

(1978) 02 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 44 of 1975 and Civil Miscellaneous Appeal No. 1048 of 1976

U.B.S. Teetil and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-02-1978

Acts Referred:

Citation : (1978) ILR Delhi 225(2) : (1978) LabIC 1225

Hon'ble Judges : V.S. Deshpande, J;H.L. Anand, J

Bench : Division Bench

Advocate : A.K. Sen, B. Dutt, G.D. Gupta, R.P. Bhatt, N.N. Goswami, B. Kirpal, Madan Lokur, S. Pappu, E.X. Joseph, C.M. Nayar and A.V.V. Nair, for the Appellant;

Judgement

H.L. Anand, J.

(1) Whether the petitioners, who were absorbed in the Central Reserve Police Force, for short, the Force, on release from the Army as Emergency Commissioned Officers, are entitled to the benefit of their service in the Army for the purpose of fixation of their seniority in the Force and certain consequential benefits in the matter of promotion, either by virtue of any of the rules that may be applicable in that behalf or on the basis of the Principle of promissory estoppel, is the principal question that is posed for our consideration by this petition under Article 226 of the Constitution of India.

(2) The relevant facts and circumstances leading to the petition are by and large beyond controversy and may be briefly stated to provide the necessary backdrop. The Central Reserve Police Force Act, 1949, for short, the Act, empowered the Central Government to constitute and regulate an armed Central Reserve Police Force by virtue of Entry I of List I of Schedule Vii to the Government of India Act, 1935, which corresponds to Entry (2) of List I in Schedule Vii of the Constitution of India, which provides for "Naval, military and air forces; any other armed forces of the Union". The Force, which was

apparently intended to be a successor to the Crown Representatives Police Force, was intended to be a Reserve Police Force to aid civil authorities in India in the maintenance of law and order in times of emergency. After the lapse of paramountcy with the independence of India on August 15, 1947, there was no longer any Crown Representative in India. The Crown Representative Police Force Law, 1939, ceased to have effect on that date and the Act was apparently passed to provide for the continuance, constitution and regulation of the Central Reserve Police Force by the Central Government. Subsequently, an armed force of the Union for ensuring the security of the borders of India was constituted. The Border Security Force, however, was initially regulated by the Act and the Rules framed there under until Parliament passed the Border Security Force Act, 1968 (Act 47 of 1968), for short, B.S.F. Act. By virtue of the provisions of Section 18 of the Act, the Central Government made the Central Reserve Police Force Rules, 1955, for short the Rules, inter alia, to regulate the functioning of the Force. Rule 105 of the Rules provides for appointment and promotion of superior officers. -Until the year 1966, when Rule 105 was amended, inter alia, by the addition of clause (iv-A) to Sub-Rule (4) of it, the only sources of recruitment of superior officers in the Force were the Indian Army and the Indian Police Service, including the retired or released army officers and retired police officers, besides direct recruitment from amongst candidates possessing the prescribed qualifications. By the aforesaid amendment, the Emergency Commissioned Officers and Short Service Commissioned Officers of the armed forces of the Union, who were commissioned on or after November 1, 1962, apparently at the time of the Chinese invasion, and were released at any time thereafter, became eligible for recruitment by virtue of the newly inserted clause (iv-A). Rule 8 of the Rules made provision for seniority and clause (i) of sub-Rule (b) of this Rule promissory estoppel, is the principal question that is posed for our made provision for inter se seniority of superior officers. This is how sub-clause (i) of Sub-Rule (b) of Rule 8 runs:-

"(I)An Army Officer shall maintain his seniority as between Army Officers within a particular rank. Similarly, an Indian Police Service Officer shall maintain his seniority between himself and other Indian Police Service Officers.

FOR purposes of inter seniority between non-Army and Army Officers of equivalent rank, substantive incumbents shall be senior to officiating or temporary officers, their inter se seniority depending on the dates of their continued unbroken service in that rank. Similarly, the inter se seniority of officiating or temporary officers shall be determined by their continuous length of service in that rank. An Army Officer reemployed in the Central Reserve Police shall maintain his Army seniority between Army Officers within a particular rank."

