

(1990) 02 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.P. No. 257 of 1980

Babu Joseph

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-02-1990

Acts Referred:

Border Security Force (Subordinate Officers and Under Officers Promotion and Seniority) Rules, 1975 — Rule 119(1), 129, 13(2), 18(2), 19(1)
Border Security Force Rules, 1969 — Rule 14A(2)
Central Reserve Police Force (Amendment) Rules, 1967 — Rule 118
Constitution of India, 1950 — Article 14, 16

Citation : (1990) 35 MPLJ 417 : (1990) MPLJ 417

Hon'ble Judges : T.N. Singh, J; S.K. Dubey, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; N.P. Mittal, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.

Nine years ago, the petitioner came to this Court and lodged the instant petition for redressal of a two-fold grievance complaining brazen violation by respondents 1 to 4 of Articles 14 and 16 of the Constitution and of statutory provisions resulting in his supersession and loss of seniority.

There are three sets of statutory Rules which fall for our consideration in this case and it is necessary, therefore, to state clearly the position in that regard at the very outset. The Border Security Force Act, 1968, for short, 1968 Act, takes care to indicate vide section 142(1) the fact of prior existence of the "Force" constituted under the Act; sub-section (3) saves expressly anything done or any action taken generally and also in particular in relation to any person appointed or enrolled in the "Force". The Border Security Force Rules, 1969, for short, 1969 Rules, have been framed by the Central Government in exercise of powers conferred u/s 141 of 1968 Act and Rule 181 of these Rules also contains a saving

clause of the same purport. Another set of Rules have also been framed under the 1968 Act, entitled B.S.F. (Subordinate Officers and Under Officers' Promotion and Seniority) Rules, 1975, for short, "New" or 1975 Rules and B.S.F. (Seniority, Promotion and Superannuation) Rules, 1978, for short, 1978 Rules. Admittedly, however, before coming into force of 1975 Rules, the provisions of Central Reserve Police Force Rules, 1955, for short, "Old" or 1955 Rules, as amended by the Central Reserve Police Force (Fourteenth Amendment) Rules, 1967 were applicable to the members of the B.S.F. comprising the Subordinate Officers, Under Officers and Constables. Chapter XV was inserted in the 1955 Rules, captioned "Special Provisions Relating to the Border Security Force". This Chapter covers Rules 117 to 136 and indeed, subsequently in the "New" or 1975 Rules, these provisions have been materially reproduced.

What is not disputed is that the petitioner was selected as a Sub-Inspector (Platoon Commander Direct Entry) in the Border Security Force on 16-11-1967 and he underwent requisite training at B.S.F. Academy at Tekanpur from 20-11-1967 to 12-7-1968. What is disclosed in Annexure P/2 is also that he was awarded Home Minister's Silver Medal being best PC (Eo) Cadet of the Force. During the course of his service, he suffered postings in the Rajasthan and Gujarat Sectors and as per Annexures P/7 and P/12, with effect from 20-9-1975, his as also names of some other Sub-Inspectors were "brought on Common List E" for promotion to the post of Inspectors. Annexure P/13 is an order passed on 14-12-1979 by the Director General, B.S.F. conferring "with immediate effect the local rank of Assistant Commandant" on the petitioner during his posting at B.S.F. Academy, Tekanpur. In that order, it is expressly mentioned, however, that conferment of the local rank does not "give him any benefit in seniority". He is still at Tekanpur holding the same post for the last 11 years and is aggrieved because he has been superseded by his batchmates, as per Annexures P/5, P/6 and PAS. They have been impleaded as Respondents 5 to 46. As per Annexure P/5. it is claimed, respondents Nos. 18, 21, 34 and 35 were promoted as Inspectors when they had put in only two years' service as Sub-Inspectors. Annexure P/8 is a comprehensive and detailed statement giving particulars of promotion of different respondents as Inspectors and Assistant Commandants. To wit respondent No. 7 (A. R. Patel) was appointed as Sub-Inspector on 17-11-1967 and promoted as Inspector on 5-1-1971 and as Assistant Commandant on 16-6-1976; respondent No. 18 (D. L. Ruria) was appointed as Sub-Inspector on 1-2-1968, promoted as Inspector on 1-8-1970 and Assistant Commandant on 16-7-1976, so on and so forth.

