REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 20 SEP 1988

APPLICATION NO. 967, 968/87(F) & 83 /88(F)

W.P. NO. /

Applicant(s)

Shri K. Ranganathan & 2 Ors

V/s

Respondent(s)

The Accountant General (A&E), Karnataka, Bangalore & 3 Ors

To

1. Shri K. Ranganathan
   Accounts Officer
   Office of the Accountant General
   (Accounts & Entitlements)
   Karnataka, Bangalore - 560 001

2. The President
   All India Association of Audit
   & Accounts Officers of the IA & AD
   Karnataka Unit
   C/o Office of the Accountant General
   (Accounts & Entitlements)
   Karnataka, Bangalore - 560 001

3. Shri R. Sathyanarayana Rao
   Accounts Officer
   Office of the Accountant General
   (Accounts & Entitlements)
   Bangalore - 560 001

4. Dr M.S. Nagaraja
   Advocate
   35 (Above Hotel Swagath)
   Ist Main, Gandhinagar
   Bangalore - 560 009

5. The Accountant General
   (Accounts & Entitlements)
   Karnataka
   Bangalore - 560 001

6. The Comptroller & Auditor General
   of India
   No. 10, Bahadur Shah Zafar Marg
   New Delhi - 110 002

7. The Secretary
   Ministry of Finance
   (Department of Expenditure)
   New Delhi - 110 001

8. Shri K. Janardhanan Sastry, IA & AS
   Assistant Accountant General
   Office of the Accountant General
   (Accounts & Entitlements), Karnataka
   Bangalore - 560 001

9. Shri M. Vasudeva Rao
   Central Govt. Stng Counsel
   High Court Building
   Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 9-9-88.

Received for Sl. No. 4

Received Government Advocate for Sl. No. 5

(S.K. Srinivasan) Advocate 20/9/88

DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

OC

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER,1988.

PRESENT:

Hon'ble Mr.Justice K.Madhava Reddy, .. Chairman.

Hon'ble Mr.Justice K.S.Puttaswamy, ..Vice-Chairman(J)

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATIONS NUMBERS 967, 968 OF 1987 AND 83 OF 1988

1. Sri K.Ranganathan,
   Accounts Officer,
   Office of the Accountant General
   (Accounts & Entitlement)
   Karnataka, Bangalore-560 001. .. Applicant in A.No.967/87

2. All India Association of Audit
   and Accounts Officers of the
   I.A & A.D., Karnataka Unit,
   Bangalore, by its President. .. Applicant in A.No.968/87

3. Shri R.Sathyanarayana Rao,
   Accounts Officer,
   Office of the Accountant General
   (Accounts & Entitlement)
   Bangalore-560 001. .. Applicant in A.No.83/88

(By Dr.M.S.Nagaraja, Advocate)

v.

1. The Accountant General
   (Accounts & Entitlements)
   Karnataka, Bangalore-1.

2. The Comptroller and Auditor General
   of India, No.10, Bahadur Shah Zafar Marg,
   New Delhi.

3. The Union of India by the Secretary,
   Ministry of Finance,
   (Department of Expenditure)
   Government of India,
   New Delhi. .. Respondents 1 to 3
   in all Applications.

Shri K.Janardhanan Sastry, IA & AS
Assistant Accountant General
Office of the Accountant General
(A & E) Karnataka,
Bangalore-560 001. .. Respondent-4 in A.Nos.967 & 968/87.

(By Sri M.Vasudeva Rao, CGASC for R1 to 3)
(Respondent-4 served, absent and unrepresented)

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These applications having come up for orders to-day, Hon'ble Mr.Justice K.S.Puttaswamy, Vice-Chairman made the following:

ORDER

These are applications made by the applicants under Section 19 of the Administrative Tribunals Act,1985 ('the Act').

2. Shri K.Ranganathan, applicant in Application No.967 of 1987 born on 12-9-1930 joined service in 1951 in the office of the Accountant General, Karnataka ('AG') as an Auditor, then designated as an Upper Division Clerk. When he was so working, he appeared for the Sub-ordinate Accounts Services Examination ('SAS') an All India Examination conducted by the Comptroller and Auditor General of India ('C&AG') in 1957 and was successful. On 22-9-1958, he was promoted as a Section Officer ('SO') then designated as Superintendent and thereafter on 7-10-1970, he was promoted as Accounts Officer (AO). He was confirmed in that post from 1-4-1978 and is due to retire on 30-9-1988.

3. Shri R.Sathyanarayana Rao, applicant in Application No.83 of 1988 born on 16-4-1936 joined service as an Auditor on 17-2-1958 in the office of the AG. He passed the SAS examination in 1966. He was promoted as SO on 22-5-1966 and then as AO on 8-4-1981 in which capacity he is now working.

4. A service Association called the 'All India Association of Audit and Accounts department, Karnataka Unit, Bangalore' (Association) recognised by Government, is the applicant in Application No. 968 of 1987. The Association is espousing the cause of Accounts Officers working in the Department. These are all the particulars of the applicants before us.

5. Shri K.Janardhana Sastry ('Sastry'), respondent-4 in Applications Nos. 967 and 968 of 1987, born on 27-8-1933 started his career in th office of the AG, as an Auditor and passed the SAS in due course. He was promoted as SO on 14-5-1960 and then as AO on

29-4-1974. When so working, he was selected in 1985/1986 to the junior time-scale of the Indian Audit and Accounts Service ('IA&AS'), a service constituted and functioning under the Indian Audit and Accounts Service (Recruitment Rules) 1983 ('New Rules') made by the President of India under Articles 148(5) and the Proviso to Article 309 of the Constitution. The New Rules, repealed the Customs and Accounts Service Recruitment Rules ('Old Rules') framed by the Governnment of India, in the Finance Department under their Resolution No.F 25(6)Ex.II/38 dated 30-4-1938.

6. The applicants have challenged the validity of sub-paras (2) and (3) of Schedule III of the New Rules as violative of Articles 14 and 16 of the Constitution.

7. Respondents 1 to 3 in Applications Nos.967 and 968 of 1987 who are also the respondents in Application No.83 of 1988 who will be hereafter referred as respondents, have filed their separate but identical replies resisting these applications. Respondent-4 in Application Nos. 967 and 968 of 1987 who has been duly served, has remained absent and is unrepresented.

8. These cases were first heard by a Division Bench of this Bench, consisting of two of us (viz., Mr.Justice K.S.Puttaswamy, Vice-Chairman and Mr.L.H.A.Rego, Member(A)) which by its order made on 18-7-1988 referred them to a larger Bench for disposal. On that reference, the Hon'ble Chairman had constituted this Full Bench and presided over the same. This is how these cases have come up before us. We heard them on 22nd and 23rd August,1988.

9. Dr.M.S.Nagaraja, learned Advocate, appeared for all the applicants. Sri M.Vasudeva Rao, learned Additional Standing Counsel for the Central Government appeared for all the respondents, except Sastry.

10. Dr.Nagaraja urges, that sub-paras (2) and (3) of Schedule III of the New Rules, which had segregated the AOs, for a hostile and discriminatory treatment, suffer from the vice of impermissible classification, were arbitrary and irrational and, therefore, violative of Articles 14 and 16 of the Constitution as ruled by the Supreme Court generally and in particular in INDRAVADAN H.SHAH v. STATE OF GUJARAT AND ANOTHER (AIR 1986 SC 1035).

11. Shri Rao refuting the contention of Dr.Nagaraja urged that the validity of the impugned provisions,was concluded by the Supreme Court in its decision rendered on 27-4-1984 in GURDIAL SINGH v. THE COMPTROLLER & AUDITOR GENERAL OF INDIA AND ANOTHER (Writ Petition No.13639 of 1983) and by a Division bench ruling of the Chandigarh Bench of this Tribunal in SANT RAM JULKA v. THE COMPTROLLER & AUDITOR GENERAL OF INDIA, NEW DELHI AND OTHERS (T.No.521 of 1986 decided on 20-10-1986) ('Julka's case). In support of his contention Shri Rao also relied on the rulings of Karnataka and Orissa High Courts in A.NORONHA v. STATE OF MYSORE AND OTHERS (AIR 1966 Mysore 267) and SUKHAMOY SEN v. UNION OF INDIA AND OTHER (1973 SLJ 810) respectively.

12. In ABDUL RAZAK AND ANOTHER v. THE DIRECTOR GENERAL, ESIC, NEW DELHI AND ANOTHER [(1988) 7 ATC 14],we have examined in detail, the power of this Tribunal to examine the validity of a service law, if that becomes necessary. For the very reasons stated in that case, (vide: paras 14 to 20) we hold that it is open to us to examine the validity of the impugned provisions. Sri Rao also did not rightly, dispute this position.

13. We must first examine as to whether the validity of the impugned rules is concluded by the Supreme Court and if so, it would not be necessary for us to go into that question.

14. One Shri Gurdial Singh, a member of a scheduled caste and working as Audit Officer (Commercial) in the office of the Director of Commercial Audit, New Delhi, who was hit by the New Rules and was, there-

fore not promoted to the IA&AS, challenged their validity before the Supreme Court under Article 32 of the Constitution in Civil Writ Petition No.13639 of 1983 inter alia, on the ground that they should have also given weightage and relaxation in age to members of scheduled castes and tribes for selection to the IA&AS. After notice to the respondents before admission, a Division Bench of the Supreme Court consisting of E.S.Venkataramiah and D.D.Madon, JJ. dismissed the same on 27.4.1984, at the admission stage in limine, in these words:

"The writ petition is dismissed."

In Julka's case the Chandigarh Bench of this Tribunal consisting of Hon'ble Sri Amarjeet Chaudhary, Member (J)(as he then was) and Hon'ble Sri Birbal Nath, Member (A) had expressed thus:

> "It was also brought to the notice of this Court by the respondents that the vires of the said rules were challenged before the Hon'ble Supreme Court of India in Civil Writ Petition No.13639 of 1983. The writ petition has already been adjudicated upon and dismissed by the Hon'ble Supreme Court of India."

In this para, the Bench had accepted the submission of Sri Rao.

15. We have earlier extracted the order of the Supreme Court in its entirety, which reveals that it had dismissed the writ petition of Gurdial Singh in limine, without giving reasons.

16. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Central Administrative Tribunal is a court within the meaning of Article 141. Though this Article does not expressly include the tribunals and the authorities functioning in the country, the law declared by the Supreme Court is binding on all of them. It is law of the land. Article 141 of the Constitution recognises the "law of binding precedents" in our country. This has origin in the Anglo-Saxon or English doctrine of precedents and has become a feature of our judicial system and the Constitution.

17. Even without elaborating on the "law of binding precedents" which is really unnecessary, it would suffice to state, that what really binds a subordinate Court or Tribunal, is the ratio decidendi or the raison detre or the principle enunciated by the Supreme Court in a case.

18. In a non-speaking order, as in Gurdial Singh's case, there are no reasons given by the Court for dismissing the writ petition. When the order itself does not give reasons, we cannot on any principle hold, that such an order has a ratio decidendi or principle enunciated which alone binds the subordinate Courts and Tribunals. It is therefore logical to conclude therefrom, that dismissal of an application in limine without reasons, does not constitute as a binding precedent. If that is so, then the challenge made by others cannot be held to be concluded by Gurdial Singh's case.

19. In this connection, it is apt to recall as to what has been decided in DARYAO AND OTHERS v. STATE OF U.P.AND OTHERS (AIR 1961 S.C.1457). In that case, a Constitution Bench of the Supreme Court, had occasion to examine whether the principle of res judicata was applicable to writ proceedings or not. In deciding that question, the Court examined the effect of an order dismissing a writ petition in limine without giving reasons. On that aspect Gajendragadkar,J., (as His Lordship then was) speaking for the Bench summed up the law in these words:

> "(19) We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.

> If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32 If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32 because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other....."

In this case, the Court had ruled, that an order dismissing a writ petition either under Article 32 or Article 226 of the Constitution in limine, without giving reasons, did not constitute a bar of res judicata.

20. When an order dismissing a writ petition under Article 32 in limine, without giving reasons does not operate as res judicata, on the very same reasons; we are of the considered view that the same cannot also operate as a binding precedent. We are also convinced that this conclusion is both logical and legal and flows from the very principles enunciated by the Supreme Court in Daryao's case. We are also of the view that this very position has been reiterated by the Supreme Court in UNION OF INDIA v. ALL INDIA SERVICES PENSIONERS' ASSOCIATION AND ANOTHER [(1988)2 SCC 580] ('Pensioners' Case).

21. We cannot really visualise the reasons that weighed with the Supreme Court for dismissing the writ petition of Gurdial Singh. But, if we may speculate and such a course is permissible, then we think that the Supreme Court found no merit in the claim of Gurdial Singh, that there should have been further weightage and relaxation in respect of members of the SC and ST for selection to the IA&AS.

22. Rupert Cross an erudite jurist, in his treatise "Precedent in English Law", Third Edition, has dealt with this aspect at length under the caption "Decisions without reasons" in Chapter-II - "RATIO AND OBITER DICTUM" at pages 47 to 49. The following observation therein is apposite:

> "In general however, the authority of a decision for which no reasons are given is very weak, because it is so hard to tell which facts were regarded as material and which were thought to be immaterial...."

We are of the view that this statement correctly depicts the legal position.

23. On the foregoing discussion, we hold that the decision of the Supreme Court in Gurdial Singh's case, does not conclude the validity of the impugned rules and that the view expressed to the contrary in Julka's case by the Chandigarh Bench does not lay down the law correctly.

24. On the validity of the impugned Rules themselves, in Julka's case, the Chandigarh Bench expressed thus:

> "The rules do not violate any provisions of the Constitution of India, nor any such argument has been advanced at the bar. The rules have been framed by the rule making authority and such a power has not been questioned. Moreover, the rules are not violative of any fundamental right or Article 311 of the Constitution of India. The intention of the legislature for fixing the age of 53 years, must be in the interest of efficient public service."

Except for the above, we must observe, with respect to that Bench, that the rest of the judgment in that case does not throw any light to enable us to form any opinion on the point at issue. We, therefore

propose to examine the matter independently, in its entirety.

25. Chapter 5 of Part V of the Constitution deals with the post of Comptroller and Auditor-General of India, appointment to that post, the status of the person appointed to that post and the immunities and privileges guaranteed to him, as also his disability to hold any other public office on his retirement from service. The C&AG is the overall head of the Department called the Indian Audit and Accounts Department (IA&AD), recognised in sub-article (5) of Article 148 of the Constitution. The C&AG and the IA&AD are the guardians and sentinel of the finances of the Union and the States. The IA&AD is a specialised department or a technical organisation and must be manned by men of competence and professional acumen.

26. The IA&AS constituted under the Old and the New Rules is the premier or the core service of the IA&AD. Naturally, selections and appointments to the core service, calls for strictness and rigour of a high order. With this brief backdrop of the Department and the service it would be useful to analyse the New Rules in general and the impugned provisions in partiuclar.

27. The preamble to the New Rules only invokes the power conferred on the President to frame the Rules under Articles 148 and 309 of the Constitution.

28. Rule 1 deals with the short title and commencement of the Rules. The Rules were published in the Gazette of India on 26-3-1983 in Part-II Section 3(i) and therefore have come into force from that day (vide: sub-rule (ii) of Rule 1).

29. Rule 2 defines certain terms which generally occur in the Rules.

30. Rule 3 deals with the constitution of the IA&AS and classification of the posts as Group-A posts. Rule 4 deals with the authorised strength and their review from time to time. Rule

with the persons appointed to the service either under Rule 6 under Rule 7. Rule 6 deals with initial constitution of the service. Under this rule all those who held the corresponding posts in the erstwhile IA&AS automatically become members of the new IA&AS constituted with effect from 26-3-1983 under the New Rules.

