

---

**(1979) 02 DEL CK 0020**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 1057 of 1974**

S.N. Rai and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

---

**Date of Decision :** 02-02-1979

**Acts Referred:**

**Citation :** (1979) 16 DLT 203

**Hon'ble Judges :** H.L. Anand, J

**Bench :** Single Bench

**Advocate :** Madan Bhatia, K.N. Kataria, B.P. Aggarwal, B. Kirpal and Madan Lokur, for the Appellant;

---

## Judgement

H.L. Anand, J.

(1) This petition under Article 226 of the Constitution of India raises an interesting question, if the petitioners, who were initially working in the Posts and Telegraphs Wing of the Central Public Works Department, and whose services were eventually transferred to the newly constituted Civil Engineering Wing of the P & T Department, had been absorbed in the Pat Department and, if so, whether they could nevertheless be repatriated to the Central Public Works Department, and in a controversy that has arisen because of an apparent conflict of interest between these officers and the direct entrants to the Civil Engineering Wing.

(2) Prior to July 1, 1963, the work of designing and construction of buildings required by the Posts and Telegraphs Department used to be looked after by the Central Public Works Department in its Posts and Telegraphs Wing. The petitioners were then working in the said Wing. By a Notification of May 4, 1963, it was declared that the P & T Department would be responsible for carrying out the Civil Engineering Works and sanction was, therefore, accorded for setting up of the Civil Engineering Wing in the P & T Department (Annexure A). By a Memorandum of June 28, 1963 (Annexure B), the Chief Engineers C. P. W. D.,

directed that the posts and units then forming the P & T Wing in the Central Public Works Department, shall accordingly cease to be borne on the establishment of the C. P. W. D. with effect from 1st July, 1963. These posts and units will form part of Pat Department from that date". Para 3 of the Memorandum runs thus :-

(3) Officers and staff including works charged staff belonging to the Centra] Fwd cadres and at present working in the Pat Wing of the C.P.W.D shall, until further orders, work under the P & T Department after the date of transfer on the same scale of pay and allowances as those applicable to them at present. They will not be entitled to any deputation (duty) allowance." The petitioners were among the officers who were thus transferred to the P & T Department and have since been working there. While it is a common case of the parties that in course of time, the entire staff, other than the officers, which was transferred to the P & T Department had been absorbed in the department, with the exception of those who opted out of it, there has been considerable controversy with regard to the absorption or the right to be absorbed in respect of the officers. It is also a common case of the parties that no deputation allowance has been paid to any of the officers. At an earlier stage of the proceedings in this Court, a contention was raised on behalf of the Union that even though there was a proposal for absorption of these officers in the P & T Department, pursuant to which their options were also invited and their suitability considered and a provision was made for such absorption in the draft recruitment rules, there was no decision in principle that these officers should be absorbed. The attempt of the petitioners to reinforce their contention that a decision had been taken in principle to absorb the petitioners, subject to their suitability and concurrence of the parent Department, with reference to the records of the Department was, however, resisted by a claim of privilege against compulsory production of records which was, however, overruled. The relevant record was subsequently produced by the Union and has since been inspected on behalf of the petitioners.

(3) According to the records of the P & T Department a Memorandum of August 20, 1953 (Annexure) was circulated by the P&T Board in which it was pointed out that it was proposed to absorb some of the officers, who were considered suitable for absorption and a provision to that effect had been made in the draft recruitment rules, which were being framed. The Memorandum invited options from the officers for permanent absorption by August 31, 1969. The Memorandum, however, added that the question of final absorption would be considered after the recruitment rules were finalised and that the question of permanent absorption of the optees will be decided only after obtaining the concurrence of the C.P.W.D. in each individual cases. Subsequently the Board sent a confidential communication of October 22, 1969 (Page 10 of the correspondence portion of file No. 100/80/68-STA.I) to the Engineer-in-Chief, C.P.W.D. on the subject of Permanent absorption of C.P.W.D. officers in the P & T Civil Wing pointing out that out of the 45 Cpwd officers on deputation to P&T Department 28 have given unconditional option for their permanent absorption.

The remaining persons have either opted conditionally or have sought clarification of some points before they exercise their option. It has been decided that in the first instance only those officers who have given a clear option may be considered for permanent absorption. A list of these officers is enclosed. I am to request that C. R. Folders of these officers may kindly be made available as early as possible together with their individual biodata.

