

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

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 2 MAR 1989

IA I IN APPLICATION NO (S)

991 to 993

& IA II IN A.NOS. 970 to 981/87(F) & 715 & 716/88(F)  
W.P. NO (S)

/88(T)

Applicant (s)

Shri G.K. Shenava & 16 Ors

v/s

To

Respondent (s)

The Secretary, M/o Home Affairs, Dept of  
Personnel & Admin Reforms, New Delhi & 9 Ors

1. Shri K.R.D. Karanth  
Advocate  
32, Mangalnagar  
Sankey Road Cross  
Bangalore - 560 052
2. Shri M.B. Shat  
Advocate  
545, 16-A Main  
III Block, Koramangala  
Bangalore - 560 034
3. The Secretary  
Department of Environment & Forests  
Parivaran Bhawan  
CGO Complex, Lodhi Road  
New Delhi - 110 003
4. The Secretary  
Ministry of Home Affairs  
Department of Personnel &  
Administrative Reforms  
North Block  
New Delhi - 110 001
5. The Chief Secretary  
Govt. of Karnataka  
Vidhana Soudha  
Bangalore - 560 001
6. The Secretary  
Union Public Service Commission  
Bholpur House  
Shahajahan Road  
New Delhi - 110 011

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/REXAX/ZXERZXERBXBX  
passed by this Tribunal in the above said application(s) on 20-2-89 & 23-2-89

  
For DEPUTY REGISTRAR  
(HOD/101)

**In the Central Administrative  
Tribunal Bangalore Bench.  
Bangalore**

Dr S. Krishnamurthy, IPS & 2 Ors

V/o The Secy, M/o Home Affairs, Dept of

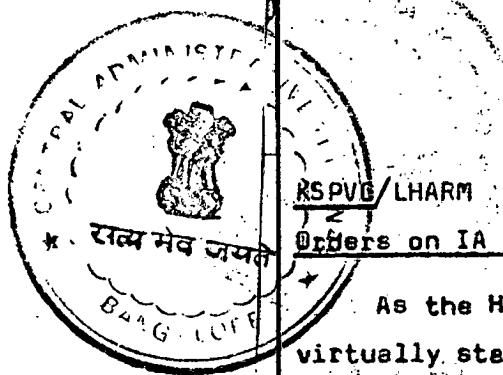
P & AR, ND & Ops. Nos. 994 to 93/88 (T)

Order Sheet (contd) M.S. Padmarajaiah, S.V. Narasimhan

N.B. Shat

-7- & H.B. Deter

Date	Office Notes	Orders of Tribunal
20-2-89	~ 0.00	



RSPVG/LHARM  
Orders on IA No.1

As the Hon'ble Supreme Court has virtually stayed the operation of our Order the question of our granting extension of time does not arise. We, therefore reject IA No.1.

Sd/-

VC

TRUE COPY

Sd/-  
M(A)

20-2-89

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

In the Central Administrative  
Tribunal Bangalore Bench,

Bangalore A.Nos. 970 to 981/87(-) &  
715 & 716/88(F)

G.K. Shenava & Ors

V/s The Secy, M/o Home Affairs, DP & AR,  
Govt. of India, New Delhi & Ors

K.R.D. Keranth & M.B. Bhat

Order Sheet (contd) M.S. Padmaraajaiah, S.V. Narasimhan  
& Mohandas N. Hegde

Date	Office Notes	Orders of Tribunal
23.2.89		<p><u>KSPVC/LHARM</u></p> <p><u>Orders on IA No.2 - Application for extension:</u> In this IA Respondent 1 has sought for extension of time till 30.4.1989.</p> <p>2. Shri MSP urges for grant of <del>the</del> time for every one of the reasons stated in IA No.2.</p> <p>3. Shri G.K. Shenava one of the applicants appearing in person opposes this IA.</p> <p>4. Against our order in A No.970 to 981/87, 715, 716, 991 to 993/88 the Union of India and others have filed Special Leave Petition before the Supreme Court which had already issued notices and has posted them for hearing <del>on</del> to 5.4.1989. In its order dated 19.1.89 the Supreme Court has also directed that there should be no reversion in pursuance of our order in these cases.</p> <p>5. Every one of these facts, justify us to grant time till 30.4.1989. Even otherwise, we are of the view that when the matter is already seized by the Supreme Court it would not be proper for this Tribunal to direct the parties <del>to</del> <sup>authorities</sup> to implement the order.</p> <p>6. In the light of our above discussion we allow IA No.2 and extend time upto 30.4.1989 in respect of matters that are not covered by the order made by the Supreme Court on 19.1.1989.</p>

TRUE COPY

*[Signature]*  
23/3/89

CENTRAL ADMINISTRATIVE  
Tribunal, BANGALORE  
CANCELLERY

Sd/-

VC

DB/3/89

Sd/-

M(A)

23.2.89

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH**

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 13 JUN 1989

## CONTEmPT

Applicant (x)

Respondent (s)

Dr S. Krishnamurthy, IPS & anr V/s The Secretary, M/o Home Affairs, DP&AR,  
To New Delhi & anr

1. Dr S. Krishnamurthy, IAS  
Director of Information & Publicity  
No. 17, Infantry Road  
Bangalore - 560 001
2. Shri V.S. Rao  
Deputy Inspector General of Police  
Karnataka Lokayukta  
Multistoried Building  
Dr B.R. Ambedkar Veedhi  
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/SIXX/XNXXRSMXBR88R  
C.P. (Civil)  
passed by this Tribunal in the above said application(s) on 5-6-89

for DEPUTY REGISTRAR  
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 5TH DAY OF JUNE, 1989.

PRESENT:

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

And:

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

C.P.(CIVIL)No.59 AND 60 OF 1989

in

APPLICATIONS NOS. 991 TO 993 OF 1988.

1. Dr.S.Krishnamurthy, IPS,  
Director of Information and Publicity,  
No.17, Infantry Road,  
BANGALORE 560 001.

2. Y.S.Rao,  
Deputy Inspector General of Police,  
Karnataka Lokayukta,  
Multistoreyed Building,  
Bangalore-560 001.

.. Petitioners.

v.

1. Sri S.A.Kalyankrishnan, IAS,  
Secretary to Government of India,  
Ministry of Home Affairs,  
Department of Personnel and Administrative  
Reforms, South Block,  
New Delhi.

2. Sri A.B.Datar, IAS,  
Chief Secretary,  
Government of Karnataka,  
Vidhana Soudha,  
Bangalore-560 001.

.. Respondents.

These petitions having come up for admission, Hon'ble Vice-Chairman made the following:

O R D E R

In these petitions filed under Section 17 of the Administrative Tribunals Act,1985 ('the Act') and the Contempt of Courts Act,1971

('the Contempt of Courts Act'), the petitioners have moved us to punish the respondents for not implementing the order dated 26-8-1988 made in their favour in A.Nos. 991 and 993 of 1988.



2. In A.Nos. 970 to 981 of 1987, 715, 816, 991 to 993 of 1988 two sets of officers belonging to All India Services called Indian Forest Service ('IFS') and Indian Police Service ('IPS') had challenged the validity of clause (d) of sub-rule (2) of Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 ('the Rules') which allowed weightage in the Year of Allotment ('YOA') and consequent seniority to ex-Army Officers. The Rules impugned were in pari materia and therefore all those applications which raised common questions, were heard and decided by us by a common order on 26-8-1988. In that order we struck down the impugned rules and directed the Government of India ('GOI') as under:-

"We direct the Government of India - respondent-1 - to assign fresh years of allotment to respondents 3 and 5 in Applications Nos. 970 to 981 of 1987 and 715 and 716 of 1988 and respondents 3 to 6 in Applications Nos. 991 to 993 of 1988 in accordance with Rule 3(2)(a) and 3(3)(a) of the IFS and IPS Rules respectively, with all such expedition as is possible in the circumstances of the cases and in any event, within a period of four months from the date of receipt of this order and regulate their seniority and other conditions of service on that basis only."

The petitioners who are members of IPS borne on the Karnataka Cadre and who were applicants in A.Nos. 991 and 993 of 1988, have asserted that GOI had not implemented our order made in their favour in letter and spirit within the time permitted by us or even thereafter and therefore the respondents are liable to be proceeded with under the CC Act. In support of their plea the petitioners have maintained that the Hon'ble Supreme Court in S.L.P.No.15218-31 of 1988 (Annexure-B) had not stayed the operation of our orders made in their favour and therefore GOI was bound to implement the order made in their favour.

3. Both the petitioners appeared in person and urged for initiation of contempt of Court proceedings against the respondents on what had been stated by them in their petitions and elaborated before us.

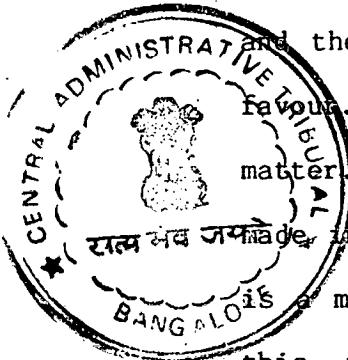
4. We have earlier noticed that the Rules pertaining to IPS and IFS which are in pari materia allowing weightage to ex-Army Officers in determining the YOA and the consequent seniority with other members of the services had been struck down by us. On that we have directed GOI as set out earlier. But, our order has been challenged by the respondents in Special Leave Petitions before the Hon'ble Supreme Court which had inter alia directed thus:-

".....Pending the disposal of these matters no reversion will take place".

On the basis of this order, we have declined to initiate Contempt of Court Proceedings, in C.P.Nos. 32 and 33 of 1989 filed by Sriyuths G.K.Shanava and N.Sampangi who were members of IFS and who had succeeded before us in our Order made on 26-8-1988. Every one of the reasons on which we did so, on 23-2-1989 which is not also inconsistent with our Order made on 20-2-1989 on I.A.No.I filed in A.Nos. 991 to 993 of 1988 and connected cases justify us not to initiate Contempt of Court Proceedings against the respondents at the instance of these petitioners also. We see no ground whatsoever to take a different view in these petitions.

5. In our Order on I.A.No.I in A.Nos. 991 to 993 of 1988 we have expressed that our Order had been virtually stayed by the Supreme Court and, therefore, there was no necessity to grant any extension of time to comply with our order. Dr. Krishna Murthy is right in maintaining that the Supreme Court had not expressly stayed our order

and therefore, the GOI was bound to implement the order made in his favour. We have expressed our view taking a broad view of the whole matter. On this it is even now open to GOI to implement the order made in favour of the petitioners. Whether it should do so or not is a matter for GOI to examine and decide. But, notwithstanding all this, we are of the view that these are not fit cases in which we



should initiate contempt proceedings against the respondents. We, therefore, dismiss these Contempt of Court Petitions at the admission stage without notice to the respondents.

Sd/-

VICE-CHAIRMAN

TRUE COPY

Sd/-

MEMBER(A)

bvs/np-



for *AP Shy* 13/6/89  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

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

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 26 AUG 1988

88(F),

APPLICATION NOS. 970 to 981/87(F), 715 & 716, 991 to 993/88(T.)

W.P.NO.

10958 to 10960/83

Applicants

Shri G.K. Shenava & 16 Ors

V/s

The Secretary, M/o Home Affairs, Dept of  
Personnel & Admin Reforms, New Delhi & 9 Ors

To

1. Shri G.K. Shenava, I.F.S.  
Conservator of Forests  
(Forest Conservation)  
Aranya Bhavan  
Bangalore - 560 003

2. Shri N. Sampangi, I.F.S.  
Technical Assistant to Chief  
Conservator of Forests (Development)  
Aranya Bhavan  
Bangalore - 560 003

3. Shri P.K. Devaiah  
General Manager  
Karnataka Cashew Development Corporation  
Limited  
Mangalore (Dakshina Kannada Dist)

4. Shri B.R. Bhaskar, I.F.S.  
Principal  
State Forest Service College  
Coimbatore (Tamil Nadu)

5. Shri A.S. Kumar, I.F.S.  
Conservator of Forests  
Bellary Circle  
Bellary

6. Shri A.N. Yellappa Reddy  
Conservator of Forests  
Kanara Circle  
Dharwad

7. Shri A.S. Sadashivaiah, I.F.S.  
Conservator of Forests  
Mysore Circle  
Mysore

8. Shri Erappa, I.F.S.  
Conservator of Forests  
Hassan Circle  
Hassan

9. Shri A.C. Lakshman, I.F.S.  
Conservator of Forests  
Shimoga Circle  
Shimoga

10. Shri B.N. Patil, I.F.S.  
Conservator of Forests  
Dry Land Development Board  
Belgaum

11. Shri B. Shantaram Adappa, I.F.S.  
Conservator of Forests  
Mysore Paper Mills Limited  
Mysore

12. Shri K. G. Maharudrappa, I.F.S.  
Conservator of Forests  
Dry Land Development Board  
Gulbarga

13. Shri K.A. Kushalappa, I.F.S.  
Conservator of Forests (Research)  
Aranya Bhavan, Malleswaram  
Bangalore - 560 003

14. Shri Ram Mohan Ray, I.F.S.  
Conservator of Forests &  
General Manager  
Karnataka Forest Development Corporation  
Crescent Road  
Bangalore - 560 001
15. Dr S. Krishna Murthy, I.P.S.  
Deputy Commissioner of Police, CAR  
Mysore Road  
Bangalore - 560 018
16. Shri K. Srinivasa Alva, I.P.S.  
Deputy Commissioner of Police (L & O)  
No. 1, Infantry Road  
Bangalore - 560 001
17. Shri Y.S. Rao, I.P.S.  
Superintendent of Police  
Belgaum District  
Belgaum
18. Shri K.R.D. Karanth  
Advocate  
32, Mangalnagar  
Sankey Road Cross  
Bangalore - 560 052
19. Shri N.B. Bhat  
Advocate  
545, 16-A Main  
III Block, Koramangala  
Bangalore - 560 034
20. The Secretary  
Department of Environment & Forests  
Paryavaran Bhavan  
CGO Complex, Lodi Road  
New Delhi - 110 003
21. The Secretary  
Ministry of Home Affairs  
Department of Personnel &  
Administrative Reforms  
North Block  
New Delhi - 110 001
22. The Chief Secretary  
Govt. of Karnataka  
Vidhana Soudha  
Bangalore - 560 001
23. The Secretary  
Union Public Service Commission  
Dholpur House  
Shahejahan Road  
New Delhi - 110 011
24. Shri Jagjit Lamba, I.F.S.  
Conservator of Forests  
Dryland Development Board  
Office of the Divisional Commissioner  
Vieweswaraiah Tower  
Dr B.R. Ambedkar Road  
Bangalore - 560 001
25. Shri M.L. Ram Prakash, I.F.S.  
Conservator of Forests (HQ)  
Office of the Chief Conservator  
of Forests (General)  
Aranya Bhavan, Malleswaram  
Bangalore - 560 003
26. Shri K.U. Shetty, I.P.S.  
Director of Youth Services  
State Youth Centres  
Nrupathunga Road  
Bangalore - 560 001
27. Shri Jaiprakash, I.P.S.  
Deputy Inspector General of Police  
Central Range  
No. 5, Miller's Road  
Bangalore - 560 052
28. Shri T. Madiyal, I.P.S.  
Superintendent of Police  
District Police Office  
Mysore
29. Shri S.N. Borker, I.P.S.  
Superintendent of Police  
District Police Officer  
Hassan
30. Shri M.S. Padmarajaiah  
Central Govt. Stng Counsel  
High Court Building  
Bangalore - 560 001

31. Shri S.V. Narasimhan  
State Govt. Advocate  
Office of the Advocate General (KAT Unit)  
BDA Commercial Complex  
Indiranagar  
Bangalore - 560 038

32. Shri Mohandas N. Hegde  
Advocate  
Kurubara Hostel Building  
2nd Main Road, Gandhinagar  
Bangalore - 560 009

33. Shri H.B. Datar  
Advocate

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Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal in  
the above said applications on 26-8-88.

*for H. B. Datar*  
DEPUTY REGISTRAR  
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 26TH DAY OF AUGUST, 1988.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr.L.H.A.Rego,

.. Member(A).

APPLICATION NOS.970 TO 981 OF 1987, 715, 716, 991 TO 993 OF 1988.

1. G.K.Shenava, I.F.S.,  
Conservator of Forests  
(Forest Conservation)  
Aranya Bhavan, Bangalore-560 003.
2. N.Sampangi, I.F.S.,  
Technical Assistant to Chief Conservator  
of Forests (Development) Aranya Bhavan,  
Bangalore-560 003.
3. P.K.Devaiah,  
General Manager,  
Karnataka Cashew Development Corporation  
Limited, Mangalore, D.K.
4. B.R.Bhaskar, I.F.S.,  
Principal, State Forest Service  
College, Coimbatore.
5. A.S.Kumar, I.F.S.,  
Conservator of Forests,  
Bellary Circle, Bellary.
6. A.N.Yellappa Reddy,  
Conservator of Forests,  
Kanara Circle, Dharwad.
7. A.S.Sadashivaiah, I.F.S.,  
Conservator of Forests,  
Mysore Circle, Mysore.
8. Erappa, I.F.S.,  
Conservator of Forests,  
Hassan Circle, Hassan.
9. A.C.Lakshman, I.F.S.,  
Conservator of Forests,  
Shimoga Circle, Shimoga.
10. B.N.Patil, I.F.S.,  
Conservator of Forests,  
Dry Land Development Board,  
Belgaum.
11. B.Santaram Adappa, I.F.S.,  
Conservator of Forests,  
Mysore Paper Mills Limited,  
Mysore.

.. Applicants  
(Contd..)

12. K.G. Maharudrappa, I.F.S.,  
Conservator of Forests,  
Dry Land Development Board,  
Gulbarga.

.. Applicants 1 to 12 in  
A.Nos. 970 to 981 of 1987.

13. K.A. Kushalappa, I.F.S.,  
S/o K.K. Achappa,  
Aged 50 years,  
Conservator of Forests (Research),  
Aranya Bhavan, Malleswaram,  
Bangalore-560 003.

14. Ram Mohan Ray, I.F.S.,  
S/o G.S. Ray, Aged 41 years,  
Consevator of Forests and General  
Manager, Karnataka Forest Development  
Corporation, Cresent Road,  
Bangalore-560 001.

.. Applicants 1 and 2 in  
A.Nos. 715 & 716 of 1988

15. Dr. S. Krishna Murthy, I.P.S.,  
Deputy Commissioner of Police, CAR,  
Mysore Road, Bangalore-560 018.

16. K. Srinivasa Alva, I.P.S.,  
Deputy Commissioner of Police (L & O),  
No.1, Infantry Road, Bangalore-560 001.

17. Y.S. Rao, I.P.S.,  
Superintendent of Police,  
Belgaum District, Belgaum.

.. Applicants 2 to 4 in  
A.Nos. 991 to 993 of 1988.

(By Sri K.R.D. Karanth, Advocate for Applicants in A.Nos. 970 to 981/87  
& Sri N.B. Bhat, Advocate for Applicants in A.Nos. 715, 716, 991 to  
993 of 1988)

v.

