

R. S. Dass

Vs

Union of India and Others

Mrs. K. Goyal and Others

Vs

Union of India and Others

Pritam Singh and Others

Vs

Union of India and Others

Ajit Singh Nagpal

Vs

Union of India and Others

Civil Appeals Nos. 4370, 4372 and 4371 of 1983 and Writ Petitions (Civil) Nos. 2423-38 of 1982 and 13243 of 1984

(Sabyasachi Mukharji, K. N. Singh JJ)

11.12.1986

JUDGMENT

SABYASACHI MUKHARJI, J. (concurring). :-

1. I have had the advantage of reading the judgment in draft to be delivered by my learned brother K. N. Singh, J. I agree with him that the appeals and the writ petitions herein should be dismissed without any order as to costs. I also respectfully agree with him on the conclusions he has reached on the different contentions urged before us in these cases. It is not necessary to refer to the facts and the issues which have been exhaustively discussed by my learned brother. There is, however, one aspect of the matter on which I have certain reservations and I would like to express my views on this aspect so that the government and the authorities concerned may try to evolve a little more objective basis on that aspect.

2. As mentioned, the validity of the Select Lists of 1978, 1979, 1980 and 1983 for promotion of the Indian Administrative Service was impugned in these matters on the ground that the Committee had not recorded any reasons for superseding the appellants and/or petitioners. The question of recording of reasons had been discussed in the decision of this Court where Select List was quashed on the ground that the Committee had failed to record reasons in superseding senior officers. In view of Regulation 5 (1) to 5 (5) as prevailing at the relevant time which came up for interpretation

in *Union of India v. Mohan Lal Capoor*, this Court quashed the Select List on the ground that the Committee had failed to record reasons in superseding senior officers. It was held that it was incumbent on the Selection Committee to have stated reasons in view of the said regulation in a manner which would disclose as to how the record of superseded officers was judged in relation to the record of those officers who were preferred for selection. This Court reiterated in the context of the said regulation that there was a mandatory obligation to record reasons in superseding senior officers, and therefore in the absence of such reasons the Select List had been vitiated.

3. Regulation 5 was, however, as noted by my learned brother, amended by Notification dated June 3, 1977 and after the amendment, Regulations 5 (4) and 5 (5) were altered. It was provided that the Selection Committee should classify eligible officers as "Outstanding", "Very Good", "Good" or "Unfit" as the case might be on overall relative assessment of their service record. The Committee was required to categorise officers in four categories on the basis of an overall relative assessment of service record of the officers. After categorisation the Committee was required to place the names of those officers first on the list who might be categorised as "Outstanding" and thereafter those officers as mentioned aforesaid. Under the amended regulation if a senior officer is superseded, the amended Regulation 5 (5) does not require the Committee to record reasons for such supersession. The new amended regulation emphasised that the merit and suitability was the governing consideration and seniority played only a subsidiary role. It was only when merits were roughly equal, seniority was the relevant determining factor. Regulation 5 (5) as it stood prior to *Capoor* case laid emphasis on the role of seniority. This has been done away with.

4. It is stated on behalf of the respondents that it was felt difficult to record reasons in the prescribed manner as laid down by this Court in the said decision and the question was considered by a Conference of Chief Secretaries in May 1976 and was further considered. The Committee recommended that the system of categorisation of officers for promotion to the higher post should be followed in case of All India Service also and thereafter the categorisation as noted above was introduced in consultation with the State Governments. Indeed the amended provision Regulation 5 minimised the role of seniority in the process of selection and importance and primacy was given to merit. This indeed is a laudable object and helps in having the best for the country. It is also true that if selection is made on merit alone for promotion to higher service, selection of such an officer though junior in service in preference to his senior does not really amount to supersession. If promotion is made on merit alone, the senior officer per se had no legal right to promotion and if promotion is made on merit, it cannot be said that a senior officer has been superseded. It has been emphasised that the categorisation is done on the service record. This has also been emphasised that such categorisation is done on the service record including confidential character rolls as maintained by senior officers holding high positions. It is, therefore, according to my learned brother, sufficient safeguard against arbitrary categorisation and misuse of power. I have my reservations on this aspect though I accede to the position that in the absence of any other practicable solution, this is perhaps a sufficient safeguard and perhaps a practical way of facing a rather delicate task. It cannot be said nowadays if one is aware of the facts and currents of life that simply because categorisation and judgment of the service record of officers are in the hands of senior officers it is a sufficient safeguard. There has been considerable erosion in the intrinsic sense of fairness and justice in the senior officers by all concerned. From the instances of conduct of many, some of senior officers and men in high position, it cannot be said that such erosion is not only unjustified.

5. In order to rule out any grievance actual or fancied, some objective basis for the categorisation in the manner indicted should be laid down. If such objective basis is made known, the fact that after categorisation, the selection of junior officers in preference to senior officers need not state reasons

and would not be violative of the canons of justice but otherwise there will be room for suspicion and that too would not be wholly unjustified.

6. I would therefore like to suggest to the government and the authorities concerned that there should be some basis of the categorisation of the officers and such basis should be objective and not merely subjective evaluation and furthermore such basis should be formulated in the form of guidelines. Objectivity in subjective evaluation of the worth of the different officers would go a long way to generate a feeling that justice has been done and unless members of the administration feel that justice has been done to them, the administration cannot become an effective weapon for social change ushering in social justice.