"The communication proceeded to say that the permanent absorption of the officers will be decided by a Selection Committee on the basis of their Service record and other considerations. Their absorption will also be subject to prior approval of the CPWD." In reply to this communication, the Deputy Director (Administration) Central Public Works Department informed the P&T Board, that the Cpwd had "no objection" to the absorption of these officers in the Pat service" (page 118 of the correspondence portion of File No. 100/81/68-STA. 1). It further appears that the suitability of these officers, including the petitioners, for absorption was considered in a meeting of the Committee of senior officers held on June 11, 1971, (vide minutes of the meeting at page I A of the correspondence portion of File No. 100/81/68-STA. 1) and the Committee examined the C.Rs. of 12 officers and decided that all these officers were suitable for absorption in the P & T Civil Wing. This was followed by a note of the Secretary of the Ministry of Communications of December 10, 1971 (page 37 of note portion of File No. 100/81/68/STA.I Parti). This note traces the history of the consideration of the question of absorption of these officers and always any fears that the direct entrants may have with regard to any possible adverse effect of the absorption on their future chances of promotion to higher positions and incorporates the policy decision to absorb these officers. This note is concurred in by the then Hon"ble Minister of Communications and on the foot of the note appears the endorsement that these officers may now be absorbed in the Civil Wing. It would be useful to reproduce the entire note Along with the other endorsements :-

"My predecessor had examined this case of absorption of deputationists from the Cpwd into the Pat Civil Wing and had recorded a note on 15th September (page 29-31). He had suggested that from the original list, one Executive Engineer and three Assistant Engineers maybe repatriated to the Cpwd The Assistant Engineers had certain adverse entries in their C&D Rolls and the Executive Engineer had not been considered fit by the Dpc in his parent Department for promotion to the grade of SB. Minister had asked me to review the position regarding the Executive Engineer, Sh. Bantwal. I have obtained from C.E. (C) his considered views on the work and conduct of Sh. Bantwal. These are placed below at Flag "A". I have also consulted the Engineer-in-Chief. Cpwd, as to the reasons why Shri Bantwal was not selected. According to him, this was not due to any adverse entries against the officers concerned but because of the system of grading by which those graded higher are given priority over those with a lower grading.

Before recording the note, I have again discussed this case with Member (TD) and C E. (Civil). They agree with me that we should, in the interest of service, absorb their Executive Engineers and five Assistant Engineers. All these officers had come to the P&T Civil Wing prior to the joining of any direct recruit. They had also, when asked, given their unconditional option to join the P & T Civil Wing. As mentioned by my predecessor in his note 29/N, to the extent that we absorb the Cpwd officers, our- direct recruits would feel that their prospects had suffered. This should, however, be viewed in the overall context. We shall be absorbing only 8 officers in a present cadre strength of about 130. As far as the Executive Engineers from amongst the direct recruits are concerned, they have put in only about two years in the grade and I understand from Ce (Civil) that according to Cpwd standards may have to wait for another 5 years for promotion. The retention of A.Es. may be resented by other A.Es., who are directly recruited as the deputationists will be on par with them for promotion as Executive Engineers. This promotion, however, is not based on seniority-cum fitness but on merit. Lastly, the S.Os. and E.Os. may also feel that their promotional prospects are whittled down by the existence of five A.Es. from another Department. I understand from C.E. (Civil) that they need have no fears in this regard since our Civil Wing constantly expanding and even as it is, their promotional prospects are blighter than of their counterparts in the C.P.W.D. Sd/H.N. Bahuguna. Sd/-N.V.Shenoi Minister (C) Dt. 10.12.71. Secretary-10.12.71. sd/- N. V. Shenoi Secy.(C)dt. 13.12.71. Three Ex. Engineers and 5 A.Es. from Cpwd may now be absorbed in our Civil Wing. Sr. Member (TO) may also kindly see. sd/- LK. Gupta. (MTD) Dt. 14.12.71 The records further indicate, and this was not disputed, that some of the officers had been given promotion in the P&T Department without any reference to the parent Department presumably on the basis that they had been treated as having been duly absorbed. The case in point is the promotion of petitioner No. 2, whose promotion was approved in 1972 by the Board and had the concurrence of the Hon"ble Minister (page 6 of noting portion of file No. 69/1/72-STA 1). It further appears from the records that the direct entrants, had not been able to reconcile to the decision with regard to the absorption of these officers and, Therefore, started exerting pressure since the middle of 1972 with a view to review the earlier decision with respect to absorption and to have these officers repatriated to their parent Department, before the formalities with regard to absorption could be gone through. They made representations and had interviews with the Hon"ble Minister and the Chairman of the P&T Board and from the minutes of these meetings it appears that the then Hon"ble Minister concurred with the Secretary of the Department that these officers should be repatriated. It appears from the noting on the file that although it was the view of the Department at a certain level that the promotional avenues for the new entrants were ever increasing in an expanding organisation like the Civil Engineering Wing and there was very little likelihood of the direct entrants being in any manner adversely affected by the absorption of these officers, the repatriation of these officers was eventually ordered because it was pointed out that one of the aspirants, who in fact never

