Union of India and Others

Vs

Dr. S. Krishna Murthy and Others

Jagjit Lamba and Another

Vs

Union of India and Others

T. Madiyal and Others

Vs

Union of India and Others

Union of India and Others

Vs

Subimal Roy and Others

Union of India and Others

Vs

G. K. Shenava and Others

Civil Appeal Nos. 4068-70, 4071-72, 4073-75, 4076 and 4077-90 of 1989

(M. M. Dutt, S. R. Pandian JJ)

26.09.1989

JUDGMENT

DUTT, J. -

1. These special leave petitions have been heard at length and elaborate submissions have been made on behalf of the parties at the preliminary hearing and, accordingly, we grant special leave in all these matters and proceed to dispose of the same on merits.

2. These appeals have been preferred by the Union of India and some erstwhile Emergency Commissioned Officers (for Short 'ECOs') and Short Service Commissioned Officers (for short 'SSCOs') and directed either against the judgment of the learned Single Judge of the Calcutta High Court or against the judgment of the Central Administrative Tribunal, Bangalore. The Tribunal has struck down the impugned rules, namely, Rule 3(2)(d) of the Indian Forest Service (Regulation of Seniority) Rules, 1968, hereinafter referred to as 'IFS (Regulation of Seniority) Rules, 1968', and

clauses (c) and (d) of sub-rule (3) of Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954, hereinafter referred to as 'IPS (Regulation of Seniority) Rules, 1954', as ultra vires Articles 14 and 16 of the Constitution of India and has directed the Government of India to assign fresh years of allotment to the ECOs and SSCOs, who were some of the respondent before the Tribunal.

3. Before the Calcutta High Court, Rule 3(2)(d) of the IPS (Regulation of Seniority) Rules, 1954 was involved and the High Court on a construction of that rule allowed the writ petition of the respondents and set aside the impugned order relating to the year of allotment of ECOs and SSCOs.

4. The period between November 1, 1962 and January 10, 1968 is marked by three events, namely, Indo-China War followed by Indo-Pakistan War and the proclamation of emergency. These ECOs and SSCOs voluntarily entered the Armed Forces of the Union of India at a time when the security of the nation was in peril due to external aggression. As they were engaged in defending the country by accepting the war service, they did not get any opportunity to enter into the civil services. The Central Government assured them that after the cessation of emergency, they will be rehabilitated in civil life so that they might not suffer on account of their rendering services to the nation. The grievance of the respondent who have been recruited to Indian Forest Service or the Indian Police Service from State Services is that although the ECOs or SSCOs, have been recruited in the said All India Services after the respondents, yet their year of appointment has been fixed earlier than the year of allotment of the respondents.

5. At this stage, we may refer to the impugned rules. Rule 3(2)(d) of the IFS (Regulation of Seniority) Rules, 1968 provides as follows :

"3. (2) The year of allotment of an officer appointed to the Service shall be -

(d) Where an officers is appointed to the Service in accordance with Rule 7-A of the Recruitment Rules, deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first of second change, as the case may be, having been eligible under Regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967.

Explanation. - If an officer, who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7-A of the Recruitment Rules and who have the same year of allotment."

6. Rule 3(2)(d) refers to Rule 7-A of the Recruitment Rules which provides, inter alia that till January 28, 1974, 20 per cent of the permanent vacancies in the Indian Forest Service to be filled by direct recruitment in any year shall be reserved for being filled by ECOs and SSCOs of the Armed Forces of Union of India, who were commissioned after November 1, 1962 and who have been released from the Armed Forces after a spell of service.

7. Clauses (c) and (d) of sub-rule (3) of Rule 3 of IPS (Regulation of Seniority) Rules, 1954 provides as follows :

"3(3)(c) The year of allotment of an Officers appointed to the Service in accordance with Rule 7-A

of the Indian Police Service (Recruitment) Rules, 1954, shall be deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance; as the case may be, having been eligible under Rule 4 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955.

Explanation. - If an officer, who qualified himself for appointment to the Service in a particular year could not be so appointed in that year on account of non-availability of a vacancy and is actually appointed in the next year then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7-A of the Recruitment Rules and who have the same year of allotment.

