

(2006) 04 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 25161 of 2004 and 1081 of 2005

G. Narasimha Murthy

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 06-04-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22, 22(1), 22(3)
Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 — Rule 17, 17(2), 18, 19
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 15, 16, 17
Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 — Rule 4, 6, 6(1), 7
Civil Procedure Code, 1908 (CPC) — Section 113, 115, 122, 59, 80
Constitution of India, 1950 — Article 103(1), 119, 133, 136, 136(2)
Evidence Act, 1872 — Section 123, 124
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
State Bank of India Act, 1955 — Section 43, 43(1)

Citation : (2006) 3 ALD 370 : (2006) 3 ALT 433

Hon'ble Judges : P.S. Narayana, J;J. Chelameswar, J;B. Seshasayana Reddy, J

Bench : Full Bench

Advocate : Rama Rao, Subrahmanya Sarma, Krishna Murtby, C. Sai Reddy, P. Venkataswamy, C. Nagaiah, K. Satyanarayana Rao, K. Umapati and G. Tuhini Kumar, for the Appellant; Government Pleader for Services II, Assistant Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The question of the power of the Andhra Pradesh Administrative Tribunal (in short hereinafter referred to as "A.P.A.T.") to condone the delay beyond the period specified under Rule 17 of the Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 (in short hereinafter referred to as "Rules" for the purpose of convenience) beyond the period of 30 days specified had been referred to the Full Bench in the light of the decision of yet another Full Bench in G. Narasimha Rao Vs. Regional Joint Director of School Education and Others, , wherein it was held that A.P.A.T. has no jurisdiction to

condone delay in filing review application in the light of the language of Rule 19 of the Rules.

2. Several writ petitions are being filed as against the orders of A.P.A.T. wherein the applications moved beyond time under Rule 17 are being dismissed on the ground that A.P.A.T. has no power to condone delay beyond the specified period.

3. Sri Rama Rao, the learned Counsel representing certain writ petitioners would maintain that the language employed in Rule 19 is different from the language in Rule 17 of the Rules. The learned Counsel also would contend that in case of review application, the matter would be within the knowledge of the concerned Counsel, whereas in case of default orders, such orders may or may not be within the knowledge of the concerned Counsel of the party, as the case may be, and hence, inasmuch as there is no specific or express exclusion on the applicability of the Limitation Act, 1963 under Rule 17 of the Rules, an application to condone delay can be definitely maintained. The learned Counsel also made certain submissions in relation to the powers of the Tribunal to dismiss for default which would have the power to restore also by implication. The learned Counsel also pointed out to Section 29(2) of the Limitation Act, 1963.

4. Sri Subrahmanya Sartna, the learned Counsel representing certain writ petitioners had drawn the attention of this Court to Section 22(3)(h) of the Administrative Tribunals Act, 1985 (in short hereinafter referred to "the Act") and Section 5 of the Limitation Act, 1963. The learned Counsel also had carefully analyzed the language employed in Section 22 of the Act and would contend that Section 35 of the Act deals with the Rule making power and in exercise of the said power the Rules had been framed. The learned Counsel while further elaborating the submissions had traced the historical background commencing from Sampath Kumar to Chandra Kumar and also would maintain that the A.P.A.T. virtually is having all the powers of the High Court. The learned Counsel had drawn the attention of this Court to Sections 14 and 15 of the Act and also the relevant entries in List-I and List-II and Articles 225, 226, 227 and 323-A of the Constitution of India. The learned Counsel also would maintain that default orders are of different kinds and there are several default orders, which are being made in view of the defective Cause List like wrong printing of the name of the Counsel or wrong printing of the numbers of the relevant O.As., and the like reasons and hence the learned Counsel would contend that in such matters, principles of natural justice would come into play and when such default orders are made due to such mistakes, the A.P.A.T. is having inherent power to restore the matters, if not, the applicants would be seriously prejudiced. Sri Subrahmanya Sarma while elaborating his submissions also had drawn the attention of this Court to Paras 62, 64, 65, 66 and 68 of the decision of L. Chandra Kumar Vs. Union of India and others, and would contend that all the powers of the High Court under Article 226 of the Constitution of India so far as they relate to Service matters are concerned, had been transferred to the A.P.A.T. The learned Counsel also had drawn the attention of this Court to Section

14(1) and Section 15(1) of the Act. The learned Counsel also had drawn the attention of this Court to Rules 17 and 18 and would submit that in the light of the language between these two Rules, different treatment is being given to the litigants figuring as applicants and respondents. The learned Counsel also had drawn the attention of this Court to Rules 15 and 16 of the Central Administrative Tribunal Rules.

5. Sri Krishna Murthy, the learned Counsel representing certain writ petitioners while virtually adopting the same line of submissions, in elaboration had carefully scrutinized the language of Rule 19 and also the language of Rule 17 of the Rules and had pointed out to the non-exclusion of the application of Section 5 of the Limitation Act, 1963. The learned Counsel also had drawn the attention of this Court to Section 29 of the Limitation Act, 1963 and made certain submissions relating to the powers of the Tribunal and also the powers of the Courts and would maintain that in view of Section 29(2) of the Limitation Act, 1963, the relevant provisions of the Limitation Act, 1963 may have to be held to be applicable to the A.P.A.T. too.

6. Heard Sri C. Sai Reddy, Sri P. Venkataswamy, Sri C. Nagaiah, Sri K. Satyanarayana Rao, Sri K. Umapathy and Sri G Tuhini Kumar, the learned Counsel representing the writ petitioners. The learned Counsel representing the petitioners in different writ petitions virtually had adopted the arguments advanced by the other Counsel already referred to supra.

7. Per contra, the learned Government Pleader for Services II would maintain that though the language of Rule 19 and Rule 17 of the Rules are not exactly akin, the fact remains that even in Rule 17(2) specifically period of 30 days had been specified and even to set aside the default order on an application filed within time, the Tribunal should be satisfied in relation to the sufficient cause for his non-appearance when the application is called for hearing. The learned Counsel would maintain that in that view of the matter, the Rule making authority had been very specific in not giving such benefit of condonation of delay beyond the specified period by making it very clear and explicit and hence, it must be taken that the language in the said Rule is imperative in nature and hence what had not been specified in the Rule cannot be read into the Rule unless otherwise it is permissible under Law. The learned Counsel also in detail explained the decision of the Full Bench in G. Narsimha Rao's case (supra).

8. The learned Assistant Solicitor General, on notice issued by this Court, made the following submissions:

The learned Counsel explained that the Rule was framed specifying 30 days period keeping in view the difference between the applicants approaching the Tribunal and the respondents who are expected to contest such matters. The learned Counsel also explained that in most of the cases, the State alone would be the contesting party though incidentally certain other contesting respondents also may be there shown as respondents. The learned Counsel also would

maintain that merely because the time had been specified in a particular Rule and such time had not been specified in yet another Rule, by that it cannot be said that the Rule is either arbitrary, discriminatory, unreasonable, irrational or unconstitutional. The learned Counsel also had drawn the attention of this Court to the different provisions of the Administrative Tribunals Act, 1985, the Rule making power and the competency in relation thereto and also would maintain that a particular Rule cannot be held to be invalid on comparison with yet another Rule or in the background of the another analogous Rule. The Counsel also placed strong reliance on certain decisions.