Only one return has come on record and that is from respondents 1 to 4. They are - (i) Secretary, Ministry of Home Affairs, Government of India, New Delhi, (ii) The Director General, Border Security Force, North Block, New Delhi, (iii) The Deputy Director (Organisation), Organisation Directorate, New Delhi and (iv) IG, BSF (P and G), Jodhpur. The defence set up is as blatant as is the impugned action. The facts pleaded by the petitioner are indeed not denied specifically except making the bold and bald averment that petitioner's seniority had been

correctly fixed on the basis of selection amongst batchmates and there had been no deviation from the Rules. It is also averred that petitioner's promotion from Sub-Inspector to Inspector had been considered under rule applicable to him, vide para 16(J). What is also averred is that petitioner's service in Rajasthan and Gujarat sectors was under valid posting on completion of his training and no injustice was caused to the petitioner if he was considered ineligible for promotion by the Inspector General of the "Frontier" in which he served. See, in this connection, sub-paras (E) and (F) of para 16. Rule 136 of the 1975 Rules, according to para 7 of the return, is "directory" and it is also claimed that under Rule 119, the "headquarter" had not to do anything. The competent authority to promote Sub-Inspector was Deputy Inspector General.

What has intrigued and amused us immensely is indeed the fact that the return does not deal with any of the several documents filed as annexures to the writ petition. Hostile discrimination being complained, it was the bounden duty of the respondents to discharge its onus in regard thereto to fulfil the mandate of Articles 14 and 16 of the Constitution in view particularly of the fact that petitioner had made representations to the Director General on 7-6-1974, 21-4-1976, 15-11-1977, 24-3-1979 and 12-4-1979 (Annexures P/9 to P/10-D respectively) and he was not favoured with any reply. Indeed, there is no denial in the return with regard to facts and circumstances appertaining to Annexure P/10-E which manifests that on 26-7-1979, the petitioner was granted a "personal interview" by the Director General. Thereafter also, representations were made on 1-8-1979 and 16-11-1979 (Annexures 10-F and 10-G) before Lawyer's -notice (Annexure P/II) went to respondents 1 to 3 on 10-3-1980.

What is crystal clear is the gravamen of petitioner's complaint in regard to denial to him of equal opportunity contemplated under Article 16 of the Constitution for his being superseded as a result of blatant infraction by the respondents of statutory provisions. Those may, therefore, be referred. The terms "Force", "member of the Force", "officer" and "subordinate officer" are defined in clauses (1), (o), (r) and (v) of section 2(1) of 1968 Act. Section 7 of the said Act, requires every member of the Force to serve in any part of India, as well as outside. Power of dismissal, removal or reduction in rank of any person subject to the Act, according to section 11(4), has to be exercised not only subject to the provisions of the Act, but also of the Rules. The Central Government is empowered u/s 141 to frame rules for the purpose of carrying into effect the provisions of the Act. As already indicated, section 142(1) and Rule 181 of 1969 Rules have been made applicable to the Border Security Force in existence at the commencement of the Act all provisions made under the Act as also made under both "New" and "Old" Rules by envisaging that members of the Force appointed earlier shall be deemed to have been appointed under the Act.

Chapter II of 1969 Rules deals with "Recruitment", while Chapter III deals with "Organisation" and in both chapters there are some Rules which are to be noticed. Rule 10 concerns appointment of an "officer" and the probationary

period in that regard. According to Rule 11, a Sub-Inspector ("Subordinate Officer") may be appointed by the Deputy Inspector General directly, besides promotion or by deputation. Rule 14-A speaks of "Ranks" and enumerates separately classification of posts (including that of Sub-Inspectors) under sub-heads "Officers", "Subordinate Officers" etc.; sub-rule (2) provides, "matters relating to inter se seniority of persons belonging to the same rank shall be determined in accordance with such rules as may be made in this behalf". We may now refer to "New" or 1975 Rules. Of those Rules, Rule 9 provides, "Seniority in any rank shall be determined on the basis of continuous regular appointment in that rank". According to Rules 7 and 8, seniority list of Sub-Inspectors and Inspectors (Subedars) "shall be maintained" by Deputy Inspector General and Inspector General respectively. Rule 11 has a Table appended indicating competent authorities in regard to "officiating promotions" made in respect of persons holding posts, among others, of Sub-Inspectors and Inspectors. This provision is *pari materia* with Rule 127 of "Old" or 1955 Rules. Similarly the New Rule 12 materially reproduces Old Rule 130 and provides for list of persons approved for promotion at different ranks to be maintained and speaks of List E in regard to Sub-Inspectors. New Rule 13(2) provides for List E (as also list D) to be maintained at the Directorate General, B.S.F., that has to be a "Consolidated Gradation List". New Rule 18, lays down procedure of selecting Sub-Inspectors for list E and Rule 19 for preparation of promotion list.

