

(1970) 08 DEL CK 0034

In the Delhi High Court

Case No : Civil Writ Appeal No. 760-D of 1966

S.K. Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-08-1970

Acts Referred:

Citation : (1970) ILR Delhi 698

Hon'ble Judges : Rajinder Sachar, J; Narain Andley, J

Bench : Division Bench

Advocate : G.L. Sanghvi, H.K. Puri, Sayed Mahmud, O.P. Malhotra and A.B. Saharia, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) This petition under Article 226 of Constitution of India challenges the seniority list of Grade Iv of the General cadre of the Indian Foreign Service Branch "B" (hereinafter referred to as Indian Forest Service (B) issued by the Respondent in the gazette dated 30th April, 1965, attached as annexure "C" to the petition.

(2) The petitioner was a permanent Upper Division Assistant in the Uttar Pradesh Secretariat in the year 1954. In the year 1956 the formation of L.F.S. (B) was approved by the Union of India and it was declared as deemed to have come into existence on 1-8-1956. The Rules for the constitution of it were called Initial Constitution Indian Foreign Service Branch "B" 1956", (hereinafter to be called as Rules of 1956) and were approved laying down the general conditions of eligibility for recruitment, method of recruitment, seniority and other terms and conditions of service. The Government of Uttar Pradesh issued a circular letter dated 28-1-1957, informing their employees of the formation of the Indian Forest Service (B) and intimating them that the Government of India had invited applications for the appointment in different grades. In response to the said circular the petitioner submitted his application in February, 1957 as a candidate

for one of the posts in grade IV. The petitioner was interviewed by the Selection Board in April, 1958 and was selected. The petitioner joined the Indian Forest Service (B) on 21-7-1958 in grade IV. The petition further alleges that the Ministry of External Affairs issued a seniority list under its Memorandum No. 7(13)-FSB/57 (EA159/7), dated the 13th February, 1959. It is alleged that in the said seniority list the petitioner was shown junior to many persons who according to him had been illegally appointed, it is also alleged that the said seniority list is illegal. The petition further states that the Ministry of External Affairs has again issued a seniority list under its memorandum dated 30-4-1965 of grade IV as on 31-5-1964. It is alleged that this list is in contravention of Rules of 1956 and is ultra vires. It is alleged that in the said seniority list while fixing seniority in the case of recruits from the State Governments like the petitioner a deduction of 6 years has been made from their period of service while no such deduction has been made in the case of other recruits. It is also alleged that some four categories of persons who were not eligible to be recruited have been shown senior to the petitioner. It is stated that if the seniority was fixed treating the permanent non-Central Secretariat service people at par with the permanent Central Secretariat persons the petitioner will come up by about 350 places in the seniority list and ought to have been promoted in the year 1961. It is also alleged in the petition that if the seniority was fixed in accordance with Rule 8(11) of Rules of 1956 and the non-eligible persons irregularly recruited are placed below the petitioner, he would go above 150 persons. It is further alleged that by Notification dated 6th May, 1964 the Ministry of External Affairs has framed rules known as the Indian Foreign Service Branch "B" (Recruitment, Cadre, Seniority and Promotion Rules, 1964, hereinafter to be called as "Rules of 1964") and the said Rules came into force with effect from 1st June, 1964. It is alleged in the petition that the petitioner is not governed by Rules of 1964 in the matter of seniority though this position was specifically given up by Mr. Sanghi counsel for the petitioner during the arguments. It was further stated that the petitioner was transferred to Kandahar in January, 1961, where he remained posted up to March, 1963. Thereafter he came back and worked as a Circle Rationing Officer with the Delhi Administration where his services had been placed on deputation. and he worked as such since 26-11-1965. It is in the end prayed that Rule 8(11) of the Rules of 1956 be declared void and that the impugned seniority list issued by the respondent be quashed.

(3) It may be mentioned that the Rules of 1956, were not issued under the proviso to Article 309 of the Constitution of India. What happened was that the Government of India, Ministry of External Affairs having decided to constitute Indian Forest Service (B) issued a memorandum prescribing the mode in which the service was to be constituted. It was specifically stated in the said memorandum that the future maintenance of the service will be in accordance with the Rules to be promulgated by the Central Government in due course. No objection can be found to the issue of this memorandum as it is now well settled that it is not essential under the proviso to Article 309 of the Constitution to

make Rules of recruitment before a service can be constituted and that the State or the Union Government has executive powers in relations to all matters with respects which the legislature of a State or Union has power to make laws. The said memorandum laying down the instructions by which recruitment was to be done to the Indian Forest Service (B) service was, Therefore, validly issued. The relevant Rule to which a reference has been made is Rule 5 which provides for the general conditions of eligibility for appointment in tile Service at the initial constitution. Clause (b) of Rule 5 provides as under:-

(B)The candidate should be serving either in the Ministry of External Affairs, or in the Ministry of Commerce and industry, or in a Diplomatic, Commercial or Consular Mission or Post abroad on the date of the constitution of the service. Provided that:-

(I)To the extent that the Central Secretariat Services Officers of various grades have to be absorbed in the Indian Foreign Service, Branch, "B", other officers from such services in replacement of those under (b), not willing to join the Indian Foreign Service Branch "B", or, considered unsuitable for the Service will be eligible on transfer to this Ministry, even though such transfer takes place after the date of the constitution of the Service.

