Supreme Court of India
Sri K. Prasad & Ors vs Union Of India & Ors on 10 December, 1987
Equivalent citations: 1988 AIR 535, 1988 SCR (2) 285
Author: S Rangnathan
Bench: Rangnathan, S.

PETITIONER:
SRI K. PRASAD & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT10/12/1987

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MISRA RANGNATH

CITATION:
1988 AIR 535 1988 SCR (2) 285
1988 SCC Supl. 269 1987 SCALE (2)1343

ACT:
Service matter-Seni(Jrity dispute raised by initial recruits and direct recruits of the Indian Forest Service (I.F.S.) from the States of Maharashtra, Uttar Pradesh & Orissa.

HEADNOTE:
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Controversies relating to the seniority of the officers in the Indian Forest Service (I.F.S., for short) in this batch of cases from the States of Maharashtra, orissa and Uttar Pradesh, arose as asequal to three decisions of this Court in regard to the constitution of the Indian Forest Service, in Kraipak v. Union of India , AIR 1970 SC 150; Parvez Qadir v. Union of India, [1972] 2 SCR 432 and Union of India v. Chothia, [1978] 3 SCR 652. The Court had to consider in these cases the questions arising out of the selections made by the Special Selection Boards (S.S. Bs.) in place of the selections set aside by the Kraipak case above mentioned, and was concerned with the initial recruitment under section 4(1) of the I.F.S. (Recruitment) Rules, 1966.

The first selections by way of initial recruitments to the State cadres were made sometime in 1966 and 1967. The

Kraipak decision came in 1969. In the meanwhile, in many of the States, the first selection had been made followed up by subsequent recruitments largely made on the basis of competitive examination under rule 4(2)(a) of the Recruitment Rules and a few also, by promotion under rule 4(2)(b). As a result of the second (and third) selections made by the S.S.B., a number of officers in the respective State Forest Service (S.F.S.) had been given appointment in the IFS with effect from October 1, 1966, under rule 4(3A) and were placed in a position of higher seniority vis-a-vis the recruits-direct recruits-under rule 4(2). The direct recruits were dissatisfied with this.

In the case of Uttar Pradesh, nine petitioners moved the High Court for relief, out of whom, eight-direct recruits of 1968 and 1969 confirmed between 1969 and 1972 came up in appeal to this Court. In this State, the initial recruitment was made in 1966-67 of 85 officers, 58 to the posts in the senior time scale and 27 to the posts in the junior time scale. Subsequently, six persons were promoted under rule 4(2)(b) and

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nine persons were recruited under rule 4(2)(a) of the Recruitment Rules. the initial recruitment having been declared bad, a fresh S.S.B. was appointed and, on its recommendations, 104 persons were appointed to the service, 60 to senior scale posts and 44 to junior scale posts. Again, in 1976, six more persons were added and thus 110 persons were taken in by way of initial recruitment as against 85 persons taken in the first selection. The direct recruits were aggrieved by these selections. Their case was rejected by the High Court.

In the case of Maharashtra, the first selection was made on 2.2.1967 of 57 officers, 36 for the senior time scale and 21 for the junior time scale. This was set aside. On July 13, 1971, at the second selection, 116 officers were found eligible but only 66 were considered suitable for appointment. 39 out of 51 eligible officers were found suitable for the senior scale, of whom, 35 were appointed immediately and four, later. For junior scale 27 were found suitable, out of whom 23 were appointed initially and four, later. All these 66 appointments were made w.e.f. t. tO. 1966. Some persons, who had joined the State Forest Service in 1962 and had put in 4 years' service as on 1.10.1966, and were thus eligible for consideration for junior scale posts, filed a writ petition in the High Court. Their grievance was that the government had not considered all the officers who were eligible for the junior posts, as should have been done as laid down in the Chothia case aforementioned. The High Court allowed the writ petitions. Some of the respondents, comprising persons, who had been directly recruited under rule 4(2) between 1968 and 1970, appealed to this Court against the decision of the High Court.

In the case of Orissa, eight persons moved this Court

by Writ Petitions. They had joined the orissa State Forest Service as on 1.4.1962. After two years' training, they had been appointed Assistant Conservators of Forests on 1.4.1964. By 1.4.1966, they had four years' continuous service in the State Cadre. They had become eligible for selection to junior scale posts in the l.F.S. Two selections were made by way of initial recruitment, once in January, 1967, when 41 officers were selected, and, then, in 1972, 42 out of 82 eligible officers were selected. The petitioners were taken into the I.F.S. under rule 4(2)(b) between 1975 and 1977. The petitioners' contention was that their names were not considered at all either at the first selection or at the second selection, and the selections were made by considering eligible officers in the order of seniority only to recruit 41 or 42 persons. The government did not consider all the 82 eligible officers and select 34 out of them arranged in the order of preference, and this vitiated the selection, as
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held in the Chothia case afore-mentioned.

Dismissing the appeals from U.P. and Maharashtra subject to observations and allowing the Orissa writ petitions, and directing the Special Selection Board to redo the selections in the light of the principles set out, the Court,
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HELD: The initial recruitment regulations clearly envisage that the Special Selection Board should consider the cases of all the officers in the State Forest Service who fulfil the conditions of eligibility and judge their suitability for appointment to posts in the service and prepare a list of such officers in the order of preference. This selection was done by a Board, the constitution of which was found to be vitiated. The logical consequence of this would be that the process of selection had to be redone by a validly appointed S.S.B., before which the range of selection was the same as was, or should have been, considered by the initial S.S.B. i.e. Out of those officers in the S.F.S. who were eligible as on 1.10.66. However, there had been some changes subsequent to 1.10.66 in the C.R.S. Of some of the officers pertaining to the period upto 1. 10.66, consequent on the representations for expunction or modification of the adverse remarks, and nobody could validly object to these persons also being considered since the case of an officers who has the adverse remark against him struck off or modified, is on the footing as if such adverse remark had not been there at all, or had been in the modified form from the beginning. The decision in the Kraipak case necessitated a complete review of the first selection. The subsequent selection Boards could not be compelled to restrict their adjudication regarding suitability to the same number of persons as the first Board had selected, so long as the same list of eligible officers

and their records as on 1.10.1966 were considered. [309D-H; 310C-D]

The first proviso to rule 4(2) of the cadre Rules, only outlines the general principle that whoever has the power to do a particular thing, has also the power to exercise it from time to time, if needed. The Central Government has the power to alter the strength and composition of the cadres at any time. However, if the terms of the relevant rules are scruitinized, it will be seen that the strength and composition of the cadres have to be determined by regulations which have to be made by the Central Government in consultation with the State Government. If the initial composition can be only drawn up in consultation with the State Government and by Regulations, it will not be permissible for the Central Government to modify or alter the same save in the same manner. It is not possible to accept the contention of

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the initial recruits that the mere appointment of an excess number of officers should be treated as an automatic expansion of the cadre strength and composition in exercise of the power available under rule 4(1). [312D-E; 313A-B]

These cases are concerned with a set of Regulations whose whole purpose is to fix the cadre strength. It is also a provision in regard to an All-lndia Service in regard to the constitution of which both the Central Government and the State Governments have a say. The cadre strength could not be varied without amending the Regulations and schedule or without. lt consulting the State Government concerned. [313H;314A]

The Cadre Regulations, read with the Cadre Rules, leave no doubt that the strength and composition referred to or prescribed therein, are of the entire cadre of the service in the State concerned and are not restricted to the recruitments made after the initial recruitment. The total authorised strength referred to is the total number of officers, who, at any point of time, can man the posts in the cadre. It could not have been the intention that the cadre should consist of an indefinite number of persons recruited by the S.S.B. from the S.F.S. supplemented by the number of officers referred to as the total authorised strength. There is no difficulty in holding that the total strength of the cadre is to be counted by including the initial recruits and that all the eligible officers adjudged suitable cannot be recruited to the service in excess of the total authorised strength. [314E-F; 316B]

The critical and difficult question in these appeals is not that appointments by way of initial recruitment were made in excess of the total authorised strength but that the government has failed to keep in mind the restrictions placed on the number of senior and junior posts in each cadre while making appointments. The grievance of the appellants is that more recruitments have been made against

the junior posts than is permissible under the respective schedule. [316C-E]

The initial recruits are right in contending that the Cadre Regulations do not lay down any water-tight classification of junior and senior posts in the manner contended for by the direct recruits. It is true that the Cadre Regulations make a reference to seniors and junior posts, but this is not intended to be an essential element in the composition of the cadre. The Cadre Rules do not indicate, in respect of some posts, whether they are to be considered as junior or senior, and they contain no definition of the words 'senior' and 'junior' posts. It cannot be postulated that the entrants to the service will first enter on a junior
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scale post and work their way upward. All the rules show that an officer, being in the junior or senior time scale or on a junior post or senior post, depends upon various eventualities, and it is not possible to pin down any posts as senior or junior or any officer as on one of the two time-scales. The Court agreed with the initial recruits that the reference to junior and senior posts in the cadre should not be considered to be so rigid-or integral a part of the cadre composition as to affect the validity of the appointments made m excess of a particular number. [318B-C; 319B-C]

One thing plain on the terms of the Regulations is that once a person is found to be eligible and is adjudged suitable for recruitment under the Initial Recruitment Regulations, he has to be taken into service as a part of the initial recruitment either immediately on 1.10.1966 or as and when the vacancies arise in the cadre. It is necessary to remember that if the vacancies are in senior posts, they can be filled only by S.F.S. Officers with eight years' continuous service, and exhypothesi such officers will not be available for at least four more years, and if the vacancies are of junior posts, they can be filled in only after a competitive examinations is held, which will take time. The Court cannot accept the contention that officers of the S.F.S., who have been adjudged suitable by the S.S.B. should not be taken into the service merely because their number exceeds the number of posts available. True, they cannot be appointed immediately but the consequence cannot be that they should be ignored and persons recruited under rule 4(2) given preference over them. It is only rational to interpret the rules as laying down that all those officers of the S.F.S. with eight or four years' experience, who are adjudged suitable for the service should be recruited to the service bef ore any recruitment can at all start under rule 4(2). Whether all such persons are entitled to the back dating of their appointment to 1.10.1966 or not, they are certainly entitled to contend that their appointment should be given precedence

over the appointments of the recruits under rule 4(2) of the Recruitment Rules. In this view of the matter, the plea of the petitioners that they will get precedence over the surplus officers among the eligible cannot at all be accepted. It is only right that persons should be adjudged on the basis of the correct C.R.S. Any. Expunction or modification in the C.R.S. Of a period naturally relates back to that period and no legitimate objection can be taken if the correct C.R.S are taken into account. There was nothing wrong in the selections made by the Selection Board. [319D-E; 320D-E; 321C-E]

