

ANDHRA PRADESH HIGH COURT

Dr. N. Desaiah

Vs.

Govt. of A.P

Writ Petn. No. 330 of 1965

(Kumarayya and Anantanarayana Ayyar, JJ.)

22.06.1966

ORDER

Anantanarayana Ayyar, JJ.

1. This is a petition under article 226 of the Constitution of India for issue of a writ of mandamus or other appropriate writ, order or direction to the Central Government and to the State Government of Andhra Pradesh (1) directing both the Governments not to take any action likely to prejudice the rights of the petitioners accruing from the decision taken by the Government of India contained in the letter No. 11/54/58 S.R. (s) dated 29th October 1959 and that taken by the State Government contained in G.O. Ms. No. 227 dated 31-1-1963 and (2) more particularly restraining the State Government from implementing the Central Government's decision permitting the Assistant Surgeons of erstwhile Hyderabad State to count their continuous service in the Health Wing prior to 1-11-1956 for purposes of promotion to the grade of Assistant Director of Public Health, Andhra Pradesh.

2. The petitioners are from the service personnel of the Public Health department of the State of Andhra Pradesh and the respondents 3 to 13, save for one, are from Medical and Health department of the erstwhile Hyderabad State. The controversy is the sequel of the process of division and integration of service personnel by reason of Section 115 of the States Reorganization Act as an inevitable consequence of the reorganization of the States of the Union of India on linguistic basis in 1956. The main points raised in this proceeding are : Whether the power of the Central Government under Part X of the States Reorganization Act is exhausted when once it has laid down the criteria for preparation of the integration or inter se seniority list and given direction to the State Government to prepare the list accordingly so that it may be said there it is left with no further power to deal with any matter arising there from either for solution or advice or for clarification. Further if it has still jurisdiction, is it incumbent on it to hear the parties before it could give any directions to the State Government ?

3. For a proper appreciation of the points in controversy it is necessary to state the facts somewhat in detail. By or under the provisions of Section 3 of the State Reorganization Act there were added to the State of Andhra from 1-11-1956 certain territories comprised in the specified

districts of the erstwhile Hyderabad State and the State of Andhra with these added territory became known as the State of Andhra Pradesh. With the expansion of the territory, the question of the service personnel belonging to the added territory came to the forefront. The States Reorganization Act made certain provisions in part X of the Act. Their provisional allotment was statutorily fixed by the said Act allowing the final allotment to be dealt with by the Central Government and continuance of officials in the same posts was ensured under the provisions of Section 116 subject to the limitations and conditions laid down therein. The Central Government was charged thus with the duty of dealing with allotment of service personnel, division and integration of services among the States including the State of Andhra Pradesh and of ensuring fair and equitable treatment to all persons affected by the provisions of Section 115. This task is not obviously an easy one for service conditions in each State are not precisely the same. They are bound to vary largely having regard to the difference in historical background. For the purposes of this case we are concerned only with the health services in either territory. In the State of Andhra the medical and public health departments were distinct and separate under separate directorates. Right from the district level up to the head of the department, there was independent hierarchy of public health officials. The department of public health was independent of medical department. There was a Public Health Act and the cadre of the District Health Officers was created under the said Act. The health officers were divided into two classes. They were officers class I in the grade of Rs. 325-600 and health officers class II in the grade of Rs. 160-600. Class I Officers had public health qualifications in addition to degree in medicine and were in the grade of Rs. 325-600. The health officers Class II were non-graduates. Above these officers were the Assistant Directors of health in the grade of Rs. 600-1000. Above them was the Director of Public Health in the grade of Rs. 1200-1500. In the Hyderabad State both the medical and public health services were under one directorate (in the grade of Rs. 1500-1800) with two Deputy Directors, one for medical and another for public health both in the grade of Rs. 1200-1400 and Assistant Directors were in the grade of Rs. 500-1000 plus non-practicing allowance of Rs. 100, Civil Surgeons in the grade of Rs. 500-1000 and Assistant health officers in the grade of Rs. 250-500 with non-practicing allowance of Rs. 50. Civil Surgeons were ex-officio District Health Officers and they were assisted by an Assistant Health Officer who may or may not have the health qualifications. Generally men with public health qualifications were to be the Assistant Health Officers. The Civil Surgeons were Class I officers and Assistant Surgeons were Class II officers. This was the position available as on 31-10-1956. Prior to that, however, from about the close of 1948 up to 1953 even in Hyderabad the Medical and Public Health Departments were distinct and separate. They were under two separate Directors working under the Secretary to the Government, the Medical and Health Department, who was designated as ex-officio Inspector-General, Medical and Health. With the expiry of the term of office of Major General Bhatia, both the services were amalgamated and placed under one Directorate. For all practical purposes, however, even thereafter the services ran on separate lines. The medical officers who were in public health side were designated as health officers, assistant health officers etc. and their pay and travelling allowance were drawn under distinct head "39 Public Health". The pay and allowances of Medical Officers working on the medical side used to be drawn under separate head "38 Medical". Even in Class I services, class I officers working on medical side were designated as civil surgeons and those working on public health side were designated as Assistant Directors of Public Health. The promotions also were regulated accordingly with the result that for the post of civil surgeons, assistant surgeons were selected in preference to assistant health officers. Similar was the case with regard to the Assistant Directors post. The Civil Surgeons were ex-officio District Health Officers and they were assisted by