1. Union of India  
by its Secretary to Government of India,  
Ministry of Home Affairs, Department of  
Personnel & Administrative Reforms,  
North Block, New Delhi.110 001.

2. State of Karnataka,  
represented by the Chief Secretary  
to Government (DPAR), Vidhana Soudha, Bangalore-560 001. ..  
.. Respondents 1 and 2 in all Applications.

3. Union Public Service Commission,  
Dholpur House, Shahajahan Road,  
New Delhi-110 011  
by its Secretary. .. Respondent-3 in A.Nos. 715 & 716/88

4. Sri Jagjit Lamba, I.F.S.,  
Conservator of Forests,  
Dryland Development Board,  
Office of the Divisional Commissioner,  
Visweswaraiah Tower,  
Dr. B.R. Ambedkar Road,  
Bangalore-560 001.

.. Respondent-3 in A.Nos. 970 to 981/87  
Respondent-4 in A.Nos. 715 & 716/88

5. Sri M.L.Ram Prakash, I.F.S.,  
Conservator of Forests,(Head Quarters),  
Office of the Chief Conservator of Forests  
(General), 'Aranya Bhavan' Malleshwaram,  
Bangalore-560 003. .. Respondent-5 in A.Nos.715 & 716/88.

6. K.U.Shetty, I.P.S.,  
Director of Youth Services,  
State Youth Centre, Nrupathunga Road,  
Bangalore-560 001.

7. Jaiprakash, I.P.S.,  
Deputy Inspector General of Police,  
Central Range, No.5, Miller Road,  
Bangalore-560 052.

8. T.Madiyal, I.P.S.,  
Superintendent of Police,  
District Police Office, Mysore.

9. S.N.Borkar, I.P.S.,  
Superintendent of Police,  
District Police Office, Hassan. .. Respondents 3 to 6 in  
A.Nos. 991 to 993 of 1988.

(By Sri M.S.Padmarajaiah, SCGSC for R1 in all applications  
and for R-3 in A.Nos.715 & 716 of 1988.

Sri S.V.Narasimhan,GP for R-2 in all Applications.

Sri Mohandas N.Hegde, Advocate for R-3 in A.Nos.970 to 981  
of 1987 and R-4 in A.Nos. 715 and 716 of 1988.

Sri H.B.Datar, Sr.Advocate for R-3 to 6 in A.Nos.991 to 993/88)

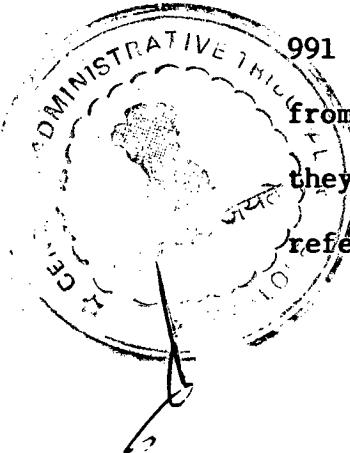
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These applications having come up for hearing, Hon'ble Vice-Chairman made the following:

#### OR D E R

As the questions that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. Applications Nos. 970 to 981 of 1987, 715 and 716 of 1988 are made under Section 19 of the Administrative Tribunals Act,1985 ('the Act') and they relate to the Indian Forest Service ('IFS'). We will hereafter refer to them, as the IFS Set. Applications Nos. 991 to 993 of 1988, are transferred applications and are received from the High Court of Karnataka, under Section 29 of the Act and they relate to the Indian Police Service ('IPS'). We will hereafter refer to them, as the IPS Set.



3. In order to appreciate the questions that arise for determination in these cases, it is first necessary to notice the facts in the aforesaid two Sets, in their order.

I: THE IFS SET

4. Prior to 1-10-1966 Sarvashri G.K.Shenava, N.Sampangi, P.K. Devaiah, B.R.Bhaskar, A.S.Kumar, A.N.Yellappa Reddy, A.S.Sadashivaiah, Erappa, A.C.Lakshman, B.N.Patil, B.Shantharam Adappa and K.G.Maharudrappa, who are the applicants in Applications Nos. 970 to 981 of 1987 were all working as Assistant Conservators of Forests ('ACFs') in the Karnataka Forest Service ('KFS'), a State Forest Service of the Karnataka State. In accordance with the Indian Forest Service (Initial Recruitment) Regulations,1966 ('IRR'), they were selected and appointed to the IFS, with effect from 1-10-1966 in a somewhat long-drawn and tortuous proceeding, the details of which are not very necessary to recount. On their appointment to the IFS, they were all assigned 1964½, as their Year of Allotment ('YOA') to the IFS. It is however not in dispute, that all of them have/ <sup>been</sup> inducted into the IFS, from the very inception of that service in the country. On their selection and appointment to the IFS, the applicants have advanced in their service career and all of them are currently holding the posts of Conservators of Forests.

5. Sri K.A.Kushalappa, the applicant in Application No.715 of 1988, was selected and appointed as an ACF to the KFS in 1965. On that appointment, he was deputed to the Forest Research Institute and Colleges, Dehra Dun ('FRIC') to undergo a two year Diploma Course or Training in Forestry for Gazetted Officers in the State Forest Service. He completed the same successfully and became a full member of the KFS by 1967.

6. When working as ACF in the KFS, Sri Kushalappa appeared for

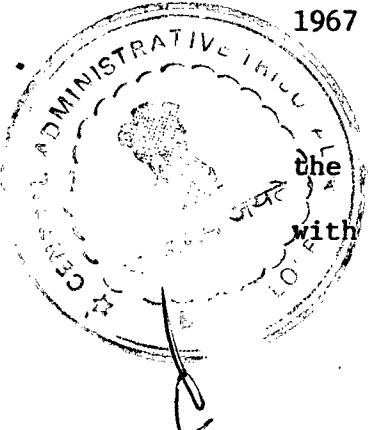
the very first competitive examination, held by the Union Public Service Commission ('UPSC') for the IFS, in 1967, under the Indian Forest Service (Recruitment) Rules, 1966 ('RR') and the Indian Forest Service (Appointment by Competitive Examination) Regulations of 1967 ('ACER') and was successful. He was, therefore, selected and appointed to the IFS, with effect from 1-7-1968, with 1967 assigned to him as his YOA. He was however exempted from undergoing the course of training in Forestry in the FRIC, which was one of the requirements to be fulfilled, in respect of direct recruits to the IFS.

7. Sri Ram Mohan Ray, the applicant in Application No.716 of 1988, appeared for the competitive examination held by the UPSC to the IFS in 1969, in which he was successful. He was thereon selected and appointed to the IFS, with effect from 1-4-1970 and assigned 1970 as his YOA.

8. Sri Jagjit Lamba ('Lamba'), respondent-3 in Applications Nos. 970 to 981 of 1987 and respondent-4 in Applications Nos. 715 and 716 of 1988, an Ex-Emergency Commissioned Officer or Short Service Commissioned Officer ('EC/SSC') of the Indian Army, appeared for the aforesaid IFS competitive examination held in 1968 and was successful. He was then appointed to the IFS with effect from 1-4-1969, but was assigned 1964 as his YOA.

9. Sri M.L.Ramprakash ('Prakash'), respondent-5 in Applications Nos. 715 and 716 of 1988, an EC/SSC, appeared for the said IFS competitive examination held by the UPSC in 1970, and was successful. He was thereon appointed to the IFS, with effect from 1-3-1972 with 1967 assigned to him as his YOA.

10. The principal grievance of the applicants is in regard to the assignment of an earlier YOA to Lamba and Prakash than they, with consequent higher seniority over them.



**II: THE IPS SET**

11. Dr. S.Krishnamurthy, the applicant in Application No.991 of 1988, corresponding to Writ Petition No. 10958 of 1983 successfully appeared for the IPS competitive examination held by the UPSC in 1966 and was appointed thereon to the IPS, with effect from 14-7-1967 with 1967 assigned to him as his YOA. Sri Y.S.Rao, applicant in Application No.993 of 1988, corresponding to Writ Petition No.10960 of 1983 successfully appeared for the IPS competitive examination held by the UPSC in 1968 and was selected and appointed thereon to the IPS with effect from 4-7-1969, with 1969 assigned to him as his YOA.

12. Sri K.Srinivasa Alva, the applicant in Application No.992 of 1988 corresponding to Writ Petition No.10959 of 1983, who was a member of the Karnataka State Police Service, was selected and appointed to the IPS from the State cadre with effect from 24-5-1972, with 1968 assigned to him as his YOA.

13. One Sri B.M.Yeshwantgol, the applicant in Application No.990 of 1988, corresponding to Writ Petition No.10957 of 1983 successfully appeared for the IPS competitive examination held by the UPSC in 1964 and was thereon selected and appointed to the IPS in 1965 with the YOA assigned to him as 1965. Since this applicant expired on 13-2-1988 we have by our separate Order made on 20-7-1988, declared that this application has abated.

14. Sri K.U.Shetty, respondent-3 on completion of his Pre-Commission Army training which commenced in April,1963, was commissioned in the Indian Army from 27-9-1963. When he was so functioning, he appeared for the IPS competitive examination held by the UPSC in 1966, on success in which, he was appointed to the IPS with effect from 18-7-1967, with 1964 assigned to him as his YOA.

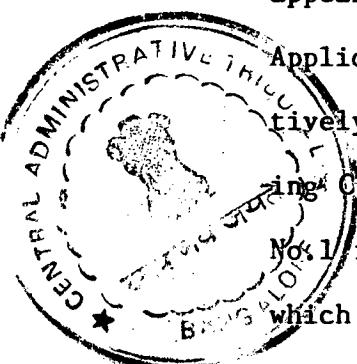
15. Sri Jaiprakash, respondent-4 on completion of Pre-Commission Army training in 1963, was commissioned in the Indian Army on 3-5-1964, and was discharged from the Army on 1-9-1969. On his discharge from the Army, he appeared for the IPS competitive examination held by the UPSC in 1968, on success in which, he was selected and appointed to the IPS with effect from 4-7-1969 with 1965 assigned to him as his YOA.

16. Sri T.Madiyal, respondent-5 while studying for final B.A. was selected for Pre-Commission training in the Army in January, 1964 and was later commissioned in the Indian Army in August, 1964. He was released from the Army in 1969 or so. He appeared for the IPS competitive examination held by the UPSC in 1970, on success in which, he was selected and appointed to the IPS with effect from 10-7-1971 with 1966 assigned to him as his YOA.

17. Sri S.N.Borkar, respondent-6 on completion of his Pre-Commission Army training in 1967, was commissioned in the Indian Army in 1968 and was released in 1973. He appeared for the IPS competitive examination held by the UPSC in 1973, on success in which, he was selected and appointed to the IPS with effect from 21-7-1974 with 1968 assigned to him as his YOA.

18. As in the IFS Set, the applicants in these cases are aggrieved by the assignment of earlier years of allotment to respondents 3 to 6 and consequent higher seniority over them.

19. Sarvashri K.R.D. Karanth and N.B.Bhat, learned Advocates appeared for the applicants in Applications Nos. 970 to 981 of 1987, and Applications Nos. 715 and 716 of 1988 and 991 to 993 of 1988 respectively. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appeared for the Union of India, arrayed as respondent-1 in all these cases and for the Union Public Service Commission, which is respondent-3 in Applications Nos. 715 and 716 of 1988. Sri S.V.Narasimhan, learned Government Advocate appeared for the State



of Karnataka, arrayed as respondent-2, in all these cases. Sri Mohandas N.Hegde, learned Advocate appeared for Sri Lamba, who is arrayed as respondent-3 and 4 in Applications Nos. 970 to 981 of 1987 and 715 and 716 of 1988 respectively. Sri H.B.Datar, learned Senior Advocate, assisted by Sri Y.H.Jagadish, appeared for respondents Nos. 3 to 6 in Applications Nos. 991 to 993 of 1988. Sri Prakash, respondent-4 in Applications Nos. 715 and 716 of 1988, who was duly served, was absent and unrepresented.

20. Applications Nos. 970 to 981 of 1987 have been filed on 12-11-1987, while Applications Nos. 715 and 716 of 1988 have been filed on 20-5-1988.

21. In their separate but common replies, respondents 1 and 2 have inter alia urged, that these applications are barred by time and therefore, are liable to be dismissed in limine, on that ground.

22. Applications Nos. 991 to 993 of 1988, corresponding to Writ Petitions Nos. 10958 to 10960 of 1983, were filed before the High Court of Karnataka, under Article 226 of the Constitution of India, on 16-6-1983. In these applications, the respondents without filing any written objections or replies before the High Court or this Tribunal, have urged that there has been undue delay and laches on the part of the applicants in approaching the High Court, on which ground, these applications are liable to be dismissed, without examining the merits.

23. As the objections urged by the respondents on limitation in regard to the IFS Set and delay and laches in respect of the IPS Set, go to the root of the matter, it is necessary to examine them first and then the merits, if that becomes necessary.

24. Sarvashri Padmarajaiah, Narasimhan and Hegde urged, that Applications Nos. 970 to 981 of 1987 and 715 and 716 of 1988 filed under Section 19 of the Act, which seek to agitate matters settled

or decided in 1969 and 1972 respectively, were barred by time and therefore, are liable to be dismissed in limine, without the merits being examined. In support of their contention, counsel for the respondents strongly relied on the ruling of the Principal Bench of the Central Administrative Tribunal in V.K.MEHRA v. SECRETARY INFORMATION AND BROADCASTING (ATR 1986 CAT 203), KSHAMA KAPUR v. UNION OF INDIA [1987 (4) ATC 329] and on an unreported decision of the Ahmedabad Bench of the said Tribunal in SHAILENDRA KUMAR SINHA v. GOVERNMENT OF INDIA AND OTHERS (O.A.361 of 1987 decided on 25-8-1987).

25. Sarvashri Karanth and Bhat, urged that the applicants challenge the vires of statutory provisions and seek for a direction for extension of the very principles accepted by the High Court of Calcutta in SUBIMAL ROY AND OTHERS v. UNION OF INDIA AND OTHERS (Civil Rule No.3596(W)/1973 decided on 30th September,1985). They further state that this came to their knowledge, only when they addressed representations to the Government in May/June,1987, which rightly entertained them, but did not so far decide the same, one way or the other, were within time and, therefore call for adjudication on merits.

26. Section 21 of the Act, which prescribes limitation for applications under the Act, reads thus:

21. **Limitation.**— (1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.



(2) Notwithstanding anything contained in sub-section (1), where -

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

Sub-sections (1) and (2) of this section at the outset, prescribe the period of limitation, for applications to be made under the Act. Sub-section (3) of this Section which corresponds to Section 5 of the Limitation Act of 1963 (Central Act No.36 of 1963) ('1963 Act'), confers power on the Tribunal to condone delay, in regard to applications made under the Act. In regard to limitation, this is the lone section in the Act and is a complete code in itself, in this respect.

27. Section 21 or other provisions of the Act or the Rules made thereunder, do not make applicable, the provisions of the 1963 Act to the proceedings under the Act. We cannot, therefore, invoke the provisions of the 1963 Act, for the purpose of determining the question of limitation under the Act. Thus far, there is no difficulty. But, this does not necessarily imply, that the principles underlying sections 3(1) and 22 of the 1963 Act, cannot be invoked while deciding the question of limitation under the Act. In the absence of any express provision to the contrary, in the Act, it is open to this Tribunal, to invoke and apply the principles underlying the various

provisions of the 1963 Act and in particular, Sections 3(1) and 22 of that Act, which recognise well-settled legal principles, in the administration of justice in our country. We hold so accordingly.

28. In deciding this aspect, we must bear in mind, all other rules of construction and the principles underlying in enacting a period of limitation in the Act and the 1963 Act. This has been neatly set out under the caption "Principles of Limitation and their Evaluation" by Justice Sen, while editing B.B.Mitra's Limitation Act, (18th Edition). With this preface, we now proceed to examine whether the applications before us made under Section 19 of the Act, are within time or not.

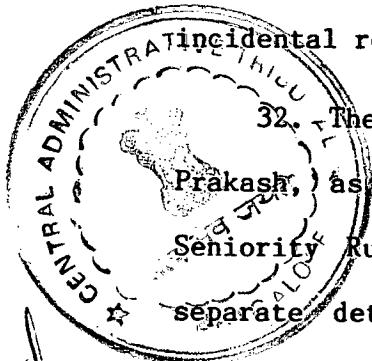
29. The applicants have invoked only Section 21(1) and not Section 21(2) of the Act, the scope of which has been determined and concluded by a string of rulings.

30. Section 21(1)(a) ibid, stipulates ~~for~~ a period of one year from the date on which a final order had been made against an aggrieved person or applicant, for the purpose of filing an application before this Tribunal. Section 21(1)(b) ibid stipulates a period of one year on expiry of 6 months, from the date on which, a representation had been made, for redressal of the grievance.

31. The first and primary relief, sought by the applicants in the case before us, is to strike down Section 3(1A) of the All India Services Act, 1951 (Central Act No.LXI of 1951) ('1951 Act') and Rule 3(2)(d) of the Indian Forest Service (Regulation of Seniority) Rules, 1968 ('IFS Seniority Rules'). On that basis, they have sought for

incidental reliefs flowing from the same.

32. The incident of assignment of 1964 and 1967 to Lamba and Prakash, as their YOA flows from and is consequential to the IFS Seniority Rules. That assignment is not on an independent and a separate determination of the claims of the applicants vis-a-vis



Lamba and Prakash or vice-versa. The assignment of YOA to Lamba and Prakash, is a mere rotine and mechanical ritual, emanating from the Rules, impugned before us. Its validity, depends upon the validity of the Rules. If the Rules are struck down, then ipso facto, the YOA too, in their respect must necessarily fall to the ground. This is the essence of the relief sought by the applicants.

33. Whether the applicants succeed in their challenge or not, which fact really hinges on merits, should not at all, sway us one way or the other, in our approach to the problem.

34. It is well recognised, that a law on a statute book, operates every day and in fact every monent. Consequently, a person affected by such law, suffers injury or grievance, every day and every moment.

35. When there is challenge to a law, enacted by the Legislature or Government, the requirement of an 'order' and 'representation' as contemplated in Section 21 of the ~~Act~~, will not arise. If that is so, then this Tribunal cannot insist, on either of them, as a condition precedent, for entertaining the applications under the Act or as a starting point or threshold for computing limitation, under Section 21 of the Act. That defect or lacuna, if any, in Section 21 of the Act cannot be remedied by this Tribunal. In such a situation, the only plausible manner of resolving this seeming legal conundrum, is to hold, that the wrong sought to be redressed, is a continuing one or a continuing cause of action, analogous to the principle, underlying Section 22 of the 1963 Act. On this conclusion, which is logical, legal and ~~unexceptionable~~ <sup>inevitable</sup> in the aforesaid circumstance, we must perforce hold, that the applications before us are in time. We are of the considered view, that this is inevitable and cannot at all, be overcome.

36. In Mehra's and Kshama Kapur's cases, this Tribunal did not at all deal with challenge to a law. Both of these cases only dealt

with orders made against the applicants in question. Hence, the principles enunciated in those cases, do not bear on the point that arises in the cases before us.

