23	09	Nil	09
19.	W. D. J. Chandradasa	23	06	Nil	06
20.	A. J. P. Leelaratne	22	06	Nil	06
21.	M. D. A. Jayasinghe	22	06	Nil	06
22.	W. K. P. I. Weerasekera	22	06	Nil	06

Length of service as a Staff Assistant was a factor stated in P4 to be taken into account in determining eligibility. If as the respondents say in their written submissions P4 was the applicable scheme and that the selections were made on the "same basis" as that used in the determination of eligibility by the Establishments Committee, why is no mention made by the Executive Director of service as Staff Assistants? It was, after all, a factor recognized at the meeting between the Trade Unions and the Governor and other representatives of the Bank on 24th October 1992. An additional mark was to be given for "the experience gained in the post of Staff Assistant."

If seniority was a factor to be taken into account by the Interview Committee, how was this assessed? What weightage was given for each year of service (1) in the Bank (2) in NSC Grade 4 and (3) NSC Grade 5 (4) and as Staff Assistants? The respondents failed to show what weightage, if any, was given to any or each of these factors. If the Interview Committee was doing anything more than the Establishments Committee, should not the marking for seniority have been at the time of **selection**, 5th – 7th January 1993, rather than 6th March 1992 when **eligibility** for interview was considered?

According to the respondents, 25% of the marks allocated at the interview was for seniority. How many marks each candidate earned and how that was determined have not been established by the Bank. However, in the light of the information in the Executive Director's affidavit, in terms of years of service in the Bank, petitioners Perera, Wijekoon, Samaratunge, Jayasuriya, Liyanage, Gurugamage and Wickramasinghe were senior to each and every one of respondents 11 – 22. With regard to Petitioner Karunaratne and respondents Wansapura and Musaffer, each of them had 27 years of service. Petitioner De Alwis had 27 1/2 years of service and was senior to petitioner Karunaratne and to respondents Wansapura and Musaffer. Petitioner Fernando had 27 years of service and was senior to the 13th to 22nd respondents.

In terms of years of service in Non-Staff Class Grade 4, all of the petitioners were senior to the 11th to 22nd respondents.

In terms of years of service in Non-Staff Class Grade 5, none of the respondents had served in that Grade, whereas petitioners Perera, Wijekoon, Liyanage and Wickramasinghe had served in that Grade. Taking the total service in NSC Grades 4 and 5, in terms of seniority in service, Perera, Wijekoon, Liyanage and Wickramasinghe were well ahead of some of the other petitioners and above each and every one of the 13th to 22nd respondents.

**(25) THE APPLICATION OF THE SUPPOSED CRITERIA –
(B) MERIT**

Seniority alone, the respondents said, was not the basis of selection. If, as established by the petitioners, they ought, in terms of the criterion of seniority, to have been selected in preference to the 11th to 22nd respondents, what were the other criteria in terms of which they were excluded? Admittedly, when one compares the response of the Bank in P15, the affidavit of Executive Director Easparanathan and the written submissions of the Bank submitted by Attorney-at-Law Abeywickrama, it is evident that there were no certain standards of selection. However, the Attorney-at-Law for the 1st–10th respondents, as we have seen, in making the written submissions of the Bank, stated that the Central Bank had applied the criteria of “merit and seniority” in selecting the candidates for promotion. What was “merit”? What were the criteria for evaluating “merit”?

The Attorney-at-Law in paragraph 2.3 of the written submissions of the 1st to 10th respondents explains that, since the record of service, work, conduct, attendance and punctuality, in terms of the scheme of promotion in P4 as amended, were to be taken into account, “as such it is clear that merit in addition to seniority will be considered for the purpose of promotion from Non-Staff Class Grade 5 to Staff Class Grade.”

