

R. S. MAKASHI & ORS.

I. M. MENON & ORS.

December 8, 1981

[A.D. KOSHAL, V. BALAKRISHNA ERADI AND
R.B. MISRA, JJ.]

Constitution of India Article 309—Proviso—Power of government to frame rules of inter se seniority of persons borrowed from different sources—Explained.

Procedure—Delay of eight years in filing writ petition—Petitioner seeking redress for alleged infringement of fundamental right—High Court, if could not dismiss on grounds of laches.

To man the various posts in the newly established Bombay Rationing Organisation (BRO) the State Government sanctioned a skelton staff. In addition to the sanctioned staff, the existing staff of the erstwhile adhoc organisation of Controller of Foodgrains (CFD) were taken into the BRO. Since it was considered necessary to have experienced staff for manning higher posts in the new Organisation the Government borrowed the services of experienced hands from other departments. Since, as work expanded, it was found that the number of persons brought on deputation to fill up all the new posts in the BRO were not enough, some persons were directly recruited into the BRO.

In 1968 the State Government issued, under the proviso to Article 309 of the Constitution, the Bombay Rationing Organisation (Fixation of Seniority) Rules, 1968 laying down the principles to be applied for the fixation of seniority of persons working in the BRO. The rules were given retrospective effect from the date of the Government resolution sanctioning the skelton staff for introduction of statutory rationing.

Rule 4(a) provided that seniority of a released government servant and a merged government servant in the cadre of senior clerk etc., as also a person who was initially appointed as a clerk etc. in the Bombay Rationing Organisation and subsequently promoted to the said cadre shall be determined with reference to the dates which shall be fixed after deducting two years from the length of continuous service.

Clause (c) of this rule provided that seniority of government servants in the cadre of senior clerks fixed on the basis of rules (a) and (b) of this rule shall be merged and refixed with reference to the dates from which their seniority is determined according to the principles in rules 4(a) and (b).

A The proviso to rule 7 provided that where there is a clash of principles contained in the government resolution with the seniority *inter se* in the former department shall prevail.

B Based on the principles laid down in 1968 Rules the Controller of Rationing had drawn up a gradation list of Rationing Inspectors, Senior Clerks and Deputy Accountants working in the BRO as on April 1, 1968. The list was exhibited on the notice board of the head office of BRO, regional offices and Rationing Offices and was communicated to the individual members of the staff.

C A final gradation list was thereafter drawn up as on April 1, 1968. Sometime later on April 9, 1973 another provisional gradation list as on April 1, 1972 was drawn up and published as before.

D Since at that time there were many employees who were temporarily recruited pending allotment of candidates selected by the State Public Service Commission rules were relaxed and their appointments were regularised subject to the condition that seniority of such non P.S.C. candidates on whom the benefit of continuance of service was conferred was to be fixed only with reference to the date of issue of the resolution, as a result of which candidates selected by the Public Service Commission already working in the various departments were treated as seniors in relation to the non P.S.C. persons covered by the resolution.

E A provisional gradation list as on April 1, 1974 was published following the seniority principles laid down by the BRO in 1968 and those laid down in the resolution concerning non P.S.C. candidates.

F In January 1976, respondents 1 to 22 who were directly recruited in the former CFD but subsequently absorbed in the BRO challenged in a writ petition the validity of the two gradation lists contending that in preparing these lists the normal rule of fixation of seniority according to the date of appointment to the post was given a go-by and that while fixing seniority unequals had been treated as equals in that the service rendered in the clerical cadre had been reckoned and equated with the service rendered in the Rationing Inspectors' cadre.

G The respondents raised a preliminary objection that the petition was barred by laches because though the gradation list had been circulated to all concerned in 1968 itself no objection had been raised and no effective steps had been taken by the petitioners to challenge the validity of the principles laid down in the government resolution and that after a lapse of 8 years it was not open to them to raise the challenge against the gradation list and try to unsettle a settled principle; (2) in view of the fact that persons from various departments had been recruited, it was necessary to evolve some fair and reasonable principles for the fixation of *inter se* seniority of the integrated personnel in the different categories.

H A single Judge of the High Court struck down clauses (a) and (c) of rule 4 and the proviso to rule 7 of the government Order dated March 22, 1968 as

being violative of Articles 14 and 16 of the Constitution and directed the State Government to prepare fresh lists of seniority without taking into consideration the provisions struck down by him. On the question of laches the Single Judge held that the law did not lay down any obligation on the Court to refuse to grant relief merely because there was a lapse of time but that since the cause of action arose and the challenge was based on infringement of Articles 14 and 16 of the Constitution, the Court could not shut out the petitioners on the ground of laches because such a course would amount to condoning the invalid rules.

The Division Bench dismissed *in limine* the appeal preferred by the respondents in the writ petition.

Allowing the appeal,

HELD : The High Court was wrong in holding that clauses (a) and (c) of rule 4 and the proviso to rule 7 of the government resolution dated March 22, 1968 are violative of Articles 14 and 16 of the constitution and in directing the State Government to prepare a fresh seniority list without taking into consideration these provisions. [90 B-C]

Assuming that the principles for determining the *inter se* seniority of persons appointed in the different categories of the newly constituted BRO laid down in the government resolution of March 22, 1968 were not known to the members of the staff immediately after the resolution was passed by the State Government a Provisional Gradation List of Rationing Inspectors etc. as on 1st April, 1968 was drawn up in implementation of these principles on 28th May 1971 and the said list was circulated to all the personnel working in the establishment of the BRO. Neither after the publication of the provisional gradation list on May 28, 1971 which was followed up by the publication and circularisation of a final gradation list on November 23, 1972, nor even after the gradation list was revised and published on April 9, 1973, did the writ petitioners file any objections against their ranking in those gradation lists, within the time allowed. [90 F-H]

Even in the belated representations filed by some of the writ petitioners no objection was raised against the principles for determination of seniority enunciated in the government resolution of 1968, nor was there any protest whatsoever against the provision made in the resolution for fixation of seniority of released government servants. Nor again when their representations were rejected by the government did the petitioners challenge the constitutionality of the rules contained in the impugned resolution. [92 D-E]

The government resolution in regard to the position of non P.S.C. candidates *vis a vis* the P.S.C. candidates did not in any way affect the *inter se* seniority between the petitioners and the released government servants drafted to the BRO because that resolution was a general order applicable to all the non P.S.C. personnel functioning on a temporary or *ad hoc* basis in the various departments of the State Government. [93 E-F]

A There is no substance in the contention of the petitioners that they stood on a separate and superior footing for the purpose of seniority in the new organisation. The staff in the new organisation was drawn from four different sources and this inevitably necessitated the formulation of reasonable principles for the determination of *inter se* seniority. At the time of formation of the BRO the petitioners were not holding any substantive or regular appointments in the CFD which itself was a mere temporary department. In contrast the deputationists (released government servants) were regular hands recruited by the Public Service Commission and they were holding posts on a substantive basis in other departments. The principles of equation evolved for determining the *inter se* seniority could not be regarded as arbitrary or unreasonable viewed in the context that the CFD candidates were merely temporary hands in a temporary department. [101 E-H]

C It is not an invariable rule that seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from it would be unreasonable and illegal. It is open to the rule making authority to take a note of the relevant circumstances obtaining in relation to each department and determine objectively the rules that should govern the *inter se* seniority and ranking. Such rules should be reasonable, just and equitable. [102 F-G]

D In the instant case the action of the Government in determining the *inter se* seniority of clerical personnel under rule 4(a) cannot be said to be in any way discriminatory or illegal.

E *S.G. Jaisinghani v. Union of India & Ors*, [1967] 2 S.C.R. 703; *Bishan Sarup Gupta v. Union of India & Ors.*, [1975] 1 S.C.R. 104 at p. 114, referred to.

When personnel drawn from different sources were being absorbed and integrated in a new department it was primarily for the government to decide as a matter of policy how the equation of posts should be effected, Courts would not interfere with such a decision unless it is shown to be unreasonable or unfair. [104 E]

F All that the proviso to rule 7 does is to state that in respect to persons drafted into the CFD from one and the same government department on deputation basis their *inter se* seniority in the former department should not be disturbed and to that extent a deviation should be made from the principles laid down in the government resolution of April 1, 1963. This proviso contains a just and wholesome principle commonly applied in such situations and it cannot be said to be arbitrary or unreasonable. The High Court was in error in striking down the rule as being violative of Articles 14 and 16 of the Constitution.

[105 E-H]

H The object of clause (b) of rule 7 is limited to the preservation and maintenance of the pre-existing *inter se* seniority as between CFD personnel even after their absorption in the BRO and this provision does not in any way hamper the operation of the principle laid down in rule 4 for the fixation of seniority of all the personnel including the merged government servants in the respective categories of BRO. [106 D-E]

The view of the single Judge that a petition under Article 226 seeking redress for alleged infringement of fundamental rights could not be dismissed on the ground of laches under any circumstances is inconsistent with the pronouncements of this Court on the subject. The High Court was wrong in over-ruling the preliminary objection based on delay and laches. [94 B-C]

A

Tilokchand Motichand and Ors. v. H.B. Munshi and Anr. [1969] 2 S.C.R. 824 at pp. 805, 836, 853-855, *Rabindra Nath Bose and Ors. v. Union of India and Ors.* [1970] 2 S.C.R. 697 at pp. 711-712; *Malcom Lawrence Cecil D'Souza v. Union of India and Ors.* [1976] 1 S.C.C. 599 at p. 602; *S.S. Moghe and Ors. v. Union of India and Ors.* [1981] 3 S.C.C. 271 at p. 292, referred to.