37. The decision in Shailendra Kumar Sinha's case, strongly relied on by the respondents reads thus:

"Heard the petitioner Shri Shailendrakumar Sinha in person. His cause of action has arisen according to the order dated 26-10-1972 and as such the petition under Section 21 of the Administrative Tribunal Act,1985 is barred by limitation. There is no merit also that we find in condoning limitation as in the meantime besides the respondent No.3 there could be a number of others who might also be affected thereby. It appears that on this question, the State Government has addressed a letter to Government of India dated 13th December,1973 which has been produced by the petitioner but which he states was not furnished to him. The petition, therefore, is clearly barred by limitation and does not disclose any cause for condonation and, besides, we have no jurisdiction to do so (See R.S. Singhal vs. Union of India - ATR 1986 CAT 28). Even if there are repeated reminders that does not keep the cause alive. The petition, therefore, rejected at the stage of admission.

This order does not set out, as to what was the challenge of the applicant and as to how and why, the same was barred by time. The limitation in regard to the application in that case, appears to have been computed from 26-10-1972 i.e, the day on which, there was an order made against the applicant and on that basis, the decision appears to have been rendered by the Ahmedabad Bench. The case does not lay down any principle. At the most, it is only a decision on its own facts and cannot, therefore be regarded as a binding precedent. We, therefore, with respect, decline to place any reliance on this decision of the Ahmedabad Bench of the Central Administrative Tribunal.

38. We have earlier noticed, that in May/June,1987, the applicants made representations to the Government of India ('GOI'), through the Government of Karnataka ('GOK') to extend to them, the benefit of the order of the High Court of Calcutta in Subimal Roy's case.



The ultimate authority to decide those representations, was the GOI and, therefore, the GOK rightly forwarded them to the former, with its comments. On receipt of the same, the GOI gave an interim reply to the GOK, on 28-10-1987, which reads thus:

Government of India,  
Ministry of Environment &  
Forests.  
No. 20014-8/87-IFS.II  
Dated 28-10-1987.

Paryavaran Bhawan,  
C.G.O.Complex, Lodi Road,  
New Delhi-110 003

The Secretary,  
Department of Personnel & Administrative  
Reforms, Government of Karnataka,  
Vidhana Soudha,  
Bangalore.

Sub: Indian Forest Service - Karnataka cadre - representations from officers against assignment of '1964' as the year of allotment to Sh.Jagjit Lamba - regarding.

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Sir,

I am directed to invite reference to your letters No.DPAR 59 SFP 87 dated the 19/20th June,1987, 25th June, 1987, 8th July,1987, 24th August,1987 and 16th September, 1987 on the subject mentioned above, and to say as follows:-

2. It is seen that the representations rely mainly on the judgment dated 30th September,1985 pronounced by the Calcutta High Court in Civil Rule No.3596(W) of 1973 titled Subimal Roy and others vs. Union of India etc. Despite sustained efforts it has not been possible so far to secure a certified copy of the judgment delivered by the Calcutta High Court in the Writ Petition cited.

3. The representing officers may, in the meanwhile, kindly be informed under intimation to this Ministry, that their representations are under consideration and a final decision in the matter, as and when arrived at, will be communicated to them.

Yours faithfully,  
Sd/- K.S.Achar,  
Desk Officer.

On receipt of this interim reply, the GOK by its letter No.DPAR 59 SFP 87 dated 10-11-1987 (Annexure-A1) informed the applicants thus:-

"Sub: Indian Forest Service-Karnataka Cadre - representations from officers against assignment of '1964' as the year of allotment to Sh.Jagjit Lamba - regarding.

I am directed to refer to your representation addressed to the Chief Secretary to Government of Karnataka on the subject mentioned and to state that the said representation

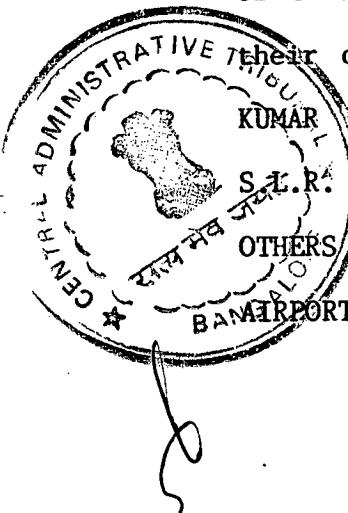
received from you has been forwarded to Government of India, Ministry of Environment & Forests, Department of Forests and Wild-life, New Delhi for taking further needful action. In reply to the said letter the Government of India, Ministry of Environment & Forests, Department of Forests & Wild-life, New Delhi in their letter No.20014-8/87-IFS-II dated 28-10-1987 has desired to inform you, that the matter is under consideration and a final decision in the matter as and when arrived at will be communicated to you."

As the applicants did not receive any further communication for a period of six months, they approached this Tribunal, reckoning expiry of the period of 6 months, as the starting point of limitation, for their applications. We are not concerned whether there is merit or not in their representation. But, nevertheless, the fact remains, that the applicants had addressed representations to the GOI, to extend to them the benefit of the order of the Calcutta High Court, in Subimal Roy's case and that these representations had been entertained by the GOI. When once these representations had been entertained by the GOI rightly or wrongly, the applicants can undoubtedly invoke the provisions of Section 21 (1)(b) of the Act and approach this Tribunal on expiry of the period referred to, in that section. This is what they have done. If that is so, then it follows, that these applications are in time.

39. On the foregoing discussion, we see no merit in the objections of the respondents in this respect and we, therefore, reject the same. Consequently, we hold that Applications Nos.970 to 981 of 1987 and 715 and 716 of 1988 are in time.

40. Sarvashri Padmarajaiah and Datar urged, that on grounds of delay and laches, Applications Nos. 991 to 993 of 1988, call for

their dismissal in limine, as ruled by the Supreme Court in KAMINI KUMAR DAS CHOWDHURY v. STATE OF WEST BENGAL AND OTHERS [1972 (7) S.L.R. 746]; MALCOLM LAWRENCE CECIL D'SOUZA v. UNION OF INDIA AND OTHERS [1976 SCC (L&S)115]; ROSHAN LAL AND OTHERS v. INTERNATIONAL AIRPORT AUTHORITY OF INDIA AND OTHERS [1981 SCC (L & S) 303];



R.S.MAKASHI AND OTHERS v. I.M. MENON AND OTHERS [1982 SCC (L & S) 77 = AIR 1982 SC 101]; K.R.MUDGAL AND OTHERS v. R.P.SINGH AND OTHERS (AIR 1986 SC 2086) and G.C.GUPTA AND OTHERS v. N.K.PANDEY AND OTHERS [(1988) 1 SCC 316].

41. These are transferred applications and they had been filed as writ petitions under Article 226 of the Constitution, before the High Court of Karnataka. Section 21 of the Act, has no application to these cases. There was and there is, no period of limitation prescribed for a writ petition under Article 226 of the Constitution.

42. This Tribunal which has stepped into the shoes of a High Court as a substitute, both de facto and de jure, in form as well as in content, is invested with all the powers of a High Court, in dealing with a transferred proceeding, a fact which is well-settled, by the decision of the Supreme Court in SAMPATH KUMAR v. UNION OF INDIA AND OTHERS [1987 (1) SCC 124]. It, therefore, follows as a corollary, that this Tribunal can throw out a transferred application on grounds of delay and laches, in the same manner, as a High Court.

43. Whether there is such delay and laches, on which grounds a Court or Tribunal should or should not decline to exercise its jurisdiction, must be determined on the facts and circumstances of that case only and not with reference to what was decided on the facts and circumstances of another case. Judicial opinion is in favour of exercising that power, at the very admission stage itself and not generally after admission or rule nisi is issued by the Court.

44. On 17-6-1983 Rama Jois, J. however, had issued rule nisi in these cases. Taking due note of this fact, we must decide these cases on merits only, rather than deline to exercise our jurisdiction on grounds of delay and laches.

45. What we have expressed in the foregoing in the IFS Set of cases in regard to deciding the question of limitation, when a law enacted by a Legislature or made by Government is challenged equally applies to the challenge of the applicants in the cases of the IPS Set as well. On what we have expressed therein, examining all the facts and circumstances of these cases, we hold that in these cases too we should not decline to exercise our jurisdiction on grounds of delay and laches but decide them only on merits.

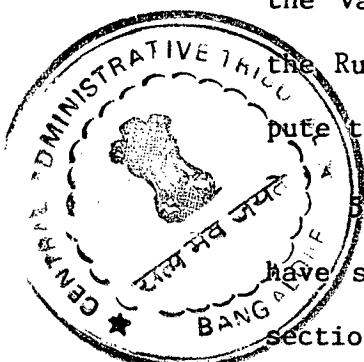
46. In the premises aforesaid, we reject the preliminary objections urged for the respondents in all these cases and proceed to examine the merits in both the Sets viz., the IFS and the IPS.

47. Sarvashri Karanth and Bhat urged, that Rule 3(2)(d) of IFS Seniority Rules was violative of Articles 14 and 16 of the Constitution and, therefore, liable to be struck down.

48. Sarvashri Padmarajaiah, Narasimhan and Hegde urged, that the Rules providing for recognition of service rendered by the EC/SSC in the Indian Army, by way of weightage, for the purpose of seniority, were not violative of Articles 14 and 16 of the Constitution and were thus valid.

49. In T.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 Section 3(1A) of the 1951 Act and Rule 3(2)(d) of the Rules. Learned counsel for the respondents did not rightly dispute this position.

50. In Applications Nos. 970 to 981 of 1987, the applicants have sought for striking down Section 3(1A) of the 1951 Act. That section, introduced by Section 2 of the All India Services Amendment Act of 1975 (Central Act 23 of 1975) reads thus:



"(1A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable".

The applicants, however, have not explained as to why and for what reason, this Section is liable to be struck down. Even at the hearing, this deficiency was not made good. On the other hand, Sri Karanth, in our opinion, very rightly did not pursue this challenge. We also find no merit in this challenge of the applicants. We, therefore, reject their challenge to Section 3(1A) of the 1951 Act.

51. We will at the outset, broadly notice the Rules, closely analyse the impugned Rules and finally deal with their validity.

52. In the construction of the Rules in general and of the impugned Rules in particular, we must bear in mind, the well-settled rules of construction of statutes. But, one of the elementary and important rules of construction has been succinctly and effectively explained by Bhagwati, J. (as His Lordship then was) in K.P. VARGHESE v. I.T.O. ERNAKULAM AND ANOTHER (AIR 1981 SC 1922). In this case, the learned Judge explained the principles, in these felicitous words:

*A task*  
"..... The ~~task~~ of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said: "..... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing be it a statute, a contract or anything else. But, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". We must not adopt a strictly liberal interpretation of section 52 sub-section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in

the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 sub-section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language: ".....the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create....."

These principles, though expounded, in construing a provision in the Income Tax Act, are equally applicable to interpreting the Rules in general and the impugned Rule in particular. Bearing these and other well-settled rules of construction, we will now ascertain the true meaning and intendment of the Rules.

53. In the IFS Seniority Rules, the challenge is only to Rule 3(2)(d) of the Rules. Very strictly, it is enough to notice and deal with the same. But, in order to properly understand its setting, <sup>and</sup> collocation, meaning / its validity, it is useful to read Rule 3 of the Rules in its entirety, however concentrating on the construction and validity of the impugned Rule. Rule 3 of the IFS Seniority Rules reads thus:

**3. Assignment of year of allotment** - (1) Every officer shall be assigned a year of allotment in accordance with provisions hereinafter contained in this rule.

(2) The year of allotment of an officer appointed to the Service shall be -

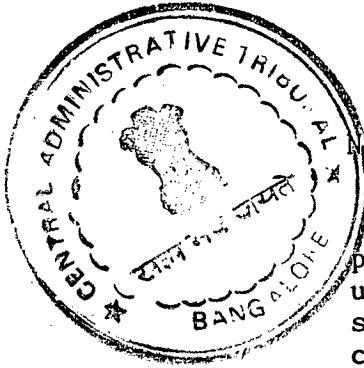
(a) where an officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held:

(b) where an officer is appointed to the Service at its initial constitution in accordance with sub-rule (1) of rule 4 of the Recruitment Rules, such year will be determined in accordance with the following formula:-  
Year of allotment = 1966 minus (N1 plus half of N2) wherein-

N1 represents completed years of continuous service upto, 1st July, 1966 in a post equivalent to or above a senior scale post included in the State Cadre, provided that any such Service rendered during the first eight years of gazetted service of the officer shall be excluded for this purpose.

N2 represents completed years of continuous Gazetted service upto 1st July, 1966 included in N1.

In computing the period of continuous service for purpose of N1 or N2 any period during which an officer has undertaken training in a diploma course in the Forest Research Institute and College, Dehra Dun or an equivalent course in any other institution which training is approved by the Central Government for this purpose, shall not be taken into account:



Provided that in the case of an officer who has undertaken the training in a diploma course in forestry at Dehra Dun for a period of more than two years, the period spent by such officer for obtaining the final diploma after having obtained the preliminary diploma shall be taken into account in computing the period of service for purposes of seniority:

Provided further that the year of allotment of an officer so arrived at shall be limited to the year which his immediate senior in the State Forest Service who is appointed to the Indian Forest Service at its initial constitution obtains:

Provided further that where in a case or class of cases, application of the formula given in this rule, results in hardship or anomaly, the seniority of officers concerned shall be determined ad hoc by the Central Government in consultation with the State Government concerned and the commission.

(c) where an officer is appointed to the Service by promotion in accordance with rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 or if no such officer is available the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 4(1) of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that seniority of officers who are substantively holding the post of a Conservator of Forests or a higher post on the date of constitution of the Service and are not adjudged suitable by the Special Selection Board in accordance with the Indian Forest Service (Initial Recruitment) Regulations, 1966, but who may later on be appointed to the Service under rule 8 of the Recruitment Rules shall be determined ad hoc by the Central Government in consultation with the State Government concerned and the Commission.

Explanation 1 - In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later:

Provided that where an officer is appointed to the Service by promotion under rule 8 of the Recruitment Rules on the basis of his name having been included in the Select List prepared by the Selection Committee constituted under regulation 3 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, the period of his continuous officiation in a senior post or post declared equivalent thereto prior to the date of the inclusion of his name in the first Select List shall also count, if such officiation is approved by the Central Government in consultation with the Commission.

Explanation 2. - An officer shall be deemed to have officiated continuously in a senior post from a certain

date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation 3. - An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence on leave or training.

Explanation 4. - An officer appointed to the Service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have no officiated but for his appointment, for a period not exceeding one year, and with the approval of the Central Government for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time scale identical to the time-scale of a senior post:

Provided that the number of officers in respect of whom the certificate shall be current at one time shall not exceed one half of the maximum size of the Select List permissible under sub-regulation (2) of regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations 1966, and follow the order in which the names of such officers appear in the Select List:

Provided further that such certificate shall be given only if, for every senior officer in the Select List appointed to a non-cadre post in respect of which the certificate is given, there is one junior Select List officer officiating in a senior post under rule 9 of the Indian Forest Service (Cadre) Rules, 1966:

Provided also that the number of officers in respect of whom the certificate is given, shall not exceed the number of posts by which the number of cadre officers holding non-cadre posts under the control of the State Government falls short of the deputation reserve sanctioned under the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

(d) when an officer is appointed to the Service in accordance with rule 7A of the Recruitment Rules, deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining precommission training or the date of his commission where there was only post commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967.

Explanation.- If an officer, who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7A of the Recruitment Rules and who have the same year of allotment.



This Rule is identical to Rule 3 of the Seniority Rules, regulating seniority of other All India Services, namely, the IAS and the IPS.

54. That the title of an Act or a Rule gives a clue in the understanding of the Act or Rule but cannot control the plain meaning of the relevant provision itself is now well-settled. The title of the IFS Seniority Rules relates to regulation of seniority of the members of the service, from different sources.

55. The preamble to the Rules merely refers to the source of power for framing the Rules.

56. Rule (1) of the Rules deals with the title and commencement of the Rules. These Rules came into force with effect from 1-7-1966. But, the IFS was actually constituted with effect from 1-10-1966 only. Prior to 1-10-1966, the IFS as now constituted, did not exist either in law or fact, in the country. However, its pre-cursor namely the Indian Forestry Service of the pre-Independence era, came to an end, by the time India attained Independence.

57. Rule 2 defines the terms (a) cadre, (b) Commission, ~~for~~ ~~competitive examination~~ (c) competitive examination, (d) gradation list, (e) officer, (f) Recruitment Rules, (g) Senior post, (h) Service (i) State Cadre, (j) State Forest Service, (k) State Government concerned and (l) Select List which generally occur in the Rules. But, very significantly, they do not define the terms "Year", "Seniority" and "Year of Allotment", the meaning of which is very decisive, in the true construction of the Rules. The terms are not defined in any other Rule or in the earlier Indian Civil Service (Regulation of Seniority) Rules of 1930 also.

58. A close analysis of the IFS Seniority Rules and of the Seniority Rules of other All India Services reveals that the YOA to members of the service and their seniority in that service, are closely inter-linked. Seniority has a close nexus with the YOA to the service. The YOA to the service determines the seniority of the members of the service.

59. In TRIBUVAN NATH BHARGAVA v. UNION OF INDIA AND OTHERS (1977

(1) SLR page 291) a Full Bench of the Delhi High Court, dealing with the inter-relationship of the YOA and seniority under the Indian Police Service Seniority Rules which are analogous to the IFS Seniority Rules observed thus:-

"60. An allotment year is a status symbol. Its object is to bring the promotee at par, on a level of equality, so as to speak, with the direct recruit of that year of allotment. Although as a fact some of the promotions were actually appointed to the service at a later date, for the purpose of determining their seniority they were assigned an earlier year of allotment on account of their previous service and administrative experience."

We must state with respect, that the expression 'status symbol', used by the Full Bench as reflective of YOA is a cliche which, in our view is both imprecise and inapt, tending to blur the real import and meaning of the term YOA. But, it appears to us that their Lordships really intended to emphasise, what we have expatiated in the foregoing, on the true meaning and significance of that term.

60. "The year" in the context, means the English Calendar year commencing from 1st January and ending on 31st December of that year. "The year" necessarily includes a part of the year as well.

61. The term "Seniority" in the case of a Government servant, means 'the length of service'. In VIJAYADEV RAJ URS, D v. G.V.RAO AND ANOTHER [1983(1)SLR 292] one of us (Justice K.S.Puttaswamy, VC) dealing with the claim of two officers, on their relative seniority in one of the cadres of the Indian Police Service, had occasion to examine and ascertain its meaning. On such examination, one of us

(Justice K.S.Puttaswamy, VC) expressed thus:-

"16. The term 'seniority' which is not defined in All India Services Act, the Seniority Rules or the General Clauses Act is not a term of art. But, still that term has come to acquire a definite and legal meaning in public services.