9. Heard the Counsel on record.

10. The question which had been referred to is of general importance. The Act (Central Act 13 of 1985) is an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto. Section 3 of the Act deals with definitions and Section 3(aa) inserted by Act 19 of 1986 defines Administrative Tribunal as in this Act, unless the context otherwise requires, "Administrative Tribunal", in relation to a State, means the Administrative Tribunal for the State or, as the case may be, the Joint Administrative Tribunal for that State and any other State or States. Section 14 of the Act deals with jurisdiction, powers and authority of the Central Administrative Tribunal. Likewise, Section 15 of the Act deals with jurisdiction, powers and authority of State Administrative Tribunal. Section 19 of the Act deals with Applications to Tribunals. Section 20 of the Act deals with Application not to be admitted unless other remedies exhausted. Section 21 of the Act deals with Limitation. Section 22 of the Act dealing with Procedure and powers of Tribunals reads as hereunder:

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as maybe advanced.

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil Court under the Code of Civil

Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or, documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

Section 22(3)(h) of the Act had been strongly relied upon by the Counsel representing the writ petitioners. Section 35(1) of the Act reads as hereunder:

The Central Government may, subject to the provisions of Section 36, by notification, make rules to carry out the provisions of this Act.

Section 35(2) (d), (e) and (f) of the Act read as hereunder:

- (d) the form in which an application may be made u/s 19, the documents and other evidence by which such application shall be accompanied and the fees payable in respect of the filing of such application for the service or execution of processes;
- (e) the rules subject to which a Tribunal shall have power to regulate its own procedure under Sub-section (1) of Section 22 and the additional matters in respect of which a Tribunal may exercise the powers of a civil Court under Clause (i) of Sub-section (3) of that section; and
- (f) any other matter which may be prescribed or in respect of which rules are required to be made by the Central Government.

In exercise of the powers under the aforesaid provisions, the Rules were made by the Central Government. Rule 19 dealing with review of application to be filed within thirty days specifies "no application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought". Rule 17 is the relevant Rule which deals with action on application for applicant's default and the said Rule reads as hereunder:

(1) Whereon on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merits.

(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same.

Provided, however, where the case was disposed of on merits the decision shall not be responded except by way of review.

Sub-section (2) specifically says that where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same.

11. On the strength of the language employed in Sub-section (2), submissions at length were made by the Counsel on record. In *The Director, Intermediate Education, Government of A.P. Vs. Rama Prabhakara Rao, School Assistant, Government Tribal Welfare Ashram High School*, it was held that the jurisdiction of A.P.A.T. to punish for their contempt in respect of matters covered by Section 14(1) is the same as vested in High Court under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971. Article 323-A of the Constitution of India reads as hereunder:-

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under Clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said Tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in Clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any Court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under Clause (3) of Article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

In *J.B. Chopra and Others Vs. Union of India (UOI) and Others*, , the two Judge Bench of the Apex Court at Para 2 held as hereunder:

In *S.P. Sampath Kumar v. Union of India* 1986 JT (SC) 996 : AIR 1987 SC 386, the Constitution Bench has held that the Act is a law made by Parliament under Clause (1) of Article 323A to exclude the jurisdiction of the High Courts under Articles 226 and 227 of the Constitution. Section 28 of the Act which bars the jurisdiction of all Courts except the Supreme Court is relatable to Clause 2(d) of Article 323-A for adjudication of service matters including questions involving the validity or otherwise of such laws on the ground that they abridge the fundamental rights under Articles 14 and 16(1) of the Constitution, and that the Administrative Tribunal set up u/s 4 of the Act is a substitute of, and not supplemental to, the High Court providing an equally efficacious alternative remedy for adjudication of such disputes. It has further held that the establishment of the Administrative Tribunal under the Act therefore takes away the jurisdiction and power of the High Court to interfere in such matters but it is not violative of the doctrine of judicial review which is a fundamental aspect of the basic structure of our Constitution because Section 28 of the Act which bars the jurisdiction of the High Court under Articles 226 and 227 of the Constitution preserves the jurisdiction and power of the Supreme Court under Articles 32 and 136 of the Constitution. It accordingly follows that the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution. That being so, the contention advanced by the petitioners that the Administrative Tribunal had no authority or jurisdiction to strike down the impugned notification dated March 15, 1980 purporting to amend Rule 4 of the Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 reserving 100 per cent vacancies to the post of Superintendent to be filled by the Head Clerks

and thereby debarring Stenographers (Sr.) from being considered for promotion to that post, as being wholly mala fide, arbitrary and irrational and thus offending Articles 14 and 16(1) of the Constitution, must therefore fail.

The Full Bench of this Court in Sakinala Harinath and Ors. v. State of A.P. and Ors. 1994 (1) APLJ 1 (FB) , held that Article 323-A(2)(d) of the Constitution of India is unconstitutional to the extent it empowers Parliament, by law to exclude the jurisdiction of the High Court under Article 226 and consequently, further declare that Section 28 of the Administrative Tribunal Act, 1985 to the extent it divests the High Court of its jurisdiction under Article 226 is unconstitutional. As the vires of no statute is questioned in any of the writ petitions, we are of the view that the petitioners should approach the Andhra Pradesh State Administrative Tribunal established under the Administrative Tribunals Act, 1985 for redressal of their grievances : when the petitioners have an effective alternative remedy, we are not inclined to adjudicate the individual merits of any case. If the petitioners approach the Administrative Tribunal, it shall entertain their representations and dispose of them in accordance with law. With the above declarations and directions, both the writ petitions and writ appeals are disposed of." In Chandrakumar v. Union of India and Ors. (supra) it was held that the Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have under our Constitutional set up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parents statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. The Supreme Court further added that the Tribunals, will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, it meant that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. The directions issued by the Supreme Court in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e., will apply to decisions rendered hereafter. To maintain sanctity of judicial proceedings, it invoked the doctrine of prospective overruling so as not to disturb

the procedure in relation to decisions already rendered." Strong reliance was placed on Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , wherein the scope of proceedings under Article 226 of the Constitution of India had been dealt with in detail by the Constitution Bench. Submissions at length were made in relation to the expressions "Court" and also "Tribunal" and reliance was placed on the under-noted decisions to explain the expression "Tribunal":

The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, ; Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, ; Abhijit Vs. Dean, Government Medical College, Aurangabad and Another, ; Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, ; Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others, ; Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, ; Samyukta Socialist Party Vs. Election Commission of India and Another, ; and Shri Sadiq Ali and Another Vs. The Election Commission of India, New Delhi and Others, .

12. This question need not detain this Court any longer for the reason that though the Tribunal may be having certain trappings of the Court, the same cannot be equated with the Court. Suffice to state that for the purpose of applicability or otherwise of the provisions of the Limitation Act, 1963, the Tribunal cannot be equated with Court, despite the fact that the Tribunal may be having certain trapping of the Court. Strong reliance was placed on Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, , where the two Judge Bench of the Apex Court while dealing with, the Appellate Authority constituted u/s 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, whether a Court or a persona designata, observed as hereunder:

When the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but this special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period. While the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act. Once the two conditions namely (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application, (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act are satisfied Section 29(2) on its own force will get attracted to appeals filed before alternative accommodation u/s 18 of the Rent Act. When Section 29(2) applies to appeal u/s 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that section, all the provisions of Sections 4 - 24 of the

Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before appellate authority u/s 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of Limitation Act can be said to have been satisfied. It is therefore clear that the Appellate Authority constituted u/s 18 of the Kerala Rent Act, 1965 functions as a Court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of set aside. Ss. 4 - 24 of the Limitation Act, 1963. Such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate Authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals.