7. I, however, hasten to add that in these cases I agree with my learned brother that justice has been done in accordance with the rules to the officers concerned and therefore concur with him in the order as proposed.

SINGH, J. :-

These three civil appeals are directed against the judgment of Division Bench of Punjab and Haryana High Court dismissing the writ petitions filed by R. S. Dass, Mrs. K. Goyal challenging the validity of the Select List prepared for the year 1978-79 for promotion of members of Punjab State Civil Service (Executive) to the Indian Administrative Service. During the pendency of these appeals 17 writ petitions were filed before this Court under Article 32 of the Constitution by Pritam Singh, Ajit Singh Nagpal and other members of the Punjab State Civil Service (Executive) challenging the validity of Select List prepared for the year 1979, 1980 and 1983. As all the cases rest upon similar facts and involve common questions of law, these were heard together and we consider it necessary to dispose them of by common judgment.

9. R. S. Dass, Mrs K. Goyal and Baldev Kapoor members of the Punjab State Civil Service (Executive) had completed more than eight years of service and they were eligible for promotion to the Indian Administrative Service but their names were not included in the Select List for the year 1978, while the names of officers junior to them were included in the Select List. R. S. Dass, Mrs K. Goyal and Baldev Kapoor filed three separate petitions before Punjab and Haryana High Court under Article 226 of the Constitution challenging the validity of Select List of 1978. Their grievance was that though they were senior, having good service record yet they were superseded by officers junior to them in an arbitrary manner without recording any reasons for the same. A Division Bench of the High Court dismissed all the three petitions by a common order dated November 20, 1979 rendered in Baldev Kapoor case holding that the Select List prepared for the year 1978 did not suffer from any legal infirmity. During the pendency of the aforesaid petitions, another Select List was prepared for the year 1979 and in that list also the name of R. S. Dass was not included. He filed another writ petition challenging the validity of that Select List also almost on the same grounds; that writ petition was also dismissed by the Division Bench on November 26, 1979. R. S. Dass and Mrs K. Goyal have preferred appeal before this Court by special leave. During the pendency of these appeals Pritam Singh and 15 other officers of the State Civil Service challenged the validity to Select List prepared for the year 1979 and 1980 before this Court by means of petitions under Article 32 of the Constitution. Ajit Singh Nagpal and other officers filed similar petitions challenging the validity of Select List prepared for the year 1983. The challenge to the validity of the Select List for the year 1978, 1979, 1980 and 1983 are almost on similar grounds.

10. Before the High Court S/Shri R. S. Dass, Baldev Kapoor and Smt. K. Goyal challenged the

validity of the Select List of 1978 on the ground that mandatory provisions of Regulation 6 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the Regulations) were violated in making the selection as the service records of eligible State officers including that of the petitioners had not been forwarded to the Union Public Service Commission and its approval was given without considering the recommendations made by the Selection Committee. Amendment made in Regulation 5 deleting the provision which required reasons to be recorded for the supersession of a State officer, was arbitrary and violative of Article 14 of the Constitution. The petitioners further challenged the vires of the Regulations on the ground of their being inconsistent with the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as the Rules) and inclusion of name of K. S. Raju was assailed on the ground that he had earned adverse remarks and yet he was selected. The petitioners further raised grievance that important material relating to the petitioners' service including certificate and letters of commendations as contained in their service records were not considered by the Selection Committee. The High Court by a well considered judgment rendered in Baldev Kapoor case dismissed all the three writ petitions on the findings that the Select List prepared for the year 1978 was in accordance with the Regulations and it did not suffer from any legal infirmity. It appears that validity of the Select List of 1978 was challenged by J. S. Chopra and other officers of the State Civil Service before the High Court under Article 226 of the Constitution on the same ground which had already been rejected by the Division Bench in Baldev Kapoor case. However having regard to the decision of this Court in Union of India v. Chothia (H. P.) Division Bench referred the matter for consideration to a larger Bench on the question as to whether the Select List was vitiated for the non-compliance of Regulation 6 (iii) inasmuch as reasons for the supersession of senior officers were not forwarded to the Commission. The Full Bench of the High Court held that the decision of this Court in Chothia case did not affect the position and the Division Bench decision in Baldev Kapoor case correctly laid down the law.

11. In the present appeals and petitions learned counsel for the appellants and the petitioners as well as Shri R. S. Dass, appellant who appeared in person argued the case and have made the following submissions :

- (1) The Select List of 1978-79, 1980 and 1983 are vitiated on the ground that Select Committee did not record any reasons in superseding the appellants/petitioners in excluding their names and including the names of junior officers in the Select List.
- (2) Amendment of the Regulation 5 (7) is violative of Articles 14 and 16 as it confers unguided power on the Selection Committee to supersede senior officers.
- (3) The Select List prepared for the year 1978 was vitiated for the non-compliance of Regulation 6 (iii) as no reasons were forwarded by the State Committee to the Commission along with record of officers proposed to be superseded.
- (4) Even if under the Regulations no reasons were necessary to be recorded, principles of Natural Justice and fair play required that reason should have been recorded.
- (5) The Select List prepared for the year 1978-79 was vitiated on account of the unauthorised participation of Shri I. C. Puri as a member of the Selection Committee.
- (6) Regulations 3 and 5 of the Promotion Regulations are violative of Rule 8 (1) of

the Recruitment Rules inasmuch as the Promotion Regulations impinge upon the State Government's power to make recommendations for appointment to the service.