31. Rule 7 of the Rules which is material, reads thus:

"7. Future maintenance of the Service - (1) Any vacancy in any of the grades referred to in Schedule I after the initial constitution of the Service, as provided in Rule 6, shall be filled in the manner as hereinafter provided under this Rule.

(2) Initial recruitment to the Service shall be in the junior scale and shall be made in the following manner:

(i) By direct recruitment on the results of a competitive examination conducted by the Commission on the basis of educational qualifications and age limit prescribed in Schedule II and any scheme of examination that may be notified by Government in consultation with the Commission from time to time in this regard.

(ii) By promotion of officers on the basis of selection on merit included in the select list for the said grade in the order of seniority in the select list prepared in the manner as specified in Schedule III.

(iii) The number of persons recruited under clause (ii) above shall not at any time exceed 33-1/3 per cent of the posts at S.Nos.1 & 2 mentioned in Schdule I.

(3) Appointments in the service to posts in Senior scale and above shall be made by promotion from amongst the officers in the next lower grade.

(4) The selection of officers for promotion shall be made by selection on merit, except in the case of promotion to posts in Senior Scale and Selection Grade of Jr. Administrative Grade which shall be in the order of seniority, subject to rejection of the unfit, on the recommendation of the departmental Promotion Committee constituted by the Comptroller and Auditor General of India, from time to time.

(5) The Comptroller and Auditor General of India may appoint to a duty post in Service on deputation/contract basis for specified periods, officers from other Departments of the Central Government or in consultation with the Commission from a State Government, Union Territory, Public Undertaking. Statutory, Semi-Government or Autonomous organisations:

Provided that the duty post in which an officer may be so appointed on deputation/contract basis shall not be higher than the A.G level I, that the period of deputation/contract shall not be more than 3 years in the first instance and that the officer prior to such appointment shall have been drawing pay in an equivalent or nearly equivalent grade or one grade or nearly one grade lower."

Rule 7(2)(i) and the related provisions regulating direct recruitment to the junior time-scale for which a quota not exceeding 66 2/3 per cent is earmarked by competitive examination in the manner stipulated therein, are not material for the cases before us and, therefore, we do not propose to analyse them.

32. Rule 7(2)(ii) deals with promotions for whom a quota not exceeding 33 1/3 per cent in the junior time-scale is reserved. The promotions are on the basis of selection on merit, of those included in the select list in the order of seniority from an eligibility list drawn up in conformity with Schedule III to the Rules.

33. Schedule III which is material reads thus:

"SCHEDULE-III

(See sub-rule 2(ii) of Rule 7)

Eligibility and manner of preparing the select list for appointment on promotion to posts in Group 'A' in the Junior scale included in the Indian Audit & Accounts Service:

(1) There shall be constituted a Selection Committee consisting of the Chairman or a Member of the Commission who will preside over the meetings of the Committee and three officers not below those in the senior Administrative Grade to be nominated by the Controlling Authority to serve as Members to prepare the select list mentioned in Sub-rule (2)(ii) of Rule 7. The absence of a Member, other than the Chairman or a Member of the Commission shall not invalidate the proceedings of the Committee, if more than half the members of the Committee had attended its meetings. The Selection Committee shall ordinarily meet at intervals not exceeding one year.

(2) A combined eligibility list shall be prepared from among departmental officers borne on the Group-B Cadres of Audit Officers, Accounts Officers and Administrative Officers in the Indian Audit and Accounts Department who have completed 5 years regular continuous service in the grade on the first day of July of the year to which the promotions pertain. Officers who have attained the age of 53 years on the above date shall not be eligible.

(3) The names of eligible Accounts Officers/Audit Officers, shall for the purpose of combined eligibility list to be arranged in the order of date of their appointments as Section Officers (or corresponding posts) without, however, affecting the inter-se seniority as Accounts Officer/Audit Officer in a particular cadre.

(4) If an officer is considered for promotion, all persons

senior to him under sub-para (3) above shall also be considered notwithstanding that they may not have rendered the requisite number of years of service in Group 'B'.

(5) The combined eligibility list shall comprise of eligible officers of specified number or numbers to be decided as per instructions issued by Government from time to time and with reference to the number of vacancies to be filled in the course of the period of 12 months commencing from the date of preparation of the list.

(6) The Selection Committee shall make selections on merit from among those included in the combined eligibility list and prepare a list arranged in order of preference of officers selected and submit the same to the Commission. On receipt of the said select list, the Commission shall forward its recommendations for appointment of officers to posts in Junior scale of the cadre to the Controlling Authority."

Sub-para (1) of this schedule regulates the constitution of a selection committee, also called as the Departmental Promotion Committee ('DPC') formaking selections to the quota available to promotees.

34. Sub-paras (2) to (6) of the Schedule elaborately regulates the preparation of an 'Eligibility List' and selection of persons therefrom. On the comprehensive methodology to be followed in regard to drawing up of the 'Eligibility' and select list or the detailed procedure on selections as such, there is no dispute between the parties. We, therefore, do not dwell on the same.

35. But, as noticed earlier, the challenge of the applicants is confined only to sub-paras (2) and (3) of this schedule. We, therefore, propose to focus our attention on their construction at this stage itself.

36. Sub-para (2) provides for the drawing up of a combined eligibility list from among Audit Officers, Accounts Officers and Administrative Officers in the IA&AD who have completed five years of regular continuous service in any of those grades as on the first day of July of the year to which the promotions pertain. Firstly, only those holding the posts of Audit Officers, Accounts Officers and Administrative Officers are considered eligible for selection.

Secondly, only those who have completed 5 years of regular continuous service as on the 1st of July of the pertinent year are eligible forselection. There is no dispute and challenge on the foregoing before us.

37. But, what is challenged is the very last sentence of the sub-para (2) viz., Officers who have attained the age of 53 years as on the date of promotion are wholly ineligible for selection. This provision peremptorily stipulates that those who have attained the age of 53 years as on the 1st day of July of the calendar year which is the crucial date, are ineligible for promotion regardless of all other qualifications and merit, to hold the post of junior time-scale officers in the IA&AS. On account of the above, the appli - cants in Applications Nos. 967 of 1987 and 83 of 1988 and many others similarly situated are now ineligible for selection to the IA&AS.

38. Sub-paras (3) and (4) of the Schedule provides for the draw- ing up of the Eligibility list. The list so drawn up is however not a seniority list.

39. We have earlier noticed as to who are eligible for selection to the service. But, sub-para (2) stipulates that while drawing up the Eligibility list, the service rendered by the eligible officers in the cadre of Section Officers, which is one stage immediately below the cadre already held by them, be reckoned. In other words, promotion to the cadre of Section Officers becomes all important and a guiding factor for inclusion in the Eligibility List. As to why this is done and whether the same is valid or not will be dealt with by us later.

40. Sub-para (4) which is closely, interlinked with sub-para (3) really incorporates the principle of 'kicking up' followed in the drawing up of Seniority Lists on the Reorganisation of States and services. This ensures justice to seniors.

41. Sub-paras (5) and (6) merely sub-serve what is provided

in the preceding provisions of the schedule.

42. With this analysis of Rule 7 and Schedule III it is useful to read the other rules also and analyse them to the extent they are necessary.

43. Rule 8 regulates the seniority of officers selected to the service from different sources and its analysis is not material for these cases.

44. Rule 9 which regulates the probation of direct recruits and promotees and has considerable bearing on the validity of sub-para (2) reads thus:

> 9. Probation. - (1) Every person on appointment to the Service either by direct recruitment or by promotion in junior scale shall be on probation for a period of two years;
>
> Provided that the Controlling Authority may extend or curtail the period of probation, in accordance with the instructions issued by the Government, from time to time:
>
> Provided further, that any decision for extension of the probation period shall be taken within 8 weeks after the expiry of the previous probation period and communicated in writing to the concerned officers together with the reasons for so doing, within the said period.
>
> (2) On completion of the period of probation, or extension thereof, officers shall, if considered fit for permanent appointment, be retained in their appointment on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be.
>
> (3) If, during the period of probation or any extension thereof, as the case may be, the Controlling Authority is of opinion that an officer is not fit for permanent appointment, the President may discharge him or revert him to the post held by him prior to his appointment to the Service, as the case may be.
>
> (4) During the period of probation or any extension thereof, the candidates may be required by the Controlling Authority to undergo such course or courses of training and instruction and to pass such examinations and tests as the Controlling Authority may deem fit, as a condition to the satisfactory completion of the probation. Those examinations may also include such examinations in Hindi as may be prescribed by the Government for similar officers of Group'A' services under the Central Government".

This Rule stipulates a minimum period of two years as probation, both for direct recruits and promotees. This period is not normally

curtailed but is extended depending on the performance of the individual officer. Every officer selected and appointed to the junior time-scale will be on probation for a minimum period of two years.

45. Rule 10 which also has a bearing on the validity of sub-para (2) reads thus:

> "10. Liability for Service in any part of India and other Conditions of Service. - (1) Officers appointed to the Service shall be liable to serve anywhere in India or outside.
>
> (2) The conditions of Service of the members of the Service in respect of matters for which no provision is made in these rules, shall be the same as are applicable, from time to time, to officers of Central Civil Service Group 'A', prescribed by the President in consultation with the Comptroller and Auditor General of India."

This rule stipulates that members of service, are liable for transfer to any place in India or outside, like Indian Embassies situated in different parts of the world.

46. Rule 11 governing disqualification, Rule 12 governing power of relaxation, Rule 13 dealing with savings, Rule 14 dealing with the power of Government on the interpretation of the Rules and Rule 15 dealing with repeals are not material for our purpose and therefore they are not analysed in detail.

47. Schedule I to the Rules deals with the cadre strength of different grades of the service and their scales of pay. Schedule II deals with the Educational qualification for direct recruits.

48. Articles 14 and 16 of the Constitution are one group of articles and Articles 15 and 16 are only an extension of Article 14 to specific cases. In other words, Article 14 is said to be the genus and Articles 15 and 16 its species. It is trite, therefore, that the principles governing Article 14 equally govern Articles 15 and 16 of the Constitution as well and this does not require a reference to decided cases.

49. The true scope and ambit of Article 14 has been explained

by the Supreme Court in a large number of cases. In RAM KRISHNA DALMIA AND OTHERS v. JUSTICE S.R. TENDOLKAR AND OTHERS (AIR 1958 SC 538) and RE: SPECIAL COURTS BILLS CASE (AIR 1979 SC 478) the Supreme Court reviewing all the earlier cases elaborately re-stated the scope and ambit of Article 14 of the Constitution. In Special Courts Bill's case, Chandrachud,CJ. speaking for a Larger Bench of 7 Judges summed up the same in these words:

> "73. As long back as in 1960, it was said by this Court in Kingshari Haldar that the propositions applicable to cases arising under Article 14 have been repeated so many times during the past few years that they now sound almost platitudinous. What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous to-day, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition to state the propositions which emerge from the judgments of this Court in so far as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:
>
> 1. The first part of Article 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.
>
> 2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.
>
> 3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or

things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exgencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

9. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the fact of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination".

On this enunciation, there was no disagreement, though there was dissent on other points, with which we are not concerned. In the later cases, the Supreme Court has reiterated these principles.

50. On the new dimension of Article 14 of the Constitution namely

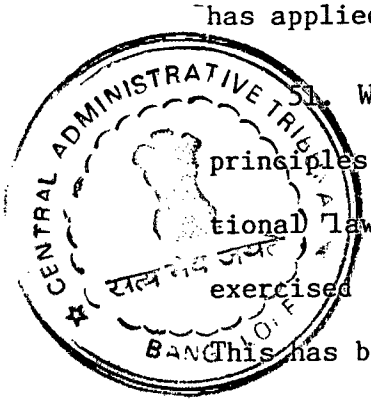
arbitrariness is the very antithesis of rule of law enshrined in Article 14 of the Constitution evolved for the first time in E.P. ROYAPPA v. STATE OF TAMILNADU (AIR 1974 SC 555), Bhagwati,J. (as His Lordship then was) expressed thus:-

> "We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistics point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14....."

In MANEKA GANDHI v. UNION OF INDIA (AIR 1978 SC 597) the same learned Judge elaborated this principle in these words:-

> "The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence....."

In the later cases, the Court has reiterated these principles and has applied them to specific cases.



51. We must also bear in mind one of the great constitutional principles propounded by James Bradley Thayer, a renowned constitutional lawyer of America namely 'that the judicial veto, is to be exercised only in cases that leave no room for reasonable doubt'. This has been articulated by the eminent Jurist-Judges of the American Supreme Court viz., Justices Holmes, Brandeis and Frankfurter in more than one case (see: Article on "The Influence of James B.Thayer upon the work of Holmes, Brandeis, and Frankfurter" in the self-same treatise in "Supreme Court Statecraft" by Wallace Mendelson, First Indian Reprint, 1987 edition). One other principle which we should bear in mind is that the validity of a law must be examined and decided as made by the law making authority itself and not from the standpoint that a better law could have been enacted or a better

solution found to the problem, should not influence us in adjudging the validity of a law. Bearing all these principles, we now proceed to examine the validity of the impugned Rules.

52. On the provision barring promotion of those, who attained 53 years of age as on first day of July of the calendar year, the applicants have urged that the AOs working in the IA&AD had been chosen for a hostile, discriminatory and arbitrary treatment. They claim that such a provision did not occur in any other service of the Union of India and the same has no rational nexus to the object of classification if any and in any event was arbitrary.

53. In refuting this claim of the applicants, the respondents assert that the bar was imposed to ensure efficient public service. In elaborating the same the respondents assert that on promotion to the IA&AS, the officer would be on probation for a minimum period of two years during which period he had to undergo training and pass examinations. This probationary period was however liable to be extended for an equal period if the performance of the probationer was not satisfactory. Those who complete probation satisfactorily, would have hardly 3 years of service before superannuation. On these and other dominant relevant facts, Shri Rao emphasised that the bar of age had been imposed which was not violative of Articles 14 and 16 of the Constitution.

54. We have earlier noticed the constitutional position of the C&AG, the special features of IA&AD and the IA&AS, on the efficiency of which the C&AG has to rely to enable him discharge the onerous duties and responsibilities enjoined on him by the Constitution, and by the laws and orders made thereto from time to time. These in reality and substance, mark out the IA&AD for a special or a different treatment as compared to other services of all other departments of the Union of India. It is apparent that on account of this

recognition, the Constitution itself had accorded a special status to the IA&AD. As a corollary, the IA&AS thus acquired a special status and position, which is not comparable to all other services of the Union of India and consequently they belong to a special and distinct group, which cannot be compared to other services. If this is held otherwise, it would be tantamount to treating equals as unequals and vice versa which would be antithetic to equality guaranteed by Article 14 of the Constitution. On this analysis it necessarily follows that the charge of the applicants that they have been chosen for a hostile and discriminatory treatment or that they have been irrationally grouped or should have been grouped with all other services of the Union of India, is wholly misconceived and has no merit at all.

55. The C&AG is a constitutional functionary and the status accorded to him cannot be claimed by all other members of the IA&AD. All other members of IA&AD, are undoubtedly civil servants of the Union of India and as such their status is analogous to the other civil servants of the Union of India. But, these broad features do not necessarily imply that their recruitment to the service should not be different from that of the other civil servants of the Union of India. Even otherwise, the requirements of a technical department like the IA&AD cannot be compared to the requirements of other departments some of which have their own special characteristics. On these factors themselves, we must necessarily hold that it is a case of classification permissible under Articles 14 and 16 of the Constitution.

56. We have earlier noticed the objects on which the age bar has been imposed. We are of the view that the bar so imposed has a rational nexus to the object of creating the IA&AS. We are of the view that the elimination for induction into the IA&AS of those attaining 53 years, satisfies the twin objectives of a valid classi-

fication under Articles 14 and 16 of the Constitution.