(d) The year of the Allotment of an Officers appointed to the Service in accordance with Rule 7-A of the Indian Police Service (Recruitment) Rules, 1954, having been eligible under the second proviso to sub-regulation (iii) of Regulation 4 of the Indian Police Service (Emergency Commissioned and Short Service Commissioned Officers) (Appointment by Competitive Examination) Regulations, 1971, shall be deemed to be the year in which he would have been so appointed at his first or second attempt, after the date of joining pre-commission training or the date of his commission where there was only post-commission training and also after the lapse of as many years as would have been necessary for him to complete his studies, in the normal course, for the award of the educational qualifications prescribed for direct recruitment to the Indian Police Service according as he qualified for appointment to the Service in his first or second chance as the case may be."

8. Both the above rules, namely, IFS (Regulations of Seniority) Rules, 1968 and IPS (Regulation of Seniority) Rules, 1954 have been framed under All India Services Act, 1954, hereinafter referred to as 'the Act'. The Act, before it was amended, conferred power to the Central Government to make rules for the regulation of recruitment and the conditions of service of persons appointed to an All India Service. No power was, however, conferred by the Act on the Central Government to frame rule with retrospective effect. The impugned rules, namely, Rule 3(2)(d) of the IFS (Regulation of Seniority) Rules, 1968 and clauses (c) and (d) of sub-rule (3) of Rule 3 of IPS (regulations of Seniority) Rules, 1954 are admittedly retrospective in operation. It is now a settled principle of law that if the statute under which a rule is framed does not confer on the authority concerned the power to make such a rule with retrospective effect, the authority will have to power to frame any rule with retrospective effect. The impugned rules, with which we are concerned, have been made by the Central Government with retrospective effect, although there was no such power conferred by the Act in that regard.

9. The All India Services (Amendment) Act, 1975 has been enacted by Parliament for the purposes of validating the impugned rules. By Section 2 of the Amendment Act, a new sub-section (1-A) has been inserted after sub-sections (1) of Section 3 of the Act, which has been referred to as "the principal Act" in the Amendment Act. Sub-section (1-A) provides as follows :

"(1-A) 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."

10. The provision for validation is contained in Section 3 of the Amendment Act and it reads as follows :

"3. 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 the 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."

11. The ECOs and SSCOs, who are some of the appellants, after demobilisation of the military emergency service, have been appointed in the Indian Police Service and the Indian Forest Service in 1969. In view of their past service in the army, which they had voluntarily joined for the defence of the country during the period between November 1, 1962 and January 10, 1968, the impugned rules were framed providing for the year of allotment of such officers appointed in the Indian Police Service or in the Indian Forest Service with retrospective effect from the date they would have been appointed at their first or second attempt after the date of joining pre-commission training or the date of their commission where there was only post-commission training. Thus, even if an officer has been appointed in an All India Service in 1969 in a regular manner after being selected on the basis of the result of the competitive examination in 1969, his year of allotment will be one or two years after his joining the pre-commission training in the army service. Suppose, an officer, after having been selected for the army service, joined his pre-commission training in 1963. In 1963 he was, therefore, eligible for taking a competitive examination for being recruited to an All India Service. If he was not successful, he would get a second chance in the next year, that is in 1964. If, after his release from the army in 1968, he took the competitive examination and successfully competed in such examination and was selected for appointment in the first chance, according to the impugned rules, his year of allotment would be 1963. If he was either not successful in this first attempt or did not avail himself of the same, he would have another chance to compete in the examination for recruitment in an All India Service in the next year, that is, in 1969 and if he was successful and appointed, his year of allotment would be 1964. In other words, the impugned rules give weightage to ECOs and SSCOs of past services rendered by them in the emergency army service.