ON one possible reckoning of this provision, it conferred on the Army Officers and the members of the Force drawn from the Indian Police Service the right to the past service in the Army and the Police being taken into account in determining inter seniority of superior officers. In the setting in which this Sub-

Rule appeared in the Rules, the benefit was apparently confined to the Army Officers and the Indian Police Service Officers perhaps because when Rule 105 was amended to enable the released Emergency Commissioned Officers to be appointed to certain posts in the force, corresponding amendment was not made in Rule 8 (b) (i) and it continued to be in its original form. Be that as it may, the Army Headquarters in its communication of 23/25 October, 1969, addressed to all the Army Commands (Annexure Ii to the petition) on the subject of employment of Emergency Commissioned Officers in the "Security Forces" pointed out that the Emergency Commissioned Officers had become eligible for appointment as Company Commanders, Quarters and Company Commanders in "the Border Security Force and the Central Reserve Police Force"; that "the terms and conditons of service of the officers as drawn up by the Director General, B.S.F. are given in Appendix "B" ". Appendix "B" to this communication is entitled "Terms and conditions of service of Emergency Commissioned Officers on their absorption in the Border Security Force". Against column 5 which deals with seniority, it is stated as under :-

"5.Seniority-They shall maintain their Army seniority between Army Officers within a particular rank. For purpose of inter-se-seniority between Army and Civil Officers of equivalent rank, substantive incumbent shall be senior to officiating/ temporary officers, their inter-se-seniorily depending on the dates of their continued unbroken service in that rank. Similarly the Inter-se-seniority of officiating/ temporary officers shall be determined by their continuous length of service in that rank."

ACCORDING to the petitioners, they opted for absorption in the Force pursuant to the aforesaid circular of the Army Headquarters which in its Appendix contained a clear representation that they would be given the benefit of past service in the Army in the matter of fixation of seniority on absorption in the Force. The petitioners were appointed on different dates in the year 1970. The offer of appointment, a specimen of which is Annexure V to the petition, however, stipulates in para 2(b) that-

" YOUR seniority and pay will be fixed in accordance with the orders issued/to be issued by the Government of India in this regard for E.C.OS, appointed in C.R.P."

IT is further stipulated that "On joining the Force, you will be governed by the C.R.P. Force Act and Rules a.nd the manual as amended from time to time". It appears that irrespective of the true interpretation of the relevant Rules the benefit of past service was intended to be and was in fact given to the petitioners in the matter of fixation of pay as also in the determination of seniority, apparently by virtue of the provisions of Rule 8(b)(i) of the Rules consistently with the representation made by the Army Headquarters in its circular referred to above. While the benefit conferred on them in the matter of fixation of Pay still continues to be enjoyed by them, the corresponding benefit in the matter of seniority was withdrawn apparently on a representation by the aggrieved members of the Force and presumably on the basis that Rule 8 confers the

benefit only on the Army and Police Officers and that the released Emergency Commissioned Officers could not be treated as Army Officers or even released or retired Army Officers. The withdrawal of the benefit was apparently also sought to be justified with reference to the released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967, for short the Reservation Rules of 1967, which in terms apply to vacancies in the Central Civil Services and posts. It appears that at one stage the posts in the Force were not being treated as civil posts and the Reservation Rules of 1967 were not being applied to these posts. The withdrawal of the benefit was apparently a sequel to a realisation that the Force was only a Police Force, even though an armed one, but nevertheless the posts in the Force were civil posts to which the Reservation Rules of 1967 were fully applicable. On the benefit of past service in the matter of seniority having thus been withdrawn, it naturally affected the corresponding right to promotion to the higher posts in the Force. That is how the petitioners filed the petition claiming the benefit of past service in the Army in the determination of their seniority in the Force and for the consequential promotional entitlements. While hearing the petition one of us (Anand, J.) referred the matter to a larger Bench in view of the importance of the questions and the rather sensitive nature of the Force. That is how the matter came up before us for disposal.