It is by no means clear that merit was taken into account. All we have is an assurance that in future it “will be considered”. The criteria set out in P4 as amended were for the purpose of guiding the **Establishments Committee** in making its recommendations with regard to those for the preliminary interview. P4 as amended says

nothing about the way in which merit was to be determined by the **Interview Committee**. Neither merit, nor seniority nor any other criteria are mentioned in P4, as amended, as guiding factors which the preliminary or second Interview Committees or the Board at the final interview should take into account. How does it become "clear" that merit was taken into account by the **Interview Committee** or that it was expected to do so merely because the **Establishments Committee** was required to take certain matters into account? Nor is there any reference in P4, R1, R2 or elsewhere as to how seniority and merit were to be ascertained.

What did the Interview Committee do? In paragraph 2.2 of the written submissions of the Bank, it is stated that "at this interview candidates were marked on seniority, academic qualifications, general awareness and performance." The assertion of the Bank that candidates were selected on the basis of "seniority and merit" cannot be sustained on the ground that academic qualifications, general awareness and performance constituted the elements of "merit", for the Bank in its written submissions, after stating that the "candidates were marked on seniority, academic qualifications, general awareness and performance", adds that "equal weightage was given to each of these elements and the members of the interview panel marked each of the candidates independently. The candidates were selected on the basis of the average marks obtained by them." Executive Director Easparanathan in paragraph 28 of his affidavit confirms this. He states as follows:

"I state that the candidates who presented themselves for interview were judged on the basis of their seniority, academic qualifications, general awareness and their performance. Equal weightage was given to the above criteria."

Thus, the selection was not simply on the basis of two criteria, namely, seniority and merit, as stated by the Bank in paragraph 2.2 of its written submissions but, as differently stated in the same submissions, and supported by Executive Director Easparanathan, on the basis of seniority, academic qualifications, general awareness and performance, for "equal weightage" was given to each of these four separate factors.

Executive Director Easparanathan further explains the selection process as follows:

27. The interviews were held by a Panel consisting of several senior officers of the Central Bank who had worked in the Bank in different capacities over a long period...

29. In addition to the members of the interview panel being aware of the capabilities of the various candidates who presented themselves for the said interview, their bio-data and their service records were also made available to the said members and each candidate was assessed independently by the members of the Board.

30. I further state that 10 out of the 12 respondents who were promoted had Degrees from recognized Universities and/or had completed the examinations conducted by the Institute of Bankers. Out of the two candidates who did not have such special qualifications, the 12th respondent had received a special commendation from a Governor of the Central Bank. A copy of the said commendation is annexed herewith marked R6. In addition, the said two candidates, namely the 11th and 12th respondents, were found to be suitable for promotion on the basis of the criteria referred to earlier. Amongst the several petitioners only the 8th petitioner had obtained a Degree from a recognized University or had any equivalent banking qualifications."

When the petitioners in their letter dated 7th March 1993 protested against their exclusion from promotion (P7), the response of the Bank in its letter dated 12th April 1993 (P15) was that the Interview Committee had made its selections on the basis of performance at the interview, seniority, experience, and general capability in their work. No mention is made of academic and/or professional qualifications having been taken into account. No mention is made of "special qualifications" or "commendations" being taken into account. Whereas "performance", simpliciter, is referred to in the written submissions of the 1st - 10th respondents and in Mr. Easparanathan's affidavit, "performance at the interview" is referred to in the letter of 12th April 1993. Did "performance at the interview"

mean how well or badly they answered the questions, or did it mean how they fared, having regard to marks given for seniority, educational qualifications, general awareness and performance in the sense of the successful accomplishment in past years of the tasks assigned to them and/or proven capabilities in that regard? Or did it mean the judgment of capabilities by reference to the personal notions of the members of the panel? We have been given no answer. If "performance" meant "experience" and/or "general capability", could the interview committee have done better than accepting the assessments made by the Establishments Committee on the basis of the five annual evaluation reports? I do not think so, having regard to the way in which the interviews were conducted.

There were no certain standards and understandably, no standards that could have been announced without reasonable protest. For example, could it have been announced, without legitimate resistance, that all NSC Grade 5 officers were, by reason of being in that Grade, excluded from further consideration as being 'chronic' cases: or that failures at previous interviews were taken into the process of reckoning? Could it have been announced without justifiable protest that academic/professional qualifications were being taken into account?

