

## **S.S. Moghe & Ors vs Union Of India & Ors on 8 May, 1981**

**Equivalent citations: 1981 AIR 1495, 1981 SCR (3) 875, AIR 1981 SUPREME COURT 1495, 1981 LAB. I. C. 861, 1981 2 SERVLJ 6, (1981) 2 SERVLJ 3, 1981 SCC (L&S) 490, (1981) 2 LABLJ 198, 1981 (3) SCC 271, (1981) 2 SERVLR 291, (1981) 2 SCWR 169, AIRONLINE 1981 SC 94**

**Author: V. Balakrishna Eradi**

**Bench: V. Balakrishna Eradi, Y.V. Chandrachud, A.P. Sen**

PETITIONER:

S.S. MOGHE & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 08/05/1981

BENCH:

ERADI, V. BALAKRISHNA (J)

BENCH:

ERADI, V. BALAKRISHNA (J)

CHANDRACHUD, Y.V. ((CJ)

SEN, A.P. (J)

CITATION:

1981 AIR 1495                      1981 SCR (3) 875

1981 SCC (3) 271                1981 SCALE (1)891

CITATOR INFO :

R                      1982 SC 101 (28)

ACT:

Constitution of India 1950, Articles 14,16, 32 and 309.

Petitioners in 1979 assailing validity of promotion given to respondents between 1968 and 1975-No valid explanation for delay in filling petition-Denial of relief.

No regular cadre and hierarchy of posts-No rules laying down modes of appointment/promotion to posts-Government whether competent to fill posts by securing services of suitable persons.

Constitution of a new service-Method of appointment to various posts-President whether competent to prescribe the methods by which vacancies in the different categories are to be filled.

Aviation Research Centre (Technical) Service Rules,

1976, Rules, 6, 7, 8 and 12-Validity of.

Civil Service Regulations, Article 26(7)(iii)-Initial constitution of service-Absorption of deputationists-Whether appointment by transfer.

HEADNOTE:

The Aviation Research Centre was a temporary and ad hoc organisation set up in 1962 for carrying out the work of collecting intelligence by the use of highly sophisticated techniques. For manning this Task Force, persons with experience in the specialised nature of the work were taken on deputation basis from different sources, such as the Intelligence Bureau, the Departments of Defence Science, Wireless Planning and Coordination, the Directorate General of Civil Aviation and the Police Cadres of different States and they were grouped together to form the ARC. To supplement the man power some persons were also directly recruited to the organisation on a purely ad hoc basis. The ARC organisation was initially treated as an extension of the Intelligence Bureau. In February 1965, it was brought under the control of the Director-General of Security. The administrative control over the organisation which was originally vested in the Ministry of External Affairs and later with the Prime Minister's Secretariat was transferred to the Cabinet Secretariat in 1965. The sanction for continuance of the temporary organisation was accorded by the Government from year to year till the year 1971 when a decision was taken by the Government to make the ARC a permanent Department. The finalisation of the principles to be adopted for constitution of the new permanent Department took considerable time and it was only on April 26, 1976 that the President of India promulgated the Aviation Research Centre (Technical) Service Rules 1976 providing for the constitution of a new service the Aviation Research Centre (Technical) Service.

876

Rule 6 of the said Rules dealt with the initial constitution of the new ARC permanent Service and provided that all persons holding, as on the appointed day, any one of the categories of posts specified in rule 4, whether in a permanent or temporary or officiating capacity or on deputation basis, shall be eligible for appointment to the service at the initial constitution thereof. Rule 7 laid down the principles to be applied for fixation, of seniority of those appointed to the various posts at the time of its initial constitution, while Rule 8 dealt with the filling up of vacancies in various grades remaining unfilled immediately after the initial constitution of the service and all vacancies that may subsequently arise in the Department. Rule 12 provided that in regard to matters not specifically covered by the rules or by order issued by the

Government, the members of the service shall be governed by general rules, regulations and orders applicable to persons belonging to the corresponding Central Civil Service.

The petitioners, who were persons recruited directly to the ARC organisation during the period between 1965 and 1971 challenged in their writ petition, the validity of the promotion given to respondent nos. 8 to 67 from the year 1968 onwards officers whose services were borrowed on deputation. They contended that the deputationists were occupying the posts in the Department only on an ad hoc basis and such ad hoc appointees who were having the benefit of lien in their parent departments and were getting promotions in those departments had no claim whatever to seniority or promotions in the borrowing department viz. A.R.C. They also assailed the Aviation Research Centre (Technical) Service Rules as conferring arbitrary powers on the controlling authority to equate the ad hoc service rendered by the deputationists in the ARC with the regular service rendered by persons like the petitioners who had been directly recruited to the Department on a regular basis which resulted in permanently blocking all the future chances of the petitioners in matters of promotion and other service benefits. The Rules were highly arbitrary and infringed Articles 14 and 16 of the Constitution since it was based on illegal treatment of unequals as equals by equating persons functioning on a mere ad hoc basis with those holding posts in the organisation on a regular basis. Rule 6(2) conferred arbitrary and unfettered powers on the Screening Committee and suffered from the vice of excessive delegation. Rule 7 in so far as it empowered the Department to reckon the seniority of the deputationists by giving them the benefit of the ad hoc service rendered by them in the ARC as well as the prior service put in by them in their parent departments was arbitrary. Rule 8(1) enabled the deputationists to consolidate the illegal advantage gained by them at the initial constitution by further promotions/appointments to still higher posts in the ARC, and by specifying the method of recruitment to the various posts in the Service and fixing a quota as between the vacancies to be filled up by promotions and those to be filled up by direct recruitment/deputation or re-employment in Schedule II of the rules, the deputationists have been treated on a par with regular departmental personnel and this involved a clear violation of Articles 14 and 16 of the Constitution. It was further contended that the position of the deputationists being that of persons permanently transferred from the parent departments to the ARC, under Article 26 of the Civil Service Regulations, such persons appointed by transfer shall be ranked below all the direct recruits as well as the promotees already functioning in the Department and the seniority list dated November 6, 1978 having been drawn up in contravention of the aforesaid principle laid down in Article 26, the said list should be

declared to be illegal and void.

877

The case of the petitioners was resisted by respondent No. 1, who contended that the appointments made by direct recruitment were merely temporary and ad hoc in character. While the deputationists were persons with rich experience and long years of service, the direct recruits were inexperienced and new to the job. The delay in promulgation of the rules was due to the fact that because of the special features of the Department and the sensitive nature of the functions to be discharged by it, various circumstances and factors had to be taken into account before the draft rules were finally cleared by the several Ministries concerned. There is no principle of law prohibiting the absorption in a newly constituted Department of persons who are functioning on deputation in a temporary organisation which was later constituted into a permanent service. The Service Rules extend equal treatment to all categories of employees who were in position on the crucial date viz., April 26, 1976 in the matter of absorption as well as determination of seniority at the initial constitution, irrespective of whether they were direct recruits or deputationists. The Screening Committee prepared the seniority List of the persons found suitable for absorption in accordance with the provisions contained in Rule 6(2) read with Rule 7. The Rules cannot be said to be arbitrary or violative of the principles of equality enshrined in Articles 14 and 16.

Dismissing the writ petition,

^

HELD: 1(i) A party seeking the intervention 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 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. [900 H-901 A]

(ii) The challenge raised by the petitioners against the validity of the promotions given to respondent nos. 8 to 67 during the period between 1968 and 1975 is liable to be rejected on the preliminary ground that it is most highly belated. There is no valid explanation from the petitioners as to why they did not approach this Court within a reasonable time after those promotions were made. 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 before this Court the promotions that were effected during the years 1968 to 1975. [900 F-G]

(iii) There is also no satisfactory explanation from the petitioners as to why no action at all was taken to challenge the validity of the promotions given to respondents nos. 8 to 67 for a period of nearly seven years subsequent to the judgment of the High Court in 1972. [901 F]

Rabindra Nath Bose and ors. v. Union of India and ors [1970] 2 S.C.R. 697 referred to.