joined, had received a routine letter to the effect that the Cpwd Deputationists would be repatriated. It was also pointed out that the letter was sent by a Junior officer and could not be considered as a commitment particularly when the recipient concerned never joined the Department. At this stage, petitioner No. 1 made a representation to the Communications Secretary protesting against the proposed repatriation. The representation was apparently turned down because by its communication of January 19, 1974 (Annexure I) the P & T Board reiterated the decision to repatriate these officers in a phased programme as and when P & T officers were in a position to replace them, and stated that the President had in supersession of all previous orders decided that these officers will also not be entitled to any deputation allowance. The present petition is an apparent sequel to the decision not only to repatriate the petitioners to the C. P. W. D. but also to deny them any deputation allowance. The petition, as laid, seeks a mandamus to compel the respondents to absorb the petitioners in the P & T Department with retrospective effect from July 1, 1963, and to give them seniority and confirmation on that basis or, alternatively to give them deputation allowance for the entire period during which they worked in the P & T Department. In the course of the hearing of the petition and particularly after the inspection of the records was allowed to the petitioners, the petitioners were allowed to raise and have raised in the rejoinder to their returns as indeed at the hearing of the petition, further pleas that the petitioners would be deemed to have been absorbed and having been so absorbed, there was no power to repatriate the petitioners and, alternatively, that the respondents were bound to absorb the petitioners on the application of the principle of promissory estoppel in that the absorption had been promised to the petitioners and that on the basis of the representations expressly and impliedly made by Government, the petitioners had altered their position and injustice would be caused to them if Government was allowed to resile from the promise held out to the petitioners.

(4) On the basis of the admitted factual hypothesis provided by the relevant official records, referred to above, the various rival contentions raised at the hearing of the petition pose a number of questions for consideration.

(5) The first question that falls for consideration is whether the transfer of the petitioners to the P & T from the P & T Wing of the Central Public Works Department by the Cpwd communication of June 28, 1963 (Annexure "B"), was tantamount in law to a severance of the lien of the petitioners on their posts or service in the parent Department and absorption by its own force, in the P & T Department. This question must be answered in the negative. It is no doubt true that the petitioners, who were borne on the strength of the Central Public Works Department, even though they were working in its Pat Wing, could not be transferred to the P & T Department being a transfer outside the cadre, without their concurrence. It is equally true that in terms of the aforesaid communication, the Posts and units then forming part of the Pat Department of the Cpwd ceased to be borne on the establishment of the Cpwd with effect from the date of the transfer and will form part of the Pat Department from that date.