(7) The State Government deliberately delayed its comments on the Select List prepared for 1980 to the Public Service Commission with a view to give undue advantage to the officers included in the 1979 list for promotion to the Indian Administrative Service.

12. Before we consider the submissions made on behalf of the appellants/petitioners we think it necessary to refer to the relevant statutory provisions regulating promotion of members of the State Civil Service to the Indian Administrative Service. The Central Government in exercise of its powers under Section 3 of the All India Services Act, 1951 framed Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as the Rules). Rule 4 provides for recruitment to the service; according to this rule recruitment to the Indian Administrative Service is made by : (i) direct recruitment through competitive examination; (ii) promotion of substantive members of the State Civil Service (Executive) and (iii) selection from amongst persons holding posts in substantial capacity in connection with the affairs of the State, who may not be members of the State Civil Service. Rule 6 provides that no appointment shall be made to the Indian Administrative Service (hereinafter referred to as the Service) except in accordance with the recruitment by one of the methods specified in Rule 4. Rule 7 provides for direct recruitment through competitive examination. Rule 8 (1) confers power on the Central Government to appoint members of the State Civil Service by promotion to the Service on the recommendation of the State Government and in consultation with the Union Public Service Commission in accordance with regulations which may be framed by the Central Government. In exercise of its powers under Rule 8 (1) the Central Government has framed the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the Regulations) laying down procedure of selection for appointment to the service by promotion. Regulation 3 provides for constitution of a committee consisting of the Chairman of the Union Public Service Commission or a member of the Commission and other members as specified in column 2 to the schedule to the Regulations. Regulation 5 provides that the Committee shall ordinarily meet at intervals not exceeding one year to prepare the list of such members of the State Civil Service found suitable for promotion to the service on an overall relative assessment of the service. This list prepared by the Committee is forwarded to the Commission by the State Government along with the records of members of those selected as well as of those proposed to be superseded together with the observation of the State Government on the recommendation of the Committee. Regulation 7 provides that the Union Public Service Commission shall consider the list along with the documents received from the State Government and on its approval the list so approved shall form the Select List of the members of the State Civil Service. The Select List shall ordinarily be in force until a fresh list is prepared and approved for the subsequent year. Regulation 8 lays down that appointment of members of the State Civil Service shall be made by the Central Government on the recommendations of the State Government in the order, in which the names of members of the State Civil Service appear in the Select List. These Regulations clearly provide for the selection of officers of the State Civil Service on merit on the overall relative assessment of their service record. In the process of preparing the Select List if the seniors are not found suitable for promotion and their names in the Select List are not included and, if junior officers are found suitable for the inclusion of their names in the Select List, the seniors stand superseded, as the selection is made on merit and not on the basis of seniority.

13. Learned counsel for the appellants/petitioners assailed the validity of the Select List of 1978, 1979, 1980 and 1983 on the ground that the Committee did not record any reasons in superseding

the appellants and petitioners. Support was drawn from the decision of this Court in Union of India v. Mohan Lal Capoor where Select List was quashed on the ground that the Committee had failed to record reasons in superseding senior officers. The court held that it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose as to how the record of superseded officers stood in relation to the record of those officers who were preferred for selection. The court further held that the Selection Committee was under a mandatory obligation to record reasons in superseding senior officers, in the absence of any such reasons the Select List was vitiated. Regulation 5 (1) to (5) which came up for interpretation before this Court in Capoor case were as under :

5 (1) The Committee shall prepare a list of such members of the State Civil/Police Service as satisfy the condition specified in Regulation 4 and as are held by the Committee to be suitable for promotion to the service. The number of members of the State Civil/Police Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the preparation of the list.

(2) The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(3) The names of the officers included in the list shall be arranged in order of seniority in the State Civil/Police Service :

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil/Police Service the Committee shall record its reasons for the proposed supersession.

14. On construction of the aforesaid Regulation 5 (5) this Court held that it was a mandatory obligation on the Committee to record reasons if it proposed supersession of a senior member of the State Civil Service. The court further held that since no reasons were recorded the Committee had failed to discharge a mandatory obligation, as a result of which the list prepared by it was rendered illegal. Regulation 5 was, however, amended by notification dated June 3, 1977, and after the amendment Regulation 5 (4) and (5) read as under :

5 (4) The Selection Committee shall classify eligible officers as "Outstanding", "Very Good", "Good" or "Unfit" as the case may be on an overall relative assessment of their service records.

5 (5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as "Outstanding", then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of the names inter se within each category shall be in the order of their seniority in the State Civil Police Service.

15. Under the amended Regulations the Committee is required to categorise officers in four

categories on the basis of overall assessment of service record of officers. After categorisation the Committee is required to place the names of those officers first on the list who may be categorised as "Outstanding" and thereafter names of those officers shall be included who are found to be "Very Good". And only thereafter the names of those officers shall be included who may be categorised "Good". If in this process any senior officer is superseded the amended Regulation 5 (5) does not require the Committee to record reasons for the supersession. The amended Regulations have brought in significant change and now the process of selection as contemplated by amended Regulations do not require the Selection Committee to record reasons for the supersession of officers of the State Civil Service.