57. It is but reasonable and proper that a person inducted into a new service entailing duties and responsibilities of a higher order, after undergoing training in various disciplines, should be an effective member of that service, by serving for a minimum period so as to leave a tangible impact of his contribution to that service. We are convinced that the minimum period of three years is reasonable not only from the point of view of promoting efficiency of the Department but also in the larger interest of public service. The provision which seeks to achieve this object cannot be condemned as arbitrary or irrational. We are of the view that sub-para (2) of Schedule III does not at all offend the new dimension of Article 14 of the Constitution.

58. In Noronha's case, the Court was examining a provision made in the Karnataka Police Rules debarring an Inspector of Police from promotion as a Deputy Superintendent of Police if he could not render a minimum period of three years of service in the promoted cadre. In rejecting the challenge of Noronha to that provision, the Court speaking through Hegde,J. (as His Lordship then was) expressed thus:

> ".....That apart, taking into consideration the nature of the duties to be performed and the responsibilities to be carried by a Deputy Superintendent of Police, we are unable to agree with Mr.Datar that the condition requiring that he should have a prospect of serving in the post in question atleast for a period of three years - the age of superannuation being 55 years - it cannot be said that the rule in question is an arbitrary one. The post of a Deputy Superintendent of Police is a responsible post. Public interest may not be best served if the Official to be promoted to that post turns out to be a mere bird of passage having no interest in the office to which he is promoted. We assume that this was one of the considerations which must have swayed with the Government in making the impugned rule. It is true that a rule of this character can be misused. That is true of most provisions. The possibility of an officer who is not in the good books of his superiors, not being promoted in due time and thereby his chance of promotion ruined is undoubtedly there. But the possibility of misuse of a rule is no ground for holding the rule to be bad. It is sould principle of law, to assume,

> that the persons who are in-charge of the Government are discharging their onerous duties and responsibilities in a fair and honest manner....."

In Sukhamoy Sen's case the Orissa High Court was examining the challenge to Rule 5 of the Indian Police Service (Recruitment) Rules,1954 ('IPS Rules'), which inter alia, barred those who were 52 years of age as on the first day of January of the year of selection for promotion to the Indian Police Service. In rejecting that challenge, the Orissa High Court concurring with the view expressed in Noronha's case, expressed thus:

> "(14) Mr.Nanda next contended that the prescription of age of 52 years beyond which a member belonging to the State Police Service shall not be ordinarily considered for promotion is arbitrary and unreasonable. This contention has also no merit. The age of retirement in the State Police Service is 55 years. By the end of 52nd year he shall have only three years to go in. Prior to the retirement, sometimes Government servants lack zeal and incentive in work. They feel like birds and passage who have no abiding interest in their work. It is, therefore, not unreasonable to put an age restriction that such categories of officers should not ordinarily be taken into consideration for promotion after a particular age. Here also the mandate is not absolute. The word 'ordinarily' qualifies the restriction and the Selection Committee has full power to consider cases of persons beyond 52nd year if they maintain efficiency. This provision is neither arbitrary nor unreasonable....."

Though in our view it would not be fair and realistic to generalise that one and all on the verge of retirement flag in their zeal and incentive for work, we are in respectful agreement with the above opinion expressed by the Karnataka and Orissa High Courts that in the interest of efficiency, it is not unreasonable to impose age restriction.

59. In Indravadan's case, on which Dr. Nagaraja strongly relied, the Supreme Court was examining the validity of Rule 6(4)(i) of the Gujarat Judicial Service Recruitment (Amendment) Rules,1979 ('Gujarat Rules') set out in extenso in para 1 of the Judgment which, inter alia, barred those who had completed 48 years or had attained 49 years of age for promotion to the posts of Assistant Judges in the

Subordinate Judicial Service of Gujarat and provided for automatic deletion of the names of those previously selected and placed in the earlier Select List. In reversing the decision of the Gujarat High Court, which had upheld the validity of that Rule, the Supreme Court ruled that provision was arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution. But, that is not the position in regard to the impugned rule. The New Rules and the Gujarat Rule are totally different in their sweep, content and object. The objects sought to be achieved by the two Rules are wholly different. While there is nothing arbitrary in the New Rules, everything was arbitrary in the Gujarat Rule. We are, therefore, of the view that the principles enunciated in this case, do not really bear on the point and assist the applicants.

60. On the foregoing discussion, we hold that para (2) of Schedule III does not offend Articles 14 and 16 of the Constitution either from the standpoint of classification or from the new dimension of Article 14. We, therefore, see no merit in the challenge of the applicants to the same.

61. Sub-para (3) of Schedule III is challenged by the applicants as violative of Articles 14 and 16 of the Constitution. On this, the applicants urged that this provision for reckoning seniority in the cadre of SOs which is two cadres below that of the Junior time-scale in the IA&AS and not the seniority in the cadre immediately below the promotion cadre, is queer, irrational and unknown to the accepted principle of promotion. On these very grounds, the applicants allege that the Accounts Officers are chosen for a hostile and discriminatory treatment in contravention of Articles 14 and 16 of the Constitution.

62. In justification of sub-para (3) and the drawing up of the combined Eligibility List on the basis of the principles articulated in that provision, the respondents in their reply have stated thus:

"In regard to the manner of preparation of combined eligibility list (not seniority list as mentioned by the applicants), it is submitted that prior to the promulgation of IA&AS (Recruitment)Rules,1983, the recruitment tothe IA&AD was regulated by the Rules regulating the methods of recruitment to the Indian Audit and Accounts Service, the Imperial Customs Service, the Military Accounts Department and the Indian Railway Accounts Service as notified in the Finance Department Resolution No.F.25(6)-EX.II/38, dated 30th April,1938 and executive orders made in accordance therewith. All Accounts/Audit Officers with a minimum of two years' of service in that capacity were eligible and the promotions were made solely on the basis of merit, from and amongst all such officers.

While framing the IAAS (Recruitment)Rules,1983, which replaced the above arrangement, the following considerations weighed with the second respondent in making suitable suggestions to Govermnet:-

(a) In accordance with the criteria then operative, the UPSC was required to consider a very large number of officers from each and every cadre, which made its work extremely difficult, if not impossible.

(b) It was considered desirable that along with merit, due weightage should also be attached to the long and meritorious service rendered by these officers in their respective cadres.

These criteria could be satisfied only if a combined list is prepared for consideration after merging eligible officers of all cadres. To achieve this goal, criteria for eligibility was revised as mentioned in para 2 of Schedule III of the IAAS (Recruitment) Rules,1983. The second step was to prescribe procedure for preparation of a combined eligibility list.

In prescribing the procedure for preparation of such a list, the respondents had to face with an extremely complex task of merging together the eligible officers from over fifty different cadres. In all these cadres, the officers performed different functions and prospects of promotion to the feeder cadre (viz.,Accounts/Audit Officers) were widely different, at different points of time. For example, in the offices of Tamil Nadu and Andhra Pradesh, the officers had to put in a service of 17 to 18 years to get into the feeder cadre, while in the cadre of Commercial Audit, the corresponding period was 10 to 12 years. In Railway Audit and Defence Audit Offices, the time taken for promotion to feeder cadre varied from office to office, but was invariably more than in case of many civil Accounts and Audit Offices. This stagnation of varied levels was on account of difference in the expansion of activities of auditee organisations and consequent expansion of audit activities. In these circumstances, it was felt that if the criteria of the date of entry in feeder cadre (viz., Accounts Officers' cadre) was adopted as the basis for preparation of combined eligibility list it would have had adverse repercussion to the promotional prospects of Accounts/Audit Officers in many cadres, resulting in consequent demoralisation and its impact on the efficiency of the Department.

In order to achieve a fair criterion it was essential

to base it on a common equalising factor among all the cadres. Such a factor was found on SAS Examination (now called SOG Examination) which was conducted by the Office of the Comptroller and Auditor General of India on all India basis. After passing this examination, a person qualifies for appointment as a Section Officer, which is the feeder cadre for promotion to the post of Accounts/Audit Officers. The SAS Examination is open to all Auditors /Clerks in the Department with specified service. Taking these factors into account it was decided to adopt the date of promotion as Section Officer as the basis for preparation of the Combined Eligibility List for promotion to IAAS. It would thus be evident that the provisions made in the rules are not rational in the given circumstances."

The respondents assert that on an indepth examination of all alternatives, it was found that the inequalities in avenues of promotion got accentuated on account of widely disparate avenues available in the cadre of Accounts Officers in different units. They felt that these inequalities could be optimised for onward promotion if the length of service was reckoned in the cadre of Section Officers in the overall Eligibility List, without however disturbing the inter se seniority of the incumbents as Accounts Officers within the same unit. We have examined this aspect, with reference to the relevant service particulars of some of the incumbents in the respective cadres and are convinced that the department has really taken recourse to administrative ingenuity and pragmatism as juste milueu -a golden mean - in resolving this vexed problem of seniority in the larger interests of its employees. The applicants therefore cannot have any legitimate grievance in this regard.

63. In granting promotions, the normal and general rule is to be guided by the seniority and performance in the cadre immediately below the promotion cadre and not any othr cadre. But, this is only a rule of practice and not rule of law. There isno immutable law to that effect. When there is a departure as in the present case, the same cannot be condemned merely on the basis of the normal and general rule of practice. Whether the departure was justified or not, has to be examined and decided on its own merits.

64. Sub-para (3) operates against all those who are similarly situated uniformly, and does not pick up anyone or any class for a hostile and discriminatory treatment. Sub-para (3) also does not chose any one for a special and more favourable treatment. When that is so, it is difficult to hold that sub-para (3) of Schedule III contravenes Articles 14 and 16 of the Constitution.

65. We have earlier noticed that the IA&AS with its distinct lineament is a service apart from all other services of the Union of India. Even that finding equally applies to sub-para (3) of Schedule III. On this score also it is difficult to hold that the said provision contravenes Articles 14 and 16 of the Constitution.

66. The situation faced by the C&AG, Government and the rule making authority was a complex and difficult one. In finding a solution, in such a situation it would not be prudent to go on the beaten track. If an expert body like the C&AG and Government on an indepth examination hold that the normal rule of practice was not suited and that another practice or principle was better suited to the problem and that results in no injustice to anybody, then this Tribunal which is ill-equipped to evaluable on their soundness, should be loath to interfere with the same. Even otherwise we see no irrationality or arbitrariness in sub-para (3) when the same is read along with sub-para (4) as that should be.

67. On the foregoing discussion, we hold sub-para (3) of Schedule III is not violative of Articles 14 and 16 of the Constitution.

68. As all the contentions urged for the applicants fail, these applications are liable to be dismissed. We, therefore, dismiss these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-
CHAIRMAN

Sd/-
VICE-CHAIRMAN

Sd/-
MEMBER(A)

N.B: I have signed this order on 6-9-1988 at New Delhi as I cannot be present at Bangalore on the date of pronouncement of this order by the other two Members of the Full Bench which heard these cases at Bangalore.

Sd/-
CHAIRMAN

TRUE COPY

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
*****

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 9 NOV 1988

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Sir,

I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr. Justice K. Madhava Reddy ~~Vice~~ Chairman, Mr Justice K.S. Puttaswamy, Vice-chairman and Hon'ble Mr. L.H.A. Rego Member (A) with a request for publication of the order in the journals.

Order dated 9-9-88 passed in A.Nos 967, 968/87(F) & 83/88(F)

Yours faithfully,

(B.V. VENKATA REDDY)
for DEPUTY REGISTRAR(J)

9 Issued 10-11-88

dlc

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(~~B.V. VENKATA REDDY~~)
for DEPUTY REGISTRAR (J)

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cjc.

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER,1988.

PRESENT:

Hon'ble Mr.Justice K.Madhava Reddy, .. Chairman.

Hon'ble Mr.Justice K.S.Puttaswamy, ..Vice-Chairman(J)

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATIONS NUMBERS 967, 968 OF 1987 AND 83 OF 1988

1. Sri K.Ranganathan,
Accounts Officer,
Office of the Accountant General
(Accounts & Entitlement)
Karnataka, Bangalore-560 001. .. Applicant in A.No.967/87

2. All India Association of Audit
and Accounts Officers of the
I.A & A.D., Karnataka Unit,
Bangalore, by its President. .. Applicant in A.No.968/87

3. Shri R.Sathyanarayana Rao,
Accounts Officer,
Office of the Accountant General
(Accounts & Entitlement)
Bangalore-560 001. .. Applicant in A.No.83/88

(By Dr.M.S.Nagaraja, Advocate)

v.

1. The Accountant General
(Accounts & Entitlements)
Karnataka, Bangalore-1.

2. The Comptroller and Auditor General
of India, No.10, Bahadur Shah Zafar Marg,
New Delhi.

3. The Union of India by the Secretary,
Ministry of Finance,
(Department of Expenditure)
Government of India,
New Delhi. .. Respondents 1 to 3
in all Applications.

4. Shri K.Janardhanan Sastry, IA & AS
Assistant Accountant General
Office of the Accountant General
(A & E) Karnataka,
Bangalore-560 001. .. Respondent-4 in A.Nos.967 & 968/87.

(By Sri M.Vasudeva Rao, CGASC for R1 to 3)
(Respondent-4 served, absent and unrepresented)

--

These applications having come up for orders to-day, Hon'ble Mr.Justice K.S.Puttaswamy, Vice-Chairman made the following:

ORDER

These are applications made by the applicants under Section 19 of the Administrative Tribunals Act,1985 ('the Act').

2. Shri K.Ranganathan, applicant in Application No.967 of 1987 born on 12-9-1930 joined service in 1951 in the office of the Accountant General, Karnataka ('AG') as an Auditor, then designated as an Upper Division Clerk. When he was so working, he appeared for the Sub-ordinate Accounts Services Examination ('SAS') an All India Examination conducted by the Comptroller and Auditor General of India ('C&AG') in 1957 and was successful. On 22-9-1958, he was promoted as a Section Officer ('SO') then designated as Superintendent and thereafter on 7-10-1970, he was promoted as Accounts Officer (AO). He was confirmed in that post from 1-4-1978 and is due to retire on 30-9-1988.

3. Shri R.Sathyanarayana Rao, applicant in Application No.83 of 1988 born on 16-4-1936 joined service as an Auditor on 17-2-1958 in the office of the AG. He passed the SAS examination in 1966. He was promoted as SO on 22-5-1966 and then as AO on 8-4-1981 in which capacity he is now working.

4. A service Association called the 'All India Association of Audit and Accounts department, Karnataka Unit, Bangalore' (Association) recognised by Government, is the applicant in Application No. 968 of 1987. The Association is espousing the cause of Accounts Officers working in the Department. These are all the particulars of the applicants before us.

5. Shri K.Janardhana Sastry ('Sastry'), respondent-4 in Applications Nos. 967 and 968 of 1987, born on 27-8-1933 started his career in th office of the AG, as an Auditor and passed the SAS in due course. He was promoted as SO on 14-5-1960 and then as AO on

29-4-1974. When so working, he was selected in 1985/1986 to the junior time-scale of the Indian Audit and Accounts Service ('IA&AS'), a service constituted and functioning under the Indian Audit and Accounts Service (Recruitment Rules) 1983 ('New Rules') made by the President of India under Articles 148(5) and the Proviso to Article 309 of the Constitution. The New Rules, repealed the Customs and Accounts Service Recruitment Rules ('Old Rules') framed by the Government of India, in the Finance Department under their Resolution No.F 25(6)Ex.II/38 dated 30-4-1938.

6. The applicants have challenged the validity of sub-paras (2) and (3) of Schedule III of the New Rules as violative of Articles 14 and 16 of the Constitution.