It is also probable that the officers and staff, who were transferred, were not allowed any deputation (duty allowance) because of the possibility of eventual absorption and the fact that the bulk of the staff had since been absorbed reinforces this belief. It is also likely that the petitioners and others, who were transferred had not objected to being set out of the cadre, and may Therefore, be said to have impliedly consented to the transfer when they continued to work in the P & T Department either because they assured that they would eventually be absorbed in a new and expanding organisation, which would hold out better prospects of promotion than in the parent Department, or at any rate, had reasonable exception of .absorption, There can also be no doubt that if the posts and units ceased to be borne on the establishment of the parent Department and became part of the new Department, there would perhaps be nothing left for the petitioners and others to do in the parent Department and there may, Therefore, be justification for a reasonable inference that they were due to bs absorbed in the new Department. All this, however, nevertheless does not add up either to a severance of relationship between the petitioner and the parent Department or their absorption in the new Department for at least three reasons. In the first instance, what was to cease to be borne on the establishment of one and form part of the other were the posts and units and not their incumbents and this is evident from the aforesaid communication. Secondly, the communication leaves no manner of doubt that the officers and staff belonging to the C.P.W.D. cadres and at present working in the P A T Wing of the C.P.W.D. were to work under the Pat Department until further orders and on the same scale of pay and allowances as those applicable to them at present. This clearly implied that the transfer was a temporary measure until appropriate arrangements had been made or the policy with regard to repatriation or absorption, as the case may be, had been laid down or the details of the manner in which the new Wing had to be staffed had been decided upon. Thirdly, if they were intended to be absorbed by the communication, there was no need for a specific mention in the communication that they would or would not be entitled to any deputation allowance even though the disentitlement of the allowance may perhaps have something to do with what may have been in contemplation at that stage with regard to the future course of their service.

(6) The second question that requires determination is whether the petitioners were ever absorbed in the P A T Department, subsequent to their transfer, or could, having regard to the surrounding circumstances, be deemed to have been absorbed. At one stage, an extreme contention had been raised on behalf of the Union that no decision had been arrived at in principle to absorb the officers subject to their option, suitability and concurrence of the parent Department. This contention was apparently inspired because of the rather ambiguous phraseology of the Board's Memorandum of August 20, 1969 (Annexure F) and probably because of the belief in the efficacy of the claim of privilege against compulsory production of records. This contention, however, could not possibly stand after the disclosures were made on the production of records and was,

Therefore, given up. It can, Therefore, be said to be a common case of the parties on this aspect of the controversy that, whatever may have been the position before the date of the aforesaid memorandum, a definite decision had been taken by the then Hon<sup>ble</sup> Minister on December 10, 1971, after the options had been exercised by these officers, they had been found to be suitable and their parent Department had given its concurrence, that these officers be absorbed in the P & T Department and the endorsement that followed which have been extracted above, categorically envisaged that the process of absorption i.e. the mechanics of it, may be completed. A perusal of the Memorandum referred to above, as indeed the communication of the Board, dated October 22, 1969, addressed to the Engineer-in-Chief, Cpwd, however, leave no manner of doubt whatever that the decision with regard to absorption in principle had been taken even before the date of the Memorandum and the said communication. In the absence of such a decision, there was no question of any proposal for absorption or of inviting options or of considering the suitability of these officers for absorption or of seeking the concurrence of the parent Department. A perusal of these two communications, as indeed the numerous nothings that follow, lead to the irresistible conclusion that the policy decision had been taken earlier but the actual absorption had to await until the suitability had been determined. Rules had been framed and concurrence had been obtained from the parent Department. Some of the files, in which such a decision was allegedly taken by Shri Satyanarain Sinha, the then Minister concerned, had not been produced. If these files had been produced the inference would be fully reinforced. It is, however, unnecessary to carry this aspect of the matter any further because of the undisputed eventual decision at the Ministerial level that these officers be absorbed. Learned counsel for the Union, as indeed the affected officers, the other respondents, however, urged that even though the Ministerial decision had been taken that these officers should be absorbed and the other conditions precedent for absorption had been satisfied, there was nevertheless, in point of fact, no absorption because neither the rules, with regard to recruitment to the Wing, were framed, nor was the decision, in fact, carried out, and that unless all the formalities required to complete the process of absorption had been carried out, it could not be said that the petitioner had been absorbed in the service of the P&T. It is not possible to accept this contention. Absorption in service is neither a Chemical nor a physical phenomenon and one does not have to look around for a physical fusion or a Chemical dilution to give effect to a decision to absorb someone in a service, to which he does not belong. Absorption is essentially a legal concept. One could understand the distinction between a decision in principle and an order with regard to absorption of a particular person pursuant to it. For example, a policy decision may be taken that certain category of persons may be absorbed subject to certain conditions being satisfied. It cannot be said that they are absorbed until they have satisfied those conditions and the authority competent to direct absorption is satisfied that they have qualified "for it and makes a specific direction in that behalf. Whereas in the present case, pursuant to what may be described as a proposal to absorb these