B

The petitioners had ample opportunities to file their objections to the gradation list but they failed to avail those opportunities. They had not furnished any valid explanation whatsoever for the inordinate delay on their part in approaching the Court with the challenge against the principles of seniority laid down in the resolution of 1968. The single Judge was in error in thinking that the passing of the government resolution of 1974 furnished a fresh cause of action for the petitioners for agitating their contentions regarding the validity of the government resolution of 1968. [99 B-F]

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1003 of 1980.

D

Appeal by special leave from the judgment and order dated the 3rd March, 1980 of the Bombay High Court in Appeal No. 106 of 1980.

E

V.M. Tarkunde, P.H. Parekh and Miss Vineeta Caprihan for the Appellants.

K.K. Singhvi, Brij Bhushan, N.P. Mahindra and A.K. Gupta, for Respondents Nos. 1, 2, and 3.

F

V.B. Desai, R.H. Dhebar and R.N. Poddar for Respondent—State.

The Judgment of the Court was delivered by

G

BALAKRISHNA ERADI, J. The second world war left in its wake conditions of scarcity of foodgrains and other essential commodities in different parts of the country. To tide over that situation and with intent to ensure a fair and equitable distribution of the available supply of foodgrains etc., schemes of rationing of foodgrains were periodically introduced in the different States in the country.

H

A In the State of Bombay, an informal (non-statutory) scheme of rationing was introduced in November, 1957 and for administering the said scheme, an *ad hoc* Organisation was set up under the Controller of Foodgrains Distribution. Since this Organisation (hereinafter referred to as CFD) was intended to be only a temporary and short-term set up, no recruitment rules were framed

B for appointment to the various categories of posts created therein. The CFD was manned principally by (1) personnel who had been working in the temporary Civil Supplies Department created during the second world war period and who were attending to certain residual duties concerned with the winding up of that department,

C (2) persons taken on deputation from other Government departments (3) retrenched former Civil Supply Department personnel, and (4) persons directly recruited to the CFD by the Controller of Foodgrains Distribution on temporary basis through the Employment Exchange. Since no rules had been framed laying down the qualifications or method of recruitment to the various posts, the guiding

D factor which seems to have weighed with the authorities in effecting appointments in the CFD was the suitability of the person concerned to carry out the duties attached to a particular post irrespective of qualifications, age, etc. Admittedly, amongst the persons appointed to the CFD, there were several non-matriculantes who were ineligible under the prevailing rules applicable to other Government Departments for regular appointment into the Government

E service in the clerical category and also quite a few persons who were over-aged for being entertained in the Government service as on the dates of their *ad hoc* appointments into the CFD.

F The principles to be observed for fixing the seniority of the personnel appointed to the CFD were laid down by the State Government by a Resolution dated April 1, 1963. Under the said Resolution, the seniority of personnel in each category was to be determined with reference to the date of first appointment in the particular cadre in which they were initially appointed in the CFD.

G In July 1965, the Government of India issued instructions to all the State Governments advising them to start statutory rationing schemes in metropolitan areas and big towns. With a view to implement those instructions of the Central Government, the State Government of Maharashtra sanctioned on October 21, 1965 a skeleton staff for working out details and carrying out other preliminary work for the introduction of a scheme of statutory rationing

H in Greater Bombay.

Subsequently, by a Resolution dated February 11, 1966, the Government of Maharashtra announced its decision to introduce a statutory rationing scheme in Bombay and the Industrial Complex around it including some areas of Thana District and to set up an organisation under the Controller of Rationing, Bombay, for efficiently administering the said statutory scheme. The strength and patten of the staff for the Bombay Rationing Organisation (for short, the BRO) which was newly created under the said Resolution was to be as shown in Annexure 'A' appended to the Resolution. The skeleton staff which had been already sanctioned for carrying out the preliminary work as per the prior Government Resolution dated October 21, 1965 was to be treated as belonging to the BRO. The existing staff of the CFD consisting of 884 posts as shown in Annexure 'B' to the aforesaid Resolution was to be merged into the new BRO with effect from March 1, 1966, excepting 9 posts of part-time Mehtars, which were to be abolished with effect from the said date. In addition, 2818 posts in 23 different categories were also created in the BRO as per the particulars shown in Annexure 'C' to the aforesaid Resolution. Out of these, 1220 newly created posts were in the category of Rationing Inspectors and 165 posts were of Senior Clerks.

Since it was considered necessary to have experienced staff for manning the higher posts in the new Organisation, it was decided to obtain the services of experienced hands from other departments on deputation. Accordingly, the Chief Secretary to the Government of Maharashtra addressed a letter dated February 22, 1968 to all, Heads of Departments stating that huge staff was required for manning the posts in the newly created BRO, that for the higher posts of Assistant Rationing Officers/Inspecting Officers/Head Clerks and Rationing Officers/Senior Clerks, it was absolutely necessary to draw upon senior and experienced persons already working in other Government offices in Greater Bombay and hence the Government had decided that each department should immediately on receipt of the letter release the requisite number of persons under intimation to the Controller of Rationing, Bombay and instruct the persons concerned to report for duty to him.

It was further mentioned in the letter that for the posts of Assistant Rationing Officers, persons who had put in at least two years' service in a scale comparable to the scale of Rs. 200-10-300 would be considered and that for the posts of Rationing Inspectors/Senior Clerks, Clerks who had put in at least two years' service would be

A considered. In compliance with the directions contained in the said letter, a large number of personnel from different departments of the State Government of Maharashtra in the Greater Bombay area were sent over to the BRO on deputation and they were appointed to posts in different categories in the new Organisation (B.R.O.) Apparently for the reason that the number of persons so obtained on deputation was not adequate to fill up all the new posts in the BRO, some persons were also directly recruited into the said Organisation subsequent to March 1, 1966.

C As an essential preliminary step for the integration of the former CFD personnel with the staff appointed in the BRO from other sources, the Controller of Rationing, Bombay published on 29.8.1966 a provisional Gradation List of the CFD personnel as on March 1, 1966. Subsequently, on March 22, 1968, the Government of Maharashtra issued the "Bombay Rationing Organisation (Fixation of Seniority) Rules, 1968", laying down the principles to be applied for the the fixation of seniority of the persons working in the BRO. These rules were issued under the proviso to Article 309 of the Constitution and they were given retrospective effect from October 21, 1965 (the date of the Government Resolution sanctioning the skeleton staff for carrying out the preliminary work for introduction of the scheme of statutory rationing). The personnel released from other departments of the State Government for work in the BRO, including retrenched or replaced Government servants who had not suffered any break in service before joining the BRO were designated under these Rules as "Released Government Servants". Rule 4 which lays down the principles for fixation of seniority of persons in the cadre of Senior Clerks/Rationing Inspectors/Deputy Accountants is in the following terms :

"Senior Clerks/Rationing Inspectors/Deputy Accountants.

G (a) Seniority of a released Government Servant and a Merged Government Servant in the cadre of senior clerk, Rationing Inspector and Deputy Accountants, as also a person who was initially appointed as a clerk, or Typist or Clerk-cum-Typist in the Bombay Rationing Organisation and subsequently promoted in the said cadre shall be determined with reference to dates which shall be fixed after deducting two years from the length of continuous service, whether officiat-

ing or permanent rendered by him in the cadre of clerks, typists, and clerk-cum-typist.

Illustration :—

Suppose there are three persons in the cadre of Senior Clerks/Rationing Inspectors and Deputy Accountants, 'A' a released Government servant was holding the post of clerk continuously from 1st October 1960 prior to his release, 'B' a merged Government Servant was holding the post of typist continuously from 1st May, 1958. 'C' was appointed as a direct recruit to the post of clerk in the Bombay Rationing Organisation on 1st May, 1966 and was subsequently promoted as Senior Clerk on 22nd May, 1968. The seniority amongst them will be fixed as under :—

Seniority rank.	Name	Date of commencement of continuous service as Clerk.	Deemed date of appointment for fixation of seniority.
1.	2.	3.	4.
1.	B	1.5.1958	1.5.1960
2.	A	1.10.1960	1.10.1962
3.	C	1.5.1966	1.5.1968

Provided that in the case of merged Government servant who was recruited to the post of Supply Inspector or Senior Clerk, by nomination, he shall take rank above a clerk in the former Foodgrains Distribution Scheme who was promoted to the cadre of Supply Inspector or Senior Clerk, in the former Foodgrains Distribution Scheme immediately, after him and if this be not the position, above the first person in the cadre of clerks belonging to that organisation who is posted in the cadre of Senior Clerks, Rationing Inspectors and Deputy Accountants on and after 1st March 1966.