12. It has been already noticed that the Tribunal has struck down the impugned rules as ultra vires the provisions of Articles 14 and 16 of the Constitution. According to the Tribunal, the impugned rules are discriminatory in nature without any reasonable justification therefor and thus offends against the provisions of Articles 14 and 16 of the Constitution. The same contention has been advanced on behalf of the respondents before us. It has not been disputed before the Tribunal and also before us, that the ECOs and SSCOs formed a definite class, distinct from the respondents or other officers of Indian Forest Service and Indian Police Service. In other words, it is the admitted position that the classification of ECOs and SSCOs is founded on an intelligible differentia which distinguishes them from the respondents and other officers of India Police Service and Indian Forest Service. It has, however, been strenuously urged that the differentia on which the classification is founded is lacking in rational relation to the object sought to be achieved by the impugned rules and, as such, it does not satisfy the test of reasonable classification as contemplated by Article 14 of the Constitution. This is also the view of the Tribunal.

13. We are unable to accept the contention. The impugned rules have been framed with a view to giving weightage to the ECOs and SSCOs in recognition of their past services in the army during

the period of emergency. We fail to understand why the classification has no rational relation to the objects sought to be achieved by the impugned rules. The classification has been made only for the purposes of compensating the ECOs and SSCOs for their lost opportunity because of their joining the army service and the impugned rules best subserve the purpose. Accordingly, we do not think that there is any merit in the finding of the Tribunal and also in the contention of the respondents that the impugned rules are violative of the provisions of Articles 14 and 16 of the Constitution.

14. Both the High Court and the Tribunal have taken the view that although Section 3 of the All India Services (Amendment) Act, 1975 validates the impugned rules purporting to have been made with retrospective effect, yet the impugned rules are invalid inasmuch as they prejudicially affect the interest of the respondents. Much reliance has been placed by the respondents on the provisions of the new sub-section (1-A) of Section 3(1) of the Act as inserted by Section 2 of the Amendment Act, 1975. Sub-section (1-A) provides, inter alia, that no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person to whom such rule may be applicable. The contention of the appellants is that sub-section (1-A) is itself not retrospective in operation and, as such, has no application to the impugned rules which are retrospective in operation, that is, before sub-section (1-A) was inserted in section 3.

15. It is, however, difficult to accept the contention of the appellants that sub-section (1-A) is only prospective and does not apply to the impugned rules which are retrospective in operation. It has been already noticed that the impugned rules have been validated with retrospective effect by Section 3 of the Amendment Act which, in validating any rule made with retrospective effect under Section 3 of the Act, provides that no such rule shall be deemed to have been 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 the Act (principal Act), as amended by the Amendment Act, were in force at all material times when such rule was made or action or thing was taken or done. In view of Section 3, it has to be deemed that provisions of Section 3, as amended by the Amendment Act, were in force at all material times when such rule was made.

In view of the provisions of Section 3 of the Amendment Act, sub-section (1-A) which has been inserted in Section 3 of the Act by way of amendment, must be deemed to be in force at the time the impugned rules were made. But the question is, even though sub-section (1-A) is deemed to have been there at the time the impugned rules were framed with retrospective effect, whether the impugned rules prejudicially affect the interests of the respondents.

16. It is urged on behalf of the respondents that the impugned rules take away the vested right of the respondents and, consequently, prejudicially affect their interest. Accordingly, it is submitted that the impugned rules are illegal and cannot operate retrospectively in the face of the provision of sub-section (1-A). This contention does not at all impress us. The respondents have been given a particular seniority in accordance, with the relevant rules. The seniority of the respondents is not taken away or interfered with by the impugned rules. The year of allotment of the respondents remain the same and is not altered to their prejudice. The impugned rules only provide for giving weightage to the ECOs and SSCOs for their past services in the army during the emergency period and their year of allotment will be determined in accordance with the impugned rules. It is, however, complained that by giving the ECOs and SSCOs a year of allotment which is prior to the year of allotment of the respondents, the respondents have become their juniors and their (respondents) chances of promotion are seriously affected.