7. Respondents 1 to 3 in Applications Nos.967 and 968 of 1987 who are also the respondents in Application No.83 of 1988 who will be hereafter referred as respondents, have filed their separate but identical replies resisting these applications. Respondent-4 in Application Nos. 967 and 968 of 1987 who has been duly served, has remained absent and is unrepresented.

8. These cases were first heard by a Division Bench of this Bench, consisting of two of us (viz., Mr.Justice K.S.Puttaswamy, Vice-Chairman and Mr.L.H.A.Rego, Member(A)) which by its order made on 18-7-1988 referred them to a larger Bench for disposal. On that reference, the Hon'ble Chairman had constituted this Full Bench and presided over the same. This is how these cases have come up before us. We heard them on 22nd and 23rd August,1988.

9. Dr.M.S.Nagaraja, learned Advocate, appeared for all the applicants. Sri M.Vasudeva Rao, learned Additional Standing Counsel for the Central Government appeared for all the respondents, except Sastry.

10. Dr.Nagaraja urges, that sub-paras (2) and (3) of Schedule III of the New Rules, which had segregated the AOs, for a hostile and discriminatory treatment, suffer from the vice of impermissible classification, were arbitrary and irrational and, therefore, violative of Articles 14 and 16 of the Constitution as ruled by the Supreme Court generally and in particular in INDRAVADAN H.SHAH v. STATE OF GUJARAT AND ANOTHER (AIR 1986 SC 1035).

11. Shri Rao refuting the contention of Dr.Nagaraja urged that the validity of the impugned provisions,was concluded by the Supreme Court in its decision rendered on 27-4-1984 in GURDIAL SINGH v. THE COMPTROLLER & AUDITOR GENERAL OF INDIA AND ANOTHER (Writ Petition No.13639 of 1983) and by a Division bench ruling of the Chandigarh Bench of this Tribunal in SANT RAM JULKA v. THE COMPTROLLER & AUDITOR GENERAL OF INDIA, NEW DELHI AND OTHERS (T.No.521 of 1986 decided on 20-10-1986) ('Julka's case). In support of his contention Shri Rao also relied on the rulings of Karnataka and Orissa High Courts in A.NORONHA v. STATE OF MYSORE AND OTHERS (AIR 1966 Mysore 267) and SUKHAMOY SEN v. UNION OF INDIA AND OTHER (1973 SLJ 810) respectively.

12. In ABDUL RAZAK AND ANOTHER v. THE DIRECTOR GENERAL, ESIC, NEW DELHI AND ANOTHER [(1988) 7 ATC 14],we have examined in detail, the power of this Tribunal to examine the validity of a service law, if that becomes necessary. For the very reasons stated in that case, (vide: paras 14 to 20) we hold that it is open to us to examine the validity of the impugned provisions. Sri Rao also did not rightly, dispute this position.

13. We must first examine as to whether the validity of the impugned rules is concluded by the Supreme Court and if so, it would not be necessary for us to go into that question.

14. One Shri Gurdial Singh, a member of a scheduled caste and working as Audit Officer (Commercial) in the office of the Director of Commercial Audit, New Delhi, who was hit by the New Rules and was, there-

fore not promoted to the IA&AS, challenged their validity before the Supreme Court under Article 32 of the Constitution in Civil Writ Petition No.13639 of 1983 inter alia, on the ground that they should have also given weightage and relaxation in age to members of scheduled castes and tribes for selection to the IA&AS. After notice to the respondents before admission, a Division Bench of the Supreme Court consisting of E.S.Venkataramiah and D.D.Madon, JJ. dismissed the same on 27.4.1984, at the admission stage in limine, in these words:

"The writ petition is dismissed."

In Julka's case the Chandigarh Bench of this Tribunal consisting of Hon'ble Sri Amarjeet Chaudhary, Member (J)(as he then was) and Hon'ble Sri Birbal Nath, Member (A) had expressed thus:

> "It was also brought to the notice of this Court by the respondents that the vires of the said rules were challenged before the Hon'ble Supreme Court of India in Civil Writ Petition No.13639 of 1983. The writ petition has already been adjudicated upon and dismissed by the Hon'ble Supreme Court of India."

In this para, the Bench had accepted the submission of Sri Rao.

15. We have earlier extracted the order of the Supreme Court in its entirety, which reveals that it had dismissed the writ petition of Gurdial Singh in limine, without giving reasons.

16. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Central Administrative Tribunal is a court within the meaning of Article 141. Though this Article does not expressly include the tribunals and the authorities functioning in the country, the law declared by the Supreme Court is binding on all of them. It is law of the land. Article 141 of the Constitution recognises the "law of binding precedents" in our country. This has origin in the Anglo-Saxon or English doctrine of precedents and has become a feature of our judicial system and the Constitution.

17. Even without elaborating on the "law of binding precedents" which is really unnecessary, it would suffice to state, that what really binds a subordinate Court or Tribunal, is the ratio decidendi or the raison detre or the principle enunciated by the Supreme Court in a case.

18. In a non-speaking order, as in Gurdial Singh's case, there are no reasons given by the Court for dismissing the writ petition. When the order itself does not give reasons, we cannot on any principle hold, that such an order has a ratio decidendi or principle enunciated which alone binds the subordinate Courts and Tribunals. It is therefore logical to conclude therefrom, that dismissal of an application in limine without reasons, does not constitute as a binding precedent. If that is so, then the challenge made by others cannot be held to be concluded by Gurdial Singh's case.

19. In this connection, it is apt to recall as to what has been decided in DARYAO AND OTHERS v. STATE OF U.P.AND OTHERS (AIR 1961 S.C.1457). In that case, a Constitution Bench of the Supreme Court, had occasion to examine whether the principle of res judicata was applicable to writ proceedings or not. In deciding that question, the Court examined the effect of an order dismissing a writ petition in limine without giving reasons. On that aspect Gajendragadkar,J., (as His Lordship then was) speaking for the Bench summed up the law in these words:

> "(19) We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.

> If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32 If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32 because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other....."

In this case, the Court had ruled, that an order dismissing a writ petition either under Article 32 or Article 226 of the Constitution in limine, without giving reasons, did not constitute a bar of res judicata.

20. When an order dismissing a writ petition under Article 32 in limine, without giving reasons does not operate as res judicata, on the very same reasons; we are of the considered view that the same cannot also operate as a binding precedent. We are also convinced that this conclusion is both logical and legal and flows from the very principles enunciated by the Supreme Court in Daryao's case. We are also of the view that this very position has been reiterated by the Supreme Court in UNION OF INDIA v. ALL INDIA SERVICES PENSIONERS' ASSOCIATION AND ANOTHER [(1988)2 SCC 580] ('Pensioners' Case).

21. We cannot really visualise the reasons that weighed with the Supreme Court for dismissing the writ petition of Gurdial Singh. But, if we may speculate and such a course is permissible, then we think that the Supreme Court found no merit in the claim of Gurdial Singh, that there should have been further weightage and relaxation in respect of members of the SC and ST for selection to the IA&AS.

22. Rupert Cross an erudite jurist, in his treatise "Precedent in English Law", Third Edition, has dealt with this aspect at length under the caption "Decisions without reasons" in Chapter-II - "RATIO AND OBITER DICTUM" at pages 47 to 49. The following observation therein is apposite:

> "In general however, the authority of a decision for which no reasons are given is very weak, because it is so hard to tell which facts were regarded as material and which were thought to be immaterial...."

We are of the view that this statement correctly depicts the legal position.

23. On the foregoing discussion, we hold that the decision of the Supreme Court in Gurdial Singh's case, does not conclude the validity of the impugned rules and that the view expressed to the contrary in Julka's case by the Chandigarh Bench does not lay down the law correctly.

24. On the validity of the impugned Rules themselves, in Julka's case, the Chandigarh Bench expressed thus:

> "The rules do not violate any provisions of the Constitution of India, nor any such argument has been advanced at the bar. The rules have been framed by the rule making authority and such a power has not been questioned. Moreover, the rules are not violative of any fundamental right or Article 311 of the Constitution of India. The intention of the legislature for fixing the age of 53 years, must be in the interest of efficient public service."

Except for the above, we must observe, with respect to that Bench, that the rest of the judgment in that case does not throw any light to enable us to form any opinion on the point at issue. We, therefore

propose to examine the matter independently, in its entirety.

25. Chapter 5 of Part V of the Constitution deals with the post of Comptroller and Auditor-General of India, appointment to that post, the status of the person appointed to that post and the immunities and privileges guaranteed to him, as also his disability to hold any other public office on his retirement from service. The C&AG is the overall head of the Department called the Indian Audit and Accounts Department (IA&AD), recognised in sub-article (5) of Article 148 of the Constitution. The C&AG and the IA&AD are the guardians and sentinel of the finances of the Union and the States. The IA&AD is a specialised department or a technical organisation and must be manned by men of competence and professional acumen.

26. The IA&AS constituted under the Old and the New Rules is the premier or the core service of the IA&AD. Naturally, selections and appointments to the core service, calls for strictness and rigour of a high order. With this brief backdrop of the Department and the service it would be useful to analyse the New Rules in general and the impugned provisions in partiuclar.

27. The preamble to the New Rules only invokes the power conferred on the President to frame the Rules under Articles 148 and 309 of the Constitution.

28. Rule 1 deals with the short title and commencement of the Rules. The Rules were published in the Gazette of India on 26-3-1983 in Part-II Section 3(i) and therefore have come into force from that day (vide: sub-rule (ii) of Rule 1).

29. Rule 2 defines certain terms which generally occur in the Rules.

30. Rule 3 deals with the constitution of the IA&AS and classification of the posts Group-A posts. Rule 4 deals with the grades, authorised strength and their review from time to time. Rule 5 deals

with the persons appointed to the service either under Rule 6 or under Rule 7. Rule 6 deals with initial constitution of the service. Under this rule all those who held the corresponding posts in the erstwhile IA&AS automatically become members of the new IA&AS constituted with effect from 26-3-1983 under the New Rules.

31. Rule 7 of the Rules which is material, reads thus:

"7. Future maintenance of the Service - (1) Any vacancy in any of the grades referred to in Schedule I after the initial constitution of the Service, as provided in Rule 6, shall be filled in the manner as hereinafter provided under this Rule.

(2) Initial recruitment to the Service shall be in the junior scale and shall be made in the following manner:

(i) By direct recruitment on the results of a competitive examination conducted by the Commission on the basis of educational qualifications and age limit prescribed in Schedule II and any scheme of examination that may be notified by Government in consultation with the Commission from time to time in this regard.

(ii) By promotion of officers on the basis of selection on merit included in the select list for the said grade in the order of seniority in the select list prepared in the manner as specified in Schedule III.

(iii) The number of persons recruited under clause (ii) above shall not at any time exceed 33-1/3 per cent of the posts at S.Nos.1 & 2 mentioned in Schdule I.

(3) Appointments in the service to posts in Senior scale and above shall be made by promotion from amongst the officers in the next lower grade.

(4) The selection of officers for promotion shall be made by selection on merit, except in the case of promotion to posts in Senior Scale and Selection Grade of Jr. Administrative Grade which shall be in the order of seniority, subject to rejection of the unfit, on the recommendation of the departmental Promotion Committee constituted by the Comptroller and Auditor General of India, from time to time.

(5) The Comptroller and Auditor General of India may appoint to a duty post in Service on deputation/contract basis for specified periods, officers from other Departments of the Central Government or in consultation with the Commission from a State Government, Union Territory, Public Undertaking. Statutory, Semi-Government or Autonomous organisations:

Provided that the duty post in which an officer may be so appointed on deputation/contract basis shall not be higher than the A.G level I, that the period of deputation/contract shall not be more than 3 years in the first instance and that the officer prior to such appointment shall have been drawing pay in an equivalent or nearly equivalent grade or one grade or nearly one grade lower."

Rule 7(2)(i) and the related provisions regulating direct recruitment to the junior time-scale for which a quota not exceeding 66 2/3 per cent is earmarked by competitive examination in the manner stipulated therein, are not material for the cases before us and, therefore, we do not propose to analyse them.

32. Rule 7(2)(ii) deals with promotions for whom a quota not exceeding 33 1/3 per cent in the junior time-scale is reserved. The promotions are on the basis of selection on merit, of those included in the select list in the order of seniority from an eligibility list drawn up in conformity with Schedule III to the Rules.

33. Schedule III which is material reads thus:

"SCHEDULE-III

(See sub-rule 2(ii) of Rule 7)

Eligibility and manner of preparing the select list for appointment on promotion to posts in Group 'A' in the Junior scale included in the Indian Audit & Accounts Service:

(1) There shall be constituted a Selection Committee consisting of the Chairman or a Member of the Commission who will preside over the meetings of the Committee and three officers not below those in the senior Administrative Grade to be nominated by the Controlling Authority to serve as Members to prepare the select list mentioned in Sub-rule (2)(ii) of Rule 7. The absence of a Member, other than the Chairman or a Member of the Commission shall not invalidate the proceedings of the Committee, if more than half the members of the Committee had attended its meetings. The Selection Committee shall ordinarily meet at intervals not exceeding one year.

(2) A combined eligibility list shall be prepared from among departmental officers borne on the Group-B Cadres of Audit Officers, Accounts Officers and Administrative Officers in the Indian Audit and Accounts Department who have completed 5 years regular continuous service in the grade on the first day of July of the year to which the promotions pertain. Officers who have attained the age of 53 years on the above date shall not be eligible.

(3) The names of eligible Accounts Officers/Audit Officers, shall for the purpose of combined eligibility list to be arranged in the order of date of their appointments as Section Officers (or corresponding posts) without, however, affecting the inter-se seniority as Accounts Officer/Audit Officer in a particular cadre.

(4) If an officer is considered for promotion, all persons

senior to him under sub-para (3) above shall also be considered notwithstanding that they may not have rendered the requisite number of years of service in Group 'B'.

(5) The combined eligibility list shall comprise of eligible officers of specified number or numbers to be decided as per instructions issued by Government from time to time and with reference to the number of vacancies to be filled in the course of the period of 12 months commencing from the date of preparation of the list.

(6) The Selection Committee shall make selections on merit from among those included in the combined eligibility list and prepare a list arranged in order of preference of officers selected and submit the same to the Commission. On receipt of the said select list, the Commission shall forward its recommendations for appointment of officers to posts in Junior scale of the cadre to the Controlling Authority."

Sub-para (1) of this schedule regulates the constitution of a selection committee, also called as the Departmental Promotion Committee ('DPC') formaking selections to the quota available to promotees.

34. Sub-paras (2) to (6) of the Schedule elaborately regulates the preparation of an 'Eligibility List' and selection of persons therefrom. On the comprehensive methodology to be followed in regard to drawing up of the 'Eligibility' and select list or the detailed procedure on selections as such, there is no dispute between the parties. We, therefore, do not dwell on the same.

35. But, as noticed earlier, the challenge of the applicants is confined only to sub-paras (2) and (3) of this schedule. We, therefore, propose to focus our attention on their construction at this stage itself.

36. Sub-para (2) provides for the drawing up of a combined eligibility list from among Audit Officers, Accounts Officers and Administrative Officers in the IA&AD who have completed five years of regular continuous service in any of those grades as on the first day of July of the year to which the promotions pertain. Firstly, only those holding the posts of Audit Officers, Accounts Officers and Administrative Officers are considered eligible for selection.

Secondly, only those who have completed 5 years of regular continuous service as on the 1st of July of the pertinent year are eligible forselection. There is no dispute and challenge on the foregoing before us.

37. But, what is challenged is the very last sentence of the sub-para (2) viz., Officers who have attained the age of 53 years as on the date of promotion are wholly ineligible for selection. This provision peremptorily stipulates that those who have attained the age of 53 years as on the 1st day of July of the calendar year which is the crucial date, are ineligible for promotion regardless of all other qualifications and merit, to hold the post of junior time-scale officers in the IA&AS. On account of the above, the appli - cants in Applications Nos. 967 of 1987 and 83 of 1988 and many others similarly situated are now ineligible for selection to the IA&AS.