Rule 4(3A) only places the fresh recruits in the same position as if they had been recruited in the first instance, i.e. on 1.10.1966 as indeed
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they should have been, and thus involves no retrospective effect beyond the date of commencement of the Act. It is also not'correct to suggest that it prejudicially affects the direct recruits in any way. The appellants acquire under the Rules no right to be in service until after the initial recruitment is over. Under the Rules, they can rank only after the candidates who get in by way of initial recruitment. The appellants cannot be aggrieved that those in service in the S.F.S. are found suitable for recruitment to the service and taken into service w.e.f. 1. 10.1966. Those persons, even if not entitled to appointment as on 1. 10.1966, are entitled to be appointed as and when vacancies arise and must always be given a position of precedence over the recruits under Rule 4(2). The direct recruits can hardly claim that they are prejudicially affected by the re-making of the initial recruitment. [323D-G]

So far as Orissa is concerned, all the 82 eligible officers had to be considered for initial recruitment, but the S.S.B. merely selected 42 officers and made an omnibus observation that the others were found unsuitable. This, as explained Chothia's case is not a proper compliance with the Rules, and so the selection has to be set aside with a direction that it should be re-done properly.[324A-B]

There has been delay on the part of the petitioners in coming to this Court, but in view of the complicated nature of the issues involved, the petitioners should not be put out of the court on the ground of laches. All the 82 eligible officers as on 1.10.66 should be considered and not merely some of them. Their suitability should be adjudged. If they are not found suitable, reasons should be given which the U.P.S.C. should be able to consider. If they are found suitable, a list of such officers should be drawn up with ranking given to them in the order of preference for the consideration of the U.P.S.C. Since this has not been done, the recruitments have to be set aside and the matter remanded with the direction that it should be finalised as per the Recruitment Rules and in the light of the judgment. [324E-G]

If the Court had agreed with the direct recruits that there had been some invalidity or infirmity attached to the subsequent selections by way of initial recruitment, the Court would not have rejected the appeals on the ground that the Regulations cannot give rise to a cause of action. There is no error in the procedure followed by the Government. [327E]

It is not the intention of the Court, nor can it be the result of dis-

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cussion, that the appointments of any officers recruited under rule 4(1) or 4(2) should be considered invalid. All the officers selected will have to be adjusted, if necessary, by amending the Cadre Regulations. The only result of the Court's findings would be the re-adjustment of the seniority with necessary and consequential effect on promotions in the service. [327G]

No merit in the appeals from U.P. and Maharashtra, Orissa writ petitions allowed, S.S.B. directed to re-do the selections in the light of the principles set out in the judgment.[328A-B]

Kraipak v. Union of India, AIR 1970, SC 150; Parvez Qadir v. Union of India, [1975] 2 SCR 432; Union of India v. Chothia, [1978] 3 SCR 652; Jagat Narain v. Union, CMWP 58 of 1968; Lila Gupta v. Lakshmi Narain, [1978] 3 SCR 922 at 932; Atlas Cycle Industries Ltd. v. State of Haryana, [1979] 1 SCR 1070 at 1076, 1084, 1085; G.S. Lamba v. Union of India, AIR 1985 SC 1019 at 1032; Kapur v. Union of India, [1972] 2 SCR 531; Union of India v. Harnek Singh, L.P.A. 406/83, decided by the Punjab & Haryana High Court on 20.9.1983; Inderjit Singh v. Union of India, [1975] 2 S.L.R. 839; Amrik Singh and Ors. v. Union of India & Ors., [1980] 2 SLR 110 and R.R. Verma and Ors. v. The Union of India & Ors., [1980] 2 S.L.R. 335, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3072 of 1980 etc. From the Judgment and order dated 5. 10.1979 of the Allahabad High Court in Civil Misc. Writ No. 3587 of 1974.

S.N. Kacker, C.P. Lal, M.N. Krishnamani, Dalip Tandon, E.C. Agganvala, Vijay Pandit, Atul Sharma and Ms. Purnima Bhat for the Appellants.

Govind Das, Anil Dev, K.K. Singhvi, P.P. Rao, Kapil Sibbal, V.A. Bobde, G.L Sanghi, A. Subba Rao, C.V.S. Rao, C. Ramesh, Miss A. Subhashini, Mrs. S. Dikshit, A.S. Bhasme, A.M. Khanwilkar, R.K. Mehta, V.J. Francis, N.M. Popli, J.R. Dass, S.P. Kalra, Mrs. Rani Chhabra, V.B. Joshi, L.K. Pandey, D.D. Gupta and K.K. Khurana for the Respondents.

P.N. Mishra for the Intervener.

The Judgment of the Court was delivered by INTRODUCTION RANGANATHAN, J. 1. The controversies arising in this batch of cases are by way of sequel to three earlier decisions of this court in regard to the constitution of the Indian Forest Service viz. Kraipak v. Union of India, AIR 1970 S.C. 150; Parvez Qadir v. Union of India, [1975] 2 S.C.R. 432 and Union of India v. Chothia, [1978] 3 S.C.R.

652. A little historical background is, therefore, necessary to appreciate the problems before us.

THE ALL-INDIA SERVICES ACT

2. A few months before India gained Independence, a decision was taken that one of the primary needs of the federal constitution envisaged for India would be the setting up of All India Services common to the Centre and to the States. The members were to be recruited from the intelligent youth of the country by competitive examinations of high standard. They were to be free from political control, contended and having a sense of security. The idea was to build up a bureaucracy consisting of efficient officers of integrity and impartiality who could man important administrative posts and make possible the continued governance of the country unaffected by periodical changes in the political set-ups in the Centre and various States consequent on quinquennial elections to the various legislatures in the country. The recruitment to these services and their ultimate disciplinary control was to be with the Union Government but the officers would serve, under the immediate control of the State Governments, on various State cadres. Initially, the All India Services viz. the Indian Administrative Service and the Indian Police Service were created to replace the former Indian Civil Service and Indian Police respectively. p The statutory basis for the implementation of the above policy was provided by Chapter I of Part XIV of the Constitution (articles 308 to 314) supplemented by the All India Services Act, 1951 (hereinafter referred to as "the Act") passed by Parliament as envisaged in article 312 of the Constitution. The Act, initially applicable to the two Services above mentioned, was extended by Amendment Act 27 of 1963 to cover the constitution of three new All-India Services one of which was the Indian Forest Service (I.F.S. for short). S. 3 of the Act empowers the Government of India to make, after consultation with the State Governments, rules for the regulation of recruitment, and the conditions of service of persons appointed, to an All-India Service. Such rules are to be laid, as soon as possible after they are made and for not less than fourteen days, before Parliament.

THE RULES

3. Pursuant to the amendment of 1963, mutual consultations were held between the Union Government and the various State Governments and the broad pattern I already in existence for the Indian Administrative Service and the Indian Police Service was decided to be adopted for the Indian Forest Service also. Once this decision was taken, the statutory rules followed. There were five sets of rules framed between 1966 and 1968:

(i) The IFS (Cadre) Rules, 1966

(ii) The IFS (Recruitment) Rules, 1966

(iii) The IFS (Probation) Rules, 1968

(iv) The IFS (Pay) Rules, 1968

(v) The IFS (Regulation of Seniority) Rules, 1968 Some of the rules relevant for our present purposes may now be set out.

4(a) Cadre Rules: The Cadre Rules came into force on 1st July, 1966. Rule 3 provides that there shall be constituted for each State or group of States an Indian Forest Service Cadre. The cadre constituted for a State is called a 'State Cadre' and a cadre constituted for a group of states, a 'Joint Cadre'. Rule 4 is important and can be extracted:

"4. Strength of Cadres: (1) The strength and composition of each of the cadres constituted under rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Government in this behalf. (2) The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit;

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any time:

Provided further that the State Government concerned may add for a period not exceeding one year, and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one of. more posts carrying duties or responsibilities of a like nature to cadre posts."

Rule 7 empowers the State Government to make the appointments to the State cadre and one of the 'concerned' State Governments to a Joint cadre. Under rule 8, every cadre post has to be filled by a cadre officer. Rule 9 envisages temporary appointments of non-cadre officers to cadre posts. Under rule 10, cadre posts are not be kept vacant or held in abeyance for a period exceeding six months without approval of the Central Government. Under rule 11, temporary arrangements or leave arrangements could be made enabling a single cadre officer to look after two cadre posts but such arrangements cannot extend beyond 12 months.

(b) Recruitment Rules: The Recruitment Rules were also framed simultaneously and came into force on 1st of July, 1966. They contemplate the initial recruitment of the officers of certain Services already in existence (hereinafter referred to as the State Forest Service or S.F.S. in short). Rule 3 and rule 4 are relevant for our present purposes .

The relevant portions of these rules reads as follows: "3. Constitution of the Service:

The Service shall consist of the following Persons, namely:

(a) Members of the State Forest Service recruited to the service at its initial constitution in accordance with the provisions of sub-rule (1) of rule 4; and

(b) Persons recruited to the service in accordance with the provisions of sub-rules (2) to (4) of rule 4.

"4. Method of recruitment to the Service (1) As soon as may be after the commencement of these rules, the Central Government may Recruit to the Service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Governments and the Union Public Service Commission (U.P.S.C.):

(2) After the recruitment under sub-rule (1), subsequent recruitment to the Service, shall be by the following methods, namely:

(a) by a competitive examination (aa) by selection of persons from amongst the Emergency Commissioned officers and Short Service Commissioned officers of the Armed Forces of the Union who were commissioned after the Ist November, 1961, and who are released in the manner specified in sub-rule (I) of rule 7A;

(b) by promotion of substantive members of the State Forest Service.

Rule 6 makes it clear that all appointments to the service are to be made by the Central Government. No appointment can be made except after recruitment by one of the methods specified in rule 4. The appointments of persons recruited to the service under rule 4(2)(a) (i.e. by competitive examination) can only be made to the junior time scale of pay and the appointments of persons recruited to the service under rule 4(2)(b) (i.e., by promotion of substantive members of the State Forest Service) shall be in the senior time-scale of pay.