Assistant Health Officers. In fact the Assistant Health Officers were in charge of the District on public health side. This was the relative position of the service personnel of the health department in the State of Andhra and Hyderabad. With the formation of Andhra Pradesh, the services on the health side from the two different territories had to be integrated and seniority fixed in order to ensure fair and equitable treatment to all the service personnel. This fell within the duties of the Central Government under the provisions of Section 115 of the States Reorganization Act. To facilitate the duties of the Central Government, the State Government had to prepare a provisional list and furnish all requisite material to the Centre. Immediately after the formation of the State of Andhra Pradesh, the Government of Andhra Pradesh in its memorandum No. 5256/2 dated 26-11-1956 issued directions that regular promotion should be made only after the Governments decision on inter se seniority between class II medical officers of Telangana and District Health Officers of Andhra was taken. A State Advisory Committee was constituted in order to prepare a provisional inter se seniority list of the public health Gazetted officers in the public health department. A list was prepared which contained the names of all the health officers of Andhra and also the officers of Hyderabad State working in the health wing as on 31-10-1956. G.O. Ms. 2021 dated 12-12-57, was issued approving the list with slight modifications. This G.O. was communicated to all the officers shown in the list intimating to them that if they had any objection to the list they should submit their representations to the Central Government within a period of 30 days from the receipt of information. This list did not satisfy the Andhra health officers. It did not satisfy some of the Hyderabad officers who did not like to continue in public health services. The latter requested that their names be deleted from the public health list. Some other Telangana officers who desired to continue in public health department were satisfied with the list and did not file any objections. The Andhra officers objected to the inclusion of Telangana officers in the inter se seniority list. They made their representations in this behalf to the Central Government.

4. The Central Government referred the matter for opinion to their Advisory Committee. The said Committee studied the set-up of the public health and medical department in Andhra and erstwhile Hyderabad as revealed from the representations of the officers and considered the objections of the Andhra officers against the provisional common gradation list of health officers prepared by the State Government. It reached the conclusion that the public health wing in Hyderabad State having regard to its hierarchy of officers was distinct from the medical department only at the levels of Assistant Directors and above and not at lower levels, whereas in Andhra right from the district to the head of the department, there was independent hierarchy of public health officers. It opined therefore that the Assistant Directors of Public Health-cum-Civil Surgeons of the erstwhile Hyderabad State in the scale of Rs. 500-1000 having the diploma in public health or equivalent qualification have been correctly integrated in the common gradation list with the Assistant Directors in Andhra in the scale of Rupees 600-1000. There can therefore be no valid objection to the list to this extent. It further found that the assistant Health Officers of Hyderabad in the scale of Rs. 250-500 with non-practising allowance of Rs. 50 - should not be legitimately integrated with the District Health officers of Andhra in the scale of Rs. 325-650 and so should not have been graded in the same list with the latter. The Committee assigned various reasons for this. It stated inter alia that for the post of Assistant Health Officer in Hyderabad it was not obligatory that the officer should have public health qualification whereas in Andhra till 1952, medical graduates with diploma in public health alone could be appointed as District Health Officers class.

5. Even after 1952, when this obligatory qualification was relaxed, the officers who did not have public health qualification were warned that they should get themselves qualified within four years of their appointment with public health qualification and otherwise they would be liable to be discharged and that they were given an initial start of Rs. 275/- instead of Rs. 325/-. In Hyderabad the posts of Assistant Health Officers were interchangeable with the posts of Assistant Surgeons and as they were recruited originally in the cadre of medical officers they should be retained in that cadre even though they may have public health qualification. While stating thus the Committee suggested also that if there be paucity of qualified public health officers for manning different posts, the Hyderabad Assistant Public Health Officers may, however, be drafted as district health officers on a short term deputation. With regard to the health officers in Municipalities and other local bodies in the erstwhile Hyderabad State, the Committee was of the view that they can be equated with District Health Officers of Andhra as they were recruited in that regular cadre. Thus the conclusions of the Committee were : (1) The Assistant Directors-cum-Civil Surgeons of Hyderabad in the scale of Rs. 500-1000 holding diploma in public health or equivalent qualification have been correctly integrated in the list with the Assistant Directors of Public Health of Andhra in the scale of Rs. 600-1000. (2) The Assistant Health Officers being originally in the cadre of medical officers of Hyderabad should be retained as medical officers and not be integrated with Assistant Health Officers of Andhra. However they may be drafted as District Health Officers on short term deputation basis by rotation along with other medical officers. (3) As the Health Officers in the municipalities and local bodies were in their regular cadre they may be retained in their regular cadre.