(3) The petition is resisted both on behalf of the Union and the affected officers, as indeed the Director General, Central Reserve Police Force, on the grounds that the petitioners were outside the term "Army Officers" and were, Therefore, not entitled to the benefit of Rule 8(b) (i) of the Rules ; that in any event on a proper interpretation of the said Rule the petitioner would not be entitled to the benefit of past service ; that the posts in the Force are civil posts and would attract the application of the Reservation Rules of 1967, which, inter alia, deal with seniority. The contention urged on behalf of the petitioners on the basis of principle of promissory estoppel was sought to be resisted on the ground that the circular merely quoted Rule 8 (b) (i) and neither made any representation nor volunteered an interpretation of it and that the petitioners would still be bound by the true interpretation of the Rule and not by its mere reproduction in the circular. A faint suggestion was also made that the Appendix "B" to the circular was intended for the benefit of those who were seeking absorption in the Border Security Force and that it had no application to the Emergency Commissioned Officers who were seeking entry into the Force. These, by and large, were the rival contentions at the hearing of the petition. However, after the conclusion of the hearing and in an attempt to salvage the position, which appeared to have been irretrievably lost, a contention was sought to be raised on behalf of the petitioners that, even if it were to be assumed that Rule 8 was inapplicable to the petitioners and was, Therefore, incapable of conferring on them the benefit of the past service, the petitioner would nevertheless be entitled to that benefit by virtue of the provisions of Rule 102 of the Rules in so far as the said Rule made a provision that in all matters with respect to which there was no provision in the

Rules, the Rules applicable to the Central Civil Services would apply, which, it was contended, would attract the application of, what popularly came to be known as the June, 1949 Memorandum of the Government of India with regard to seniority and which in terms recognised the entire length of service of a public servant as a criterion for the determination of seniority.

(4) The first question for consideration is as to whether Rule 8 (b) (i) of the Rules would be attracted in the case of the petitioners and be made a foundation for the benefit of past service in the matter of seniority in the Force. On the basis of the rival contentions of the parties, two propositions emerge with regard to the applicability of this Rule : (i) Whether the petitioners would be within the expression "Army Officers" in the Rule so as to attract the Rule, and (ii) if so, whether the Rule confers any benefit of past service in the Army at all.

(5) After hearing learned counsel for the parties at considerable length and after giving the matter our earnest consideration, we are of the view that the first question with regard to the applicability of Rule 8 (b) (i) must be answered in the negative and there is, Therefore, no option but to hold that the Emergency Commissioned Officers would be outside the expression "Army Officers", and that being so, the petitioners would not be entitled to the benefit of past service on the basis of the aforesaid Rule. In the way we have looked at this question, the second question with regard to the interpretation of Rule 8 (b) (i) would not appear to survive. We would presently give our reasons for the conclusion.

(6) What is the correct position of an Emergency Commissioned Officer in the Army and what are the incidents of such a Commission? It was not disputed before us that even though an Emergency Commissioned Officer in the Army was subject to military discipline in the same way in which regular Army Officers were, he could nevertheless be not treated at par with those holding permanent Commission in the regular Army. According to Army Instruction 9/S, Emergency Commissions in the regular Army may be granted to civilian generally "for the duration of the Emergency and for so long thereafter as their services may be required". The terms and conditions on which such Commission may be granted are set out in the instructions that follow. According to these instructions, such Commission may be terminated at time by Government, inter alia, "if his services are no longer required" [15-A(iii)]. Similarly, the Emergency Commissioned Officers may on giving three months' notice be permitted to resign his commission [15(b)]. In terms of para 15(c), however, "An officer granted this Commission, if eligible and suitable in all respects, may be considered at the appropriate time for permanent regular Commission in the Regular Army". During the time the Emergency Commissioned Officers serve in the Army, they are permitted to retain a lien on their permanent/quasi-permanent civilian appointment, if any [18(a)]. Grant of permanent Commission to serving Emergency Commissioned Officers is regulated by Army Instruction No. 13/S. It is, Therefore, obvious that an Emergency Commissioned Officer holds the Commission for the limited period of duration of Emergency or for such time thereafter as may be required and the