"However, under rule 6A, "an officer in the junior time scale of pay shall be appointed by the State Government concerned to a post in the senior time scale of pay if, having regard to his length of service, experience and performance in the junior time scale of pay, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of Pay."

Rule 7 deals with the recruitment by competitive Examination, rule 7A deals with recruitment by selection of persons from among officers released from the Armed Forces and rule 8 with recruitments by promotion. Rule 9 provides that the recruitment of persons under rule 8 is not to exceed 331/3 per cent of the number of senior duty posts borne on the cadre of that State.

(c) Pay Rules: The Pay Rules provide for time scales of pay for the members of the service. There are two scales prescribed, one a Junior scale, the top of which is reached after 18 years of service and the other a senior scale which runs over a period of about 22 years. Under rule 4, the initial pay of a member of the service appointed under rule 4(1) of the Recruitment Rules has to be fixed in the

junior time-scale of the service at he stage he would have got if he had been appointed in that scale on the deemed date of appointment in the year of allotment. Sub-rule (b) of rule 4(1) contemplates appointment of such an officer simultaneously to a post in the senior time scale and prescribes the mode of fixation of his salary in the senior time scale.

(d) Seniority Rules: So far as seniority rules are concerned, two rules are relevant for our present purposes. One is the definition of 'senior post' contained in rule 2(g), which reads thus:

> "2(g)'Senior post' means-
>
> a post included and specified under item (1) of the Cadre of each State in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations. 1966. and includes: a post included in the number of posts specified in item 2 and 5 of the said cadre, when held on senior scale of pay, by an officer recruited to the Service in accordance with sub-rule (1) of rule 4 or rule 7 of the Recruitment Rules."

Rule 3 describes the mode of appointment and the allotment of a year of allotment to every officer appointed to the service. The seniority of officers is determined primarily by the year of allotment and, inter-se officers having the same year of allotment, by the principles set out in rule 4.

THE REGULATIONS

5. It may be mentioned that the rules contemplate regulations being made by the Central Government in consultation with the State Government on various matters. Some of these regulations are also relevant:

> 6(a) Cadre Strength Regulations: The Fixation of Cadre Strength Regulations were framed in exercise of the powers conferred by rule 4(1) of the Cadre Rules. These regulations were first issued by a notification of the Government of India dated 31.10.1966 and were deemed to have come into force with effect from Ist October, 1966. There is only one substantive clause in this regulation, which reads thus:
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> "2. Strength and Composition of Cadres The posts borne on, and the strength and composition of the cadre of, the Indian Forest Service in each of the States, shall be as specified in the Schedule to these regulations."

The schedule proceeds to set out the strength and composition of the cadres of various States. In these matters before us we are concerned with the position in regard to three States,: Uttar Pradesh, Maharashtra and Orissa. The provisions of the Schedule in so far as these States are concerned are as follows:

Maharashtra U.P. Orissa

1. Senior posts under the State Government Chief Conservator of 1 1 1 Forests Deputy Chief Conservator of Forests - 2 -

Addl. Chief Conservator of Forests	1	-	-
Conservator of Forests	7	9	4
Conservator of Forests (Development Circle)	-	-	1
Conservator of Forests, Working Plan Circle	1	1	-
Conservator of Forests, Headquarters	1	-	-
Special officer, Revenue & Forest Department	1	-	-
Deputy Conservators of Forests	35	48	24
Deputy Conservators of Forests, Integrated Unit	3	-	-
Deputy Conservator of Forests, Working Plans	8	-	-
Deputy Conservators of Forests, Foresters' Training Division	-	2	-
Deputy Conservator of Forests, Forest Resources Survey Division	-	1	-
Forest Utilisation officer	1	-	1
Working Plan officer	-	7	4
Forest Extension officer	-	1	-
Chief Wild Life Warden	-	1	-
Timber Supply officer	-	1	-
Silviculturist	1	2	1
Working Plan officers			
Officer on Special Duty for Forest Labourers Cooperative Society	1	-	-
Officer on Special Duty for Forest Labourers Cooperative Society	1	-	-
Assistant to Chief Conservator of Forests	1	-	-
P.A. to the Chief Conservator of Forests	-	-	1
Total:	62	76	37
2. Senior posts under the Central Government	5	6	3
	67	82	40
3. Posts to be filled by promotion in accordance with rule 8 of the Indian Forest Service			

	(Recruitment) Rules 1966	22	27	13
4.	Posts to be filled by direct recruitment	45	55	27
		67	82	40
5.	Deputation Reserve 15% of 4 above	7	8	4
6.	Leave Reserve 11% of 4 above	5	6	3
7.	Junior posts 20% of 4 above	9	11	5
8.	Training Reserve 5% of 4 above	2	3	1
		90	110	53
	Direct Recruitment posts	68	83	40
	Promotion posts	22	27	13
	Total Authorised Strength	90	110	53

(b) Initial Recruitment Regulations: The second set of regulations is the Initial Recruitment Regulations framed in pursuance of rule 4(1) of the Recruitment Rules. These regulations are somewhat important for our present purposes and they have to be referred to in some detail. These also came into force with effect from Ist July, 1966. Regulation 3 provides for the constitution of a Special Selection Board (S.S.B.) for the purpose of making selections to the service. The S.S.B. consists of a number of officers, one of whom is the Chief Conservator of Forests (C.C.F.) of the State Government, concerned. Regulations 4. 5 and 6 have to be set out in full:

> "4. Conditions of eligibility-(1) Every officer of the State Forest Service who, on the date of constitution of the Service-
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> (a) is holding a cadre post substantively or holds a lien on such post, or
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> (b) (i) holds substantively a post in the State Forest Service,
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> (ii) who has completed not less than eight years of continuous service (whether officiating or substantive) in that Service, and
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> (iii)who has completed not less than three years continuous service in an officiating capacity in a cadre post or in any other post declared equivalent thereto by the State Government concerned, shall be eligible for selection to the Service in the senior scale.
>
> (2) Every officer of the State Forest Service who has completed four years of continuous service on the date of constitution of the Service shall be eligible for

selection to the Service in the junior scale.

Explanation: In computing the period of continuous service for the purpose of sub-regulation (1)(b) or sub-regulation (2) there shall be included any period during which an officer has undertaken:

(a) training in a diploma course in the Forest Research Institute and Colleges, DehraDun; or
(b) such other training as may be approved by the Central Government in consultation with the Commission in any other institution.

Preparation of list of suitable officers: (1) The Board shall prepare, in the order of preference, a list of such officers of State Forest Service who satisfy the conditions specified in regulation 4 and who are adjudged by the Board suitable for appointment to posts in the senior and junior scales of the Service.

(2) The list prepared in accordance with sub-

regulation (1) shall then be referred to the Commission for advice, by the Central Government along with:

(a) the records of all officers of State Forest Service included in the list;

(b) the records of all other eligible officers of the State Forest Service who are not adjudged suitable for inclusion in the list, together with the reasons as recorded by the Board for their non- inclusion in the list; and

(c) the observations, if any, of the Ministry of Home Affairs on the recommendations of the Board.

(3) on receipt of the list, along with the other documents received from the Central Government, the Commission shall forward its recommendations to that Government.

6. Appointment to the Service-The officers recommended by the Commissioner under sub-regulation (3) of regulations shall be appointed to the Service by the Central Government, subject to availability of vacancies in the State Cadre concern.

(c) The Appointment by Competitive Examination Regulations: We may next refer to the appointment by Competitive Examination Regulations, 1968. All that is necessary for our present purposes is that, under these regulations, a candidate, to compete at the examination, must, inter

alia have attained the age of 20 and not attained the age of 24 on the Ist day of July of the year in which the examination is held. There is a provision for relaxation of the upper age limit in respect of persons who are directly recruited to the gazetted cadre of the State Forest Service and put in less than 4 years' service (including 2 years' training for Diploma course in the Foreign Research Institute and Colleges, Dehradun on the Ist July, 1966. But persons who have put in more than 4 years' service in the State Forest Service would not be eligible to appear in these examinations firstly because they would have crossed the maximum age limit and secondly because the provision for relaxation does not enuse in their favour.

(d) Appointment by Promotion Regulations: Recruitment by promotion under rule 9(1) of the Recruitment Rules is governed by the Appointment by Promotions Regulations, 1966, which came into force with effect from 1.7.1966. A selection committee is constituted under regulation 3 to select candidates whose conditions of eligibility for promotion are defined in regulation 4. Briefly speaking, the selection committee is to consider the cases of all substantive members of the State Forest Service, who on the first day of January of that year, have completed not less than eight years of continuous service (whether officiating or substantive) in a post not lower in rank than that of Assistant Conservator of Forests. This Committee would then prepare a list of eligible members which, after approval by the U.P.S.C., would be forwarded to the State Government for making appointment to the cadre posts.

INITIAL RECRUITMENT

7. Kraipack case: Sometime after these rules and regulations were framed the initial recruitment to the service was taken on hand. S.S.Bs., including the C.C.F., made selections of officers to the various cadres. The process brought to light a serious defect in the constitution of the S.S.Bs. It has been mentioned earlier that, under the Initial Recruitment Regulations, a S.S.B. had been constituted for selection L) of officers at the time of the initial constitution of the service and that the Chief Conservator of Forests (C.C.F.) was one of the officers on the Selection Board. A perusal of the Schedule to the Cadre Strength Regulations would show that the C.C.F. was also one of the cadre posts mentioned in the Schedule. At the time of the initial recruitment, therefore, it was necessary also to recruit an officer who might eventually fill this post. Thus, the C.C.F. was not only on the S.S.B. but was also a prospective candidate for consideration in the initial recruitment. This somewhat anamolous position was considered by the Supreme Court in the case of A.K. Kraipak v. Union of India, AIR 1970 S.C. 150 in its judgment dated 29th April, 1969. The Supreme Court held that the initial recruitment to the State Cadre of Jammu & Kashmir was vitiated by the above circumstance and quashed the same. Though the question arose only with regard to one of the States, namely, Jammu & Kashmir, the position was identical in respect of several States in the Indian Union. Hence all the initial recruitments made to the various State cadres had to be quashed either suo moto by the Government or got quashed by proceedings in a court of law. It may be mentioned here that, in the States with which we are concerned here, the position was as follows. In Orissa, a select list of 41 officers was issued in January 1967, which had to be set aside as a result of the decision in Kraipak. In Uttar Pradesh, 85 persons were initially recruited to the service and this initial recruitment was held to be bad, on 11.12.1979, in Jagat Narain v. Union, CMWP 58 of 1968 following the decision in Kraipak. In Maharashtra, a selection was made on 2.6.1967 of 57 persons

but this selection was set aside by the High Court following Kraipak.