13. The Counsel representing the writ petitioners also made elaborate submissions on the applicability of principles of natural justice to such Tribunals and would maintain that apart from the usual default orders, several other default orders are being passed for several mistakes which are occurring in the cause-list and other like reasons for no default of either the Counsel on record or the concerned parties. Strong reliance was placed on Hashmatullah v. District Magistrate/Adhyaksha Zila Parishad Basti and Ors. (2000) 9 SCC 380, wherein the Apex Court while dealing with restoration of writ petition dismissed for want of prosecution observed that where the cause-list had not shown the party names and only mentioned name of the Counsel, there was sufficient cause for non-appearance and the petition was dismissed for default on 16-2-1993 and the appellant came to know of the default order on 4-7-1995 and filed restoration application two days later, High Court dismissing the restoration application as highly belated and refusing to restore the writ petition when the defect in the cause-list had been established and in such case restoration would be justified and declining to restore would be unjustified." The applicability of the principles of natural justice to the Tribunals being well settled, need not be overemphasized and repeated again, the catena of decisions in this regard reiterate the well settled legal position. In Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, , it was held "We find in the course of our judicial experience, and we notice this fact with some apprehension, that members of public services in alarmingly large numbers resort to legal remedies in Courts of law for agitating their grievances in regard to service matters. This phenomenon is symptomatic of a sense of injustice and subversive of that undivided and devoted attention to official duties which is so essential for efficient and dynamic functioning of the Government. While taking judicial notice of the ingredients of litigation between State and the Public servants, in Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, , the Apex Court observed:

There are few other litigative areas than disputes between members of various

services inter se, where the principle that public policy requires that all litigation must have an end can apply with greater force. Public servants ought not to be driven or required to dissipate their time and energy in Court-room battles. Thereby their attention is diverted from public to private affairs and their inter se disputes affect their sense of oneness without which an institution cannot function effectively. The Constitution of Service Tribunals by State Government with an Apex Tribunal at the Centre which in the generality of the cases should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the Courts from the avalanche of writ petitions and appeals in service matters. The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many....

In K. Ajit Babu and others Vs. Union of India and others, , their Lordships of the Supreme Court while considering the powers of Tribunal to exercise the right of review under Rule 17 of the Central Administrative Tribunal Procedure Rules, it was observed:

The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the CPC may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appeals against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at anytime at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end.

Strong reliance was placed on Paras 11, 12 and 13 of the Full Bench decision in G. Narasimha Rao's case (supra) wherein it was observed as hereunder:

Even assuming that the Limitation Act is not expressly excluded by the Administrative Tribunals Act or the Rules made thereunder, we have to see whether the scheme of the special law i.e., in this case Administrative Tribunals Act/Rules and the nature of remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern all the matters provided by it. If on an examination of the relevant provisions it is found that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act and the Rules made there-under. In our view, even in case the Act/Rules does not exclude the provisions of Sections 4 - 22 of the Limitation Act by an

express reference, it would none the less has to be examined whether and to what extent the nature of those provisions or the nature of the subject-matter and the scheme of the Act/Rules exclude their operations. The provisions of Section 3 of the Limitation Act envisages that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Whereas Rule 19 of the Rules which gives an preemptory command that no application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought.

Even otherwise the provisions of the Limitation Act which unless expressly excluded would be attracted can be made applicable to the nature of the proceedings under the Act/Rules, but the same is not what Section 29(2) of the Act says because it provides that Sections 4 - 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. If none of them are excluded all of them are applicable whether those sections are applicable or not is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. Section 6 of the Limitation Act, which provides for the extension of the period of limitation till after the disability in the case of a person who is either minor or insane or an idiot, is inapplicable to the proceedings under the Act/Rules. Similarly Sections 7 - 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of filing of applications and the procedure to be followed under the Act/Rules. The applicability of those provisions has, therefore, to be judged not from the terms of Limitation Act but by the provisions of the Administrative Tribunals Act 1985 and the Rules made thereunder relating to the filing of original applications and review applications and their disposal to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of the Act.

Rule 19 is couched in negative form and disables the person from seeking review u/s 22(3) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay u/s 21 of the Act is applicable only to the applications filed u/s 19, but the same cannot be made applicable to the review sought u/s 22(3)(f). Sub-section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal, namely that the power of the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Government. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of Limitation Act on the premise that Limitation Act is made applicable in view of Sub-section (2) of Section 29 of the Limitation Act.

14. It is no doubt true that the language employed in Rule 19 and Rule 17 of the

Rules which had been referred to supra are not exactly similar. Though, the rigor of negative language employed in Rule 19 had not been as it is incorporated in Rule 17, the fact remains that even while fixing the period of 30 days for restoration, satisfying the Tribunal relating to the sufficient cause for non-appearance was made a sine quo non. In the light of the same, the present question in controversy may have to be decided.

15. It is no doubt true that there may be some default orders of dismissal of proceedings not falling under Rule 17 and these orders may be of varied forms and though such orders may be illustratively specified, they cannot be exhaustively given. One example being such orders made due to the omissions and the defects in the cause list and of like nature. It is needless to say that the A.P.A.T. may have to judge whether such an order would squarely fall within the ambit of Rule 17 and if it does not fall within Rule 17, whether A.P.A.T. to exercise the power by invoking the principles of natural justice, de hors Rules 17 of the Rules. If an order does not fall within the ambit of the any specified Rules relating to the setting aside of the default orders, the A.P.A.T. may be at liberty to examine whether such default orders be set aside for violation of the principles of natural justice. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Constitution Bench at Para 20 held:

The aim of the rules of natural justice is to secure justice to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was though that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing {*audi alterant partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a

given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

In *State Bank of Patiala and others Vs. S.K. Sharma*, , a two Judge Bench of the Apex Court while dealing with the principles to be followed in matters of disciplinary enquiries, evolved certain basic principles of natural justice keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee as hereunder:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature, or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted there from, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. Take a case where there is a provision expressly providing that after the evidence of the employer/Government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/ employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated

under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertain whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set-aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/ employee has not waived it or that the provision could not be awarded by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principle of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule. In other words, a distinction must be make between "no opportunity" and no adequate opportunity i.e., between "no notice"Vno hearing" and "no fair hearing", (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice, in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/ employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere).

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rules, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before him.