6. The Central Government then invited the views of the State Government on these recommendations. The State Government in its letter bearing reference No. 594 BB/59-1 dated 14-7-1959, agreed with the suggestions 1 and 3 of the Central Advisory Committee and offered its comments with regard to suggestion No. 2. It pointed out that even in the Andhra area not all the health officers have public health qualification and at any rate there should be no objection to equate the Assistant Health Officers of Hyderabad possessing public health qualification with the Andhra Officers, it further remarked that if the recommendation of the Central Advisory Committee is accepted and enforced it will cause hardship to the Assistant Health Officers drawn from Telangana area because they will be debarred from promotion to the post of Assistant Directors of Public Health for all times. It also brought to the notice of the Central Government that the State Government had accepted the recommendations of the Pay Committee to merge the cadres of Assistant Surgeons working in the medical department and Assistant Health Officers working in the public health department and orders in this regard will issue in due course and that promotion to the post of Assistant Director of Public Health will have to be made from the officers drawn from the combined cadre of Assistant Surgeons and District Health Officers holding the qualification of diploma in public health. These comments along with certain suggestions made by the State Government were referred to the Advisory Committee. The said Committee did not agree with the views of the State Government on matters of integration. It made it clear that the objection to integrating Hyderabad Officers with the District Health Officers was based on the fact that unlike in Andhra in Hyderabad there was no separate cadre of health officers, that the Hyderabad officers were all originally recruited as medical officers with no obligatory qualification in public health, that it was but an accident that the Hyderabad officers were holding the post of Assistant Health Officers at the relevant period and therefore their integration with the District Health Officers of Andhra has been resented to both by the Hyderabad and Andhra Officers; by the former because they were being drafted against their will

to the public health department even though they were recruited as medical officers. The Andhra Officers objected to integration on the ground that there was no obligation of public health qualification on the Hyderabad Officers when they were recruited and hence if they are integrated with them they will be in a position to count their entire service of Assistant Health Officers-cum-Assistant Surgeons for seniority whereas the Andhra Officers had to wait for 3 years or so for acquiring the public health qualification before entering service. On this basis the Committee said that it should be in the interests of both the categories of officers to be retained in their respective cadres. It was, however, suggested that the difficulty of the State Government arising from paucity of public health officers may be removed by deputing the Hyderabad officers on the public health side on rotation basis. As regards the suggestion of the State Government the Committee said that if the second alternative suggested by the State Government, viz., only such Assistant Surgeons as have health qualification should be integrated with the District Health Officers, is accepted it will result in allowing service rendered before acquiring public health qualification for seniority against those who had to acquire public health qualification before entering service. The Committee expressed surprise why the alternative suggested by it was not being accepted. Its remark in this behalf runs thus : "It is not understood why the alternative suggested by us which will satisfy the Andhra, Telangana and the State Government has not been accepted. Since the State Government have already accepted the proposal of their Pay Committee that for promotion to the post of Assistant Director, Public Health, even the Assistant Surgeons with public health qualification will be eligible for the post of Assistant Director Public Health, the only objection of the State Government that the Hyderabad Officers on being taken in their cadre of Medical Officers will be deprived of this promotion does not stand." After considering the report, the Central Government accepted in toto the recommendations of the Central Advisory Committee and communicated its decision to that effect to the State Government by its letter No. F. 11/54/59 S. R. (S) dated 29th September, 1959 directing that the individuals concerned may kindly be informed of the decision. The effect of accepting the report of the Advisory Committee in toto and the decision of the Government based thereon was that there was no need of any change in the common gradation list of Assistant Directors of Public Health as approved in G. O. Ms. 2012 G. A. D. dated 12-12-1957. (2) That in the common gradation list of health officers, however, of the officers of Hyderabad only the health officers in the municipalities and other local bodies in Telangana would be retained as that, according to the Committee, was their regular cadre. (3) That the names of Class II medical officers of the erstwhile Hyderabad medical and health services shall be deleted from the said common gradation list and included in the cadre of Assistant Surgeons. (4) That the medical officers may, however, be drafted as District officers of public health on deputation. And (5) that there was no bar against the Assistant Surgeons with public health qualification being promoted to the post of Assistant Director of Public Health provided they are qualified and eligible. The last-mentioned consequence necessarily flowed from the report of the Committee which bears special reference to this and which has been set out above. It may be noted at this very stage that it is mainly this aspect of the matter that has given rise to the present controversy. Some G. Os. issued thereafter contain reference thereto and also certain details and developments in that behalf. G.O. Ms. 597 (Health) dated 16-3-1960, issued in consequence of acceptance of the recommendations of the Inter-State Seminar on Education, Medical and Public Health and Tribal Welfare held at Kurnool on 27th and 28th June 1958 and also of the Pay Committee constituted by the State Government, refers to the formation of common cadre for Health Officers and Assistant Surgeons and conditions of promotion to the post of Assistant Director of Public Health. The Director of Medical Services and the Director of Public Health were