Commission is liable to be terminated at any time when his services are no longer required. It is, Therefore, neither a permanent Commission nor a Commission in the regular Army and while serving as an Emergency Commissioned Officer such an officer cannot be considered as having been absorbed in the Army. In fact, he retains his lien on any civilian post that he may have held prior to the grant of the Commission in a permanent or a quasi-permanent capacity. It was also not disputed that while a regular Army Officer retains his Army rank after retirement or release, if earlier than retirement, the Emergency Commissioned Officer does not either when his Commission is terminated or if he opts out of the Commission. The mere fact that an Emergency Commissioned Officer serves the Army though normally at a difficult time and at the expense of other alternative career and is bound by the Army discipline, he does not carry on release the benefit of a Regular Army Officer or be equated with a retired or released officer of the regular Army. In view of this connotation of the expression "Army Officer" and the clearly distinguishable position of an Emergency Commissioned Officer as compared to an officer of the regular Army, one should have thought that when in the year 1966, the Emergency Commissioned Officers became eligible for entry into the Force as superior officers by virtue of clause (iv-A) of Sub-Rule (4) of Rule 105 of the Rules, Rule 8(b)(i) dealing with seniority, particularly the latter part of the Rule dealing with inter se seniority between non-Army and Army Officers, would have been suitably amended, if the intention was to equate the Emergency Commissioned Officers with regular Army Officers, in the matter of benefit of past service on absorption in the Force. It may be useful to remember in this context that at the same time when the aforesaid clause was added, clause (v) was also added to Sub-Rule (4) to provide for re-employment of retired or released Army Officers and a corresponding amendment was made in the latter part of Rule 8(b)(i) to make 9 provision with regard to the seniority of such re-employed Army Officers. The fact that Rule 8 (b) (i) was otherwise left intact even after a new element was introduced in 1966 into the category of eligible reinforces the contention that the Emergency Commissioned Officers were outside the expression "Army Officer" irrespective of whether such an Army Officer was intended to convey the meaning of a serving or a non-serving Army Officer, a further question that need not be examined in the present case in view of the way we have looked at the position of the Emergency Commissioned Officers. There is, Therefore, no escape from the conclusion that the Emergency Commissioned Officers being outside the expression "Army Officers", the claim to the benefit of the past service could not possibly be substantiated with reference to the aforesaid Rule and if the Emergency Commissioned Officers are to be given the benefit of the past service, a claim which may otherwise be well-merited, the Emergency Commissioned Officers would have to find a foundation for it elsewhere and should there be no statutory basis or support in any principle of law, they may perhaps have to look for relief from the executive.

B.Application of the Rules of 1967 to the Emergency Commissioned Officers

(7) In exercise of powers conferred by proviso to Article 309 and clause (5) of Article 148 of the Constitution, the President promulgated the Reservation Rules of 1967. They were deemed to have come into force with effect from January 29, 1966, and ceased to be in force on and from January 29, 1971. The Rules, inter alia, provide for reservation of certain vacancies in the civil services for Emergency Commissioned Officers of the Armed Forces of the Union. Rule 6 of the Rules confers on the candidates who are appointed against the vacancies reserved by the Rules benefits of past service. This is how the Rule runs :-

6.Seniority and Pay.-(1) Seniority and pay of those candidates who are appointed against the vacancies reserved under sub-rule (1) of rule 4 shall be determined on the assumption that they entered the service or the post, as the case may be, at the first opportunity they had after joining the training prior to their Commission or the date of the Commission where there was only post Commission training, that is- (A)In case of services or post recruitment of which is made on the results of a competitive examination conducted by the Commission, the released Emergency Officer or Short Service Commissioned Officers who compete successfully at the first or second available opportunity would be deemed to have passed the examination at the first or second occasion he could have appeared and shall be assigned the year of allotment correspondingly, and

(B)In the case of services or posts recruitment to which made otherwise as than through a competitive examination conducted by the Commission, seniority shall be filled on the assumption that the officers would have been appointed on the date arrived at after giving credit for the approved military service as Emergency Commissioned Officers or Short Service Commissioned Officers as the case may be, including the period of training, if any, and shall be deemed to have been allotted the corresponding year for the purpose of fixation of seniority."

(8) The principal contention of the petitioners has been that the petitioners are entitled to the benefit of past service in the Army in the determination of their seniority in the Force on the basis of the provisions of Rule S(b)(i) of the Rules. In resisting the contention, it has been urged on behalf of the respondents that the Emergency Commissioned Officers absorbed in the Force would be entitled to the benefit of the past service only to the extent and in accordance with the provision of the Reservation Rules of 1967. This argument was sought to be resisted on behalf of the petitioners on the ground that the Reservation Rules of 1967 had no application to the petitioners because the posts in the Force were not "civil posts", nor was the Force a "civil service", and that the said Rules regulated the reservation of vacancies in civil service and posts alone and were, Therefore, not attracted in relation to the Force and the posts held by the petitioners in the Force. In view of the rejection of the principal contention of the petitioners, we are not sure if any interest of the petitioners could be served by the contention that the Reservation Rules of 1967 have no application to them, particularly where such a contention would have the unfortunate effect, if