(7) There may be situations where the interest of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

16. A Futile attempt was made to convince this Court that the powers of A.P.A.T. are analogous to the powers of the High Court under Article 226 of the Constitution of India and hence, A.P.A.T. to be taken to be having powers of restoration, de hors the Rules. This contention can not find favour at the hands of this Court and liable to be rejected for the simple reason that the very Constitutional scheme as envisaged by Articles 226, 227 and 323A of the Constitution of India would disapprove such stand. The basic structure of the Constitution, the power of judicial review of High Courts under Article 226 of the Constitution of India and the supervisory powers under Article 227 of the Constitution of India also would suggestively negative such stand. Similarity of exercise of certain powers in service matters by these Tribunals cannot be equated with the extraordinary jurisdiction in relation to the issuance of prerogative writs etc., conferred on the High Courts by the Constitution of India. Be that as it may, on a careful analysis of the scheme of the Act, the Rules framed thereunder and on the crystalization and assimilation of the whole Constitutional scheme, this Court is of the considered opinion that the powers of the A.P.A.T. in this regard cannot be equated with the powers of the High Courts under the different provisions of the Constitution of India. In Chandra Kumar's case (supra) it was held:

In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , a 13-Judge Constitution Bench, by a majority of 7:6, held that though, by virtue of Article 368, Parliament is empowered to amend the Constitution, that power cannot be exercised so as to damage the basic features of the Constitution or to destroy its basic structure. The identification of the features which constitute the basic structure of our Constitution has been the subject-matter of great debate in Indian Constitutional Law. The difficulty is compounded by the fact that even the judgments for the majority are not unanimously agreed on this aspect. (There were five judgments for the majority, delivered by Sikri, C.J., Shelat and Grover, JJ., Hedge and Mukherjee, JJ., Jaganmohan Reddy, J. and Khanna, J. While Khanna, J. did not attempt to catalogue the basic features, the identification of the basic features by the other Judges are specified in the following paragraphs of the Court's judgments: Sikri, C.J. (Para 292), Shelat and Grover, JJ. (Para 582). Hegde and Mukherjee, JJ. (Paras 632, 661) and Jaganmohan Reddy, J. (paras 1159, 1161). The aspect of judicial review does not find elaborate mention in all the majority judgments. Khanna, J. did, however, squarely address the issue (at Para 1529):

...The power of judicial review is, however, confine not merely to deciding whether in making the impugned laws the Central or State Legislatures have acted within the four corners of the legislative lists eannarked for them; the

Courts also deal with the question as to whether the laws are made in conformity with and not in violation of the other provisions of the Constitution.... As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by those rights are not contravenedJudicial review has thus become an integral part of our constitutional system and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of provisions of statutes. If the provisions of the statute are found to be violative of any article of the Constitution, which is the touchstone for the validity of all laws, the Supreme Court and the High Courts are empowered to strike down the said provisions.

In *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, , a five-Judge Constitution Bench had to, inter alia, test the Constitutional validity of provisions which ousted the jurisdiction of all Courts including the Supreme Court, in election matters. Consequently, the Court was required to express its opinion on the concept of judicial review. Though all five Judges delivered concurring judgments to strike down the offending provisions, their views on the issue of judicial review are replete with variations, Ray, C.J., was of the view that the concept of judicial review, while a distinctive feature of American Constitutional Law, is not founded on any specific Articles in our Constitution. He observed that judicial review can and has been excluded in several matters; in election matters, judicial review is not a compulsion. He, however, held that our Constitution recognises a division of the three main functions of Government and that judicial power, which is vested in the judiciary cannot be passed to or shared by the Executive or the Legislature, (Paras 32, 43, 46, 52). Khanna J. took the view that it is not necessary, within a democratic set up, that disputes relating to the validity of elections be settled by Courts of Law; he, however, felt that even so the legislature could not be permitted to declare that the validity of a particular election would not be challenged before any forum and would be valid despite the existence of disputes. (Para 207). Mathew, J. held that whereas in the United States of America and in Australia, the judicial powers is vested exclusively in Courts, there is no such exclusive vesting of judicial power in the Supreme Court of India and the Courts subordinate to it. Therefore, the Parliament could, by passing a law within its competence, vest judicial power in any authority for deciding a dispute. (Paras 322 and 323). Beg J. held that the power of Courts to test the legality or ordinary laws and constitutional amendments against the norms laid down in the Constitution flows from the supremacy of the Constitution which is a basic feature of the Constitution. (Para 622). Chandrachud, J. felt that the contention that judicial review is a part of the basic structure and that any attempt to exclude the jurisdiction of Courts in respect of election matters was unconstitutional, was too broadly stated. He pointed out that the Constitution, as originally enacted, expressly excluded judicial review in a large number of important matters. The examples of Articles 136(2) and 226(4) (exclusion of review in laws relating to armed forces), Article

262(2) (exclusion of review in river disputes), Article 103(1) (exclusion of review in disqualification of Members of Parliament), Article 329(a) (exclusion of review in laws relating to delimitation of constituencies in laws relating to delimitation of constituencies and related matters), were cited for support. Based on this analysis. Chandrachud, J. came to the conclusion that since the Constitution, as originally enacted, did not consider that judicial power must intervene in the interests of purity of elections, judicial review cannot be considered to be a part of the basic structure insofar as legislative elections are concerned.

The foregoing analysis reveals that the judges in, *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, . All of whom had been party to *Kesavananda Bharati's* case, did not adopt similar approaches to the concept of judicial review. While Beg J. clearly expressed his view that judicial review was a part of the basic structure of the Constitution, Ray, CJ and Mathew, J. pointed out that unlike in the American context, judicial power had not been expressly vested in the judiciary by the Constitution of India. Khanna, J. did not express himself on this aspect, but in view of his emphatic observations in, *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , his views on the subject can be understood to have been made clear. Chandrachud, J. pointed out that the Constitution itself excludes judicial review in a number of matters and felt that in election matters, judicial review is not a necessary requirement.

In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , Five-Judge Constitution Bench of this Court had to consider the validity of certain provisions of the Constitution (42nd Amendment) Act, 1976 which, inter alia, excluded judicial review. The judgment for the majority, delivered by Chandrachud CJ for four Judges, contained the following observations:

...Our Constitution is founded on a nice balance of power among the three wings of the State, namely, the Executive, the Legislature and the Judiciary. It is the function of the Judges, nay their duty, to pronounce upon the validity of laws. If Courts are totally deprived of that power, the fundamental rights conferred upon the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled.

If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other Court," there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution.

So long as the jurisdiction of the High Courts under Article 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323B of the Constitution. It is to be remembered that, apart from the authorisation that flows from Articles 323A and 323B, both

Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislature under Entry 65 of List II; Entry 46 of List III can also be availed of both of Parliament and the State Legislatures for this purpose.

In *Gurram Satyaseshamamba @ Gurram Satya Santamani and Others Vs. Gurram Krishnavenamma (died) by LRs. and Others*, , the Division Bench of which one of us (Justice P.S. Narayana) was a party, while dealing with Article 226 of the Constitution of India and period of limitation by ordinary legislation or the Rules observed:

The journey of law from *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, to *L. Chandra Kumar Vs. Union of India and others*, would clearly go to show that power of judicial review under Articles 226 and 227 of the Constitution of India is a part of the basic structure of the Constitution of India. In the light of the same, can there be imposition of any fetter on this power of Constitutional Courts by importing ordinary Rules of limitation specified by the Rules ? No doubt, for practice and procedure such Rules may be there, but they can neither control nor over-ride the Constitutional power vested in High Courts by virtue of either Article 226 or 227 of the Constitution of India. Hence, the contention that this is only a revisional power under Article 227 and hence it being not a new power and such power also can be restricted by ordinary Rules of limitation, cannot be accepted. Rules u/s 122 of the Code no doubt form part and parcel of the Code. Reliance was placed on *Sawan Ram and Others Vs. Guman Singh and Others*, , *Setho Das and Another Vs. Paro Devi and Others*, , *Pulin Behari Dinda and Another Vs. Byomkesh Mitra and Others*, , *Waryam Singh v. Amarnath* 1954 SCR 565. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, it was held :

The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in *Bhailal Lai Bhai's* case, 1960 M.P.C. 304 out of which Civil Appeal No. 362 of 62 has arisen. On behalf of the respondents-petitioners in these appeals (C.A.Nos.861 to 867 of 1962) Mr. Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. We argued that assuming that the remedy of recovery by action in a civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution. Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil

action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for the recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained.