requested to prepare, in consultation with each other, a common seniority list of existing Assistant Surgeons and Health Officers and submit the same to the Government for approval. After the decision of the Central Government was communicated, the State Government took steps for deleting the names of the Assistant Surgeons from the common gradation list of public health. By U. O. note No, 594, BB 1/50-13 Health dated 7th June, 1960 the Government directed that the names of the officers in paras 3 and 4 be deleted and a revised common gradation list be prepared and communicated to the officers. It was made clear that these officers shall be retained in the list of Assistant Surgeons and such of these officers who were shown in the list shall be treated as working in the public health department on deputation basis from 1-11-1956. It also stated that for purposes of promotion to the post of Assistant Director of Public Health, Assistant Surgeons with public health qualification will also be considered provided they are qualified and eligible. This was followed by another note dated 29-6-1960. After the list was revised, Memo. No. 1961-60-1 dated 21-7-60, of the General Administration Department (marked Ex. C) was addressed to the Director for communicating the decision of the Government and also the revised common gradation list as amended in para 2 to the officers concerned. It inter alia points out that for purposes of promotion the post of Assistant Director of Public Health, the Assistant Surgeons with Public Health qualification can also be considered provided they are qualified and eligible. Again G.O. Ms. 309 dated 6-2-61 issued by the Secretary to the Government, Health, Housing and Municipal Administration Department to the Director of Public Health for communicating the decision of the Govt. of India to all the officers of the Public Health department reiterates the decision taken by the Government of India and also the fact that for purposes of promotion to the post of Assistant Director of Public Health, the Assistant Surgeons with public health qualification can be considered provided they are qualified and eligible. It refers to G.O. No. 597 and states that the cadre of Assistant Surgeons and Health Officers, both Telangana and Andhra, have been combined and that the criterion for promotion to the post of Assistant Director of Public Health should thereafter be the possession of a diploma in public health and five years experience whether in the medical department or health department whether designated as Assistant Surgeon or Health Officer With the preparation of the revised common gradation list in compliance with the decision of the Government of India arose the question of review of promotions already effected since 1-11-1956, for they were only provisional. For some time they were made in the ratio of 1:1 on the regional basis, but that formula was discarded on the advice of the Committee. The Director of Public Health sought clarification on the question of regularization of these promotees and also certain other question. The Government thereupon issued Memo No. 1827-BB-60-10 Health dated 6-2-1961, to the effect that Assistant Surgeons though working on deputation basis in public health department are eligible for promotion as Assistant Directors in the public health department and therefore all officers who were promoted whether in the ratio of 1 :1 or otherwise on a temporary basis should be retained as Assistant Directors of Public Health and their services should be regularized. It was further stated that Assistant Surgeons with Public Health qualification were eligible for promotion as Assistant Director of Public Health and in fact separation of these officers from the public health cadre was effected specifically with that safeguard and that as the cadres of Assistant Surgeons and Health Officers for Telangana and Andhra have been combined, the only criterion for promotion thereafter was the possession of a diploma in public health or BSSc and experience as Health Officer in the public health department for a period of five years The Director was informed that the question of regularisation of ADPHs should not be linked with the preparation of the common cadre of Assistant Surgeons and Health Officers.

7. The Andhra Officers took exception to this. They thought that all this was contrary to the decision of the Central Government. They made grievance of the fact that the State Government was under an erroneous impression that the decision of the Central Government ever contemplated that Assistant Surgeons with P.H. qualification could be considered for promotion to the cadre of Assistant Director of Public Health notwithstanding the fact that those officers could not be integrated with the health officers of Andhra. It was urged that on account of the steps taken by the Government under that assumption, the Andhra Officers have been deprived of their chances of promotion and in fact the decision of the Government of India has been indirectly circumvented thereby. Seven officers including petitioners 1 and 4 made representations to the State Government and the Government in G. O. 437 (Health) dated 16-2-61, rejected their representations.