2. So long as there was no regular cadre and hierarchy of posts and no rules laying down the mode of appointment/promotion to those posts, it was perfectly open to the Government to fill up the posts by securing the services of persons who in its opinion were by virtue of their experience and qualifications, best suited for being entrusted with the specialised kinds of functions attached to the various posts. [902 E]

878

In the instant case the petitioners had been appointed as ACIOs-II only on a temporary and ad hoc basis. Such appointments did not confer on them any rights even to the posts of DFOs. It had also been categorically made clear to them in the letters containing the offers of appointment that such appointments will not confer on them any right to be permanently absorbed in the post if and when it was made permanent. There was also not even any executive order or administrative instruction declaring the post of DFO as the feeder category for appointment to the higher posts. The petitioners, therefore, had no legal right or claim for being appointed by promotion to the higher posts of ACIO-I (FO), ATO, etc. [902 F-G]

3(i) When a new service is proposed to be constituted by the Government, it is fully within the competence of the Government to decide as a matter of policy the sources from which the personnel required for manning the service are to be drawn. [903 F]

(ii) It is in the exercise of the said power, that provision has been made by sub-rule (1) of Rule 6, that all the persons who, as on the appointed day, were already working in the ARC organisation on a temporary and ad hoc basis and had thereby acquired valuable experience in the specialised kinds of work would be eligible for appointment to the new service at the stage of its initial constitution. Equal opportunity was given to all to get permanently appointed in the new ARC (Technical) Service subject to their being found fit by the Screening Committee under sub-rule (2) of Rule 6. The provision cannot be said to be violative of Articles 14 and 16. [903 G, 904 A]

4(i) The provision for Constitution of a Screening Committee for adjudging the suitability of the persons in the field of eligibility for permanent appointment to the service is absolutely reasonable. [904 D]

(ii) The power conferred on the controlling authority to issue general or special instructions to a Screening Committee is really in the nature of a safeguard for ensuring that the rules relating to the initial constitution of the service were applied fairly and justly. The controlling authority is the "Secretary Department of Cabinet Affairs". When supervisory powers are entrusted to such a high and responsible official, it is reasonable to

assume that they will be exercised fairly and judiciously and not arbitrarily. The contention that the provisions of sub-rule (2) of Rule 6 suffer from the vice of arbitrariness or excessive delegation therefore, fails. [904 E]

5(i) When recruitment to the new Service was being made from two different classes of sources, it was necessary for the Government to evolve a fair and reasonable principle for regulating the inter se seniority of the personnel appointed to a new Department. What has been done under Rule 6 is to give credit to the full length of continuous service put in by all the appointees in the concerned grade, whether such service was rendered in the temporary ARC organisation or in other departments of the Government. The criterion applied, namely the quantum of previous experience possessed by the appointees measured in terms of the length of continuous service put in by them in the concerned or equivalent grade is perfectly relevant to the purpose underlying the framing of the rule. The principle laid down in rule 6(2) for determination of

879

inter se seniority was quite reasonable and fair and did not involve any arbitrary or unfair discrimination against the petitioners. [905 C-E]

In the instant case while the petitioners had no substantive lien in respect of or title to any post in any department, the deputationists were having a lien on the posts held by them in their parent departments. The petitioners, therefore, formed a different class consisting of persons who were virtually being recruited for the first time into regular Government service, as distinct from respondents 8 to 67 who had been holding posts in their parent departments for several years on regular basis who formed a separate class. [905 B]

6. The provisions contained in Rule 7 that the seniority of persons appointed on permanent basis in each grade at the initial constitution of the service shall be in the order in which they are shown in the relevant list prepared by the Screening Committee in accordance with the provisions of Rule 6 was upheld as perfectly valid and constitutional. [905 F-G]

7. At the time of constituting a new service and laying down the mode of appointment to the various posts it is fully within the powers of the President of India to prescribe the methods by which vacancies arising in the different categories of posts in the department should be filled up. In the instant case this is precisely what has been done by Rule 8 and the provisions of Schedule II. [906 B]

8. The draft rules were prepared by the Directorate of ARC and submitted to the Government in 1972 itself but on a detailed scrutiny being made it was found that the said draft required substantial modification in several respects. Revised rules were, therefore, drafted and submitted to the

Government late in 1974. The time taken in finalising the rules was due to the fact that intensive examination of all the relevant aspects had to be done by the various concerned Ministries before the draft rules could be finally approved and issued. The plea of malafides put forward by the petitioners is not established. [906 H-907 B]

9. Article 26(7)(iii) of the Civil Services Regulations applies to cases "where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of candidates by direct recruitment or promotion". The absorption of the erstwhile deputationists in the ARC (Technical) Service at the time of its initial constitution was not by such transfer. The provisions of Article 26(7)(iii) are, therefore not attracted. [909 F-G]

10. The provisions of Rule 6(3) and Rule 7 will be strictly conformed, to both in letter as well as in spirit, by respondents nos. 1 to 7. In case it is found on examination that the ranking assigned to any of the petitioners in the impugned seniority list dated November 6, 1978 is not consistent with the principles laid down in the aforementioned rule, necessary action should be immediately taken to rectify the said defect. If the promotional chances of any of the petitioners have been adversely affected by reason of any defect in the seniority list, such promotions should also be reviewed after following the requisite procedure. The petitioners may bring to the notice of the first respondent specific instances, if any, of deviation from the principles enunciated in Rule 6(3) and Rule 7 resulting in incorrect assignment of seniority and rank by sub-

880

mitting representations. Such representations, if received, will be duly examined and appropriate orders passed thereon as expeditiously as possible. [910 F-911 A]

**JUDGMENT:**

**ORIGINAL JURISDICTION:** Writ Petition No. 119 of 1979. (Under Article 32 of the Constitution of India) V.M. Tarkunde, G.L. Sanghi, Mrs. Jayashree Wad, G.D). Gupta and Miss Anita for the Petitioners.

K. Parasaran, Solicitor General and Miss. A. Subhashini for Respondents 1-2 and 4-7.

Dr. Y.S. Chitale, A.T.M. Sampath and P.N. Ramalingam for the other appearing Respondents.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. In this petition filed under Article 32 of the Constitution, the petitioners-31 in number-who are all officers serving in the Aviation Research Centre (for short, the 'ARC') have challenged the constitutionality of Rules 6 to 8

of the "Aviation Research Centre (Technical) Service Rules, 1976" issued by the President of India under the proviso to Article 309 of the Constitution, as also the legality and validity of the "absorption" of respondents Nos. 8 to 67 in the said Department pursuant to the impugned Rules. There is a further prayer in the writ petition to declare the Seniority List dated November 6, 1978 (Annexure 'G') published by the Department as illegal, unconstitutional and void. Yet another relief claimed by the petitioners is that all the promotions granted to respondents Nos. 8 to 67 in the ARC service from 1968 till 1978 should be declared by this Court as illegal and void, and that a writ of mandamus or any other appropriate writ, order or direction should be issued to respondents Nos. 1 to 7 the Union of India, the Cabinet Secretary, the Director of Department of Personnel, the Director General of Security, the Director of ARC and the Adviser (Technical), A.R.C., respectively to constitute the ARC afresh in accordance with law and to rearrange the seniority in the Service in conformity with law.

The petitioners' case is that shortly after the formation of the ARC in 1963 the petitioners were directly recruited to the said department on a regular basis during the period between 1963 and 1966 in the category of Assistant Central Intelligence officers Grade II, (which has since been redesignated as Deputy Field officers (Tech.) (for short DFO) under the impugned Rules while respondents Nos. 8 to 67 are officers whose services have been borrowed on deputation to the ARC from some departments of Central Government and from the Police Cadre of State Governments. The petitioners contend that by virtue of their regular appointments in the ARC, they were, as of right, entitled to be promoted to the higher posts of Assistant Central Intelligence officer, Grade-I-now called the Field officer (Tech.)-Deputy Central Intelligence officer (Tech.)/Assistant Technical officer subject only to the right of the Department to supersede those found unsuitable for such promotions. However, instead of promoting the petitioners to the vacancies that arose in such higher categories of posts, the Department filled up those vacancies by granting promotions to the deputationists. thereby illegally denying to the petitioners the opportunities legitimately due to them for promotion in the Department. It is contended by the petitioners that the deputationists were occupying the posts in the Department only on ad hoc basis and such ad hoc appointees who were having the benefit of lien in their parent departments and were getting promotions in those departments had no claim whatever to seniority or promotions in the borrowing Department, namely, the ARC. On this basis the petitioners have raised a .. challenge in this writ petition against the legality of the various promotions given to respondents Nos. 8 to 67 in the year 1968 and thereafter.

A draft combined seniority list of Assistant Central Intelligence officers Grade-II (Tech.) working in the ARC was published in March 1971 (Annexure 'A'), wherein the officers on deputation as well as those who are directly recruited in the ARC had all been included and the seniority of the deputationists had been fixed by taking into account the total length of service put in by them in the rank of ACIO in their parent departments as well as in the ARC. According to the petitioners, the said list had been prepared in violation of the principle that the same period of service of a Government servant cannot be legally considered twice over for service benefits in two Departments, namely, the parent department and the borrowing department. G A Writ Petition-Civil Writ Petition No. 1020 of 1971- was filed in the Delhi High Court by three of the present petitioners complaining against the promotions given to the deputationists and challenging