38. Sub-paras (3) and (4) of the Schedule provides for the draw- ing up of the Eligibility list. The list so drawn up is however not a seniority list.

39. We have earlier noticed as to who are eligible for selection to the service. But, sub-para (2) stipulates that while drawing up the Eligibility list, the service rendered by the eligible officers in the cadre of Section Officers, which is one stage immediately below the cadre already held by them, be reckoned. In other words, promotion to the cadre of Section Officers becomes all important and a guiding factor for inclusion in the Eligibility List. As to why this is done and whether the same is valid or not will be dealt with by us later.

40. Sub-para (4) which is closely, interlinked with sub-para (3) really incorporates the principle of 'kicking up' followed in the drawing up of Seniority Lists on the Reorganisation of States and services. This ensures justice to seniors.

41. Sub-paras (5) and (6) merely sub-serve what is provided

in the preceding provisions of the schedule.

42. With this analysis of Rule 7 and Schedule III it is useful to read the other rules also and analyse them to the extent they are necessary.

43. Rule 8 regulates the seniority of officers selected to the service from different sources and its analysis is not material for these cases.

44. Rule 9 which regulates the probation of direct recruits and promotees and has considerable bearing on the validity of sub-para (2) reads thus:

> 9. Probation. - (1) Every person on appointment to the Service either by direct recruitment or by promotion in junior scale shall be on probation for a period of two years;
>
> Provided that the Controlling Authority may extend or curtail the period of probation, in accordance with the instructions issued by the Government, from time to time:
>
> Provided further, that any decision for extension of the probation period shall be taken within 8 weeks after the expiry of the previous probation period and communicated in writing to the concerned officers together with the reasons for so doing, within the said period.
>
> (2) On completion of the period of probation, or extension thereof, officers shall, if considered fit for permanent appointment, be retained in their appointment on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be.
>
> (3) If, during the period of probation or any extension thereof, as the case may be, the Controlling Authority is of opinion that an officer is not fit for permanent appointment, the President may discharge him or revert him to the post held by him prior to his appointment to the Service, as the case may be.
>
> (4) During the period of probation or any extension thereof, the candidates may be required by the Controlling Authority to undergo such course or courses of training and instruction and to pass such examinations and tests as the Controlling Authority may deem fit, as a condition to the satisfactory completion of the probation. Those examinations may also include such examinations in Hindi as may be prescribed by the Government for similar officers of Group'A' services under the Central Government".

This Rule stipulates a minimum period of two years as probation, both for direct recruits and promotees. This period is not normally

curtailed but is extended depending on the performance of the individual officer. Every officer selected and appointed to the junior time-scale will be on probation for a minimum period of two years.

45. Rule 10 which also has a bearing on the validity of sub-para (2) reads thus:

> "10. Liability for Service in any part of India and other Conditions of Service. - (1) Officers appointed to the Service shall be liable to serve anywhere in India or outside.
>
> (2) The conditions of Service of the members of the Service in respect of matters for which no provision is made in these rules, shall be the same as are applicable, from time to time, to officers of Central Civil Service Group 'A', prescribed by the President in consultation with the Comptroller and Auditor General of India."

This rule stipulates that members of service, are liable for transfer to any place in India or outside, like Indian Embassies situated in different parts of the world.

46. Rule 11 governing disqualification, Rule 12 governing power of relaxation, Rule 13 dealing with savings, Rule 14 dealing with the power of Government on the interpretation of the Rules and Rule 15 dealing with repeals are not material for our purpose and therefore, they are not analysed in detail.

47. Schedule I to the Rules deals with the cadre strength of different grades of the service and their scales of pay. Schedule II deals with the Educational qualification for direct recruits.

48. Articles 14 and 16 of the Constitution are one group of articles and Articles 15 and 16 are only an extension of Article 14 to specific cases. In other words, Article 14 is said to be the genus and Articles 15 and 16 its species. It is trite, therefore, that the principles governing Article 14 equally govern Articles 15 and 16 of the Constitution as well and this does not require a reference to decided cases.

49. The true scope and ambit of Article 14 has been explained

by the Supreme Court in a large number of cases. In RAM KRISHNA DALMIA AND OTHERS v. JUSTICE S.R. TENDOLKAR AND OTHERS (AIR 1958 SC 538) and RE: SPECIAL COURTS BILLS CASE (AIR 1979 SC 478) the Supreme Court reviewing all the earlier cases elaborately re-stated the scope and ambit of Article 14 of the Constitution. In Special Courts Bill's case, Chandrachud,CJ. speaking for a Larger Bench of 7 Judges summed up the same in these words:

> "73. As long back as in 1960, it was said by this Court in Kingshari Haldar that the propositions applicable to cases arising under Article 14 have been repeated so many times during the past few years that they now sound almost platitudinous. What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous to-day, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition to state the propositions which emerge from the judgments of this Court in so far as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:
>
> 1. The first part of Article 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.
>
> 2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.
>
> 3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or

things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exgencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

9. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the fact of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination".

On this enunciation, there was no disagreement, though there was dissent on other points, with which we are not concerned. In the later cases, the Supreme Court has reiterated these principles.

50. On the new dimension of Article 14 of the Constitution namely

arbitrariness is the very antithesis of rule of law enshrined in Article 14 of the Constitution evolved for the first time in E.P. ROYAPPA v. STATE OF TAMILNADU (AIR 1974 SC 555), Bhagwati,J. (as His Lordship then was) expressed thus:-

> "We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistics point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14....."

In MANEKA GANDHI v. UNION OF INDIA (AIR 1978 SC 597) the same learned Judge elaborated this principle in these words:-

> "The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence....."

In the later cases, the Court has reiterated these principles and has applied them to specific cases.

51. We must also bear in mind one of the great constitutional principles propounded by James Bradley Thayer, a renowned constitutional lawyer of America namely 'that the judicial veto, is to be exercised only in cases that leave no room for reasonable doubt'. This has been articulated by the eminent Jurist-Judges of the American Supreme Court viz., Justices Holmes, Brandeis and Frankfurter in more than one case (see: Article on "The Influence of James B.Thayer upon the work of Holmes, Brandeis, and Frankfurter" in the self-same treatise in "Supreme Court Statecraft" by Wallace Mendelson, First Indian Reprint, 1987 edition). One other principle which we should bear in mind is that the validity of a law must be examined and decided as made by the law making authority itself and not from the standpoint that a better law could have been enacted or a better

solution found to the problem, should not influence us in adjudging the validity of a law. Bearing all these principles, we now proceed to examine the validity of the impugned Rules.

52. On the provision barring promotion of those, who attained 53 years of age as on first day of July of the calendar year, the applicants have urged that the AOs working in the IA&AD had been chosen for a hostile, discriminatory and arbitrary treatment. They claim that such a provision did not occur in any other service of the Union of India and the same has no rational nexus to the object of classification if any and in any event was arbitrary.

53. In refuting this claim of the applicants, the respondents assert that the bar was imposed to ensure efficient public service. In elaborating the same the respondents assert that on promotion to the IA&AS, the officer would be on probation for a minimum period of two years during which period he had to undergo training and pass examinations. This probationary period was however liable to be extended for an equal period if the performance of the probationer was not satisfactory. Those who complete probation satisfactorily, would have hardly 3 years of service before superannuation. On these and other dominant relevant facts, Shri Rao emphasised that the bar of age had been imposed which was not violative of Articles 14 and 16 of the Constitution.

54. We have earlier noticed the constitutional position of the C&AG, the special features of IA&AD and the IA&AS, on the efficiency of which the C&AG has to rely to enable him discharge the onerous duties and responsibilities enjoined on him by the Constitution, and by the laws and orders made thereto from time to time. These in reality and substance, mark out the IA&AD for a special or a different treatment as compared to other services of all other departments of the Union of India. It is apparent that on account of this

recognition, the Constitution itself had accorded a special status to the IA&AD. As a corollary, the IA&AS thus acquired a special status and position, which is not comparable to all other services of the Union of India and consequently they belong to a special and distinct group, which cannot be compared to other services. If this is held otherwise, it would be tantamount to treating equals as unequals and vice versa which would be antithetic to equality guaranteed by Article 14 of the Constitution. On this analysis it necessarily follows that the charge of the applicants that they have been chosen for a hostile and discriminatory treatment or that they have been irrationally grouped or should have been grouped with all other services of the Union of India, is wholly misconceived and has no merit at all.

55. The C&AG is a constitutional functionary and the status accorded to him cannot be claimed by all other members of the IA&AD. All other members of IA&AD, are undoubtedly civil servants of the Union of India and as such their status is analogous to the other civil servants of the Union of India. But, these broad features do not necessarily imply that their recruitment to the service should not be different from that of the other civil servants of the Union of India. Even otherwise, the requirements of a technical department like the IA&AD cannot be compared to the requirements of other departments some of which have their own special characteristics. On these factors themselves, we must necessarily hold that it is a case of classification permissible under Articles 14 and 16 of the Constitution.

56. We have earlier noticed the objects on which the age bar has been imposed. We are of the view that the bar so imposed has a rational nexus to the object of creating the IA&AS. We are of the view that the elimination for induction into the IA&AS of those attaining 53 years, satisfies the twin objectives of a valid classi-

fication under Articles 14 and 16 of the Constitution.

57. It is but reasonable and proper that a person inducted into a new service entailing duties and responsibilities of a higher order, after undergoing training in various disciplines, should be an effective member of that service, by serving for a minimum period so as to leave a tangible impact of his contribution to that service. We are convinced that the minimum period of three years is reasonable not only from the point of view of promoting efficiency of the Department but also in the larger interest of public service. The provision which seeks to achieve this object cannot be condemned as arbitrary or irrational. We are of the view that sub-para (2) of Schedule III does not at all offend the new dimension of Article 14 of the Constitution.

58. In Noronha's case, the Court was examining a provision made in the Karnataka Police Rules debarring an Inspector of Police from promotion as a Deputy Superintendent of Police if he could not render a minimum period of three years of service in the promoted cadre. In rejecting the challenge of Noronha to that provision, the Court speaking through Hegde,J. (as His Lordship then was) expressed thus:

> ".....That apart, taking into consideration the nature of the duties to be performed and the responsibilities to be carried by a Deputy Superintendent of Police, we are unable to agree with Mr.Datar that the condition requiring that he should have a prospect of serving in the post in question atleast for a period of three years - the age of superannuation being 55 years - it cannot be said that the rule in question is an arbitrary one. The post of a Deputy Superintendent of Police is a responsible post. Public interest may not be best served if the Official to be promoted to that post turns out to be a mere bird of passage having no interest in the office to which he is promoted. We assume that this was one of the considerations which must have swayed with the Government in making the impugned rule. It is true that a rule of this character can be misused. That is true of most provisions. The possibility of an officer who is not in the good books of his superiors, not being promoted in due time and thereby his chance of promotion ruined is undoubtedly there. But the possibility of misuse of a rule is no ground for holding the rule to be bad. It is sound principle of law, to assume,

that the persons who are in-charge of the Government are discharging their onerous duties and responsibilities in a fair and honest manner....."

In Sukhamoy Sen's case the Orissa High Court was examining the challenge to Rule 5 of the Indian Police Service (Recruitment) Rules,1954 ('IPS Rules'), which inter alia, barred those who were 52 years of age as on the first day of January of the year of selection for promotion to the Indian Police Service. In rejecting that challenge, the Orissa High Court concurring with the view expressed in Noronha's case, expressed thus:

"(14) Mr.Nanda next contended that the prescription of age of 52 years beyond which a member belonging to the State Police Service shall not be ordinarily considered for promotion is arbitrary and unreasonable. This contention has also no merit. The age of retirement in the State Police Service is 55 years. By the end of 52nd year he shall have only three years to go in. Prior to the retirement, sometimes Government servants lack zeal and incentive in work. They feel like birds and passage who have no abiding interest in their work. It is, therefore, not unreasonable to put an age restriction that such categories of officers should not ordinarily be taken into consideration for promotion after a particular age. Here also the mandate is not absolute. The word 'ordinarily' qualifies the restriction and the Selection Committee has full power to consider cases of persons beyond 52nd year if they maintain efficiency. This provision is neither arbitrary nor unreasonable....."

Though in our view it would not be fair and realistic to generalise that one and all on the verge of retirement flag in their zeal and incentive for work, we are in respectful agreement with the above opinion expressed by the Karnataka and Orissa High Courts that in the interest of efficiency, it is not unreasonable to impose age restriction.

59. In Indravadan's case, on which Dr. Nagaraja strongly relied, the Supreme Court was examining the validity of Rule 6(4)(i) of the Gujarat Judicial Service Recruitment (Amendment) Rules,1979 ('Gujarat Rules') set out in extenso in para 1 of the Judgment which, inter alia, barred those who had completed 48 years or had attained 49 years of age for promotion to the posts of Assistant Judges in the

Subordinate Judicial Service of Gujarat and provided for automatic deletion of the names of those previously selected and placed in the earlier Select List. In reversing the decision of the Gujarat High Court, which had upheld the validity of that Rule, the Supreme Court ruled that provision was arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution. But, that is not the position in regard to the impugned rule. The New Rules and the Gujarat Rule are totally different in their sweep, content and object. The objects sought to be achieved by the two Rules are wholly different. While there is nothing arbitrary in the New Rules, everything was arbitrary in the Gujarat Rule. We are, therefore, of the view that the principles enunciated in this case, do not really bear on the point and assist the applicants.

60. On the foregoing discussion, we hold that para (2) of Schedule III does not offend Articles 14 and 16 of the Constitution either from the standpoint of classification or from the new dimension of Article 14. We, therefore, see no merit in the challenge of the applicants to the same.

61. Sub-para (3) of Schedule III is challenged by the applicants as violative of Articles 14 and 16 of the Constitution. On this, the applicants urged that this provision for reckoning seniority in the cadre of SOs which is two cadres below that of the Junior time-scale in the IA&AS and not the seniority in the cadre immediately below the promotion cadre, is queer, irrational and unknown to the accepted principle of promotion. On these very grounds, the applicants allege that the Accounts Officers are chosen for a hostile and discriminatory treatment in contravention of Articles 14 and 16 of the Constitution.

62. In justification of sub-para (3) and the drawing up of the combined Eligibility List on the basis of the principles articulated in that provision, the respondents in their reply have stated thus:

"In regard to the manner of preparation of combined eligibility list (not seniority list as mentioned by the applicants), it is submitted that prior to the promulgation of IA&AS (Recruitment)Rules,1983, the recruitment tothe IA&AD was regulated by the Rules regulating the methods of recruitment to the Indian Audit and Accounts Service, the Imperial Customs Service, the Military Accounts Department and the Indian Railway Accounts Service as notified in the Finance Department Resolution No.F.25(6)-EX.II/38, dated 30th April,1938 and executive orders made in accordance therewith. All Accounts/Audit Officers with a minimum of two years' of service in that capacity were eligible and the promotions were made solely on the basis of merit, from and amongst all such officers.

While framing the IAAS (Recruitment)Rules,1983, which replaced the above arrangement, the following considerations weighed with the second respondent in making suitable suggestions to Govermnet:-

(a) In accordance with the criteria then operative, the UPSC was required to consider a very large number of officers from each and every cadre, which made its work extremely difficult, if not impossible.

(b) It was considered desirable that along with merit, due weightage should also be attached to the long and meritorious service rendered by these officers in their respective cadres.

These criteria could be satisfied only if a combined list is prepared for consideration after merging eligible officers of all cadres. To achieve this goal, criteria for eligibility was revised as mentioned in para 2 of Schedule III of the IAAS (Recruitment) Rules,1983. The second step was to prescribe procedure for preparation of a combined eligibility list.