LEGISLATIVE INTERVENTION

8.(a) Rule 4(3A)-The decision in Kraipak having rendered the initial appointment in all the States invalid, the defect had to be cured and fresh selections had to be made by way of initial recruitment. Perhaps a second selection could have been made even under general law by way of implementation of the decision but Government wanted to make sure and, therefore, it introduced rule 4(3A) in the Recruitment Rules. This provision reads as follows:

> "4(3A)-Notwithstanding anything contained in this rule where appointments to the Service in pursuance of the recruitment under sub-rule (1) have become invalid by reason of any judgment or order of any court, the Central Government may make fresh recruitment under that subrule and may give effect to the appointments to the service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as aforesaid had been given effect to."

This rule was introduced with effect from 1.3.1971.

9. S. 3(1A)-It appears that certain doubts had arisen in the meanwhile regarding the power of the Government to make rules with retrospective effect. Since such retrospective effect was necessary for various reasons and particularly for implementing the decision of the Third Central Pay Commission, it was considered necessary to make a specific statutory provision clarifying the power of the Central Government to make rules, if necessary, with retrospective effect. Parliament, therefore, enacted the All India Service (Amendment) Act, 1975. The statement of objects of the Amendment Act shows that section 3 of the Act was amended "so as to empower the Central Government to make rules with retrospective effect subject to the safeguard that no rules shall be made retrospectively so as to prejudicially affect the interests of any person, who may be governed by such rules." The Amendment Act also proposed to validate rules which had been made in the past with retrospective effect. It may the convenient here to set out the new sub-section (lA) introduced in section 3 of the Act the 1975 Amendment Act. This sub-section reads as follows:

> " 1A-The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

It is also necessary to refer to section 3 of the Amendment Act, which was in the following terms.

> "3. Validation-No rule made, or purporting to have been made, with retrospective effect, under section 3 of the Principal Act before the commencement of this Act shall be deemed to be invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and accordingly every such rule and any

> action taken or thing done thereunder shall be as valid and effective as if the provisions of section 3 of he Principal Act, as amended by this Act, were in force at all material times when such rule was made or action or thing was taken or done.

10. Purvez Qadir's Case-Exercising the powers conferred by the amendment of the Act and the rules, the Central Government constituted fresh S.S.Bs. to consider the initial recruitment to the various State cadres in place of the one that was quashed in Kraipak. This raised the question of the validity of rule 4(3A), introduced with substantial retrospective effect. The seniority of persons recruited to the service as affected by the provision that recruitments to be made pursuant to the new sub-rule would be deemed to have taken effect from Ist October, 1966. The validity of the rule was, therefore, challenged by various concerned officers but this challenge was repelled by the Supreme Court in the case of Parvez Qadir v. Union of India & Ors., [1975] 2 S.C.R. 432.

11. Chothia Case-Another challenge was also posed to the initial recruitment made in certain States under rule 4(1). It appears that the S.S.Bs. had considered not all the officers who were eligible under the initial recruitment rules but only such number of them as was considered necessary to fill up the vacancies that were then available in the State cadre. Thus, for example, in the State of Maharashtra, although there were 116 officers eligible for consideration, the State is said to have considered only about 95 of them. The others were not, it is alleged, considered by the S.S.B. This procedure was challenged by a number of officers. A contention was raised that rule 4(1) and the regulation thereunder envisaged a consideration by the S . S . . Of (broadly speaking) all the officers belonging to the State Forest Service who had put in 8 years of service or 4 years of service (as the case may be) for recruitment to the service and that the S.S.B. had to arrange the names of all the officers found to be eligible and adjudged suitable for appointment in the order of preference. Thereafter, subject to the availability of vacancies, these officers had to be recruited to the service. It was also urged that in respect of each one of the officers not placed in the select list, the SSB had to record and forward to the U.P.S.C. specific reasons for their non-inclusion in the list. It was not sufficient for the S.S.B. generally to say that it had considered the other officers and found them unsuitable as initial recruits. This contention was accepted by the Supreme Court in Union of India v. Chothia., [1978] 3 S.C.R.

652.

12. Present Cases-In the present matters, we have to consider certain questions arising out of the second (in the case of U.P., the second and third) set of selections made by the SSBs in place of the first selection set aside by Kraipak. To avoid confusion, we may clarify here that what we are concerned with in all the cases is the INITIAL RECRUITMENT under s. 4(1) of the Recruitment Rules but made for the second or third time, the first selection having been set aside by Kraipak. The problem arises this way. It has been mentioned that the first selections by way of initial recruitments to the State cadres were made sometime in 1966 and 1967. The Kraipak decision came in 1969. In the meanwhile in many of the States the first selection had been followed up by subsequent recruitments largely made on the basis of competitive examination under rule 4(2)(a) of the Recruitment Rules and a few also by promotion under rule 4(2)(b). As a result of the second (and third) selections made by the SSBs, a number of officers in the respective S.F.S. have been given

appointment in the I.F.S. with effect from 1. 10.1966 under rule 4(3A) and have thus been placed in a position of higher seniority vis-a-vis the recruits under rule 4(2) (all of whom are, for convenience, hereinafter referred to as 'direct recruits'). The direct recruits are dissatisfied with this for obvious reasons.

13. The present batches of cases relate to three State cadres, Maharashtra, Orissa and Uttar Pradesh. Before dealing with the contentions, it may perhaps be convenient to give a brief resume of the position in each of these States.

14. Uttar Pradesh-The nine petitioners in the High Court (of whom 8 are appellants before this court) are direct recruits of 1968 and 1969 confirmed between 1969 and 1972 after probation. In this State, the initial recruitment was made in 1966-67 of 85 officers, 58 to posts in the senior time scale and 27 to posts in the junior time scale. Subsequently, six persons were promoted under rule 4(2)(b) and nine persons were recruited under rule 4(2)(a) of the Recruitment Rules. The initial recruitment having been declared bad, a fresh SSB was appointed and, on its recommendations 104 persons were appointed to the Service, 60 to senior time scale posts and 44 to junior time scale posts. Again in 1976, six more persons were added and thus 110 persons have been taken in as and by way of initial recruitment as against 85 persons taken in the first selection. The direct recruits are aggrieved by these selections. They contend:

> (a) Under the Maharashtra Schedule to the Cadre Regulations, there can be initial recruitment only to 28 junior posts. This has been exceeded by the second and third selections;
>
> (b) As on 23.12.1974, the total strength of the cadre rose to 104 plus 15, appointed earlier under rule 4(2), thus making a total of 119 as against an authorised strength of 110 only;
>
> (c) The second and third selections can only be made to validate the initial recruitment of 85 which had been invalidated and cannot be made use of to increase the number of initial recruits;
>
> (d) The third selection of six officers is, in any event, bad as the power under rule 4(3A) could have been exercised only once; and
>
> (e) It appears that in the subsequent selections certain officers not adjudged suitable at the first selection have been included. This could have been done only if their confidential report (CRs) subsequent to, or other than, those considered at the time of the first selection had been considered. This is not. justified as a recruitment under rule 4(3A) has to be made as if it was being made at the time of the initial recruitment i.e. 1. 10.1966 and subsequent records cannot be taken into account.

Their contentions having been rejected by the High Court, they are in appeal.

15. Maharashtra-Turning to Maharashtra, the position is as follows: The first selection was made on 2.2.1967 of 57 officers, 36 for the senior time scale posts and 21 for the junior time scale posts. This was set aside. On 13.7.1971, at the second selection, 116 officers were found to be eligible but only 66 officers were considered suitable for appointment. 39 out of 51 eligible officers were found suitable for senior scale out of whom 35 were appointed immediately and four later. 27 were found suitable for junior scale out of whom 23 were appointed initially and four later. All these 66 appointments were made w.e.f. 1.

10. 1966. The writ petitioners before the High Court (in. Spl. CA No. 2443/74) were persons who had joined the SFS in 1962 and had put in 4 years.of service as on 1. 10. 1986 and were thus eligible for consideration to junior scale posts. Their grievance was that the Government had not considered the case of all the officers who were eligible for consideration for junior posts (viz. those in S. Nos. 52 to 116 on the eligibility list) because the Government, which had found 23 officers suitable when they reached S. No. 96 stopped there and did not consider the names of the others at all as they should have done under Chothia. Initially, the writ petition was dismissed on 2.6.1979 for the failure to implead all persons affected as parties but this Court by its order dated 24.10.1980 (in CA 2359/80) restored the matter for fresh disposal after adding the affected persons as parties. The High Court eventually allowed the writ petition on 7.8.1981 holding that all the 116 officers should be considered and that the omnibus reason given for rejecting some is not sufficient compliance with regulation 5(2)(b) of the Initial Recruitment Regulations. It directed that now the 116 persons should be considered for the 90 posts available in the State cadre in strict compliance with regulation 5. Some of the respondents, comprising persons who had been directly recruited under rule 4(2) between 1968 and 1970, have preferred the appeals to this Court. While they have in principle no objection to a fresh selection, their contention is (a) that the recruitments to the senior time scale posts should not be redone as there is no controversy regarding the selection of 39 out of 5 1 eligible officers; (b) that the number of selections to junior time scale posts from out of the candidates S. Nos. 52 to 116 should not exceed 23; and (c) that the selections should be made on the basis of CRs upto 1. 10. 1966 without reference to subsequently changes made therein or the CRs for subsequent periods. On behalf of the writ petitioners before the High Court (respondents here), a preliminary objection has been taken. They point out that the appellants had not raised any protest of this type either at the stage of hearing of the original writ petitions or at the stage of their rehearing (when they had been added as parties). Neither was any counter affidavit filed nor was there any appearance on their beahlf. In view of this, it is contended that their appeal is not maintainable. It is also submitted that the selections now being made are for an initial recruitment as on 1.1().1966, a date at which the appellants had not been "born" into the service, and so they do not have any locus standi to complain against any recruitments as on the said date. Without prejudice to the above preliminary objections, they also support the judgment of the High Court on merits.