(II)Persons serving in attached and subordinate offices of the Ministry of External Affairs who, before transfer to these offices were holding posts in the Ministry of External Affairs, or, in Missions or Posts abroad and, who, but for such transfer, would have been eligible, shall be eligible for recruitment at the initial constitution.

(III)If the required number of suitable candidates is not available from the source mentioned at item (b) above, other candidates serving under the Government of India, or, a State Government, will be considered.

PROVIDED that all or any of these conditions of eligibility may be relaxed in special cases in consultation with the Union Public Service Commission.

GRADE IV

(I)Recruitment shall be made to this grade from members of the corresponding grade of the Central Secretariat Service who are either permanent in that grade, or, have been included in the Regular Temporary Establishment of Grade Iv of the Central Secretariat Service, or, have been declared quasi-permanent as Assistant, or, are eligible for appointment to Grade I of the Central Secretariat Clerical Service with seniority counting up to 31-12-44.

(II)Recruitment shall be made to Grade Iv from non-Central Secretariat Service Officers, who are otherwise, eligible, provided that the candidate;-

(A)is a graduate of an Indian University or holds an equivalent educational qualification of a Foreign University, and

(B)has held a Grade Iv (Central Secretariat Service), or, an equivalent post for at

least three years before the prescribed date, a candidate who has held such a post for less than three years may be considered for recruitment to the next lower grade of the service.

(HI)The normal age limit for Grade Iv shall be 22 to 45 years.

RULE8 reads as under :

THE seniority of persons selected for Grades, I, Ii and Iii of the General Cadre of the Service and, for Grade I of the Stenographers Sub Cadre of the Service, will be determined in accordance with the following formula:-

(II)The seniority of persons selected for Grades of the Service other than those mentioned in para (1) shall be determined in the following manner for each such grade"-

(A)Members of the Central Secretariat Service or Central Secretariat Stenographers Service or Central Secretariat Clerical Service selected for an equivalent grade of the Service shall retain their seniority, infer se.

(B)In regard to a person other than those in (a) above, seniority shall be determined with reference to the total length of continuous service in a grade equivalent to that for which he is selected. He will come next below the junior most officer in (a) above with the same, or, longer service, provided that, where the length of service is equal, the officer senior in age will rank higher.

(4) The grievance of the petitioner in the writ petition is two fold, namely, (1) that a deduction has been made of six years service from his total length of continuous service with the result that he has been placed junior to a number of persons belonging to the category in clause (a) of Rule 8 (II), and (2) that many persons have been recruited to the J.F.S. (B) who were not eligible to have been recruited in terms of Rule 5 but that however he was not challenging their appointment and would be quite content if they were placed junior to him in the seniority list.

(5) Written statement has been filed by Mr. N.N. Gupta, Under Secretary, Ministry of External Affairs. A preliminary objection is taken that the petitioner seeks to challenge the virus of Rule 8(11) of the Rules of 1956 after a lapse of almost 11 years. It is also objected that the petitioner was confirmed as far back as in 1958 and that it is not open to him now to challenge the seniority list of 1959 after such a long time. It is also stated that the petitioner accepted his confirmation as far back as 1960 and should not be allowed to complain after the lapse of so many years. It is denied that the classification made under the Rules is arbitrary or that it has no reasonable nexus between the object and basis thereof. It is stated that to have an efficient service and keeping in view the functions to be performed by such personnel in the Ministry of External Affairs and abroad, persons were recruited to grade Iv as were of calibre comparable to the Central Secretariat Service Grade Iv which was the standard. Accordingly a distinction was made under Rule 5 between the Central Secretariat Service and