the validity of the combined seniority list published by the Department in 1971. During the pendency of that writ petition the impugned seniority list of 1971 was substituted by two separate lists-one consisting of the direct recruits and the other consisting of deputationists. Thereupon, the writ petition before the Delhi High Court was got amended by the petitioners therein by incorporating objections against the new seniority lists published by the Department. When the case came up for hearing, counsel appearing on behalf of the Union of India submitted before the High Court that statutory rules governing the service were then under preparation, that the arrangements till then made were all purely on ad hoc basis and the whole question will eventually be finalised after the rules were framed. In the light of the said submission, the High Court dismissed that writ petition observing that since no rules governing the Service had been framed and the appointments in question had all been made on purely ad hoc basis, the petitioners did not have at that point of time any legitimate grievance and the writ petition was, therefore, premature. It is submitted by the petitioners that, contrary to the assurance given to the Delhi High Court, the Department did not take early action for framing the rules but instead continued to confer on the deputationists the benefit of further illegal promotions and it was only after all the higher posts were filled by promoting deputationists that the Department ultimately promulgated the impugned statutory Service Rules on April 26, 1976. Strong reliance has been placed by the petitioners on office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs (Annexure 'C') laying down certain general principles for determining seniority of various categories of persons employed in Central Services. According to the petitioners, in the absence of statutory rules governing the conditions of service of personnel in the ARC, the principles laid down in the aforesaid office Memorandum were applicable to the said Department. It is urged that under clause (viii) of the said office Memorandum, it was incumbent on the authorities to replace all the deputationists who, according to the petitioners, were holding the posts in the Department only on ad hoc basis, by persons approved for regular appointment by direct recruitment, and until the deputationists were so replaced the deputationists had to be placed in bloc below person directly recruited to the grade. The petitioners have sought to derive support from Annexure 'D' which is a letter dated October 15, 1971 addressed by the Department of Personnel, Cabinet Secretariat to the Director General of Security, wherein it is pointed out that persons appointed to a grade on deputation basis are appointed for a specific period, after the expiry of which they are required to revert back to their parent departments and since the said deputationists do not have any locus standi in the borrowing departments, they are not entitled to promotions/confirmations in the borrowing departments. The letter proceeds to state that the question of fixation of their inter se seniority of such deputationists vis-a-vis other categories of officers of a particular grade by preparing a combined seniority list does not, therefore, arise. However, it was also added in the next para. graph of the letter that though deputationists are not entitled to promotion to a higher grade, yet they can be considered for appointment on deputation to the higher grades, if the Recruitment Rules of the higher grade provide for appointment on deputation basis, and in the absence of the Recruitment Rules, it is for the appointing authority to decide whether a person already serving as a deputationist in the lower grade should be considered for appointment on deputation to the higher posts. According to the petitioners, on the basis of the principle enunciated in this letter, persons serving on deputation in the ARC should all have been repatriated to their parent departments as soon as direct recruits became available in sufficient number and the action taken by the Department in filling up the vacancies in the higher categories, namely, ACIOs Grade I (Field

officers) and Assistant Technical officers by granting promotions to respondents Nos. 8 to 67 was totally illegal. The petitioners have alleged that some of the deputationists were holding posts in their parent departments which were inferior in rank in comparison with the posts of DFOs. It is contended by the petitioners that the grant of such promotions to the deputationists amounted to conferment of double benefits on them since they were simultaneously earning promotions in their parent departments. Some of the petitioners who had joined the ARC in 1963 as DFOs became eligible for promotions in 1968 by completing the five years' qualifying period, but instead of promoting them to the category of Field officers, the Department filled up the vacancies which became available in 1968 and subsequent years by promoting some of the respondents who were only deputationists. The petitioners contend that the deputationists were serving in the ARC only on ad hoc basis and hence they were not eligible under the terms of the Memorandum dated December 27, 1959 (Annexure 'C') for the grant of any promotions in the borrowing department. It is alleged that while effecting such irregular promotions, the petitioners were not even considered and they were illegally denied the opportunity of competing with the respondents for promotions to the posts of Field officers. In 1975, a further injustice is said to have been done to the petitioners when twenty of the deputationists functioning as Field officers were promoted as Assistant Technical officers (for short, ATOs). Writ- petitioners Nos. 1 and 4 made representations complaining against those promotions, but those representations were rejected by the Director, ARC by his Memorandum dated September 8, 1975 (Annexure 'E'). On December 1, 1975, seven more deputationists were promoted as ATOs. The petitioners have raised the plea that the aforesaid promotions of the deputationists were illegal and discriminatory since the Department had fixed an arbitrary date, namely, December 1972 for computing the qualifying period of three years for eligibility to be considered for promotions. It was only after most of the posts in the higher categories of ATOs and FOs had come to be occupied by the deputationists as a consequence of such irregular promotions that the impugned Rules were promulgated by the President of India on April 26, 1976. Through the said Rules, the Department has purported to absorb all the deputationists/respondents Nos. 8 to 67 in the ARC Service as TOs/ATOs/FOs and thereby legalised all the illegal promotions granted to those deputationists. This, according to the petitioners, has been done with the mala fide intention of giving favoured treatment to a deputationist at the expense of the direct recruits like the petitioners. The petitioners have put forward the contention that the impugned Rules are arbitrary and discriminatory and are violative of Articles 14 and 16 of the Constitution. It is their further plea that the wholesale absorption of the deputationists is a colourable and unconstitutional exercise of power and the impugned Rules in so far as they provide for such absorption are in the nature of a fraud on the powers conferred on the President by the proviso to Article 309 of the Constitution. The petitioners point out that even after the constitution of the Service by the impugned Rules, no seniority list was published for more than two years, but promotions to the posts of FOs were, in the meantime, granted to several of the deputationists. It is contended by the petitioners that Rule 6 of the impugned Rules confers arbitrary powers on the controlling authority to equate the ad hoc service rendered by the deputationists in the ARC with the 'regular' service rendered by persons like petitioners who had been directly recruited to the Department on a regular basis and this has resulted in permanently blocking all the future chances of the petitioners in matters of promotion and other service benefits. According to the petitioners the "initial constitution" of the Service purported to be brought about under the Rules is itself highly arbitrary and it infringes Articles 14 and 16 of the Constitution since it is based on illegal treatment of unequals as equals by equating

persons functioning on a mere ad hoc basis with those holding posts in the organisation on a regular basis. Another ground of attack put forward by the petitioners is that Rule 6(2) confers arbitrary and unfettered powers on the Screening Committee and hence it suffers from the vice of excessive delegation. It is also urged that the said sub-rule is unconstitutional because it enables the controlling authority to retain to itself an arbitrary power to control the decision-making of the Screening Committee by means of "general or special instructions" thereby rendering it impossible for the Screening Committee to function in an independent and objective manner. According to the petitioners, Rule 6(2) enables the controlling authority to impose its will and whims on the Screening Committee. The petitioners allege that the controlling authority had imposed its favoured treatment to deputationists and displayed a discriminatory attitude against the regular departmental personnel like the petitioners by treating the ad hoc service of the deputationists in the ARC as regular service and absorbing them in the posts or grades to which they have been granted illegal promotions. The petitioners have urged that Rule 6(2) in so far as it vaguely uses the words "continuous appointment in the grade" has vested an arbitrary power in the Department to take into consideration the ad hoc service rendered by the deputationists in grades to which they have no right in law and hence the said provision is highly arbitrary and violative of Article 14 of the Constitution. Alternatively, it is submitted by the petitioners that the aforesaid words "continuous appointment in the grade" should be reasonably construed to mean "continuous appointment on regular basis in the grade" in which event alone the rule can be regarded as free from the vice of arbitrariness. Rule 6(6) has also been attacked by the petitioners as infringing Articles 14 and 16 of the Constitution on the ground that it enables the Screening Committee to discriminate against the direct recruits by treating them on a par with the deputationists. It is contended by the petitioners that the said sub-rule confers power on the Screening Committee to absorb such of the deputationists in a lower grade who were found to be unsuitable for absorption in a higher grade and thereby completely blocks the chances of persons like the petitioners to get promotions into such lower grades despite their being found suitable for such promotions. Another point raised by the petitioners is that it was incumbent on the Screening Committee before it took its final decision regarding the absorption of personnel in the various grades to give an opportunity to the petitioners to represent their case, and inasmuch as this procedure was not followed, the decisions taken by the Screening Committee were in clear violation of the principles of natural justice. The petitioners have also voiced a grievance that even though the Screening Committee had prepared a list of the officers whom it had decided to absorb in the various grades, the Department did not disclose the contents of the said list to personnel working in the ARC but kept the matter secret.

Reiterating their contention that the promotions given to respondents Nos. 8 to 67 during the period from 1968 to 1978 were all illegal on the ground that these promotions had been made without considering the cases of the petitioners, the petitioners have put forward further plea that the publication of the impugned Seniority List was deliberately delayed by the Department till November 6, 1978. with intent to favour the deputationists, some of whom were promoted as ATOs on November 5, 1978. On this basis, it is contended that the action taken by the Department in publishing the Seniority List dated November 6, 1978 was mala fide.

Another argument advanced by the petitioners is that Rule 7 in so far as it empowers the Department to reckon the seniority of the deputationists by giving them the benefit of the ad hoc

service rendered by them in the ARC as well as the prior service put in by them in their parent departments is arbitrary. The petitioners contend that this deviation from the principle uniformly followed for fixing the seniority in all other departments of the Government of India namely those laid down in the Home Ministry's office Memorandum dated December 22, 1959 was wholly unjustified and as a result thereof the direct recruits in the ARC are subjected to a differential treatment resulting in gross prejudice to them without there being any rational basis for separate classification. There is also an allegation that in fixing the seniority of personnel as per the impugned gradation list dated November 6, 1978, even service rendered by the deputationists in non-comparable and lower ranks has been wrongly taken into account. Rule 8(1) has been attacked by the petitioners as empowering the controlling authority to enable the deputationists to consolidate the illegal advantage gained by them at the initial constitution by further promotions/appointments to still higher posts in the ARC. It is pointed out by the petitioners that while specifying the method of recruitment to the various posts in the Service and fixing a quota as between the vacancies to be filled up by promotions and those to be filled up by direct recruitment/deputation or re-employment in Schedule II of the rules the deputationists have been treated on a par with regular departmental personnel, and this involves a clear violation of Articles 14 and 16 of the Constitution.