17. At this stage, we may also notice the contention of Mr. Raju Ramachandran, learned counsel appearing on behalf of the some of the respondents. It is submitted by the learned counsel that as the respondents have acquired a particular seniority, Section 3 of the Act as amended, if read as suggested by the army officers, would contravene the fundamental rights of the respondents. This extreme contention is not sustainable on the face of it, for even assuming that the seniority of the respondents or their chances of promotion are affected by the impugned rules, surely it cannot be said that there has been a contravention of the fundamental rights of the respondents. Nobody has any fundamental right to a particular seniority or to any chance of promotion. It is not the case of the respondents that because of the impugned rules their cases for promotion will not be taken into consideration by the authorities. The decision in A. Janardhana v. Union of India ((1983) 3 SCC 601 : (1983) 2 SCR 936), has no manner of application to the facts and circumstances of the Instant case. In that case, this Court has laid down that it is open to the government to retrospective revise service rules, if the same does not adversely affect vested right. Further, it has been observed as follows : (SCC p. 627, para 38)

"After the promotee is promoted, continuously renders service and is neither found wanting nor inefficient and is discharging his duty to the satisfaction of all, a fresh recruit from the market years after promotee was inducted in the service comes and challenges all the past recruitment's made before he was borne in service and some decisions especially the ratio in Jaisinghani case (S. G. Jaisinghani v. Union of India, AIR 1967 SC 1427) as interpreted in two Bishan Sarup Gupta cases (Bishan Sarup Gupta v. Union of India, (1973) 3 SCC 1 : 1973 SCC (L&S) 1; Bishan Sarup Gupta v. Union of India, (1975) 3 SCC 116 : 1974 SCC (L&S) 506) gives him an advantage to the extent of the promotee being preceded in seniority by direct recruit who enters service long after the promotee was promoted. When the promotee was promoted and was rendering service, the direct recruit may be a schoolian or college-going boy. He emerges from the educational institution, appears at a competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with service."

18. We have already pointed out that the impugned rules do not affect the vested rights of the respondents adversely. In Janardhana case ((1983) 3 SCC 601 : (1983) 2 SCR 936) this Court was dealing with the question of seniority of promotees vis-a-vis fresh recruits from the market and observed that when the promotee was promoted and was rendering service, the direct recruit might be a schoolian or college-going boy. In the instant cases before us, the dispute is not between promotees and direct recruits, the latter having no past service to their credit. The ECOs and SSCOs are not in the position of direct recruits, for they have a record of past services in the army which have been taken into consideration for fixing their year of allotment in accordance with the impugned rules. So, Janardhana case ((1983) 3 SCC 601 : (1983) 2 SCR 936) has no manner of application to the facts and circumstances of the instant cases before us.

19. It is not that for the first time by the impugned rules, the past services of the ECOs and the SSCOs have been taken into consideration for the purposes of giving them their year of allotment with retrospective effect, that is to say, on a date earlier than their actual appointment in the India Police Service or in the Indian Forest Service, as pointed out by Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the government-appellants. The learned Additional Solicitor General has drawn our attention to the notings in the government files for the purpose of showing the government policy to rehabilitate the ECOs and SSCOs in All India Services, Central Services and State Services in order to ensure good response and to provides sufficient incentives for those who offered themselves for emergency commissions. These nothings start from November 17, 1962. It is not necessary for us to make a particular reference to the

notings in the government files. Suffice it to say that in view of the voluntary offer of services by the youngmen of our-country to defend to country against foreign aggression, the government took a very sympathetic view and took steps to compensate them after their discharge from the Emergency Commission Service, for the opportunity lot by them in joining the All India Services. One thing which is very significant to be mentioned here that although their past services were taken into consideration, the government did not relax the minimum qualifications required for the All India Services. These ECOs and SSCOs had to appear in the competitive tests held by the Union Public Service Commission and they were appointed only after they became successful in such tests.

20. In this connection, we may refer to the Officer Memorandum dated January 29, 1966 providing for the rehabilitation of the ECOs and SSCOs recruited since November 1, 1962, after their release from the Armed Forces. The contents of the Memorandum are in the nature of executive instructions, but such executive instructions were followed and were given effect to. Paragraph 6 of the Memorandum which deals with seniority and pay reads and follows :

"6. Seniority and pay. - Seniority and pay of those candidates who are appointed against the reserved vacancies in the All India and Central Services would be determined on the assumption that they entered service/post at the first opportunity they had after joining for pre-commission training. The principles regarding fixation of pay and seniority laid down in this Ministry's Office Memorandum No. F. 35/11/62-Ests. (B) dated August 6, 1963 read with Office Memorandum of even number dated February 15,1965 (copy enclosed) will apply mutatis mutandis to determine the pay and seniority of ex-Emergency Commissioned Officers/Short Service Regular Commissioned Officers appointed against the reserved vacancies."