In *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*, it was held:

In England, as pointed out by Bachawat, J., the Court of Chancery acted on the analogy of Statute of Limitation (vide Halsbwy, Vol.14, P.647, art. 1190).

It seems to me, however, that the above solution is not quite appropriate for petitions under Article 32. A delay of 12 years or 6 years would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Bearing in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, which had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the USA convinces me that the underlying idea of the Constitution was to provide an expeditious and authoritative remedy against the inroads of the State. If a claim is barred under the Limitation Act, unless there are exceptional circumstances, prima facie it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Indian Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State, I would dismiss the petition on the ground of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all. It is difficult to lay down a precise period beyond which delay should be explained. I favour one year because this Court should not be approached lightly, and competent legal advice should be taken and pros and cons carefully weighed before coming to this Court. It is common knowledge that appeals and representations to the higher authorities take time; time spent in pursuing these remedies may not be excluded under the Limitation Act, but it may ordinarily be taken as a good explanation for the delay.

...

...

The next and the more fundamental question is whether in the circumstances the

Court should give relief in a writ petition under Article 32 of the Constitution. No period of limitation is prescribed for such a petition. The right to move this Court for enforcement of fundamental rights is guaranteed by Article 32. The writ under Article 32 issues as a matter of course if a breach of a fundamental right is established. Technical rules applicable to suits like the provisions of Section 80 of the CPC are not applicable to a proceeding, under Article 32. But this does not mean that in giving relief under Article 32 the Court must ignore and trample under foot all laws of procedure, evidence, limitation, res judicata and the like. Under Article 145(1)(c) rules may be framed for regulating the practice and procedure in proceedings under Article 32. In the absence of such rules the Court may adopt any reasonable rule of procedure. Thus a petitioner has no right to move this Court under Article 32 for enforcement of his fundamental right on a petition containing misleading and inaccurate statements, and if he files such a petition the Court will dismiss it, see W.P. No. 183 of 1966, *Indian Sugar and Refineries Ltd. v. Union of India* decided on March 12, 1967 (SC). On grounds of public policy it would be intolerable if the Court were to entertain such a petition. Likewise the Court held in *Daryao and Others Vs. The State of U.P. and Others*, that the general principles of res judicata applied to a writ petition under Article 32. Similarly, this Court has summarily dismissed innumerable writ petitions on the ground that it was presented after unreasonable delay.

The normal remedy for recovery of money paid to the State under coercion or mistake of law is by suit. Articles 32 and 226 of the Constitution provide concurrent remedy in respect of the same claim. The extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies the recovery of which by suit is barred by limitation. Where the remedy in a writ application under Article 32 or Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Courts in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in the writ jurisdiction. On similar grounds the Court of Chancery acted on the analogy of the Statutes of limitation in disposing of stale claims though the proceeding in a Chancery was not subject to any express statutory bar, see Halsbury's Laws of England, Vol.14, page 647, Article 119, *Knox v. Gye* 5 HL 656 at p.674. Likewise, the High Court acts on the analogy of the statute of limitation in a proceeding under Article 226 though the statute does not expressly apply to the proceeding. The Court will almost always refuse to give relief under Article 226 if the delay is more than the statutory period of limitation.

In *Aidal Singh and Others Vs. Karan Singh and Others*, it was held at Para 120:

To sum up, the powers contemplated by the Constitution makers under Articles 226 and 227 appear to be different. The former is described as the power to issue certain writ orders or directions. The latter is described as the power of superintendence. There are two separate sections in the Constitution next door

to each other dealing with these powers. The power under Article 226 is only judicial. The power under Article 227 is both judicial and administrative. The power under Article 226 is exercised on the application of a party and for the enforcement of a legal right.

The power under Article 227 can be exercised suo motu by the Court as the custodian of all justice within the limits of its territorial jurisdiction and for the vindication of its position as such. For the exercise of the power under Article 226, the Court has framed rules. There are no such rules for the exercise of power under Article 227. Article 226 appears to be self-restrictive. On the other hand, there are no restrictions, if any, are self-imposed. The power under Article 227 is a power that can be exercised only over Courts and tribunals.

On the other hand, the power under Article 226 is a power that can be exercised not only over Courts and Tribunals, but also over other bodies like the Government. Article 226 confers a new power, at any rate, so far as the Allahabad High Court is concerned. On the other hand, Article 227 relates to a power which is merely a continuation of an old power. In India, legislative history discloses that there has been in the past and there is at present a rupture between the two powers. Prior to the Constitution, the power to issue writs could not be considered to be a branch of the power of superintendence, because the power of superintendence possessed by the High Courts did not carry with it the power to issue writs.

Even under the Constitution, the power of superintendence is treated as a power divorced from the power to issue writs. This is borne out by the fact that the Supreme Court possesses the power to issue writs, yet it does not possess the power of superintendence. The analogy of English law cannot hold good in India. In England the power to issue writs is a part and parcel of the power of superintendence, because the power there is exercised by the Court as a delegate of the Sovereign who is the fountain of all justice.

This is not so in India where the source or power has always been the Statute which is at present the Constitution of India. The power conferred under Article 26 in India is also wider than the power to issue high prerogative writs in England. The power exercised under Article 226 is original. On the other hand, the power exercised under Article 227 is not original. Further, it is more reasonable to hold that an appeal should lie in cases where the judgment of a single Judge relates to the judgment of a Court or Tribunal than to take a contrary view.

The contrary view would also bar the right of appeal of a party to the Supreme Court under Article 133 of the Constitution. There may be cases where both the Articles 226 and 227 are applicable. In cases where the relief can be given under both, the Court should exercise its power under Article 226 on the principle that where a specific remedy is provided, the general provisions of law should not be resorted to. In any case, if a party is otherwise entitled to a right of appeal

against an order under Article 226, the fact that the same relief could be granted under Article 227 is no reason for depriving it of the said right where the party has given the application itself under Article 226, has claimed its right to relief under the said Article, and the case itself has been entertained and disposed of by the Court under the same Article.

The contention that the Rule specifying the period of limitation cannot be rendered nugatory in view of it being public policy cannot be accepted especially in view of the post Chandra Kumar's (supra) scenario. Definitely no such fetters can be imposed on exercise of Constitutional power by these Courts. It is no doubt true that in several of the matters as against interlocutory orders under the Code, since in view of the amended Section 115 of the Code, Revisions cannot be maintained, even beyond the period of limitation the remedy under Article 227 of the Constitution of India is being invoked. This question is more concerned with the exercise of power and mode of exercise of such power. Definitely, the Court can decline to interfere on the ground of delay and laches but not on the ground that it is barred by limitation specified by the Rules. It is no doubt true that to file Revisions u/s 115 of the Code, there is a period of limitation. When the object of introducing the amending provisions itself is to check the delay being caused in disposal of the main matters in view of entertaining of civil revision petitions as against every interlocutory order, to hold that the ordinary period of limitation is not applicable to the civil revision petitions under Article 227 of the Constitution of India preferred as against such interlocutory orders, would be in a way defeating the said object. Procedural rules or safeguards cannot override the exercise of power of judicial review by Constitutional Courts inclusive of the Constitutional remedy under Article 227 of the Constitution of India. No guidelines need be laid down in this regard. We do hope that the Constitutional Courts would exercise sound judicial discretion while either entertaining or declining to entertain such civil revision petitions as against such interlocutory orders which are otherwise not revisable u/s 115 of the Code. Limitation cannot be imposed in exercise of Constitutional powers by higher Courts in judicial hierarchy, suffice to state that these Courts would be definitely cautious in such matters keeping in view the broader spectrum and horizon of this procedural anomaly of ordinary Rules of limitation vis-a-vis the Constitutional remedies.