Lastly, it is contended that even if it is to be assumed that the decision taken by respondents I to 7 to retain the deputationists in the Department at the time of the initial constitution of the ARC was valid, the position of the deputationists would, in law, be only that of persons permanently transferred from the parent departments to the ARC and under Article 26 of the Civil Service Regulations, such persons appointed by transfer shall be ranked below all the direct recruits as well as the promotees already functioning in the Department. The petitioners contend that since the Seniority List dated November 26, 1978 has been drawn up in contravention of the aforesaid principle laid down in article 26, the said list should be declared to be illegal and void.

Detailed counter-affidavits have been filed on behalf of respondent No. 1 and respondents Nos. 13 to 16, 22, 25, 28 and 31. In the counter-affidavit filed on behalf of respondent No. 1, by the Deputy Secretary, Cabinet Secretariat, it is stated that the Aviation Research Centre was initially set up as a Sensitive Security organisation in the year 1963 on a purely temporary basis by way of an extension of the Intelligence Bureau. In February 1965, the ARC, along with two other schemes, was brought under the control of the Director General of Security. The Department was continued by the Government on temporary basis from year to year till 1971 when the Government, after reviewing all the relevant factors, took a decision to make the ARC permanent. The administrative control over the ARC was originally vested in the Ministry of External Affairs and later with the Prime Minister's Secretariat till 1965 when it was transferred to the Cabinet Secretariat. There were no Recruitment and Cadre Rules for the ARC during the period when the Department was functioning on a temporary and purely experimental basis and a number of officers, including respondents Nos. 8 to 67, were taken on deputation from other Central and State Government Departments to man the various posts in the organisation. Some persons, like the petitioners, were also directly recruited as ACIOs-II on a purely temporary and ad hoc basis against temporary posts in the ARC. The contention of the petitioners that they were regularly recruited as DFOs in the ARC is denied by the Government- respondents. It is submitted in the counter- affidavit of respondent No. I that the

appointments given to the petitioners were merely 'ad hoc' in character and this had been clearly specified in the Memos issued to them containing the order of appointment that the appointments were temporary and would not confer on them any right for permanent appointment if and when the posts were made permanent. It is stated that the Memos issued to all the petitioners were on identical terms and a specimen copy of the Memo issued to the petitioners has been appended to the counter affidavit of respondent No. 1, as Annexure 'R-1'. The further submission made in the counter-affidavit of the first respondent is that in the ARC there was no regular cadre nor any Recruitment Rules prior to 1976 and as and when posts in the various categories in the grades were sanctioned, they were filled up by getting suitable hands with the requisite qualifications and some experience from other departments on deputation and some vacancies were also filled up by direct recruitment.

Briefly sketching the history of the formation of the ARC, the first respondent has stated that the ARC organisation was set up in the wake of Chinese aggression that took place in the winter of 1962 and its primary role was to collect intelligence by employing the most modern highly sophisticated techniques and to furnish it to other Agencies like the Special Frontier Force and the Special Security Bureau which were in need of such intelligence in order to give better protection to our borders against external aggression. For manning such an organisation, it was absolutely essential to secure the services of persons possessing the requisite experience, technological skill, special attitude and ability. Initially, therefore, the various posts in the ARC organisation, which was started on a mere experimental basis, were filled up by taking on deputation officers from the intelligence Bureau and other departments which had the expertise in related fields, such as, the Department of Defence Science, Wireless Planning and Coordination and Directorate General of Civil Aviation. With the gradual expansion in the activities of the ARC, it was found that the aforesaid Departments could not supply on deputation basis enough hands for meeting the needs of ARC and hence, the direct recruitments from the open market had also to be made. However, all the appointments made by direct recruitment were merely temporary and ad hoc in character. While the deputationists were persons with rich experience and long years of service, the direct recruits were inexperienced and new to the job. In the circumstances, the higher posts of FOs, ATOs and Assistant Directors had to be filled up by ad hoc appointments from amongst the deputationists who by virtue of their long experience in the particular type of work were considered suitable for those posts. As and when direct recruits gained adequate experience, several of them were also given ad hoc appointments to such higher posts. It is further averred in the counter affidavit that in making such appointments to the higher posts, only considerations of public interest and maintenance of efficiency in the functioning of the Department had weighed with the appointing authority. The allegation put forward by the petitioners that the direct recruits were discriminated against has been denied by the first respondent as totally unfounded, and it is stated that all such appointments to the various technical posts in the higher categories of FOS, ATOS and Assistant Directors were made by the Department on the recommendations of the duly constituted DPCs/Selection Committees. Some of the deputationists were also appointed to the higher post when they got promotions to the corresponding ranks in their parent departments. The Department treated both the direct recruits as well as the deputationists as ad hoc appointees in the ARC with equal rights, and equal weightage was given to both categories of employees in respect of length of service in a given grade irrespective of whether or not it was rendered wholly in ARC. As regards the petitioners' contentions

based on the MHA Memorandum dated December 22, 1959, it is pointed out in the counter-affidavit that the general principles laid down therein had no application till the matter of filling up of temporary posts in a temporary department. Stress is laid in the counter-affidavit on the fact that simultaneously with the constitution of the ARC as a regular department, the ARC (Technical) Service Rules, 1976 were promulgated by the Government and it has been submitted that the principles laid down in the aforesaid Memorandum did not get attracted to the new service inasmuch as it is clearly specified in the Memo itself that the principles enunciated therein will not be applicable for such Services and posts for which separate principles have been already issued or may be issued thereafter by the Government, The allegation of the petitioners that they had not been considered for promotion at the time when the vacancies in the categories of DFOs were filled up during the year 1968 to 1975 has been denied by the first respondent and it is averred in the counter- affidavit that the direct recruits were given promotions in the higher posts when they were found suitable by the DPC for ad hoc promotions to the grades of FOs (Tech.), etc. Reliance is placed by the first respondent of the observations made by the Delhi High Court in its judgment in Civil Writ Petition No. 1020 of 1971, filed by three of the present petitioners, that no discrimination could be said to have been made against the direct recruits either in drawing up the seniority list of 1971 or in the action taken by the authorities to filling up some of the higher posts by appointing deputationists. Though a decision was taken by the Government in 1971 to make the ARC a permanent department, and steps to frame rules were also immediately initiated, the draft rules could be finalised after intensive examination by various concerned Ministries only by April 1976 when the Rules were promulgated. The allegation made by the petitioners that the promulgation of the rules was deliberately delayed in order to confer an undue advantage on the deputationists who were granted promotions to the higher grades in the meantime, has been categorically denied by the first respondent in its counter-affidavit. The delay in promulgation of the rules was due to the fact that because of the special features of the Department and the sensitive nature of the functions to be discharged by it, various circumstances and factors had to be taken into account before the draft rules were finally cleared by the several Ministries concerned.

The first respondent has stated in the counter- affidavit that equal treatment had been meted out to the direct recruits and the deputationists in the matter of promotion/appointment from the grade of ACIO-1 to that of ATO. The allegation of the petitioners that the DPC had fixed the crucial date for eligibility for promotion from the category of ACIO-I to the grade of ATO in an arbitrary manner so as to exclude the petitioners from consideration, has f) been denied by the first respondent and it is averred that the crucial date was determined by the DPC on each occasion by taking into consideration the number of vacancies likely to be available for promotion/selection and the number of persons who could reasonably be considered for such promotions/selection. It is pointed out by tile first respondent that when deputationists were selected by the DPC, they were 'appointed' to the higher posts on deputation and it was not a process of promotion as wrongly contended by the petitioners.