officers, their suitability is considered, they are found fit for absorption and their Department gives concurrence and they unconditionally exercise the option to be absorbed, the process of absorption would, in any event, be Complete when the Hon"ble Minister concurs in the decision that these officers be absorbed and a direction, is issued that the necessary steps be taken in that behalf. What remained to be done is not a matter of substance but of form, procedure or the mechanics to carry out the decision. It is not the form that determines the nature of the action but it is the substance that is determinative of it. The form was neither a constitutional nor a statutory requirement and it could not, Therefore, be said that since a form had been prescribed for the action, it must be done in that form or not at all. We arrive at the same conclusion if we examine the matter from the contract angle. If the proposal to absorb, subject to suitability and concurrence, etc., was a proposal in terms of the law of contract, the exercise of option by the officers and the fulfillment of the other conditions would be tantamount in terms of the law of contract, to unqualified acceptance of the proposal thereby giving rise to a concluded contract. Even if the original proposal, contained in the Memorandum of August 20, 1969, was not a proposal, the exercise of option by the officers certainly was and the Ministerial approval to absorption was in the nature of its acceptance and the end result was a concluded contract. It is, no doubt, true that service under the State is a matter of status but it is at the same time in the nature of a contract between the State and a citizen. Nothing would turn on the constitutional requirement of how a contract may be entered into because it is well settled that the Union may enter into a contract even by correspondence or notes or orders on the file so long as the decisive action is taken at a level, which is competent to enter into such a commitment. If the matter was to be determined from the contract angle, it is nobody's case that the Hon"ble Minister was not competent to enter into such a contract or that the high officials of the Board and the Communications Ministry lacked any competence in that behalf. The contract having thus been duly entered into, all that remained to be done was..the mode of its performance or the usual procedure for the transfer of service records of these officers to the P & T Department and of certain consequential entries in the relevant records with regard to the new status of these officers. The substance of the matter could not be ignored by the mere delay or the absence of these formalities. Otherwise, it would be a case of form defeating the substance. It is true that the recruitment rules had yet to be finalised and promulgated. The recruitment rules, however, do not constitute any source of power to make the recruitment and the absence of the rules, Therefore, does not impinge on the undoubted power of the executive to recruit. Learned counsel for the respondents were unable to point to any constitutional or statutory provision, which may disable the executive to make recruitment to the P & T Department in the absence of the statutory rules. It is, no doubt, desirable, so indeed proper, that statutory rules are framed for recruitment to the various services so as to regulate recruitment, promotion and allied matters, so that there is an element of uniformity and certainty with regard to the mode of recruitment and other matters affecting the service. These rules,

however, regulate the exercise of the power which exists independently of these. If, Therefore, the executive decided to recruit in a particular manner before the rules are framed, there is nothing to prevent it from doing so. That the draft rules contained a provision for absorption of these officers was not disputed. That would give sufficient indication of what form the rules were intended to take and if there was nothing in any statute or rule to the contrary, there could be no legal objection to the absorption of these officers in the Department. The absence of the recruitment rules, Therefore, would not be of any consequence and would not deviate from the validity of the absorption, pursuant to the Ministerial decision referred to above. The officers were, Therefore, duly absorbed in the P & T Department.

(7) The third question that requires consideration is if there is anything to prevent the Government to review its earlier decision and to order the repatriation of these officers. This question is obviously posed in view of the admitted position that under the pressure of the new entrants to the P&T Service, the other respondents, the Hon<sup>ble</sup> Minister eventually decided, presumably to ensure better promotional avenues for the new entrants, that these experienced officers, who had served the Departments so well and for so long, should be repatriated. This question has two facts, namely, the power to review a decision and the reasons for it.