(26) THE APPLICATION OF SUPPOSED CRITERIA - (C) ACADEMIC/PROFESSIONAL QUALIFICATIONS

It was common cause that the matter in question related to the "rankers", "in-service", "ordinary scheme". Accepting the respondents' view that the applicable scheme was that which was set out in P4 as amended by R1 and R2, there is nothing that suggests that academic and/or professional qualifications play any part in the promotion of Staff Assistants to Staff Class Grade 1. That was plainly a scheme recognizing the importance of experience judged by the proven excellence and worth of serving officers. Academic and/or professional qualifications were relevant, as far as serving officers were concerned, to the scheme of "accelerated promotion" in terms of which the Bank was attempting to inject new blood as well as providing incentives to serving officers to improve their knowledge and skills. In any event, academic and professional qualifications had

been already given credit in earlier promotions and it seems to have been a recognized policy in the Bank not to give credit for academic/professional qualifications if it had already been given. Thus, although at one stage 10% weightage had been given for educational qualifications in the appointment of Staff Assistants, this had been withdrawn by the Governor in order to avoid duplication.

Assuming that it was legitimate to have taken academic/professional qualifications into account and that ten of the twelve respondents had the requisite qualifications – and this we do not know for certain because there is no evidence that the Degrees were not merely any Degrees from “recognized universities” as the Executive Director says in paragraph 30 of his affidavit, but also in specific subjects deemed relevant to the work in hand and of a specified quality, namely, first or second class upper division, as prescribed by the Board in R1 – why was De Alwis, the eighth petitioner, who in paragraph 30 of Executive Director Easparanathan’s affidavit is admitted to have had a Degree, excluded from selection? Why was he excluded while respondent 17, S. R. Gnanamuttu who, according to the written submissions of the Bank, had no Degree but merely possessed a Diploma in Library Science selected? In the written submissions of the Bank Gnanamuttu is referred to as a person holding “special academic qualifications.” Were selections made on the basis of a Degree, as the Executive Director claims, or on the basis of “special academic qualifications” as stated by the Bank in its written submission? What were “special academic qualifications”? How were they relevant to the selection of Staff Class Grade officers? A Diploma in Library Science is not a recognized academic or professional qualification in terms of P4 as amended by R1 which took great care in specifying the relevant degrees and professional qualifications. The respondents have made no explanation. How are the selections of Wansapura, the 11th respondent, and Musfer, the 12th respondent, justified if the phrase ‘special qualifications’ meant ‘diplomas’, Wansapura and Musfer had neither degrees nor diplomas of any sort. The explanation of the Executive Director in paragraph 30 of his affidavit is that although Musfer had no degree, she had “a special commendation from the Governor” in support of which he produced R6. R6 is a letter dated 16th December 1982 from the Secretary to the Governor and Deputy Director of Economic

Research addressed to the Governor commending the "devoted work" of four officers, including Musafar, in connection with the "efficient organization and smooth functioning" of a seminar. The letter bears an endorsement, presumably from the Governor, stating DE. Mrs. Musafar is hereby commended. P1. place this in her personal file". Whether, and if so, and to what extent this commendation, which had been issued as far back as 1982, had already been taken into account in making Musafar eligible for interview is not in evidence. However, there is no justification made by the respondents, and I can see no grounds, let alone sufficient reasons, for equating such a commendation with the academic and professional qualifications of the sort specified in R1 in the scheme that was supposed to have been applicable. It was an *ad hoc* criterion adopted for the particular purpose of selecting Musafar, and therefore, unfairly discriminatory in her favour, resulting in the unjustifiable exclusion of one of the petitioners. As far as Wansapura, the 11th respondent was concerned, not even so much as a substituted criterion was suggested. After, unsatisfactorily explaining why Musafar was selected, the Executive Director, in paragraph 30 of his affidavit, lamely and vaguely, says: "In addition, the said two candidates, namely the 11th and 12th respondents were found to be suitable for promotion on the basis of the criteria referred to earlier." There is no evidence establishing Wansapura's superiority in any way to the petitioners.