8. Ten officers including some of the above-mentioned officers sent telegrams to the Government of India complaining of injustice to them. The Government of India asked for comments of the State Government. Some officers made formal representations to the Central Government. These representations were referred by the Government to the Central Advisory Committee. The Committee at a meeting held on April 17, 1961 considered these representations. After referring to the background and recommendations already made by them, the Committee said that strictly speaking they were not concerned with the manner in which promotions were made to the grade of Assistant Director of Public Health but that since the complaint was made that junior officers of Hyderabad are being appointed in the grade of Assistant Director, overlooking the claims of Andhra officers, ostensibly in pursuance of a recommendation of the Committee, it was necessary to explain more fully the implication of the recommendation already made. The Committee then said that on the whole it would be fair to both categories of officers to stipulate that for being eligible for appointment to the grade of Assistant Director, officers should have two basic qualifications, viz., (1) the diploma in public health and (2) a minimum service of five years in the public health department. This has been accepted by the State Government. Then the only problem that could arise was the seniority as between the eligible officers of Andhra and Hyderabad. According to the Committee the Andhra Pradesh Government had proposed that seniority as between Andhra and Telangana officers should be determined on the basis of length of continuous service in the grade of District Health Officers for Andhra officers and that in the grade of Assistant health officers-cum-Assistant Surgeons for the Telangana officers. The Committee inter alia remarked that it would be unfair to evolve a formula under which a Telangana officer immediately he became qualified could, on the strength of his service in the grade of Assistant Surgeon, become senior to an Andhra Officer who has spent all his service in the public health department. The committee recommended that as between eligible officers of Andhra and Telangana, seniority should be determined on the basis of length of service in the public health department alone and not on the basis of combined length of service in the grade of Assistant Surgeon and Assistant Health Officer or District Health Officer. The Home Ministry then in D. O. No. F. 10/8/61-S. R. (S) dated 20th June 1961, invited the attention of the Committee to the notification No. 275/GAD/SRC/19 Medical 52 dated 25th March, 1954 of the Government of erstwhile Hyderabad in which the Raj Pramukh, in exercise of the powers conferred by the proviso to Article 309 of the Constitution had made rules regulating the method of recruitment to various posts in the Hyderabad Medical and Health Department, wherein it was provided that appointment to all vacancies in class I posts to the extent of 50 p.c. will be made by way of direct recruitment and to the extent of 50 p.c. by promotion from class II on principle of seniority-cum-efficiency. The Central Advisory Committee considered the matter once again and

sent their note dated 14-9-1961 No. 4/1(5) 61/CAC and for the reasons mentioned in the letter reiterated their recommendation that as between officers of Andhra and Telangana eligible for promotion to the grade of Assistant Director of Public Health seniority should be determined on the basis of length of service in the public health wing. The committee suggested further that if necessary the Central Government may convey its approval under Section 115(7) of the States Reorganization Act to any revision of the recruitment if the notification dated 25th March 1954 stood in the way of implementation of the recommendations. The Central Government invited the views of the State Government on these recommendations. The State Government had none to offer and by its letter No. 4343-BB-61-15 Health decided to reopen the promotions made from 1-11-56 in the light of the recommendations as these appointments were made on temporary basis. The Central Government took its decision on the representations made, in accordance with the recommendations of the Central Advisory Committee and communicated the same through letter No. 10/8/61 S. R. (S) dated 9-10-1962, requesting the State Government to communicate the same to the officers concerned. It is made clear even in this letter that in the seniority list only Andhra officers should be included, that the Health Officers in Telangana will be absorbed in the Medical department, that it was also contemplated that Telangana officers should nevertheless be eligible for promotion to the higher grade of Assistant Director, Public Health but that their seniority should not be determined on the basis of the combined length of service in the grade of Assistant Surgeons and Assistant Health Officers but on the basis thereof in the Public Health department alone. The promotions effected were reviewed by the State Government accordingly. Thereafter G.O. Ms. 227 (Health) dated 31-1-63 was issued. The result was that some of the Telangana Assistant Health Officers promoted to the post of Assistant Directors were reverted and some suffered in seniority. This gave rise to discontent among the Hyderabad officers most of whom had worked in the health wing for many a long year but their service was not taken into account. The Central Advisory Committee's report of 14-9-61, permitted the counting of continuous service in the public health wing. The decision of the Government contained the words "Public Health Department." This could cause misapprehension that service in the public health department could in case of Hyderabad officers start only from 1-11-1956 and not before. Seven officers including respondents 2, 6, 7 and 8 herein made counter representations to the Central Government. The Central Government referred the matter to the Advisory Committee. The Advisory Committee considered the representations in the light of the previous recommendations. It considered the question whether the Telangana officers could claim the benefit of service rendered prior to 1-11-1956 in the health wing of the Medical and Health service of erstwhile Hyderabad. The Committee said "that in recommending that the Telangana officers should be shown in the gradation list of Medical Officers the Committee wanted to ensure that the said officers were not allowed to look forward to promotion in both ways which could be unfair to the officers of public health department of Andhra. Telangana officers with requisite qualifications were, however, made eligible for promotion to the grade of Assistant Director of Public Health on the basis of length of service in the public health department alone. If therefore there was a distinct public health wing in the Medical and Health service of erstwhile Hyderabad and if there were officers who had taken root in the public health wing of the service, it would be only fair that such service wing should be treated as service in public health department for purposes of promotion to the grade of Assistant Director of Public Health". The Central Government accepted this recommendation took decision on the representations accordingly and communicated to the State Government that such continuous service as was rendered in the public health wing of the erstwhile Hyderabad medical and public health services prior to 31-10-1956 will be considered for promotion to the grade of Assistant Director of Public

Health. This decision was communicated on 6-1-65. The petitioners did not make any representations to the Central Government thereafter but have come to this Court instead and filed the present writ petition on 10th March 1965, stating that the Government of Andhra as well as the Union Government are attempting to modify G.O. Ms. 227 by permitting Telangana officers to count their service for purposes of promotion to the post of Assistant Director of Public Health from a date prior to 1-11-1956. They impleaded only the State Government and the Government of India. The other respondents were brought on record on their own applications. The petition was resisted by the State Government who said in para 3 of their counter that the Ministry of Home Affairs in consultation with the Central Advisory Committee decided to accept the representations of the Telangana Officers to the extent that such continuous service as was rendered in the public health wing should count towards length of service for purposes of promotion to the grade of Assistant Director of Public Health and the writ petition filed was not maintainable. The Central Government also disputed the maintainability of the writ petition. Of the other respondents, one of the respondents Dr. Sita supported the petition and the others opposed the same.