17. The term 'seniority' in the public service is longer length of service in the very same grade or cadre. If the seniority is to be determined with reference to the very original entry into service of the officers ignor-



ignoring the various developments that take place in their career, it would undoubtedly destroy the very concept of promotions and all the incidents flowing from the same. A person may be senior to another in the initial cadre. But, that by itself cannot be a justification to ignore the promotions, supersessions and hold that a person promoted earlier would still be junior to the person superseded in the promotional post also. An officer may be senior to another in the initial cadre or when both of them join service in one and the same cadre. But, that cannot be the position in the superior posts filled by promotion. By holding that the officer promoted earlier to the officer promoted later, the seniority in the initial cadre is neither affected nor destroyed. One is not antithesis to another. On any principle of logic or law, the contention urged for the respondents that respondent No.1 is senior to the petitioner even in the cadre of Special I.G.P. is not sound.

18. A person appointed or promoted earlier is always senior to the person appointed or promoted later. A person confirmed earlier takes precedence over a person not confirmed or confirmed later. According to respondents themselves the post of IGP and Spl.IGP are equivalent posts and are inter changeable. I will assume this to be the correct position for purpose of this case.

19. In N.CHANDRAMOULI v. STATE OF MYSORE (3) a Division Bench of this Court, examining the relative claims of regularly appointed and irregularly appointed candidates and their inter-se seniority in the preparation of the inter state seniority list of Government Insurance Department and the term 'seniority' and its incidents thereto, observed thus:

3. [(1970) 2 Mys.LJ 187]

" Seniority in simple English means a longer life than of another thing or person taken for comparison. In the case of Government servant, it means 'the length of service'. If the service of one person is longer than that of another the first named person is called senior to the other. The value of the right of seniority is the right to consideration for promotion to a higher post in cases where promotion is made on seniority-cum merit basis. In such cases, it is undoubted that seniority taken into account is the seniority in the grade immediately below the promotional post or in the grade which is described as the grade from which promotions are to be made. It proceeds upon the basis that the comparison for purposes of seniority is between equals or those that are in the same grade or equated grades. It is incongruous to say or even to conceive that seniority is a concept involving comparison between the length of service in one grade and the length of service in another grade. If so, it becomes perfectly clear that it is impossible to compare regular service with irregular service for determining seniority between the regularly appointed Government servants and irregularly appointed Government servants. The very concept of seniority makes it impossible to postulate such a comparison".

In **Sant Ram Sharma v. State of Rajasthan** (AIR 1967 SC 1910) to which I will draw a detailed reference at a later stage, the Supreme Court has observed thus:-

"That means that if a post falls vacant it is filled by the person who has served longest in the post immediately below".

The observations made in Chandramouli's case which are unexceptional and sound have not been dissented by the Supreme Court or by the Court in any later ruling. So also the observation made in Santaram Sharma's case has not been departed by the Supreme Court in any later ruling".

We are of the view that this plain ~~lexicographic~~ meaning of the term "Seniority" is apt and correct even in the present context and, therefore, we adopt the same for the purpose of the ~~cases~~ before us.

62. "The year of allotment" (YOA) means, year of allotment to the service. The term 'allotment' though simple in itself and understood as actual allotment or assignment to the service, is not wholly free from doubt and therefore, poses some difficulty to a layman. But, examining the real context and purpose of this term, it appears to us, that it has been used as synonymous, to year of appointment to the service.

63. The word 'allotment', is derived from the word 'allot'. The Shorter Oxford English Dictionary (Volume-I) defines the terms 'allot' and 'allotment' as under:

**Allot** - 1. To distribute to lot, or in such way that the recipients have no choice; to assign shares authoritatively; to apportion. (2) to assign as a lot or portion to; to appoint (without distribution); hence, to appropriate to a special person or purpose. 3. To appoint, destine (a person to do). To reckon (upon).

2. The .. end that was allotted him SURREY. Ten years I will a. to the attainment of knowledge JOHNSON. 4. And I a. we must economise. Hence **Allotable** a, **Allottee**, one to whom an allotment is made, **Allotter**, one who allots, **Allottery**, allotted share.

**Allotment** - 1. The action of allotting, 2. Lot in life, destiny, 3. A share or portion, esp. of land, allotted to a special person or purpose. 4. Comm. The division of a ship's cargo into equal portions, to be distributed among purchasers by lot.

This lexicographic meaning and its etymological evolution, supports our earlier conclusion.

64. The GOI as the author and operator of the scheme of All India Services has not explained the rationale of the term YOA or



what it means conceptionally. But, as we comprehend, the rationale for adopting the term YOA and not the simple and straight-forward term 'appointment', was for the reason, that the members of one, common integrated service, drawn from different sources, are allotted to different State cadres, for service, with an obligation to serve the Centre (i.e., the GOI) as well. This appears to be the premium mobile for adopting the term 'allotment' instead of the term 'appointment'.

65. Rule 3 of the Rules regulates the YOA to the service.

66. Rule 3(1) enjoins that the GOI assign the YOA to every member of the service, in accordance with the provisions made in the following sub-rule (2) of the Rules. This rule exhaustively deals with the YOA in respect of the members of the service drawn from all the three sources namely (i) initial recruitment, (ii) direct recruitment and (iii) promotions. Even though this rule deals with direct recruitment first, then the initial recruitment and lastly promotion, we will deal with them in the earlier order, we have noticed.

67. Sub-rule 2(a) of Rule 3, provides for YOA to an officer appointed to the service, on the results of a competitive examination. When a person is appointed to a service on the results of a competitive examination, he has to be assigned the YOA following the year, in which such examination was held. This clause relates to the YOA, in respect of direct recruits or regular recruits from the open market.

68. We have earlier noticed, that the IFS was constituted with effect from 1-10-1966 in the post-Independence era. The initial constitution of this service was from among the State Forest cadres of all the States in the country, in accordance with the IRR, to the junior and senior scales of the service.

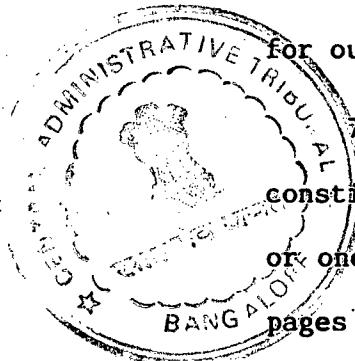
69. Sub-rule (b) of Rule 3(2) elaborately sets out, the detailed formula or principle for allotting, the YOA to the initial recruits, in respect of both the senior and junior scales of the service.

In conformity with this provision, the applicants in Applications Nos. 970 to 981 of 1987 had been allotted 1964<sup>1/2</sup> as their YOA.

70. Sub-clause (c) of sub-rule (2) of Rule 3, regulates the YOA to those selected, promoted and appointed to the IFS from the State cadres, from time to time.

71. We now pass on to clause (d) of sub-rule (2) of Rule 3 of the Rules framed and published by the GOI, by their Notification No.39/25/68-AIS (IV) C dated 10-3-1970, which is vital and is in fact the real bone of contention between the parties. This rule stipulates that an EC/SSC appointed to the IFS, shall be deemed to have been appointed, in the year in which, he would have been so appointed, as if he had appeared and passed the IFS competitive examination, as if held then. In other words, his appointment is notionally pushed backwards, by a number of years, though in fact and reality, that was and is not so. This rule provides for an earlier deeming appointment, for assigning the YOA retrospectively, with consequent higher seniority, over those appointed to the service earlier. This is done on the concept of 'missed opportunity' and decidedly gives an edge to EC/SSC in regard to seniority over others. On the plain language of this provision, an earlier YOA, was assigned by the GOI to Lamba and Prakash. But, whether in so doing, it was permissible for the GOI to ignore or overlook, the very genesis of constitution of the service and the relevant Rules, thereby giving rise to mutual inconsistency and/or apparent incongruity, among the various sources of recruitment, is the next question, that calls for our examination.

72. The 1951 Act and the Rules and Regulations made by the GOI constituting and continuing the IFS, all need to be read as one scheme or one service and not piecemeal but really as one set of Rules (See: pages 23 to 30 under the caption "Statute must be read as a whole" - Chapter I - Basic Principles of Statutory Interpretation by G.P. Singh, 3rd Edition). Every rule must be read as part of an omnibus



omnibus scheme ~~and~~ of establishing an All India Service. In a scheme of this nature and dimension due effect must be given to every other relevant Rule as well. Every part must be read as consistent with the whole and not in isolation or severance, lest this should result in disharmony or discord (See: pages 104 to 109 under the caption "Inconsistency and repugnancy to be avoided; harmonious construction" -Chapter 2 - Guiding Rules of Statutory Interpretation by G.P.Singh. Bearing this in mind, we shall now read conjointly, Rules 3 and 4 of the RR which is the sheet-anchor of the applicants. These rules read thus:-

**3. Constitution of Service.** - The Service shall consist of the following persons, namely:-

- (a) Members of the State Forest Service recruited to the service at its initial constitution in accordance with the provisions of sub-rule (1) of rule 4; and
- (b) persons recruited to the service in accordance with the provisions of sub-rules (2) to (4) of rule 4.

**4. Method of recruitment to the Service.** - (1) As soon as may be after the commencement of these rules, the Central Government may recruit to the Service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Governments and the Commission:

Provided that no member holding a post referred to in sub-clause (ii) of clause (g) or rule 2 and so recruited shall, at the time of recruitment, be allocated to any State cadre other than the cadre of a Union territory.

(2) After the recruitment under sub-rule (1), subsequent recruitment to the Service, shall be by the following methods, namely:

- (a) by a competitive examination:
- (aa) by selection of persons from amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968 and who are released in the manner specified in sub-rule (1) of rule 7(A);
- (b) by promotion of substantive members of the State Forest Service.

(3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the Service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the Commission:

Provided that where any such vacancy or vacancies relates or relate to a State Cadre or a Joint Cadre, the State Government concerned shall also be consulted.

(3A) Notwithstanding anything contained in this rule, where appointments to the Service in pursuance of the recruitment under sub-rule (1) have become invalid by reason of any judgement or order of any court, the Central Government may make fresh recruitment under that sub-rule and may give effect to the appointments to the service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as aforesaid had been given effect to.

(4) Notwithstanding anything contained in sub-rule (2), if in the opinion of the Central Government the exigencies of the service so require, the Central Government may, after consultation with the State Government and the Commission, adopt such methods of recruitment to the Service other than those specified in the said sub-rule, as it may by regulations made in the behalf prescribe.

(5) Notwithstanding anything hereinbefore contained in this rule in relation to the State of Sikkim, recruitment to the State Cadre on its initial constitution shall be made by such method, as the Central Government may, after consultation with the State Government and the Commission prescribe.

Rule 3 stipulates, that the service shall comprise those members selected and appointed under the IRR, the direct recruits and promotees, selected and appointed in conformity, with the detailed Rules made for each category. Rule 4 envisages that the first direct recruitment as also appointments by promotion, shall be accomplished only after the initial recruitment is completed and not earlier. The logical corollary therefore is that initial recruitment to the Service under the IRR, must invariably precede all other modes of recruitment to the Service. In fact, the very term 'initial' is in itself, clearly indicative of this requirement. If that is so, the initial recruits form the very base or foundation of the IFS, constituted with effect from 1-10-1966. They are in fact, "the source and origin" - fons et origo - of the IFS. All others, irrespective of the mode of recruitment follow the initial recruits and are inevitably junior to them in keeping with the principle "first in time, superior in right" - prio tempore potior jure. The rationale and soundness of this rule, is at once manifest and does not necessitate further elaboration. After all, the serving officers in the State



Forest cadres, with a meritorious record of service and performing the very nature of duties which are akin, are first inducted into the IFS; <sup>hence</sup> it is but meet and proper, that they take precedence over the direct recruits and all others appointed to the service. We see no error or impropriety in this. On the contrary, this provision appears to us to be rational and salutary. If this <sup>is</sup> then is the true position, then we must necessarily read clause (d) of sub-rule (4) of Rule 3 of the Seniority Rules as subject to Rules 3 and 4 of the RR. A fortiori, it follows from the same, that those recruited later, notwithstanding the category or group from which they are recruited, will be junior to all those initially recruited to the IFS. We are of the view, that this construction is inevitable, keeping in mind that every statute has to be considered as a whole, to render the construction as a harmonious one. It is also a well-settled canon of construction, that the construction which advances the object of the act, rather than retards and promotes, rather than demotes, the object of the Act, has to be preferred, as a contrary view would have the effect of creating a void. We are precisely guided by this principle. It therefore follows that Lamba and Prakash have to be treated as juniors to the initial recruits, despite clause (d) of sub-rule (2) of Rule 3 of the IFS Seniority Rules.

73. In Subimal Roy's case, Subimal Roy and others, who were initial recruits to the IFS, from the West Bengal State Forest Service cadre, challenged the assignment of 1964, as YOA, to Sarvashri T.B. Pundarikakshudu and Kailash Chandra Pant, arrayed respectively as respondents 4 and 5, though appointed to the IFS with effect from 1-4-1969, from the quota reserved for the EC/SSCs. This was resisted by respondents 4 and 5 and the Union of India but not by the Government of West Bengal, which supported the initial recruits or the petitioners in that case. On an examination of the rival contentions, Bhagabati Prosad Banerjee, J. upheld, the claim of the petitioners in these words:

"After considering the facts and circumstances of the case and the decisions referred to, I am of the view that the seniority of the respondents Nos. 4 and 5 as determined in pursuance of coming into force of the Rule 3(2)(d) of the Regulation of Seniority Rules, 1968 affecting the seniority of the petitioners cannot be sustained in view of the fact that the said rule came into force after the respondents Nos. 4 and 5 were appointed and that at the relevant time there was no scope for giving any retrospective effect in the Rule prior to 1975 and that in 1975 when the Act was amended by incorporating the Amendment Act which provided power for the first time to make rules with retrospective effect. But, it was made specifically clear that no rule should be given retrospective effect so as to prejudicially effect the interest of any person. In the instant case, by making retrospective effect in the manner of application of Rule 3(2)(d) of the said Rules, the interest of the petitioners were seriously affected. The petitioners were made junior to persons appointed subsequent to the petitioners and that in the instant case, the seniority of the respondent No.4 and 5 was assigned from a date which earlier than the date of their appointment in the service. The respondents No.4 and 5 were appointed into the service in the year 1969 and that the seniority of the respondents was assigned on the strength of the said Rule with effect from 1964 which in my view is not permissible as if it is contended that Rule 3(2)(d) of the said Rules confers such power to fix seniority in respect of the respondents No.4 and 5, with retrospective effect i.e., from a date much earlier than their entry in the service effecting seniority of all other persons who were appointed prior to the respondent No.4 and 5, in that event the said rule is liable to be discriminatory and violative of the provisions of Article 14 and 16 of the Constitution of India. In my view the said Rule in its application read with the statutory protection as given by the Amendment Act of 1975 Rule 3(2)(d) of the said Rules could not be construed in such a manner which may prejudicially affect the interest of other persons. In view of the provisions of Section 3(1)(A) of the Amendment Act, 1975, the scope of Rule 3(2)(d) of the said Rules is limited and that in view of that within the scope and ambit of the said Rules, the seniority of other persons appointed earlier could not be effected. Incidentally the stand taken by the State Government in this behalf against the introduction of the said Rule affecting the interest Respondent No.4 and 5 appears to me reasonable and the reasons for taking such stand is well founded. The Supreme Court in the case of *A. Janardhana v. Union of India* reported in AIR 1983 SC 769 held that a direct recruit who comes into the service after a promotee, should not be permitted by any principle of seniority to score a march over a promotee because that itself is arbitrary and shall be violative of Article 14 and 16 of the Constitution of India. In view of the said decision of the Supreme Court, it must be held that it is extremely undesirable, unjust and inequitable in service jurisprudence as to go down below a person who comes to the service after long years. In my view under Rule 3(2) (d) of the said Rules, the Central Government had no jurisdiction to fix a seniority of the respondent No.4 and 5 seriously affecting the seniority of the petitioners. For the reasons stated above, the writ application succeeds. The rule is made absolute.



Let a writ in the nature of Mandamus do issue cancel-  
ling and/or setting aside the order dated 26th October, 1970  
which is Annexure 'H' to the petition fixing the seniority  
of the respondent No.4 and 5 with effect from 1964 and  
further the said respondents are commanded to fix up the  
seniority of the respondent No.4 and 5 without affecting  
the seniority of the petitioner. The respondents are fur-  
ther directed to forebear from fixing the seniority of  
the respondent No.4 and 5 over the seniority already assign-  
ed to the petitioners. The Rule is accordingly made abso-  
lute. There will be no order as to costs."

These conclusions are in accord with what we have independently ex-  
pressed as above, on the Rules. We are in respectful agreement with  
these conclusions.

74. In their representation to Government of India as also in  
their applications, the applicants have alluded to Subimal Roy's  
case and relied on the same. In answer to this plea, the Government  
of India in its reply had stated thus:

"As far the averments referring to the judgment of the  
High Court of Calcutta the same are denied for want of  
knowledge. The applicants are put to proof of their con-  
tentions in the matter of the contents of the judgment  
of the High Court of Calcutta. It is submitted however,  
that the applicants before the High Court of Calcutta had  
moved the Hon'ble High Court in a Writ Petition in the  
year 1973 itself and were not guilty of delay of over 17  
years as in the case of these applicants before this Hon'ble  
Tribunal."

In the writ petition filed by Subimal Roy and others, Government  
of India, as a necessary party, /impleaded, served and was represented  
by a distinguished senior Advocate of the Calcutta Bar. In the face  
of this, it is rather surprising that the Government of India should  
plead ignorance and urge, that the applicants should prove their  
plea, on what had been decided by the High Court of Calcutta in that  
case. This apart, the manner in which GOI had met the plea of the  
applicants is no pleading at all (vide: Order VI of the Code of Civil  
Procedure). We must observe with regret, that it has been our expe-  
rience that the pleadings of the GOI and its agencies are often woe-  
fully inadequate and are filed in a rather flippant manner, as a  
mere ritual. It is noticed that more often than not, the parawise  
remarks drafted by one of the officials who does not have the requi-

requisite legal background, are mechanically adopted without ensuring their completeness and cogency. We need hardly point out that such an attitude does not conduce to proper and effective adjudication of the matter by the Tribunal. We hope and trust that the GOI will take due care to guard against recurrence of the like.

75. In its Memo filed on 22-7-1988, the Union of India asserted that the decision of the Calcutta High Court, in Subimal Roy's case, had been challenged by it, before the Supreme Court in a Special Leave Petition, filed on 26-5-1988 and the same was still pending disposal in that Court. We accept the correctness of this submission. But, that will not in any way alter the position. We must, however express our surprise and consternation, that the Union of India should have at the time of filing its reply initially to the applications relating to the IPS Set, should have feigned ignorance about the decision of the High Court of Calcutta in Subimal Roy's case, leading us to infer irresistibly that the Union of India was less than truthful in making this statement. Such an attitude does not assist the Tribunal in proper and effective adjudication of the matter and is therefore deplored.

76. The other Rules of IFS Seniority Rules only give effect to Rule 3 of the IFS Seniority Rules. Even otherwise, their detailed analysis is not very necessary.