(8) As for the power to review a Government decision there can be little doubt that, subject to certain exceptions, which would be referred to presently, the executive has undoubted power to reconsider any decision that it may have arrived at. The initiated power of review, a peculiar feature of judicial action, does not extend to the field of administrative action. It is, however, true that frequent review of executive decision may to an extent, introduce an element of uncertainty in Government policy and attitude, even though the ability and willingness to review administrative decisions is a sign of executive dynamism and flexibility. The element of uncertainty is, however, considerably diluted when one takes into account that in a system governed by the Rule of Law, it is the Government of laws and not of men with the result that decisions that men take are based on laws, as indeed, well recognised principles, including the imperative need that all Government action must be just and fair. Government decisions are, Therefore, not based on personal whim or fancy of an individual. Executive Decisions are presumed to be based on executive exigencies and, in matters relating to services, to exigencies of service, a balancing of conflicting interests of different sections of the Service, subject to the predominant needs of public interest. It is also not possible to ignore that, by and large, executive decisions in a system like ours, are principle and need oriented and well balanced and, Therefore, do not leave any trail of avoidable or unnecessary hardship or injustice. That there are obvious constraints, constitutional and statutory, based on well established principles, to which the executive decisions must always be subordinate, is also beyond doubt, for, if they transgress those limits, they lose not only their legitimacy but also expose themselves to the vice of invalidity. It

is, Therefore, not possible to accept the contention that there was any lack of power with the Government at the appropriate level to consider the desirability of reviewing an earlier decision with regard to absorption and to reverse the same and require the petitioners to be repatriated subject, however, to certain constraints which may inhibit the power to repatriate or which may otherwise prevent Government from exercising such a power.

(9) As for the reasons for the review, it is undoubted that any Government decision must not only be just and fair but must also be bonafide and based on relevant considerations. Any Government decision which is either not just or fair or lacks in bonafides or is based on extraneous considerations or is intended to serve a collateral purpose would suffer from the vice of invalidity. While it is true that a Government decision with regard to any Service must, Therefore, be based on considerations which are germane to the exigencies of service and the larger claims of public interest, it is not possible to countenance the suggestion that in arriving at such a decision. Government is not entitled to consider the impact that a decision may have on a section of its service. Thus, in considering whether officers working on deputation should be permanently absorbed in service or not, it is open to Government to consider the impact that such absorption may have on the possible promotional prospects of direct recruits for the time being or in the future, even though Government may be expected, as it ordinarily indeed does, to balance the conflicting claims of the direct entrants, the rankers and the deputationists, while laying down a policy with regard to recruitment to a new Service or to a new cadre. A contention was raised on behalf of the petitioners that having regard to the increasing expansion of the new Wing and the likelihood of its further expansion in the future, the promotional avenues had virtually multiplied manifold and that the absorption of only a handful of officers in such a large organisation could not possibly have any adverse effect on the promotional avenues for the existing direct entrants or those that would follow and pointed attention was drawn to the rather eloquent notes in the records of the P & T Department, which clearly brought out that the absorption was not likely to have any adverse effect on such avenue. It was, Therefore, urged that there was, Therefore, no factual foundation for the Minister to review the decision on the ground that the absorption would have an adverse effect. Now, this is true that the Wing had, since its establishment, considerably expanded and was expected to expand further. It is equally true that some of the notes in the Departmental files demonstrate with reference to the facts and figures that there were expanding horizons for promotional avenues and the absorption of a few experienced officers would have no adverse effect on it. It is, however, nevertheless not possible to accept the contention that this was not a relevant consideration. Any decision with regard to absorption of officers in a service is bound to have effect on the direct entrants, however, marginal or negligible it may be and would, Therefore, be relevant consideration for Government to take into account in considering the question of absorption. That Government had considered this aspect when the earlier decision to absorb had

been taken would by itself show that it was a relevant consideration and, if it be so, taking this aspect into consideration at the time of reconsideration could not be said to be extraneous. A further contention was raised that at the time of the decision to absorb the question had been duly considered and there was, Therefore, no fresh material on the basis of which the decision could be reviewed. Now, this is correct that when the decision to absorb was taken, the note that led to the decision clearly pointed out that there was very little likelihood of the promotional avenue of direct recruits being adversely affected and that this aspect had been duly considered by Government, but I do not see why, when a representation had been made by the affected officers, such a matter could not enter Government consideration, particularly where the affected officers have had no opportunity to rebut the conclusion that their promotional avenues would not be affected. A point was also made on behalf of the petitioners that the revised decision was based on a fallacy in that it referred to a routine letter that had been sent to one of the aspirants, before actual recruitment, to the effect that the deputationists would be repatriated. Now, this is true, and it has been brought out in the notes referred to above, that some routine letters were written to some of the aspirants, which did give the impression that the deputationists would be repatriated and the aspirants and may have been of a routine nature, it must be held to be extraneous matter. Such a consideration was germane to the decision. With regard to the desirability of reviewing the earlier decision.