In prescribing the procedure for preparation of such a list, the respondents had to face with an extremely complex task of merging together the eligible officers from over fifty different cadres. In all these cadres, the officers performed different functions and prospects of promotion to the feeder cadre (viz.,Accounts/Audit Officers) were widely different, at different points of time. For example, in the offices of Tamil Nadu and Andhra Pradesh, the officers had to put in a service of 17 to 18 years to get into the feeder cadre, while in the cadre of Commercial Audit, the corresponding period was 10 to 12 years. In Railway Audit and Defence Audit Offices, the time taken for promotion to feeder cadre varied from office to office, but was invariably more than in case of many civil Accounts and Audit Offices. This stagnation of varied levels was on account of difference in the expansion of activities of auditee organisations and consequent expansion of audit activities. In these circumstances, it was felt that if the criteria of the date of entry in feeder cadre (viz., Accounts Officers' cadre) was adopted as the basis for preparation of combined eligibility list it would have had adverse repercussion to the promotional prospects of Accounts/Audit Officers in many cadres, resulting in consequent demoralisation and its impact on the efficiency of the Department.

In order to achieve a fair criterion it was essential

> to base it on a common equalising factor among all the cadres. Such a factor was found on SAS Examination (now called SOG Examination) which was conducted by the Office of the Comptroller and Auditor General of India on all India basis. After passing this examination, a person qualifies for appointment as a Section Officer, which is the feeder cadre for promotion to the post of Accounts/Audit Officers. The SAS Examination is open to all Auditors /Clerks in the Department with specified service. Taking these factors into account it was decided to adopt the date of promotion as Section Officer as the basis for preparation of the Combined Eligibility List for promotion to IAAS. It would thus be evident that the provisions made in the rules are not rational in the given circumstances."

The respondents assert that on an indepth examination of all alternatives, it was found that the inequalities in avenues of promotion got accentuated on account of widely disparate avenues available in the cadre of Accounts Officers in different units. They felt that these inequalities could be optimised for onward promotion if the length of service was reckoned in the cadre of Section Officers in the overall Eligibility List, without however disturbing the inter se seniority of the incumbents as Accounts Officers within the same unit. We have examined this aspect, with reference to the relevant service particulars of some of the incumbents in the respective cadres and are convinced that the department has really taken recourse to administrative ingenuity and pragmatism as juste milueu -a golden mean - in resolving this vexed problem of seniority in the larger interests of its employees. The applicants therefore cannot have any legitimate grievance in this regard.

63. In granting promotions, the normal and general rule is to be guided by the seniority and performance in the cadre immediately below the promotion cadre and not any othr cadre. But, this is only a rule of practice and not rule of law. There isno immutable law to that effect. When there is a departure as in the present case, the same cannot be condemned merely on the basis of the normal and general rule of pr[illegible] Whether the departure was justified or not, has to be examined and decided on its own merits.

64. Sub-para (3) operates against all those who are similarly situated uniformly, and does not pick up anyone or any class for a hostile and discriminatory treatment. Sub-para (3) also does not chose any one for a special and more favourable treatment. When that is so, it is difficult to hold that sub-para (3) of Schedule III contravenes Articles 14 and 16 of the Constitution.

65. We have earlier noticed that the IA&AS with its distinct lineament is a service apart from all other services of the Union of India. Even that finding equally applies to sub-para (3) of Schedule III. On this score also it is difficult to hold that the said provision contravenes Articles 14 and 16 of the Constitution.

66. The situation faced by the C&AG, Government and the rule making authority was a complex and difficult one. In finding a solution, in such a situation it would not be prudent to go on the beaten track. If an expert body like the C&AG and Government on an indepth examination hold that the normal rule of practice was not suited and that another practice or principle was better suited to the problem and that results in no injustice to anybody, then this Tribunal which is ill-equipped to evaluable on their soundness, should be loath to interfere with the same. Even otherwise we see no irrationality or arbitrariness in sub-para (3) when the same is read along with sub-para (4) as that should be.

67. On the foregoing discussion, we hold sub-para (3) of Schedule III is not violative of Articles 14 and 16 of the Constitution.

TRUE COPY

68. As all the contentions urged for the applicants fail, these applications are liable to be dismissed. We, therefore, dismiss these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-
CHAIRMAN

Sd/-
VICE-CHAIRMAN 9/9/1988

Sd/-
MEMBER(A) 9-9-1988

N.B: I have signed this order on 6-9-1988 at New Delhi as I cannot be present at Bangalore on the date of pronouncement of this order by the other two Members of the Full Bench which heard these cases at Bangalore.

Sd/-
CHAIRMAN

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

सत्यमेव जयते

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

6th Floor,
Insurance Building Complex,
Tilak Road,
Hyderabad—500 001.
Telephone No : 237999

Lr.NO.CAT/HYD/JUDL/TA.No.921& Batch/86; Date.....2-3-89.....

To

The Deputy Registrar(Judl),
Central Administrative Tribunal,
Banglore Bench, BANGLORE.

Sir,

Sub:- Cases referred to FULL BENCH - Intimation to other Benches - Copy of Judgment - Request for - Regarding.

. . . . . .

I am directed to say that there are five Transferred Applications pertaining to A.G.'s Office pending in this Tribunal. The petitioners/Applicants are the Accounts Officers in A.G.'s Office. Their next promotion was Class-I Cadre. The promotion for these petitioners was denied on the ground that the Officers attaining the age of 53 years by 1-7-1983, shall not be eligible to the promotion of Class-I Cadre. In the above five cases the said rule has been assailed.

Dy no 59-JII 6/3/89

In the course of arguments, it was brought to the notice of the Tribunal, that similar matter has been heard by FULL BENCH of Central Administrative Tribunal Banglore Bench, and the Judgment therein is awaited. On that ground the counsel for the Applicants sought adjournment, having argued the case at length on previous occassions.

In the context, I am directed to request you to furnish ~~kk~~ a copy of the judgment, if it is delivered, for perusal of this Bench at an early date.

Thanking You,

Yours Faithfully,

DEPUTY REGISTRAR (JUDL).

2/3/89

केन्द्रीय प्रशासनिक अधिकरण
अतिरिक्त न्यायपीठ, बैंगलोर

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indira Nagar BANGALORE-560 038.

A.No 967 & 968/87
and A.No 83/88

Dated 7th March 1989

To

The Deputy Registrar(Judicial),
Central Administrative Tribunal,
Hyderabad Bench, 6th floor,
Insurance Building Complex,
Tilak Road, Hyderabad-500 001

Sub: CASES REFERRED TO FULL BENCH-INTIMATION TO OTHER BENCHES - COPY OF JUDGEMENT - REQUEST FOR - REGARDING.

******

Ref: Lr.No CAT/HYD/JUDL/TA No 921 Batch/86 dated 02-03-1989

******

Sir,

Reference your letter mentioned above. Presumably the judgement referred to ak is the order dated 09-09-1988 in A.Nos 967 & 968/87 and 83/88. A copy of the same is sent herewith.

Yours faithfully,

(BV VENKATA REDDY)
DEPUTY REGISTRAR(J)

O/c.

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER,1988.

PRESENT:

Hon'ble Mr.Justice K.Madhava Reddy, .. Chairman.

Hon'ble Mr.Justice K.S.Puttaswamy, ..Vice-Chairman(J)

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATIONS NUMBERS 967, 968 OF 1987 AND 83 OF 1988

1. Sri K.Ranganathan,
   Accounts Officer,
   Office of the Accountant General
   (Accounts & Entitlement)
   Karnataka, Bangalore-560 001. .. Applicant in A.No.967/87

2. All India Association of Audit
   and Accounts Officers of the
   I.A & A.D., Karnataka Unit,
   Bangalore, by its President. .. Applicant in A.No.968/87

3. Shri R.Sathyanarayana Rao,
   Accounts Officer,
   Office of the Accountant General
   (Accounts & Entitlement)
   Bangalore-560 001. .. Applicant in A.No.83/88

(By Dr.M.S.Nagaraja, Advocate)

v.

1. The Accountant General
   (Accounts & Entitlements)
   Karnataka, Bangalore-1.

2. The Comptroller and Auditor General
   of India, No.10, Bahadur Shah Zafar Marg,
   New Delhi.

3. The Union of India by the Secretary,
   Ministry of Finance,
   (Department of Expenditure)
   Government of India,
   New Delhi. .. Respondents 1 to 3
   in all Applications.

4. Shri K.Janardhanan Sastry, IA & AS
   Assistant Accountant General
   Office of the Accountant General
   (A & E) Karnataka,
   Bangalore-560 001. .. Respondent-4 in A.Nos.967 & 968/87.

(By Sri M.Vasudeva Rao, CGASC for R1 to 3)
(Respondent-4 served, absent and unrepresented)

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These applications having come up for orders to-day, Hon'ble Mr.Justice K.S.Puttaswamy, Vice-Chairman made the following:

ORDER

These are applications made by the applicants under Section 19 of the Administrative Tribunals Act,1985 ('the Act').

2. Shri K.Ranganathan, applicant in Application No.967 of 1987 born on 12-9-1930 joined service in 1951 in the office of the Accountant General, Karnataka ('AG') as an Auditor, then designated as an Upper Division Clerk. When he was so working, he appeared for the Sub-ordinate Accounts Services Examination ('SAS') an All India Examination conducted by the Comptroller and Auditor General of India ('C&AG') in 1957 and was successful. On 22-9-1958, he was promoted as a Section Officer ('SO') then designated as Superintendent and thereafter on 7-10-1970, he was promoted as Accounts Officer (AO). He was confirmed in that post from 1-4-1978 and is due to retire on 30-9-1988.

3. Shri R.Sathyanarayana Rao, applicant in Application No.83 of 1988 born on 16-4-1936 joined service as an Auditor on 17-2-1958 in the office of the AG. He passed the SAS examination in 1966. He was promoted as SO on 22-5-1966 and then as AO on 8-4-1981 in which capacity he is now working.

4. A service Association called the 'All India Association of Audit and Accounts department, Karnataka Unit, Bangalore' (Association) recognised by Government, is the applicant in Application No. 968 of 1987. The Association is espousing the cause of Accounts Officers working in the Department. These are all the particulars of the applicants before us.

5. Shri K.Janardhana Sastry ('Sastry'), respondent-4 in Applications Nos. 967 and 968 of 1987, born on 27-8-1933 started his career in th office of the AG, as an Auditor and passed the SAS in due course. He was promoted as SO on 14-5-1960 and then as AO on

29-4-1974. When so working, he was selected in 1985/1986 to the junior time-scale of the Indian Audit and Accounts Service ('IA&AS'), a service constituted and functioning under the Indian Audit and Accounts Service (Recruitment Rules) 1983 ('New Rules') made by the President of India under Articles 148(5) and the Proviso to Article 309 of the Constitution. The New Rules, repealed the Customs and Accounts Service Recruitment Rules ('Old Rules') framed by the Governnment of India, in the Finance Department under their Resolution No.F 25(6)Ex.II/38 dated 30-4-1938.

6. The applicants have challenged the validity of sub-paras (2) and (3) of Schedule III of the New Rules as violative of Articles 14 and 16 of the Constitution.

7. Respondents 1 to 3 in Applications Nos.967 and 968 of 1987 who are also the respondents in Application No.83 of 1988 who will be hereafter referred as respondents, have filed their separate but identical replies resisting these applications. Respondent-4 in Application Nos. 967 and 968 of 1987 who has been duly served, has remained absent and is unrepresented.

8. These cases were first heard by a Division Bench of this Bench, consisting of two of us (viz., Mr.Justice K.S.Puttaswamy, Vice-Chairman and Mr.L.H.A.Rego, Member(A)) which by its order made on 18-7-1988 referred them to a larger Bench for disposal. On that reference, the Hon'ble Chairman had constituted this Full Bench and presided over the same. This is how these cases have come up before us. We heard them on 22nd and 23rd August,1988.

9. Dr.M.S.Nagaraja, learned Advocate, appeared for all the applicants. Sri M.Vasudeva Rao, learned Additional Standing Counsel for the Central Government appeared for all the respondents, except Sastry.

10. Dr.Nagaraja urges, that sub-paras (2) and (3) of Schedule III of the New Rules, which had segregated the AOs, for a hostile and discriminatory treatment, suffer from the vice of impermissible classification, were arbitrary and irrational and, therefore, violative of Articles 14 and 16 of the Constitution as ruled by the Supreme Court generally and in particular in INDRAVADAN H.SHAH v. STATE OF GUJARAT AND ANOTHER (AIR 1986 SC 1035).

11. Shri Rao refuting the contention of Dr.Nagaraja urged that the validity of the impugned provisions,was concluded by the Supreme Court in its decision rendered on 27-4-1984 in GURDIAL SINGH v. THE COMPTROLLER & AUDITOR GENERAL OF INDIA AND ANOTHER (Writ Petition No.13639 of 1983) and by a Division bench ruling of the Chandigarh Bench of this Tribunal in SANT RAM JULKA v. THE COMPTROLLER & AUDITOR GENERAL OF INDIA, NEW DELHI AND OTHERS (T.No.521 of 1986 decided on 20-10-1986) ('Julka's case). In support of his contention Shri Rao also relied on the rulings of Karnataka and Orissa High Courts in A.NORONHA v. STATE OF MYSORE AND OTHERS (AIR 1966 Mysore 267) and SUKHAMOY SEN v. UNION OF INDIA AND OTHER (1973 SLJ 810) respectively.

12. In ABDUL RAZAK AND ANOTHER v. THE DIRECTOR GENERAL, ESIC, NEW DELHI AND ANOTHER [(1988) 7 ATC 14],we have examined in detail, the power of this Tribunal to examine the validity of a service law, if that becomes necessary. For the very reasons stated in that case, (vide: paras 14 to 20) we hold that it is open to us to examine the validity of the impugned provisions. Sri Rao also did not rightly, dispute this position.

13. We must first examine as to whether the validity of the impugned rules is concluded by the Supreme Court and if so, it would not be necessary for us to go into that question.

14. One Shri Gurdial Singh, a member of a scheduled caste and working as Audit Officer (Commercial) in the office of the Director of Commercial Audit, New Delhi, who was hit by the New Rules and was, there-

fore not promoted to the IA&AS, challenged their validity before the Supreme Court under Article 32 of the Constitution in Civil Writ Petition No.13639 of 1983 inter alia, on the ground that they should have also given weightage and relaxation in age to members of scheduled castes and tribes for selection to the IA&AS. After notice to the respondents before admission, a Division Bench of the Supreme Court consisting of E.S.Venkataramiah and D.D.Madon, JJ. dismissed the same on 27.4.1984, at the admission stage in limine, in these words:

"The writ petition is dismissed."

In Julka's case the Chandigarh Bench of this Tribunal consisting of Hon'ble Sri Amarjeet Chaudhary, Member (J)(as he then was) and Hon'ble Sri Birbal Nath, Member (A) had expressed thus:

> "It was also brought to the notice of this Court by the respondents that the vires of the said rules were challenged before the Hon'ble Supreme Court of India in Civil Writ Petition No.13639 of 1983. The writ petition has already been adjudicated upon and dismissed by the Hon'ble Supreme Court of India."

In this para, the Bench had accepted the submission of Sri Rao.

15. We have earlier extracted the order of the Supreme Court in its entirety, which reveals that it had dismissed the writ petition of Gurdial Singh in limine, without giving reasons.

16. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Central Administrative Tribunal is a court within the meaning of Article 141. Though this Article does not expressly include the tribunals and the authorities functioning in the country, the law declared by the Supreme Court is binding on all of them. It is law of the land. Article 141 of the Constitution recognises the "law of binding precedents" in our country. This has origin in the Anglo-Saxon or English doctrine of precedents and has become a feature of our judicial system and the Constitution.