accepted, of depriving the petitioners of the constitutional protection of Article 311 of the Constitution of India. Nevertheless, since the question was raised, we propose to deal with it. On a consideration of the matter fortunately, we find that there is no force in the contention that the Reservation Rules of 1967 are not attracted to the Force or the posts in it. In our view, there is absolutely no force in the contention that the Force is not a civil service or the Union or that the posts in it are not civil posts and the Senior Counsel, who appeared for some of the petitioners, candidly conceded that he was unable to support the contention.

(9) Articles 309, 310 and 311 clearly draw a distinction between the civil services and posts and persons in civil service and holding civil posts, on the one hand, and defense service, posts connected with defense and persons who are members of the defense Service or holding posts connected with defense, on the other. Article 309 has a wider sweep because it empowers the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed "to public services and posts in connection with the affairs of the Union or of any State" and would, Therefore, regulate the services and posts either of the Union or of any State. Article 310 also takes within its sweep not only the civil services and persons holding civil posts, but also members of "a defense service" or persons who hold "any post connected with defense". Article 311 which confers the constitutional protection, however, limits such protection to members of a civil service or to persons who hold a civil post thereby excluding from its ambit the defense service, members of such service and persons holding posts connected with defense. This distinction is carried further in the numerous civil service regulations where the distinction is clearly maintained. Rule 7 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, classifies the civil services and specifically states that Central civil posts of any class not included in any other Central civil service shall be deemed to be included in the general Central service of the corresponding class. Rule 104 of the Rules clearly specifies that the post of a superior officer in the Force shall be the post included in the general Central Services Class 1.

(10) There, however, appears to be juxtaposition in Entry II in Schedule VII of the Constitution when it makes provision for "Naval, military and air forces; any other armed forces of the Union". There has been some judicial controversy in the past as to whether the Central Reserve Police Force constituted under the Act or its predecessor could be said to be one of "the other armed forces of the Union" and if so, whether it could be treated as part of the defense forces of the Union reading the latter part of the Entry ejusdem generis with the earlier part. Both these questions were answered in the affirmative by the Madras High Court in the case of *O. P. Sharma v. Union of India* (1), of the Central Reserve Police Force, where the question was as to whether a member of the Force was entitled to constitutional protection of Article 311 of the Constitution of India. The validity of the Act was challenged in the Calcutta High Court in the case of *Tarun Kumar Sengupta, v. Union of India & another* (2), on the ground that it was ultra vires the Government of India Act, 1935, and was, Therefore, not law in force within

the meaning of Article 372 of the Constitution. Learned Single Judge of that Court accepted the contention and came to the conclusion that, having regard to the scheme of the Act, the Act in pith and substance was an Act dealing with the subject of Police which fell within the ambit of List II and, Therefore, the exclusive province of the Provincial List of the Government of India Act. The contrary view, however, prevailed with the Division Bench of the High Court on appeal and it was held that the Central Reserve Police Force was not so much Police as an "Armed Force"(3). It was further held that although Police was exclusively a State subject, but nevertheless it will leave the question of another field of legislation where above the concern of different States there may be still a requirement of Police, and that the Central Reserve Police Force was a kind of an auxiliary Force to help and assist the normal Police. The use of the expression "Reserve" before the word "Police" was emphasised. It was further held that an armed Police Force would be within the expression "any other Armed Force". In a separate, but concurrent judgment, Mitra, J. elaborated the conclusion further and made certain observations which may be treated as equating the Central Reserve Police Force with the defense forces. His Lordship noticed that the expression "any other Armed Forces" followed the Naval, Military and Air Force of the Dominion in the relevant Entry in the Government of India Act and the corresponding Entry in the Constitution and expressed the view that the application of doctrine of ejusdem generis was neither relevant nor necessary because even if the doctrine was applied "the Armed Force continued by Section 3 of the Act, with its duties such as those specified in Section 7(2) of the Act, cannot but be held to be an Armed Force of the nature of the Army which may be called upon for duty outside the territory of India and within any part of the territory of India". His Lordship continued to observe that "the Central Reserve Police Force with its duties, such as they are, can by no means be said to be a civil Armed Force created only for the maintenance of public order and for prevention and detection of crimes". It was further held that if on the other hand the doctrine of ejusdem generis was not applied, the Central Government was without doubt competent "to raise an Armed Force to be maintained by the Central Government" and that "the Force is an Armed Force, the use of the word Police notwithstanding". The conclusion was also justified with reference to the territorial limit within which the Provincial Government may constitute the Provincial Police Force and it was. Therefore, held that the constitution and maintenance of an Armed Police Force which could be called upon to act in any part of India and outside the territory of India was still within the legitimate field of Central Legislative action under the Government of India Act and the corresponding provisions of the Constitution of India.