New Rule 18(2) has a significant feature, absent in the Old Rules. However, we propose to extract not only relevant portions of Old Rule 136 but also some other provisions of the Old or 1955 Rules. Rule 18(2) for the first time, contemplates that nominees of the Commandant to be recommended to the Inspector General to be considered for promotion to the rank of inspector must have the specified qualifications. Among others, it is contemplated that he "shall have completed not less than three years" service as Sub-Inspector", : Other Old Rules:

"118. Merit and suitability in all respects as basis of Promotion.

In all ranks promotion shall be based on merit and suitability in all respects with due regard to seniority.

Passing of pre-promotion course essential for Promotion.

(1) A member of the Border Security Force shall, before any promotion be required to pass a pre-promotion course referred to rule 28 and such other examinations as may be specified by the Director General, Border Security Force, from time to time:

Provided that if the competent authority is satisfied that on account of exigencies of service or other reasons such a member is not able to pass the pre-promotion course, he shall be required to pass the next available pre-promotion course.

Basis of seniority in any rank - seniority in any rank shall depend on the date of continuous officiation or appointment in such rank.

Exemption from passing pre-promotion course: -

Till such time as the pre-promotion course referred to in rule 128 becomes available to every person qualified to join them, not qualifying in any one of them shall not stand in the way of his promotion, which may be considered on the basis of his performance in the existing rank.

Procedure of selecting Sub-Inspectors (Platoon Commanders) for list "E" and promotion from Sub-Inspector (Platoon Commander) to Inspectors (Company 2/ICS).

(1) Once every year the Commandant shall recommend to the Inspector General, through the Deputy Inspector General concerned, such Sub-Inspector (Platoon Commander) whom he considers suitable for promotion to the rank of Inspectors (Company 2/ICS).

(2) The Inspector-General of the Frontier shall constitute a Board consisting of himself and all the Deputy Inspectors General under him and two Commandants of the Battalions. (Proviso not relevant).

(3) The Board shall consider the record of service of the nominees, their performance in the course, and seniority and test them on parade and interview them.

(4) The Board shall prepare a list of names of officers found fit for inclusion in list "E".

(5) The names will be arranged in order of seniority:

Provided that in case where the Board considers the performance, merit and record of service of an officer of outstanding merit, the Board may place his name above his seniority.

(6) A Gradation list of Sub-Inspectors (Platoon Commanders) approved for inclusion in list "E" shall be maintained in Headquarters of the Border Security Force".

It is true New Rules 7 and 8 have precursors in Old Rules 123 and 124 in that seniority list of Sub-Inspectors had to be maintained "Statewise" and that of Inspectors "Frontierwise", under Old Rules; but those provisions must be read subject to Rule 125 which is reproduced in the New Rule 9 earlier noted. Both rules bear the same caption, "Basis of Seniority". Admittedly, in the text words used in both rules are "Seniority in any rank" and further in one case, the other expression used is "shall be determined" and in other case, "shall depend on". The language used in New Rule 9 and Old Rule 125 fully exposes and justifies the overriding purport and character of the right contemplated thereunder in regard to "seniority".

