Tamil Nadu Administrative Service ... vs Union Of India & Ors on 19 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1898, 2000 (5) SCC 728, 2000 AIR SCW 1506, (2000) 5 JT 86 (SC), 2000 (2) UJ (SC) 1084, 2000 (3) SCALE 398, 2000 (5) SRJ 463, 2000 UJ(SC) 2 1084, 2000 (2) UPLBEC 1683, 2000 (5) JT 86, (2000) 2 SERVLR 659, 2000 SCC (L&S) 748, (2000) 3 LAB LN 474, (2000) 3 SCT 424, (2000) 2 UPLBEC 1683, (2000) 3 SUPREME 493, (2000) 3 SCALE 398, (2000) 3 ALL WC 1826

Bench: N.S.Hegde, M.J.Rao

CASE NO.:
Writ Petition (civil) 613 of 1994
Writ Petition (civil) 671 of 1994
Writ Petition (civil) 83 of 1998
Writ Petition (civil) 197 of 1998
Special Leave Petition (civil) 7823 of 1996

PETITIONER:
TAMIL NADU ADMINISTRATIVE SERVICE OFFICERS ASSOCIATION & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 19/04/2000

BENCH:
N.S.Hegde, M.J.Rao

JUDGMENT:

SANTOSH HEGDE, J.

L.....I.....T.....T.....T.....T.....T.....T..J Leave granted in SLP©No.7823/96. In the above writ petitions and civil appeal members of the Tamil Nadu and Haryana State Administrative Services have sought for directions from this Court to the respondents to encadre all the State Deputation Reserve posts, Ex-cadre posts and Temporary posts hitherto manned by the members of the Indian Administrative Service (for short IAS) for a continuous period exceeding three years, in the IAS

cadre. It is their complaint that in their respective States large number of posts which are not included in item 1 of the Schedule to the IAS (Fixation of Cadre Strength) Regulations, 1955 (for short Cadre Regulations) are being manned by IAS officers and these posts have been in existence for decades together and in spite of the same they are not encadred even though under the Cadre Regulations it is obligatory for the Central Government to do periodical cadre review. Consequent to the failure on the part of the respondents to encadre these large number of posts the petitioners/appellants are denied of their legitimate right of being selected to the IAS by promotion under Rule 8 of the IAS (Recruitment) Rules, 1954 (for short Recruitment Rules). They contend that 33 1/3 per cent of the State IAS cadre is reserved for selection by promotion of the State service officers and non encadring of the above posts has denied them of their legitimate share in the State cadre. During the pendency of these petitions and appeal, by notification dated December 31, 1997 the Central Government brought about certain amendments to the IAS (Appointment by Promotion) Regulations, 1955 (for short Appointment by Promotion Regulations). The Central Government in its counter affidavit filed in the above cases contended that the complaints of the petitioners/appellants do not survive after the amendment since the respondents by those amendment have included the State Deputation Reserve posts and the Trainee reserve posts as part of the State cadre strength and petitioners are now entitled to have their share of 33 1/3 per cent of the enhanced cadre strength for their appointment to the IAS. However, the petitioners have rebutted this contention of the Respondent and have amended their original petitions and/or filed separate petitions challenging the said amendments. A perusal of the pleadings in the petitions/appeal filed prior to the amendment shows that under Rule 9 of the Recruitment Rules as it stood before the amendment, the number of persons to be recruited to the IAS from the State Civil Service was restricted to 33 1/3 per cent of the number of posts found at items 1 and 2 to the concerned schedule of the Cadre Strength Regulations. By amending the Recruitment Rules, the Union has now enhanced the cadre strength of each State by including the posts allotted to them under items 5 and part of item 6 of the Schedule found in the Cadre Strength Regulations which are posts classified as State Deputation Reserve and Trainee reserve. Therefore, it is clear that since the filing of the original petitions/appeal the Central Government has increased the strength of the State cadre of IAS, but the petitioners/appellants pleaded that this increase in the strength is wholly illusory. They contend that still large number of posts, which are either termed as ex-cadre or temporary, are excluded from the cadre strength and what is increased by the amendment is only a cosmetic increase. The respondents in opposition contend that during the exercise of review of the cadre strength they have taken note of the necessary requirements of each State and have encadred only such State Deputation Reserve and the Trainee reserve posts which in their opinion requires to be encadred. They contend that the State Governments have in contravention of Rule 4 of the Cadre Rules at times have been creating certain ex-cadre posts which in the opinion of the Central Government are unnecessary and hence such posts cannot be encadred in the IAS. In regard to the partial relief got by them after the amendment, the petitioners further contend the same has been given prospective effect only thereby denying them their legitimate seniority. They contend that inclusion of these posts ought to have been made with effect from the date these posts were created or at least from the date on which these petitions were filed. In reply to this, Central Government contends that the petitioners do not have any legal right to demand the encadrement of these posts which hitherto were not a part of the cadre strength. This request of the petitioners amounts to asking the Central Government to create additional posts which right is not available to the