16. Orissa-In the case of Orissa, writ petitions have been directly filed in this court. There are eight petitioners who had joined the Orissa State Forest Service as on 1.4.1962. After two years' training, they were appointed as Assistant Conservators of Forests on 1.4.1964. By 1.4.1966 they had completed 4 years' continuous service in the State Cadre. They were, therefore, eligible for selection to junior scale posts in the IFS. Two selections were made by way of initial recruitment, once in

January 1967 when 4 1 officers were selected and, then in 1972 when 42 out of 82 eligible officers were selected. The petitioners were not adjudged suitable at either of these selections but they were eventually taken into the IFS under Rule 4(2)(b) between 1975 and 1977. The petitioners' contention is that their names were not considered at all either at the first selection or at the second selection under an impression that the number of posts in the junior time scale were limited. It is said that the selections were made by considering eligible officers in the order of seniority only to an extent necessary to recruit 41 or 42 persons and the Government did not consider all the 82 eligible officers and select 42 out of them arranged in the order of preference. This, it is argued vitiates the selection as held in Chothia. In the counter affidavit, these allegations are vehemently denied. It is claimed that the petitioners were all considered at the time of drawing up the earlier select lists. The respondents, are (a) the persons selected and appointed in 1972 who are still in service and (b) persons who have come in between 1966 and 1975 by way of recruitment under rule 4(2)(a). They plead that the writ petition should be dismissed on grounds of laches as the petitioners raised no such protest or objection at any earlier stage and have come to court after a lapse of twelve years. They also deny the allegations in the writ petitions and contend that the petitioners had all been duly considered at the earlier selections but had not been adjudged suitable for recruitment to the service.

17. These, in brief, are the problems raised in these cases and we may now proceed to deal with them one after the other.

CAN NUMBER EXCEED INITIAL SELECTIONS?

18. The first contention urged on behalf of the direct recruits is that rule 4(3A) authorises the Government to fill in only the number of posts the appointment to which had been declared void by the Court and no more. Thus, in U.P., the initial recruitment which had to be quashed because of Kraipak was of 85 persons. Taking advantage of this situation, the Government purported to recruit 104 persons on 23.12.1974 and six more in 1976, thus completing the total strength of 110 as against 85 first filled up. Likewise, in Maharashtra the first selection was of 57 persons which was expanded to 66 in 1971. ln Orissa, the first selection was of 41 persons but the second selection resulted in the recruitment of 42 persons. T his addition to the number of officers first recruited in the subsequent selections is challenged by the direct recruits principally because the subsequent selections, which are deemed to be a remaking of the initial recruitment, have been given retrospective effect from 1. 10.1966 and thus these persons rank higher in seniority to the direct recruits who have come in from 1967 onwards.

19. We are unable to accept this contention. The initial recruitment regulations clearly envisage that the S.S.B. should consider the cases of all the officers in the S.F.S. who fulfill the conditions of eligibility and judge their suitability for appointment to posts in the service and prepare a list of such officers in the order of preference. This selection was initially done by a Board, the constitution of which was found to be vitiated. The logical consequence of this would be that the process has to be redone by a competent and validly appointed S.S.B. from out of the eligible officers. It is not anybody's case that, in the second or third selections, the Board has considered persons other than those in the SFS who were eligible as on 1.10.1966. In other words, the range of selection was the

same as was considered or should have been considered by the initial S.S.B. It is also not anybody's case that the Board has considered the records of any of these officers subsequent to 1.10.1966. It, however, appears that there had been some changes, subsequent to 1. 10.1966, in the CRs of some of the officers pertaining to the period upto 1. 10.1966, consequent on representations made for expunction or modification of adverse remarks. Sri Kackar suggested that such revised CRs should not have been taken with account but we are unable to agree. We do not think that anyone can validly object to this course since the case of an officer who has succeeded in having an adverse remark against him struck off or modified is exactly on the same footing as if such adverse remarks had not been there at all or had been there in the modified form right from the beginning. What has happened therefore is only that, from the same set of officers as had been considered by the initial S.S.B., the subsequent Boards have adjudged more officers as suitable for recruitment, partly due to inherent differences of approach between one Board and another in the process of adjudication and partly due to the fact that the records of some of the officers for the relevant period had undergone changes which had to be taken into account. One further reason for the increase in the number of officers adjudged suitable (which we shall discuss in some detail later) is that the initial S.S.B. considered only some out of all the eligible officers and did not extend their scrutiny to all the eligible officers as they should have done as per the decision in Chotia to sum up, the decision in Kraipak necessitated a complete review of the first selection. On no logical basis can the subsequent Selection Boards be compelled to restrict their adjudication of suitability to the same list number of persons as the first Board had selected, so long as the same list of eligible officers and their records as on 1. 10.1966 were considered. We see, therefore, no t) merit in the first contention urged on behalf of the direct recruits.

STRENGTH & COMPOSITION OF THE CADRE

20. The second contention urged on behalf of the direct recruits is more substantial and is perhaps the vital contention on which their case rests. It is pointed out that the Cadre Strength Regulations not merely prescribe the strength of the various cadres but also their composition. One of the principal features of the composition as per the schedules is that the authorised strength prescribed is to consist of a certain number of senior posts and a certain number of junior posts. According to the direct recruits, the schedules prescribe the minimum number of senior posts and the maximum number of junior posts. It is pointed out:

(a) that all the posts enumerated against-items nos. 1 and 2 in each of the schedules are specifically described as senior posts; (b) that items nos. 3 and 4 set out in each of the schedules pertain to recruitments (subsequent to the initial recruitment) under rule 4(2) of the Recruitment Rules and that these items have to be left out of account in considering the initial recruitment under rule 4(1);(c) that all the posts enumerated against item no. 7 are described as junior posts; and (d) that the posts mentioned against items nos. S, 6, and 8 depend upon item no. 4 and so partake of the same character. Even assuming that all the posts against item nos. 5 to 8 are only junior posts, the total number of junior posts cannot exceed 13, 28 and 23 respectively in the case of Orissa, Uttar Pradesh and Maharashtra. On this premise, it is contended that the appointments purportedly made by way of initial recruitment in the subsequent selections have exceeded the quotas prescribed by the schedules in regard to senior and junior posts. Thus in U.P., while the first recruitment of 58

officers to the senior scale and 27 to the junior scale was in order, the second recruitment of 44 persons to junior scale posts was not warranted. Likewise, in Maharashtra while the Government restricted itself in the first selection to the appointment of 23 persons to the junior scale, the High Court has now directed the filling up of all the 90 posts in the cadre by considering the 116 eligible officers, overlooking that the maximum number of officers found eligible for consideration to senior scale posts is only 51 and that out of the balance of 65 persons only 23 can be appointed to junior scale posts. The petitioners submit that, while they do not wish to attack the validity of the appointment of officers in excess of the respective quotas, it is necessary at least to ensure that the officers so appointed do not steal a march over those who have been rightly recruited in terms of rule 4(2) after the first recruitment in terms of rule 4(1) had been completed.

21. The Government and the initial recruits seek to meet the above contention in two ways. They contend, firstly, that the assumption of the direct recruits that the prescription of strength of the service in the schedule will apply to the initial recruitment is wrong and that, even if this were correct, the further assumption that the schedule separately prescribes limitations on the number of junior and senior posts is wrong. Secondly, they submit that, even if both the above assumptions are granted, the argument overlooks that the rules confer power on the Central Government to alter the strength and composition of the cadres at any time and that, therefore, any appointments, even if made in excees, should be treated as an automatic expansion of the cadre strength and would not be irregular or invalid.

22. We may take up the second argument first. If it were correct. it would be a complete answer to the contentions of the direct recruits. The argument is that it is for the Central Government to fix the strength and composition of the cadres and that this power can be exercised by it at any time. The first proviso to rule 4(2) of the cadre rules, it is said, places this beyond all doubt. As against this, it is contended by the direct recruits that the proviso relied upon is only a proviso to rule 4(2) and does not extend to rule 4(1). it is urged that it has application only to the power of the Central Government to make alterations to the cadre strength in between the three-year review contemplated by rule 4(2). Shri Kackar, in this context, referred us to the following observations in Royappa v. State of Tamil Nadu, [19741 2 SCR 348 at p. 379:

> "We now turn to the first ground of challenged which alleges contravention of the second proviso to r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 and r. 9, sub s.(1) of the Indian Administrative Service (Pay) Rules, 1954. So far as the second proviso to r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 is concerned, we do not think it has any application. That proviso merely confers limited authority on the State Government to make temporary addition to the cadre for a period not exceeding the limit therein specified. The strength and composition of the cadre can be determined only by the Central Government under r. 4(l) and the Central Government alone can review it trienially or at any other intermediate time under r. 4(2)."

23. We do not think that such a narrow interpretation of the proviso is warranted. As we see it, the proviso only outlines the general principle that, whoever has the power to do a particular thing has

also the power to exercise it from time to time, if need be: (vide, s. 14 of the General Clauses Act, 1897). It had to be specifically put in because of the language of the main part of sub-rule (2) providing for a triennial review lest it should be construed as a restriction on the general power otherwise available. We, therefore, agree with the contention of the initial recruits that the Central Government has the power to alter the strength and composition of the cadres at any time. We are, however, still of the view that the contention urged on behalf of the initial recruits cannot be accepted for a different reason. If the terms of the relevant rules are scrutinised, it will be seen that the strength and composition of the cadre has to be determined by regulations and that these regulations have to be made by the Central Government in consultation with the State Government. It is a well settled principle that, if a statutory power has to be exercised in a particular manner, any exercise of that power has to comply with that procedure. [t follows, therefore, that if the initial composition can be only drawn up in consultation with the State Government and by regulations, it will not be permissible for the Central Government to modify or alter the same save in the same manner. In fact also, it has been brought to our notice, there have been subsequent increases in the authorised strength of almost all State Cadres and this has been effected by an appropriate amendment to the Regulations. It is not the case of the Government that before the second and third selections were made, either the State Government was consulted or the regulations were amended for increasing the strength. Nor is it even their case that there was any specific order by the Central Government changing the strength and composition of any cadre. We are, therefore, of opinion that it is not possible to accpet the contention of the initial recruits that the mere appointment of an excess number of officers should be treated as an automatic expansion of the cadre strength and composition in exercise of the power available under rule 4(1).