Right to seniority in any rank, in our view, is controlled by Rule 9 (New) and Rule 125 (Old) and the New Rules 7 and 8 corresponding to the Old Rules 123 and

124 are merely procedural. That is indicated by the use therein of the word "maintain". The purport of the word is to prescribe the procedure only as is suggested by the language of the New Rules 7 and 8. The Rules speak of the duty of the person concerned, namely, in one case of the Deputy Inspector General and in another case, of Inspector General, in regard to such lists to be maintained; and nothing else. Also important in this context is relevance of Rule 14-A(2) of 1969 Rules contemplating Rules for "inter se seniority of persons belonging to the same rank" and obviously that purpose is served by Rules 7 and 8. The provision requiring a common gradation list to be prepared as per New Rule 13(2), corresponding to Old Rule 136(6), is also significant. When that list is prepared, to arrange therein names of persons the order of "seniority" has to be followed. Evidently, use of the word "seniority" therein can only have reference to Old Rule 125 or New Rule 9. Otherwise, it will make no sense in preparing a common list of all candidates who are to be selected for promotion from the post of Sub-Inspector to Inspector. Support for this view is also provided by the Proviso to Old Rule 136(5) corresponding to Proviso to New Rule 19(1). The order of merit may be changed by the Board and "seniority" of any candidate may be relegated if another candidate's performance, merit and record of service are found to be of "outstanding grade". It is clear that the prescribed procedure postulates A.C. Rs. of all candidates to be available and taken into consideration and as such, there can be little scope for considering at that stage, any "Statewise" or "Frontierwise" seniority as service records of all candidates are pooled for a singular grading.

Reliance of Shri Mittal on Indian Administrative Service (Cadre) Rules, 1954, to contest petitioner's case of "common seniority", in our opinion, is misconceived. We do not think if such an exercise would be legitimate as service conditions in respect to service variously constituted for varying purposes cannot be equated. This court in *Dr. P. Gopal Ratnarh's case* 1989 MPLJ 610 : 1989 LLJ 443, observed that there is no constitutional restriction on the State Government or Union Government framing Service Rules to provide for recruitment to any service in any particular manner or to specify in the Rules any particular procedure of recruitment and other matters. Having regard to the language of Article 309 we reiterate that the appropriate government has plenary powers to frame Service Rules for the constitution of any particular service in order to provide appropriate conditions of service of any personnel of such service inasmuch as the Constitution has not even provided any constitutional format or model for such Rules.

The members of the Border Security Force are supposed to render an entirely different kind of service as section 4 of the Act indicates. The Force is constituted "as an armed force of the Union for ensuring the security of the borders of India". The different provisions of the Act and the Rules framed thereunder leave no room for any doubt that members of the Force are subjected to a different kind of discipline; they perform a different duty and that too in a different manner. They are recruited differently, trained differently and also posted

differently to render a different kind of service. A soldier and a bureaucrat stand poles apart. Service Rules framed for them and bureaucrats cannot but have different bearings. To ensure that as a citizen of this free country, fundamental right of "equality of opportunity" guaranteed under Article 16 of the Constitution is not denied to him, his conditions of service are regulated in different manners that best suits his class. The language, purport and object of different sets of Service Rules applicable to the members of B.S.F. make this position clear.

Law is well-settled that any statutory provision, its purport and language has to be construed on its own terms and only in case of ambiguity, reference may be made to general scheme of legislation on a given subject if that affords any help on the construction of the provision in question. The general rule of construction rather is that words and expressions used in the Act take their colour from the context in which they appear. (See - *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, ; *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, It is equally well-settled that when two Acts form a cognate legislation and are in *pari materia* forming one Code, they are to be interpreted as such; provisions not truly in *pari materia* are to be ignored and not referred to divine the legislative intent of any particular provision merely because such an exercise, in any particular case, is found convenient. (See - *J.K. Steel Ltd. Vs. Union of India (UOI)*, ; *Sachidananda Benerji, Assistant Collector of Customs Vs. Sitaram Agarwala and Another*, Law being as is just stated, Shri Jain's reliance, on the other hand, on 1978 Rules is appropriate and relevant. Rule 3(2)(ii) of the said Rules is as follows:

"3. Seniority of officers - (1) All officers holding a higher rank whether in an officiating or substantive capacity shall be senior to officers holding a lower rank.