(11) In the present case, there is no challenge to the validity of the Act. The question before us is a limited one, namely, whether having regard to the scheme of the Act and the nature of the duties assigned to the Force, it is a civil service or because it may in certain respect be likened to the Armed Forces and is. Therefore, part of the defense Service being one of the Armed Forces of the

Union, even though admittedly not part of the regular Army. The proper question that we have to ask ourselves is whether the service or the posts in the Force could be said to be part of the defense Forces or be treated as Service or posts connected with defense. If the answer to the question is in the affirmative, it is neither a civil service nor a civil post. If, however, the answer is in the negative, it would be a civil service and the posts in the Force would be civil posts. It is admittedly an Armed Force of the Union, but it is not every armed force that become part of the defense Service nor would that necessarily make it a force or service connected with the defense of India. This is so because the scheme of the Act, as indeed the preamble to it, leave no manner of doubt that the Force was intended to be essentially a Police Force set up with the object of maintenance of law and order even though its area of operation would not be confined like the normal Police to the territory of a particular State, but may be extended to any part of India and even outside the territories of India. None of the functions of the Force are, however, of the nature of the defense of the borders of India even though the Force may be deployed outside India; its deployment outside the country would nevertheless be consistent with the nature of the duties within the country, i.e. maintenance of law and order. Mere obligation to be deployed outside the territories of India does not imply that its functions would undergo any change when sent beyond the territories of India. It would be useful to bear in mind in this context the distinction between the object for which the Force was set up and the object for which the Border Security Force was set up. According to the preamble to the Border Security Force Act, the Border Security Force was set up for the "defense" of the borders of India in contradistinction to the Police functions of the Force, namely, the maintenance of law and order. Examined in this context, it would be both unnecessary and irrelevant to consider if the application of the doctrine of *ejusdem generis* could be applied to the relevant Entry. This is so because either way the Force, though an Armed Force of the Union, that may be likened to any other Armed Force, was nevertheless not part of the defense Forces or connected with the defense of the country. We do not understand any of the observations made by the Division Bench of the Calcutta High Court and the Madras High Court in the cases referred to above as laying down any proposition to the contrary. If some of these observations are capable of being so understood, we respectfully disagree. It is, Therefore, not possible to hold that the Force is neither a civil service nor the posts in it are civil posts so as to take the Force outside the reach of the Reservation Rules of 1967.

(12) That leaves for consideration two subsidiary questions which were urged on behalf of the petitioners though in a somewhat half hearted manner.

(13) In the first instance, it was urged that the petitioners had been persuaded to join the Force by a definite representation in Appendix "B" to the Circular (Annexure II) to the effect that the released Emergency Commissioned Officers on absorption in the Force would be entitled to the benefit of past service and the benefit having been actually given to the petitioners, both in the matter of fixation of pay and seniority, the impugned withdrawal of the benefit of seniority

would be hit by the principle of promissory estoppel and that the petitioners would be entitled to the benefit on the application of the aforesaid principle.