21. Thus, although the impugned rules were not in existence in 1966, the executive instructions as contained in the Office Memorandum conferred the same benefit as conferred by the impugned rules. In other words, it is apparent that the executive instructions have now been adopted as rules framed under the Act. Even otherwise, the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967, framed by the President of India under the proviso to Article 309 and Clause (5) of Article 148 of the Constitution of India, contained similar provisions as to the seniority and pay of ECOs and SSCOs. Indeed, the provision of Rule 6 relating to seniority of pay of ECOs and SSCOs is somewhat similar to paragraph 6 of the Office Memorandum. The date of commencement of the said rules is significant to be noticed. Under sub-rule (2) of Rule 1, the said Rules shall be deemed to have come into force with effect from January 29, 1966 which is the date of the said Office Memorandum. It is, therefore, manifestly clear that the executive instructions, as contained in the Office Memorandum, have been incorporated in the form of rules framed under proviso to Article 309 and clause (5) of Article 148 of the Constitution of India.

22. It is, however, submitted on behalf of the respondents that in view of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960 (for Short 'Residuary Rules'), the said rules framed under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India will not apply to persons appointed to an All India Service. The contention, in our opinion, is not correct, for clause (a) of Rule 2 of the Residuary Rules provides that the Central Government may make regulations to regulate any matters relating to conditions of service of persons appointed to an All India Service for which there is no provision in the rules made or deemed to have been made under the Act and until such regulations are made such matters shall be regulated in the case of persons serving in connection with the affairs of the Union of India, by the rules, regulations and orders applicable to officers of the Central Services Class I. Admittedly, no rules under the Act were

then framed in regard to the seniority of ECOs and SSCOs and/or granting them weightage for their past war service and, accordingly, the rules framed under the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India applicable to Class I officers of the Central Government were also applicable to ECOs and SSCOs relating to their seniority in the All India Services.

23. It is urged on behalf of the appellants that while the benefit of weightage is being conferred on the discharged ECOs and SSCOs way back from 1966, the writ petitions of the respondents should have been dismissed on the ground of inordinate delay and laches. In support of this contention, some decisions have been cited by the appellants. Similarly, the respondents have also placed reliance on some other decisions of this Court. We do not think that after the writ petitions were entertained by the Calcutta High Court and by the Tribunal and disposed of on merits, it will be proper at this stage to dismiss the writ petitions on the ground of inordinate delay or laches. At the same time, it should be borne in mind that when a particular rule conferring benefits on a particular group of government servants in recognition of their past services in the army, has been in operation for over twenty years, this Court will be very slow to interfere with the rule and deprive such group of government servants of the benefits so conferred on them. This, however, does not mean that this Court will shut its eyes even though such rules are illegal and are violative of the provisions of Articles 14 and 16 of the Constitution. We have, however, held that the impugned rules do not offend against or infringe the provisions of Articles 14 and 16 of the Constitution.

24. Now, we may consider the contention of Mr. Lalit, learned counsel appearing on behalf of the respondents in the appeal arising out of S.L.P. (C) No. 10105 of 1988. These respondents were in the State Forest Service before 1966 and, subsequently, absorbed in the Indian Forest Service under the Central Government. It is not disputed that unlike Indian Police Service, the Indian Forest Service was constituted much later in the year 1966. It is also not disputed that the respondents were the first batch of incumbents or entrants in the Indian Forest Service. It is submitted on behalf of the respondents that the Indian Forest Service was constituted with the respondents as the initial recruits.

25. We may now refer to some of the provisions of Indian Forest Service (Recruitment) Rules, 1966, hereinafter referred to as 'IFS Recruitment Rules'. Rule 3 of the IFS Recruitment Rules relates to the constitution of the Service. It provides 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."