the non-Central Secretariat Service for the purpose of eligibility requiring the latter to have an experience of three years. A similar distinction was also made between these two broad categories for the fixation of seniority. It was denied that the Rules of 1964 did not apply to the petitioner and it was maintained that Rule 21(1) of the Rules of 1964 specifically states that persons appointed to the service in the Initial Constitution shall have seniority already allotted to them at that time. Accordingly it was maintained that the seniority already allotted to the petitioner at the initial constitution of the service and the seniority list which was issued in 1959 is maintained by the Rules of 1964. It was also stated that since the officials of the categories of the petitioner who came from various states were working against the post of Upper Division Assistants and since the grades of pay vary from State to state, it was decided by the Government of India with the approval of the Union Public Service Commission that a debit of 6 years service should be made in all such cases to establish equivalence as contemplated by the Rules of 1956. This formula was adopted uniformly for all the State optees. It was further maintained that this principle was applied as far back as 1959 and cannot be disturbed after the lapse of 7 years. It was also denied that the appointment of four categories of officials to grade Iv of the General Cadre of I F S. (B) was made without complying with or in contravention of the Rules of recruitment. It was explained that certain persons who had passed the Assistant Grade Examination held by the Union Public Service Commission in 1955 were recruited to grade Iv of General Cadre of Indian Forest Service (B) and at the time of their recruitment they were holding their posts in the Central Secretariat as Assistants and most of them were working as C.S.S. Assistants in the Ministry of External Affairs. It was maintained that the requirement in Rule 5(b) that the candidates shall be serving in either of the Ministries of External Affairs or Commerce etc. on the date of the constitution of service was relaxable under the proviso of the said Rules and that as the U.P.S.C. had approved of all the appointments it amounted to relaxation of the said Rule in respect of these officers. It was further stated that at first the Ministry of Home Affairs in consultation with the Chairman of the U.P.S.C. decided that the first 400 officers were entitled to appointment as Assistants in the C.S.S. Grade Iv against substantive posts on probation and the officers below those 400 were initially appointed in Grade Iv of the C.S.S. against temporary posts. Later on the Ministry of Home Affairs decided that not only these 400 but the whole group of 800 directly recruited Assistants (1955 Examination) should be placed above the second Regular Temporary Establishment but below the first Rte of Assistants who had meanwhile been confirmed as Assistants. Thus 1955 Examination Assistants had a status superior to those included in the second Rte of Assistants of the C.S.S. Inasmuch as Assistants included in the Rte were eligible to be appointed to grade Iv of the general cadre of the Indian Forest Service (B) at its initial constitution. the 1955 Examination Assistants should also be considered eligible within the meaning of Rule 5(A)(11) of the Initial Constitution Rules. It was denied that the three years service in equivalent grade on 1-8-1956 was applicable to the officers of C.S.S". As regards other categories, as no list had

been given, it was maintained that this plea cannot have any validity. The issue of seniority list dated 13-2-1959 was admitted and it was maintained that the petitioner cannot be allowed to challenge the seniority list after a lapse of 7 years" period. As far as the seniority list dated 30-4-1965 is concerned, it was maintained that it was perfectly legal and was based on the seniority list dated 13-2-1959. It was specifically stated that the petitioner's seniority having been fixed in 1959 the same has not been disturbed and nor is it the petitioner's allegation that the same has been disturbed. It was maintained that the repetition of the list which is prepared every year does not give a fresh cause of action. It was maintained that the petitioner was given an offer of appointment which he had previously accepted and he cannot now resile from it.

(6) A rejoinder was filed by the petitioner in which the original pleas in the petition have been reiterated. It was also maintained that the petitioner had been in continuous correspondence with the authorities. It was maintained that it was only on his return back to India in 1963 that he came to know of the finalisation of the seniority list prejudicial to the interest of the petitioner. It was maintained that the petitioner sent a representation to the authorities and the same was rejected; the intimation of which was given to him on 5-6-1964. The petitioner is stated to have later on submitted a memorial on 27-8-1964 and he sent a number of reminders. He was also informed by the letter from the Ministry of External Affairs dated 7-2-1966 that the matter was being examined. According to the petitioner he submitted further reminders but no decision having been taken, he filed the present writ petition. According to him there has thus been no delay.

(7) A further reply dated 20-10-1967, in reply to the rejoinder by the petitioner, was filed by Mr. N.N. Gupta. It was denied that at the time when the seniority list was finalised for 1959-60 all the State optees including the petitioner were posted outside India in different missions. It was also maintained that the State optees were fully aware of their seniority and the contention of the petitioner that he came to know of the finalisation of the seniority list on his return from Mission abroad was denied. It was maintained that the State optees knew the position even before their confirmation. To illustrate this, an instance of one Pravesh Kumar Mukherjee who sent his representation dated 4-1-1960 is mentioned wherein he had clearly stated as one of the grounds for attacking the fixation of seniority that his seniority had been fixed after deducting six years of his service like all other State optees while no such deduction was made in respect of Central Secretariat officers recruited to Grade IV. It was specifically asserted that all the State optees were fully aware of their position of seniority in grade Iv and that with that knowledge they gave their consent to the termination of their lien in the respective department of the State at the time of their confirmation in grade IV. It was stated that the offer of appointment in grade Iv was made to the petitioner in a letter written to him on 15-5-1958 in which it was explained to the petitioner that his position in the seniority list of grade Iv would be as shown in appendix "B" to the said letter. It is stated that the

petitioner was informed that his infer se seniority has been fixed after careful consideration and has been approved by the U.P.S.C. The seniority which was mentioned in appendix "B" to the "said letter has been reproduced in para 12 of the affidavit of Mr. Gupta dated 20-10-1967. It is stated that the petitioner is not competent to challenge the seniority list now because those very persons had been shown senior to him in the letter written to him in 1958. In support of the averment of the respondent that the State optees knew about the deduction of 6 years from their service another instance of one Kanhaiya Lal a State Optee of Uttar Pradesh (i.e. from the State from which the petitioner came) is mentioned who had also put in a representation to the Ministry of External Affairs on 14-7-1960 in which he had made a grievance that while fixing the seniority of officers selected for this grade from various States, 6 years of their (including his) service in the equivalent grade had been deducted. It is stated that Kanhaiya Lal was confirmed by the orders issued on 9-7-1962 and in spite of knowing that 6 years deduction had been made from his service he opted to stay in Grade Iv Indian Forest Service

(B) rather than exercising the option to revert to his parent department where he still had a lien until the time he was confirmed in grade IV. It is maintained that the statement of the petitioner that none of the State optees were aware of the decision of the government of deducting six years service is incorrect.