(14) The doctrine of promissory estoppel was enunciated by Denning, J. as he then was, in the case of *Central London Property Trust Limited (4)*, in the year 1947. A little later, the principle enunciated by the illustrious Judge had found expression almost independently of it in India in the case of *Collector of Bombay v. Municipal Corporation of the City of Bombay (5)*, in which Justice Chandrashekhara Iyer, J. in his concurring though separate judgment brought out the imperative of the courts doing "justice: by the promotion of honesty and good faith" whether "it is the equity recognised in *Ramsden's* case or its is some other form of equity". The doctrine was later made popular in India by the decision of the Supreme Court in the case of *Union of India v. Anglo Afghan Agencies (6)*, and while different shades of opinion have been expressed in India in the decisions that have since followed as to the true scope and limit of the doctrine, it has been subject matter of rather fierce controversy in the country of its origin and there has of late been some dilution of the efficacy of the doctrine as a basis for a fresh cause of action because of the principle of consideration so much so that in the case of *Combe v. Combe (7)*, Lord Denning himself had to restate the position and of the other two Judges in the Court of Appeal in that case one "was content to repeat that the principle must be used as a shield and not as a sword" and the other was not prepared to commit himself to its unreserved acceptance even though giving it as much approval as was compatible with prudence" (8). It is, however, unnecessary to carry the matter any further because the essential condition for the application of the doctrine cannot be said to have been satisfied in the present case. The essential condition is that the person who acts on the representation must act to his prejudice. The petitioners who were due to be released from the Army as Emergency Commissioned Officers and would not have normally had the benefit of past service in any new assignment were unable to show that by acting on the representation that the benefit of the past service would be available to the petitioners on absorption in the Force, they were in any manner acting to their prejudice either because they were foregoing a better offer or otherwise. When a fresh entrant joins new service) ordinarily he does not carry the benefit of past service in the absence of any rules to the contrary or a special contract in that behalf. The benefit was, however, sought to be conferred on the petitioners in view of the unusual nature of their service background and presumably because of the rather useful work being done in that behalf by the resettlement organisation of the Army That being so, it could not be said that in applying for absorption in the Force, the petitioners were acting to their prejudice. There would, Therefore, be no scope for the application of the doctrine or of the benefit in consequence thereof.

(15) Lastly, it was urged that even if the Rule 8(b)(i) was inapplicable, the petitioners would be entitled to the benefit of the past service by virtue of Rule 102 of the Rules, a residuary Rule which made the normal Rule in civil service

with regard to seniority and other matters applicable where there was no provision in that behalf in the Rules. This contention is clearly untenable because the residuary Rule would not be attracted in view of the fact that the Reservation Rules of 1967 contain a clear provision in Rule 6 with regard to seniority. Mere absence in Rule 6 of any provision with regard to the benefit of past service in the matter of seniority would not mean that there is no provision with regard to seniority in the Rules. The exclusion by implication deprives the entrant of the benefit of past service. Resort, Therefore, could not be had by the petitioners to the residuary Rule. Even otherwise, invocation of Rule 102 would in no way improve the case of the petitioners because even on the application of this Rule, the petitioners would be governed in the matter of seniority by the Home Ministry's Memorandum of December 1959 since the petitioners joined the Force after 1959 and the Memorandum of 1959 does not give the benefit of either past service or of the entire service which was a gift of the 1949 Memorandum of the Ministry of Home Affairs in the peculiar historical background of the Memorandum. This contention must, Therefore, also fail.

(16) While it is thus not possible to give any relief to the petitioners, this is not to say that the petitioners do not have a legitimate grievance. The petitioners, as indeed the other Emergency Commissioned Officers similarly situated, had served the country at a difficult time and had while serving the Army gained both training as well as experience. When the benefit of past service was agreed to be given to the petitioners initially, there was, Therefore, considerable rationale behind it. When the benefit was withdrawn in the matter of seniority even though it was continued in the matter of fixation of pay, the petitioners justifiably felt aggrieved even though they do not appear to us to have a case for judicial intervention. The controversy between fresh entrants on the one hand and the entrants into a service with career background on the other has been a perennial one because of their conflicting interests and these have sufficient echo in the judicial precedents in India. There is something to be said in favor of the point of view of each of the two categories. The petitioners, as indeed the respondent officers who were sought to be affected, are part of a sensitive service. Any grievance that any section of such service may nurse is apt to cause heart burning and E frustration. It would, Therefore, be reasonable and proper that the conflicting claims of the two sections are dispassionately considered by appropriate authorities after giving each of them an opportunity of being heard and an attempt is made to resolve the controversy in such a way that a reasonable balance is struck between the conflicting claims in larger public interest. It is, however, not possible for this Court to give any relief to the petitioners having regard to the obvious limitations of the law.

(17) The petition is, Therefore, dismissed leaving the parties to bear their respective costs. While C. M. 3471/77 was not pressed, no directions are necessary in C. Ms. 1048/76 and 1775/76. These applications are accordingly disposed of.