It is no doubt true that Rule of reading down a provision has a rule of harmonious construction in a different name. In *Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others*, , it was held :

The rule of "reading down" a provision of law is now well recognized. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of "reading down", however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular

provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes. See the following observations of this Court in the case of B.R. Enterprises Vs. State of U.P. and Others, :

First attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the Courts have been endeavoring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively it is to sub-serve the object of the legislation. Old golden rule is of respecting the wisdom of Legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps Courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the Courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the Courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the Courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, its historical background, the purpose of enacting such a provision, the mischief, if any which existed, which is sought to be eliminated....This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power.

Reliance also was placed on P. Tulsi Das and Others Vs. Govt. of A.P. and Others, , St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, in this regard. The Constitutional power of the High Courts under Article 227 of the Constitution of India cannot be in any way curtailed or limited by imposing such rule of restriction under the rule making power and such rules cannot in any way affect the Constitutional powers of these Courts concerned with the power of judicial review and hence these Rules imposing such limitation may have to be read down and the powers of the High Courts under Article 227 of the Constitution of India are left unaffected by such restrictions specified in the procedural Rules.

17. The constitutional validity of Rule 17(2) of A.P.A.T. Procedure Rules 1989 where-under the time limit of 30 days had been specified had been questioned by moving an application in this regard. The main ground of the attack is that imposing such restriction specifying time limit under Rule 17 only in case of

applicants and non-imposition of any such restriction in the subsequent Rule, Rule 18 in the case of ex parte hearing and disposal of applications being arbitrary and discriminatory since the same is not based on any valid classification whatsoever. Incidentally Rules 15 and 16 of the Central Administrative Tribunal procedural Rules, 1987, also had been referred to and the absence of any such condition in Rule 15 of the said Rules also had been pointed out. In *Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others*, , it was held as hereunder:

Freedom granted by Article 301 is of the widest amplitude and is subject to only such restrictions as are contained in the succeeding Articles in Part XIII of the Constitution. The following observations in *Automobile's* case are relevant :

Even in the matter of textual construction there are difficulties. One of the difficulties which was adverted to during the Constituent Assembly debates related to the somewhat indiscriminate or inappropriate use of the expressions "subject to" and "notwithstanding" in the articles in question. Article 302, as we have seen, makes a relaxation in favour of Parliament. Article 303 again imposes a restriction on that relaxation "notwithstanding anything in Article 302 but Article 303 relates both to Parliament and the State Legislature, through Article 302 makes no relaxation in favour of the State Legislature. The non obstante clause in Article 303 is, therefore, somewhat inappropriate. Clause (2) of Article 303 carves out an exception from the restriction imposed on Parliament by Clause (1) of Article 303. But again Clause (2) relates only to Parliament and not the State Legislature even though Clause (1) relates to both. Article 304 again begins with a non-obstante clause mentioning both Article 301 and Article 303, though Article 304 relates only to the Legislature of the State. Article 303 relates to both the State Legislature and Parliament and again the non-obstinate clause in Article 304 is somewhat inappropriate. The fact of the matter is that there is such a mix up of exception upon exception in the series of articles in Part XIII that a purely textual interpretation may not disclose the true intendment of the articles. This does not mean that the text of the articles, the words used therein, should be ignored. Indeed, the text of the articles is a vital consideration in interpreting them; but we must at the same time remember that we are dealing with the constitution of a country and the interconnection of the different parts of the Constitution forming part of an integrated whole must not be lost sight of. Even textual ly, we must ascertain the true meaning of the word "free" occurring in Article 301. From what burden or restrictions is the freedom assured? This is a question of vital Importance even in the matter of construction. In Section 92 of the Australian Constitution the expression used was "absolutely free" and repeatedly the question was posed as to what this freedom meant. We do not propose to recite the somewhat chequered history of the Australian decisions in respect of which Lord Porter, after a review of the earlier cases, said in *Commonwealth of Australia v. Bank of New South Wales* 1950 AC 235, that in the "labyrinth of cases decided u/s 92 there was no golden thread." What is more important for our purpose is that he expressed the view that two general

propositions stood out from the decisions : (i) that regulation of trade, commerce and intercourse among the States is compatible with its absolute freedom, and (ii) that Section 92 of the Australian Constitution is violated only when a legislative or executive act operates to restrict such trade, commerce and intercourse directly and immediately as distinct from creating some indirect or inconsequential impediment which may fairly be regarded as remote. Lord Porter admitted "that in the application of these general propositions, in determining whether an enactment is regulatory or something more or, whether a restriction is direct or only remote or incidental, there cannot fail to be difference of opinion." It seems clear, however, that since "the conception of freedom of trade, commerce and intercourse in a community regulated by law presupposes some degree of restriction upon the individual", that freedom must necessarily be delimited by considerations of social orderliness. In one of the earlier Australian decisions (*Duncan v. The State of Queensland* 1916 (22) CLR 556 Griffith, C.J. said:

But the word "free" does not mean extra legem, any more than freedom means anarchy. We boast of being an absolutely free people, but that does not mean that we are not subject to law.

As the language employed in Article 301 runs unqualified the Court, bearing in mind the fact that provision has to be applied in the working of an orderly society, has necessarily to add certain qualifications subject to which alone that freedom may be exercised. This point has been very lucidly discussed in the dissenting opinion which Fullagar, J., wrote in *McCarter v. Brodie* (1950) 80 CLR 432, an opinion which was substantially approved by the Privy Council in *Hughes and Vale Proprietary Ltd. v. State of New South Wales* (1955) AC 241. The learned Judge gave several examples to show the distinction between what was merely permitted regulation and what true interference with freedom of trade and commerce. He pointed out that in the matter of motor vehicles, most countries have legislation which requires the motor vehicle to be registered and a fee to be paid on registration. Every motor vehicle must carry lamps of a specified kind in front and at the rear and in the hours of darkness these lamps must be alight if the vehicle is being driven on the road, every motor vehicle must carry a warning device, such as horn; it must not be driven at a speed or in a manner which is dangerous to the public. In certain localities a motor vehicle must not be driven at more than a certain speed. The weight of the load which may be carried on a motor vehicle on a public highway is limited. Such examples may be multiplied indefinitely. Nobody doubts that the application of rules like the above does not really affect the freedom of trade and commerce; on the contrary they facilitate the free flow of trade and commerce. The reason is that these rules cannot fairly be said to impose a burden on a trader or deter him from trading: it would be absurd, for example, to suggest that freedom of trade is impaired or hindered by laws which require a motor vehicle to keep to the left of the road and not drive in a manner dangerous to the public. If the word "free" in Article 301 means "freedom to do whatever one wants to do" then chaos may

be the result; for example, one owner of a motor vehicle may wish to drive on the left of the road while another may wish to drive on the right of the road. If they come from opposite directions, there will be an inevitable clash. Another class of examples relates to making a charge for the use of trading facilities, such as, roads, bridges, aerodromes etc. The collection of a toll or a tax for the use of a road or for the use of a bridge or for the use of an aerodrome is no barrier or burden or deterrent to traders who in their absence may have to take a longer or less convenient or more expensive route. Such compensatory taxes are no hindrance to anybody's freedom so long as they remain reasonable; but they could of course be converted into a hindrance to the freedom of trade. If the authorities concerned really wanted to hamper anybody's trade, they could easily raise the amount of tax or toll to an amount which would be prohibitive or deterrent or create other impediments which instead of facilitating trade and commerce would hamper them. It is here that the contrast, between "freedom" (Article 301) and "restrictions" (Articles 302 and 304) clearly appears: that which in reality facilitates trade and commerce is not a restriction, and that which in reality hampers or burdens trade and commerce is a restriction. It is the reality or substance of the matter that has to be determined. It is not possible a priori to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade but the distinction: if it has to be drawn, is real and clear. For the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory it cannot operate as a hindrance." Para 14