A *Illustration :—*

Suppose there are four persons in the cadre of Senior Clerks, Rationing Inspectors and Deputy Accountants. All of them were in the Bombay Foodgrains Distribution Scheme. 'A' was a clerk in the Scheme and he was promoted to the post of Supply Inspector with effect from 1st May 1960 and since then was continuously officiating in the post. 'B' and 'C' were recruited as Supply Inspectors by nomination and were officiating continuously in that post from 15th April, 1960 and 15th April, 1965. None of the Clerks in that scheme was promoted after 'C' till the merger of the staff in the Bombay Rationing Organisation. 'D' was a Clerk and he was promoted as Senior Clerk with effect from 15th April 1966 i.e. after merger of the staff in the Bombay Rationing Organisation. Their seniority amongst them will be as under :—

D	<hr/>	
	Seniority rank	Name
	<hr/>	
	1	B
	2	A
E	3	C
	4	D
	<hr/>	

- F** (b) Seniority of a Government servant appointed in the Bombay Rationing Organisation by direct requirement to the cadre of Senior Clerks, Rationing Inspectors and Deputy Accountants shall be fixed with reference to the dates of appointments to the posts in the said cadres :

G *Illustration :*

Suppose there are three persons in the cadre of Senior Clerks, Rationing Inspectors and Deputy Accountants who were recruited to the cadre by nomination. 'A' was recruited as Rationing Inspector from 24th February 1966. 'B' was recruited as Senior Clerk from 15th March 1966. 'C' was recruited as Deputy Accountant, from 28th

H

February, 1966. The seniority amongst them will be fixed as under :—

Seniority rank.	Name	Date of commencement of continuous service.
1.	2.	3.
1.	A	24.2.1966
2.	C	28.2.1966
3.	B	15.3.1966

- (c) Seniority of Government servant in the cadre of Senior Clerks, Rationing Inspectors and Deputy Accountants fixed on the basis of the rules in (a) and (b) above, shall be merged and refixed with reference to the dates from which their seniority is determined according to the principles in the rules 4 (a) and 4 (b) above.

Illustration :—

Suppose there are 7 persons in the cadre of Senior Clerks, Rationing Inspectors, Deputy Accountants. 'A' and 'B' were Supply Inspectors directly recruited in the Bombay Foodgrains Distribution Scheme and were continuously officiating in those posts from 4th May, 1963 and 1st May 1963 respectively. 'C' was a Clerk in the former Bombay Foodgrains Distribution Scheme from 1st September 1960. He was promoted as Supply Inspector on 5th May, 1963. 'D' was a Rationing Inspector directly recruited to it from 2nd February, 1966. 'E' was a released Government servant holding the post of Clerk in the former office from 1st August 1960. He was taken up as Senior Clerk from 2nd August, 1967, in the Bombay Rationing Organisation. 'F' was a released Government servant holding the post of a clerk in his former office from 1st February, 1964. He was taken up as Rationing Inspector on 1st August 1967. 'G' was a released Government servant holding the post of a clerk in his former

A office from 1st December 1964. He was taken up as a clerk in Bombay Rationing Organisation subsequently he was promoted as Rationing Inspector from 1st April, 1967. The seniority amongst them will be as under t—

B	Senio- rity rank.	Name	Mode	Actual date		DEEMED
				As Clerk	As Sr. Cl./ R.I./Dy. Acctt.	
C	1.	2.	3.	4. (a)	4. (b)	5.
	1.	E	Promoted clerk (released)	1.8.60	2.8.67	1.3.62
D	2.	B	Direct S.I.	—	1.5.63	31.8.62
	3.	A	-do-	—	4.5.63	31.8.62
	4.	C	Promoted Ex. CFD Clerk	1.9.60	5.5.63	1.9.62
E	5.	F	Promoted Clerk (released)	1.2.64	1.8.67	1.2.66
	6.	D	Direct Ration- ing Inspector.	—	2.2.66	2.2.66
F	7.	G	Released Clerk absorbed in Bombay Ration- ing Area Or- ganisation as Clerk and sub- sequently pro- moted as Rationing Inspector.”	1.12.64	1.4.67	1.12.66
G						
H						

However, it was further provided under Rule 7 that “notwith-
standing anything contained in the foregoing Rules :

- (a) In case of Government servants released from one and the same office to join the Bombay Rationing Organisation the seniority inter se in their former office shall not be disturbed ; A
- (b) in case of the merged Government servants, they shall be governed by the principles contained in the Government Resolution, Agriculture and Co-operation Department No. EST-1060/40002/SIV, dated the 1st April 1963; and B
- (c) in case of — C
- (i) those who were recruited directly in the former Bombay Foodgrains Distribution Scheme shall be governed by the principles contained in the Government Resolution No. Agriculture and Cooperation Department No. EST 1060/40002/SIV dated the 1st April, 1963 ; D
- (ii) those who were drawn in the Bombay Foodgrains Distribution Scheme from one and the same Government Office/Department shall take their rank according to seniority inter-se in the office/department from which they were drawn. E

Provided further where there is a clash of principles contained in the Government Resolution Agriculture and Cooperation Department No. EST 1060/40002/SIV, dated the 1st April, 1963 with the seniority inter-se in the former Department the seniority inter-se in the former Department shall prevail. F

Illustration :—

'A' who started his career as Assistant in Revenue and Forests Department from 1st May 1962 was drawn in Bombay Foodgrains Distribution Scheme on 18th October, 1964 and was taken up as Inspecting Officer, 'B' an Assistant in Revenue and Forests Department working in that cadre continuously from 1st May, 1961 was released to join Bombay Rationing Organisation on 22nd August, 1966 as Inspecting Officer. 'C' who started his career as Assistant in General Administration Department from 1st G
H

A

April 1960 was drawn in Bombay Foodgrains Distribution Scheme on 18th May, 1965 as Inspecting Officer. 'D' as Assistant in General Administration Department working in that cadre continuously from 1st May, 1960 was released to join Bombay Rationing Organisation on 1st July 1967 as Inspecting Officer. The seniority of these persons will be fixed as under :—

B**C**

Seniority rank.	Name	Department	Date of recruitment as Asstt. in the present Deptt.	Date of joining in Bombay Food-grains Distribution Scheme.	Date of joining in Bombay Rationing Organisation
-----------------	------	------------	---	--	--

D

1.	2.	3.	4.	5.	6.
1.	C.	General Admn. Department.	1.4.60	18.5.65	1.3.1966
2.	D.	General Admn. Department.	1.5.60	—	1.7.67
3.	B.	Revenu & Forests Department	1.5.61	—	22.8.1966
4.	A.	Revenue & Forests Department	1.5.62	18.10.64	1.3.1966 (Date of merger)

E**F****G****H**

By State Government's Resolution dated July 25, 1968, various posts that existed in the former CFD were equated with posts in the BRO in the manner indicated therein. Items 9 to 11 in the Table appended to the said Resolution dealt with the posts of Deputy Chief Supply Inspectors, Supply Inspectors and Senior

Clerks, respectively in the CFD. All those three categories of posts were equated with the posts of Rationing Inspectors/Senior Clerks in the BRO on Rs. 160-10-220-EB-10-270 despite the fact that in the CFD the pay scale of the post of Deputy Chief Inspector was a higher post than that of Supply Inspectors and Senior Clerks and it carried a higher pay scale.

By a Resolution dated July 29, 1968, the State Government of Maharashtra promulgated the Recruitment Rules for non-gazetted posts in the establishment of the BRO specifying also the method of appointment to the various posts in the said Organisation. Under these Rules, appointments to the category of Senior Clerks/Rationing Inspectors in the BRO were to be made either by promotion from among Clerks, Clerks-typists, Typists etc., who had worked as such for not less than two years, or by transfer of General Duty Clerks from the Secretariat Departments and the Offices of Heads of Departments with not less than two years of service in the cadre. Obviously, the first of the two alternative methods aforementioned would get attracted only when persons already working in the BRO as Clerks were to be appointed as Senior Clerks/Rationing Inspectors. The other alternative provided was to fill up the vacancy by transfer of Clerks working in the Secretariat Departments or in the Offices of the Heads of Departments who possessed not less than two years of service.

On May 28, 1971, a Gradation List of Rationing Inspectors, Senior Clerks and Deputy Accountants working in the BRO as on April, 1, 1968 was published by the Controller of Rationing. It was expressly recited therein that the said List had been drawn up in accordance with the seniority principles enunciated in the Government Resolution dated March 22, 1968. It was also stated that while preparing the said list, the *inter se* seniority of the ex-CFD personnel had been kept in tact except in the case of those who had been working in the CFD on deputation from other Departments and Offices in respect of whom the seniority had been fixed according to their position *inter se* in the respective former Departments and Offices from which they had been drawn on deputation. A specific direction was contained in paragraph 3 of the Order that copies of the said order should be exhibited on the Notice Boards in the Head Office of the BRO, all the Regional offices as well as in the Rationing Offices, and the signatures of all the employees working in the respective offices should be taken in a separate copy

A of the order which should be kept on the record of the respective Offices. It was further ordered that a report to the effect that the Gradation List had been brought to the notice of all the persons concerned should be forwarded to the Assistant Controller of Rationing, (EST), Head Office in his personal name on or before June 10, 1971.