24. On behalf of the Government and the initial recruits, it was contended that the Regulations, in this respect, cannot be considered to be mandatory, particularly as they do not outline the consequences that will follow on a violation of their requirements. Reference was made, in this context, to the decision of this court in Lila Gupta v. Lakshmi Narain, [1978] 3 SCR 922 at p. 932; Atlas Cycle Industries Ltd. v. State of Haryana, [1979] 1 SCR 1070 at p. 1076 and 1084-5 and G.S. Lamba v. Union of India, AIR 1985 S.C. 1019 at p. 1032. We do not think the observations cited are in point. The nature and context of the provisions considered in the cited decisions were totally different. In Lila Gupta, the court was concerned with the question whether a marriage contracted in violation of the proviso to s. 15 of the Hindu Marriage Act should be considered void; and the Atlas case, the question was whether the non-lying of a notification before the Legislature rendered it null and ineffective; and in the Lamba case the court, in the context of certain facts, came to the conclusion that the exercise of a power of relaxation should not be treated as vitiated merely because reasons were not recorded. Here we are concerned with a set of Regulations whose whole purpose is to fix the cadre strength. It is also a provision in regard to an All-India Services in regard to the constitution of which both the Central Government and State Governments have a say. It is difficult to accept, in this context, the submission that the cadre strength could be varied without amending the Regulations and schedule of without consulting the State Government concerned. The former course would leave the strength of the cadre easily alterable, fluctuating and indeterminable and thus nullify the entire purpose of the Cadre Strength Regulation. So far as the latter is concerned, this Court held, in Kapur v. Union of India, [1975] 2 S.L.R. 531 that it is not open to a State Government to overutilise the deputation reserve in all All-India Service without consulting the

Central Government. Equally, we think, it is not open to the Central Government to alter the strength and composition of the Cadre without con-

sulting the State Government concerned. The second argument of the initial recruits is, therefore, rejected.

25. We may now turn to the first argument which, again consists of two parts. The first is that the restriction on number of officers in the schedule does not apply to the initial recruitment at all. It is argued that the idea and intention of the Initial Recruitment regulations is that all officers of the SFS found eligible for appointment either in the senior time scale or in the junior time scale and adjudged suitable for such appointment to the service by the S.S.B. and U.P.S.C. will automatically stand recruited to the service irrespective of the number of such of . Thus, it is argued that even if, in any particular State, the number of such officers exceeds the total authorised strength of that State Cadre as per the Schedule to the Cadre Regulations, there can be no bar to their initial recruitment to the service. In support of this contention, it is pointed out that items nos. 3 and 4 mentioned in the schedule, viz., posts to be filled by direct recruitment, are references to recruitments under rule 4(2) of the Recruitment Rules. It is then said that item no. S and 8 which are expressed as a percentage of item no. 4 can also be considered only as a reference to such subsequent recruitment. It follows, it is argued, that the total authorised strength which is the aggregate of item nos. 3 to 8 can pertain only to the strength of recruitments under rule 4(2) and not to the initial recruitment. Plausible as this argument appears, we are unable to accept this contention. The Cadre Regulations read with the Cadre Rules leave no doubt that the strength and composition referred to, or prescribed, therein is of the entire cadre of the service in the State concerned and is not restricted to the recruitments made after the initial recruitment. The total authorised strength referred to is the total number of officers who, at any point of time, can man the posts in the cadre. It could not have been the intention that the cadre should consist of an indefinite number of persons recruited by the SSB from the SFS supplemented by the number of officers referred to as the total authorised strength. This conclusion is reinforced by three important considerations. The first, as rightly pointed out by Sri Kackar, is that if the intention were that the Schedule was to operate only in respect of recruitments under rule 4(2), it would have been specifically so mentioned. Not only has this not been done; the regulations have been made retrospective with effect from the date of commencement of the Service which would be totally without purpose on the argument addressed by the initial recruits. Such a situation cannot be accepted. The second is that the number of officers referred to against item nos. 3 and 4 is the same as the numbers indicated against 1 and 2 which represents posts already in the State cadre and in Central Government and which have to be filled in by way of initial recruitment. Thus, for example, if in Maharashtra, 67 officers in the SFS are found eligible and are recruited to the service against the various cadre posts and if subsequently 67 officers are recruited against item nos. 3 & 4, the total authorised strength will rise to 134. The fact that the total of items 1 and 2 is the same as the total of items 3 and 4 indicates beyond doubt that, apart from officers recruited against items 5 to 8, the cadre, at any point, can only consist of the number prescribed as the authorised strength and not virtually twice that number. The more harmonious way of reading the entries in the schedule in that the maximum strength of the cadre at any point can only be the total authorised strength which will comprise of the senior posts mentioned against items nos. 1 and 2 and the adjuncts specified against items nos. 5 to 8. Items 3

and 4 are indicated in the schedule only to show that after the initial recruitments are over and recruitments are to be made to senior posts in the cadre under rule 4(2), the number of promotes should not exceed 331/3% of the senior posts in the cadre, which is the requirement of rule 9 of the Recruitment Rules. The break-up and composition of the cadre, referred to against items nos. 3 and 4, will only be relevant at the stage when, all the initial recruits having retired or ceased to be in service, the cadre comprises exclusively of persons recruited under rule 4(2). The third consideration which reinforces our conclusion is the significant mandate that the initial recruitment under rule 4(1) shall be "subject to the availability of vacancies in the State Cadre concerned". If the number of initial recruits can be indefinite and limitless as urged, this expression would be meaningless. The apprehension that the interpretation placed by us would create difficulties where the number of eligible officers of the SFS adjudged suitable exceeds the total strength is really without foundation. In the first place, a good deal of discussion preceded the framing of the rules and regulations and one can reasonably assume that the cadre strength has been fixed for each State with a fair idea about the number of SFS officers who may be eligible and are likely to come into the cadrs at the time of initial recruitment. The actual experience in the three States before us also shows that the contingency of such officers exceeding the total authorised strength is quite remote. Secondly, even if in any case there should be an excess of such officers, no insurmountable problems will be created. The Central Government, in consultation with the State Government (which would only be too anxious to place its eligible officers in the All-India Service) can increase the authorised total strength to accommodate them. Even otherwise, the surplus officers will be kept in the waiting list and will get into the service as and when vacancies available due to retirement or other vacation of office by the initial recruits arise or as and when the cadre strength is augmented. All that is necessary is that they should all be accommodated before recruitment under rule 4(2) is undertaken. There is, therefore, no difficulty in holding that the total authorised strength of the cadre is to be counted by including the initial recruits and that all eligible officers adjudged suitable cannot be recruited to the Service in excess of the total authorised strength.

26. The truly critical, and really difficult, question that needs consideration in these appeals is not that appointments by way of initial recruitment were made in excess of the total authorised strength but that the Government has failed to keep in mind the restrictions placed on the number of senior and junior posts in each cadre while making appointments. The point made is that, in each State cadre, the posts indicated against items nos. I and 2 are senior posts. These, say the petitioners, can be filled up subject to the availability by officers found eligible under regulation 4(1). Items nos. 3 and 4 do not at all figure at the time of initial recruitment. So far as items 5 to 8 are concerned, it is submitted, items 7 and 8 are clearly junior posts and, though there is no indication whether items nos. 5 and 6 are to be junior or senior posts, the total number of junior posts in the cadre cannot exceed the total number mentioned against items nos. 5 to 8. The grievance of the petitioners is that more recruitments have been made against junior posts than is permissible under the respective schedule.

27. The above contention arises in the following way. In U.P. as has been pointed out earlier, the first recruitment of 58 and 27 fell within the prescribed strength. But, in the second selection, 44 junior posts and again six more officers in a third selection were taken in. This it is said, was not justified as the maximum number of junior posts in the cadre was only 28. While it is suggested

that, strictly speaking, the appointment of surplus officers is invalid, the petitioners say that they do not want those appointments declared invalid but only pray that they should not be treated as initial recruits and hence should be placed in seniority below the direct recruits. In Maharashtra, the setting aside of the initial recruitment is not, and cannot be, complained against in view of the earlier decision of this Court. The only grievance here is that the High Court, while ordering a redo of the initial recruitment, by a second selection, has directed that, the 116 eligible persons should be considered for 90 posts, without specifying that officers eligible for senior scale will have to be considered for 67 senior posts and a maximum of only 23 officers could be taken for junior posts. In Orissa, 41 officers were recruited in 1967 and 42 in 1972 by way of initial recruitment. It is not known whether the number of officers appointed to junior posts has been restricted to 13 (the total of items nos. 5 to 8 in the Schedule) or not but there is no allegation that this number has been exceeded and so this question does not arise.

28. The answer of the initial recruits to this contention is that it proceeds on a complete misapprehension of the nature of the all-India Service and the composition of the cadre. They say that the rules contemplate two stages. The first is a recruitment of an officer to the All- India Service, whether under rule 4(1) or 4(2), in accordance with the regulations and subject to the total strength authorised thereunder. This is done by the Central Government and it is with this that we are concerned here. The second is the appointment of a person recruited to the Service to a particular post in the cadre. This has to be done by the State concerned under rule 7 of the Cadre Rules. At the first stage, the post which the person may eventually accept in the service is totally irrelevant. Once a person is recruited, whatever may be the post to which he may be assigned, he will be an I.F.S. Officer belonging to the cadre. To give an easily understood analogy, a person who succeeds in the written and viva voce tests held for recruitment to the Indian Administrative Service becomes a member of the Service once he is recruited having been selected and having come within the scope of the available posts in the service. Thereafter, whether he is to be appointed as a Collector or as an officer in the Secretariat or is to occupy one of the innumerable cadre posts allotted to the service and whether he should be given a junior post or senior post will be a concern of the State concerned and will have no bearing on the validity of his initial recruitment to the service.

29. The initial recruits also object to the attempt of the direct recruits to equate senior and junior posts with senior time scale and junior time scale posts mentioned in the Initial Recruitment Regulations. They say that a senior officer can occupy a junior scale post if exigencies of the service so require. This will not cause any prejudice to the officer because he will be carrying his own time scale of pay on any post. So also, a very junior officer can be appointed to a senior post, for the Pay Rules envisage an officer just recruited to the service being appointed simultaneously to a post on the senior time scale. Attention is also invited to the definition in the Seniority Rules which defines certain posts as senior in the light of the status of the officer occupying the same. It is urged, therefore, that though the Cadre Regulations describe some posts as senior and some as junior, this is only a description of the nature of the posts on the cadre and has no bearing on the nature of the initial recruitment. Hence, it is said, a reference to the junior and senior posts should not be confounded with the right of an appointee to be placed on a junior or senior time scale post, as the case may.