77. 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 principle governing Article 14 equally govern Articles 15 and 16 of the Constitution as well and this does not require a reference to decided cases.

78. 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 Bills' 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 today, 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.

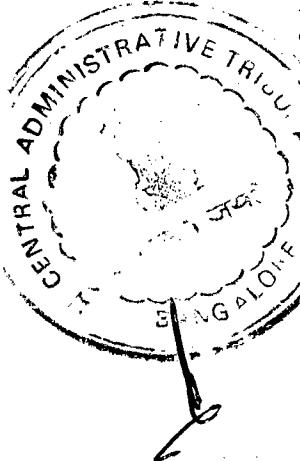
5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties 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 exigencies 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 face 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.

79 On the new dimension of Article 14 of the Constitution namely "arbitrariness was 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 positivistic 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 Art.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 Supreme Court has reiterated these principles and applied them to specific cases. Bearing these principles in mind, we must examine the validity of the impugned provision, in the cases before us.

80. The applicants claim, that the impugned provision notionally allowing an earlier year of allotment or appointment to EC/SSC with consequent higher seniority, though in fact they had entered the service many years later than the applicants, suffers from the vice of impermissible classification and is also arbitrary and violative of Article 14 of the Constitution.

81. On the necessity or otherwise, of allowing the concession in regard to seniority to EC/SSC Officers, the GOI and GOK have stated thus:

30. Regarding ground (1) of the application:

The benefits conferred on EC/SSC officers recruited to the Indian Forest Service, in the matter of seniority, is at par with the benefits allowed in the other Central Service and the All India Services where, in consideration of the service rendered by the EC/SSC officers in the Armed Forces, benefit of seniority is allowed to them as if, instead of entering service in the Armed Forces, they had directly entered civil employment. This is in keeping with the considered policy of the Union of India and it is denied that the spirit in which such benefit has been



been allowed to a deserving category of officers is in any manner arbitrary, or much less capricious."

This is all the justification pleaded in support of the impugned rule. We do not propose to restrict only to this plea but take into consideration all relevant aspects in determining the validity of the same.

82. We have earlier noticed the meaning of the terms 'Seniority' and 'Year of Allotment' and their close inter-relation in respect of the All India Services. On the basis of the impugned provision, Lamba and Prakash who had actually entered service later, are shown as senior to the applicants who had joined service earlier which fact has been recognised and is not in dispute.

83. The applicants have not rightly challenged the question of relaxation of age-limit, lowering of standards and earmarking a special quota for the EC/SSC.

84. The fact that the EC/SSCs had rendered yeoman service in the Indian Army and to the country, at a critical time, when it was facing external aggression from foreign powers and that on their release from the Army on recruitment to the service, they form a separate group or class, is not in doubt, though we must express that we were not impressed by the rather pleonastic contention of Sri Padmarajaiah surcharged with undue emotion to overstate the case on this point. But, whether the same has a rational nexus to the object of the service in general and seniority in service in particular is the next important aspect which calls for a critical examination.

85. None of the respondents could enlighten us as to how, the previous service rendered in the Indian Army, manifestly with a break, would be relevant for service in the IFS. We are also unable to visualise, as to how such service rendered in the Indian Army, would be relevant to service in the IFS. It is apt to recall here, the well-known legal maxim: "The cowl does not make the monk," - cucullus non facit monachum. On the other hand, we are of the view, that

xxxxxx the extraneous and disjointed service in the Indian Army has no rational nexus at all, to confer seniority for service, in the IFS. If that is so, then it is obvious, that the same does not satisfy the twin requirements of a valid classification and, therefore is violative of Articles 14 and 16 of the Constitution.

86. In contra-distinction, the service rendered by the State Forest Service Officers before their direct recruitment to the IFS, on the basis of a competitive examination, bearing close affinity to the service required to be rendered in the IFS, strange enough, has not been reckoned, for the purpose of determining their seniority in the IFS. We need hardly say, exclusion of this Service for the purpose of determination of seniority is patently violative of Articles 14 and 16 of the Constitution. On this conclusion also, the impugned provision is violative of Articles 14 and 16 of the Constitution.

87. The impugned provision has really the effect of treating equals as unequals and vice versa for which there is neither rhyme nor reason. Equality postulates identity of the class and its touchstone, is enshrined in Article 14 of the Constitution. The basic principle, which informs Articles 14 and 16, is equality and inhibition against discrimination.

88. The provision for earlier YOA to EC/SSC Officers on the principle of 'missed opportunity' though there was none such, prior to 1967, to enter the service or even before the very constitution of that service, can only be characterised as chimerical and arbitrary.

When there was no opportunity before 1967 for anybody to enter the IFS, the question of applying the principle of 'missed opportunity' only in regard to the EC/SSC does not at all arise. But, it was urged that this provision is similar to those recruited initially and those promoted from the State cadres to the IFS. We are of the view that this comparison is specious. Those initially recruited

to either the junior and/or senior scales, were already members of the State Forest Service and were already discharging the very duties, performed by the members of the IFS. This is also true of ~~those~~ promoted, from the State cadre to IFS. What is true of the above categories of officers, is not true of those recruited for the first time from outside or open avenue. From this it follows, that the contention, that this provision is akin to that made in the case of the initial recruits and promotees from the State Forest cadres is palpably erroneous and is bereft of merit.

89. We are also of the view that the impugned provision militates against the very morale, cohesion and camaraderie of the service, which are so very essential, to preserve and maintain its harmony, discipline and efficiency. The provision creates an invidious distinction for no good and valid reason and the reason advanced in support is not at all sound.

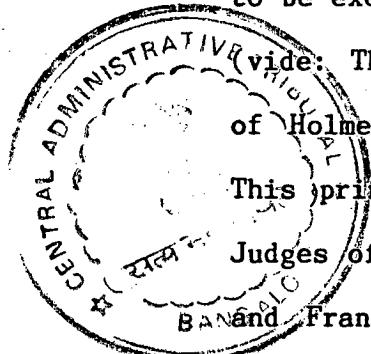
90. In *A.S.AYER AND OTHERS v. V.BALASUBRAMANYAM AND OTHERS* [1980 SCC (L & S) 145 = 1980 (1) SCC 634] which was strongly relied upon by the respondents, the Court was examining the validity of the Recruitment and Seniority Rules of Class I Service, of the Survey of India, which inter alia, provided for recruitment of serving military engineers of the Army, protection of their conditions of service and certain weightage in seniority over those recruited from among the civilians. In reversing the decision of the Andhra Pradesh High Court, which had invalidated the Rules, as violative of Articles 14 and 16 of the Constitution, the Supreme Court held, that the Rules in the matter of seniority, with which we are primarily concerned were not violative of Articles 14 and 16 of the Constitution and were valid. In upholding the validity of the Rules, the Supreme Court traced the genesis of the service, its nature and attributes and all other relevant factors and held, that those drawn from the Indian Army, with a separate and distinct identity, were not comparable

to those drawn from among the civilians and the Rules, therefore, were not violative of Articles 14 and 16 of the Constitution. But, that is not the position in the impugned provision. The EC/SSC did not enter the IFS, with insignia as EC/SSC Officers or as members of the Indian Army and continue to serve in the IFS, as members of the Indian Army, as in the case of Class I Service, in the Survey of India. On the other hand, they entered the IFS as direct recruits along with other direct recruits but with certain concessions extended to them. In this context, the IFS cannot be said to be analogous at all, to Class I Service in the Survey of India, either in regard to the historical background or the nature and/or affinity of duties required to be performed. We are therefore of the view, that the principles enunciated in Iyer's case are clearly distinguishable and do not assist the respondents to sustain the impugned Rule.

91. We have examined the validity of the impugned rule with all humility/ which has been so pithily expressed by Morris Cohen as "the great lesson of life" (vide: page 33 of the Article: "Judge Learned Hand" in "Supreme Court Statecraft" by Wallace Mendelson, First Indian Reprint, 1987 edition)- with regard to the true scope and ambit of Article 14 of the Constitution, as expounded by our Supreme Court in various rulings. We have also examined the same, bearing in mind, one of the cardinal Constitutional principles propounded by James Bradley Thayer, one of the American Constitutional lawyers of international renown and eminence, that judicial veto is to be exercised only in cases that leave no room for reasonable doubt

(vide: The Article: "The Influence of James B. Thayer upon the work of Holmes, Brandeis, and Frankfurter" in the self-same treatise).

This principle has been eloquently articulated by the great Jurist-Judges of the American Supreme Court viz., Justices Holmes, Brandeis, and Frankfurter, in more than one case. On such examination, we are of the considered view, that the impugned rule is clearly viola-



violative of Articles 14 and 16 of the Constitution, both from the standpoint of permissible classification, as also its new dimension. We, therefore, hold that the impugned rule, is liable to be struck down, as violative of Articles 14 and 16 of the Constitution.

92. Clause (d) of sub-rule (2) of Rule 3, is an independent clause and is severable. On its being struck down, the rest of the Rules which are valid, are still operable and enforceable. From this it follows, that we should only direct the GOI to assign fresh YOA to Lamba and Prakash, in accordance with clause (a) of Rule 3 of the Rules viz., the year ensuing that in which they had appeared for the competitive examination for the IFS.

92. Rule 3 of the IPS (Regulation of Seniority) Rules, 1954 (1954 Rules) which is relevant to the IPS set, reads thus:

**3. Assignment of Year of Allotment.** - (1) Every Officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

(2) The year of allotment of an officer in service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules:

Provided that where the year of allotment of an officer appointed in accordance with rule 9 of the Recruitment Rules has not been determined prior to the commencement of these Rules his year of allotment shall be determined in accordance with the provision in clause (b) of sub-rule (3) of this rule and for this purpose, such officer shall be deemed to have officiated in a senior post only if and for the period for which he was approved for such officiation by the Central Government, in consultation with the Commission.

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be -

- (a) where the officer is appointed to the Service on the results of a competitive examination the year following the year in which such examination was held;
- (b) where the officer is appointed to the Service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former;

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a cadre earlier than the date on which any of the officers recruited to the Service, in accordance with rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Governments concerned.

Explanation-1 - In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority; count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later:

Provided that where the name of a State Police Service Officer was included in the Select List in force immediately before the reorganisation of a State and is also included in the first Select List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

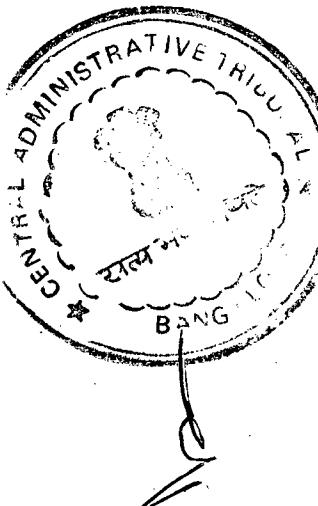
Explanation 2- An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation 3 - An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence on leave or training.

Explanation 4 - An officer appointment to the Service in accordance with sub-rule (1) of the rule 9 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment for a period not exceeding one year and, within the approval of the Central Government, for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time scale identical to the time-scale of a senior post:

"Provided that the number of officers in respect of whom the certificate shall be current at one time shall not exceed one half of the maximum size of the Select List permissible under sub-regulation (1) of regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, and follow the order in which the names of such officers appear in the Select List:

Provided further that such certificate shall be given only if, for every senior officer in the Select List appointed to a non-cadre post in respect of which the



the certificate is given, there is one junior Select List officer officiating in a senior post under rule 9 of the Indian Police Service (Cadre) Rules, 1954.

Provided also that the number of officers in respect of whom the certificate is given, shall not exceed the number of posts by which the number of cadre officers holding non-cadre posts under the control of the State Government falls short of the deputation reserve sanctioned under the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955.

(c) The year of allotment of an officer appointed to the Service in accordance with rule 7A of the Indian Police Service (Recruitment) Rules, 1954, shall be deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining Pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under rule 4 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955.

Explanation - If an officer, who qualified himself for appointment to the Service in a particular year could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7A of the Recruitment Rules and who have the same year of allotment.

(d) The year of allotment of an officer appointed to the Service in accordance with Rule 7A of the Indian Police Service (Recruitment) Rules, 1954, having been eligible under the second proviso to sub-regulation (iii) of Regulation 4 of the Indian Police Service (Emergency Commissioned and Short Service Commissioned Officers) (Appointment by Competitive Examination) Regulations, 1971, shall be deemed to be the year in which he would have been so appointed at his first or second attempt, after the date of joining pre-commissioned training or the date of his Commission where there was only post-commission training and also after the lapse of as many years as would have been necessary for him to complete his studies, in the normal course, for the award of the educational qualifications prescribed for direct recruitment to the Indian Police service according as he qualified for appointment to the Service in his first or second chance as the case may be.

This provision is analogous to Rule 3 of the IFS Seniority Rules.

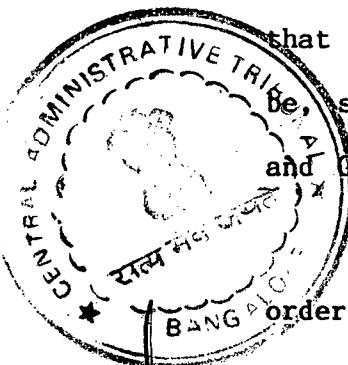
93. "Indian Police" in British India was designated as the IPS in Free India. This position in regard to the IPS or that of the IFS, which came to be constituted with effect from 1-10-1966, does not materially alter the construction we have placed on the IFS Seniority Rules and its application to this Rule also.

94. In so far as the IPS is concerned, we are conscious that the service rendered in the Indian Army has some relevance to it and is not wholly alien as in the case of the IFS. But notwithstanding the same, we are of the view, that each and every reason, on which we have held, that clause (d) of sub-rule (2) of Rule 3 of the IFS Seniority Rules is liable to be struck down, equally applies to the validity of clauses (c) and (d) of sub-rule (3) of Rule 3 of the 1954 Rules. For those very reasons we hold that this provision too, is liable to be struck down, as violative of Articles 14 and 16 of the Constitution.

95. As pointed out in the IFS Set, we hold that this clause which is independent, is severable and that the rest of the provisions are operable in its absence. We must, therefore, direct the GOI to assign fresh YOA to Sarvastri K.U.Shetty, Jaiprakash, T.Madiyal and S.N.Borkar, in accordance with Rule 3~~(3)~~(a) of the 1954 Rules.

96. As a consequence of assignment of the revised YOA to respondents as above, their seniority vis-a-vis the applicants and others, is bound to be affected. As to how this would affect their service career cannot be started with any certainty at this stage. Without any doubt, this has to necessarily await assignment of the revised YOA and dovetailing of the concerned respondents in the pertinent seniority lists, from time to time, based on the revised YOA. When that is done, we do hope and trust, that there would be no occasion to revert these respondents. But, if at all that becomes obligatory, then it is but fit and proper for the GOI and the GOK, to ensure, that such reversion does not take place, to stave off which, if need be, supernumerary posts be created. We have no doubt that the GOI and GOK will do so, by taking a pragmatic view of the whole matter.

97. In the light of our above discussion, we make the following orders and directions:



(i) We strike down clause (d) of sub-rule (2) of Rule 3 of the Indian Forest Service (Regulation of Seniority) Rules, 1968 and clauses (c) and (d) of sub-rule (3) of Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954.

(ii) We direct the Government of India - respondent No. 1, to assign fresh years of allotment to respondents Nos. 3 and 5 in Applications Nos. 970 to 981 of 1987 and 715 and 716 of 1988 and respondents 3 to 6 in Applications Nos. 991 to 993 of 1988 in accordance with Rule 3(2)(a) of the IFS and the IPS Rules respectively, with all such expedition as is possible in the circumstances of the cases and in any event, within a period of four months from the date of receipt of this order and regulate their seniority and other conditions of service on that basis only.

98. Applications are disposed of in the above terms, but in the circumstances of the cases, we direct the parties to bear their own costs.

99. Let this order be communicated to all the parties within a week by the latest.



Sd/-  
VICE-CHAIRMAN. 26/3/1988.

Sd/-  
MEMBER(A). 26.3.1988

TRUE COPY

*Haeri*  
for DEPUTY REGISTRAR (DR) /  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

Re: 10/10/89

D. No. 5457/88/ Sec. IVA  
SUPREME COURT OF INDIA  
NEW DELHI  
Dated 6th October, 1989

From:

The Assistant Registrar,  
Supreme Court of India,  
New Delhi

To

The Registrar  
Central Administrative Tribunal, B.D.A. Complex, Indira Nagar,  
Bangalore.

CIVIL APPEAL NOS 4071-72 OF 19 89  
(High Court Application Nos. 715 & 716/88)

..... Appellants

Jagjit Lamba & Anr.

Versus

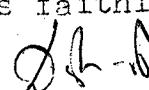
..... Respondents.

367/89  
By. No. 2c/s  
Date 2/10/89  
Additional Bench  
SIR,

In pursuance of Order 13, Rule 6, S.C.R. 1966, I am  
directed by their Lordships of the Supreme Court to transmit  
herewith a certified copy of the Judgment/Order dated the  
26th September, 1989 in the Appeals above-mentioned. The  
Certified copy of the Decree made in the said appeals will be  
sent later on.

Please acknowledge receipt.

Yours faithfully,

  
ASSISTANT REGISTRAR.

AS |

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Certified to be true copy

*Dashrath*

Assistant Registrar (Jndl.)

2101989

Supreme Court of India

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NOS. 4068-70 OF 1989  
(Arising out of SLPs (C) Nos. 14926-28 of 1988)

Union of India & Ors.

..... Appellants

Versus

Dr. S. Krishna Murthy & Ors.

..... Respondents

A N D

CIVIL APPEALS NOS. 4071-72 OF 1989  
(Arising out of SLPs (C) Nos. 14897-98 of 1988)

Jagjit Lamba & Anr.

..... Appellants

Versus

Union of India & Ors.

..... Respondents

A N D

CIVIL APPEALS NOS. 4073-75 OF 1989  
(Arising out of SLPs (C) Nos. 14732-34 of 1988)

T. Madiyal & Ors.

..... Appellants

Versus

Union of India & Ors.

..... Respondents

W I T H

CIVIL APPEAL NO. 4076 OF 1989  
(Arising out of SLP (C) No. 10105 of 1988)

Union of India & Ors.

..... Appellants

Versus

Subimal Roy & Ors.

..... Respondents

W I T H

CIVIL APPEALS NOS. 4077-90 OF 1989  
(Arising out of SLPs (C) Nos. 15218-31 of 1988)

Union of India & Ors.

..... Appellants

Versus

G.K. Shenava & Ors.

..... Respondents

JUDGMENT

DUTT, J.

These special leave petitions have been heard at length and elaborate submissions have been made on behalf of the parties at the preliminary hearing and, accordingly, we grant special leave in all these matters and proceed to dispose of the same on merits.