(2) In a particular rank-

(ii) Seniority of officers appointed to any post in substantive capacity shall be determined in accordance with the date of appointment to that post in a substantive capacity and where two or more officers are appointed to a post in a substantive capacity on the same date, their seniority shall be determined in accordance with their seniority to such post in an officiating capacity"

Although the provision applies to the case of an "officer", it clears the purport, and object underlying Rule 9 (of 1975 Rules) of mentioning "continuous regular appointment" for seniority. Aforequoted Rule 3(2)(ii) in specific terms refers to "date of appointment" to signify clearly that continuation of appointment shall be reckoned from the date it is made. It is true, the "appointment" contemplated in the extract has to be valid appointment as petitioner has contended in this case, submitting that respondents 5 to 46 cannot be senior to him by securing regular appointment in higher posts by illegal promotion. In that regard, Shri Jain also cited this Court's decision in *Rajendra Singh's case* 1986 CCLJ 69 : 1986 LLJ 202 , wherein denial of opportunity to take "pre-promotion test" by "posting out" of a member of B.S.F. was held illegal and the order, it was held, tantamounted

to reduction in rank of the person concerned. In Reserve Bank of India and Others Vs. C.N. Sahasranaman and Others, cited by Shri Mittal, the question was entirely different and we do not think that it benefits the answering respondents in any way. The scheme of promotion drawn up by the Reserve Bank envisaged consideration of "centrewise" seniority of employees and that was held to be non-violative of Articles 14 and 16 of the Constitution. There was no question of interpretation of statutory provision in that regard.

Under the Old Rules of 1955, as held in Rajendra Singh (supra), the right contemplated in regard to any member of the Force to pursue a pre-promotion course, is indefeasible. That position is also maintained under the New Rules of 1975. The stand of answering respondents that the provision is "directory" is wholly worthless. Right to promotion is an essential ingredient of conditions of service of public employment and that can be imperilled at the risk of infringing Article 16 of the Constitution. That apart, on its own term, Rule 119(1) read with its Proviso, leaves no room for any doubt in regard to its mandatory character. Rule 129 partakes the same character as the provision is complementary and rights contemplated under both rules are indeed inter-linked as are the two provisions. When the mischief likely to result from infringing the right contemplated under Rules 119 and 129 is constitutionally interdicted, the provision cannot but have a mandatory character. The proviso to section 119(1) speaks of the duty of the competent authority to ensure that the member of the Force "shall be required to pass the next available pre-promotion course". The language is peremptory, but the object is more salutary than that. Test to determine the nature of any statutory provision, whether mandatory or directory, is well-settled by now. The Court is required to look at the language, the purpose and object of the provision in the Scheme of the statute and conceive also the "danger" that would ensue from non-compliance with the provision. (See - Banwarilal Agarwalla Vs. The State of Bihar and Others, ; Virjiram Sutaria Vs. Nathalal Premji Bhavadia and Others, ; Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, ; Lachmi Narain and Others Vs. Union of India (UOI) and Others,

14-A. Indeed, petitioner's complaint is that the primal or original sin of the respondents to deny to the petitioner right envisaged to him under Rule 119 is unpardonable because that is compounded by the violation of Rule 129. His promotion could be considered on the basis of his "performance in the existing rank" if the pre-promotion course could not be arranged for him; but that was not done. In the return there is no explanation from respondent 3 in that regard despite the admitted fact that at the relevant time the petitioner was posted under him in the Rajasthan Sector. Although Old Rules did not contain provision parallel to Rule 18(2) of New Rules signifying the qualifying period for consideration for promotion, according to Old Rule 118, "merit and suitability" of the petitioner (as per his A.C. Rs.) ought to have been considered by respondent 3. Indeed, the second part of Rule 129 postulates expressly the necessary requirement of the Old Rule expressly specifying the basis for consideration -

"performance in the existing rank".

For another just grievance, in which we see much merit, no cause at all has been shown and no explanation is forthcoming to satisfy us how petitioner's batchmates, named in Annexures P/5 and P/8, could be given accelerated promotion, some of them putting in only two years' service only. Petitioner's name came on List E for promotion to post of Inspector with effect from 20-9-1975 while his compeers got promotion in that post between 1970 and 1973. He made representation as per Annexure P/1 on 7-6-1974 submitting that with him 13 of the batchmates came to be posted in the Rajasthan/Gujarat sectors, but only four remained in Rajasthan others being posted out to such places as Manipur and Jammu and Kashmir. He submitted that he could have got at least 3 or 4 chances to appear in pre-promotion course like his colleagues who had become Inspectors for three years and indeed in his next representation, submitted on 21-4-1976, he also mentioned that in qualification, he ranked best among his compeers being a Science Graduate and that his performance was excellent, evidenced by commendation cards/appreciation certificates and A.C. Rs. He also submitted that in the first chance itself in 1973, he passed promotion course and was approved for promotion and that fact was vocal to suggest his "merit and suitability" for timely promotion along with his comperrs, which was denied to him.