In reply to the challenge made by the petitioners against Rule 6 of the impugned Rules which provides for the initial constitution of the new service to be known as the Aviation Research Centre (Technical) Service it is submitted by the first respondent that there is no principle of law prohibiting the absorption in a newly constituted Department of persons who are functioning on

deputation in a temporary organisation which was later constituted into a permanent service. It is also submitted by the first respondent that the provision in the impugned rules for absorption of the deputationists in the ARC (Technical) Service was Made in public interest since it was found that the continual retention of the deputationists who possessed valuable experience and had long association with the organisation was absolutely necessary for the efficient functioning of the Department. The first respondent states that the impugned rules extend equal treatment to all categories of employees who were in position on the crucial date, namely, April 25, 1976, in the matter of absorption as well as determination of seniority at the initial constitution, irrespective of whether they were direct recruits or deputationists. Since the direct recruits were all occupying the posts in the ARC only on a purely ad hoc basis, they had no legal right to be appointed in the new Department and merely by reason of their temporary appointments as ACIO-II (Tech.) in the ARC organisation they could not automatically become members of the new ARC (Technical) Service which was constituted for the first time with effect from April 26, 1976. All persons working in the ARC in various temporary posts as on April 26, 1976, were given the option to express their willingness or otherwise to be absorbed in the new Department. The petitioners as well as the direct recruits were treated alike in the matter of the assessment of their suitability for absorption by the Screening Committee and on being found suitable, they were absorbed either in the same posts which they were occupying immediately prior to April 26, 1976 or in a lower post, subject to availability of permanent posts. The Screening Committee prepared the seniority list of the persons found suitable for absorption in accordance with the provisions contained in Rule 6 (2) read with Rule 7 of the impugned Rules. The counter-affidavit of the first respondent goes on to state that the seniority list published on November 6, 1978 had been prepared strictly in accordance with the provisions of the impugned Rules, the names of the officers having been arranged with reference to the dates of their continuous appointment to the concerned grade. Printing out that the benefit of the ad hoc service rendered in a particular grade has been given not only to the former deputationists but also to the direct recruits in the matter of determining their inter se seniority in the grade of FOs, it is submitted by the first respondent that there is no merit in the petitioner's contention that the seniority list of November 6, 1978 has been prepared in a discriminatory manner so as to violate Article 16 of the Constitution. The first respondent has further submitted that the charge of discrimination has been made by the petitioners on the basis of an erroneous assumption that the petitioners were in regular service in the ARC prior to the promulgation of the impugned Rules and that hence they had a superior claim for promotion to a higher post in comparison with the deputationists. The petitioners had been appointed/promoted to various grades in the ARC only on ad hoc basis prior to April, 26 1979 and the benefit of such ad hoc service rendered by them had been given to the petitioners in the same way and to the same extent as service rendered by the former deputationists on deputation. The first respondent, therefore, submits that the provisions of Rule 6 cannot be said to be 'arbitrary or violative' of the principle of equality enshrined in Articles 14 and 16 of the Constitution.

Repelling the contention of the petitioners that the principle for fixation of seniority laid down in the impugned Rules is illegal for the reason that it is inconsistent with the guidelines and general principles for determination of seniority in the Central Services enunciated in MHA Memorandum dated December 22, 1959 (Annexure 'C') the first respondent has submitted in the counter affidavit that there is no substance in this plea since it has been specially stated in the Memorandum

(Annexure 'C') itself that the principles contained therein will not apply to "such services and posts for which separate principles have already been issued or may be hereafter issued by Government". The allegation made by the petitioners that the framing of the rules and the constitution of the ARC (Technical) Service was deliberately delayed with a view to give undue advantage to the deputationists has been denied by the first respondent as baseless and untrue. Prior to 1971, there were no permanent posts at all in the ARC because the Department was temporary and all the temporary posts were being sanctioned on a year to year basis. Action to frame the rules was initiated shortly after the decision was taken in 1971 to make the ARC a permanent Department. The first set of draft rules was prepared and submitted to Government in 1972. Since it was found to be defective in certain aspects, a revised draft was prepared in 1974. Since the whole matter had to be subjected to extensive and intensive examination by various Ministries taking into account all relevant factors, the finally approved rules could be promulgated only in April 1976.

The first respondent has submitted that Rule 6 of the impugned Rules provides equal treatment to all the officers in position in the ARC on the crucial date in the matter of absorption and determination of inter se seniority at the time of initial constitution of the service. The service rendered by the former deputationists in various grades prior to their absorption in the ARC could not be ignored, as their services were required by the Department in public interest. It is pointed out that if the contention of the petitioners that only persons who are regularly appointed in the ARC could be absorbed in the service is to be accepted, then none of the petitioners could have been permanently appointed in the ARC Technical Service, as the appointments held by the petitioners prior to the constitution of the ARC Service in 1976 were purely temporary and ad hoc. The further plea put forward by the petitioners that Rule 6(2) of the impugned Rules suffers from the vice of excessive delegation of power has been stoutly denied by the first respondent. The Screening Committee was required to act within the frame-work of the scheme of absorption envisaged in the Rules and the Committee had followed proper guidelines which had been approved by the controlling authority, namely, the Secretary, Department of Cabinet Affairs, Cabinet Secretariat. The provision enabling the controlling authority to issue general instructions was incorporated in the rules for the purpose of ensuring that the rules relating to the initial constitution of the service were applied uniformly and judiciously. The contention put forward by the petitioners that the said provision renders the functioning of the Screening Committee nugatory, is refuted by the first respondent as being devoid of any merit. The allegation made by the petitioners that the deputationists were given illegal promotions from time to time has also been denied in the first respondent's counter-affidavit as totally baseless. It is admitted that during the period when the ARC was functioning as a temporary Department, some of the deputationists who were initially appointed as (Tech.) were subsequently appointed to higher posts on deputation basis but the first respondent submits that there could be no valid objection to such appointments, as they had all been made in the public interest and in accordance with the general instructions on the subject. Referring to the provisions contained in Rule 5(3) of the impugned Rules regarding the exercise of option by officers willing to be absorbed on permanent basis in the ARC, it is submitted in the counter-affidavit that the said provision was equally applicable to direct recruits as well as the erstwhile deputationists. Since the temporary appointments of the direct recruits in the post of ACIO-II (Tech.) did not confer on them any right of confirmation and the ARC (Technical) Service was altogether a new service, the first respondent states that the petitioners were rightly asked to



exercise their option in terms of Rule 6(3). Dealing with the attack levelled by the petitioners against the validity of Rule 6(6), it is pointed out in the counter-affidavit that the spirit and content of the rule is that persons who were holding higher posts on the crucial date and were considered suitable for permanent appointment in the said posts but could not be appointed substantively to such posts for want of vacancies, may be given permanent posts in the owner grade. It is pointed out in the counter-affidavit that the said rule was applicable to direct recruits as well as to the deputationists and that, as a matter of fact, some of the petitioners got the benefit of this rule inasmuch as they were appointed substantively in the grade of DFO(T) with effect from April 26, 1976, while they are holding posts of Fo(T) on the said date. The charge of discrimination levelled by the petitioners is, therefore, denied by the first respondent as being devoid of any foundation.

With reference to the grievance put forward by the petitioners that they were denied an opportunity to represent their case before the Screening Committee, it is submitted by the first respondent that under the scheme of the impugned Rules, the Screening Committee was not expected to entertain any representations from any quarter and, in fact, no representations were received. The Committee had acted strictly in accordance with the provisions contained in the Rules in determining the suitability of the persons concerned for absorption in the new Department and the principles of natural justice have no applicability in such a context. The allegation of mala fides put forward by the petitioners has been stoutly denied by the first respondent. After the seniority list was prepared by the Screening Committee in accordance with the provisions contained in Rule 6(2) read with Rule 7 of the impugned Rules, certain formalities had to be gone through before orders regarding substantive appointments of the officers to the various grades could be issued. It was only after the issue of substantive appointment orders to persons who had opted for absorption into the service, that the Department could publish the seniority list. The formalities aforementioned included obtaining the options from all the employees, getting the approval of the parent departments of the erstwhile deputationists for their permanent absorption in the ARC Service, medical examination of employees, etc. It was on account of the delay involved for completing the said procedure that the seniority list could be finally published only on November 6, 1978. The counter-affidavit proceeds to state that promotions in the Department were effected in the meantime strictly on the basis of the seniority list of officers recommended for absorption which the Screening Committee had prepared. It is further pleaded by the first respondent that no illegality whatever was involved in adopting the principle of reckoning the seniority in a particular post on the basis of total length of continuous service put in by the concerned officers in the particular grade in the ARC or in the equivalent grade in the parent department. The said rule was framed keeping in view the special requirements of the new Department. If the deputationists had not been given the benefit of the service put in by them in the equivalent grade in their parent departments, they would have all opted for their reversion to their parent departments and that would have resulted in incomplete dislocation of the functioning in the ARC. The first respondent states that in formulating or applying the seniority rule there has not been any arbitrary discrimination as between direct recruits and deputationists and hence neither the rules nor the seniority list can be said to be violative of Articles 14 and 16 of the Constitution. B Dealing with the contention put forward by the petitioners on the basis of article 26 of the Civil Service Regulations, it is submitted by the first respondent that the said article, which deals with appointments by transfer "in accordance with a provision in the Recruitment Rules providing for such transfers" had no applicability at all in the matter of taking persons on deputation to the ARC

when it was a purely temporary Department which had no Recruitment Rules. The subsequent absorption of such deputationists and other categories of employees has been done strictly in accordance with the provisions contained in the impugned Rules which are statutory in origin. In the absence of any Recruitment Rules, there was no legal bar whatever preventing the competent authority from borrowing persons from other departments on deputation basis to man the various posts in the ARC during the period prior to the introduction of the impugned Rules with effect from April 26, 1976. The former deputationists had occupied a larger percentage of the higher posts during the aforesaid period because they had put in more years of service in different grades and had much greater experience in carrying out the functions which were of a highly specialised nature when compared to the direct recruits whose induction in the ARC started only from 1965.

On the basis of the aforesaid averments contained in his counter-affidavit, the first respondent has submitted that the petitioners are not entitled to any relief in this writ petition and that the petition should be dismissed.

In the separate counter-affidavit filed on behalf of respondents 13, 16, 22 etc., they have put forward more or less the same contentions in defence of the writ petition as have been taken by the first respondent.