**(27) THE APPLICATION OF SUPPOSED CRITERIA –
(D) "GENERAL AWARENESS"**

What was "general awareness"? If "awareness" was used in the usual, contemporary sense of being watchful and being on one's guard, how was this relevant to the purpose of recruitment by way of promotion of Non-Staff Class Officers to the Staff Class? Perhaps the term "awareness" was used in the Middle English sense of being informed and cognizant and conscious? Aware of what? Matters germane to the work to be performed; or other matters? If they were with regard to unrelated matters, what was the purpose of the questions? Was the quizzing then to merely expose the ignorance of some persons and to make fun of them or to embarrass them? There is no explanation.

It is understandable that questions may have been asked about the functions of the Central Bank and the functions of the Department in which they worked, for they were going to continue to work in the Bank and may have been assigned to work in the same Department of the Bank as that in which they were functioning. However, what was the relevance of ascertaining the knowledge of candidates "with regard to the work handled by them"? What might have been relevant would rather have been what Executive Director Easparanathan described as the "vastly different" work **to be** handled by them as Staff Class Officers. The interview should have been concerned with whether candidates were aware of what they were **expected to do** rather than with what they were **doing**.

Competence with regard to what the candidates were doing, had already been ascertained, among other things, in five annual evaluation reports and considered for the purpose of determining eligibility for the interview. Column 4 entitled "Knowledge" of the annual Personnel Evaluation Report (P12), states that it "describes the extent of the background information an employee has in respect of his own duties and of subjects allied to those duties," and proceeds to set out seven possible assessments – the most number of options under any head – in the Report. The evaluation of "knowledge" had been by reference to responses to the following assessments:

- (a) Has a good knowledge of his subject and related matters.
- (b) Very well-informed; unusually sound knowledge not only of his own subject and related subjects as well.
- (c) Has a thorough knowledge of his subject; shows effective experience.
- (d) Knows his subject fairly well.
- (e) Has just sufficient knowledge, of his subject to deal satisfactorily with only the general aspects of his work.
- (f) Has hardly any knowledge of his subject and functions.
- (g) Has little knowledge of his subject and has need to consult others and refer frequently for information.

Could the interview panel have done better in the time available?

**(28) THE APPLICATION OF SUPPOSED CRITERIA – (E)
IDENTIFICATION OF A PROBLEM AND RESPONDING TO IT**

Likewise, the capacity to identify a problem and satisfactorily respond to it had been considered at five annual evaluations under the head "Comprehension and Judgment". The evaluation form states that what was sought to be ascertained was "the capacity of an employee to understand a situation in relation to his work and give an apt decision in relation to that situation." The evaluation was based on responses to the following assessments:

- (a) Can pick up new work in a reasonable period of time.
- (b) Has satisfactory capacity for grasping new ideas or learning a new job of work.
- (c) Has a clear and sharp mind; quick to grasp a problem; high order of intelligence.
- (d) Slow in picking up new work and in grasping new ideas.
- (e) Very slow to learn a new task even with some explanation.
- (f) Is able to understand the general implications of a problem and pick up new work fairly quickly.

Could the interview panel have done better in the time available?

**(29) THE APPLICATION OF SUPPOSED CRITERIA –
(F) ANALYTICAL SKILLS**

What the Executive Director meant by "analytical skills in answering a question" is not clear. How this was ascertained by the questions asked of the petitioners is difficult to understand. However, "Analytical Ability", which is described in the annual evaluation form as an "employee's ability to think logically and set out the salient features of a problem", were ascertained in the five annual evaluation reports by reference to the following assessments:

- (a) Has good capacity for investigating a problem analytically and logically.
- (b) Is able to pick out the salient features of some of the simpler problems only.
- (c) Capacity for logical thinking and analytical investigation is of a very high order.
- (d) Capacity to think logically and to analyse a problem is limited.
- (e) Officer's capacity to think logically and present the essential features of a new problem is satisfactory.
- (f) Unable to think logically and sort out the factors bearing on a problem.