It was further observed:

After carefully considering the arguments advanced before us we have come to the conclusion that the narrow interpretation canvassed for on behalf of the majority of the State cannot be accepted, namely, that the relevant articles in Part XIII apply only to legislation in respect of the entries relating to trade and commerce in any of the lists of the Seventh Schedule. But we must advert here to one exception which we have already indicated in an earlier part of this judgment. Such regulatory measures as do not impede the freedom of trade, commerce and intercourse and compensatory taxes for the use of trading facilities are not hit by the freedom declared by Article 301. They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper trade, commerce and intercourse but rather facilitate them.

In *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, , the Apex Court held as hereunder:

The catena of decisions referred to above concludes unwaveringly in spite of very wide power being conferred on delegatee that such a section would still not be ultra vires, if guideline could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. In testing validity of such provision,

the Courts have to discover, whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. In the fast changing scenario of economic, social order with scientific development spawns innumerable situations which Legislature possibly could not foresee, so delegatee is entrusted with power to meet such exigencies within the in built check or guidance and in the present case to be within the declared policy. So delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially effecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situation cannot be culled out which has to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Such power is meant rarely to be used. So far decisions relied by the petitioner, where the provisions were held to be ultra vires, they are not cases in which Court found that there was any policy laid down under the Act. In A.N. Parasuraman Etc. Vs. State of Tamil Nadu, Court held Section 22 to be ultra vires as the Act did not lay down any principle or policy. Similarly, in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, Section 7 was held to be ultra vires as there was no principle or policy laid down.

Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of powers must stand the test to (sic) judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power. The question whether the power has been exercised validly by the delegatee, in the present case, if yes, then it can only be for the furtherance of that policy, What is that policy? The policy is the development and use of rural and urban land including construction of, colonies, buildings etc., in accordance with the policy of the planning as laid down under the Act and the Rules. When such a wide power is given to any statutory authority including a delegatee then it is obligatory on the part of such authority to clearly record its reason in the order itself for exercising such a power. Application of mind of such authority at that point of time could only be revealed when order records its reason. Even if Section is silent about recording of reason, it is obligatory on the Government while passing orders u/s 113 to record the reason. The scheme of the Act reveals, the Government is conferred with wide ranging power, including power to appoint all important statutory authorities; appoints Director and its members of Town and Country

Planning u/s 4; constitutes Tamil Nadu Town and Country Planning Board u/s 5; Board to perform such functions as Government assigns u/s 6; appoints Madras Metropolitan Development Authority u/s 9-A; Government entrusted for making master plan or any other new plan; any plan or modification is subject to the approval of Government. In fact, every statutory Committee is created by the Government and its planning is subject to the approval by the Government. It is because of this that very wide power is given to it u/s 113. In a given case, where a new development in rural or urban area may be required urgently and provisions under the Act and Rules would take long procedure, it may in exercise of its exemption power exempt some of the provisions of the Act and Rules to achieve the development activity faster or in a given case, if any hardship arises by following or having not followed the procedure as prescribed, the power of exemption could be exercised but each of these cases would be for furtherance of the development of that area.

When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both viz., the public and the individual. So long it does not materially effect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety, public convenience, public health etc., the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may be in a given case, be justified but in no case effecting the public at large. So every time Government exercises its power it has to examine and balance this before exercising such a power. Even otherwise every individual right including fundamental right is within reasonable limit but if it inroads public rights leading to public inconveniences it has to be curtailed to that extent. So no exemption should be granted effecting public at large. Various development rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, Government must keep in mind, whether such a grant would recoil on public or not and to what extent. If it does then exemption is to be refused. If the effect is marginal compared to the hardship of an individual that may be considered for granting. Such an application of mind has not been made in any of these impugned orders. Another significant fact which makes these impugned orders illegal is that Section 113 empowers it to exempt but it obligates it to grant subject to such condition as it deems fit. In other words, if any power is exercised then Government must put such condition so as to keep in check such person. We find in none of these sixty-

two orders any condition is put by the Government. If not this then what else would be the exercise of arbitrary power.

In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, it was held that in the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect and these presumptions will have to be made in the case of rule making authority also. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, it was held that the Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes or construction or obligation and the statutory Rules cannot be described as, or equated with, administrative directions. Similar views had been expressed in *Rameshchandra Kachardas Porwal : M/s. Narayandas Govinddas: Sha Moteejee Virchandji: Pravinchandra Keshavlal : MV Manjunath: M/s. Appasaheb Bharamappa Vankundre: Basudeo Prasad : AIR 1981 1127 (SC)* and *Mulchand Gulabchand Vs. Mukund Shivram Bhide and Another*. In *K. Thimmappa v. Chairman, Central Board of Dirs, SBI (2001) 2 SCC 259*, it was held as hereunder:

Mr. Shanti Bhushan and Mr. Kapil Sibal, learned Counsel, appearing for the bank, on the other hand contended that Conditions of Service Order, 1979, is a statutory order, made in exercise of powers conferred under Sub-section (1) of Section 43 of the State Bank of India Act, 1955 and the said order purports to rationalise and standardise in restructuring the administrative set up of the Management cadres and in process of such restructuring if on consideration of relevant and germane materials, placement of the officers has been made, as provided under paragraph 7 of the Conditions of Service Order, then such placement is not liable to be interfered with by a Court of law, unless a strong case is made out, either on the ground of mala fides or on the ground of infraction of a constitutional provision. According to the learned Counsel, when officers of a pre-existing Grade are sought to be placed in the different grades, which emanated on account of standardisation and re-structuring, then it may not be possible in a given situation to put all the officers of a particular grade to be placed in a corresponding grade or scale of pay evolved in the process of restructuring. This being the position, while grafting of these officers in the newly created grade and scale, if there is a bifurcation of officers of a particular grade into two, based on their period of service, experience and other relevant factors, such bifurcation would not tantamount to treating them (sic) officers, on the basis of the responsibilities and functions exercisable by such officers whereas paragraph 7 deals with the placement and paragraph 8 deals with the fitment in the new scale of pay and this being the position, notwithstanding paragraph 7 is subject to paragraph 6, there would be no bar in bifurcating the officers of a particular grade and placing them in two different grades, as has been done in the present case, if there is any reasonable basis for such bifurcation. According