17. Even without elaborating on the "law of binding precedents" which is really unnecessary, it would suffice to state, that what really binds a subordinate Court or Tribunal, is the ratio decidendi or the raison detre or the principle enunciated by the Supreme Court in a case.

18. In a non-speaking order, as in Gurdial Singh's case, there are no reasons given by the Court for dismissing the writ petition. When the order itself does not give reasons, we cannot on any principle hold, that such an order has a ratio decidendi or principle enunciated which alone binds the subordinate Courts and Tribunals. It is therefore logical to conclude therefrom, that dismissal of an application in limine without reasons, does not constitute as a binding precedent. If that is so, then the challenge made by others cannot be held to be concluded by Gurdial Singh's case.

19. In this connection, it is apt to recall as to what has been decided in DARYAO AND OTHERS v. STATE OF U.P.AND OTHERS (AIR 1961 S.C.1457). In that case, a Constitution Bench of the Supreme Court, had occasion to examine whether the principle of res judicata was applicable to writ proceedings or not. In deciding that question, the Court examined the effect of an order dismissing a writ petition in limine without giving reasons. On that aspect Gajendragadkar,J., (as His Lordship then was) speaking for the Bench summed up the law in these words:

> "(19) We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.

> If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32 If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32 because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other....."

In this case, the Court had ruled, that an order dismissing a writ petition either under Article 32 or Article 226 of the Constitution in limine, without giving reasons, did not constitute a bar of res judicata.

20. When an order dismissing a writ petition under Article 32 in limine, without giving reasons does not operate as res judicata, on the very same reasons; we are of the considered view that the same cannot also operate as a binding precedent. We are also convinced that this conclusion is both logical and legal and flows from the very principles enunciated by the Supreme Court in Daryao's case. We are also of the view that this very position has been reiterated by the Supreme Court in UNION OF INDIA v. ALL INDIA SERVICES PENSIONERS' ASSOCIATION AND ANOTHER [(1988)2 SCC 580] ('Pensioners' Case).

21. We cannot really visualise the reasons that weighed with the Supreme Court for dismissing the writ petition of Gurdial Singh. But, if we may speculate and such a course is permissible, then we think that the Supreme Court found no merit in the claim of Gurdial Singh, that there should have been further weightage and relaxation in respect of members of the SC and ST for selection to the IA&AS.

22. Rupert Cross an erudite jurist, in his treatise "Precedent in English Law", Third Edition, has dealt with this aspect at length under the caption "Decisions without reasons" in Chapter-II - "RATIO AND OBITER DICTUM" at pages 47 to 49. The following observation therein is apposite:

> "In general however, the authority of a decision for which no reasons are given is very weak, because it is so hard to tell which facts were regarded as material and which were thought to be immaterial...."

We are of the view that this statement correctly depicts the legal position.

23. On the foregoing discussion, we hold that the decision of the Supreme Court in Gurdial Singh's case, does not conclude the validity of the impugned rules and that the view expressed to the contrary in Julka's case by the Chandigarh Bench does not lay down the law correctly.

24. On the validity of the impugned Rules themselves, in Julka's case, the Chandigarh Bench expressed thus:

> "The rules do not violate any provisions of the Constitution of India, nor any such argument has been advanced at the bar. The rules have been framed by the rule making authority and such a power has not been questioned. Moreover, the rules are not violative of any fundamental right or Article 311 of the Constitution of India. The intention of the legislature for fixing the age of 53 years, must be in the interest of efficient public service."

Except for the above, we must observe, with respect to that Bench, that the rest of the judgment in that case does not throw any light to enable us to form any opinion on the point at issue. We, therefore

propose to examine the matter independently, in its entirety.

25. Chapter 5 of Part V of the Constitution deals with the post of Comptroller and Auditor-General of India, appointment to that post, the status of the person appointed to that post and the immunities and privileges guaranteed to him, as also his disability to hold any other public office on his retirement from service. The C&AG is the overall head of the Department called the Indian Audit and Accounts Department (IA&AD), recognised in sub-article (5) of Article 148 of the Constitution. The C&AG and the IA&AD are the guardians and sentinel of the finances of the Union and the States. The IA&AD is a specialised department or a technical organisation and must be manned by men of competence and professional acumen.

26. The IA&AS constituted under the Old and the New Rules is the premier or the core service of the IA&AD. Naturally, selections and appointments to the core service, calls for strictness and rigour of a high order. With this brief backdrop of the Department and the service it would be useful to analyse the New Rules in general and the impugned provisions in partiuclar.

27. The preamble to the New Rules only invokes the power conferred on the President to frame the Rules under Articles 148 and 309 of the Constitution.

28. Rule 1 deals with the short title and commencement of the Rules. The Rules were published in the Gazette of India on 26-3-1983 in Part-II Section 3(i) and therefore have come into force from that day (vide: sub-rule (ii) of Rule 1).

29. Rule 2 defines certain terms which generally occur in the Rules.

30. Rule 3 deals with the constitution of the IA&AS and classification of the posts as Group-A posts. Rule 4 deals with the grades, authorised strength and their review from time to time. Rule 5 deals

with the persons appointed to the service either under Rule 6 or under Rule 7. Rule 6 deals with initial constitution of the service. Under this rule all those who held the corresponding posts in the erstwhile IA&AS automatically become members of the new IA&AS constituted with effect from 26-3-1983 under the New Rules.

31. Rule 7 of the Rules which is material, reads thus:

"7. Future maintenance of the Service - (1) Any vacancy in any of the grades referred to in Schedule I after the initial constitution of the Service, as provided in Rule 6, shall be filled in the manner as hereinafter provided under this Rule.

(2) Initial recruitment to the Service shall be in the junior scale and shall be made in the following manner:

(i) By direct recruitment on the results of a competitive examination conducted by the Commission on the basis of educational qualifications and age limit prescribed in Schedule II and any scheme of examination that may be notified by Government in consultation with the Commission from time to time in this regard.

(ii) By promotion of officers on the basis of selection on merit included in the select list for the said grade in the order of seniority in the select list prepared in the manner as specified in Schedule III.

(iii) The number of persons recruited under clause (ii) above shall not at any time exceed 33-1/3 per cent of the posts at S.Nos.1 & 2 mentioned in Schdule I.

(3) Appointments in the service to posts in Senior scale and above shall be made by promotion from amongst the officers in the next lower grade.

(4) The selection of officers for promotion shall be made by selection on merit, except in the case of promotion to posts in Senior Scale and Selection Grade of Jr. Administrative Grade which shall be in the order of seniority, subject to rejection of the unfit, on the recommendation of the departmental Promotion Committee constituted by the Comptroller and Auditor General of India, from time to time.

(5) The Comptroller and Auditor General of India may appoint to a duty post in Service on deputation/contract basis for specified periods, officers from other Departments of the Central Government or in consultation with the Commission from a State Government, Union Territory, Public Undertaking. Statutory, Semi-Government or Autonomous organisations:

Provided that the duty post in which an officer may be so appointed on deputation/contract basis shall not be higher than the A.G level I, that the period of deputation/contract shall not be more than 3 years in the first instance and that the officer prior to such appointment shall have been drawing pay in an equivalent or nearly equivalent grade or one grade or nearly one grade lower."

Rule 7(2)(i) and the related provisions regulating direct recruitment to the junior time-scale for which a quota not exceeding 66 2/3 per cent is earmarked by competitive examination in the manner stipulated therein, are not material for the cases before us and, therefore, we do not propose to analyse them.

32. Rule 7(2)(ii) deals with promotions for whom a quota not exceeding 33 1/3 per cent in the junior time-scale is reserved. The promotions are on the basis of selection on merit, of those included in the select list in the order of seniority from an eligibility list drawn up in conformity with Schedule III to the Rules.

33. Schedule III which is material reads thus:

"SCHEDULE-III

(See sub-rule 2(ii) of Rule 7)

Eligibility and manner of preparing the select list for appointment on promotion to posts in Group 'A' in the Junior scale included in the Indian Audit & Accounts Service:

(1) There shall be constituted a Selection Committee consisting of the Chairman or a Member of the Commission who will preside over the meetings of the Committee and three officers not below those in the senior Administrative Grade to be nominated by the Controlling Authority to serve as Members to prepare the select list mentioned in Sub-rule (2)(ii) of Rule 7. The absence of a Member, other than the Chairman or a Member of the Commission shall not invalidate the proceedings of the Committee, if more than half the members of the Committee had attended its meetings. The Selection Committee shall ordinarily meet at intervals not exceeding one year.

(2) A combined eligibility list shall be prepared from among departmental officers borne on the Group-B Cadres of Audit Officers, Accounts Officers and Administrative Officers in the Indian Audit and Accounts Department who have completed 5 years regular continuous service in the grade on the first day of July of the year to which the promotions pertain. Officers who have attained the age of 53 years on the above date shall not be eligible.

(3) The names of eligible Accounts Officers/Audit Officers, shall for the purpose of combined eligibility list to be arranged in the order of date of their appointments as Section Officers (or corresponding posts) without, however, affecting the inter-se seniority as Accounts Officer/Audit Officer in a particular cadre.

(4) If an officer is considered for promotion, all persons

senior to him under sub-para (3) above shall also be considered notwithstanding that they may not have rendered the requisite number of years of service in Group 'B'.

(5) The combined eligibility list shall comprise of eligible officers of specified number or numbers to be decided as per instructions issued by Government from time to time and with reference to the number of vacancies to be filled in the course of the period of 12 months commencing from the date of preparation of the list.

(6) The Selection Committee shall make selections on merit from among those included in the combined eligibility list and prepare a list arranged in order of preference of officers selected and submit the same to the Commission. On receipt of the said select list, the Commission shall forward its recommendations for appointment of officers to posts in Junior scale of the cadre to the Controlling Authority."

Sub-para (1) of this schedule regulates the constitution of a selection committee, also called as the Departmental Promotion Committee ('DPC') formaking selections to the quota available to promotees.

34. Sub-paras (2) to (6) of the Schedule elaborately regulates the preparation of an 'Eligibility List' and selection of persons therefrom. On the comprehensive methodology to be followed in regard to drawing up of the 'Eligibility' and select list or the detailed procedure on selections as such, there is no dispute between the parties. We, therefore, do not dwell on the same.

35. But, as noticed earlier, the challenge of the applicants is confined only to sub-paras (2) and (3) of this schedule. We, therefore, propose to focus our attention on their construction at this stage itself.

36. Sub-para (2) provides for the drawing up of a combined eligibility list from among Audit Officers, Accounts Officers and Administrative Officers in the IA&AD who have completed five years of regular continuous service in any of those grades as on the first day of July of the year to which the promotions pertain. Firstly, only those holding the posts of Audit Officers, Accounts Officers and Administrative Officers are considered eligible for selection.

Secondly, only those who have completed 5 years of regular continuous service as on the 1st of July of the pertinent year are eligible forselection. There is no dispute and challenge on the foregoing before us.

37. But, what is challenged is the very last sentence of the sub-para (2) viz., Officers who have attained the age of 53 years as on the date of promotion are wholly ineligible for selection. This provision peremptorily stipulates that those who have attained the age of 53 years as on the 1st day of July of the calendar year which is the crucial date, are ineligible for promotion regardless of all other qualifications and merit, to hold the post of junior time-scale officers in the IA&AS. On account of the above, the appli - cants in Applications Nos. 967 of 1987 and 83 of 1988 and many others similarly situated are now ineligible for selection to the IA&AS.

38. Sub-paras (3) and (4) of the Schedule provides for the draw- ing up of the Eligibility list. The list so drawn up is however not a seniority list.

39. We have earlier noticed as to who are eligible for selection to the service. But, sub-para (2) stipulates that while drawing up the Eligibility list, the service rendered by the eligible officers in the cadre of Section Officers, which is one stage immediately below the cadre already held by them, be reckoned. In other words, promotion to the cadre of Section Officers becomes all important and a guiding factor for inclusion in the Eligibility List. As to why this is done and whether the same is valid or not will be dealt with by us later.

40. Sub-para (4) which is closely, interlinked with sub-para (3) really incorporates the principle of 'kicking up' followed in the drawing up of Seniority Lists on the Reorganisation of States and services. This ensures justice to seniors.

41. Sub-paras (5) and (6) merely sub-serve what is provided

in the preceding provisions of the schedule.

42. With this analysis of Rule 7 and Schedule III it is useful to read the other rules also and analyse them to the extent they are necessary.

43. Rule 8 regulates the seniority of officers selected to the service from different sources and its analysis is not material for these cases.

44. Rule 9 which regulates the probation of direct recruits and promotees and has considerable bearing on the validity of sub-para (2) reads thus:

> 9. Probation. - (1) Every person on appointment to the Service either by direct recruitment or by promotion in junior scale shall be on probation for a period of two years;
>
> Provided that the Controlling Authority may extend or curtail the period of probation, in accordance with the instructions issued by the Government, from time to time:
>
> Provided further, that any decision for extension of the probation period shall be taken within 8 weeks after the expiry of the previous probation period and communicated in writing to the concerned officers together with the reasons for so doing, within the said period.
>
> (2) On completion of the period of probation, or extension thereof, officers shall, if considered fit for permanent appointment, be retained in their appointment on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be.
>
> (3) If, during the period of probation or any extension thereof, as the case may be, the Controlling Authority is of opinion that an officer is not fit for permanent appointment, the President may discharge him or revert him to the post held by him prior to his appointment to the Service, as the case may be.
>
> (4) During the period of probation or any extension thereof, the candidates may be required by the Controlling Authority to undergo such course or courses of training and instruction and to pass such examinations and tests as the Controlling Authority may deem fit, as a condition to the satisfactory completion of the probation. Those examinations may also include such examinations in Hindi as may be prescribed by the Government for similar officers of Group'A' services under the Central Government".

This Rule stipulates a minimum period of two years as probation, both for direct recruits and promotees. This period is not normally

curtailed but is extended depending on the performance of the individual officer. Every officer selected and appointed to the junior time-scale will be on probation for a minimum period of two years.

45. Rule 10 which also has a bearing on the validity of sub-para (2) reads thus:

> "10. Liability for Service in any part of India and other Conditions of Service. - (1) Officers appointed to the Service shall be liable to serve anywhere in India or outside.
>
> (2) The conditions of Service of the members of the Service in respect of matters for which no provision is made in these rules, shall be the same as are applicable, from time to time, to officers of Central Civil Service Group 'A', prescribed by the President in consultation with the Comptroller and Auditor General of India."

This rule stipulates that members of service, are liable for transfer to any place in India or outside, like Indian Embassies situated in different parts of the world.

46. Rule 11 governing disqualification, Rule 12 governing power of relaxation, Rule 13 dealing with savings, Rule 14 dealing with the power of Government on the interpretation of the Rules and Rule 15 dealing with repeals are not material for our purpose and therefore, they are not analysed in detail.

47. Schedule I to the Rules deals with the cadre strength of different grades of the service and their scales of pay. Schedule II deals with the Educational qualification for direct recruits.

48. Articles 14 and 16 of the Constitution are one group of articles and Articles 15 and 16 are only an extension of Article 14 to specific cases. In other words, Article 14 is said to be the genus and Articles 15 and 16 its species. It is trite, therefore, that the principles governing Article 14 equally govern Articles 15 and 16 of the Constitution as well and this does not require a reference to decided cases.

49. The true scope and ambit of Article 14 has been explained

by the Supreme Court in a large number of cases. In RAM KRISHNA DALMIA AND OTHERS v. JUSTICE S.R. TENDOLKAR AND OTHERS (AIR 1958 SC 538) and RE: SPECIAL COURTS BILLS CASE (AIR 1979 SC 478) the Supreme Court reviewing all the earlier cases elaborately re-stated the scope and ambit of Article 14 of the Constitution. In Special Courts Bill's case, Chandrachud,CJ. speaking for a Larger Bench of 7 Judges summed up the same in these words:

> "73. As long back as in 1960, it was said by this Court in Kingshari Haldar that the propositions applicable to cases arising under Article 14 have been repeated so many times during the past few years that they now sound almost platitudinous. What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous to-day, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition to state the propositions which emerge from the judgments of this Court in so far as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:
>
> 1. The first part of Article 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.
>
> 2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.
>
> 3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or

things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exgencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

9. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the fact of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination".