(10) The fourth question that requires consideration is whether assuming that these officers had been duly absorbed, but there was power to review the decision, could they nevertheless be repatriated to their parent Department, without their consent, merely because certain formalities with regard to absorption had still to be gone through. This question must be answered in the negative. Once the second question is answered the way it has been done above, the absorption was complete notwithstanding the formalities that may have to be gone through. Once the officers were duly absorbed in the P & T Department, any repatriation to the parent Department would amount to disintegration of the cadre and, what is worse, be tantamount to their transfer outside the cadre in which they got absorbed. Government has undoubted power to classify the civil services or to even bifurcate a cadre but there is no power to transfer a civil servant outside the service or the cadre without the concurrence of the public servant concerned. An existing cadre may be split up into two cadres but to send a public servant outside the cadre is a different matter and must be treated differently. In view, Therefore, of the incidence of absorption and inability of Government to transfer these officers out of the cadre in which they got absorbed, there was no power in Government to declare that these officers had got de-absorbed, as it were, or that they would be repatriated to their erstwhile parent Department. That being so, the subsequent Ministerial decision, referred to above, by which the petitioners were required to be repatriated, was in excess of power, even though Government cannot always be bound down to a particular

decision and may be free, in certain circumstances, to resile from a position that it takes and to review its earlier decision.

(11) The fifth question that calls for determination is as to whether the petitioners could successfully invoke the doctrine of promissory estoppel to prevent repatriation. In the way I have looked at some of the earlier questions, this question hardly survives and has really become academic but, having regard to the importance of the question, it would be proper to record a decision. The question postulates the assumption that there was no absorption and if there was, there is no other bar to repatriation. The application of the doctrine was called in aid in two alternative ways. If there was no absorption, the aid of the doctrine was requisitioned to compel the Government to absorb the petitioners on the ground that, on account of the representations of the Government that the petitioners would be absorbed the petitioners had altered their position to their prejudice and detriment and to let the Government resile from that position would cause injustice to the petitioners. If, on the other hand, there was a decision to absorb and Government had the power to nevertheless repatriate the petitioners, the doctrine was called in aid to prohibit the Government from repatriating the petitioners on the above premises.

(12) The doctrine of promissory estoppel, also known as equitable estoppel and now new equity, was laid down by Lord Cairns in the case of Hughes and was dug out of the debris of judicial history by Lord Denning and disinterred and restated as a recognised doctrine in the High Tree's case, was made popular in India by the well known case of Indo Afghan Agencies. Later judicial thinking in England and even an apparent recantation of his position by Lord Denning himself and, following that, some of the decisions in India, cast some doubt as to the limits to which the doctrine could be extended particularly, in its application against the state in its governmental, public or sovereign capacity, as also whether the doctrine could provide a cause of action and be, therefore, capable of being used as a weapon of offence as distinguished from a mere shield of defense. In the case of Jain Shudh Vanaspati, while speaking for the Division Bench of this court, I had noticed that since its exposition by the Supreme Court in the case of Indo Afghan Agencies (Supra) the doctrine had been considerably watered down in the country of its origin on account of the judicial controversy following the decision in the case of Robertson and that there was considerable judicial thinking which concedes to the sovereign authority the power to change the policy or modify the administrative action even if on the basis of any representation made earlier a citizen may have acted to his prejudice, a view which is shared by juristic opinion in India. It was further observed that the doctrine would nevertheless be still available in India because in spite of the controversy the decision of the Supreme Court in that case still held the field. We were, however, hesitant to tie the relief in that case to the doctrine because in view of the rather nebulous legal position with regard to the doctrine of promissory estoppel, it may perhaps be too fragile a thread on which to base the rights of the petitioners. But fortunately, the mist seems to be clearing in England

and there is a refreshing reinforcement of the doctrine in India with the recent decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Co (P) Ltd., in which Bhagwati, J., has not only reiterated the doctrine, as expounded by the Court in the case of Indo Afghan Agencies (Supra), but has even expanded its frontiers and, by virtually dispensing with the detriment factor, added an entirely new dimension to it. The doctrine has thus been preserved for posterity as yet another instrument to bridge the gulf between law and justice and to enforce against the State, even in its sovereign capacity, any representation that its functionaries may have made, subject to certain well recognised exceptions. The law may, therefore, be said to be well settled in India that the State would be bound by any representation if a citizen acting on it may have altered his position and it would cause injustice to the citizen if the State was allowed to resile from the representation, in the absence of any statutory obligation to the contrary.