to the learned Counsel, the provision for confirmation, contained in paragraph 16 would not attract the mischief of inglorious uncertainty of confirmation in the service and on the other hand, it is the satisfactory completion of training of the officers, which is determinative of the confirmation in service and failure on the part of the officer, who is not found fit for confirmation by the Competent Authority, would entail termination of service in case of a direct appointee and reversion to the substantive grade in case of a promotee. This being the position with regard to confirmation, the ratio in Patwardhan's case as well as Direct Recruits case (supra) on which reliance has been placed by the Counsel, appearing for the petitioners, would have no application at all. According to Mr. Shanti Bhushan, the judgment of this Court in AIR 1989 31 (SC) , fully governs the present batch of cases and as such, there is no infirmity with the classification that has been made amongst the officers of Grade I on the basis of their date of confirmation, whether prior to 31-12-1972 or thereafter. Mr. Sibal, further urged that it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach the Court expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters and in the case in hand, the placement that was made in the year 1979 is now sought to be assailed in writ petition filed in different High Courts, the earliest being in the year 1988 and the latest being in the year 1998 and such delay in approaching the Court disentitles the petitioners from invoking the extraordinary jurisdiction of the Court under Article 226 of the Constitution, and, therefore, these petitions are liable to be dismissed. In support of this contention, reliance was placed on the decision of this Court in the case of P.S. Sadasivaswamy Vs. State of Tamil Nadu, . Before we deal with the respective contentions of the parties it would be appropriate for us to notice that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule Making Authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:

(A) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and

(B) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Article 14 of the Constitution does not insist that the classification should be scientifically perfect and a Court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be

discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view. If a law deals with members of well defined class then it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the Rule Making Authority to determine what categories of persons would embrace within the scope of the rule and merely because some categories which would stand on the same footing as those which are covered by the rule are left out would not render the Rule or the Law enacted in any manner discriminatory and violative of Article 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation, and what it really seeks to achieve.

In *St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education* (2000) 3 SCC 321, it was held as hereunder:

A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general cause of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly

foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature.

In *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, , it was held that delegated legislation must advance the purposes of the statute it is framed under and unless it does so, it cannot be sustained. In *State of Karnataka and Anr. v. B. Suvarna Malini and Anr.* (2001) 1 SCC 728, it was held that where the Rules were made under the statute after duly complying with requirements, they are legislative in character having the force as if framed by the State Legislature. In *Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others*, , the Apex Court while dealing with the scope and ambit of subordinate legislation held as hereunder:

It may be noted that under Paragraph 8, the Chairman or the Speaker of a House is empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules being delegated legislation are subject to certain fundamental factors underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it that is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter Delegated Legislation in Francis Bennion's *Statutory Interpretation* 3rd Edn.). The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision. No rules can be framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, the rules should be interpreted consistent with the aforesaid principle.

Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said Rule and Sub-rule (6) of the same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid

down in the CPC for the verification of pleadings. The heading of Rule 7 is "PROCEDURE". Sub-rule (1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and Sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation the rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz., the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under Sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

In *Ramesh Mehta Vs. Sanwal Chand Singhvi and Others*, , while dealing with the aspect of meaningful interpretation to be given to subordinate legislation held as

hereunder:

A subordinate or delegated legislation must also be read in a meaningful manner so as to give effect to the provisions of the statute. In selecting the true meaning of a word regard must be had to the consequences leading thereto. If two constructions are possible to adopt, a meaning which would make the provision workable and in consonance with the statutory scheme should be preferred.

In *P.V. Mani and Others Vs. Union of India (UOI) and Others*, , His Lordship Sivaraman Nair, J, speaking on behalf of the Full Bench of the Kerala High Court observed as hereunder:

In *Kruse v. Johnson* (1898) 2 QB 91, Lord Russel of Killowen C.J., upheld the validity of a Municipal Bye-law against singing within 50 yards of dwelling houses for the following reason:

But, when the Court is called upon to consider the bye-law of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canons of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think Courts of justice ought to be slow to condemn an invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness.

Lord Russel C.J., had indicated the extent to which Courts may go even in a case of municipal bye-laws in assessing its reasonableness in the following words:

But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the right of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires". But it is in this sense, and in this sense only, as I conceive, that the question of reasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the county, which have the right to choose those whom they think best fitted to represent them in their local Government

bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of Judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle of definite standard by which reasonableness or unreasonableness may be tested.

It is therefore needless to add that the Courts shall approach subordinate legislative instruments with considerable amount of caution and examine them for absence of competence or reasonableness of fairness and other invalidating circumstances with almost the same standards as legislative enactments are dealt with by Courts. The presumption of constitutionality, competence and reasonableness ordinarily attaches to such instruments just as much as to legislative enactments, as is evidence from the following observations from "Administrative Agencies and the Courts" by Cooper:

Where the Legislature has clearly delegated such authority, the only issue that can normally be raised as to the validity of the rule concern the question whether it is ultra vires as exceeding the scope of the authority delegated, and whether it is violative of due process guarantees. These issues are not often presented and accordingly such regulations are normally treated on the same basis as legislative acts.

It is not that such instruments are absolutely immune from attack. But such attacks should be considered only on production of prima facie proof as to such invalidating circumstances. The Court shall not assume that a subordinate legislative instrument is invalid for absence of competence or bona fides or fairness or reasonableness and cast the negative burden on the rule-making authority. It should be just the other way; the person who challenges the vires of a rule has to prove his challenge just as much as a person who challenges a legislative enactment.

18. No doubt, an attempt was made to draw a distinction between the terms "the applicants" and "the respondents" and a contention was advanced that the applicants and the respondents constitute two different well defined classes and hence it cannot be said that fixing of 30 days time only in the case of applicants and non-fixing of such time in the case of respondents would amount to either being arbitrary or discriminatory. It is no doubt true that the applicants approach the Tribunal first and the respondents contesting or not contesting the litigation may depend upon several factors and due to several reasons. By that itself, it cannot be said that the applicants or the respondents would fall under well defined classes so as to treat them as separate classes inasmuch as these parties are coming before the Tribunal for the purpose of agitating their legal rights and it is needless to say that several suitable directions also would be issued depending upon the facts and circumstances of a particular given case. Keeping in mind the object for which the Service Tribunals had been in fact established

and also taking into consideration the different provisions of the Administrative Tribunals Act, 1985, it cannot be said that the parties coming before the Tribunal can be classified on the ground of the parties approaching the Tribunal at the first instance and the parties expected to contest the matters and this cannot be taken as a valid classification for the purpose of putting a discrimination of fixing 30 days in the case of applicants and not putting any such restriction at all in the case of respondents. It may not be out of context if it is referred here itself that in the corresponding Rule under Central Administrative Tribunal Procedure Rules, 1987, such restriction had not been imposed. Even if the test of reasonableness to be applied, such imposition of restriction while exercising the Rule making power cannot be said to be reasonable and viewed from any angle, the restriction of imposing 30 days time for moving an application cannot be said to be reasonable, the same being arbitrary and discriminatory and being violative of Article 14 of the Constitution of India. In the facts and circumstances of the case, the application W.P.M.P. No. 25935/2005 in W.P. No. 25161/2004 is hereby allowed.

19. Conclusion :

Rule 17(2) of the A.P.A.T. Procedure Rules, 1989 so far as "within 30 days from the date of dismissal" are hereby declared as arbitrary, discriminatory, unreasonable, irrational and unconstitutional being violative of the Article 14 of the Constitution of India and the same is hereby struck down. The reference is answered accordingly. Let these matters appear in the list before the appropriate Division Bench for disposal in accordance with Law.

In the facts and circumstances of the case, the application is hereby allowed.