16. In Capoor case the Regulation 5 (2) as it then existed laid down that selection for inclusion in the list shall be based "on merit and suitability with due regard to seniority" which meant that merit and suitability in all respects was the governing consideration and seniority was to play a secondary role, but if merit and suitability were roughly equal, seniority was the determining factor or if it was not reasonably possible to assess inter se merit and suitability of two eligible officers and come to a firm conclusion, seniority tilted the scale. Regulation 5 (5) as it then existed laid emphasis on the role of seniority as it laid down that in the process of selection, review or revision of the Select List if it was proposed to supersede any member of State Civil Service, the Committee shall record its reasons for the proposed supersession. The necessity to record reasons clearly implied that seniority of an officer in the State Service could not be ignored altogether. This Court in Capoor case held that if senior officer was superseded by including the name of a junior officer in the Select List in preference to a senior officer, the Committee was under a mandatory legal obligation to record reasons in a manner which would disclose how the record of each officer superseded stood in relation to record of others who were to be preferred. The court further emphasised that recording of reasons was necessary as it provided a visible safeguard against possible injustice and arbitrariness in making the selection. It appears that the Committee making selection constituted for the purpose of preparing the Select List felt difficulty in recording reasons, in the precise manner as laid down by this Court. The question was considered by a conference of Chief Secretaries held in May 1976 and it appointed a Committee to consider the question. The Committee noted that consequent to the judgment of this Court in Capoor case, there was tendency for the Selection Committee to go by seniority subject to the rejection of the unfit, even though Regulations prescribed merit as the criteria for selection. The Committee reported that the system of categorisation of officers for promotion to the higher post should be followed in case of All India Services also. After considering the report of the Committee, the Conference of Chief Secretaries made recommendations to the Union Government that necessary amendment should be made in the Regulations providing for grading of eligible officers as "Outstanding", "Very Good", "Good" for the purpose of being placed in the Select List to ensure that Select List is drawn upon the basis of merit and suitability and to obviate the necessity of giving reasons for the supersession of any officer.

17. In pursuance to the recommendations of the Chief Secretaries' Conference the Central Government in consultation with the State Governments and the Union Public Service Commission, amended Regulation 5 by its notification No. 11039/6/76-AIS(I)-A dated June 3, 1977.

18. The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given primacy to merit. Now the Committee is required to categorise the eligible officers in four different categories, namely "Outstanding", "Very Good", "Good" and "Unfit" on overall relative assessment of their service records. After categorisation is made the Committee has to arrange the names of officers in the Select List in accordance with the procedure

laid down in Regulation 5 (5). In arranging the names in the Select List the Committee has to follow the inter se seniority of officers within each category. If there are five officers who fall within the "Outstanding" category their names shall be arranged in the order having regard to their inter se seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of "Very Good" and "Good". Similarly if a junior officer's name finds place in the category of "Outstanding", he would be placed higher in the list in preference to a senior officer included in the "Very Good" or "Good" category. In this process a junior officer if categorised "Outstanding" or "Very Good" would supersede his seniors. This cannot be helped. Where selection is made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to his senior does not strictly amount to supersession. Where promotion is made on the basis of seniority, the senior has preferential right to promotion against his juniors but where promotion is made on merit alone, senior officer has no legal right to promotion and if juniors to him are selected for promotion on merit the senior officer is not legally superseded. When merit is the criteria for the selection amongst the members of the service, no officer has legal right to be selected for promotion, except that he has only right to be considered along with others. In *Gurdayal Singh Fiji v. State of Punjab* this Court held that a member of State Civil Service has no legal right to promotion, instead he has only right to be considered along with others. But assuming that appellants/petitioners stood superseded by the reason that junior officers to them were included in the Select List, no reasons were necessary to be recorded in view of the amended statutory provisions.

19. Learned counsel urged that reasons if recorded ensure objectivity and impartiality. In the absence of reasons the Committee may act in arbitrary manner to supersede senior officers which would be violative of Articles 14 and 16 of the Constitution. We find no merit in the submission. Article 16 ensures equality in matters relating to appointment and promotion to an office or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the IAS has right to be considered alongwith others for selection for promotion. If eligible officers are considered on merit, in an objective manner no government servant has any legal right to insist for promotion nor any such right is protected by Article 14 or 16 of the Constitution. Article 16 does not insist that reasons should be recorded for the non-selection of a member of a State Service.

20. Learned counsel urged that in the absence of statutory provision, principles of natural justice require the Selection Committee to record reasons for the supersession of officers to enable them to make representation against their supersession.

21. We find no merit in the submission. Principles of natural justice do not require an administrative authority or a selection committee or an examiner to record reasons for the selection or non-selection of a person. In the absence of a statutory provision an administrative authority is under no legal obligation to record reasons in support of its decision. There is no scope for applying principles of natural justice in matters relating to selection of suitable members of State Service for promotion to a higher service. In *Mohan Lal Capoor* case similar submission was made that principles of natural justice require communication of reasons to the officer proposed to be superseded top enable him to make representation. Both the learned Judges who constituted the Bench repelled the contention. Mathew, J. held that no notice was required to be given to a senior officer if he was proposed to be superseded in favour of a junior on the ground of his greater merit and suitability; the learned Judge further observed that it was not expedient to extend the horizon of natural justice. Beg, J. also rejected the submission that minimal requirement of just and fair treatment in such a situation would be to inform the officer to be superseded the reasons recorded

for his proposed supersession to enable him to make representation. On such a ground expansion of scope of natural justice was not justified.