From the averments contained in counter-affidavit of the first respondent and the documents produced before us, it is seen that .. the Aviation Research Centre was a temporary and ad hoc organisation set up late in 1962, on an emergency basis, when the country was threatened with the Chinese aggression for carrying out the work of collecting intelligence by the use of highly sophisticated techniques. For manning this Task Force, persons with experience in the specialised nature of the work were taken on deputation basis from different sources, such as the intelligence Bureau, the Departments of Defence Science, Wireless Planning and Coordination, the Directorate General of Civil Aviation and the Police of different States and they were grouped together to form the ARC. Subsequently, to supplement the man power, some persons were also directly recruited to the organisation on a purely ad hoc basis. The ARC organisation was initially treated as an extension of the intelligence Bureau. In February 1965, it was brought under the control of the Director General of Security. The administrative control over the organisation which was originally vested in the Ministry of External Affairs and later with the Prime Minister's Secretariat was transferred to the Cabinet Secretariat in 1965. The sanction for continuance of the temporary organisation was accorded by the Government from year to year till the year 1971 when decision was taken by the Government to make the ARC a permanent Department. But, the finalisation of the principles to be adopted for constitution of the new permanent Department took considerable time and it was only on April 26, 1976 that the President of India promulgated the Aviation Research Centre (Technical) Service Rules providing for the constitution of a new service to be known as Aviation Research Centre (Technical) Service and laying down the principles regulating the method of recruitment to the various posts in the said Service. Till 1976, there was no regularly constituted cadre of posts in the temporary ARC organisation and there were also no rules or even executive orders laying down any principles regulating the method of appointment to the various posts in the organisation.

Clause 6 of the impugned Rules deals with the initial constitution of the new ARC permanent Service. That clause is in the following terms:

"6. Initial Constitution-

(1) All persons holding, as on the appointed day, any one of the categories of posts specified in rule 4, whether in a permanent or temporary or officiating capacity or on deputation basis, shall be eligible for appointment to the service at the initial constitution thereof.

(2) The controlling authority shall constitute a Screening Committee in respect of each grade for adjudging the suitability of persons, who, being eligible to be appointed to the service under sub-rule (1) were serving in any grade immediately before the initial constitution of the cadre for permanent appointment therein and every committee so constituted shall, subject to such general or special instructions as the controlling authority may give and after following such procedure as the committee may deem fit, prepare lists of persons considered suitable for such appointment in each grade with the names of such persons arranged in the order of seniority based on the date of continuous appointment in the grade in which they are to be absorbed or in an equivalent grade;

Provided that if the controlling authority deems it necessary so to do, the same committee may be constituted to function in relation to two or more grades. D (3) An intimation shall be sent to every person considered suitable for appointment on a permanent basis to a post in any grade giving him an opportunity to express, within thirty days of the receipt of intimation by him his willingness to be so appointed on a permanent basis and the option once exercised shall be final.

(4) Persons who are willing to be appointed on a permanent basis shall be so appointed in the order of seniority against permanent posts available as on the appointed day.

(5) Notwithstanding anything contained in sub-rules (2) to (4), every person holding, as on the appointed day, a permanent post in any one of the categories specified in rule 4 in the Aviation Research Centre shall, without prejudice to his being considered for appointment to a permanent post in the higher grade or to his continuance in such higher grade in officiating or temporary capacity, be absorbed in his respective substantive grade against the permanent posts available as on the appointed day.

(6) The Screening Committee may recommend for permanent appointment in a lower grade any person who is serving in a higher grade irrespective of whether he is deputationist or a direct recruit and every appointment made on such recommendation shall be without prejudice to his continuing to serve in the higher grade.

(7) Persons holding posts, as on the appointed day, in any grade of the service who are not found suitable for permanent appointment under sub-rules (2) to (6), may be continued in posts in the

same grade of the service in a temporary or officiating capacity as the case may be."

Rule 7 lays down the principles to be applied for fixation of seniority of those appointed to the various posts in the ARC at the time of its initial constitution. That rule reads:

"7. Seniority of persons appointed on permanent basis in each grade at the initial constitution of the service shall be in the order in which they are shown in the relevant list prepared in accordance with provisions of rule 6."

The next rule under challenge by the petitioners is Rule 8 which deals with the topic of filling up of vacancies in various grades remaining unfilled immediately after the initial constitution of the service and all vacancies that may subsequently arise in the Department. That rule is in the following terms:

"8. Maintenance-

(1) Subject to the initial Constitution of the various grades in the service, every post remaining unfilled and every vacancy that may arise thereafter shall be filled in accordance with the provisions contained in Schedule II, by appointment on promotion, deputation transfer, re-

employment after retirement or direct recruitment as the case may be.

(2) For a period not exceeding three years from the date of commencement of these rules, notwithstanding the limits specified in column 7 of Schedule II, the controlling authority may, if it considers it necessary so to do, exceed the percentage specified for filling up of vacancies by deputation and decrease the percentage prescribed for filling up of vacancies by promotion, direct recruitment of re-employment after retirement, as it may deem fit."

The only other rule which requires to be referred to for the purpose of the present case is Rule 12 which states that "in regard to matters not specifically covered by these rules or by orders issued by the Government, members of the service shall be governed by general rules, regulations and orders applicable to persons belonging to the corresponding Central Civil Service".

The petitioners are some amongst the persons recruited directly to the ARC organisation during the period between 1965 and 1971. The basic premise on which the petitioners have rested their challenge against the validity of the promotions given to respondents Nos. 8 to 67 from the year 1968 onwards as well as of the provisions contained in the impugned Rules is that they (petitioners) had all been regularly appointed to the ARC at the time of their initial appointment itself and that by virtue of such regular appointments, they had acquired vested rights for seniority, promotions etc., in the said organisation. As already noticed, during the period between 1965 and 1971, the ARC organisation was a purely temporary one, the continuance of which, on an experimental basis, was being sanctioned from year to year. There was no regular cadre of posts in the organisation nor was there any set of rules regulating the method of appointment to the various posts that had created on

a mere temporary and ad hoc basis.

Annexure 'R-I' produced along with the first respondent's counter-affidavit is a copy of the letter issued by the Directorate General of Security to one of the petitioners, communicating the offer of appointment to the temporary post of ACIO-II(Tech.). It was on the basis of the acceptance of that offer by the said petitioner that he was appointed in the Department of ARC. It is stated in the counter-affidavit of the first respondent that the appointments of all the remaining writ-petitioners to the cadre of ACIO-II (DFO) were made on identical terms and this averment has not been controverted by the petitioners. It is expressly recited in Ex. R-1 that what was being offered thereunder was a temporary appointment to a temporary post and that the permanent appointment of the person concerned to the post, if and when the post was made permanent, would depend upon various factors governing permanent appointment in such posts in force at the time, and that the temporary appointment will not confer on him the title of permanency from the date the post is converted. It is further stipulated in the letter that the appointment was liable to be terminated at any time by a notice given by either side, namely, the appointee or the appointing authority without assigning any reason. There is also a further condition that the services of the appointee were liable to be terminated within a period of six months from the date of his appointment without any notice and without any reason being assigned. Since the petitioners are shown to have been appointed to the cadre of ACIO-II on the aforementioned conditions, it is difficult to see how they can successfully contend that they had been regularly appointed to the ARC with effect from the dates of their initial recruitment. They were holding merely ad hoc appointments which did not confer on them any entitlement for permanent absorption in the posts if and when the posts were made permanent. The basic premise on which the petitioners have sought to build up their case of arbitrariness and discriminations, namely, that the petitioners had all been initially recruited directly to the ARC on a regular basis while the deputationists were holding posts only on ad hoc basis, is thus seen to be contrary to facts. The correct position which obtained as on the date of the promulgation of the impugned Rules was that the petitioners as well as the deputationists were all working in the temporary ARC organisation only on a purely ad hoc basis. It is against this factual background that we have to examine the contentions put forward by the petitioners in support of the challenge levelled by them against the impugned Rules as well as against the seniority list of 1968 and the various promotions given to respondents Nos. 8 to

67. 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 Nos. 8 to 67 during the period between 1968 and 1975. In our opinion, the challenge raised by the petitioners against those 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 before this Court the promotions that were effected during the years 1968 to 1975. A party seeking the intervention 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 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 & Ors v. Union of India & Ors.

In this case before us, many of the impugned promotions had been effected during the year 1968-69 onwards. Three of the present petitioners had challenged the validity of some of the promotions granted to various deputationists as well as the ranking given to them in a seniority list of ARC personnel published in 1971 by filing Civil Writ Petition No. 1020 of 1971 in the Delhi High Court. Though the High Court by its judgment dated April 7, 1972 dismissed that writ petition on the ground that it was premature inasmuch as it had been submitted before it by the counsel for the Union of India that all the existing arrangements in the ARC were purely ad hoc and that service rules would be framed shortly, the High Court has recorded clear findings in the judgment that the principle adopted for the preparation of the combined seniority-list of 1971 could not be said to have violated Articles 14 to 16 of the Constitution and that it had not been shown by the writ petitioners in that case that the impugned promotions had been effected in violation of any "statutory rules, constitutional or statutory limitations or even administrative instructions" .