26. So, under Rule 3, the service consists of members of the State Forest Service recruited to the service at its initial constitution and persons recruited in accordance with the provisions of sub-rule (2) to (4) of Rule 4. The next relevant provisions is Rule 4. Sub-rule (1) and (2) of Rule 4, which are relevant for our purposes, are extracted below :

"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 Commission :

Provided that no member holding a post referred to in sub-clause (ii) of Clause (g) of Rule 2 and so recruited shall, at the time of recruitment, be allocated to any State cadre other than the cadre of a Union territory.

(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 November 1, 1962, but before January 10, 1968 and who are released in the manner specified in sub-rule (1) of Rule 7-A;

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

27. It appears from sub-rules (1) and (2) that there are four methods of recruitment. The first method is as contained in Rule 4(1), that is, the initial recruits from the State Forest Service. The other three methods of recruitment have been provided for in Sub-rule (2) including the recruitment of ECOs and SSCOs who were commissioned during the period of emergency and released in the manner specified in sub-rule (1) of Rule 7-A. It is, however, clear that the recruits under Sub-rule (2) including the ECOs and SSCOs are recruited after the initial recruits under Rule 4(1). Another thing to be noticed is that the first examination for recruitment in the Indian Forest Service was held by the Union Public Service Commission in 1967.

28. It is strenuously urged by Mr. Lalit that as the respondents were the initial recruits or, in other words, the Indian forest Service having been constituted with them, no person recruited under Rule 4(2) of the IFS Recruitment Rules can be given seniority over the respondents who are the initial recruits. As the Indian Forest Service itself was constituted in 1966, there is no question of giving seniority to any recruits beyond 1966. It is urged by the learned counsel that the first examination of the Indian Forest Service having been held in 1967 after the constitution of their service, there is also no question of lost opportunity so far as the ECOs and SSCOs are concerned. It is submitted that if such examinations had started to be held from 1962, then it could be said that the ECOs and SSCOs had lost the opportunity of competing in such examinations in view of their joining the army. Accordingly, it is submitted that so far as the Indian Forest Service is concerned, the consideration for giving weightage to the ECOs and SSCOs on the basis of their past services in the army does not apply.

29. Attractive though the contentions are, we are unable to accept the same. It is true that the respondents were the initial recruits when the Indian Forest Service was constituted in 1966 and that the other recruits including the ECOs and SSCOs entered the service after the respondents, but this fact has very little bearing on the question of fixing the year of allotment having regard to the past services of such recruits. The respondents themselves were appointed to the Indian Forest Service in 1966, but they have been given the year of allotment as '1964 1/2', that is to say, long before the service came into existence. If it is possible in the case of the respondents, we fail to understand why it is not possible in the case of other recruits including the ECOs and SSCOs. The grievance of the respondents is that the ECOs and SSCOs having been appointed subsequent to their appointment

or, in other words, they having entered service after the respondents, they could not be given a year of allotment prior to that allotted to the respondents. This contention is again misconceived. So far as the respondents are concerned, the year of allotment has been granted to them on the basis of certain principles, as contained in Rule 3 of IFS (Regulation of Seniority) Rules, 1968. The ECOs and SSCOs are, however, governed by the impugned rules and their year of allotment has been fixed as '1964' which is prior to the year of allotment of the respondents and accordingly, the ECOs and SSCOs are senior to the respondents in the Indian Forest Service. In the Indian Police Service also the year allotment of the ECOS and SSCOs is prior to that of those respondents who are in that service.

30. We do not think that any invidious discrimination has been made between the ECOs and SSCOs on the one hand and the respondents on the other, both in regard to Indian Forest Service and Indian Police Service, as contended on behalf of the respondents. As soon as it is found that the ECOs and SSCOs have been classified into a distinct and separate class, and that such classification is reasonable, no objection can be taken to the year of allotment given to them in accordance with the impugned rules. After giving our anxious consideration to the respective contention of the parties and after considering the different rules and regulations and also the fact that the ECOs and SSCOs had voluntarily offered their services for the defence of the country during the period of the emergency, disagreeing with the High Court and the Tribunal, we are of the view that no illegality has been committed by the government in framing the impugned rules with retrospective effect. We hold that the impugned rules are quite legal and valid.

31. For the reasons aforesaid, the impugned judgments of the High Court and of the Tribunal are set aside and all these appeals are allowed. There will, however, be no order as to costs in any of these appeals.

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