petitioners. The petitioners have also in their amended and fresh petitions questioned the constitutional validity of amended Regulation 5(1) of the Appointment by Promotion Regulations. The Petitioners contend that by the said amendment the Union has brought about unwanted, arbitrary and drastic changes in the calculations of vacancies available to be filled by the promotees by excluding the anticipated vacancies and by confining the selections only to substantive vacancies available on the first day of January of the said year. The petitioners contend that the process of selection invariably takes considerably long time consequent to which timely selection has become impossible, by excluding the anticipated vacancies, it is contended there will be further delay in selecting the petitioners to the IAS which might deprive many of them their chance to be selected for the IAS. They also contend that this practice of calculating the vacancies on the anticipated basis has been in vouge for a number of decades and the Central Government has brought about these amendments without any justification which limits the opportunities available for the petitioners for being selected to the IAS. The Union of India has rebutted this contention. It contends that these amendments were brought about to streamline the selection process. It is stated that it has become practically impossible to make selections to anticipated vacancies for want of necessary information and some other practical reasons. They deny that these amendments are arbitrary and unnecessary. From the above contentions of the parties and taking into account the subsequent events that have taken place after the filing of the original petitions/appeal, the following questions arise for our consideration: 1. Should the temporary and ex-cadre posts that are in existence in the concerned State Government service be directed to be encadred in the IAS cadre strength of the States concerned? 2. Are the petitioners entitled in law to demand that the encadrement of posts should be effective from the original date of creation of the posts or at least from the date of filing of the respective petitions? 3. Are the amendments brought about to Regulation 5(1) of the IAS (Appointment by Promotion) Regulations, 1955 ultra vires and liable to be struck down? Before we proceed to consider the arguments advanced in support of their respective contentions in the above cases it is necessary to note that similar grievances were made by the State Service Officers of States of Madhya Pradesh and West Bengal before the Central Administrative Tribunal, Jabalpur and Calcutta benches. In the case of K.K. Goswamy vs. Union of India (T.A. No. 81/86) Jabalpur bench of the Tribunal held that deputation reserve listed at item 5 of the Schedule under the Cadre Strength Regulations has to be included for computing the promotion quota. This judgment was brought up by way of SLP before this Court and the same was rejected. It is also to be noted that similar view was taken by the Calcutta bench of Central Administrative Tribunal. The Chandigarh bench of Central Administrative Tribunal as per the order dated December 13,1995, from which the above noted Civil Appeal No. of 2000 (arising out of S.L.P. © No. 7823 of 1996) arose, took the view that the temporary/ex cadre posts which have continued for long number of years, cannot be allowed to be continued as such, hence it directed the Central and the State Government to take necessary steps to discharge their legal and constitutional duties by examining the question whether such temporary and ex cadre posts which are in existence for a number of years and are likely to continue indefinitely should be either abolished or should form part of the cadre of the State of Haryana. Though the applicants therein succeeded in getting the above direction, they have preferred the above civil appeal to the extent the Tribunal failed to give them the retrospective benefit of the said order and rejected the challenge to the amendments referred to herein above. We have heard Shri M.N. Rao and Shri Parag Tripathi, learned senior counsel for the petitioners/ appellants and Shri Mukul Rohtagi, learned Additional Solicitor General for Union of India. The