30. We have given careful thought to the various aspects of the issue and it seems to us that the initial recruits are right in contending that the Cadre Regulations do not lay down any water-tight classification of junior and senior posts in the manner contended for by the direct recruits. It is true that the Cadre Regulations make a reference to senior and junior posts but this is not intended to be an essential element in the composition of the cadre. For one thing, the Cadre Regulations do not indicate, in respect of a number of posts, whether they are to be considered as junior or senior. This would not have been the position if this classification was intended to be a vital feature of the composition. Secondly, the Cadre Regulations contain no definition of the words 'senior' and 'junior' posts. There is a definition only in the seniority rules but even that definition declares a post indicated in item no. 2 of the schedule as a senior post to be a senior post only when the current incumbent therein at any point of time is an officer on the senior time scale of pay. Nor can we conclude that the posts are divided into senior time scale and junior time scale posts, the former of which can be describe as senior, and the latter as junior posts. This is because the Pay Rules show that if regard be had to pay scales, some of the posts are on scale of pay higher than either of the scales indicated in rule 3 thereof. Again the rules envisage that (a) officers recruited under rule 4(1) should be placed on either of the scales depending, broadly speaking, on the length of their service; (b) direct recruits through competitive examination should be taken on the junior scale; and (c) that recruits through promotion should be placed on the senior scale. In other words, it cannot be postulated that entrants to the service will first enter on a junior scale post and work his way upward. Though rule 6A of the Recruitment Rules permits an appointment of an officer on a junior time scale post to a post on the senior time scale only if "having regard to his length of service, experience and performance in the junior scale of pay, the State Government is satisfied that he is suitable for appointment to a post in the senior time scale of pay", rule 4 of the Pay Rules envisages an officer recruited under rule 4(1) of the Recruitment Rules being simultaneously appointed to a post on the senior time scale. This rule indeed takes away the basis of the arguments on behalf of the direct recruits for it will be open to the State Government to appoint even officers recruited on junior time scale to posts on the senior time scale. Equally, there appears to be no specific bar to an officer recruited to the senior time scale being appointed to a post described as a junior post in the Schedule to the Cadre Regulations as such an officer will carry his time scale with him, although, normally, such an appointment is not likely to be made. All these rules therefore show that an officer being in the junior or senior time scale or a on a junior post or senior post depend upon various eventualities and it is not possible to pin down any posts as senior or junior or any officer as on one of the two time-scales. We are, therefore, inclined to agree with the initial recruits that the reference to junior and senior posts in the cadre should not be considered to be so a rigid or integral part of the cadre composition as to affect the validity of appointments made in excess of a particular number.

31. However, we would like to say that, in the view we take of the regulations as discussed below, it is unnecessary to express any concluded opinion on the above issue. One thing that is plain on the terms of the regulations is this: that, once a person is found to be eligible and is adjudged suitable for recruitment under the Initial Recruitment Regulations, he has to be taken into the service as part of the initial recruitment either immediately on 1. 10. 1966 or as and when vacancies arise in the cadre. When the number of officers found eligible for each category is less than the number of available posts in the corresponding category, there is no difficulty. But where the number of

suitable candidates to either category or in both categories exceeds the number of posts, difficulties arise on the stand taken by the direct recruits. In this context, we can conceive of four types of situations. To illustrate with reference to a concrete example, we may consider a State where, on the basis urged by the direct recruits, there are 45 senior and 20 junior posts in the cadre. Let us suppose that the SSB's selections reveal one of the following alternative states of affairs:

(i) that 25 persons in the SFS are suitable for senior posts and 15 persons for junior posts;

(ii) that 25 persons in the SFS are suitable for senior posts and 40 persons for junior posts; G

(iii)that 50 persons in the SFS are suitable for senior posts and 15 for junior posts; and

(iv) that 75 persons in the SFS are found suitable for senior post and 40 for junior posts.

Situation (i) will create no difficulty. The initial recruitment will be inadequate to fill up the cadre and the remaining posts will have to be filled in by recruits under rule 4(2). In situation (iii) also, there will be no difficulty if it can be agreed that persons found eligible for senior posts can be given junior posts for the time being. But if this is not conceded, five of the officers found suitable for senior posts will be left out even though five of the junior posts are vacant and will have to wait until enough senior posts fall vacant and then compete for them alongwith others who may have become eligible therefor by then. In situation (ii) above, though there are 40 persons found suitable for junior posts, twenty of them will have to be left out even though there are 20 senior posts remaining vacant. And, in situation (iv) above, 30 . Officers adjudged suitable for senior posts and 20 for junior posts will he left out. The situations thus result

(a) either in vacancies being unfilled though there are available officers adjudged suitable (b) or in officers adjudged suitable being left out altogether. The first of these positions is contrary to the spirit of the Recruitment. Rules that no cadre posts should remain vacant for long spells particularly when cadre officers are available to occupy them. It is necessary to remember in this context that if the vacancies are in senior posts they can be filed up only by SFS officers with X years' continuous service and, ex hypothesi, such officers will not be available for at least four more years, and if the vacancies are of junior posts, they can be filled in only after a competitive examination is held and this will take time. The second of the positions will leave the officers selected for the service and having more than 4 years of experience in the SFS in a very uneviable position. They cannot be appointed according to the petitioners, because there are no vacancies of posts for which there have been found suitable. They cannot seek recruitment under rule 4(2)(a), as regulation 4(3) of the Appointment by Competitive Examination Regulations prescribes an upper age limit of 24 years which they would have crossed already and permits relaxation of that age limit only to persons directly recruited to the SFS officers who had put in less than four years' service including their training period. They cannot also hope for recruitment under rule 4(2)(b) until they put in eight

years' of service. The result will be that these persons will be in the dilemma of looking on and seeing younger people and people with shorter service being recruited under rule 4(2). Surely that could not, have been the intention of these rules and regulations. Such an interpretation also amounts to an arbitrary and discriminatory treatment of a group of officers incompatible with the spirit of article 14 of the competition. We cannot, therefore, accept the contention that officers of the SFS who have been adjudged suitable by the SSB should not be taken into the service merely because their number exceeds the number of posts available. True, they cannot be appointed immediately but the consequence cannot be that they should be ignored and persons recruited under rule 4(2) given preference over them.

32. The correct solution, in our opinion, on a proper construction of the rules, is this. Even accepting the position, for the sake of argument, that the number specified for each category of posts in the Cadre Regulations limits, as contended for by the petitioners, the number of persons who could have been taken into the service in those posts in the first instance, the others are also entitled to be absorbed into the service as and when vacancies occur, by reason of Rule 6 of the initial Recruitment Regulations. The filing up of such vacancies will also be part of the initial recruitment contemplated under rule 4(1) and no recruitment under rule 4(2) can start before the above process is complete. It is only rational to interpret the rules as laying down that all those officers of the SFS with 8 or 4 years' experience, as the case may be, who are adjudged suitable for the service should be recruited to the service before any recruitment can at all start under rule 4(2). Whether all such persons are entitled to the back-dating of their appointment to 1. 10. 1966 or not, they are certainly entitled to contend that their appointment should be given precedence over the appointments of recruits under rule 4(2) of the Recruitment Rules. That being so, if there are vacancies against which recruitments could have been made under rule 4(2) they should have first gone to these left-overs among the eligibles. In this view of the matter the plea of the petitioners that they will get precedence over these surplus officers among the eligible cannot at all be accepted.

CAN THERE BE RECRUITMENT MORE THAN ONCE?

33. The next contention urged by Shri Kackar was that a fresh selection by way of initial recruitment can take place only once and cannot be repeated twice as has been done in the State of Maharashtra. He cited, in this connection, a decision of the Punjab & Haryana High Court in Union of India v. Harnek Singh, L.P.A. 406/83 decided on 20.9.83 affirming the decision of the Single Judge in W.P 545 75. We think that this argument proceeds on a misapprehension. To recapitulate the facts relating to this cadre, there were 116 officers who were eligible for consideration by the Selection Board. The first selection was of 57 persons (36 to senior scale posts and 21 for Junior scale posts). This was set aside because of Kraipak. This necessitated a reconsideration of the cases of the 116 eligible officers by a different SSB of suffering from the defect that vitiated the earlier one. This S.S.B. appears to have committed the mistake of considering only 97 persons out of 116. This was not correct, as it was the duty of the Selection Board, under Chotia, to consider all the 116 officers, arrange those adjudged suitable in their order of preference and give reasons for not including in the list the names of those not adjudged suitable. This has, therefore, necessitated the second selection which the High Court has directed. Apart from the fact that such a fresh selection has to follow as a necessary consequence of the setting aside of the earlier selection by the court, it is also specifically

warranted by the terms of rule 4(3A) which authorises such fresh recruitment under sub-rule (1) '.where appointments to the service in pursuance of sub-rule (1) have become invalid by reason of any judgment or order of any court. " It is not limited to a fresh recruitment becoming necessary on account of Kraipak.

34. The position in this regard in U.P. is slightly different. Here 5 persons were recruited initially but this became bad due to Kraipak. Subsequently, 104 persons were recruited. We have already held that this recruitment cannot be challenged either because it is of a number larger than the initial 85 or because it selects 44 officers eligible only for the junior time scales. Sri Kackar, however, contends that there was no justification to recruit six more persons in 1976. Here again, though ostensibly there have been two selections, there has been in substance only one selection in place of the one set aside by reason of Kraipak. It is not in dispute that the Selection Board has considered only such of the officers as were eligible on 1.

10. 1966. It is also common ground that the selection has been made only on the basis of the C. Rs. pertaining to that period. We have already pointed out that it is only right that persons should be adjudged on the basis of the correct C.Rs. pertaining to them. Any expunction or modification in the CR of a period naturally relate back to that period and no legitimate objection can be taken if the correct CRs are taken into account. In our view, therefore, there was nothing wrong in the selections made by the Selection Board. Though made in two stages, the Board was only considering and selecting suitable officers out of those eligible for consideration on 1- 10- 1966 on the strength of their CRs uptil then and this has to be taken only as the initial recruitment, done in two stages but really one.