B Subsequently, a final Gradation List as on April 1, 1968 was also published with a similar direction for bringing it to the notice of all the persons borne on the establishment of the BRO. Still later, on April 9, 1973, another provisional Gradation List of Rationing Inspectors, Senior Clerks and Deputy Accountants as on April 1, 1972 was published with a like direction that it should be brought to the notice of all the persons borne on their establishment.

C By Resolution dated March 1, 1974, the Government of Maharashtra took note of the fact that during the course of the previous few years a number of candidates who had not been selected by the Public Service Commission had come to be recruited temporarily to the posts of Clerks, Typists, Stenographers, Assistants, etc. pending allotment of candidates selected by the Public Service Commission, and it was directed that since many of such temporary employees had put in several years of service, they may be retained in Government service without being replaced by candidates selected by the Public Service Commission, provided they fulfilled the following two conditions :

D “(1) The non-P.S.C. persons concerned should have the minimum educational qualifications prescribed for the posts to which they were appointed.

E (2) They were within the age-limits prescribed for appointment to the respective posts held by them at the time of their initial appointment to such posts.”

F It was also specified in the Resolution that the benefit of such retention in service would be applicable only to the non-P.S.C. persons, who were recruited in various Government offices prior to January 1, 1971 and were in service on the date of issue of the said order. Further, the Resolution contained a clear stipulation that the seniority of such non-P.S.C. persons on whom the benefit of continuance of service was thereby conferred was to be fixed only with reference to the date of issuance of the said Resolution, with the

G

H

consequence that P. S. C. selected candidates who were already working in the various Departments or Offices prior to the said date were all to be treated as seniors in relation to the non-P.S.C. persons covered by the said Resolution.

On November 18, 1975, a provisional Gradation List of Rationing Inspectors, Senior Clerks and Deputy Accountants of the BRO as on April 1, 1974 was published on a combined application of the seniority principles laid down by the BRO in the Rules dated March 22, 1968 and those laid down in the Resolution dated March 1, 1974 concerning the non P.S.C. candidates who were granted the benefit of retention in service under the said Resolution. A similar Gradation List of Assistant Rationing Officers/Junior Accountants of the BRO as on April 1, 1974 was also published by the Controller of Rationing on November 27, 1975.

On January 31, 1976, respondents Nos. 1 to 22 herein who were directly recruited in the former CFD as Supply Inspectors and had been subsequently absorbed in the BRO in the category of Rationing Inspectors/Senior Clerks/Deputy Accountants, filed a Writ Petition under Article 226 of the Constitution in the High Court of Bombay - Misc. Petition No. 166/76 - challenging the legality and validity of the aforementioned two Gradation Lists dated November 18, 1975 and November 21, 1975. The main contention put forward by them in the writ petition was that the impugned lists were violative of Articles 14 and 16 of the Constitution, inasmuch as, firstly, the State Government and the Controller had given a go-by to the normal rule of fixation of seniority according to the date of appointment to the post, and secondly, unequals had been treated as equals while fixing the seniority inasmuch as the period of service rendered by the employees in the clerical cadre had been reckoned and equated with the service rendered in the Rationing Inspector's cadre. Another plea taken in the writ petition was that the seniority of the writ petitioners has been made to depend upon an uncertain factor, namely, the seniority of persons who get promoted to the cadre of Rationing Inspectors/Senior Clerks etc., from time to time and this rule which kept the question of seniority of employees in a state of flux for all time to come was grossly arbitrary and unreasonable.

Respondents 1 to 3 in the writ petition were the State of Maharashtra, the Controller of Rationing and the Under Secretary to the Government of Maharashtra, Food & Supply Department,

A respectively. One hundred and sixty-two employees working in the BRO in different categories of posts were impleaded as respondents Nos. 4 to 165 on the ground that they were likely to be affected in case the reliefs claimed by the writ petitioners were granted by the High Court. The respondents raised a preliminary objection before the High Court the main attack levelled in the petition being

B against the validity of the Government Resolution dated March 22, 1968, the writ petition filed after the lapse of more than seven years since the passing of the impugned Resolution was liable to be dismissed on the ground of delay and laches. It was pointed out that on the basis of the impugned Resolution, the provisional Gradation List had been published on May 28, 1971 showing the seniority of

C personnel in the BRO as on April 1, 1968 and it had been specifically stated in the said gradation list that it had been drawn up on the basis of the principles laid down in the impugned Government Resolution dated March 22, 1968. The said list had been circulated to all the Offices attached to the BRO and signatures of all the personnel working in the different Offices had been taken in

D token of their having seen the list. The respondents stressed before the High Court the fact that even though objections had been invited against the provisional Gradation List, none of the petitioners had filed any objections. Subsequently, a final Gradation List was published on November 23, 1972, which was also brought to the notice of the personnel working in the BRO. Reliance was

E also placed by the respondents on the fact that the second provisional Gradation List based on the impugned Resolution of 1968 was published on April 9, 1973 showing the seniority of personnel working in the BRO as on April 1, 1972 and though writ petitioners 1 to 3 filed certain objections against the said list long after the date fixed for the receipt of such objections, no contention has

F been taken therein objecting to the seniority principles laid down in the Government Resolution of 1968. The objections raised by writ petitioners 1 to 3 were rejected by the Controller of Rationing as per his communications dated December 6, 1973 and December 19, 1973. Even thereafter, no steps were taken by the petitioners to challenge the validity of the principles laid down in the Government Resolution. It was urged by the respondents before the High Court that in view of the aforesaid conduct of the petitioners, it was not legally open to them to raise a challenge against the said Resolution in the writ petition filed after eight years and thereby

G upset the seniority position of personnel which had become settled during the course of the period of eight years and disrupt rights

H

which have become vested in others by virtue of the various postings and promotions that have taken place in the meantime.

On the merits, the respondents contended before the High Court that the BRO being a newly constituted Organisation with its personnel drawn from different sources, it was perfectly open to the State Government to lay down the principles to be applied for the determination of *inter se* seniority of the members of the staff belonging to the different categories. Since the new Department was to consist of "merged Government servants" who were absorbed from the CFD, "released Government servants" drawn on deputation from other departments and also direct recruits, it was necessary to evolve some fair and reasonable principle for the fixation of the *inter se* seniority of the integrated personnel in the different categories. The respondents submitted before the High Court that viewed in the context of the relevant facts and circumstances, the principles laid down in the impugned Resolution were perfectly reasonable and that the challenge levelled by the petitioners against the said Resolution and the Gradation Lists dated November 18, 1975 and November 27, 1975 on the ground of alleged violation of Articles 14 and 16 of the Constitution was wholly devoid of merit.

The writ petition was heard by a learned Single Judge of the High Court and by judgment dated September 11, 1979, the petition was allowed and clauses (a) and (c) of rule 4 and the proviso to rule 7 of the impugned Government Resolution dated March 22, 1968 were struck down on the ground that they were violative of Articles 14 and 16 of the Constitution. The Gradation Lists dated November 18, 1975 and November 27, 1975 were also quashed by the learned Judge, and the first respondent—State of Maharashtra—was directed to prepare a fresh seniority list without taking into consideration the aforesaid provisions of the impugned Government Resolution dated March 22, 1968 which had been struck down and to give consequential benefits to the writ petitioners, including increments, promotions etc.

The preliminary objection on the ground of laches and delay, raised by the respondents before the High Court, was over-ruled by the learned Single Judge by stating, firstly, that the law with respect to laches did not lay down any obligation on the Court to refuse to grant reliefs merely because there was a lapse of time since the cause of action arose and since the challenge against the

A Government Resolution was based on the contention that the fundamental rights of the petitioners under Articles 14 and 16 of the Constitution were violated, it was not open to the court to shut out the petitioners from putting forward their challenge against the rules on the ground of delay or laches since such course would tantamount to "condoning the continuance of invalid rules or statutes." The second reason stated by the learned Judge for overruling the preliminary objection was that beyond making a vague statement that the seniority list of November 23, 1972 showing the placement of the officers as on April 1, 1968 had been since followed and promotions made on that basis, no factual data had been placed before the High Court by the respondents "to show the extent of such promotions and the manner in which the promotees would be affected if the relief was granted to the petitioners". A further ground mentioned by the learned Judge for rejecting the preliminary objection put forward on the ground of delay is that by reason of the Resolution dated March 1, 1974 passed by the State Government directing that all temporary employees in the clerical cadre, who had been recruited prior to January 1, 1971 without insistence on the passing of the Public Service Commission examination, may be regularly absorbed in service with effect from March 1, 1974 subject to the conditions mentioned therein, the final Gradation List of personnel in the BRO published on November 23, 1972 has inevitably been upset and hence it cannot be said that any rights have accrued to such of the employees in the BRO who were assigned ranks above the writ petitioners in the impugned seniority list, so as to entitle them to put forward the objection based on laches and delay.