If the petitioners were dissatisfied with the aforementioned findings entered by the Delhi High Court, one should have expected then to approach this Court at least soon after that decision was rendered by that High Court in April 1972-we are not suggesting that the findings of the High Court operate as res judicata against the petitioners in these proceedings. There is no satisfactory explanation forthcoming from the petitioners as to why no action at all was taken by them to challenge the validity of the impugned promotions given to respondents Nos. 8 to 67 from 1968 onwards for a period of nearly seven years subsequent to the aforesaid pronouncement by the Delhi High Court.

Quite apart from what has been stated above on the aspect of 'laches', on the merits also we do not find any substance in the contentions urged by the petitioners against the legality of the promotions granted to respondents Nos. 8 to 67 during the period between 1968 and 1975. At that time, as already, noticed, the ARC was a purely temporary organisation which was being continued on a year to year basis. There was no regular cadre of posts in the said organisation, nor were there any rules governing the mode of recruitment etc. All the appointments made in the organisation, whether of direct recruits like the petitioners or of deputationists like respondents Nos. 8 to 67, had been made only on an ad hoc basis. Since there was no regularly constituted service, the principles contained in the office Memorandum dated December 22, 1959 issued by the Ministry of Home Affairs (Annexure 'C'), on which strong reliance was placed by the petitioners, could have no application at all to the temporary ARC organisation. It is clear from a reading of the said Memorandum (Annexure 'C') that its provisions will get attracted only in relation to Government servants appointed to the Central Services.

During the period aforementioned, the ARC was just a Task Force set up on an ad hoc and experimental basis for the purpose of carrying out certain functions of a highly specialised and sensitive nature. Quite naturally, the personnel required for manning the organisation had to be picked and grouped together in the manner best suited to effectuate the object and purpose underlying the creation of the organisation. So long as there was no regular cadre and hierarchy of posts and no rules laying down the mode of appointment/promotion to those posts it was perfectly

open to the Government to fill up the posts by securing the services of persons who, in its opinion, were, by virtue of their experience and qualifications, best suited for being entrusted with the specialised kinds of functions attached to the various posts. We have already seen that the petitioners had been appointed as ACIOs-II(DFOs) only on a temporary and ad hoc basis. Such appointments did not confer on them any rights even to the posts of DFOs. It had also been categorically made clear to them in the letters containing the offers of appointment that such appointments will not confer on them any right to the permanently absorbed in the post if and when it was made permanent. There was also not even any executive order or administrative instruction declaring the post of DFO as the feeder category for appointment to the higher posts. In such circumstances, it has to be held that the petitioners had no legal right or claim for being appointed by promotion to the higher posts of ACIO-I (FO), ATO, etc. It has been averred in the counter-affidavit that as and when vacancies arose in the higher posts of FO, ATO, etc., in the tem-

porary ARC organisation in the early years after its formation, deputationists who, by virtue of their greater experience in the particular type of specialised work, were considered suitable for carrying out the duties attached to those posts on deputation basis to the category of FO, ATO, etc. Subsequently, after the direct recruits had gained sufficient experience, some of them who were found suitable, were also appointed as ACIOs-I, ATOs, etc. No illegality of any kind was involved in the action so taken by the concerned authorities to fill up the vacancies in the higher posts by ad hoc appointments of persons possessing the requisite ability and experience. We have, therefore, no hesitation to reject the contention put forward by the petitioners that the promotions granted to respondents Nos. 8 to 67 during the period between 1968 and 1975 were illegal and violative of Articles 14 and 16 of the Constitution .

We shall now proceed to deal with the challenge raised by the petitioners against the provisions contained in the impugned rules. It is under Rule 3 of the Rules that the Aviation Research Centre (Technical) Service was constituted for the first time. The composition of the service has been described in Rule 4, wherein the designations, classifications and scales of pay of the various posts included in the Service have been set out. Rule 6 provides for the initial constitution of the Service. The petitioners have challenged the validity of sub-rule (I) of this Rule which declares that all persons holding, as on the appointed day, any one of the categories of posts specified in Rule 4, whether in a permanent or temporary or officiating capacity or on deputation basis, shall be eligible for appointment to the service at the initial constitution thereof. When a new service is proposed to be constituted by the Government, it is fully within the competence of the Government to decide as a matter of policy the sources from which the personnel required for manning the Service are to be drawn. It is in the exercise of the said power vested in the Government, that provision has been made by sub-rule (I) that all the persons who, as on the appointed day were already working in the ARC organisation on a temporary and ad hoc basis and had thereby acquired valuable experience in the specialised kinds of work would be eligible for appointment to the new service at the stage of its initial constitution. The writ-petitioners as well as the deputationists, namely, respondents Nos. 8 to 67 were all functioning in the temporary ARC organisation on an ad hoc basis. Equal opportunity was given to all of them by sub rule (I) of Rule 6 to get permanently appointed in the new ARC (Technical) Service subject to their being found fit by the Screening Committee referred to in the sub-rule (2). We fail to see how the said provision can be said to be violative of Articles 14 and 16 of

the Constitution. The attack levelled by the petitioners against sub-rule (1) of Rule 6 is thus manifestly devoid of merit.

The next contention urged by the petitioners is that sub-rule (2) of Rule 6 confers arbitrary and uncanalised powers on the Screening Committee and is hence violative of the principles of equality of opportunity enshrined in Article 16 of the Constitution. Another point urged is that the said sub-rule in so far as it provides that the Screening Committee should discharge its functions subject to such general or special instructions as the controlling authority may give, confers an arbitrary and unlimited power on the controlling authority and enables the controlling authority to impose its will and whims on the Screening Committee. We see no force in either of the aforesaid contentions. The provision for constitution of a Screening Committee for adjudging the suitability of the persons in the field of eligibility for permanent appointment to the service is absolutely reasonable. The power conferred on the controlling authority to issue general or special instructions to a Screening Committee is really in the nature of a safeguard for ensuring that the rules relating to the initial constitution of the service were applied fairly and justly. The 'controlling authority' is the "Secretary, Department of Cabinet Affairs". When supervisory powers are entrusted to such a high and responsible official, it is reasonable to assume that they will be exercised fairly and judiciously and not arbitrarily. We are, therefore, unable to uphold the contention of the petitioners that the provisions of sub-rule (2) of Rule 6 suffer from the vice of the arbitrariness or excessive delegation.

The petitioners have also attacked the provisions contained in sub-Rule (2) of Rule 6 enjoining the Screening Committee to arrange the names of persons considered suitable for appointment in each grade in the order of seniority based on the date of continuous appointment in the grade in which they were absorbed or in an equivalent grade. We have already found that the basic assumption on which the petitioners have founded the attack against this provision, namely, that the petitioners were all holding regular appointments as DFOs in the ARC organisation from the dates of their initial recruitment and that the deputationists (respondents Nos. 8 to 67) were functioning in their respective posts only on an ad hoc basis is incorrect and fallacious. As on the date of the promulgation of the rules and the initial constitution of the ARC. (Technical) Service, petitioners as well as respondents Nos. 8 to 67 were all holding the various posts in the ARC organisation only on a temporary and ad hoc basis. While the petitioners had no substantive lien in respect of or title to any post in any department, the deputationists were having a lien on the posts held by them in their parent departments. The petitioners, therefore, formed a different class consisting of persons who were virtually being recruited for the first time into regular Government service, as distinct from the respondents 8 to 67 who had been holding posts in their parent departments for several years on the regular basis who formed a separate class. When recruitment to the new Service was being made from two different classes of sources, it was necessary for the Government to evolve a fair and reasonable principle for regulating the inter se seniority of the personnel appointed to a new Department. What has been done under Rule 6 is to give credit to the full length of continuous service put in by all the appointees in the concerned grade, whether such service was rendered in the temporary ARC organisation or in other departments of the Government. The criterion applied, namely the quantum of previous experience possessed by the appointees measured in terms of the length of continuous service put in by them in the concerned or equivalent grade is perfectly relevant to the purpose underlying the framing of the rule. In our opinion, the aforesaid principle



laid down in rule 6(2) for determination of inter se seniority was quite reasonable and fair and it did not involve any arbitrary or unfair discrimination against the petitioners. The attack levelled by the petitioners against the said provision contained in sub-rule (2) will, therefore, stand repelled.

In the light of what we have stated above, the provision contained in rule 7 that the seniority of persons appointed on permanent basis in each grade at the initial constitution of the service shall be in the order in which they are shown in the relevant list prepared by the Screening Committee in accordance with provisions of Rule 6 has also to be upheld as perfectly valid and constitutional.

We see no substance at all in the challenge raised by the petitioners against Rule 8 of the impugned rules and the provisions of Schedule II. Under the said rule, the appointing authority is empowered to fill up every post remaining unfilled immediately after the initial constitution of the various grades in the service as well as every vacancy that subsequently arises by making appointments on promotion, deputation/transfer, re-employment after retirement or direct recruitment, in accordance with the provisions contained in Schedule II. At the time of constituting a new service and laying down the mode of appointment to the various posts, it was fully within the powers of the President of India to prescribe the methods by which vacancies arising in the different categories of posts in the department should be filled up and this is precisely what has been done as per rule 8 and the provisions of Schedule II. The petitioners have not been able to make out that the provisions of Rule 8 and Schedule II are tainted by illegality of any kind.