22. The principle of audi alteram partem is a basic concept of principles of natural justice. No one should be condemned without hearing is the essence of justice. Courts of law apply this principle to ensure fair play and justice in judicial and quasi-judicial matters. Of late these principles have been extended even to administrative actions also. However, the application of the audi alteram partem rule is not applicable to all eventualities or to cure all ills. Its application is excluded in the interest of administrative efficiency and expedition. Sometimes legislation itself excludes the application of the rule. It is difficult to conceive exhaustively all eventualities and circumstances for application or exclusion of the rule. In *A. K. Kraipak v. Union of India*, a Constitution Bench of this Court held these rules operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also, especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones, and an unjust decision in an administrative enquiry may have a more far-reaching effect than a decision in a quasi-judicial enquiry. The Bench, however, further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose.

23. In *Union of India v. Col. J. N. Sinha* this Court held that if a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provisions the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

24. In *Chairman, Board of Mining Examination v. Ramjee, Krishna Iyer, J.* speaking for the Court observed : [SCC p. 262, SCC (L&S) p. 231, para 13]

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of such situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction.

25. It is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations. Applications of these uncodified rules are often excluded by express provision or by implication. In *Union of India v. Tulsiram Patel* a Constitutional Bench of this Court considered the scope and

extent of applicability of principles of natural justice to administrative actions. Madon, J. summarised the position of law on this point and observed as follows : [SCC p. 479, SCC (L&S) p. 735, para 101]

So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; not can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case.

In the instant case statutory regulations do not expressly or by implication apply the rule of audi alteram partem in making the selection. On the other hand the scheme contained under the regulations exclude the applicability of the aforesaid rule by implication. Select List is prepared each year which ordinarily continues to be effective for a year or till the fresh Select List is prepared. If during the process of selection a senior officer is proposed to be superseded by virtue of not being included in the Select List, and if opportunity is afforded to him to make representation and only thereafter the list is finalised, the process would be cumbersome and time consuming. In this process it will be difficult for the Committee to prepare and finalise the Select List within a reasonable period of time and the very purpose of preparing the Select List would be defeated. Scheme of the Regulations therefore clearly warrants exclusion of principle of audi alteram partem. No vested legal right of a member of the State Civil Service who after being considered, is not included in the Select List, is adversely affected. Non-inclusion in the Select List does not take away any right of a member of the State Civil Service that may have accrued to him as a government servant : therefore no opportunity is necessary to be afforded to him for making representation against the proposed supersession.

26. The next submission was that the Select List prepared for 1978 was vitiated for the non-compliance of Regulation 6 (iii) inasmuch as the State Government failed to forward to the Commission reasons recorded by the Committee for supersession of seniors as required by that regulation. It was urged that even after deletion of Regulation 5 (7) [sic 5 (5)] which required Committee to record reasons for supersession of an officer by the Notification dated June 3, 1977, Regulation 6 (iii) remained unamended; therefore, the Committee was under a mandatory duty to record reasons, and the State Government was required to forward the same to the Commission. Since the Committee failed to comply with the mandatory obligation, the Select List prepared for the year 1978 stood vitiated. To support this submission reliance was placed on the decision of this Court in Chothia case. In that case interpretation of Regulation 5 of the Indian Forest Service (Initial Recruitment) Regulation of 1966 came up for consideration. Regulation 5 laid down method for preparation of list of suitable officers of State Forest Service adjudged by the Selection Board for appointment to posts in the Senior and junior scales of Indian Forest Service. Regulation 5 (2) was as under :

5 (2) The list prepared in accordance with sub-regulation (1) shall then be referred to the Commission for advice, by the Central Government alongwith -

(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.

27. Construing the aforesaid regulation this Court held that both the clauses (a) and (b) of Regulation 5 must be complied with before the recommendations are sent to the Commission. Clause (b) of the Regulation 5 laid down that where eligible officers of the State Forest Service were not found suitable, reasons must be given by the Board for their non-inclusion in the Select List. The court held that Regulation 5 (b) which provided for recording reasons was mandatory and it must be complied with. But in view of the amendments made in regulations under consideration providing for selection on the basis of categorisation of members of the State Civil Service into different categories on the assessment of their service records, principles laid down in Chothia case are not applicable. After the amendment of Regulation 5 the Committee was under no legal obligation to record reasons for supersession of a senior officer and for that reason it did not record any reasons; therefore, the question of forwarding any reasons by the State Government to the Commission did not arise. Regulation 6 (iii) which required the State Government to forward to the Commission along with reasons as recorded by the Committee for the proposed supersession of any member of the State Civil Service was consistent with the unamended Regulation 5 (7) [sic 5 (5)] which required the Committee to record reasons for supersession of a member of the State Civil Service. By Notification No. 11039/3/78-AIS (1) dated June 2, 1979 clause (iii) of Regulation 6 was deleted as a result of which the State Government ceased to be under any obligation to forward to the Commission reasons recorded by the Committee for supersession of officers. Having reared to the legislative history and the purpose and the object which was sought to be achieved by the amendments there could be no mandatory legal obligation on the Committee to record reasons. Regulation 6 (iii) merely required the State Government to forward reasons if recorded for supersession of the officers to the Commission, but if no reasons were recorded the State Government was under no legal obligation to forward the same to the Commission and its non-compliance did not vitiate the Select List. Since the entire system of selection has been changed on account of amendment in the regulations, the principles laid down in Chothia case do not apply to the instant cases. The Madhya Pradesh High Court in *P. C. Pradhan v. Union of India* and the Punjab and Haryana High Court in *J. S. Chopra* case have taken similar views.