RETROSPECTlVE EFFECT OF RULE 4(3A)

35. Sri Kackar took considerable pains to urge that the persons selected in 1972 and later cannot claim seniority over the petitioners recruited earlier under rule 4(2). The argument was that, even if this be treated as authorised by rule 4(3A), the retrospective effect to this rule has to be limited by reference to s. 3(lA) of the Act. He contends, relying on the decision in Inderjit Singh v. Union of India, [1975] 2 S.L.R. 839 that the Act has been framed in exercise of the powers conferred by Article 312 of the Constitution and that, unlike rules framed under Article 309 of the Constitution, the rules framed under the Act cannot have greater retrospective effect than is authorised by the Act itself. He therefore urges that rule 4(3A) should not be as interpreted as to "prejudicially affect the interests" of the petitioners who, by reason of their earlier appointments under rule 4(2) have earned a higher seniority than the respondents who are subsequent recruits under rule 4(1). We do not think it is necessary to go into all these questions. Granting all the premises of Sri Kackar, we think that rule 4(3A) does not offend any of them. The rule only places the fresh recruits in the same position as if they had been recruited in the first instance i.e. On 1.10.1966 as indeed they should have been and thus involves no retrospective effect beyond the date of commencement of the Act. It is also not correct to suggest that it prejudicially affects the direct recruits in any way. The fresh selectees of 1974 were all in the SFS on 1. 10.1966, at a time when the petitioners were nowhere in the picture. As we have pointed out earlier the petitioners acquire under the rules no right to be in the service until after the initial recruitment is over. The mere fact that, due to certain fortuitous

circumstances, that initial recruitment has had to be set aside and time has been consumed in the process of remaking that selection validly and properly, cannot, in our view, confer a right on the recruits under s. 4(2) so as to justify their complaint that some benefits given to them have been taken away. Under the rules, they can rank only after the candidates who get in by way of initial recruitment. In that position there is no change and the petitioners cannot be aggrieved that those in service in the SFS are found suitable for recruitment to the service and taken into the service w.e.f. 1. 10.1966. As we have observed earlier, those persons, even if not entitled to appointment as on 1.10.1966, are entitled to be appointed as and when vacancies arise and must always be given a position of precedence over the recruits under rule 4(2). In this view of the matter the direct recruits can hardly claim that they are prejudicially affected by the remaking of the initial recruitment. We, therefore, do not see any force in Sri Kakker's contention.

THE POSITION IN ORISSA

36. So far as orissa is concerned, the position is very simple. It clearly emerges from our discussion above that all the 82 eligible officers had to be considered for initial recruitment. Though it has been alleged in the counter- affidavit that they had been so considered, the Government note referred to by counsel dated 2.6.1967 (at p. 47 of the paper-book) indicates to the contrary. The S.S.B. merely selected 42 officers and made an omnibus observation that the others were found unsuitable. This, as explained in Chothia, is not proper compliance with the rules and so the selection has to be aside with a direction that it should be redone properly.

37. It has been vehmently contended for the respondents that the writ petition should be dismissed on the ground of laches. It is true that the petitioners have come to court somewhat belatedly. Counsel urged that they had been under a bona fide impression that they had been considered and found ineligible. But this does not appear to be correct. T here is on record (at p. 44 of the paper book) a representation made by one of them on 20.4.67 from which it seems that he was even then aware that his name had not been considered at all because of an interpretation that the junior posts were limited to 19 only. Nevertheless, they did not take any steps. The Gujarat, Karnataka and Maharashtra judgments on which the petitioners rely had been rendered in 1978, Jan. 1981 and August 1981 respectively but even after that the petitioners allowed time to lapse. There has therefore been delay on the part of the petitioners in coming to Court. Nevertheless, having regard to the complicated nature of the issues involved, we do not think that the petitioners should be put out of court on the ground of laches. The position as it has now emerged is that all 82 eligible officers as on 1.

10. 1966 should be considered and not merely some of them. Their suitability should be adjudged. If they are not found suitable, reasons should be given which the U.P.S.C. should be able to consider. If they are found suitable a list of such officers should be drawn up with ranking given to them in the order of preference for the consideration of the U.P.S.C. Since this has not been done the recruitments have to be set aside and the matter remanded with directions that it should be finalised as per the Recruitment Rules and in the light of the above discussion.

OTHER CONDITlONS

38. Before concluding, we may touch upon certain other contentions which were urged before us:

(i) Shri Kackar, for instance, made a reference to rules 3 and 4 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960, the Government of India's decisions thereunder and the decisions of this Court in Shri Amrik Singh and others v. Union of India and others, [1980] 2 S .L . R. 1 10 and R. R. Verma and Ors. v . The Union of India & Ors., [1980] 2 S.L.R. 335 interpreting the same. These rules confer powers on the Central Government to relax or dispense with the requirements of any rule in case they cause undue hardship in any particular case and also to decide questions arising as to the application or interpretation of certain rules applicable to All-India Services. Apart from the fact that no relaxation, dispensation or interpretation has been made by the Government, we see no occasion at all to involve these provisions and we need not go with the question of their interpretation.

(ii) Shri Kackar also made a reference to rule 3(3) of the Pay Rules inserted in 1980 to highlight the fact that since promotions in the service are under this rule, based on "merit with due regard to seniority", the interests of the direct recruits is vitally affected by the fall in their seniority resulting from the induction of initial recruits by a second or third or even further selection. We have already pointed out that this argument proceeds on a misconception. The direct recruits cannot have any grievance against the remaking of the initial selection because they cannot deny to the eligible officers on the S.F.S. their legitimate dues. No doubt, they can complain against the fall in their seniority if these subsequent selections are invalid but, if, as we have explained above, they are the logical consequence of Kraipak and have been validly made, they can have no grievance. In the latter event, it is actually the persons who ought to have been included in the first selection but were not, due to no fault of theirs, who have room for legitimate complaint that recruits under s. 4(2) have been allowed to forestall them.

(iii) Sri Kakkar submitted that the view we have taken that recruitment under rule 4(2) cannot be restored to until initial the recruitment under rule 4(1) is complete runs contrary to the following Observations of this Court in Parvez Qadir, [1975] 2 SCR 432 at p. 443.

> "If the interpretation urged by the petitioner's learned Advocate to be accepted, then the initial recruitment not having taken place till after the Kraipak's case was decided any subsequent recruitment to the Service under sub-rule (2) of rule 4 cannot take place. Such cannot, in our view, be the purpose of the rules and regulations, nor was it so in tended . "

We do not agree The above observations were made in the context of answering an argument that. the officers for initial recruitment have to be considered not as on 1. 10.1966 but as on the date of the (second, third or subsequent) selection that may have to be made consequent on Kraipak. The court pointed out that, to uphold such a contention would virtually render the rules and regulations meaningless as, then, one unsuccessful aspirant after another could hold up the selections by way of initial recruitment indefinitely and thus deprive others of benefits they could have otherwise obtained. This Court did not, and did not intend to, observe, inspite of the language of rule 4(2), that recruitment under that rule could be made even before recruitment under rule 4(1) are complete.

(iv) Shri Singhvi in supporting his plea that the appeal in the Maharashtra cases is not maintainable relied on the following observations of the Court in HarjeetSingh v. Union, [1980] 3 S.C.R. 459:

> "On the other hand we think that the Fixation of Cadre Strength Regulations made under Rule 4 of the Cadre Rules do not over-ride the Recruitment Rule, the remaining Cadre Rules and the Seniority Rules so as to render invalid any service rendered by a non-cadre officer in a Cadre post on the mere ground of breach of the Fixation of Cadre Strength Regulations, when there has been strict compliance with Rule 9 of the Cadre Rules. We think that fixation of Cadre Strength is the exclusive concern of the Central and the State Governments and the Regulations are made for their convenience and better relationship. Excessive utilisation of 'Deputation or Central Reserve' is a matter for adjustment and controversy between the Central and the State Governments and is of no concern to any member of the Service. For example no can cadre officer who is asked to fill a deputation post can refuse to join the post on the ground that the 'Deputation Reserve' has already been exceeded. The Regulations are not intended to and do not confer any right on any member of the Service, unlike some other Rules which do confer or create rights in the members of the Services. Among other Rules, for instance Rule 9(2) of the Recruitment Rules stipulates that the total number of persons recruited by promotion shall not at any time exceed 25% of the posts shown against item Nos. 1 and 2 of the cadre in the schedule to the fixation of Cadre Strength Regulations. Now, if at a point of time this limit is exceeded, direct recruits may have a just cause for complaint and it may perhaps be held that to the extent of the excess the appointments by promotion are invalid and confer no rights of seniority over direct recruits. But, as we said, the Fixation of Strength Regulations confer no rights on members of the Service and a mere breach-of the Regulations furnishes no cause of action to any member of the service on the ground that his seniority is affected in some round about way. We may add that there is no suggestion that Rule 9(2) of the Recruitment Rules was contravened."

He urged, on the strength of these observations, that the Cadre Strength Regulations only provide for internal adjustments at the discretion of the Government that no one can claim a right on the strength of those Regulations. In our opinion the argument places the case of the initial recruits on too high a pedestal to be accepted and we do not think that the cited observations help him sustain such a tall argument. The exception, given by way of illustration in the above passage, indicates that there can be circumstances in which rights can be created in certain recruits under the Cadre Strength Regulations. If we had agreed with the direct recruits that there had been some invalidity or infirmity attached to the subsequent selections by way of initial recruitment, we would not have rejected the appeal on the ground that the Regulations cannot give rise to a cause of action. It is only because we have come to the conclusion, on a proper interpretation of the Cadre Strength Regulations and the Recruitment Rules, that there is no error in the procedure followed by the Government that we are rejecting the appellants' contention.

39. We would like to make one more thing clear before we conclude. It is not our intention, nor can it be the result of our discussion, that the appointment of any of the officers recruited under rule 4(1) or 4(2) should be considered invalid. All the officers selected will have to be adjusted, if necessary, by amending the Cadre Regulations. The only result of our findings will be the readjustment of their seniority with necessary and consequential effect on their promotions in the Service.

CONCLUSlON

40. In the result, we see no merits in the appeals from U.P. and Maharashtra which, consequently, stand dismissed subject to what we have observed above. So far as the Orissa writs are concerned, they are allowed and the S.S.B. is directed to redo the selections in the light of the principles set out in this judgment. We make no order as to costs. S.L.