9. Thus, it would appear from the above statement of facts that the whole controversy revolves round the fact that Class II Hyderabad officers notwithstanding that they were not integrated with the District Health Officers of Andhra were held eligible for promotion to the post of Assistant Director of Public Health in case they were qualified and eligible and further their continuous service in the health wing of erstwhile Hyderabad has also been permitted to be counted for purposes of promotion and seniority.

10. The petitioners urged that the first-mentioned proposition, namely, that the Assistant Surgeons are eligible for promotion is inconsistent with and contrary to the decision of the Government of India as contained in letter No. 11/ 54/58 S.R. (S) dated 29-10-1959 received from the Deputy Secretary, Government of India as well as memo No. 411-BB/61-2 Health dated 16th February 1961, based thereon, issued by the State Government, and that the decision of the Central Government being conclusive, reliance on subsequent G. O. and memos issued by the State Government is of no avail. It is further urged that once the Government of India on the representation of certain Andhra officers including N. Desiah and Viswanadham, two of the petitioners, has given decision on the question of counting seniority for purposes of promotion which is contained in letter 10-8-1961 S. R. (S) dated 9th October 1962 and that decision has been implemented by the State Government as is manifest from G.O.Ms. 227 dated 31-1-1963 by reviewing all promotions, reverting some of the promotees, confirming some others and regularising the promotions temporarily made, the Central Government was left no longer with any statutory power of dealing with fresh representations and giving further directions in the matter. In fact it is said that the statutory power of the Central Government came to an end when the criteria for integrating the health services were laid down by them and at any rate when they were implemented in the above manner. It is also urged that the State Government is neither bound to comply with the directions subsequently given nor is competent to do so on account of the action already taken by it. We do not think that these submissions made whether on point of law or of facts are well founded. The controversy, as we see, relates to service matters of members of Health services who hold their office during the pleasure of the Governor. In the ordinary circumstances, all their matters could have been legitimately dealt with by the State itself consistent with the safeguards, if any, guaranteed by the Constitution. This normal incidence of State's executive power is of course beyond plea of doubt or question. In fact Article 162 of the Constitution provides that, subject to the provisions of the Constitution, the executive

power of a State extends to the matters with respect to which the Legislature of the State has power to make laws. The proviso, however, curtails this power to the extent stated therein. The Legislature of the State has power to make laws with regard to "State Public Services" as in entry 41, list 2 of the 7th schedule. The executive power of the State therefore extends to matters connected with States Public Services. But, as observed already, the present question though relating to public services has arisen on account of reorganization of the States of Union of India. The reorganization itself is a creature of law as provided by Article 3 of the Constitution. The consequences of reorganization as a rule are varied and manifold. Reorganization may result either in the extinction of the previous States or continuance of any State or States with added or truncated territory or formation of new States by carving out territory from existing State or States. These changes are bound to have their own repercussions on various matters. The service personnel also cannot remain unaffected especially when they belong to a territory, which has been merged in a new or other State. Certain provisions have necessarily to be made for their allocation and also integration with the personnel of the States to which they are allotted. The Constitution therefore provided in its Article 4 that the law under which reorganization is made shall contain such consequential, supplemental and incidental provisions also as may be necessary. We have therefore to look to the States Reorganization Act (Act 37 of 1956) for provisions, if any, in this behalf. Needless to recall that the opening words of Article 162 make the provisions of that Article subject to other provisions of the Constitution. Articles 3 and 4 are some of these provisions. The States Reorganization Act enacted as contemplated by Articles 3 and 4 of the Constitution contains provisions in respect of services. While Part II of the Act provides for territorial changes and the formation of new States, Part X contains provisions in relation to services. There are altogether five Sections contained therein: They are Sections 114 to 118. We are not, for the purpose of this case, concerned with Section 114 which deals with all India services and makes provision in relation thereto. Sections 115 to 117 are material for our purpose. Sections 115 and 116 contain provisions with regard to services and continuance of officers in the same posts respectively. Sub-Sections 1 to 4 of Section 115 deal with allotment of service personnel. Section 115 in sub-clause (1) has made statutory allotment of service personnel of certain existing States, to their corresponding successor States by introducing a fiction. The service personnel in these cases create no problem as the entire territory of each of the States went to one Successor State and was not divided among various successor States. The case, however, is different with service personnel of other existing States, the territories of which were divided among several States. The Parliament in relation thereto evolved a convenient formula of provisional allotment leaving at the same time the final allotment to the Central Government. The procedure laid down in sub-clause (2) effects provisional allotment of certain service personnel and the final allotment is provided for in sub-clause (3). That is left to the Central Government which is charged with the duty of affecting division and integration as contemplated by the provisions. Sub-Clause (5) makes provision for establishment of Advisory Committees for purposes of assisting the Central Government in regard to the division and integration of services among the new States and States of Andhra Pradesh and Madras and also for ensuring fair and equitable treatment to all persons affected by the provisions of Section 115 and also for proper consideration of any representations made by the persons affected thereby. Sub-clause (7) however protects the power of the State Legislature to make laws and of the Governor of the States to make rules regulating the conditions of service of persons serving in connection with the affairs of State as a result of allotment made under sub-clauses 1 to 4; the only limitation placed therein being by reason of the proviso that the State Legislature or the Governor of the State are precluded from varying the conditions of service applicable