28. The appellant/petitioners entertain an apprehension that in the absence of reasons the selection would be made in an arbitrary manner overlooking the claim of a senior officer eligible for promotion to the Indian Administrative Service. In this regard it was urged that selection on merit confers wide discretion on the authority making selection and in the absence of reasons there would be no objectivity and the members of the State Civil Service would receive discriminatory treatment by the Committee. The scheme contained in promotion regulation and the criteria prescribed therein for preparing the Select List do not justify any such apprehension. The principle object of the promotion system as contained in the regulations is to secure the best possible incumbents for promotion to the Indian Administrative Service which is the backbone of the administrative machinery of the country. The efficiency of the administration in the Union as well as in the State largely depends upon the efficiency of the members of the Indian Administrative Service. Efficient public service is in public interest and the public interest is best secured if reasonable opportunity for promotion exist for all qualified members of the State Civil Service and only those who are found efficient and suitable in all respects are promoted. This object is sought to be achieved by the Regulations in prescribing merit as the sole test for promotion. In order to judge the merit the regulations provide for categorisation of eligible members of the State Civil Service on the basis of their service records which are scrutinised by the Committee consisting of high ranking officers of

the State Government and the Central Government. The service records of all eligible officers whose names are included in the proposed Select List and the records of even those who are not selected is again scrutinised by the State Government and the Union Public Service Commission and only thereafter final shape is given to the selection list. There are, therefore, adequate checks and safeguards at different stages at different authorities. But if any dispute arises with regard to the arbitrary exclusion of a senior member of the State Service the matter can always be investigated by perusing his service records and comparing the same with the service record of officers who may have been preferred and that would certainly disclose the reasons for the suppression of the senior officer. It is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of Select List under the regulations for promotion to All India Service, ensures objective and impartial selection. The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the Select List. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power.

29. It was urged that the selection merely based on the appraisal of service record is arbitrary and it is bound to cause injustice as entries in the character roll of members of the State Service depend upon the whims of the recording officer. It is true that the service records contain remarks which sometimes may not be fully justified, but for the reason the scheme contained in the rules and regulations for promotion cannot be characterised unreasonable. There are various methods of selection viz. by competitive examination, written test-cum-viva voce, or by assessment of service records. For the purpose of recruitment to the Indian Administrative Service from amongst the officers of the State Civil Service, latter method namely, selection on the basis of scrutiny of service records has been accepted. This is a well recognised system for making selection. In *Parvez Qadir v. Union of India* while considering similar submission the court observed : [SCC pp. 329-30, SCC (L&S) pp. 285-86, para 17]

The past performance of an officer being one of the criteria for making selection, the only way to adjudge their suitability is by perusal of confidential records. It is true that confidential records do not sometimes give a true picture due to the vagaries of the recording officer. The human fallibility and want of objectivity in the superior officer are factors which cannot be eliminated altogether. For that matter one can ask what method is perfect? For this reason certain safeguards have been provided in order to make them as objective as possible. If there is an adverse entry against any officer that officer is given an opportunity to explain. After the explanation is given, the superior officer as well as the government ultimately decide whether the remark by the recording officer was justified or not, and if it is not justified the Government can always order its deletion. Sometimes vagary may enter into the service confidential, and if cannot be postulated that all superior officers

who have been empowered to finalise such entries will suffer from any of those traits because the actions of the officer concerned may not have any immediate impact upon him and consequently his sense of objectivity will not be dimmed or strained. In our view, often enough, the entries in confidential records are themselves an insignia of the capacity and capability of the maker as a superior officer as well as a commentary on the quality of the officer against whom that confidential remark is being noted. But those who are charged with the duty to oversee that these entries are fair, just and objective quite often do intervene and rectify any entry on representation being made against it at the proper time. In these circumstances, we do not think that the method of selection based on past performance as disclosed by the confidential records is not the proper method for adjudging suitability of the officer concerned.

30. An ancillary argument was raised to demonstrate discrimination. It was urged that the Regulations do not lay down any guidelines for categorisation of officers of the State Service into various categories with the result the Committee even if acting bona fide may apply different standards at different times. The argument was further developed that the Committee members change and, therefore the same Committee or different Committee is likely to apply its own standard in judging the suitability of officers in different manner in different years which would result in discrimination. This submission is founded on the assumption that the Committee is free to categorise officers at its sweet will but that assumption is misconceived. Under Regulation 5 the Committee has to categorise officers on the basis of their service records into four categories as discussed earlier. The categorisation is objectively made on the material available in the service records of the officers. There is hardly any scope for applying different standards or criteria at different times as the service records namely the character roll entries would indicate the category of the officers as adjudged by the authority recording annual confidential remarks. There is no dispute that in Punjab, under the State Government's instruction the authority competent to record annual remarks in the character roll of members of the State Civil Service, has been directed to indicate the category of the officer, e. g. whether the officer is "outstanding", "very good" or "good". The annual confidential remarks as available in the character roll of officers of the State Civil Service therefore indicate the category to which a particular officer may belong. We were informed by counsel for the Union Government during the hearing of the cases that under instructions issued by the Union Government all the State Governments are following similar pattern in categorising members of the State Civil Service in the annual remarks made in their confidential records. This has brought uniformity in the character roll entries. Since category of members of State Civil Service is available in their service record, the Committee has no discretion to disregard the same. The Committee has to categorise the members of the State Service on the basis of entries available in their character roll and thereafter to arrange their names in the proposed list in accordance with the principles laid down in Regulation 5. There is no scope for applying different standard or test in preparing the list, or to practise discrimination. We, therefore, find no merit in the submission that Regulations 3 and 5 are discriminatory and they violate Articles 14 and 16 of the Constitution.