F We may also briefly set out the reasons mentioned by the learned Judge in support of his conclusion that clauses (a) and (c) of rule 4 and proviso to rule 7 of the Government Resolution dated March 22, 1968 offend Articles 14 and 16 of the Constitution. Firstly, it is stated by the learned Judge that since the petitioners had been directly recruited as Supply Inspectors in the former CFD, they were in the position of direct recruits to the cadre of Rationing Inspectors in the BRO and the provision contained in the impugned rules for assignment of deemed dates to the promotees coming from other departments on the basis of their continuous service in the clerical cadre minus two years is against "the normal rule which determines the seniority on the basis of the dates of appointment to the post". According to the learned Judge, any

departure from the "normal rule" mentioned by him must be justified by rational, relevant and cogent reasons and since there was no material "to justify the enactment of the said abnormal rule for determining seniority" either in the impugned Resolution itself or in the return filed on behalf of the State, the provisions contained in the impugned rules had to be struck down on the ground of infringement of Articles 14 and 16 of the Constitution. The second reason stated by the learned Judge is that there is an inherent fallacy in the attempt made by the impugned rules to equate the post of Supply Inspector in the CFD to the posts in clerical cadres in other departments and the impugned rules in so far as they provide for the fixation of *inter se* seniority of Rationing Inspectors/Senior Clerks/Deputy Accountants in the BRO by giving credit to the service rendered by the "released Government servants" in the clerical cadre in their parent departments subject to a deduction of two years therefrom is violative of Articles 14 and 16. In the opinion of the learned Judge, it was not legally open to the Government, while laying down rules for fixation of seniority in the category of Rationing Inspectors/Senior Clerks, to make a provision for taking into consideration any service rendered by the deputationists in the lower post of Clerk and that by itself spells out discrimination. The learned Judge has expressed the view that in treating a clerk with two years' service on a par with the Supply Inspector of the CFD, the impugned Resolution has treated unequals as equals and thereby committed a clear breach of provisions of Articles 14 and 16 of the Constitution. Lastly, it was held by the learned Judge that, since under the provisions of the impugned Resolution the deemed date of appointment of a promotee depends upon two factors, namely, his *inter se* seniority amongst the persons who have been promoted from his department and his continuous service in the clerical cadre minus two years, it is inevitable that whenever a person from some other department is taken on promotion to the BRO, the deemed date of appointment of persons drawn earlier from the same department is likely to get altered and since in consequence thereof the deemed dates of the direct recruits will also undergo a change, the seniority of the direct recruits is made dependant on uncertain events which has no reasonable nexus with the object and purpose of the rules and the rule has therefore to be struck down as arbitrary and violative of the principles of equality of opportunity enshrined in Articles 14 and 16 of the Constitution.

Twenty nine persons belonging to the category of "released Government servants" who are amongst the respondents in the writ

A petition and whose seniority etc., were adversely affected by the decision rendered by the learned Single Judge, preferred a Letters Patent Appeal before a Division Bench of the High Court, but that appeal was dismissed *in limine* by the Division Bench, and hence they have filed this appeal in this Court after obtaining special leave.

B After giving our anxious consideration to the arguments addressed by counsel appearing on both sides, we have unhesitatingly come to the conclusion that the view expressed by the High Court that clauses (a) and (c) of rule 4 and the proviso to rule 7 of the impugned Government Resolution dated March 22, 1968 are violative of the provisions of Articles 14 and 16 of the Constitution, is unsustainable in law and that the direction given by the High Court to the State Government to prepare a fresh seniority list without taking into consideration the aforesaid provisions of the impugned Government Resolution and to give to the writ petitioners consequential benefits, including promotions and the emoluments on the basis of such revised seniority gradation list was not called for. We are also of opinion that the High Court was wrong in over-ruling the preliminary objection raised before it by the present appellants that the writ petition in so far it sought to challenge the legality of the Government Resolution dated March 22, 1968, was highly belated and was liable to be dismissed on the ground of laches and delay.

E The challenge in the writ petition was directed mainly against the Government Resolution dated March 22, 1968, which laid down the principles for determining the *inter se* seniority of personnel appointed in the different categories of posts in the newly constituted BRO. It may be assumed that the principles enunciated in the said Resolution did not come to the knowledge of the petitioners and other employees of the BRO immediately after the Resolution was passed by the State Government. But in implementation of those principles, a provisional gradation list of Rationing Inspectors/Senior Clerks/Deputy Accountants of the BRO as on April 1, 1968 was drawn up and issued by the Controller of Rationing on May 28, 1971. Paragraph 3 of the Order dated May 28, 1971 whereunder the said gradation list was issued contained a specific direction to all the Deputy Controllers of Rationing in the Head Office and also in the regions and to the Rationing Offices, to exhibit one copy of the gradation list together with a copy of the said Order whereunder the list was issued on their respective Office Boards, use another copy for obtaining signatures of all the persons who were still borne

on the establishment of the BRO and keep the third copy for the office record. It was directed in the same paragraph that "it should be seen that all the persons working in this Organisation, including those on leave or under suspension or retired, are informed of their seniority and rank and their signatures obtained in token thereof". In the absence of any acceptable evidence to the contrary, it is legitimate to presume that the said direction had been duly carried and that the provisional gradation list and the order dated May 28, 1971 had been duly brought to the notice of all personnel belonging to the concerned categories then working in the BRO. It is important to notice that in the first paragraph of the aforesaid Order dated May 28, 1971, it had been expressly mentioned that the provisional gradation list had been drawn up in accordance with the seniority principles enunciated in the Government Resolution dated March 22, 1968. Paragraph 2 of the said Order also contained a brief summary of the principles on which the gradation list had been drawn up. In paragraph 5 of the Order, it was stated that it was open to the persons whose names were included in the gradation list to make representations about the fixation of their seniority on or before June 21, 1971, and that representations received thereafter will not be entertained on any account. It is to be remembered in this context that the BRO is a small Organisation functioning only in the city of Bombay. Since copies of the Order dated May 28, 1971 and the provisional gradation list had been circulated in the Head Office, the Regional Offices and all the Rationing offices of the BRO and also shown individually to all the members of the staff working in the different offices, the writ-petitioners must be taken to have become fully aware of the principles laid down in the Government Resolution dated March 22, 1968 at least when the provisional gradation list dated May 28, 1968 was so published and circulated. None of the writ-petitioners, however, preferred any objection against their ranking in the said provisional gradation list. On November 23, 1972, a final gradation list of Rationing Inspectors/Senior Clerks/Dy. Accountants of the BRO as on April 1, 1968 was published with directions for bringing the said list also to the notice of all the persons borne on the concerned categories of the Organisation. Even after the circulation of the said list, the writ-petitioners did not file any objections against the ranking given to them in the said list, which was based on the principles enunciated in the Government Resolution dated March 22, 1968, nor did they take any steps whatever to challenge the constitutional validity of those principles.

A

B

C

D

E

F

G

H

A Subsequently, another provisional gradation list of Rationing Inspectors/Senior Clerks/Dy. Accountants as on April 1, 1972 was published by the Controller of Rationing on April 9, 1973. In that list also, it was expressly mentioned that it had been drawn up in accordance with the seniority principles enunciated in the Government Resolution dated March 22, 1968. This list was admittedly brought to the knowledge of the petitioners and the other personnel working in the concerned categories in the BRO. In the Order dated April 9, 1973, whereunder the said list was issued, it had been specified that representations against the seniority and ranking should be submitted to the Controller of Rationing on or before May 1, 1973 and that thereafter no representations would be entertained on any account. The writ-petitioners did not file any objections within the said period. However, writ-petitioners 1 to 3 submitted certain written representations to the Controller of Rationing in November, 1973, contending that the "deemed dates" assigned to them in the gradation list were incorrect. Even in those representations, no objection was raised against the principles for determination of seniority enunciated in the Government Resolution of 1968, and there was no protest whatever against the provision made in the said Resolution for fixation of the seniority of "released Government servants" by giving them credit for the length of regular service put in by them as clerks in other departments minus two years. The representations filed by petitioners 1 to 3 were rejected by the Controller of Rationing by orders passed in December 1973, wherein it was stated that the seniority and ranking assigned to them in the provisional gradation list could not be altered in view of the provisions contained in rule 4 (a) and the provision to rule 7 of the Rules laid down in the Government Resolution of 1968. If the petitioners desired to challenge the constitutionality of Rules contained in the Government Resolution dated November 22, 1968, they should have woken up at least when they received the aforesaid replies from the Controller of Rationing and approached the Court for appropriate relief within a reasonable time thereafter. No such action was taken by them and all that they did was merely to address some further representations to the Secretary, Food & Civil Supply Department reiterating the request made by them before the Controller of Rationing for alteration of their "deemed dates". Writ-petitioners 11 and 12 are also seen to have submitted some belated representations against the provisional gradation list complaining that the "deemed dates" assigned to them were incorrect. In those representations also, there was no protest or objection raised against

the principles laid down in the Government Resolution dated November 22, 1968.