service conditions of All India Service Officers are governed by the provisions of the All India Services Act, 1961 and the Rules and Regulations made under the said Act such as the Cadre Rules, Cadre Regulations, Recruitment Rules and the Appointment by Promotion Regulations. Practically, every aspect from the creation of the cadre, fixation of strength of the cadre, filling up of the officers in the cadre, their deputation, selection, promotion and seniority are all statutorily governed under the above-cited Rules and Regulations. Under Rule 3 of the Cadre Rules, an IAS cadre is created for each State or a group of States in the Indian Union. Rule 4 of the said Rules provides that the Central Government in consultation with the State Governments should determine the strength and composition of the cadres constituted under Rule 3 by framing the regulations in this behalf. This Rule also provides for a review of the cadre from time to time which used to be at an interval of every 3 years and presently amended to 5 years. The review of the cadre strength contemplated under this Rule is to be done in consultation with the State Governments concerned. The proviso to this Rule empowers the State Government concerned to temporarily add to its cadre one or more post(s) for a period not exceeding one year on its own and with approval of the Central Government for a further period not exceeding two years. Thus, a conjoint reading of these sub-clauses and proviso of Rule 4 shows the fixation of the cadre strength and review thereof is the responsibility of the Central Government and for any urgent need of temporary nature, the State Government is empowered to add to this cadre one or more posts on its own as provided in the proviso to Rule 4(2). Therefore, creation of a cadre and fixation of the cadre strength are statutorily controlled and the same will have to be reviewed periodically bearing in mind the necessity prevailing at the time of review. The components of the cadre are also fixed statutorily which normally consist of the six items enumerated in the Schedule to the Cadre Strength Regulations. The said Regulation also provides for fixation of number of posts under those 6 items. Under Rule 8(1) of the Recruitment Rules, provision is made for recruitment to the IAS by the Central Government by promotion of substantive members of the State Civil Service. The number of posts so permitted to be filled from the State service is regulated under Rule 9 of the said Rules which has fixed a quota of not exceeding 33 1/3% of the number of posts as are shown against Items 1 and 2 of the cadre in relation to the State concerned as fixed under the Cadre Regualtions. (After the amendment of 1997 the posts enumerated under Items 5 and part of Item 6 are also to be counted for the purpose of fixing the quota of 33 1/3%). In the background of the above statutory provisions, we will now consider the first claim of the petitioners for encadrement of ex-cadre/temporary posts. This argument proceeds on the basis that as per the Cadre Rules no temporary or ex cadre posts are permitted to be created by the State Governments for a period exceeding 3 years (See Rule 4(2) of the Cadre Rules). The petitioners contend that the posts identified by them in their petitions being permanent in nature and some of them having been created under State enactments requiring their manning by IAS officers have to be encadred. They further contend that if they are so encadred they are entitled to be promoted to the extent of 33 1/3% of the so enhanced posts The Central Government, per contra, contends that during the triennial review (as it used to be), they have taken into consideration the necessity to encadre such ex cadre and temporary posts in consultation with the State Governments and after finding out the need to encadre such posts and wherever it was found necessary, such encadrement was done. They also contend that by virtue of the amendments of 1997, the posts earmarked for State deputation reserve and training reserve have already been included in the cadre strength of the respective States and if there is any further need to encadre any more post, the same will be done during the course of next periodic review of the cadre strength of the States. A perusal