31. Learned counsel urged that recommendations of the Selection Committee which prepared the Select List for the year 1979 was illegal on account of the participation of Shri I. C. Puri, as he was not entitled to be a member of the Selection Committee, his participation in the deliberation of the Committee was unauthorised. Regulation 3 (1) provides that a committee shall be constituted consisting of the Chairman of the Commission or any other member of the Commission representing it and other members as specified in corresponding column 3 of the schedule. The proviso to the regulation lays down that except the Chairman or the member of the Commission, no other person who is not a member of the service shall be member of the Committee. It further provides that the Central Government may after consultation with the State Government amend the

schedule. Other members of the Committee as specified in column 3 of the schedule to the regulation as applicable to the State of Punjab specified the (1) Chief Secretary to the Government (2) Development Commissioner (3) Seniormost Financial Commissioner, and (4) a nominee of the Government of India, not below the rank of Joint Secretary as members of the Committee.

32. Senior posts in the Indian Administrative Service not below the rank of Commissioner are determined in accordance with the schedule to the Indian Administrative Service (Fixation of Cadres Strength) Regulations, 1954. The cadre regulation did not provide for any post of Development Commissioner for the State of Punjab as a result of which there was no separate post of Development Commissioner. Instead, the Financial Commissioner was made Incharge of the Development Department and he was designated as Financial Commissioner (Development). Shri I. C. Puri who was posted as the Financial Commissioner (Development) was the Incharge of the Development Department at the relevant time and as such he was appointed a member of the Selection Committee and admittedly he participated in the deliberations of the Selection Committee which held its deliberation on November 30, 1979 for preparing the Select List of 1979. In the affidavit filed on behalf of the State of Punjab it has been asserted that the Development Department was under the charge of the Financial Commissioner who was designated as Financial Commissioner (Development) and Shri Puri who was holding the rank of the Commissioner was the Secretary Incharge of the Development Department.

33. On behalf of the appellant/petitioners it was strenuously urged that Shri Puri was not the Secretary Incharge of the Development Department on November 30, 1979. Instead Hardayal Singh was Incharge of the Development Department as Special Secretary in the Department of Rural Development, Panchayats, Agriculture and Forests. In the counter-affidavit filed on behalf of the State Government it is asserted that Hardayal Singh was merely posted Special Secretary to the Government. He was neither holding the rank of Commissioner nor he was the Secretary Incharge of the Development Department. However, Hardayal Singh was given the rank of Secretary simply to protect his special pay in the time scale of selection grade in the India Administrative Service. He was not Incharge of the Department as Secretary, instead he was working under overall control of Financial Commissioner (Development) namely, Shri I. C. Puri. This finds support from the note recorded by Hardayal Singh on December 5, 1979 requesting the Chief Secretary for allocation of work between the Financial Commissioner (Development) and Special Secretary. The relevant note is available on record. It is thus evidence that Hardayal Singh was working under the overall control of Shri I. C. Puri who was the Financial Commissioner (Development) and Secretary Incharge of the Development Department. The material placed on record leaves no room for any doubt that Shri I. C. Puri designated as Financial Commissioner (Development) was also discharging the duties and function of the Development Commissioner. He was, therefore holding the dual charge as no separate post of Development Commissioner had been sanctioned by the government. These facts clearly show that for all purposes Shri Puri was working as Development Commissioner. As Financial Commissioner (Development) he was exercising same powers and discharging same functions which could be performed by a Development Commissioner; therefore he was competent to participate in the deliberations of the Selection Committee. While considering this question we cannot be oblivious of the fact that at no stage any objection was raised against functioning of Shri Puri as a member of the Selection Committee or his participation in the deliberations. There is further no allegations of male fide or bias against Shri Puri. There is evidence on record to show that recommendations of the Selection Committee constituted under Regulation 3 were unanimous, which were scrutinised by the State Government and the Union Public Service Commission before the same were approved.

34. Learned counsel placed strong reliance on the decision of this Court in A. K. Kraipak case. In that case initial recruitment to the Indian Forest Service was challenged. In pursuance of the Indian Forest Service (Initial Recruitment) Regulations, 1966 a special Selection Board was constituted for selecting officers for appointment to the Indian Forest Service, from officers of the forest department of the State of Jammu and Kashmir. The Acting Chief Conservator of Forests of the State was a member of the Selection Committee which made recommendations for the recruitment; he participated in the Selection Board's deliberations in preparing the list of selected candidates in order of preference, although he himself was a candidate for selection. The court held that the participation of the Acting Chief Conservator vitiated the recommendations made by the Selection Board as there was conflict between the Acting Chief Conservator's personal interest and his duty and further he was a judge in his own cause. The court further held that taking into consideration probability and ordinary course of human conduct, there was reasonable ground for believing that the Acting Chief Conservator was likely to have been biased. In these circumstances the court held that the selection made by the Board could not be considered to have been made fairly and justly as it was influenced by a member who was biased. Principles laid down in Kraipak case do not affect the validity of the recommendations made for the preparation of Select List of 1979 as Shri I. C. Puri was neither biased against any of the appellant/petitioners, nor was there conflict between his personal interest and duty. Shri Puri had no interest in the inclusion or exclusion of a member of the State Civil Service nor had he any personal interest in preparing the list. There is no allegation of bias or malice against Shri Puri, his participation in the meeting of the Selection Committee did not render the Select List of 1979 illegal.