On March 1, 1974, the Government of Maharashtra passed a Resolution directing that non-PSC persons who were employed in the Ministerial posts, namely, Clerks, Typists, Clerks-typists, Steno-typists and Stenographers in the Secretariat Departments and various Government Offices in Greater Bombay, prior to January 1, 1971, and who were in the service of Government on the date of the issue of the said order, should continue in Government service without being replaced by the candidates selected by the Maharashtra Public Service Commission, provided they possessed the minimum educational qualifications prescribed for the post to which they were appointed and they were also within the age limits prescribed for appointment to the respective posts held by them at the time of their initial appointment to such posts. It was made very clear in paragraph 4 of the said order that the seniority of the non-PSC persons on whom the benefit of permanent absorption in service was conferred thereunder was to be fixed only with reference to the date of the said order and that all the Public Service Commission selected candidates who were working in the various departments/offices prior to the date of the said Resolution would be treated as seniors in relation to the non-PSC persons covered by the said order. It is manifest that this order did not in any way affect the *in:er se* seniority between the writ petitioners and the released government servants drafted to the BRO from other Government departments wherein they had been holding posts on a regular basis after having passed the Public Service Commission examination. It is also worthy of note that the Government Resolution of 1974 was a general order applicable to all the non-PSC personnel functioning on a temporary or *ad hoc* basis in the Secretariat as well as the various departments of the State Government and except as indicated above it did not have any special applicability to the BRO.

On November 18, 1975, another provisional gradation list of Rationing Inspectors/Senior Clerks/Deputy Accountants of the BRO as on April 1, 1974 was published by the Controller of Rationing. Representations were filed by writ petitioners 1 to 3 objecting to the ranking assigned to them in the said provisional gradation list and it was only in those representations that an objection was specifically taken by them for the first time that the "released" personnel from other departments who had been appointed in the cadre of Rationing Inspectors in the BRO should not be assigned seniority over them

A since those persons had been working in their parent departments only in the capacity of Clerks. The representation of writ-petitioner 1 was filed on December 3, 1975 while those of writ petitioners 2 and 3 on November 27, 1975 and December 9, 1975. Shortly thereafter, the petitioners approached the High Court by filing the writ petition on January 31, 1976.

B

The view expressed by the learned single Judge of the High Court that a writ petition filed under Article 226 of the Constitution, seeking redress on the ground of alleged infringement of fundamental rights cannot be dismissed by the court on the ground of laches, under any circumstances, is inconsistent with the pronouncements of this Court on the subject and cannot be accepted as correct or sound.

C

In *Tilokchand Motichand and Ors. v. H.B. Munshi & Anr.*,⁽¹⁾ this Court had occasion to deal with a contention that the right to move the Supreme Court under Article 32 of the Constitution, being a fundamental right, a writ petition filed in the Supreme Court under the said provision cannot be dismissed on the ground of delay or laches, since such a course would amount to a denial of a fundamental right. Repelling the said argument, Mitter, J. observed thus :

D

E

"I cannot however find any merit in the contention that because there is an invasion of a fundamental right of a citizen he can be allowed to come to this Court, no matter how long after the infraction of his right he applies for relief. The Constitution is silent on this point; nor is there any statute of limitation expressly applicable, but nevertheless, on grounds of public policy I would hold that this Court should not lend its aid to a litigant even under Art. 32 of the Constitution in case of an inordinate delay in asking for relief and the question of delay ought normally to be measured by the periods fixed for the institution of suits under the Limitation Acts.

F

G

The Limitation Acts do not in terms apply to claims against the State in respect of violation of fundamental rights. A person complaining of infraction of any such rights has one of three courses open to him. He can either

H

(1) [1969] 2 SCR 824 at pp. 835, 836, 853-855.

make an application under Art. 226 of the Constitution to a High Court or he can make an application to this Court under Art. 32 of the Constitution, or he can file a suit asking for appropriate reliefs. The decisions of various High Courts in India have firmly laid down that in the matter of the issue of a writ under Art. 226 the courts have a discretion and may in suitable cases refuse to give relief to the person approaching it even though on the merits the applicant has a substantial complaint as regards violation of fundamental rights. Although the Limitation Act does not apply, the courts have refused to give relief in cases of long or unreasonable delay. As noted above in *Bhailal Bhai's* case [1964] 6 SCR 261, it was observed that the "maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured." On the question of delay, we see no reason to hold that a different test ought to be applied when a party comes to this Court under Art. 32 from one applicable to applications under Art. 226.

In my view, a claim based on the infraction of fundamental rights ought not to be entertained if made beyond the period fixed by the Limitation Act for the enforcement of the right by way of suit. While not holding that the Limitation Act applies in terms, I am of the view that ordinarily the period fixed by the Limitation Act should be taken to be a true measure of the time within which a person can be allowed to raise a plea successfully under Art. 32 of the Constitution."

To the same effect are the following observations of Sikri, J. in his separate judgment in the same case :

"A delay of 12 years or 6 would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Bearing in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, who had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the U.S.A.

A convinces me that the underlying idea of the Constitution was to provide an expeditious and authoritative remedy against the intrusions of the State. If a claim is barred under the Limitation Act, unless these are exceptional circumstances, *prima facie* it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Indian Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay.

C It is said that if this was the practice the guarantee of Art. 32 would be destroyed. But the article nowhere says that a petition, howsoever late, should be entertained and a writ or order or direction granted, howsoever remote the date of infringement of the fundamental right. In practice this Court has not been entertaining stale claims by persons who have slept over their rights."

D In *Rabindra Nath Bose and Ors. v. Union of India and Ors.*,⁽¹⁾ the identical question again came up to be considered by this Court, and Sikri, J. speaking on behalf of the Constitution Bench, said this:

E "But in so far as the attack is based on the 1952 Seniority rules, it must fail on another ground. The ground being that this petition under Art. 32 of the Constitution has been brought about 15 years after the 1952 Rules were promulgated and effect given to them in the Seniority List prepared on August 1, 1953. Learned Counsel for the petitioners says that this Court has no discretion and cannot dismiss the petition under Art. 32 on the ground that it has been brought after inordinate delay. We are unable to accept this contention.

G The learned Counsel for the petitioners strongly urges that the decision of this Court in *M/s. Tilokchand Motichand's* ⁽²⁾ case needs review. 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 Art. 32

H

(1) [1970] 2 SCR 697 at pp. 711-712.

(2) [1969] SCC 110.

of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Art. 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years.

It is said that Art. 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. We are not anxious to throw out petitions 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 effected a long time ago would not be set aside after the lapse of a number of years."

The same position was reiterated by this Court in *Mulcom Lawrence Cecil D'Souza v. Union of India and Ors.*,⁽¹⁾ and again in a very recent pronouncement of this Court in *S.S. Moghe and Ors. v. Union of India and Ors.*⁽²⁾ We may usefully extract the following observations contained in paragraph 23 of the judgment of this Court in the last mentioned case :

"At this stage, it will be convenient to first dispose of the contentions urged by the petitioners, against the validity of the promotions given to respondents 8 to 67 during the period between 1968 and 1975. In our opinion, the challenge raised by the petitioners against these promotions is liable to be rejected on the preliminary ground that it is most highly belated. No valid explanation is forthcoming from the petitioners as to why they did not approach this Court within a reasonable time after those promotions were made, in case they really did feel aggrieved by the said action of the Department. This writ petition has been filed only in the year 1979, and after such a long lapse of time the petitioners cannot be permitted to assail

(1) [1976] 1 S.C.C. 599 at p. 602.

(2) [1981] 3 S.C.C. 271 at p. 292.

A before this Court the promotions that were effected
during the years 1968 to 1975. A party seeking the inter-
vention and aid of this Court under Article 32 of the
Constitution for enforcement of his fundamental rights,
should exercise due diligence and approach this Court
B within a reasonable time after the cause of action arises
and if there has been undue delay or laches on his part,
this Court has the undoubted discretion to deny him relief
(see *Rabindra Nath Bose v. Union of India*,⁽¹⁾)

C The Government Resolution of March 22, 1968 must have
come to the knowlegde of the writ petitioners at least when the
provisional seniority list dated May 28, 1971 was circulated
amongst the staff of the BRO. Thereafter, in November 1972, a
final Gradation List of Rationing Inspectors/Senior Clerks/Deputy
D Accountants of the BRO as on April 1, 1968 had been published
and the said list was circulated to all the members borne on
the concerned categories of the Organisation. It was expressly stated
in both the aforesaid lists that the ranking of personnel had
been effected in accordance with the principles laid down in
the Government Resolution dated March 22, 1968. The writ peti-
tioners did not file any objections against the provisional list
despite representations having been invited, nor did they take any
E steps to question the validity of the final gradation list or the senior-
ity principles laid down in the Government Resolution of 1968, on
the basis of which the said list had been prepared.