Could the interview panel have done better in the time available?

(30) THE INTERVIEW PANEL WAS IN NO POSITION TO MAKE A BETTER EVALUATION THAN THAT WHICH HAD BEEN ALREADY MADE

Could the Interview Committee in the time available to them have made a more thorough and fairer evaluation of the knowledge of the work handled by the candidates, their ability to identify a problem and respond to it, and their analytical abilities, than those already made year by year for five years by the immediate supervising officer of each candidate, moderated by the Deputy Head of the Department to which the candidate was attached and finally confirmed by the Head of such Department? (See paragraph 25(c) – (f) of the affidavit of Executive Director Easparanathan)? I do not think so. Indeed, having regard to the questions asked of the petitioners, one wonders how their relevant knowledge, abilities and skills were ascertained.

The interview panel had before them candidates who were, in terms of the "classification and Descriptive Code" set out in the "Personnel Evaluation Form – Report Sheet" (P12), "excellent" if not "outstanding. If the 11th – 22nd Respondents were more excellent or more outstanding than the petitioners, if has not been established by evidence.

There was no mark sheet produced to enable us to ascertain how each member of the Interview Committee made his "Independent" assessment in respect of each of the matters about which Mr. Easparanathan in paragraph 19 of his affidavit says the Interview Committee was concerned. Not even the aggregate mark sheet was produced in these proceedings. The respondents have failed to discharge their burden of adducing evidence to show that the selections they made were even-handed, fair and justifiable. The evidence in fact points in the opposite direction.

(31) DECLARATION

For the reasons stated in my judgment, I declare that the selection of the eleventh to twenty-second respondents in preference to the petitioners was in violation of Article 12(1) of the Constitution and that the appointments of the eleventh to twenty-second respondents to Staff Class Grade 1 were therefore of no force or avail and null and void.

(32) ORDERS

Although the Court has a wide discretion in terms of Article 126(4) of the Constitution in granting relief and in making directions, I do not deem it just and equitable that I should accede to the prayer of the petitioners that the Central Bank of Sri Lanka should be directed to promote the petitioners to Staff Class Grade 1 with effect from 16th March 1993, for accountability for achieving the objects of that institution lies with the Monetary Board. Within the bounds of the law, the determination of the necessary ancillary staff to assist the Board in achieving its objects and the selection of the best available persons, ought, in fairness, to be matters for the Monetary Board as the accountable authority. My business as a Judge of this Court is to see that they act within the bounds of the law.

The Central Bank in terms of what it has stated, requires ten more persons in Staff Class Grade 1 on the basis of the promotion of serving officers in Non-Staff Class Grades 4 and 5. I direct the Central Bank to make such recruitments by way of promotions within two months of this order.

I direct that petitioners G. F. L. Perera, K. M. P. Wijekoon, R. S. Liyanage and T. M. Wickremasinghe because they were, as explained, the victims of a cruel charade aggravating the disappointment of unequal treatment in violation of their fundamental right of equality, shall each be paid forthwith a sum of Rs. 20,000 by the First Respondent by way of a solatium.

I further direct that the First Respondent shall pay forthwith a sum of Rs. 10,000 each by way of a solatium to petitioners W. D. P. Samarathunga, D. Jayasuriya, J. Gurugamage, W. R. de Alwis, M. G. W. Karunaratne and K. N. W. Fernando for the violation of their fundamental right of equality.

Additionally, I direct that the First Respondent shall pay forthwith to each and every one of the petitioners a sum of Rs. 5000 as costs.

WIJETUNGA, J.

I agree with the conclusions reached by my brother Amerasinghe in regard to the complaint of the petitioners and his reasons therefor. I also agree with the orders he proposes to make.

WADUGODAPITIYA, J.

I have read the judgment of my brother Amerasinghe, and I agree with the conclusions reached by him in regard to the violation of the fundamental rights of the complaints in this case. I am also in agreement with the remedial measures he has proposed.

Relief granted.