(8) The position that emerges, Therefore, is that the petitioner was offered an appointment in grade Iv by the government's letter dated 15-5-1958. He was told that his position in the seniority list would be as per appendix "B" attached with the said letter. This assertion of the respondent made in the affidavit of Mr. Gupta dated 20-10-1967 has not been controverted at all by the petitioner in the further affidavit, filed by him dated 20-7-1968. It must, Therefore, be accepted that the averment made in Mr. Gupta's affidavit, in para 12 sworn on 20-10-1967 that the position of seniority of the petitioner was intimated to him in 1958 is correct. In the said list, an extract of which is given in the affidavit of Mr. Gupta, the petitioner is shown junior to one Ram Tirath Mohan. This fact, Therefore, was obviously made known to him in 1958. The list which was issued on 13-2-1959, of which mention has been made by the petitioner in para 23 of the writ petition, shows the petitioner at Serial No. 438 and Ram Tirath Mohan at Serial No. 386. In the 1965 seniority list also the petitioner is shown at Serial No. 361 and Ram Tirath Mohan at Serial No. 323. This position clearly, Therefore, supports the contention made in the reply of the respondent that the seniority of the petitioner which was fixed in the year 1959 is the same and has not been disturbed in the seniority list of 1965. Mr. Sanghi learned counsel for the petitioner was not able to show anything to prove that the basis of the seniority list of 1959 had in any manner been changed in the subsequent seniority list issued in 1965. This aspect of the matter that the seniority list which was issued in 1959 has also been maintained intact is of importance because of the preliminary objection that has been taken by the respondent that the present writ petition really is asking for revision of the seniority list issued in 1959 and

the petitioner should not be allowed to challenge it after a lapse of so many years. It is stated that a further seniority list issued in 1965 cannot obviously give fresh cause of action or a grievance to the petitioner. If the petitioner wishes to challenge the seniority, the challenge really has to be made to the list which was issued in 1959.

(9) Mr. Sanghi quite aware of this had to concede that his real challenge was to the list of 1959. In order, however, to explain the delay in filing the writ petition which was filed in 1966, Mr. Sanghi in the first instance contended that the petitioner only came to know about the deduction of 6 years from his total service in computing the seniority sometime in 1963 or 1964 when he came back from Kandahar. According to him as soon as he came to know of it, he made a representation to the authority which was rejected on 5-6-1964. Soon thereafter the petitioner sent memorials to the President. According to the counsel for the petitioner, in February, 1966 the said memorial was said to be receiving consideration and, Therefore, the petitioner was justified in waiting for this period. According to him not having got any satisfactory reply the petitioner filed the present writ petition on 23-12-1966 and, Therefore, it cannot be said that the petition is in any way belated. This argument of Mr. Sanghi, however, assumes that the petitioner did not come to know of the seniority list which was issued in 1959. In our opinion not only is there nothing to show that the petitioner did not know of the seniority list issued in 1959, but on the other hand there is ample material to come to the conclusion that the petitioner was aware of the seniority list that was issued in 1959. As we have already indicated there is an assertion made by the respondent that the petitioner was issued a letter in 1958 in which his place in seniority was indicated to "him. This fact has not been denied by the petitioner and, Therefore, this is the first indication that the petitioner was told about his seniority in the year 1958. Then we have the issue of seniority list along with the memorandum of the government dated 13-2-1959 of which a mention has been made by the petitioner in para 23 of the writ petition. Mr. Sanghi sought to urge that this was, in fact, not a seniority list but was only a list of officers appointed to grade Iv of the General Cadre of Indian Forest Service (B) at its initial constitution. In our opinion this contention is unsustainable. In the petition itself the petitioner has called this memorandum of 13-2-1959 as a seniority list and it hardly lies in the mouth of the petitioner now to urge that the same was not a seniority list -Apart from that, part 4 of the memorandum clearly states that the seniority list be circulated to the officers concerned There can, Therefore, be no manner of doubt that the memorandum dated 13-2-1959 giving a list of the names of the persons was a seniority list. Mr. Sanghi, however, contended that even if this memorandum was to be taken as a seniority list yet it was never circulated and the petitioner, Therefore, was not aware of it. This contention is also without any merit because the Memorandum clearly bears an endorsement of its having been circulated to all the Indian Missions and Posts abroad and to various other Ministries. In that view of the matter cannot be said that the seniority list issued on 13-2-1959 was a closely

guarded secret and was not made known to the persons concerned like the petitioner.