of the petition allegations does show that a number of posts outside the IAS cadre in the States concerned are in existence which are being manned by IAS Officers. Continuous existence of these posts over the decades shows that these posts are of permanent in nature, but the pertinent question for consideration is whether merely because the State Government has created some posts and continued them over the years by posting regular IAS officers, can a court issue a mandamus to the Central Government to encadre these posts ? If one looks into the object of creating an all India service, it is clear that this service was created to select exceptionally bright and intelligent men/women through all India examinations and train them to handle the affairs of the States by manning important posts in the administration of the State. These persons are not to be posted to any and every posts in the Government. They are to man only such posts which have been identified to be so important as to require the services of these persons. With this view in mind, the Central Government was entrusted with the responsibility of identifying such posts and to encadre them in the IAS cadre. A perusal of the Cadre Rules and Regulations shows that the Central Government has identified posts like that of the Collectors, Commissioners, Members of the Board of Revenue, Secretaries and Deputy Secretaries in the administrative departments and Heads of important Departments. It is the attitude of the State Governments of creating ex-cadre/temporary posts without consulting the Central Government and contrary to the Cadre Rules which has created the controversy in hand and has given rise to heart-burn and disappointment to the State civil servants. This however does not, in our opinion, confer any right on the petitioners to seek a mandamus for encadring those ex- cadre/temporary posts, for any such mandamus would run counter to the statutory provisions governing the creation of cadre and fixation of cadre strength. The basis of the petitioners right to be selected for All India service is traceable in case of State Civil Service officers to Rule 8 of the Recruitment Rules which says that the Central Government may recruit to the IAS persons by promotion from amongst the members of the State civil service. This Rule itself puts a ceiling on the number of posts that could be filled in the IAS from such promotions which is limited to not more than 33 1/3% of the posts enumerated therein. The prayer of the petitioners for encadrement of the ex-cadre/temporary posts in reality amounts to asking the Central Government to create more posts. The question then arises whether there is any such right in the petitioners to seek such creation of additional posts. It is a well- settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons; be it administrative, economical or policy, decide not to fill up such post(s). See The State of Haryana v. Subhash Chander Marwaha & Ors. [(1974) 3 SCC 220].This principle applies with all the more force in regard to the creation of new vacancies like by encadrement of new posts; more so when such encadrement or creation of new posts is statutorily controlled. We have noticed earlier that the Cadre Regulations and the Recruitment Rules require the Central Government to follow a particular procedure and make necessary consultations before fixing or re-fixing the cadre strength. In such a situation, issuance of a mandamus to increase the cadre strength or to encadre a particular post merely on the basis of long existence of these posts would be inappropriate. The petitioners in support of their contention have placed reliance upon a judgment of this Court in C.O. Arumugham & Ors. v. State of Tamil Nadu & Ors. [1991 Supp (2) SCC 199]. In para 5 of the said judgment this Court held thus : As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing

from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. In our opinion, that decision does not help the contention of the petitioners to seek a mandamus to encadre the ex- cadre/temporary posts as contended in their petition. The above judgment only lays down that a civil servant has a right under Articles 14 and 16(1) of the Constitution to be considered for promotion and such consideration cannot be postponed on unreasonable grounds. The petitioners next relied on another judgment of this Court in P.S. Mahal & Ors. v. Union of India & Ors.[(1984) 4 SCC 545] wherein in para 21 of the judgment, this Court laid down that whenever a long term vacancy arises in a post, whatever may be the reason by which the vacancy is caused, it would have to be filled up by promotion by applying the quota rule. Court further said :

> But where a vacancy arises on account of the incumbent going on deputation for a reasonably long period and there is no reasonable likelihood of the person promoted to fill such vacancy having to revert, the vacancy would be subject to the quota rule, . From the above observations of this Court, the petitioners contend that since the vacancies pointed out by them in the petition are of permanent nature, the same will have to be encadred so as to give them an enhanced quota of promotion. We do not find any such support to the case of the petitioners from the aforesaid case. It is to be noted that the facts of the Mahals case (supra) are entirely different from that of the petitioners. That was a case where the promotees who were occupying a direct recrtuiment post for a considerably long period when sought to be reverted by the application of quota rule, this Court found such reversions to be to be inequitable. Such is not the case in the present petitions.

Here the petitioners are not yet promoted much less there is any threat of reversion. The claim of the petitioners herein is based on an argument that on the existing facts the cadre strength of the State IAS cadre requires to be enhanced which is an argument de hors the quota rule. Therefore, we are of the opinion that this judgment does not help the petitioners to seek a mandamus to encadre the ex-cadre and temporary posts existing in their respective States. So also the next judgment relied upon by the petitioners that is the case of O.P. Singla & Anr. v. Union of India & Ors. [(1984) 4 SCC 450] does not help the petitioners. However, reliance is placed on paras 9 and 34 of this judgment wherein this Court while considering the inter se seniority dispute between the direct recruits and promotees held at para 34 thus : In such a situation the seniority of direct recruits and promotees appointed under those Rules must be determined according to the dates on which direct recruits were appointed to their respective posts and the dates from which the promotees have been officiating continuously either in temporary posts created in the service or in the substantive vacancies to which they were appointed in a temporary capacity. We do not think this case of Singla (supra) also assists the petitioners. However, we must observe on facts that the above-cited judgments of Singlas case (supra) give an indication that if any temporary posts are in existence for a long time then such posts may have to be treated as permanent posts but then these observations will have to be taken into consideration in the background of the statutory rules applicable to the present case. We have already noticed in this Case that the Statute applicable mandates the Central Government to fix the cadre strength in consultation with the State Governments concerned, duly bearing in mind the objects of the Act and the Rules and Regulations. The Central Government in its