These appeals have been preferred by the Union of India and some erstwhile Emergency Commissioned Officers (for short 'ECOs') and Short Service Commissioned Officers (for short 'SSCOs') and directed either against the judgment of the learned Single Judge of the Calcutta High Court or against the judgment of the Central Administrative Tribunal, Bangalore. The Tribunal has struck down the impugned rules, namely, rule 3(2)(d) of the Indian Forest Service (Regulation of Seniority) Rules, 1968, hereinafter referred to as 'IFS (Regulation of Seniority) Rules, 1968', and clauses (c) and (d) of sub-rule (3) of rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954, hereinafter referred to as 'IPS (Regulation of Seniority) Rules, 1954', as ultra vires Articles 14 and 16 of the Constitution of India and has directed the Government of India to assign fresh years of allotment to the ECOs and SSCOs, who were some of the respondents before the Tribunal.

Before the Calcutta High Court, rule 3(2)(d) of the IPS (Regulation of Seniority) Rules, 1954 was involved and the High Court on a construction of that rule allowed the

writ petition of the respondents and set aside the impugned order relating to the year of allotment of ECOs and SSCOs.

The period between 1.11.1962 and 10.1.1968 is marked by three events, namely, Indo-Chinese War followed by Indo-Pakistan War and the proclamation of emergency. These ECOs and SSCOs voluntarily entered the Armed Forces of the Union of India at a time when the security of the nation was in peril due to external aggression. As they were engaged in defending the country by accepting the war service, they did not get any opportunity to enter into civil services. The Central Government assured them that after the cessation of emergency, they will be rehabilitated in civil life so that they might not suffer on account of their rendering services to the nation. The grievance of the respondents who have been recruited to Indian Forest Service or the Indian Police Service from State Services is that although the ECOs or SSCOs, have been recruited in the said All India Services after the respondents, yet their year of appointment has been fixed earlier than the year of allotment of the respondents.

At this stage, we may refer to the impugned rules. Rule 3(2)(d) of the IFS (Regulation of Seniority) Rules, 1968 provides as follows:-

"3(2). The year of allotment of an officer appointed to the Service shall be-

- (a) .....
- (b) .....
- (c) .....

(d) where an officer is appointed to the Service in accordance with rule 7A of the Recruitment Rules, deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1957.

Explanation.-If an officer, who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7A of the Recruitment Rules and who have the same year of allotment."

Rule 3(2)(d) refers to rule 7A of the Recruitment Rules which provides, inter alia that till January 28, 1974, 20 per cent of the permanent vacancies in the Indian Foreign Service to be filled by direct recruitment in any year shall be reserved for being filled by ECOs and SSCOs of the Armed Forces of the Union of India, who were commissioned after November 1, 1962 and who have been released from the Armed Forces after a spell of service.

Clauses (c) and (d) of sub-rule (3) of rule 3 of IPS (Regulation of Seniority) Rules, 1954 provide as follows:-

- "3(3)(a) .....
- (b) .....
- (c) The year of allotment of an officer

appointed to the Service in accordance with rule 7A of the Indian Police Service (Recruitment) Rules, 1954, shall be deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under rule 4 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955.

Explanation.-If an officer, who qualified himself for appointment to the Service in a particular year could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7A of the Recruitment Rules and who have the same year of allotment.

(d) The year of allotment of an officer appointed to the Service in accordance with rule 7A of the Indian Police Service (Recruitment) Rules, 1954, having been eligible under the second proviso to sub-regulation (iii) of Regulation 4 of the Indian Police Service (Emergency Commissioned and Short Service Commissioned Officers) (Appointment by Competitive Examination) Regulations, 1971, shall be deemed to be the year in which he would have been so appointed at his first or second attempt, after the date of joining pre-commission training or the date of his Commission where there was only post-commission training and also after the lapse of as many years as would have been necessary for him to complete his studies, in the normal course, for the award of the educational qualifications prescribed for direct recruitment to the Indian Police Service according as he qualified for appointment to the Service in his first or second chance as the case may be."

Both the above rules, namely, IFS (Regulation of Seniority) Rules, 1968 and IPS (Regulation of Seniority) Rules, 1954 have been framed under All-India Services Act, 1954, hereinafter referred to as 'the Act'. The Act, before it was amended, conferred power on the Central Government to make rules for the regulation of recruitment and the conditions of service of persons appointed to an All-India Services. No power was, however, conferred by the Act on the Central Government to frame rules with retrospective effect. The impugned rules, namely, rule 3(2)(d) of the IFS (Regulation of Seniority) Rules, 1968 and clauses (c) and (d) of sub-rule (3) of rule 3 of IPS (Regulation of Seniority) Rules, 1954 are admittedly retrospective in operation. It is now a settled principle of law that if the statute under which a rule is framed does not confer on the authority concerned the power to make such a rule with retrospective effect, the authority will have no power to frame any rule with retrospective effect. The impugned rules, with which we are concerned, have been made by the Central Government with retrospective effect, although there was no such power conferred by the Act in that regard.

The All-India Services (Amendment) Act, 1975 has been enacted by Parliament for the purpose of validating the impugned rules. By section 2 of the Amendment Act, a new sub-section (1-A) has been inserted after sub-section (1) of section 3 of the Act, which has been referred to as "the principal Act" in the Amendment Act. Sub-section (1-A)

provides as follows:-

"(1-A). The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

The provision for validation is contained in section 3 of the Amendment Act and it reads as follows:-

"3. No rule made, or purporting to have been made, with retrospective effect, under section 3 of the principal Act before the commencement of this Act shall be deemed to be invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and accordingly every such rule and any action taken or thing done thereunder shall be as valid and effective as if the provisions of section 3 of the principal Act, as amended by this Act, were in force at all material times when such rule was made or action or thing was taken or done."

The ECOs and SSCOs, who are some of the appellants, after demobilisation of the military emergency service, have been appointed in the Indian Police Service and the Indian Forest Service in 1969. In view of their past service in the army, which they had voluntarily joined for the defence of the country during the period between 1.11.1962 and 10.1.1968, the impugned rules were framed providing for the year of allotment of such officers appointed in the Indian Police Service or in the Indian Forest Service with retrospective effect from the date they would have been appointed at their first or second attempt after the date of joining pre-commission training or the date of their commission where there was only post-commission training.

Thus, even if an officer has been appointed in an All-India Service in 1969 in a regular manner after being selected on the basis of the result of the competitive examination in 1969, his year of allotment will be one or two years after his joining the pre-commission training in the army service. Suppose, an officer, after having been selected for the army service, joined his pre-commission training in 1963. In 1963 he was, therefore, eligible for taking a competitive examination for being recruited to an All-India Service. If he was not successful, he would get a second chance in the next year, that is, in 1964. If, after his release from the army in 1968, he took the competitive examination and successfully competed in such examination and was selected for appointment in the first chance, according to the impugned rules, his year of allotment would be 1963. If he was either not successful in his first attempt or did not avail himself of the same, he would have another chance to compete in the examination for recruitment in an All-India Service in the next year, that is, in 1969 and if he was successful and appointed, his year of allotment would be 1964. In other words, the impugned rules give weightage to ECOs and SSCOs of the past services rendered by them in the emergency army service.

It has been already noticed that the Tribunal has struck down the impugned rules as ultra vires the provisions of Articles 14 and 16 of the Constitution. According to the Tribunal, the impugned rules are discriminatory in nature

without any reasonable justification therefor and thus offends against the provisions of Articles 14 and 16 of the Constitution. The same contention has been advanced on behalf of the respondents before us. It has not been disputed before the Tribunal and also before us, that the ECOs and SSCOs formed a definite class, distinct from the respondents or other officers of Indian Forest Service and Indian Police Service. In other words, it is the admitted position that the classification of ECOs and SSCOs is founded on an intelligible differentia which distinguishes them from the respondents and other officers of Indian Police Service and Indian Forest Service. It has, however, been strenuously urged that the differentia on which the classification is founded is lacking in rational relation to the object sought to be achieved by the impugned rules and, as such, it does not satisfy the test of reasonable classification as contemplated by Article 14 of the Constitution. This is also the view of the Tribunal.

We are unable to accept the contention. The impugned rules have been framed with a view to giving weightage to the ECOs and SSCOs in recognition of their past services in the army during the period of emergency. We fail to understand why the classification has no rational relation to the objects sought to be achieved by the impugned rules. The classification has been made only for the purpose of compensating the ECOs and SSCOs for their lost opportunity because of their joining the army service and the impugned rules best subserve the purpose. Accordingly, we do not

think that there is any merit in the finding of the Tribunal and also in the contention of the respondents that the impugned rules are violative of the provisions of Articles 14 and 15 of the Constitution.

Both the High Court and the Tribunal have taken the view that although section 3 of the All-India Services (Amendment) Act, 1975 validates the impugned rules purporting to have been made with retrospective effect, yet the impugned rules are invalid inasmuch as they prejudicially affect the interests of the respondents. Much reliance has been placed by the respondents on the provision of the new sub-section (1-A) of section 3(1) of the Act as inserted by section 2 of the Amendment Act, 1975. Sub-section (1-A) provides, inter alia, that no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. The contention of the appellants is that sub-section (1-A) is itself not retrospective in operation and, as such, has no application to the impugned rules which are retrospective in operation, that is, before sub-section (1-A) was inserted in section 3.

It is, however, difficult to accept the contention of the appellants that sub-section (1-A) is only prospective and does not apply to the impugned rules which are retrospective in operation. It has been already noticed that the impugned rules have been validated with retrospective effect by section 3 of the Amendment Act

which, in validating any rule made with retrospective effect under section 3 of the Act, provides that no such rule shall be deemed to have been invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and, accordingly, every such rule and any action taken or thing done thereunder shall be as valid and effective as if the provisions of section 3 of the Act (principal Act), as amended by the Amendment Act, were in force at all material times when such rule was made or action or thing was taken or done. In view of section 3, it has to be deemed that provisions of section 3, as amended by the Amendment Act, were in force at all material times when such rule was made. In view of the provisions of section 3 of the Amendment Act, sub-section (1-A) which has been inserted in section 3 of the Act by way of amendment, must be deemed to be in force at the time the impugned rules were made. But the question is, even though sub-section (1-A) is deemed to have been there at the time the impugned rules were framed with retrospective effect, whether the impugned rules prejudicially affect the interests of the respondents.

It is urged on behalf of the respondents that the impugned rules take away the vested rights of the respondents and, consequently, prejudicially affect their interests. Accordingly, it is submitted that the impugned rules are illegal and cannot operate retrospectively in the face of the provision of sub-section (1-A). This contention

does not at all impress us. The respondents have been given a particular seniority in accordance with the relevant rules. The seniority of the respondents is not taken away or interfered with by the impugned rules. The year of allotment of the respondents remains the same and is not altered to their prejudice. The impugned rules only provide for giving weightage to the ECOs and SSCOs for their past services in the army during the emergency period and their year of allotment will be determined in accordance with the impugned rules. It is, however, complained that by giving the ECOs and SSCOs a year of allotment which is prior to the year of allotment of the respondents, the respondents have become their juniors and their (respondents) chances of promotion are seriously affected.

At this stage, we may also notice the contention of Mr. Raju Ramachandran, learned Counsel appearing on behalf of some of the respondents. It is submitted by the learned Counsel that as the respondents have acquired a particular seniority, section 3 of the Act as amended, if read as suggested by the army officers, would contravene the fundamental rights of the respondents. This extreme contention is not sustainable on the face of it, for even assuming that the seniority of the respondents or their chances of promotion are affected by the impugned rules, surely it cannot be said that there has been a contravention of the fundamental rights of the respondents. Nobody has any fundamental right to a particular seniority or to any chance of promotion. It is not the case of the respondents

that because of the impugned rules their cases for promotion will not be taken into consideration by the authorities. The decision in A. Janardhana v. Union of India, [1983] 2 SCR 936 has no manner of application to the facts and circumstances of the instant cases. In that case, this Court has laid down that it is open to the Government to retrospectively revise service rules, if the same does not adversely affect vested rights. Further, it has been observed as follows:-

"After the promotee is promoted, continuously renders service and is neither found wanting nor inefficient and is discharging his duty to the satisfaction of all, a fresh recruit from the market years after promotee was inducted in the service comes and challenges all the past recruitments made before he was born in service and some decisions especially the ratio in Jaisinghani's case as interpreted in two B.S.Gupta's cases gives him an advantage to the extent of the promotee being preceded in seniority by direct recruit who enters service long after the promotee was promoted. When the promotee was promoted and was rendering service, the direct recruit may be a schoolian or college going boy. He emerges from the education institution, appears at a competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with service."

We have already pointed out that the impugned rules do not affect the vested rights of the respondents adversely. In Janardhana's case, this Court was dealing with the question of seniority of promotees vis-a-vis fresh recruits from the market and observed that when the promotee was promoted and was rendering service, the direct recruit might be a schoolian or college going boy. In the instant cases

before us, the dispute is not between promotees and direct recruits, the latter having no past services to their credit. The ECOs and SSCOs are not in the position of direct recruits, for they have a record of past services in the army which have been taken into consideration for fixing their year of allotment in accordance with the impugned rules. So, Janardhana's case has no manner of application to the facts and circumstances of the instant cases before us.

It is not that for the first time by the impugned rules, the past services of the ECOs and the SSCOs have been taken into consideration for the purpose of giving them their year of allotment with retrospective effect, that is to say, on a date earlier than their actual appointment in the Indian Police Service or in the Indian Forest Service, as pointed out by Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the Government-appellants. The learned Additional Solicitor General has drawn our attention to the notings in the Government files for the purpose of showing the Government policy to rehabilitate the ECOs and SSCOs in All-India Services, Central Services and State Services in order to ensure good response and to provide sufficient incentives for those who offered themselves for emergency commissions. These, notings start from November 17, 1962. It is not necessary for us to make a particular reference to the notings in the Government files. Suffice it to say that in view of the voluntary offer of services by the youngmen of our country

to defend the country against foreign aggression, the Government took a very sympathetic view and took steps to compensate them after their discharge from the Emergency Commission Service, for the opportunity lost by them in joining the All-India Services. One thing which is very significant to be mentioned here that although their past services were taken into consideration, the Government did not relax the minimum qualifications required for the All-India Services. These ECOs and SSCOs had to appear in the competitive tests held by the Union Public Service Commission and they were appointed only after they became successful in such tests.

In this connection, we may refer to the Office Memorandum dated January 29, 1966 providing for the rehabilitation of the ECOs and SSCOs recruited since November 1, 1962, after their release from the Armed Forces. The contents of the Memorandum are in the nature of executive instructions, but such executive instructions were followed and were given effect. Paragraph 6 of the Memorandum which deals with seniority and pay reads as follows:-

"6. Seniority and pay.

Seniority and pay of those candidates who are appointed against the reserved vacancies in the All-India and Central Services would be determined on the assumption that they entered service/post at the first opportunity they had after joining for pre-Commission training. The principles regarding fixation of pay and seniority laid down in this Ministry's Office Memorandum No. E.35/11/62-Ests. (B) dated the 6th

August, 1963 read with Office Memorandum of even number dated 15th February, 1965 (copy enclosed) will apply mutatis mutandis to determine the pay and seniority of ex-Emergency Commissioned Officers/Short Service Regular Commissioned Officers appointed against the reserved vacancies."

Thus, although the impugned rules were not in existence in 1966, the executive instructions as contained in the Office Memorandum conferred the same benefit as conferred by the impugned rules. In other words, it is apparent that the executive instructions have now been adopted as rules framed under the Act. Even otherwise, the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967, framed by the President of India under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India, contained similar provisions as to the seniority and pay of ECOs and SSCOs. Indeed, the provision of rule 5 relating to seniority of pay of ECOs and SSCOs is somewhat similar to paragraph 6 of the Office Memorandum. The date of commencement of the said rules is significant to be noticed. Under sub-rule (2) of rule 1, the said rules shall be deemed to have come into force with effect from January 29, 1966 which is the date of the said Office Memorandum. It is, therefore, manifestly clear that the executive instructions, as contained in the Office Memorandum, have been incorporated in the form of rules framed under proviso to Article 309 and clause (5) of Article 148 of the Constitution of India.

It is, however, submitted on behalf of the respondents that in view of the All-India Services (Conditions of Service - Residuary Matters) Rules, 1960 (for short 'Residuary Rules'), the said rules framed under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India will not apply to persons appointed to an All-India Service. The contention, in our opinion, is not correct, for clause (a) of rule 2 of the Residuary Rules provides that the Central Government may make regulations to regulate any matters relating to conditions of service of persons appointed to an All-India Service for which there is no provision in the rules made or deemed to have been made under the Act and until such regulations are made such matters shall be regulated in the case of persons serving in connection with the affairs of the Union of India, by the rules, regulations and orders applicable to officers of the Central Services Class-I. Admittedly, no rules under the Act were then framed in regard to the seniority of ECOs and SSCOs and/or granting them weightage for their past war service and, accordingly, the rules framed under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India applicable to Class-I Officers of the Central Government were also applicable to ECOs and SSCOs relating to their seniority in the All-India Services.

It is urged on behalf of the appellants that while the benefit of weightage is being conferred on the discharged ECOs and SSCOs way back from 1966, the writ petitions of the respondents should have been dismissed on the ground of

inordinate delay and laches. In support of this contention, some decisions have been cited by the appellants. Similarly, the respondents have also placed reliance on some other decisions of this Court. We do not think that after the writ petitions were entertained by the Calcutta High Court and by the Tribunal and disposed of on merits, it will be proper at this stage to dismiss the writ petitions on the ground of inordinate delay or laches. At the same time, it should be borne in mind that when a particular rule conferring benefits on a particular group of Government servants in recognition of their past services in the army, has been in operation for over twenty years, this Court will be very slow to interfere with the rule and deprive such group of Government servants of the benefits so conferred on them. This, however, does not mean that this Court will shut its eyes even though such rules are illegal and are violative of the provisions of Articles 14 and 16 of the Constitution. We have, however, held that the impugned rules do not offend against or infringe the provisions of Articles 14 and 16 of the Constitution.

Now, we may consider the contention of Mr. Lalit, learned Counsel appearing on behalf of the respondents in the appeal arising out of S.L.P. (C) No.10105 of 1988. These respondents were in the State Forest Service before 1966 and, subsequently, absorbed in the Indian Forest Service, under the Central Government. It is not disputed that unlike Indian Police Service, the Indian Forest Service

was constituted much later in the year 1966. It is also not disputed that the respondents were the first batch of incumbents or entrants in the Indian Forest Service. It is submitted on behalf of the respondents that the Indian Forest Service was constituted with the respondents as the initial recruits.

We may now refer to some of the provisions of Indian Forest Service (Recruitment) Rules, 1966, hereinafter referred to as 'IFS Recruitment Rules'. Rule 3 of the IFS Recruitment Rules relates to the constitution of the Service. It provides as follows:-

"3. Constitution of the Service.-The Service shall consist of the following persons, namely:-

- (a) Members of the State Forest Service recruited to the service at its initial constitution in accordance with the provisions of sub-rule (1) of rule 4; and
- (b) persons recruited to the service in accordance with the provisions of sub-rules (2) to (4) of rule 4."