F Still later, in April 1973, another provisional Gradation List of
personnel working in the aforesaid categories was published by the
Controller of Rationing and the said list, which was also drawn up
in accordance with the seniority principles enunciated in the Govern-
ment Resolution of March 22, 1968, had been admittedly brought
to the knowledge of the writ petitioners. They did not file any
objections against the said list within the time prescribed. And
what is more significant is that even in the earlier representations
G filed by writ petitioners 1 to 3, which they filed in November 1973,
no objection or protest was raised by them against the principles
for determination of seniority laid down in the Government Resolu-
tion of 1968. The Controller of Rationing informed writ petitioners
H 1 to 3 in December 1973 itself that the representations stood
rejected since the seniority and rank assigned to them in the pro-

(1) [1970] 2 SCR 697.

visional Gradation List were in strict conformity with the principles laid down in the Government Resolution of 1968. Even thereafter, the petitioners did not wake up and it was only on January 31, 1976 that they approached the High Court by filing the present writ petition out of which this appeal has arisen seeking to quash the Government Resolution of 1968 and the Gradation Lists of November 18, 1975 and November 27, 1975. The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968. As already indicated by us, the fact that the Government had subsequently passed a Resolution dated March 1, 1974 directing the regularisation of the temporary appointments of non-P.S.Cs. clerical personnel working in Ministerial posts in the different Government Departments in Greater Bombay, has no relevancy at all in this context of dealing with the question of delay and laches on the part of the petitioners in taking steps to challenge against the Government Resolution of 1968. The *inter se* seniority between the petitioners and the other personnel regularly absorbed in the BRO who have come over to the BRO as "released Government servants" is not in any way affected by the said Government Resolution of April 1, 1974, inasmuch as it has been expressly made clear therein that the temporary personnel who are entitled to the benefit of regularisation thereunder were to be assigned seniority only on the basis that regular appointments were effected on the date of issue of the said order. The learned Single Judge of the High Court was, therefore, clearly in error in thinking that the passing of the Government Resolution of 1974 furnished a fresh cause of action for the petitioners for agitating their contentions regarding the invalidity of the Government Resolution of 1968. We are unable to appreciate the further reason stated by the learned Single Judge, that the respondents had not placed on record any factual data to show the extent of promotions made on the basis of the seniority list of 1972 and the manner in which the promotees would be affected if the relief was granted to the writ-petitioners, and the same we find to be based on a totally incorrect approach. It is to be noticed that there was no dispute before the High Court that from the date of publication of the provisional list of May 28, 1971, which was expressly based on the principles laid down in the Government Resolution of 1968, the seniority and rank of all the personnel in concerned categories had been fixed in accordance with the principles laid down in the impugned Resolu-

A

B

C

D

E

F

G

H

A tion. In the counter-affidavits filed in the High Court on behalf
of the State Government and the Controller of Rationing as well as
B in the affidavits filed by the other respondents, it had been specifically averred that innumerable promotions had been made during
the period of six years on the basis of seniority as fixed in
C accordance with the impugned rules and many officers had gone up
by two or three stages as a result of such promotions. Further,
there is the clinching fact that the writ petitioners themselves had
impleaded as many as 162 officers as respondents on the ground
that they were all likely to be affected in case the reliefs claimed in
the writ petition were granted. In these circumstances, we consider
D that the High Court was wrong in over-ruling the preliminary objection
raised by the respondents before it, that the writ petition
should be dismissed on the preliminary ground of delay and laches,
E inasmuch as it seeks to disrupt the vested rights regarding the
seniority, rank and promotions which had accrued to a large
number of respondents during the period of eight years that had
intervened between the passing of the impugned Resolution and
the institution of the writ petition. We would accordingly hold
that the challenge raised by the petitioners against the seniority
principles laid down in the Government Resolution of March 22,
1968 ought to have been rejected by the High Court on the ground
of delay and laches and the writ petition in so far as it related to
the prayer for quashing the said Government Resolution should
have been dismissed.

F On the merits also, we do not find any substance in the
attack levelled by the petitioners against the legality and validity of
the seniority principles laid down in the impugned Government
Resolution of March 22, 1968. We shall briefly indicate our
reasons for reaching this conclusion. The BRO was a totally new
Department which was constituted on March 1, 1966 pursuant to
the Government Resolution dated February 11, 1966. Under the
said Resolution, it was directed that the staff for manning the new
G Organisation should consist of :

- H (a) the skeleton staff already sanctioned under an earlier
Government Resolution dated October 21, 1965 for
carrying out the preliminary work in connection
with the establishment of the new Organisation
(BRO);

- (d) the existing staff under the Controller of Foodgrains Distribution, Bombay, consisting of 384 posts which were to be merged with a new Bombay Rationing Office (BRO) with effect from March 1, 1956; A
- (c) personnel drawn on deputation from other departments of the State Governments; and B
- (d) persons directly recruited to the BRO.

Here is, therefore, a case where the staff for manning a new department has been drawn from four different sources. In such a situation, it was inevitable that some reasonable principles had to be formulated for the determination of the *inter se* seniority of the personnel appointed to work in the different categories of posts in the new Organisation. The entire argument of the petitioners is based on an erroneous assumption that from the very inception they belonged to the BRO and had some vested rights with respect to seniority and rank in the said Organisation. The petitioners who were members of the staff of the CFD were taken into the BRO along with the skeleton staff appointed under the Government Resolution dated October 21, 1965 and the "released Government servants" etc., as part of the single scheme formulated by the Government for the constitution of a new department (BRO). There is therefore, no substance in the contention advanced by the writ petitioners that they stood on a separate and superior footing for the purpose of seniority etc., in the new Organisation. In this connection, it is relevant to note that the writ petitioners were holding the posts of Supply Inspectors in the CFD only on the basis of appointments which were purely temporary. They had not been recruited through the Public Service Commission but were given temporary appointments on the basis of recommendations made by the Employment Exchange and their services were terminable at any time without notice. Thus the position that existed at the time of the formation of the BRO was that the writ petitioners were not holding any substantive or regular appointments in the CFD which itself was only a temporary Department. In contrast, the deputationists who came over to the BRO as "released Government servants" were persons who had been holding for many years Ministerial posts in other Government departments on regular basis pursuant to their recruitment by the Public Service Commission. Under the impugned seniority rules laid down by the Government Resolution dated March 22, 1968, a deputationist

C

D

E

F

G

H

A (released Government servant) 'with two years' regular service as Clerk in other Government departments has been equated with a Supply Inspector of the CFD and it is on this basis that the *inter se* seniority as between the erstwhile CFD personnel and the "released Government servants" appointed to a post of Rationing Inspectors/ Senior Clerks/Deputy Accountants in the BRO is to be reckoned.

B In our opinion, the said equation cannot be regarded as arbitrary or unreasonable, especially when it is viewed in the context of the factual background that the Supply Inspectors in the CFD were merely temporary hands whose appointments were of a precarious nature and the functions and duties performed by them are not shown to have been substantially different from those discharged by the clerks in other Government departments. The principle laid down in rule 4 (a) that the seniority of "released Government servants" and merged Government servants in the cadres of Senior Clerks, Rationing Inspectors and Deputy Accountants shall be determined with reference to dates which shall be fixed after deducting two years from the date of continuous service whether officiating or permanent rendered by him in the cadre of clerks, typists etc., appears to our minds to be perfectly just and unexceptionable in the circumstances of the case. The reasons stated by the learned Single Judge of the High Court for declaring the aforesaid rule to be arbitrary and violative of Article 16 of the Constitution do not appeal to us as correct or sound. Almost the entire reasoning of the learned Single Judge is based on an assumption that there is an invariable "normal rule" that seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from the said rule will be *prima facie* unreasonable and illegal. The said assumption is devoid of any legal sanction. We are unable to recognise the existence of any such rigid or inflexible rule. It is open to the rule-making authority to take a note of the relevant circumstances obtaining in relation to each department and determine with objectivity and fairness what rules should govern the *inter se* seniority and ranking of the personnel working in the concerned departments and the courts will only insist that the rules so formulated should be reasonable, just and equitable. Judged by the said test of reasonableness and fairness, the action taken by the Government in equating the clerical personnel which had rendered two years regular service in other departments with the temporary Supply Inspectors of the CFD and in directing as per impugned rule 4 (a) that their *inter se* seniority shall be determined with reference to the length of service calculated on the basis of the said equation cannot be said to be in any

C

D

E

F

G

H

way discriminatory or illegal. We are unable to accept as correct the view expressed by the learned Single Judge of the High Court that "while fixing the seniority in the higher post, it is not open to take into consideration any service rendered in the lower post and that by itself spells out discrimination." Firstly, it is not correct to regard the post of a regular clerk in the other departments as lower in grade in relation to that of a Supply Inspector in the CFD. Further, in *S.G. Jaisinghani v. Union of India and Ors.*,⁽¹⁾ this Court has pointed out that in the case of recruitment to a service from two different sources and the adjustment of seniority between them a preferential treatment of one source in relation to the other can legitimately be sustained on the basis of a valid classification, if the differences between the two sources has a reasonable relation to the nature of posts to which the recruitment is made. In that case, this Court upheld the provision contained in the seniority rules of the Income-tax Service, whereby a weightage was given to the promotees by providing that three years of outstanding work in Class II will be treated as equivalent to two years of probation in Class I (Grade II) Service.