counter has stated that it has conducted this exercise during the periodic review and wherever necessary, temporary and ex-cadre posts created by the State Governments have been encadred, however few they may be. They have also specifically contended that each and every ex-cadre and temporary post created by the State Government is not necessarily required to be encadred in the IAS. On behalf of the Union of India, reliance was placed on the various Rules and Regulations to which reference has already been made by us. Learned counsel for the Union of India relied on the following judgment of this Court in the case of Subash Chander Marwahas case (supra) and Shankarsan Dash v. Union of India [(1991) 3 SCC 47] to support its contention that the petitioners do not have a right to seek encadrement of the posts. We respectfully agree with the ratio laid down in the above cases. However, we think it appropriate to notice a passage from the judgment of this Court in Shankarsan Dashs case (supra) at para 7 which is as follows : However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test and no discrimination can be permitted.

The petitioners next contend that though there is a statutory obligation on the part of the Central Government to make a periodical review which it has failed to do so. By this failure the promotees promotion got inordinately delayed and they have lost their seniority in the promoted cadre, therefore, they are entitled to their seniority being fixed with retrospective effect. For this purpose, they rely on the judgments of Singlas case (supra) and Syed Khalid Rizvi & Ors. v. Union of India & Ors. [1993 Supp. (3) SCC 575]. We have already referred to the earlier two cases. In the last of the said cases referred to above, this Court had held : Preparation of the select-list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction. Based on the above observations of this Court, the petitioners contend that since the periodic review and preparation of select-list in this case has not been done in time in accordance with the Rules, the petitioners are entitled for retrospective seniority once that error is rectified. Here we would like to note that the decision of this Court in Rizvis case (supra) has been explained in the case of Kasturi Rangan v. Union of India [1981 Scale SP 11]. From the judgment of Kasturi Rangan (supra), it is clear that mere delay in preparing the select list as also the cadre review is not fatal if the concerned respondent had given sufficient reasons for the same. In the instant case, we find from the counter affidavit of the Union of India that they have given sufficient explanation for the delay in preparing the select list as also cadre review. Therefore, petitioners cannot claim any relief based solely on the ground of delay in cadre review or preparation of select list. The petitioners further contend that similar relief was granted in the case of applicants who filed original applications before the Jabalpur and Calcutta Benches of the Central Administrative Tribunal, and there is no reason why the petitioners should be denied such benefits. The Union of India has explained in the counter affidavit that those are isolated cases where promotions were given on the basis of the directions issued in the original applications as well as contempt petitions, and the same should not be treated as a binding precedent in every other case. We notice that as per the statutory provisions, the encadring of posts can be done only on certain fact-situations existing and further it will have to be done on a review to be conducted by the Central Government in