So, under rule 3, the Service consists of members of the State Forest Service recruited to the Service at its initial constitution and persons recruited in accordance with the provisions of sub-rules (2) to (4) of rule 4. The next relevant provision is rule 4. Sub-rules (1) and (2) of rule 4, which are relevant for our purpose, are extracted below:-

"4. Method of recruitment to the Service.-

- (1) As soon as may be after the commencement of these rules, the Central Government may recruit

to the Service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Governments and the commission:

Provided that no member holding a post referred to in sub-clause (ii) of clause (g) or rule 2 and so recruited shall, at the time of recruitment, be allocated to any State cadre other than the cadre of a Union Territory.

(2) After the recruitment under sub-rule (1), subsequent recruitment to the Service, shall be by the following methods, namely:

- (a) by a competitive examination;
- (aa) by selection of persons from amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968 and who are released in the manner specified in sub-rule (1) of rule 7A;
- (b) by promotion of substantive members of the State Forest Service."

It appears from sub-rules (1) and (2) that there are four methods of recruitment. The first method is as contained in rule 4(1), that is, the initial recruits from the State Forest Service. The other three methods of recruitment have been provided for in sub-rule (2) including the recruitment of ECOs and SSCOs who were commissioned during the period of emergency and released in the manner specified in sub-rule (1) of rule 7A. It is, however, clear that the recruits under sub-rule (2) including the ECOs and SSCOs are recruited after the initial recruits under rule 4(1). Another thing to be noticed is that the first examination for recruitment in the Indian Forest Service was held by the Union Public Service Commission in 1967.

It is strenuously urged by Mr. Lalit that as the respondents were the initial recruits or, in other words, the Indian Forest Service having been constituted with them, no person recruited under rule 4(2) of the IFS Recruitment Rules can be given seniority over the respondents who are the initial recruits. As the Indian Forest Service itself was constituted in 1966, there is no question of giving seniority to any recruits beyond 1966. It is urged by the learned Counsel that the first examination of the Indian Forest Service having been held in 1967 after the constitution of their service, there is also no question of lost opportunity so far as the ECOs and SSCOs are concerned. It is submitted that if such examinations had started to be held from 1952, then it could be said that the ECOs and SSCOs had lost the opportunity of competing in such examinations in view of their joining the army. Accordingly, it is submitted that so far as the Indian Forest Service is concerned, the consideration for giving weightage to the ECOs and SSCOs on the basis of their past services in the army does not apply.

Attractive though the contentions are, we are unable to accept the same. It is true that the respondents were the initial recruits when the Indian Forest Service was constituted in 1966 and that the other recruits including the ECOs and SSCOs entered the service after the respondents, but this fact has very little bearing on the question of fixing the year of allotment having regard to

the past services of such recruits. The respondents themselves were appointed to the Indian Forest Service in 1966, but they have been given the year of allotment as '1964 <sup>1</sup>/<sub>2</sub>', that is to say, long before the Service came into existence. If it is possible in the case of the respondents, we fail to understand why it is not possible in the case of other recruits including the ECOs and SSCOs. The grievance of the respondents is that the ECOs and SSCOs having been appointed subsequent to their appointment or, in other words, they having entered service after the respondents, they could not be given a year of allotment prior to that allotted to the respondents. This contention is again misconceived. So far as the respondents are concerned, the year of allotment has been granted to them on the basis of certain principles, as contained in rule 3 of IFS (Regulation of Seniority) Rules, 1968. The ECOs and SSCOs are, however, governed by the impugned rules and their year of allotment has been fixed as '1964' which is prior to the year of allotment of the respondents and, accordingly, the ECOs and SSCOs are senior to the respondents in the Indian Forest Service. In the Indian Police Service also the year of allotment of the ECOs and SSCOs is prior to that of those respondents who are in that Service.

We do not think that any invidious discrimination has been made between the ECOs and SSCOs on the one hand and the respondents on the other, both in regard to Indian Forest

Service and Indian Police Service, as contended on behalf of the respondents. As soon as it is found that the ECOs and SSCOs have been classified into a distinct and separate class, and that such classification is reasonable, no objection can be taken to the year of allotment given to them in accordance with the impugned rules. After giving our anxious consideration to the respective contentions of the parties and after considering the different rules and regulations and also the fact that the ECOs and SSCOs had voluntarily offered their services for the defence of the country during the period of emergency, disagreeing with the High Court and the Tribunal, we are of the view that no illegality has been committed by the Government in framing the impugned rules with retrospective effect. We hold that the impugned rules are quite legal and valid.

For the reasons aforesaid, the impugned judgments of the High Court and of the Tribunal are set aside and all these appeals are allowed. There will, however, be no order as to costs in any of these appeals.

*Saf* .....  
(MURARI MOHON DUTT)

*Saf* .....  
(S. RATNAVEL PANDIAN)

New Delhi,

September 26, 1989

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

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 7 NOV 1989

IA III IN

APPLICATION NO (s)

970 to 981/87(F), 715 & 716/88(F)

W.P. NO (D)

Applicant (s)

Shri G.K. Shanava & 13 Ors

To

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Advocate  
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3. The Secretary  
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New Delhi - 110 003

4. The Secretary  
Ministry of Home Affairs  
Department of Personnel and  
Administrative Reforms  
North Block  
New Delhi - 110 001

5. The Chief Secretary  
Govt. of Karnataka  
Vidhana Soudha  
Bangalore - 560 001

Respondents

V/s The Secretary, M/o Home Affairs, Dept of  
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Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~REMARK~~/~~REMARK~~ ORDER  
passed by this Tribunal in the above said application(s) on 25-10-89.

*By [Signature]*  
DEPUTY REGISTRAR  
(JUDICIAL)

**In the Central Administrative  
Tribunal Bangalore Bench,  
Bangalore**

Ans: 970-981 / 87(F), 715 & 716/88(F) 3 -

G.K. Shenava & 13 Ors.

K.R.D. Karanth & N.B. Bhat

V/s The Secretary, M/o Home Affairs, New Delhi

Order Sheet (contd)

& 9 Ors

M.S. Padmarajaiah, S.V. Narasimhan &

Mehandas H. Mehta

Orders of Tribunal

Date	Office Notes	Orders of Tribunal
		<p><u>VC/LHAR(AM)</u> 25-10-1989</p> <p><u>ORDERS</u></p> <p><u>in Applications: 970 to 981/87(F)</u>  <u>And 715 and 716 of 1988(F).</u></p> <p>In these cases, some of the respondents have sought for extension of time. The applications for extension of time were made when the matters were pending before the Supreme Court.</p> <p>Sri M.V.Rao appearing for Sri M.S.Padmarajaiah, has placed before us the Order made by the Supreme Court in Civil Appeals Nos.4068-70 of 1989 and connected cases, dated 26-9-1989, reversing the decision rendered by us. On this view, the question of allowing the applications for extension of time, does not arise.</p> <p>We therefore reject these applications <i>as having become unnecessary.</i></p> <p style="text-align: center;">S1 — S1 —</p> <p>VICE CHAIRMAN MEMBER (A)  <b>TRUE COPY</b> 25-10-89</p> <p style="text-align: center;">B.A. Venkatesh  DEPUTY REGISTRAR (JD)  CENTRAL ADMINISTRATIVE TRIBUNAL  BANGALORE</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Commercial Complex(BDA)  
Indira Nagar, Bangalore-560 038.

File of A.No. 991- 993/88

Dated the 6-12-89

To

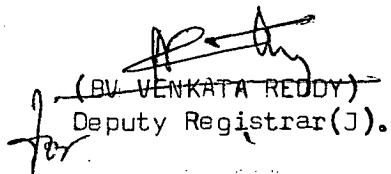
1. The Registrar,  
Central Administrative Tribunal,  
Principal Bench, Faridkot House,  
Copernicus Marg, NEW DELHI-110 001.
2. The Registrar,  
Central Administrative Tribunal,  
Calcutta Bench,  
CGO Complex, 234/4-AJC Bose Road,  
CALCUTTA-700 020.
3. The Registrar,  
Central Administrative Tribunal,  
Bombay Bench, CGO Complex,  
Ist Floor, Near Kankon Bhavan,  
NEW BOMBAY-400 614.
4. The Registrar,  
Central Administrative Tribunal,  
Allahabad Bench, 23-A, Thorn Hill Road,  
ALLAHABAD-1.
5. The Registrar,  
Central Administrative Tribunal,  
Chandigarh Bench, SCO No.102-103,  
Sector-34-A,  
CHANDIGARH.
6. The Registrar,  
Central Administrative Tribunal,  
Guwahati Bench, Rajgarh Road,  
Off. Shillong Road,  
GUWAHATI-781 005.
7. The Registrar,  
Central Administrative Tribunal,  
Ernakulam Bench,  
Kandamkulathy Towers, 5th Floor,  
M.G.Road, ERNAKULAM.
8. The Registrar,  
Central Administrative Tribunal,  
Patna Bench, 88-A, Shrikrishna Nagar,  
PATNA- 800 001.

9. The Registrar,  
Central Administrative Tribunal,  
Jabalpur Bench, Carava Complex,  
15-Civil Lines, JABALPUR (M.P.)
10. The Registrar,  
Central Administrative Tribunal  
Madras Bench, EVK Sampath Bldgs.,  
5th Floor, DPI Compound, College Road,  
MADRAS-600 006.
11. The Registrar,  
Central Administrative Tribunal,  
Jodhpur Bench,  
C/o Rajasthan High Court,  
JODHPUR, Rajasthan.
12. The Registrar,  
Central Administrative Tribunal,  
Hyderabad Bench,  
New Insurance Bldg., Complex, 6th Floor,  
Tilak Road, HYDERABAD.
13. The Registrar,  
Central Administrative Tribunal,  
Ahmedabad Bench, Navrang pura,  
Near Sardar Patel Colony,  
Usmanpura, AHMEDABAD.
14. The Registrar,  
Central Administrative Tribunal,  
Cuttack Bench, Dolmandi,  
CUTTACK-753 001.

Sir,

With reference to Principal Bench's circular No.14/1/89-JA/2719, dated 20-3-89, I am forwarding herewith a copy of the particulars of the orders passed by the Supreme Court of India in SLP/CA/CMP, preferred against the cases on the file of this Bench.

Yours faithfully,

  
(BV VENKATA REDDY)  
Deputy Registrar(J).

Copy to:-

1. P.S. to Hon'ble & Members, (A)
2. File No.13/89-J-II.
3. Court Officers.

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

1. The OA/TA/CCP No. of the Case appealed: A.NO. 991-993 of 1988
2. Name of Parties:
  - (a) Applicant(s)/Petitioner(s) : Dr.S.Krishnamurthy IPS & ors
  - (b) Respondent(s) : U.O.I by its Secry. Ministry of Home Affairs, New Delhi & ors
3. Nature of case in brief : ~~xxx~~ Fixation of Seniority  
Allowing earlier year of appointment to EC/SSC with higher seniority-Challenged
4. Name of the Bench which passed the impugned orders : BANGALORE BENCH
5. Whether the case was:-
  - (a) Allowed or disallowed : Allowed
  - (b) Date of Order : 26.8.88
  - (c) Bench comprising of : Honble Sh.K.S.Puttaswamy ViceChair man and Honble Sh.L.H.A.Rego M (A)
6. SLP/Civil Appeal No, : C.A Nos 4066-70/89 (In SLP No. 14926-29 of 88) and connected CAs.
7. Parties name before the Hon'ble Supreme Court:-
  - (a) Applicant(s)/Petitioner(s) : UOI and others
  - (b) Respondents : Dr.S.Krishnamurthy & ors
  - (c) Date of Interim Order : 19.01.89 pending disposal no reversal shall take place
  - (d) Nature of Order in brief (may contain the order if not too long) : Final order dated 26.9.88 of SC CAT orders set aside. Appeal allowed, Held that no illegality committed in allotment of seniority.
  - (e) Whether operation of the order of the Tribunal stayed/restricted or modified. : CAT order set aside

Re 15910

SPG

Rajkumar  
Smt. K.

5423/88/

Sec. IVA

D. No. 5423/88/  
SUPREME COURT OF INDIA  
NEW DELHI

Dated 6th October, 1989

From:

The Assistant Registrar,  
Supreme Court of India,  
New Delhi

To

The Registrar, Central Administrative Tribunal  
B.D.A. Complex, Indiranagar, Bangalore.

CIVIL APPEAL NOS 4073 -75 OF 19 89  
High Court Application Nos. 991-993/88 )

346/SC/1989  
29/10/1989  
T. Madiyal & Ors.

..... Appellants.

Versus

Supreme Court of India & Ors.

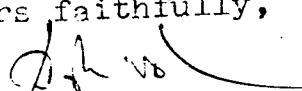
..... Respondents

Sir,

In pursuance of Order 13, Rule 6, S.C.R.1966, I am directed by their Lordships of the Supreme Court to transmit herewith a certified copy of the Judgment/~~order~~ dated the 26th September, 1989 in the Appeal above-mentioned. The Certified copy of the Decree made in the said appeal will be sent later on.

Please acknowledge receipt.

Yours faithfully,

  
ASSISTANT REGISTRAR.

AS |

210126

Certified to be true copy  
D. S. / S.  
Assistant Registrar (Judl.)  
..... D. S. / S. .... 1989  
Supreme Court of India

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NOS. 4068-70 OF 1989  
(Arising out of SLPs (C) Nos. 14926-28 of 1988)

Union of India & Ors. .... Appellants

Versus

Dr. S. Krishna Murthy & Ors. .... Respondents

A N D

CIVIL APPEALS NOS. 4071-72 OF 1989  
(Arising out of SLPs (C) Nos. 14897-98 of 1988)

Jagjit Lamba & Anr. .... Appellants

Versus

Union of India & Ors. .... Respondents

A N D

CIVIL APPEALS NOS. 4073-75 OF 1989  
(Arising out of SLPs (C) Nos. 14732-34 of 1988)

T. Madiyal & Ors. .... Appellants

Versus

Union of India & Ors. .... Respondents

W I T H

CIVIL APPEAL NO. 4076 OF 1989  
(Arising out of SLP (C) No. 10105 of 1988)

Union of India & Ors. .... Appellants

Versus

Subimal Roy & Ors. .... Respondents

W I T H

CIVIL APPEALS NOS. 4077-90 OF 1989  
(Arising out of SLPs (C) Nos. 15218-31 of 1988)

Union of India & Ors. .... Appellants

Versus

G.K. Shenava & Ors. .... Respondents

JUDGMENT

DUTT, J.

These special leave petitions have been heard at length and elaborate submissions have been made on behalf of the parties at the preliminary hearing and, accordingly, we grant special leave in all these matters and proceed to dispose of the same on merits.

These appeals have been preferred by the Union of India and some erstwhile Emergency Commissioned Officers (for short 'ECOs') and Short Service Commissioned Officers (for short 'SSCOs') and directed either against the judgment of the learned Single Judge of the Calcutta High Court or against the judgment of the Central Administrative Tribunal, Bangalore. The Tribunal has struck down the impugned rules, namely, rule 3(2)(d) of the Indian Forest Service (Regulation of Seniority) Rules, 1968, hereinafter referred to as 'IFS (Regulation of Seniority) Rules, 1968', and clauses (c) and (d) of sub-rule (3) of rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954, hereinafter referred to as 'IPS (Regulation of Seniority) Rules, 1954', as ultra vires Articles 14 and 16 of the Constitution of India and has directed the Government of India to assign fresh years of allotment to the ECOs and SSCOs, who were some of the respondents before the Tribunal.

Before the Calcutta High Court, rule 3(2)(d) of the IPS (Regulation of Seniority) Rules, 1954 was involved and the High Court on a construction of that rule allowed the

writ petition of the respondents and set aside the impugned order relating to the year of allotment of ECOs and SSCOs.

The period between 1.11.1962 and 10.1.1968 is marked by three events, namely, Indo-Chinese War followed by Indo-Pakistan War and the proclamation of emergency. These ECOs and SSCOs voluntarily entered the Armed Forces of the Union of India at a time when the security of the nation was in peril due to external aggression. As they were engaged in defending the country by accepting the war service, they did not get any opportunity to enter into civil services. The Central Government assured them that after the cessation of emergency, they will be rehabilitated in civil life so that they might not suffer on account of their rendering services to the nation. The grievance of the respondents who have been recruited to Indian Forest Service or the Indian Police Service from State Services is that although the ECOs or SSCOs, have been recruited in the said All India Services after the respondents, yet their year of appointment has been fixed earlier than the year of allotment of the respondents.

At this stage, we may refer to the impugned rules. Rule 3(2)(d) of the IFS (Regulation of Seniority) Rules, 1968 provides as follows:-

"3(2). The year of allotment of an officer appointed to the Service shall be-

- (a) .....
- (b) .....
- (c) .....

(d) where an officer is appointed to the Service in accordance with rule 7A of the Recruitment Rules, deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1957.

Explanation.-If an officer, who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7A of the Recruitment Rules and who have the same year of allotment."

Rule 3(2)(d) refers to rule 7A of the Recruitment Rules which provides, inter alia that till January 28, 1974, 20 per cent of the permanent vacancies in the Indian Foreign Service to be filled by direct recruitment in any year shall be reserved for being filled by ECOs and SSCOs of the Armed Forces of the Union of India, who were commissioned after November 1, 1952 and who have been released from the Armed Forces after a spell of service.

Clauses (c) and (d) of sub-rule (3) of rule 3 of IPS (Regulation of Seniority) Rules, 1954 provide as follows:-

"3(3)(a) .....,  
(b) .....,  
(c) The year of allotment of an officer

appointed to the Service in accordance with rule 7A of the Indian Police Service (Recruitment) Rules, 1954, shall be deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under rule 4 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955.

Explanation.-If an officer, who qualified himself for appointment to the Service in a particular year could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7A of the Recruitment Rules and who have the same year of allotment.

(d) The year of allotment of an officer appointed to the Service in accordance with rule 7A of the Indian Police Service (Recruitment) Rules, 1954, having been eligible under the second proviso to sub-regulation (iii) of Regulation 4 of the Indian Police Service (Emergency Commissioned and Short Service Commissioned Officers) (Appointment by Competitive Examination) Regulations, 1971, shall be deemed to be the year in which he would have been so appointed at his first or second attempt, after the date of joining pre-commission training or the date of his Commission where there was only post-commission training and also after the lapse of as many years as would have been necessary for him to complete his studies, in the normal course, for the award of the educational qualifications prescribed for direct recruitment to the Indian Police Service according as he qualified for appointment to the Service in his first or second chance as the case may be."

Both the above rules, namely, IFS (Regulation of Seniority) Rules, 1968 and IPS (Regulation of Seniority) Rules, 1954 have been framed under All-India Services Act, 1954, hereinafter referred to as 'the Act'. The Act, before it was amended, conferred power on the Central Government to make rules for the regulation of recruitment and the conditions of service of persons appointed to an All-India Services. No power was, however, conferred by the Act on the Central Government to frame rules with retrospective effect. The impugned rules, namely, rule 3(2)(d) of the IFS (Regulation of Seniority) Rules, 1968 and clauses (c) and (d) of sub-rule (3) of rule 3 of IPS (Regulation of Seniority) Rules, 1954 are admittedly retrospective in operation. It is now a settled principle of law that if the statute under which a rule is framed does not confer on the authority concerned the power to make such a rule with retrospective effect, the authority will have no power to frame any rule with retrospective effect. The impugned rules, with which we are concerned, have been made by the Central Government with retrospective effect, although there was no such power conferred by the Act in that regard.