We may also extract, with advantage, the following observations of Palekar, J., speaking on behalf of the Constitution Bench, in *Bishan Sarup Gupta v. Union of India and Ors.*⁽²⁾ :

"There is no question in this case of any discrimination being made in a service after officers from the sources have been brought in one cadre. It is true that seniority is a vital element in the matter of promotion but that does not mean that allotment of seniority by rule, relative to recruitment, involves any classification for the purposes of promotion. The argument that the promotees and direct recruits became one class immediately on entry and, thereafter, there could be no classification between them does not disclose the correct approach to the problem of fixing *inter se* seniority between them. When recruits from two sources have come into a service it is essential to fix *inter se* seniority for a proper integration of the cadre. Therefore, it is really a case of adjustment of seniority between the recruits and does not amount to making a classification after their absorption in one service."

(1) [1967] 2 SCR 703.

(2) [1975] 1 SCR 104 at p. 114.

A A comparison of the pay scales of the Supply Inspectors in CFD with that of Clerks in the other departments shows that though the clerks started with a lower salary, their pay scale reached a much higher level than that of the Supply Inspectors. It is also relevant to notice that the next promotion post available to the clerks in other Government departments from where they had gone on deputation to the BRO was that of Assistant or Head Clerk in the Grade of Rs. 200-450 or Rs. 200-300, while the next promotion post of Supply Inspector in the former CFD was that of an Assistant Zonal Officer in the Grade of Rs. 200-300. Further the post of 'Assistant' to which the Clerks in other Government departments get a promotion has been declared to be equivalent to the post of Assistant Rationing Officer in the BRO which is the post immediately above that of Rationing Inspector in the BRO. When all these factors are taken into account, it becomes clear that the post of Supply Inspector in the CFD cannot be regarded as a post higher than or superior to that of clerk in the other Government Departments. Hence, we do not find it possible to uphold the view expressed by the learned Single Judge of the High Court that the seniority principle embodied in rule 4(a) treats unequals as equals and that it is, therefore, violative of Articles 14 and 16 of the Constitution.

E When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government. In the instant case, we have already indicated our opinion that in equating the post of Supply Inspector in the CFD with that of Clerk with two years regular service in the other Government departments, no arbitrary or unreasonable treatment was involved.

G Clause (c) of rule 4 which is the next provision that has been struck down by the High Court merely states that the seniority of Government servants in the cadre of Senior Clerks/Rationing Inspectors/Deputy Accountants shall be refixed in accordance with the principles laid down in clauses (a) and (b) of rule 4. We have repelled the challenge against clause (a) of rule 4 and no challenge has

been raised by the petitioners before us against clause (b) of the said rule. It must automatically follow that the aforesaid provision contained in clause (c) of rule 4 is perfectly valid and constitutional.

That takes us on to the proviso to rule 7 which is the only other provision struck down by the High Court. Clause (a) of rule 7 lays down that in the case of Government servants taken into the BRO on release from one and the same office, their seniority *inter se* in their former office shall be maintained in the BRO. Clause (b) is a similar provision relating to the "merged Government servants" (ex-CFD personnel). Clause (c) of rule 7 lays down that the *inter se* seniority of persons directly recruited in the former CFD Organisation shall be governed by the principles set out in the Government Resolution dated April 1, 1963. It is further stated in the said clause that in regard to persons who were taken to the CFD from one and the same Government office/department, they shall take their rank according to their *inter se* seniority in the office/department from which they were drawn. Thereafter, follows the impugned proviso which lays down that where there is a clash of principles contained in the Government Resolution dated April 1, 1963 with the seniority *inter se* in the former department, the seniority *inter se* in the former Department shall prevail. The principles for fixation of *inter se* seniority of personnel working in the CFD had been enunciated by the Government in the Resolution dated April 1, 1963. What has done under the impugned proviso is only to state that with respect to persons who have been drafted into the CFD Organisation from one and the same Government department on deputation basis, their *inter se* seniority in the former department shall not be disturbed and that to the said extent a deviation should be made from the principles laid down in the Government Resolution dated April 1, 1963. We fail to see how the said direction contained in the impugned proviso for preservation of the *inter se* seniority of deputationists who have been drawn from one and the same Government department to serve the CFD can be said to be arbitrary or unreasonable. It is a just and wholesome principle commonly applied in such situations where persons from other departments are drafted to serve on deputation their *inter se* seniority in the parent department should be respected and preserved during the period of such deputation to the new department. We, therefore, consider that the High Court was in error in striking down the proviso to rule 7 as being violative of Articles 14 and 16 of the Constitution.

A It now only remains for us to examine whether there is substance in the contention put forward by the writ petitioners that even if the impugned seniority principles laid down in the Government Resolution dated March 22, 1968 are to be regarded as valid, the seniority lists dated November 18, 1975 and November 27, 1975 have not been drawn up in accordance with those principles. The first point urged before us is that the effect of clause (b) of rule 7 is to make the provisions of clauses (a) and (b) of rule 4 inapplicable to merged government servants and to direct that the seniority of the merged Government servants should be determined only in accordance with the principles laid down in the Government Resolution dated April 1, 1963. This argument is based on a total misconception of the scope and effect of rule 7 (b). What that rule provides is only that as between the CFD personnel who have been absorbed in the BRO their *inter se* seniority reckoned on the basis of the principles contained in the Government Resolution dated April 1, 1963 shall be preserved. In other words, the object and purpose of sub-clause (b) is limited to the preservation and maintenance of the pre-existing *inter se* seniority as between the CFD personnel even after their absorption in the BRO and the said provision does not in any way hamper the operation of the principles laid down in rule 4 for the fixation of the seniority of all the personnel including the merged Government servants in the respective categories in the BRO. A careful reading of the provision of clause (c) and the illustrations given thereunder makes this position abundantly clear. The aforesaid contention put forward on behalf of the writ petitioners will, therefore, stand rejected.

F There is, however, some substance in the grievance put forward on behalf of the writ petitioners that in drawing up the impugned seniority lists in purported application of the principles laid down in clause (a) rule 4, many persons who were juniors to the writ petitioners in the category of Supply Inspectors in the CFD have ranked above the petitioners in the category of Inspectors/Senior Clerks/Deputy Accountants. There are also instances where persons who were working in the CFD as clerks at the time of the merger and were appointed in the BRO as clerks but have been subsequently promoted in the BRO as Rationing Inspectors/Senior Clerks/Deputy Accountants have been shown in the gradation list as seniors in relation to the writ petitioners despite the fact that the writ petitioners were all along functioning as Supply Inspectors in the CFD by virtue of their having been recruited to the said cate-

gory in that Organisation. We do not find anything in rule 4 (a) which warrants such an unfair treatment being meted out to persons like the petitioners who were directly recruited as Supply Inspectors in the CFD. Rule 7 clearly lays down that the operation of clause (a) of rule 4 is subject to the limitation specified therein, namely, that in the case of merged Government servants their *inter se* seniority will be preserved in tact. Hence, no person who was functioning as a junior in relation to the writ petitioners in the category of Supply Inspectors in the CFD can be assigned seniority or rank above the writ-petitioners in the cadre of Rationing Inspectors/Senior Clerks/Deputy Accountants in the BRO. Similarly, no person who has been taken into the BRO as a clerk from the CFD can under any circumstances be placed above the writ petitioners in the gradation list of Rationing Inspectors/Senior Clerks/Deputy Accountants of the BRO. It is clear from the averments contained in the counter-affidavit filed on behalf of the State Government that the aforesaid principle has been violated while preparing the two impugned gradation lists dated November 18, 1975 and November 27, 1975. The explanation given in the counter-affidavit for adopting the said course does not appear to us to be acceptable or sound. It was pointed out by the counsel for the respondents (writ petitioners) that Exhibit 'A' produced along with the counter-affidavit of the first respondent herein shows that as many as 30 persons, who had joined the BRO as Clerks and were subsequently promoted as Rationing Inspectors, have been shown as seniors in relation to the writ petitioners in the gradation list dated November 18, 1975. Similarly, Exhibit 'B' gives the names and particulars of persons who were appointed as supply Inspectors in the CFD subsequent to the appointment of the petitioners, but who have nevertheless been shown in the impugned gradation list as seniors to the writ petitioners in the corresponding cadre in the BRO. We have already made it clear that on a combined reading of rules 4 and 7 of the impugned seniority rules, the *inter se* seniority of the CFD personnel has to be strictly maintained in tact, and that no person who was junior in the CFD in the category of Supply Inspector can go above his senior in that Organisation after being absorbed in the BRO, and also that no person who has been taken as a clerk in the BRO can go above persons absorbed therein in the category of Rationing Inspectors.

In the light of what we have said above, the impugned seniority lists in so far as they have been drawn up in deviation from the legal position explained above call for immediate revision. We

A would accordingly direct respondents 23 and 24 (State of Maharashtra and the Controller of Rationing, Bombay) to revise the two impugned seniority lists and refix the ranking assigned to the writ petitioners and others in the light of what we have said in this judgment.

B In the result, this appeal is allowed and the judgments of the High Court are set aside. The writ petition—Misc. Petition No. 166 of 1976—is allowed only to the limited extent of the aforesaid direction issued to respondents 23 and 24 for revision of the impugned seniority lists and it is dismissed in other respects.

C The parties will bear their respective costs.

P.B.R.

Appeal allowed.