(10) Mr. Sanghi next contended that even if it be assumed that this seniority list was made known to the petitioner there is no indication that the said list showed that the deduction of 6 years had been made from the service of the State optees. and, Therefore the petitioner could not have made a representation against it at that time. In our opinion this argument is a specious one. Once the seniority list has been issued it is expected that the person concerned will satisfy himself that his seniority has been fixed according to Rules as he interprets them. If one employee has a grievance it is up to him to take up the matter with the appropriate authorities and take for clarification. That apart it cannot be accepted that the factum of deduction of six years was a secret and was not known to the persons concerned. We have been shown the original record from where we find that the list was sent in April, 1958 to the U.P.S.C. of persons who have been selected for appointment to Indian Forest Service (B) in Grade IV. In the Memorandum sent to the Chairman, U.P.S.C. it was clearly mentioned that the seniority of the employees of the State Governments, as in other similar cases, was being fixed on the basis of deducting 6 years from their qualifying service i.e. service which has been taken into account for the purpose of determining eligibility as laid down in the rules. In the list that was sent Along with this memorandum the name of the petitioner is shown at item No. 18 in list No. Iii and the name of R.T. Mohan at Serial No. 5. It was, thereafter that the letter of offer of appointment in grade Iv was sent to the petitioner of which a mention has been made in para 12 of the affidavit of Mr. Gupta-dated 20-10-1967. The position of R.T. Mohan and the petitioner in 1959 list is the same as was shown in the list sent to the Chairman U.P.S.C. by the Ministry of External Affairs. This conclusively proves that before the issue of the seniority list in 1959 deduction of 6 years had been made from the length of qualifying source of State Optees like the petitioner. It was for this reason that the other State optees did make representation in which specifically a grievance was made about the deduction of 6 years from their service. Instances have been mentioned in the return of one Mukherjee who made his representation dated 4-1-1960; and of Kanhaiya Lal State Optee of Uttar Pradesh (from the State of the petitioner) who also made his representation on 14-7-1960 protesting against the deduction of 6 years. In the face of this material it is not possible for us to accept the contention of Mr. Sanghi that though the seniority list had been issued in 1959 and the petitioner had been specifically intimated of his seniority and other persons had also made representation in 1960 about the specific complaint of deduction of 6 years from their service, yet the petitioner was unaware of this. In this connection it is relevant to note that the petitioner was in India upto January, 1961. It is hard to imagine that whereas his other colleagues (some of them coming from the State of the petitioner) were aware of the deduction of 6 years of service, the petitioner alone was unaware of it. It must, Therefore, be held that the petitioner was aware of the deduction of six years having been made

from the length of his qualifying service at the time when the seniority list was issued in 1959. It is in this context, Therefore, that the preliminary objection of the respondent that the petitioner should not be allowed to challenge his seniority after a lapse of 7 years assumes importance. The earliest instance shown by the petitioner when he challenged the seniority list is when he made a representation in March 1964 i.e. after a lapse of 5 years. The fact that the petitioner was in Kandahar from January, 1961 to March 1963 is of no consequence as according to our finding the petitioner knew of his seniority when the seniority list was issued in February, 1959 i.e. almost two years before he went out of India. Even after coming back from Kandahar he waited for one full year before sending his representation to the government. In our view there is no escape from the conclusion that there is no Explanation for the petitioner not to have challenged the seniority list issued in 1959. is common case that unless he could challenge the 1959 seniority list there could be no challenge to the seniority list issued in 1965, because the latter is merely a repetition of the earlier list. Mr. Sanghi had also sought to urge and justify the delay in filing the writ petition by showing that he had been sending representations from 1964 onward, but on our finding that the petitioner knew of the seniority list in 1959, the time spent from 1964 onward in sending the representation cannot condone the delay of the earlier five years.

(11) When faced with this position, Mr. Sanghi urged that this delay is not fatal to the petitioners case. He referred us to *The Moon Mills Ltd. v. M. R. Mehar* President, Industrial Court, Bombay and of hers AIR 1967 S.C. 1451 and brought to our notice the observations of the Privy Council reproduced in that case where it was stated that the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine and that lapse of time and delay are most material where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party -in a situation in which it would not be reasonable to place him the remedy were afterwards to be asserted, In that case their lordships of the Supreme Court found that the petitioner had not been guilty of acquiescence or negligence and, Therefore, was entitled to a writ. Their lordships observed :-

"IT is also true that. the writ will not be granted if there is such negligence or omission on the part of the applicant to assert this right as, taken in conjunction with the lapse of time, and other circumstances, causes prejudice to the adverse party."

(12) Dr. Mahmud, learned counsel for the respondent however, submitted that there was no Explanation for the delay in filing the present writ petition and that the petitioner by his conduct was, Therefore, stopped from challenging the seniority list issued in 1959. He submitted that in the course of years scores of employees assumed that their seniority fixed in the year 1959 was correct and

the department also had been proceeding on the same basis since then. He submits that many promotions etc. had been made on the basis of that seniority list and if the petitioner was allowed to challenge the same it will lead to a virtual chaos in the service as it will upset the situation which has existed for a number of years. He in this connection referred us to *Rabindra Nath Bose and others v. Union of India and others* 1970 S.L.R. 616. In that case the petitioners who were confirmed Assistant Commissioners of Income Tax in the years 1959 had filed a writ petition under Article 32 of the Constitution of India for seeking relief under Articles 14 and 16 of the Constitution. The writ petitioner sought to have seniority over the respondents who had been confirmed as Assistant Commissioners of Income Tax earlier to 1959. In this case their lordships refused to give any relief on the ground that the petition had been filed after inordinate delay. Sikri J. who spoke for the court observed as under :-

" BUT after carefully considering the matter, we are of the view that no relief should be given to petitioners who without any reasonable Explanation. approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into State demands after a lapse of years, it is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.