immediately before the appointed day in case of persons allotted under sub-Sections 1 to 4 to their detriment without the previous approval of the Centre. Thus, the conditions of service applicable immediately before the appointed day are to this extent protected. All that has been insisted in this behalf is that save with the previous approval of the Central Government, the conditions of service would not be varied to the detriment of the persons. Under Section 117 the Central Government is empowered to give such directions to State Government as may appear to it to be necessary for purposes of giving effect to the provisions of Sections 114 to 116 and it is obligatory on the State Government to comply with those directions. It is thus clear that on account of the States Reorganization certain powers relating to service personnel have been entrusted to the Central Government and it was made obligatory on the State Government to comply with all directions given for the purpose. The power that is conferred is mainly and essentially in regard to division and integration of service personnel and ensuring of fair and equitable treatment to all persons affected by the provisions of Sections 114 to 116. These powers of the Central Government have not been disputed at all. All that has been urged on behalf of the petitioners is that the statutory power so conferred on the Central Government being for a set purpose, it becomes exhausted when once the division and integration of services is completed under Sub-Section (6) of Section 115 and the Central Government would not, thereafter, be entitled to give any directions to the State Government in the matter of integration of such services. Undoubtedly, this position in law is not and cannot be controverted. But the most important question is when process of division and integration said to be complete. Is it complete when certain criteria have been laid down by the Central Government for the guidance of the State Government for the preparation of common gradation list or will it continue up till all the matters relating to this integration have been fully and finally settled? Whether the integration as used in the Act must have a limited meaning or should it be given its wide and liberal meaning? That is the crux of the whole question. What is meant by integration is to our minds a fusion (i.e.) combining the various facts in one unified whole. It is only when the various parts are fitted in their proper place so as to constitute a harmonious whole that we may be able to say that the integration has taken place. There should indeed be cohesion. So then in relation to service personnel. It would be necessary for purposes of integration to fit them in their respective places so as to form a homogeneous service. All the problems arising in the process of their being brought in co-ordination with one another have necessarily to be solved. Thus integration involves matters of details as well. Unless such matters as have bearing on fusion are completely determined, integration cannot be complete. The duty of the Central Government is not over with mere laying down some criteria. Nor does its statutory power get exhausted with it. It has to see that the integration is effected properly in the manner contemplated by it that its directions in this behalf are rightly followed and are not misunderstood or misconstrued. The statute itself lays down that it has to properly consider from time to time the representation made by persons affected in the process of division and Integration. The problems arising may be diverse and may not be fully comprehended unless certain aspects are brought to light by the persons affected. Having regard to the fact that occasion for representation arises when adverse effect is foreseen or realized, not all the representations can come at one time. Some of the decisions of the Central Government are therefore bound to be tentative till the process is completed. The Act enjoins also that fair and equitable treatment to all has to be ensured. That is possible when there is opportunity for persons affected to make representation as and when they feel that they are affected. Further the very fact that Central Government has power to give direction from time to time for purposes of Sections 114 to 116 is a further proof of the fact that the power of the Central Government is not exhausted unless the entire process is properly completed and all

matters bearing on integration have been correctly understood and given effect to. It is always open to the Central Government to clarify their meaning in case of doubt or set right the incorrect application of any principle enunciated. The matter now in dispute was indeed, a matter connected with the persons affected and related to the process of integration. We cannot therefore, accept the contention that the Central Government had no power or jurisdiction to give the impugned direction by way of clarification for implementing the process of integration as contemplated or decided upon already by the Central Government. It cannot be said that it is a matter unconnected with the process of integration. Nor can it be said as contended for on behalf of the petitioners that it is something that is newly introduced or is Inconsistent with the original decision taken by the Central Government.