35. Shri B. S. Khoji, learned counsel for Pritam Singh and other petitioners in the writ petitions urged that Promotion Regulations 3, 5 and 7 are ultra vires rule 8 and the entire selection made in pursuance of the impugned regulations are illegal. Rule 8 (1) provides that the Central Government may on the recommendations of the State Government and in consultation with the Commission and in accordance with such regulations as the Central Government may frame after consultation with the State Government and the Commission, recruit to the Indian Administrative Service persons by promotion from amongst the substantive members of State Civil Service. According to the learned counsel, Rule 8 (1) confers power on the Central Government to make recruitment to the Indian Administrative Service by promotion from amongst the members of the State Civil Service on the recommendations of the State Government, in consultation with the Commission. However, Regulations 3, 5 and 7 rob the State Government of its power of making recommendation for recruitment to the service. The plea of ultra vires can be sustained if Regulations 3, 5 and 7 are inconsistent with Rule 8 (1). In our opinion Rule 8 (1) confers power on the Central Government to make recruitment to the Indian Administrative Service by promotion from amongst the members of the State Civil Service on the recommendations of the State Government in consultation with the Commission. It further contemplates that the recommendations of the State Government and consultation with the Commission which is a constitutional obligation as envisaged by Article 320 of the Constitution, would be in accordance with regulations which the Central Government may frame after consultation with the State Government and the Commission. Rule 8 (1), therefore, contemplates the State Government's recommendation and the consultation of the Commission in accordance with the regulations framed by the Central Government. The Central Government has framed promotion regulations which provide method and manner of selection. Regulation 3 provides for constitution of Selection Committee to prepare list of suitable officers in accordance with Regulation 5. The list so prepared is forwarded by the State Government to the Union Public Service Commission along with records and the observations of the State Government in accordance with Regulation 6. Thereafter the Commission considers the list under Regulation 7. The

Commission may make any change in the list received from the State Government and thereafter it may approve finally with such modification as in its opinion it may be just and proper. The list as finally approved by the Commission forms the Select List of members of State Civil Service which ordinarily remains in force until its review and revision. Regulation 9 lays down that the appointment of members of State Civil service shall be made by the Central Government on the recommendations of the State Government in the order in which their names appear in the Select List. In our opinion these regulation do not in any manner impinge upon the powers of the State Government to make recommendations to the Central Government as contemplated by Rule 8. There is, therefore, no merit in the petitioners' submission.

36. On behalf of Pritam Singh, petitioner, it was urged that the State Government acted mala fide in deliberately delaying its comments to the Commission on the list of 1980 and thereby it manipulated appointment of Tejinder Singh, M. P. Mitra and Gurdev Singh. In order to appreciate this submission it is necessary to refer to the facts which are not disputed. The names of Tejinder Singh, M. P. Mitra and Gurdev Singh were included in the Select List approved for the year 1979, and as such they were entitled to promotion during the period of currency of that list. On December 31, 1980 Selection Committee constituted under Regulation 3 met to prepare fresh Select List for the year 1980. The list so prepared did not included the names of aforesaid officers. But before the 1980 list could be finally approved by the Commission, the aforesaid officers were promoted and appointed to IAS. In the background of these facts it was urged that the State Government deliberately did not forward its comments to the Union Public Service Commission on the proposed Select List of 1980 as a result of which delay was caused in the approval of the 1980 list. In the counter-affidavit filed on behalf of the State government allegations regarding mala fide have been denied. No material had been placed before us to substantiate the plea of mala fide. Merely because the State Government forwarded its recommendations with delay is not sufficient to justify inference that the delay was purposive with a view to grant undue favour to the officers named above. Regulations contemplate preparation of Select List each year. The process of selection, preparation and its final approval involves participation of three authorities namely the Selection Committee constituted under Regulation 3, the State Government and the Union Public Service Commission. The records of all the eligible officers are scrutinised by the Committee, State Government and the Commission before the Select List is finally approved and if there is any difference between the authorities, consultation between the State Government and the Commission is bound to take place. These steps which are necessary for the approval of Select List are time consuming. In actual practice sometimes delay may be inevitable. As the Select List is to be prepared each year the State Government should take action well in advance to avoid any delay. If undue delay is caused in preparation of Select List, it provides occasion for suspicion again the authorities and it is likely to generate frustration and heart-burning among the members of the State Civil Service which would obviously be detrimental to public administration. The Select List of 1979 which included the names of Tejinder Singh, M. P. Mitra and Gurdev Singh continued to be effective under regulation 7 (4) till another Select List for the subsequent year was finally approved. There is no dispute that the aforesaid officers were promoted and appointed to IAS before the approval of the Select List for the year 1980. Therefore no exception can be taken to the validity of their appointment. We are, further of the opinion that delay made by the State Government in forwarding its comments to the Union Public Service Commission with regard to the 1980 list did not cause any prejudice to Pritam Singh and other petitioners as none of them was selected for inclusion in the 1980 list.

37. We, therefore, find no merit in the appeals and the writ petitions. They are accordingly dismissed but there will be no order as to costs.

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