On facts accordingly, it has been established beyond dispute that no explanation is forthcoming as to why petitioner could not be considered for promotion in 1970 along with respondent No. 18. Whether respondent 3 or for that matter the commander or D.I.G. concerned performed their respective duties envisaged under Old Rules 129 and 136 read with Rule 118? There is no whisper of it in the return. It is true that New Rule 20 contemplates accelerated promotion in case of "any person who is considered to be of exceptional merit", but it is also provided that number of such persons so promoted shall not exceed 10% of number of vacancies in each rank in any one year. The burden was on respondents to satisfy the Court that respondents 5 to 46 could be, and have been, given accelerated promotion under Rule 20. That burden has not been discharged. In that regard also, petitioner's complaint of hostile discrimination has due merit. It is too late today to dispute the constitutional proposition settled by the Constitution Bench in D.S. Nakara and Others Vs. Union of India (UOI), in regard to burden of authorities facing charge of hostile discrimination. (See also, Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh,

For all the foregoing reasons, we have no hesitation to hold that petitioner is entitled to a mandamus and that is issued in terms of a two-fold direction to be carried out by respondents 1-3. In doing so, we have taken in view the just submission of Shri Mittal that it is not possible for us to assess on facts the point of time when petitioner could be validly promoted to a particular post and what rank he should hold now. He has claimed that his batchmates are Deputy Commandants for several years, but it has to be decided by the respondents, by

assessing his merit and dues step-wise in terms of the relevant statutory provisions. He has to be given promotion on particular dates to particular posts and his seniority in respective posts has also to be fixed on appropriate dates. We direct the respondents that petitioner's entitlement to promotion due be fixed with reference to 1970 and to pass orders in regard to his promotion to respective posts on due dates, fixing properly his seniority in respective posts, in the light of observations herein made. That shall be done within three months. This direction we have made keeping in view not only discrimination suffered by petitioner vis-a-vis Respondent No. 18, but also the provisions of New Rule 18(2). The petitioner being appointed on 16-11-1967, he had completed three years on 16-11-1970. As such his entitlement to promotion for higher post had to be considered on that date; and on other subsequent dates for next higher post than of Inspector and beyond. That has to be done now by respondents.

Before parting with the records, we must observe that Shri Mittal had undertaken a puerile and futile exercise, but that has to be noticed for his satisfaction. Counsel cited Naresh Chand Saha, AIR 1970 SC 864; Tilakchand Motilal, ibid 898; Dayaram Asanand Gursahani Vs. State of Maharashtra and Others, , as also this Court's decision in Virendrasingh 1977 MPLS 32 : 1976 LLJ 491, but on facts, benefit of the holding thereof relied on by Shri Mittal does not accrue to the respondents. The petitioner, by no stretch of imagination, can be held guilty of laches. Annexure P/7 is an order passed on 10-3-1975 with regard to petitioner's promotion and seniority, but he raised hue and cry prior to that by his representation, Annexure P/9, submitted on 7-6-1974 and subsequently also on different dates regularly and continuously. We do not think if he can be found guilty of being smart, awake and vigilant in the matter of protecting his constitutional and statutory right. Pendency of the instant petition in this Court for nine years will attach no stigma to him as the delay in disposal of this petition has been caused due to other reasons. He invoked this Court's jurisdiction by filing the instant petition on 12-12-1980 after serving Demand of Justice Notice on respondents through lawyer, on 10-3-1980. Service on respondents 5 to 46 could be effected with great difficulty and only on 29-8-1989, the petition was treated ripe for hearing after service was recorded in respect of respondents excepting respondents 9, 28, 30, 35, 37, 40, 41, 42, 45 and 46. The last mentioned ten respondents having left service, their names were deleted.

In the result, the petition succeeds and is allowed in terms of the directions hereinabove made. However, we do not award the petitioner costs because respondents 1 to 3 cannot be blamed for the protraction of the proceedings in this Court. They had filed return expeditiously, on 21-4-1981; and they also assisted the Court in effecting service on respondents 5 to 46.