(13) We are not anxious to throw out petitioners on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion affected a long time ago would not be set aside after the" lapse of a number of years.

(14) Learned counsel for the petitioners, however, says that there has been no undue delay. He says that the representations were being received by the Government all the time. But there is a limit to the time which can be considered reasonable for making representations. If the Government has? turned down one representation, the making of another representation on similar lines would not enable the petitioner to explain the delay."

(15) Dr. Mahmud also referred to *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*,) where Hidayatullah C.J. spoke as follows:-

" THE question is whether this Court will in- quire into belated and State claims or take note of evidence of neglect of one's own rights for a long time? I am of opinion that not only it would (not?) but also that it should (not?). The party claiming Fundamental Rights must move the Court before other's rights come into existence. The action of court's cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court. This

principle is well-recognised and has been applied by Courts in England and America."

(16) The contention of Dr. Mahmud is that if their lordships of the Supreme Court refused to interfere in a matter filed under Article 32 of the Constitution on the ground of delay there is very much stronger reason for this court not to interfere under Article 226 of the Constitution in matters which are brought before it after such a long time. We are of the view that there is force in this contention of the counsel for the respondent. The seniority list now sought to be challenged was prepared as far back as 1959 and it is quite obvious that in the course of this period of years many rights must have flowed to a number of persons and if the petitioner is allowed to re-open the matter after such a long time it will result in confusion and uncertainty. We are, Therefore, of the view that this petition deserves to be rejected on the preliminary ground that it has been filed after a great deal of delay.

(17) But as the matter was also argued on merits we think it would be fair if we dispose of the petition on merits as well. The contention of Mr. Sanghi was that there was no justification for the respondent to make deduction of 6 years from his service as the same was not warranted by Rule 8(11). According to Mr. Sanghi Rule 8 (II) (b) provides that seniority shall be determined with reference to the total length of continuous service in a grade equivalent to that for which an employee is selected. He, therefore; contended that the whole service of the petitioner as an Assistant in the Uttar Pradesh should have been counted towards his seniority. He contended that there was nothing in Rule 8 (II) (b) to justify the said deduction of 6 years and, Therefore, this deduction was outside the ambit of Rule 8(11)(b). As against this Dr. Mahmud counsel for the respondent contended that Rules of 1956 though called rules were in fact executive instructions and were not statutory rules and that it was Therefore, open to the respondent to have issued further executive instructions to fill up and amplify the instructions already issued. It has been stated by the respondent that in order to establish equivalence of the State optees with the persons in the C.S.S. it was decided by the Respondent in consultation with the Union Public Service Commission to make a deduction of 6 years from the total length of qualifying service of the state optees, This according to Mr. Mahmud is a supplementary executive instruction and, Therefore, it cannot be said that there was no authority in the respondent to make the deduction. It is now well settled that even if statutory rules are not framed the government can. issue administrative instructions regarding principles to be followed concerning various conditions of services. Of course, it is true that a Government cannot amend or supersede statutory rules by administrative instructions but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and then issue instructions not inconsistent with the rules already framed, as per Sant Ram Sharma v. State of Rajasthan and another 1967 S.I.R. 9060. The contention of Mr Sanghi, Therefore, that there was no authority on the basis of which 6 years deduction from the length of qualifying services of the State optees was made, is without

merit.

(18) Even if the matter is to be considered strictly by reference to Rule 8 (II) (b), it cannot be said that the said rule does not permit the respondent to make the deduction of six years as has been done. It would be seen that -In order to determine the seniority the rule talks of the total length of continuous service in a grade equivalent to that for which a person is selected. The petitioner was selected for grade Iv of Indian Forest Service (B). Admittedly there was no grade Iv of Indian Forest Service (B) in the Uttar Pradesh State where the petitioner was working before joining the present post. According to clause (b) of Rule 8(11), Therefore, the equivalence has to be worked out by the department. The argument of Mr. Sanghi assumes that the total service put in by the petitioner as an Upper Division Assistant in the U.P. State must be treated to be equivalent to the Indian Forest Service (B) grade IV. There is admittedly no such equation under the rules. It is common ground that various officers of the category of the petitioner working in the various States against the posts of Upper Division Assistants were selected for the Indian Forest Service (B) grade IV. It is also not disputed that their pay scales varied from State to State and also the nature of duties and responsibilities assigned to the various State Government Officers were not known, and, Therefore, it was not possible to equate the State Officer's duties with the duties and responsibilities of corresponding officers in the Central Secretariat Service. Obviously the government had to establish a principle of equivalence having regard to the facts and circumstances of the case. The rules themselves also provided that credit will be given for not the whole of the service but only that rendered in an equivalent grade. It was for this reason that some practical rule as a yardstick had to be found out and the respondent applied the uniform rule of deduction of 6 years service of the State employees. The respondent has also stated in the return that the office of the Central Secretariat is a higher office with larger organisation and scope than the State Secretariats. It is explained that a Deputy Secretary in the State Government usually joins as an Under Secretary in the Central Secretariat when placed on deputation to Government of India and a Joint Secretary comes as a Deputy Secretary and so on. The Meston Committee observed as mentioned in the report of the Central Pay Commission, 1947, to the effect that the Central Secretariat requires in its clerical staff a higher degree of intelligence, a broader outlook and a more discriminating critical faculty than are expected in the offices of any Provincial Government and this observation has been mentioned to justify the action of the Respondent in having made a deduction of 6 years for the purpose of working out equivalence of the grade. It is also stated in the return that according to the criteria suggested in the Auditor General's decision below F.R. 30, the words "duties" and "responsibilities" are to be interpreted in a wide sense as including besides the work to be performed the general responsibilities and liabilities incidental to being a member of a particular service. It is stated that even if the pay scales are the same but since they were under different governments they cannot be treated as of equivalent grades and without reference to the