consultation with the State Governments and on being satisfied that an enhancement in the cadre strength or encadring of certain posts is necessary in the administrative interest of the States concerned. Until such encadrement takes place, nobody including the petitioners could stake a claim to consider their case for promotion to those ex-cadre posts. Therefore, such right to be considered for promotion, in our considered view, would arise only from the date of encadrement which having been done with effect from 1998 only, we do not think that as a matter of right the petitioners are entitled for retrospective seniority. In light of the above, we are of the opinion that the petitioners are not entitled to the twin reliefs sought for by them i.e. for a writ of mandamus to encadring the ex-cadre/temporary posts, so also for a writ of mandamus for the retrospective seniority in regard to the posts already included in the State IAS cadre strength by virtue of 1997 amendments. This, however, does not mean that there is no obligation on the part of the Central Government to consider the requirement of encadring the ex-cadre/temporary posts which are existing in those States in regard to which the complaint is made. It is to be noticed that a large number of posts exclusion of which would make sufficient impact on the quota fixed under Rule 9 of the Recruitment Rules are in existence for periods extending even over two decades. We are also told that many of these posts are statutorily required to be filled up by the members of the IAS, but for reasons not known, these posts are not being made permanent. It is possible that these posts which, on the face of it, are in contravention of the cadre rules, are created by the concerned States for reasons other than the administrative exigencies and it is also possible that the Central Government which has the primary responsibility of making the cadre reviews, has not applied its mind to the real necessity of encadring these posts. Though prima facie we have accepted the explanation given by the Union of India still we find such posts are being continued by the States concerned even till date. We have not found any reason either in the pleadings or in the arguments addressed on behalf of the Union of India why it has not taken any steps to direct the State Governments concerned to abolish these posts if not required to be encadred. Therefore, we find it necessary to direct the Union of India to consider in consultation with the State Government concerned, as required in the Cadre Rules, review the necessity of either to encadring these ex-cadre/temporary posts or not and take such other necessary steps. In this process the Central Government shall bear in mind the existence of these posts for the last so many years and if it is so satisfied and finds it necessary in the interest of justice to encadre these posts, it may do so with retrospective date so that officers promoted consequent to such encadrement would have the benefit of the seniority from such date, bearing, of course, in mind the possible conflict that may arise in fixation of inter se seniority and take appropriate decisions in this regard so as to avoid any further disharmony in the service. This leaves us now to consider the challenge made to the constitutional amendments effected in Regulation 5(1) of the Appointment by Promotion Regulations. The petitioners in this regard contend that under the old provision, the Selection Committee was required to calculate the anticipated substantive vacancies for preparation of select list which is now being changed to vacancies not exceeding the substantive vacancies as on the first day of January of the year in which the meeting is held. They contend that by this change in procedure large number of vacancies which should have been available for selection of promotees will be left out. They state that there is always considerable delay in completing the process of promotion by selection and this delay will be further extended by virtue of the amendments and consequently the promotion of the petitioners will get delayed and some of them may even loose the chance of getting selected to the IAS. They say that the unamended provisions were in existence for decades and there was no need for effecting this amendment. In

reply thereto, the respondents contend that these changes have been brought about to avoid the delay in making the selections. They say by the existing Rules, it was extremely difficult to ascertain with certainty/finality the number of anticipated vacancies since the State Governments had the power to give extension of service up to 6 months beyond the date of retirement to a number of IAS officers. It is also stated that many a time such anticipated vacancies did not fructify and a State civil service officer included in the select list could not be sure of his appointment and this ultimately led to a plethora of litigation. It is with a view to avoid such difficulties that preparation of select list is confined to the vacancies available as on the first day of January of the year concerned. We have carefully gone through the pleadings of the petitioners and the respondents in this regard and we do not find any arbitrariness in this amendment. We think this is a matter of policy which will be uniformly applicable after the amendments. Further, vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by them. Therefore, the challenge of the petitioners that this amendment is arbitrary and violative of Article 14 of the Constitution, cannot be accepted. In regard to the next contention that by the amendment the respondents are given a unilateral and arbitrary power to hold the Selection Committee proceedings or not, is also denied by the respondents. They state that under the amended Rules there is no unfettered or uncanalised power and discretion given regarding the authority to hold Selection Committee meetings. On the contrary, they plead that there is a clear mandate for holding the meeting of the Selection Committee every year but in view of the exceptional exigencies given in the Rule itself, the Committee could not be constituted and that too only on the basis of a conscious decision taken by the respondents. They further contend that the Rules have been framed with inbuilt safeguards to keep at bay the eventuality of non-convening the Selection Committee meeting by default on the part of the State Government etc. They also contend that under the amended Rules in exceptional situations alone and for reasons to be recorded in writing, a meeting of the Selection Committee could be deferred.

In view of the above statement of the Union of India found both in the explanatory note to the amendments and the counter affidavit filed in the concerned writ petitions, we are of the opinion that this challenge of the petitioners should also fail. We, however, make it clear while disposing of these petitions that it is open to the petitioners to file a detailed representation to the Central Government, giving all the particulars of the post which they consider are fit to be encadred and special reasons why they should be encadred with a retrospective date and on such representation being made, the Central Government will consider these representations in consultation with the State Governments concerned, and take appropriate decisions in this regard, preferably within six months from the receipt of those representations. The petitions and appeal are disposed of accordingly. No costs.