The All-India Services (Amendment) Act, 1975 has been enacted by Parliament for the purpose of validating the impugned rules. By section 2 of the Amendment Act, a new sub-section (1-A) has been inserted after sub-section (1) of section 3 of the Act, which has been referred to as "the principal Act" in the Amendment Act, Sub-section (1-A)

provides as follows:-

"(1-A). The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

The provision for validation is contained in section 3 of the Amendment Act and it reads as follows:-

"3. No rule made, or purporting to have been made, with retrospective effect, under section 3 of the principal Act before the commencement of this Act shall be deemed to be invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and accordingly every such rule and any action taken or thing done thereunder shall be as valid and effective as if the provisions of section 3 of the principal Act, as amended by this Act, were in force at all material times when such rule was made or action or thing was taken or done."

The ECOs and SSCOs, who are some of the appellants, after demobilisation of the military emergency service, have been appointed in the Indian Police Service and the Indian Forest Service in 1969. In view of their past service in the army, which they had voluntarily joined for the defence of the country during the period between 1.11.1962 and 10.1.1968, the impugned rules were framed providing for the year of allotment of such officers appointed in the Indian Police Service or in the Indian Forest Service with retrospective effect from the date they would have been appointed at their first or second attempt after the date of joining pre-commission training or the date of their commission where there was only post-commission training.

think that there is any merit in the finding of the Tribunal and also in the contention of the respondents that the impugned rules are violative of the provisions of Articles 14 and 16 of the Constitution.

Both the High Court and the Tribunal have taken the view that, although section 3 of the All-India Services (Amendment) Act, 1975 validates the impugned rules purporting to have been made with retrospective effect, yet the impugned rules are invalid inasmuch as they prejudicially affect the interests of the respondents. Much reliance has been placed by the respondents on the provision of the new sub-section (1-A) of section 3(1) of the Act as inserted by section 2 of the Amendment Act, 1975. Sub-section (1-A) provides, inter alia, that no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. The contention of the appellants is that sub-section (1-A) is itself not retrospective in operation and, as such, has no application to the impugned rules which are retrospective in operation, that is, before sub-section (1-A) was inserted in section 3.

It is, however, difficult to accept the contention of the appellants that sub-section (1-A) is only prospective and does not apply to the impugned rules which are retrospective in operation. It has been already noticed that the impugned rules have been validated with retrospective effect by section 3 of the Amendment Act

which, in validating any rule made with retrospective effect under section 3 of the Act, provides that no such rule shall be deemed to have been invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and, accordingly, every such rule and any action taken or thing done thereunder shall be as valid and effective as if the provisions of section 3 of the Act (principal Act), as amended by the Amendment Act, were in force at all material times when such rule was made or action or thing was taken or done. In view of section 3, it has to be deemed that provisions of section 3, as amended by the Amendment Act, were in force at all material times when such rule was made. In view of the provisions of section 3 of the Amendment Act, sub-section (1-A) which has been inserted in section 3 of the Act by way of amendment, must be deemed to be in force at the time the impugned rules were made. But the question is, even though sub-section (1-A) is deemed to have been there at the time the impugned rules were framed with retrospective effect, whether the impugned rules prejudicially affect the interests of the respondents.

It is urged on behalf of the respondents that the impugned rules take away the vested rights of the respondents and, consequently, prejudicially affect their interests. Accordingly, it is submitted that the impugned rules are illegal and cannot operate retrospectively in the face of the provision of sub-section (1-A). This contention

does not at all impress us. The respondents have been given a particular seniority in accordance with the relevant rules. The seniority of the respondents is not taken away or interfered with by the impugned rules. The year of allotment of the respondents remains the same and is not altered to their prejudice. The impugned rules only provide for giving weightage to the ECOs and SSCOs for their past services in the army during the emergency period and their year of allotment will be determined in accordance with the impugned rules. It is, however, complained that by giving the ECOs and SSCOs a year of allotment which is prior to the year of allotment of the respondents, the respondents have become their juniors and their (respondents) chances of promotion are seriously affected.

At this stage, we may also notice the contention of Mr. Raju Ramachandran, learned Counsel appearing on behalf of some of the respondents. It is submitted by the learned Counsel that as the respondents have acquired a particular seniority, section 3 of the Act as amended, if read as suggested by the army officers, would contravene the fundamental rights of the respondents. This extreme contention is not sustainable on the face of it, for even assuming that the seniority of the respondents or their chances of promotion are affected by the impugned rules, surely it cannot be said that there has been a contravention of the fundamental rights of the respondents. Nobody has any fundamental right to a particular seniority or to any chance of promotion. It is not the case of the respondents

that because of the impugned rules their cases for promotion will not be taken into consideration by the authorities. The decision in A. Janardhana v. Union of India, [1983] 2 SCR 536 has no manner of application to the facts and circumstances of the instant cases. In that case, this Court has laid down that it is open to the Government to retrospectively revise service rules, if the same does not adversely affect vested rights. Further, it has been observed as follows:-

"After the promotee is promoted, continuously renders service and is neither found wanting nor inefficient and is discharging his duty to the satisfaction of all, a fresh recruit from the market years after promotee was inducted in the service comes and challenges all the past recruitments made before he was born in service and some decisions especially the ratio in Jaisinghani's case as interpreted in two B.S.Gupta's cases gives him an advantage to the extent of the promotee being preceded in seniority by direct recruit who enters service long after the promotee was promoted. When the promotee was promoted and was rendering service, the direct recruit may be a schoolian or college going boy. He emerges from the education institution, appears at a competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with service."

We have already pointed out that the impugned rules do not affect the vested rights of the respondents adversely. In Janardhana's case, this Court was dealing with the question of seniority of promotees vis-a-vis fresh recruits from the market and observed that when the promotee was promoted and was rendering service, the direct recruit might be a schoolian or college going boy. In the instant cases

before us, the dispute is not between promotees and direct recruits, the latter having no past services to their credit. The ECOs and SSCOs are not in the position of direct recruits, for they have a record of past services in the army which have been taken into consideration for fixing their year of allotment in accordance with the impugned rules. So, Janardhana's case has no manner of application to the facts and circumstances of the instant cases before us.

It is not that for the first time by the impugned rules, the past services of the ECOs and the SSCOs have been taken into consideration for the purpose of giving them their year of allotment with retrospective effect, that is to say, on a date earlier than their actual appointment in the Indian Police Service or in the Indian Forest Service, as pointed out by Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the Government-appellants. The learned Additional Solicitor General has drawn our attention to the notings in the Government files for the purpose of showing the Government policy to rehabilitate the ECOs and SSCOs in All-India Services, Central Services and State Services in order to ensure good response and to provide sufficient incentives for those who offered themselves for emergency commissions. These, notings start from November 17, 1962. It is not necessary for us to make a particular reference to the notings in the Government files. Suffice it to say that in view of the voluntary offer of services by the youngmen of our country

to defend the country against foreign aggression, the Government took a very sympathetic view and took steps to compensate them after their discharge from the Emergency Commission Service, for the opportunity lost by them in joining the All-India Services. One thing which is very significant to be mentioned here that although their past services were taken into consideration, the Government did not relax the minimum qualifications required for the All-India Services. These ECOs and SSCOs had to appear in the competitive tests held by the Union Public Service Commission and they were appointed only after they became successful in such tests.

In this connection, we may refer to the Office Memorandum dated January 29, 1966 providing for the rehabilitation of the ECOs and SSCOs recruited since November 1, 1962, after their release from the Armed Forces. The contents of the Memorandum are in the nature of executive instructions, but such executive instructions were followed and were given effect. Paragraph 6 of the Memorandum which deals with seniority and pay reads as follows:-

**"6. Seniority and pay.**

Seniority and pay of those candidates who are appointed against the reserved vacancies in the All-India and Central Services would be determined on the assumption that they entered service/post at the first opportunity they had after joining for pre-Commission training. The principles regarding fixation of pay and seniority laid down in this Ministry's Office Memorandum No.F.35/11/62-Ests.(B) dated the 6th

August, 1963 read with Office Memorandum of even number dated 15th February, 1965 (copy enclosed) will apply mutatis mutandis to determine the pay and seniority of ex-Emergency Commissioned Officers/Short Service Regular Commissioned Officers appointed against the reserved vacancies."

Thus, although the impugned rules were not in existence in 1965, the executive instructions as contained in the Office Memorandum conferred the same benefit as conferred by the impugned rules. In other words, it is apparent that the executive instructions have now been adopted as rules framed under the Act. Even otherwise, the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967, framed by the President of India under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India, contained similar provisions as to the seniority and pay of ECOs and SSCOs. Indeed, the provision of rule 6 relating to seniority of pay of ECOs and SSCOs is somewhat similar to paragraph 6 of the Office Memorandum. The date of commencement of the said rules is significant to be noticed. Under sub-rule (2) of rule 1, the said rules shall be deemed to have come into force with effect from January 29, 1966 which is the date of the said Office Memorandum. It is, therefore, manifestly clear that the executive instructions, as contained in the Office Memorandum, have been incorporated in the form of rules framed under proviso to Article 309 and clause (5) of Article 148 of the Constitution of India.

It is, however, submitted on behalf of the respondents that in view of the All-India Services (Conditions of Service - Residuary Matters) Rules, 1960 (for short 'Residuary Rules'), the said rules framed under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India will not apply to persons appointed to an All-India Service. The contention, in our opinion, is not correct, for clause (a) of rule 2 of the Residuary Rules provides that the Central Government may make regulations to regulate any matters relating to conditions of service of persons appointed to an All-India Service for which there is no provision in the rules made or deemed to have been made under the Act and until such regulations are made such matters shall be regulated in the case of persons serving in connection with the affairs of the Union of India, by the rules, regulations and orders applicable to officers of the Central Services Class-I. Admittedly, no rules under the Act were then framed in regard to the seniority of ECOs and SSCOs and/or granting them weightage for their past war service and, accordingly, the rules framed under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India applicable to Class-I Officers of the Central Government were also applicable to ECOs and SSCOs relating to their seniority in the All-India Services.

It is urged on behalf of the appellants that while the benefit of weightage is being conferred on the discharged ECOs and SSCOs way back from 1966, the writ petitions of the respondents should have been dismissed on the ground of

inordinate delay and laches. In support of this contention, some decisions have been cited by the appellants. Similarly, the respondents have also placed reliance on some other decisions of this Court. We do not think that after the writ petitions were entertained by the Calcutta High Court and by the Tribunal and disposed of on merits, it will be proper at this stage to dismiss the writ petitions on the ground of inordinate delay or laches. At the same time, it should be borne in mind that when a particular rule conferring benefits on a particular group of Government servants in recognition of their past services in the army, has been in operation for over twenty years, this Court will be very slow to interfere with the rule and deprive such group of Government servants of the benefits so conferred on them. This, however, does not mean that this Court will shut its eyes even though such rules are illegal and are violative of the provisions of Articles 14 and 16 of the Constitution. We have, however, held that the impugned rules do not offend against or infringe the provisions of Articles 14 and 16 of the Constitution.

Now, we may consider the contention of Mr. Lalit, learned Counsel appearing on behalf of the respondents in the appeal arising out of S.L.P. (C) No.10105 of 1988. These respondents were in the State Forest Service before 1966 and, subsequently, absorbed in the Indian Forest Service under the Central Government. It is not disputed that unlike Indian Police Service, the Indian Forest Service

was constituted much later in the year 1965. It is also not disputed that the respondents were the first batch of incumbents or entrants in the Indian Forest Service. It is submitted on behalf of the respondents that the Indian Forest Service was constituted with the respondents as the initial recruits.

We may now refer to some of the provisions of Indian Forest Service (Recruitment) Rules, 1966, hereinafter referred to as 'IFS Recruitment Rules'. Rule 3 of the IFS Recruitment Rules relates to the constitution of the Service. It provides as follows:-

"3. Constitution of the Service.-The Service shall consist of the following persons, namely:-

- (a) Members of the State Forest Service recruited to the service at its initial constitution in accordance with the provisions of sub-rule (1) of rule 4; and
- (b) persons recruited to the service in accordance with the provisions of sub-rules (2) to (4) of rule 4."

So, under rule 3, the Service consists of members of the State Forest Service recruited to the Service at its initial constitution and persons recruited in accordance with the provisions of sub-rules (2) to (4) of rule 4. The next relevant provision is rule 4. Sub-rules (1) and (2) of rule 4, which are relevant for our purpose, are extracted below:-

"4. Method of recruitment to the Service.-

- (1) As soon as may be after the commencement of these rules, the Central Government may recruit

to the Service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Governments and the commission:

Provided that no member holding a post referred to in sub-clause (ii) of clause (g) or rule 2 and so recruited shall, at the time of recruitment, be allocated to any State cadre other than the cadre of a Union Territory.

(2) After the recruitment under sub-rule (1), subsequent recruitment to the Service, shall be by the following methods, namely:

(a) by a competitive examination;

(aa) by selection of persons from amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968 and who are released in the manner specified in sub-rule (1) of rule 7A;

(b) by promotion of substantive members of the State Forest Service."

It appears from sub-rules (1) and (2) that there are four methods of recruitment. The first method is as contained in rule 4(1), that is, the initial recruits from the State Forest Service. The other three methods of recruitment have been provided for in sub-rule (2) including the recruitment of ECOs and SSCOs who were commissioned during the period of emergency and released in the manner specified in sub-rule (1) of rule 7A. It is, however, clear that the recruits under sub-rule (2) including the ECOs and SSCOs are recruited after the initial recruits under rule 4(1). Another thing to be noticed is that the first examination for recruitment in the Indian Forest Service was held by the Union Public Service Commission in 1967.

It is strenuously urged by Mr. Lalit that as the respondents were the initial recruits or, in other words, the Indian Forest Service having been constituted with them, no person recruited under rule 4(2) of the IFS Recruitment Rules can be given seniority over the respondents who are the initial recruits. As the Indian Forest Service itself was constituted in 1966, there is no question of giving seniority to any recruits beyond 1966. It is urged by the learned Counsel that the first examination of the Indian Forest Service having been held in 1967 after the constitution of their service, there is also no question of lost opportunity so far as the ECOs and SSCOs are concerned. It is submitted that if such examinations had started to be held from 1952, then it could be said that the ECOs and SSCOs had lost the opportunity of competing in such examinations in view of their joining the army. Accordingly, it is submitted that so far as the Indian Forest Service is concerned, the consideration for giving weightage to the ECOs and SSCOs on the basis of their past services in the army does not apply.

Attractive though the contentions are, we are unable to accept the same. It is true that the respondents were the initial recruits when the Indian Forest Service was constituted in 1966 and that the other recruits including the ECOs and SSCOs entered the service after the respondents, but this fact has very little bearing on the question of fixing the year of allotment having regard to

the past services of such recruits. The respondents themselves were appointed to the Indian Forest Service in 1966, but they have been given the year of allotment as '1964  $\frac{1}{2}$ ', that is to say, long before the Service came into existence. If it is possible in the case of the respondents, we fail to understand why it is not possible in the case of other recruits including the ECOs and SSCOs. The grievance of the respondents is that the ECOs and SSCOs having been appointed subsequent to their appointment or, in other words, they having entered service after the respondents, they could not be given a year of allotment prior to that allotted to the respondents. This contention is again misconceived. So far as the respondents are concerned, the year of allotment has been granted to them on the basis of certain principles, as contained in rule 3 of IFS (Regulation of Seniority) Rules, 1968. The ECOs and SSCOs are, however, governed by the impugned rules and their year of allotment has been fixed as '1964' which is prior to the year of allotment of the respondents and, accordingly, the ECOs and SSCOs are senior to the respondents in the Indian Forest Service. In the Indian Police Service also the year of allotment of the ECOs and SSCOs is prior to that of those respondents who are in that Service.

We do not think that any invidious discrimination has been made between the ECOs and SSCOs on the one hand and the respondents on the other, both in regard to Indian Forest

Service and Indian Police Service, as contended on behalf of the respondents. As soon as it is found that the ECOs and SSCOs have been classified into a distinct and separate class, and that such classification is reasonable, no objection can be taken to the year of allotment given to them in accordance with the impugned rules. After giving our anxious consideration to the respective contentions of the parties and after considering the different rules and regulations and also the fact that the ECOs and SSCOs had voluntarily offered their services for the defence of the country during the period of emergency, disagreeing with the High Court and the Tribunal, we are of the view that no illegality has been committed by the Government in framing the impugned rules with retrospective effect. We hold that the impugned rules are quite legal and valid.

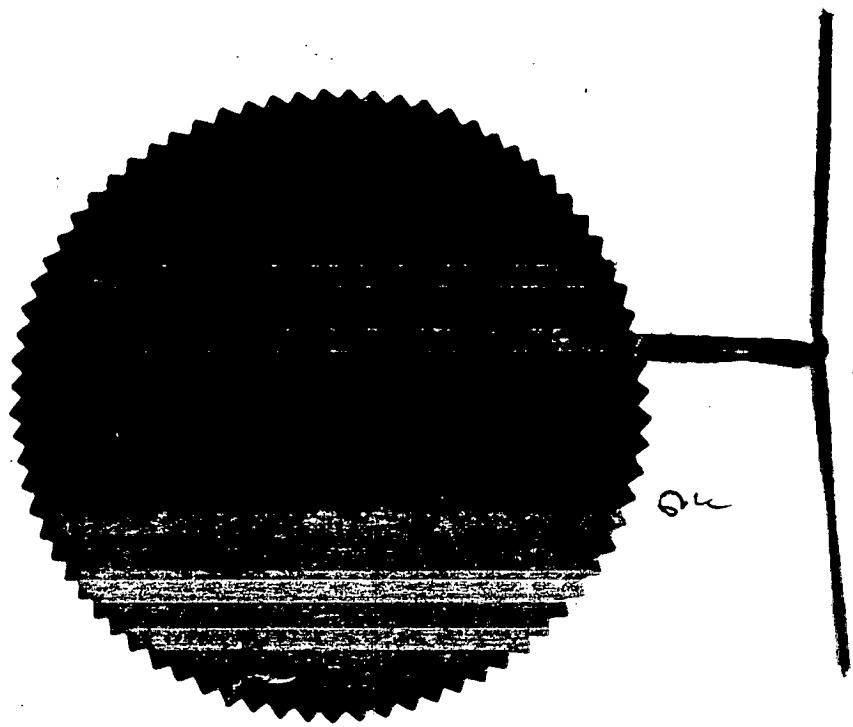
For the reasons aforesaid, the impugned judgments of the High Court and of the Tribunal are set aside and all these appeals are allowed. There will, however, be no order as to costs in any of these appeals.

*Sd/-*  
.....  
(MURARI MOHON DUTT)

*Sd/-*  
.....  
(S. RATNAVEL PANDIAN)

New Delhi,

September 26, 1989



Aug 2, 1988  
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