comparison of the duties of the two posts. It is also stated that the posts of Assistants in the Central Secretariat Service and Indian Forest Service (B) are classified as Class Ii non-gazetted while the post of Upper Division Assistant in the U.P. Government is classified as class Til and the same is the classification in other State Governments. The case of the respondent Therefore, is that as there were various pay scales and that almost all the pay scales were not equivalent to that of grade Iv for which the State optees were being recruited after taking into account the nature of duties and work performed in both the posts, and after consultation with the Union Public Service Commission decided on a uniform rule to deduct a period of 6 years so as to bring it within the purview of Rule 8 (II) (b) to calculate the service in the equivalent grade performed by the state employees. I.F.S.(B) was being formed for the first time and for the initial recruitment the sources were many fold i.e., from Central Secretariat Service and the State Government service. Some basis to work out the equivalence of the grades in State and in the Indian Forest Service (B) grade Iv had to be worked out. No material has been placed on record to show that the Upper Division Assistant's grade in the State must be considered as equivalent to the grade of Indian Forest Service (B) grade IV. On the other hand it is the case of the respondent that there is a vital difference between the two grades and that grade Iv is much superior from that of the Upper Division Assistants in the States on account of pay and the nature of duties performed by the employees. In these circumstances it cannot be said, that the rule which was uniformly applied by the respondent to deduct the service of 6 years was arbitrary and unreasonable and has to be struck down as unconstitutional. Whether there is reasonable classification or not depends upon the facts of each case and the circumstances prevailing at the time when the recruitment was made. When the State makes a classification between the sources of recruitment unless the classification is unjust on the face of it, onus lies on the party attacking the decision to show by placing on the record the material that the rules are violative of Article 16 of the Constitution. No material has been placed before us to show that the formula worked out by the respondent to equate the grades of State optees by deduction of 6 years was arbitrary and illegal. Counsel for the petitioner suggested that the deduction of 6 year's period was without any justification and was totally arbitrary. In the absence of any data we are unable to accept this contention. It must not be forgotten that in the matter of employment and recruitment from sources more than one certain amount of latitude and flexibility necessarily has to be left with the authorities concerned. It is never possible when Constituting a service where recruitment is from more sources than one to have an absolute, rigid and inflexible formula.

(19) By the very nature of things the different pay scales, the nature of work, duty require a certain amount of flexibility being available to the authorities concerned. In the absence, Therefore, of any allegation of mala fide it cannot be held that the formula applied by the respondent for the deduction of 6 years service of the State optee is in any manner arbitrary or discriminatory. This

contention of the counsel for the petitioner, Therefore, must fail.

(20) The next contention of Mr. Sanghi is that certain categories of persons have been recruited which it was not competent for the respondent to do under the Rules of 1956 and that some of them have been placed senior to the petitioner. According to him as those persons did not fall within the categories of clause 8(IJ) (a) as being members of the Central Secretariat Service they could not have been placed senior to the petitioner. The difficulty in Mr. Sanghi's way, however, is that those persons were recruited in 1958-59 and were shown as having been recruited from sources which are covered by Rule (8) (II) (a). It is clearly stated in the return that those persons were holding the posts of C.S.S. The main grievance out of these four categories was made about the first category of those persons who were recruited and who had passed the Assistant Grade Examination conducted by the Union Public Service Commission in 1955 for recruitment to grade Iv of C.S.S. The grievance was that these persons were not members of the C.S.S. within the meaning of Rule 5A (II) (i) of the Rules on 1-8-1956 nor had they three years of service in an equivalent grade before 1-8-1956 and as such were not qualified for recruitment at the initial constitution. This allegation has been denied in the return. It has been explained that these persons had passed the Assistant Grade Examination held by the Union Public Service Commission in 1955 and that further at the time of their recruitment to grade Iv they were holding posts in the C.S.S. as Assistants and most of them were working as Assistants in the C.S.S. in the Ministry of External Affairs. . The fact that some of these persons were not working in the attached Ministry of External Affairs or Ministry of Commerce etc. on 1-8-1956 was said to be of no consequence as the said requirement was relaxed under the proviso to the Rule in consultation with the Union Public Service Commission. It is also the case of the respondents that the Ministry of Home Affairs decided with the approval of the Chairman of the U.P.S.C. that up to the rank of 400 persons who had taken the examination in 1955 for Assistant's post were entitled to appointment as Assistants in the C.S.S. grade Iv against substantive post of probation and the officers below Serial No. 400 against the temporary post but this decision was later on changed so that this whole group of 800 directly recruited Assistants of 1955 Examination were to be placed above the second Regular Temporary Establishment but below the first Rte of Assistants who had been confirmed as Assistants, Thus 1955 Examination Assistants had a status superior to those included in the second Rte of Assistants of the C.S.S. In as much as Assistants included in the Rte were eligible to be appointed to Grade Iv of the general cadre of the Indian Forest Service (B) at its initial constitution, the whole of the batch of 1955 Examination Assistants was also eligible within the meaning of Rule 5(A)(11) of the Initial Constitution Rules. We thus find that there is no illegality in the appointment of this category.