On this enunciation, there was no disagreement, though there was dissent on other points, with which we are not concerned. In the later cases, the Supreme Court has reiterated these principles.

50. On the new dimension of Article 14 of the Constitution namely

arbitrariness is the very antithesis of rule of law enshrined in Article 14 of the Constitution evolved for the first time in E.P. ROYAPPA v. STATE OF TAMILNADU (AIR 1974 SC 555), Bhagwati,J. (as His Lordship then was) expressed thus:-

> "We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistics point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14....."

In MANEKA GANDHI v. UNION OF INDIA (AIR 1978 SC 597) the same learned Judge elaborated this principle in these words:-

> "The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence....."

In the later cases, the Court has reiterated these principles and has applied them to specific cases.

51. We must also bear in mind one of the great constitutional principles propounded by James Bradley Thayer, a renowned constitutional lawyer of America namely 'that the judicial veto, is to be exercised only in cases that leave no room for reasonable doubt'. This has been articulated by the eminent Jurist-Judges of the American Supreme Court viz., Justices Holmes, Brandeis and Frankfurter in more than one case (see: Article on "The Influence of James B.Thayer upon the work of Holmes, Brandeis, and Frankfurter" in the self-same treatise in "Supreme Court Statecraft" by Wallace Mendelson, First Indian Reprint, 1987 edition). One other principle which we should bear in mind is that the validity of a law must be examined and decided as made by the law making authority itself and not from the standpoint that a better law could have been enacted or a better

solution found to the problem, should not influence us in adjudging the validity of a law. Bearing all these principles, we now proceed to examine the validity of the impugned Rules.

52. On the provision barring promotion of those, who attained 53 years of age as on first day of July of the calendar year, the applicants have urged that the AOs working in the IA&AD had been chosen for a hostile, discriminatory and arbitrary treatment. They claim that such a provision did not occur in any other service of the Union of India and the same has no rational nexus to the object of classification if any and in any event was arbitrary.

53. In refuting this claim of the applicants, the respondents assert that the bar was imposed to ensure efficient public service. In elaborating the same the respondents assert that on promotion to the IA&AS, the officer would be on probation for a minimum period of two years during which period he had to undergo training and pass examinations. This probationary period was however liable to be extended for an equal period if the performance of the probationer was not satisfactory. Those who complete probation satisfactorily, would have hardly 3 years of service before superannuation. On these and other dominant relevant facts, Shri Rao emphasised that the bar of age had been imposed which was not violative of Articles 14 and 16 of the Constitution.

54. We have earlier noticed the constitutional position of the C&AG, the special features of IA&AD and the IA&AS, on the efficiency of which the C&AG has to rely to enable him discharge the onerous duties and responsibilities enjoined on him by the Constitution, and by the laws and orders made thereto from time to time. These in reality and substance, mark out the IA&AD for a special or a different treatment as compared to other services of all other departments of the Union of India. It is apparent that on account of this

recognition, the Constitution itself had accorded a special status to the IA&AD. As a corollary, the IA&AS thus acquired a special status and position, which is not comparable to all other services of the Union of India and consequently they belong to a special and distinct group, which cannot be compared to other services. If this is held otherwise, it would be tantamount to treating equals as unequals and vice versa which would be antithetic to equality guaranteed by Article 14 of the Constitution. On this analysis it necessarily follows that the charge of the applicants that they have been chosen for a hostile and discriminatory treatment or that they have been irrationally grouped or should have been grouped with all other services of the Union of India, is wholly misconceived and has no merit at all.

55. The C&AG is a constitutional functionary and the status accorded to him cannot be claimed by all other members of the IA&AD. All other members of IA&AD, are undoubtedly civil servants of the Union of India and as such their status is analogous to the other civil servants of the Union of India. But, these broad features do not necessarily imply that their recruitment to the service should not be different from that of the other civil servants of the Union of India. Even otherwise, the requirements of a technical department like the IA&AD cannot be compared to the requirements of other departments some of which have their own special characteristics. On these factors themselves, we must necessarily hold that it is a case of classification permissible under Articles 14 and 16 of the Constitution.

56. We have earlier noticed the objects on which the age bar has been imposed. We are of the view that the bar so imposed has a rational nexus to the object of creating the IA&AS. We are of the view that the elimination for induction into the IA&AS of those attaining 53 years, satisfies the twin objectives of a valid classi-

fication under Articles 14 and 16 of the Constitution.

57. It is but reasonable and proper that a person inducted into a new service entailing duties and responsibilities of a higher order, after undergoing training in various disciplines, should be an effective member of that service, by serving for a minimum period so as to leave a tangible impact of his contribution to that service. We are convinced that the minimum period of three years is reasonable not only from the point of view of promoting efficiency of the Department but also in the larger interest of public service. The provision which seeks to achieve this object cannot be condemned as arbitrary or irrational. We are of the view that sub-para (2) of Schedule III does not at all offend the new dimension of Article 14 of the Constitution.

58. In Noronha's case, the Court was examining a provision made in the Karnataka Police Rules debarring an Inspector of Police from promotion as a Deputy Superintendent of Police if he could not render a minimum period of three years of service in the promoted cadre. In rejecting the challenge of Noronha to that provision, the Court speaking through Hegde,J. (as His Lordship then was) expressed thus:

> ".....That apart, taking into consideration the nature of the duties to be performed and the responsibilities to be carried by a Deputy Superintendent of Police, we are unable to agree with Mr.Datar that the condition requiring that he should have a prospect of serving in the post in question atleast for a period of three years - the age of superannuation being 55 years - it cannot be said that the rule in question is an arbitrary one. The post of a Deputy Superintendent of Police is a responsible post. Public interest may not be best served if the Official to be promoted to that post turns out to be a mere bird of passage having no interest in the office to which he is promoted. We assume that this was one of the considerations which must have swayed with the Government in making the impugned rule. It is true that a rule of this character can be misused. That is true of most provisions. The possibility of an officer who is not in the good books of his superiors, not being promoted in due time and thereby his chance of promotion ruined is undoubtedly there. But the possibility of misuse of a rule is no ground for holding the rule to be bad. It is sould principle of law, to assume,

> that the persons who are in-charge of the Government are discharging their onerous duties and responsibilities in a fair and honest manner....."

In Sukhamoy Sen's case the Orissa High Court was examining the challenge to Rule 5 of the Indian Police Service (Recruitment) Rules,1954 ('IPS Rules'), which inter alia, barred those who were 52 years of age as on the first day of January of the year of selection for promotion to the Indian Police Service. In rejecting that challenge, the Orissa High Court concurring with the view expressed in Noronha's case, expressed thus:

> "(14) Mr.Nanda next contended that the prescription of age of 52 years beyond which a member belonging to the State Police Service shall not be ordinarily considered for promotion is arbitrary and unreasonable. This contention has also no merit. The age of retirement in the State Police Service is 55 years. By the end of 52nd year he shall have only three years to go in. Prior to the retirement, sometimes Government servants lack zeal and incentive in work. They feel like birds and passage who have no abiding interest in their work. It is, therefore, not unreasonable to put an age restriction that such categories of officers should not ordinarily be taken into consideration for promotion after a particular age. Here also the mandate is not absolute. The word 'ordinarily' qualifies the restriction and the Selection Committee has full power to consider cases of persons beyond 52nd year if they maintain efficiency. This provision is neither arbitrary nor unreasonable....."

Though in our view it would not be fair and realistic to generalise that one and all on the verge of retirement flag in their zeal and incentive for work, we are in respectful agreement with the above opinion expressed by the Karnataka and Orissa High Courts that in the interest of efficiency, it is not unreasonable to impose age restriction.

59. In Indravadan's case, on which Dr. Nagaraja strongly relied, the Supreme Court was examining the validity of Rule 6(4)(i) of the Gujarat Judicial Service Recruitment (Amendment) Rules,1979 ('Gujarat Rules') set out in extenso in para 1 of the Judgment which, inter alia, barred those who had completed 48 years or had attained 49 years of age for promotion to the posts of Assistant Judges in the

Subordinate Judicial Service of Gujarat and provided for automatic deletion of the names of those previously selected and placed in the earlier Select List. In reversing the decision of the Gujarat High Court, which had upheld the validity of that Rule, the Supreme Court ruled that provision was arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution. But, that is not the position in regard to the impugned rule. The New Rules and the Gujarat Rule are totally different in their sweep, content and object. The objects sought to be achieved by the two Rules are wholly different. While there is nothing arbitrary in the New Rules, everything was arbitrary in the Gujarat Rule. We are, therefore, of the view that the principles enunciated in this case, do not really bear on the point and assist the applicants.

60. On the foregoing discussion, we hold that para (2) of Schedule III does not offend Articles 14 and 16 of the Constitution either from the standpoint of classification or from the new dimension of Article 14. We, therefore, see no merit in the challenge of the applicants to the same.

61. Sub-para (3) of Schedule III is challenged by the applicants as violative of Articles 14 and 16 of the Constitution. On this, the applicants urged that this provision for reckoning seniority in the cadre of SOs which is two cadres below that of the Junior time-scale in the IA&AS and not the seniority in the cadre immediately below the promotion cadre, is queer, irrational and unknown to the accepted principle of promotion. On these very grounds, the applicants allege that the Accounts Officers are chosen for a hostile and discriminatory treatment in contravention of Articles 14 and 16 of the Constitution.

62. In justification of sub-para (3) and the drawing up of the combined Eligibility List on the basis of the principles articulated in that provision, the respondents in their reply have stated thus:

"In regard to the manner of preparation of combined eligibility list (not seniority list as mentioned by the applicants), it is submitted that prior to the promulgation of IA&AS (Recruitment)Rules,1983, the recruitment tothe IA&AD was regulated by the Rules regulating the methods of recruitment to the Indian Audit and Accounts Service, the Imperial Customs Service, the Military Accounts Department and the Indian Railway Accounts Service as notified in the Finance Department Resolution No.F.25(6)-EX.II/38, dated 30th April,1938 and executive orders made in accordance therewith. All Accounts/Audit Officers with a minimum of two years' of service in that capacity were eligible and the promotions were made solely on the basis of merit, from and amongst all such officers.

While framing the IAAS (Recruitment)Rules,1983, which replaced the above arrangement, the following considerations weighed with the second respondent in making suitable suggestions to Govermnet:-

(a) In accordance with the criteria then operative, the UPSC was required to consider a very large number of officers from each and every cadre, which made its work extremely difficult, if not impossible.

(b) It was considered desirable that along with merit, due weightage should also be attached to the long and meritorious service rendered by these officers in their respective cadres.

These criteria could be satisfied only if a combined list is prepared for consideration after merging eligible officers of all cadres. To achieve this goal, criteria for eligibility was revised as mentioned in para 2 of Schedule III of the IAAS (Recruitment) Rules,1983. The second step was to prescribe procedure for preparation of a combined eligibility list.

In prescribing the procedure for preparation of such a list, the respondents had to face with an extremely complex task of merging together the eligible officers from over fifty different cadres. In all these cadres, the officers performed different functions and prospects of promotion to the feeder cadre (viz.,Accounts/Audit Officers) were widely different, at different points of time. For example, in the offices of Tamil Nadu and Andhra Pradesh, the officers had to put in a service of 17 to 18 years to get into the feeder cadre, while in the cadre of Commercial Audit, the corresponding period was 10 to 12 years. In Railway Audit and Defence Audit Offices, the time taken for promotion to feeder cadre varied from office to office, but was invariably more than in case of many civil Accounts and Audit Offices. This stagnation of varied levels was on account of difference in the expansion of activities of auditee organisations and consequent expansion of audit activities. In these circumstances, it was felt that if the criteria of the date of entry in feeder cadre (viz., Accounts Officers' cadre) was adopted as the basis for preparation of combined eligibility list it would have had adverse repercussion to the promotional prospects of Accounts/Audit Officers in many cadres, resulting in consequent demoralisation and its impact on the efficiency of the Department.

In order to achieve a fair criterion it was essential

to base it on a common equalising factor among all the cadres. Such a factor was found on SAS Examination (now called SOG Examination) which was conducted by the Office of the Comptroller and Auditor General of India on all India basis. After passing this examination, a person qualifies for appointment as a Section Officer, which is the feeder cadre for promotion to the post of Accounts/Audit Officers. The SAS Examination is open to all Auditors /Clerks in the Department with specified service. Taking these factors into account it was decided to adopt the date of promotion as Section Officer as the basis for preparation of the Combined Eligibility List for promotion to IAAS. It would thus be evident that the provisions made in the rules are not rational in the given circumstances."

The respondents assert that on an indepth examination of all alternatives, it was found that the inequalities in avenues of promotion got accentuated on account of widely disparate avenues available in the cadre of Accounts Officers in different units. They felt that these inequalities could be optimised for onward promotion if the length of service was reckoned in the cadre of Section Officers in the overall Eligibility List, without however disturbing the inter se seniority of the incumbents as Accounts Officers within the same unit. We have examined this aspect, with reference to the relevant service particulars of some of the incumbents in the respective cadres and are convinced that the department has really taken recourse to administrative ingenuity and pragmatism as juste milueu -a golden mean - in resolving this vexed problem of seniority in the larger interests of its employees. The applicants therefore cannot have any legitimate grievance in this regard.

63. In granting promotions, the normal and general rule is to be guided by the seniority and performance in the cadre immediately below the promotion cadre and not any othr cadre. But, this is only a rule of practice and not rule of law. There isno immutable law to that effect. When there is a departure as in the present case, the same cannot be condemned merely on the basis of the normal and general rule of practice. Whether the departure was justified or not, has to be examined and decided on its own merits.

64. Sub-para (3) operates against all those who are similarly situated uniformly, and does not pick up anyone or any class for a hostile and discriminatory treatment. Sub-para (3) also does not chose any one for a special and more favourable treatment. When that is so, it is difficult to hold that sub-para (3) of Schedule III contravenes Articles 14 and 16 of the Constitution.

65. We have earlier noticed that the IA&AS with its distinct lineament is a service apart from all other services of the Union of India. Even that finding equally applies to sub-para (3) of Schedule III. On this score also it is difficult to hold that the said provision contravenes Articles 14 and 16 of the Constitution.

66. The situation faced by the C&AG, Government and the rule making authority was a complex and difficult one. In finding a solution, in such a situation it would not be prudent to go on the beaten track. If an expert body like the C&AG and Government on an indepth examination hold that the normal rule of practice was not suited and that another practice or principle was better suited to the problem and that results in no injustice to anybody, then this Tribunal which is ill-equipped to evaluable on their soundness, should be loath to interfere with the same. Even otherwise we see no irrationality or arbitrariness in sub-para (3) when the same is read along with sub-para (4) as that should be.

67. On the foregoing discussion, we hold sub-para (3) of Schedule III is not violative of Articles 14 and 16 of the Constitution.

68. As all the contentions urged for the applicants fail, these applications are liable to be dismissed. We, therefore, dismiss these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

TRUE COPY

Sd/-
CHAIRMAN

Sd/-
VICE-CHAIRMAN 9/9/88

Sd/-
MEMBER(A) 9.9.88

N.B: I have signed this order on 6-9-1988 at New Delhi as I cannot be present at Bangalore on the date of pronouncement of this order by the other two Members of the Full Bench which heard these cases at Bangalore.

SECTION OFFICER 9/11
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-
CHAIRMAN 6-9-88