(13) The satisfaction of the petitioners with the reinstatement of the law of promissory estoppel is, however, illusory because of the absence of the necessary factual foundation for its application. The petitioners were transferred to the P & T Department with their implied consent and it is nobody's case that the petitioners gave such a consent because of any representation made by the Government. That the petitioners gave such a consent in the expectation that they would eventually be absorbed in a new and expanding wing of the P & T Department would not attract the doctrine. It is true that at some stage, and I have referred to it in detail above, a promise was held to the petitioners that they would be considered for absorption, but even if such a promise had not been held the petitioners, having initially given their implied consent to their transfer, were bound to continue to serve on deputation until they had sought repatriation and such repatriation had been agreed to. The continued stay of the petitioners in the Pat Department could not be said to be such a voluntary act as to constitute alteration of their position. To an extent, they were bound to serve in the P&T Department until repatriation although it cannot be disputed that their willingness to continue in the Department may have partly been because they were expecting to be absorbed and had been given an assurance to that effect. It is true that, to the extent that the petitioners did not agitate for grant of a deputation allowance, they had taken a certain course or refrained from taking a certain course of action because of the promised absorption, but that is not such an alteration as could be said to be irretrievable so as to inhibit any change in the Government course of action. If they were not to be absorbed or were eventually not absorbed, they would nevertheless ask for deputation allowance with retrospective effect and the petitioners have set up in this very petition an alternative case for relief by way of deputation allowance with retrospective effect from the date of their transfer. It is true that the detriment ingredient of the doctrine has apparently been dispensed with by the latest decision of the Supreme Court, but, to my mind, there must still be something in the way of citizen alters his position that should infest the change in the attitude of the

Government with the potential to cause injustice or lead to some kind of fraud. It may be that the continuance of the petitioners in the P & T Department in the lure of an eventual absorption may have meant their foregoing, .deliberately or unconsciously, better avenues in the parent Department or, through the parent Department elsewhere, but then can it be ignored that the petitioner's continuance in the new Wing of the P & T Department by itself also held out a promise of much better avenues of promotion in a newly constituted Wing with possibilities of manifold expansion. In fact, by remaining in the Pat Department for long many years, the Petitions could not be said to have either suffered any detriment or be said to have altered their position in such a way as to attract the doctrine because the petitioners had everything to gain and nothing to lose, their lien on the parent Department having more or less been maintained because of the delay in the mechanics of absorption. Their continuance in the P & T Department may perhaps have had some marginal impact on their fortunes but that is neither more nor less than the vicissitudes of normal service under the State and the ordinary incidence of public service. There is, Therefore, no justification to invoke the doctrine in the present case even if aid of the doctrine was necessary for the petitioners to succeed in their claim. The doctrine perhaps needs to be stretched a little more to take in a case of this type.

(14) That leaves for consideration the last question as to the entitlement of the petitioners to deputation allowance, if they are not entitled to be absorbed and this again is a question which, in view of the way I have looked at some of the other questions, does not really survive and is purely academic at this stage. This, however, need not detain me any longer because it was not disputed that, if the petitioners must be repatriated for some reason, they were certainly entitled to the normal deputation allowance because they had been sent out of the cadre and, the condition that they would not be entitled to deputation allowance, was partly, if not wholly, because they or those of them, who were considered suitable, were expected to be absorbed under the P & T Department in course of time.

(15) In the result, the petition succeeds, the rule is made absolute and in view of my decision on the question absorption, it is declared that the petitioners had been duly absorbed in the P & T Department and could not be repatriated. The Union is restrained from repatriating the petitioners without their content. The petitioners would also have their costs. Counsel's fee is assessed at Rs. 750.00 .