(21) As regards the second category it was stated that the requirement of three years service in equivalent grade on 1-8-1856 was not necessary.

(22) As regards the third category, the names were not mentioned and, Therefore, no reply was called for.

(23) So far as the qualification of being a graduate is concerned, the same was relaxable and was relaxed under Rule 5(A) of the Initial Constitution Rules.

(24) It was thus maintained that all the persons were properly and legally recruited and there was no contravention of the Rules. It has not been shown to us that these statements which have been made in the affidavit are in any way against the record. More-over the petitioner's allegation have been made in a general way and the challenge to the appointment of each individual has not been made in the writ petition. It was necessary for the petitioner to satisfy in each individual case the infirmities of his appointment if he was seeking to challenge the same.

(25) The real difficulty of-the petitioner, Therefore, is that these appointments have been made in 1958, and it is not open to him to challenge their appointments now. In fairness to Mr. Sanghi we may say that he did not seek to challenge their appointments. He, however, claimed that even though their appointments maybe held valid yet they should be placed junior to the petitioner. He thus is seeking to get relief indirectly which is not open to the petitioner now to ask for after a lapse of so many years. More-over this allegation in the petition suffers from lack of details and it has not given full data. On that ground it is not possible to give any relief to the petitioner. The seniority of all those persons was also settled in the year 1959 and the petitioner did not challenge it and it is not open to the petitioner to challenge it now after the lapse of so many years. This contention of Mr. Sanghi, Therefore, also fails.

(26) Mr. Sanghi during the course of arguments put in an application seeking to impugn Rule 21 of Rules of 1964.

(27) It may be pointed out that there was no challenge to the Rules of 1964 in the main petition and it was for this reason that this application was moved. This application is very much belated and was moved when the case had been heard for one day and we did not think it proper to allow the petitioner to re-open the matter after such a long time but even then we allowed Mr. Sanghi to argue this point. When argued we found no force in the submission of the learned counsel for the petitioner. Rule 21 of Rules of 1964 only states that persons appointed to the service at the initial constitution shall have the seniority already allotted to them at that time. We are not able to appreciate as to what objection or illegality can be attributed to this Rule. This is a usual kind of Rule which maintains intact the seniority of persons prior to coming into force of The Rules of 1964. Mr. Sanghi, however, sought to urge that this Rule can only mean that a seniority which has been validly fixed prior to the coming into force of this Rule was saved and not that even a seniority which had been illegally fixed was to be saved. The purpose of this argument of Mr. Sanghi was, however, to show that the seniority of the petitioner that had been fixed in the year 1959 is against the provisions of

the Rules of 1956 and the same was invalid and, Therefore, when Rule 21 of the Rules of 1964 purported to carry it forward it as an invalid rule as it sought to validate a seniority which was originally invalid. This endeavor was really with a purpose to try to re-open the 1959 seniority after a lapse of so many years by taking a cover under Rule 21 of the Rules of 1964 as giving a fresh cause of action. In our view there is no merit in this contention of Mr. Sanghi because even if Rule 21 was held invalid, the result would be that the petitioner would be seeking to challenge the seniority fixed in 1959 and for that purpose the time factor will still have to be explained by reference to other details than the Rules of 1964 i.e, to say that the promulgation coming into force of Rules of 1964 would not give any cause of action to the petitioner to challenge the seniority fixed in 1959 if he cannot otherwise explain the delay. Moreover we have already held that the seniority of 1959 had been fixed according to Rules and, Therefore, the Rules of 1964 saved the seniority which was validly fixed. We do not find any infirmity in this Rule 21 to declare it invalid. Rather on the contrary this is a proper and appropriate and just Rule which protects and safeguards the rights of the persons recruited earlier to the coming into force of the Rules of 1964. This contention of Mr. Sanghi, Therefore, also fails.

(28) The result is that there is no merit in the petition and the same is dismissed, but in the circumstances of the case there will be no order as to costs.