The next point urged by the petitioners is that the Screening Committee had acted in violation of the principles of natural justice in as much as it had not afforded to the petitioners an opportunity to make their representations before the Committee. The function entrusted to the Committee was to adjudge the suitability of person who were holding posts in the different grades in the temporary ARC organisation for permanent appointment in the newly constituted ARC (Technical) Service on the basis of the records relating to their past performance in ARC organisation, etc. We do not see how the principles of natural justice can get attracted in such a context. The law does not cast any obligation on a Committee discharging such a function to invite representations from the persons in the eligible categories and consider those representations while adjudging their suitability for appointment into the new service. Hence we do not find any substance in the argument advanced on behalf of the petitioners that there was a violation of principles of natural justice by the Screening Committee.

The petitioners have put forward a further plea that the promulgation of the impugned rules was deliberately delayed till April 1976 with a view to confer an unfair advantage on the deputationists, several of whom were granted promotions to higher posts during the period between 1971 when the decision to make the department permanent was taken and April 26, 1976 when the impugned rules were finally issued. We find it stated in the counter-affidavit filed on behalf of the first respondent that the draft rules were prepared by the Directorate of ARC and submitted to the Government in 1972 itself, but, on a detailed scrutiny being made, it was found that the said draft required substantial modification in several respects. Revised rules were, therefore, drafted and submitted to the government late in 1974. The first respondent has submitted that the time taken in finalising the rules was due to the fact that intensive examination of all the relevant aspects had to

be done by various concerned Ministries before the draft rules could be finally approved and issued. We are inclined to accept the explanation offered by the first respondent for the delay in promulgation of the Rules, and we hold that the plea of mala fides put forward by the petitioners is not established.

All the promotions given to the deputationists as well as to the direct recruits during the period between 1968 and 1976 had been effected only on a purely ad hoc basis. Even though temporary in character, those promotions had been made only on the basis of the recommendations made by the Departmental Promotion Committee which had effected the selections by applying uniform and relevant considerations, such as length of service in the lower grade and over-all experience and performance. It is stated in the counter- affidavit that, while making such promotions for appointments to higher posts, no deputationists with lesser years of service vis-a-vis direct recruits had been given ad hoc appointment to any higher post. The first respondent has submitted that in making the promotions aforementioned, the authorities concerned were actuated only by considerations of the best interests of the department and the maintenance of a higher standard of efficiency in its function and there was no intention whatever to confer any advantage to the deputationists or to discriminate against the direct recruits. We do not find any ground for not accepting as correct and true the aforesaid submissions made on behalf of the first respondent. Accordingly we hold that in granting promotions to the deputationists during the period between 1971 and 1975 respondents 1 to S were not actuated by any intention to confer an unfair advantage on the deputationists.

Another argument advanced on behalf of the petitioners was that at the time of their initial appointment in the ARC, they had been given high expectations regarding their promotional prospects from the post of DFO, and that by bringing in large number of deputationists and fitting them into the higher posts, the Government had illegally gone back on the promise held out to the petitioners. We see no merit in this contention. As already noticed, in the letters sent to the petitioners offering appointment to the category of ACIO- II (DFO), it had been made abundantly clear that their appointments would be purely temporary and ad hoc in nature and would not confer on them any claim for permanent absorption even in the post of DFO. No subsequent representation is shown to have been made to the petitioners by the Department at any time prior to 1976 holding out any prospects of Department permanent absorption in service or promotions to higher grades. The petitioners continued to function in the ARC organisation only on ad hoc basis till the rules were promulgated and they were absorbed into the new ARC (Technical) Service at the stage of its initial constitution on the basis of the provisions contained in Rules 3 and 6. It is significant to note in this context that it was only after the petitioners had seen the impugned rules and had gained full knowledge of the provisions contained therein relating to absorption and seniority in the department, that they opted for absorption in the service in accordance with those rules and it was on the basis of the options so exercised by them that they were appointed in the new constituted service.

The petitioners have also put forward a case that despite the provision contained in rule 6 (3) there was, as a matter of fact, no adjustment of the suitability of the various officers by the Screening Committee and, instead, there was a wholesale absorption of all the personnel in the posts which

they were holding in the ARC organisation as on April 26, 1976. This allegation has been strongly refuted in the counter-affidavit filed by the first respondent wherein it has been stated that the Screening Committee has examined individually 9 the cases of all the concerned officers before deciding about their suitability for permanent absorption in the service and prepared ranked lists strictly in accordance with the principle laid down in Rule 6 (2). The learned Solicitor General, appearing on behalf of the Union of India, submitted before us that the files containing the minutes of the meetings of the Screening Committee and the ranked select lists prepared by the Committee for the different grades were available with him in Court and he offered to place them before us for our perusal. In the circumstances, we see no reason not to accept as correct the aforesaid averments contained in the counter affidavit of the first respondent. It then follows that this contention of the petitioners has also to fail.

Another point urged on behalf of the petitioners was that some of the deputationists were not holding in their parent depart-

ments posts equivalent in rank to those in which they were appointed on deputation in the ARC organisation and such persons should not have been subsequently absorbed in the new ARC Service in those higher categories. We are unable to uphold this contention. At the time when the ARC was a mere temporary organisation without any recruitment rules the posts in that organisation could be filled up by appointing suitable hands possessing the requisite specialised skill and experience drawn from any source in respect of whatever was the position occupied by such appointees in their parent service, if any. Likewise, at the stage of the initial constitution of the new ARC (Technical) Service the Government had the right and full freedom to decide from what all sources the personnel for the new Department should be drawn and there is no warrant in law for imposing a limitation that in taking persons from other departments the field of choice should be restricted to persons holding any particular ranks in those other departments. The relevant consideration for appointment of personnel in a department of this nature has necessarily to be the suitability of the person concerned for the specialised type of the work for adjudging which the experience and expertise that he possesses in carrying out such functions would be the most relevant criterion. Once appointments are made to the various grades in the new service the inter se seniority of the persons appointed in each category or grade is to be fixed under Rule 6 on the basis of the total length of service in the particular or equivalent Grade and this, in our opinion, is a perfectly reasonable principle.

The argument advanced by the petitioners that the seniority of the deputationists who have been absorbed into the ARC (Technical) Service is governed by the provisions of Article 26 (7) (iii) of the Civil Service Regulations is wholly devoid of merit. Article 26 (7) (iii) applies to cases "where a person is appointed by transfer in accordance with a provision in the recruitment rules providing for such transfer in the event of non-availability of candidates by direct recruitment or promotion". The absorption of the erstwhile deputationists in the ARC (Technical) Service at the time of its initial constitution was not by such transfer and hence the provisions of Article 26 (n) (iii) are not attracted.

We do not also see any merit in the argument put forward on behalf of the petitioners that sub-rule (6) of Rule 6 of the impugned Rules enables the Screening Committee to absorb in a lower grade

such of the deputationists who were found unsuitable to be absorbed in the higher posts which they were holding as on April 26, 1976. Firstly, this is not a provision applicable only to the erstwhile deputationists. On the other hand, the sub-rule itself makes it very clear that its provisions apply equally to all the persons who are eligible for absorption in the service under sub-rule (1) irrespective of whether they are deputationists or direct recruits. Sub-rule (6) comes into operation when a person in the eligible category holding a post in a higher grade on the appointed day, who has been found suitable for permanent appointment in such higher grade cannot, however, be absorbed in the said grade on account of non-availability of a vacancy therein. What the sub-rule lays down is that in such eventuality the Screening Committee may recommend such a person for permanent appointment in a lower grade and thereby retain his services in the new Department. We fail to see how this provision can be said to infringe any of the fundamental rights of the petitioners.

Lastly, it was contended on behalf of the petitioners that in preparing the impugned seniority list dated November 6, 1978, the principles laid down in Rule 6 (3) and Rule 7 have not been correctly observed, and that by reason of the deviation from those principles, the promotional prospects of some of the petitioners have been adversely affected. No concrete instance of any such deviation from the principles set out in Rule 6 (3) and Rule 7 has been brought to our notice. All the same, we think it necessary to observe that this Court expects that the provisions of Rule 6 (3) and Rule 7 will be strictly conformed to, both in letter as well as in spirit, by respondents Nos. 1 to 7, and that in case it is found on examination that the ranking assigned to any of the petitioners in the impugned seniority list dated November 6, 1978 is not consistent with the principles laid down in the aforementioned rule, necessary action should be immediately taken to rectify the said defect, and if the promotional chances of any of the petitioners have been adversely affected by reason of such defect in the seniority list, such promotions should also be reviewed after following the requisite procedure. We direct that the petitioners may bring to the notice of the first respondent specific instances, if any, of deviation from the principles enunciated in Rule 6 (3) and Rule 7 resulting in incorrect assignment of seniority and rank to them by submitting representations before the first respondent within a period of six weeks from today. In case any such representations are received, they will be duly examined by the first respondent and appropriate orders will be passed thereon in the manner indicated above as expeditiously as possible.

Subject to the above observations and directions, we dismiss this writ petition. The parties will bear their respective costs.

N.V.K.

Petition dismissed