11. We have set out at length the manner in which original decision dated 29-10-1959 of the Central Government was reached and the way in which it was sought to be implemented. The Advisory Committee's report was accepted by the Central Government in to after the views and suggestions were invited from the State Government and the Advisory Committee had expressed its opinion thereon. The Advisory Committee's report bears specific reference to the fact that the Assistant Surgeons with public health qualification will be eligible for the post of Assistant Directors of the Public Health Department. In fact, on that basis alone, the Advisory Committee said that the objection of the State Government that the Hyderabad Officers would be debarred from promotion would not stand. It is manifest, therefore, that it is with this reservation that the names of the Hyderabad officers were directed to be deleted from the list of the Public Health Officers. Of course, Memo No. 411 BB/61-2 (Health) dated 16th February 1961, which contains the decision as against the representations made by various persons, does not bear specific reference to this and this gave scope for the contention that this aspect is an innovation, but the Advisory Committee's report, which was referred to in the said Memo is specific and the G. Os. issued thereafter make mention of it. We have set out in detail all this in earlier part of this judgment.

12. The decision of the Government of India on the representation of the officers contained in letter No. 10/B161-SR dated 9th October 1962 also speaks of the fact that it was contemplated that the Telangana Officers should also be eligible for promotion to the higher grade of Assistant Director of Public Health. All that the Committee and the Government wanted was that for counting seniority between the Andhra and Hyderabad officers eligible for promotion to the grade of Assistant Director of Public Health, the combined continuous service in the grade of Assistant Health Officers-cum-Assistant Surgeons for Telangana officers should not be counted for obviously that was not exclusively in the health wing. It was, therefore, decided that the seniority should be determined on the basis of the length of service in the public health department alone and not the combined length of service in the grade of Assistant Surgeon-cum-Assistant Public Health Officer. It must be remembered that in the Advisory Committee's note date 14-9-1961 No. 4/1/(5)/61/CAC the expression "health wing" also is used. The expression Health department used in the decision of the Government however gives room for difficulty The State Government while implementing it understood it as meaning so far as the Hyderabad Officers were concerned their service as health officers after 31-10-56 and not before. As we have already noticed there was a health wing, though not separate department under a separate directorate, in the erstwhile Hyderabad State. For some time before that there was also a separate department as well. The actual position is that there were officers who worked for several years continuously on the health side. As the word "department" created confusion and was

misunderstood by the State Government, the Telangana officers made counter representation and the Central Government, after consulting the Advisory Committee, clarified the situation as a result of which the period of service in the health wing had to be counted for seniority in relation to Hyderabad officers. Thus, it is clear that from the very inception, the Central Government had taken a decision that the Assistant Surgeons though they may be kept in the cadre of medical officers can be considered for promotion to the cadre of Assistant Directors of health provided they are qualified and eligible, but that for purpose of seniority as against the Andhra Officers, their combined service as Assistant Surgeons-cum-Assistant Health Officers, should not be counted. By the impugned direction, it is made plain that their continuous service in the Health wing alone shall be counted. This is not anything new or inconsistent with what was decided before by the Central Government. The decision of the Government of India taken on 29-10-1959, based on the acceptance of the Advisory Committee's report remains inviolate by the impugned direction. Far from being inconsistent with, it is calculated to give true effect to the decision. If the State Government was under a misapprehension as to the true meaning and implication of certain phraseology such as 'Health department' used in the decision, as already observed, it was open to the Central Government to remove the same. The misapprehension, which affected the officers, could give occasion to the representations on behalf of such officers as contemplated by Section 115(5) and the Central Government was bound to consider these representations and take such steps as may ensure fair and equitable treatment to those persons. It was competent for it under Section 117 to give direction as was done and the State Government was bound to comply with the same. We are, therefore, of the view that the petitioners cannot make grievance of letter No. 10/8/61 S.R. (S) dated 6th January, 1965, which contains the decision of the Government of India on the representation of some of the Telangana officers including some of the respondents herein. We are also of the view that the power under, Section 115(5) was not exhausted as soon as the criteria were laid down by the Central Government or the list was prepared. In order to hold that the power is exhausted, it is necessary that the integration of services is completed. If there was doubt as to the meaning or the true implication of the decision taken or if that was wrongly understood by the State Government, it was open to the Central Government, on the representations of the parties concerned, to show their true meaning for the implementation of the integration process. In this view of the matter, we do not think that the decisions relied on viz. *P.C. Kunhi Krishnan Nambiar v. State of Kerala*¹, *A.N. Naganoor v. Union of India*², *A.J. Patel v. State of Gujarath*³, and *M.A. Jaleel v. State of Mysore*⁴, can render any assistance to the contention of the petitioners.

13. It is then urged that the impugned decision of 6-1-65 has been reached in contravention of the principles of natural justice as the Andhra Officers were not given notice of the representations of the Hyderabad officers, nor were given opportunity of being heard and that therefore the decision must be held to be void. If such an argument is legally tenable, the previous decisions on which the petitioners rely also are equally open to similar criticism for the representations of the Andhra Officers were disposed of under letter No. 10/8/61-SR(S) dated 9-10-62, without notice to the Hyderabad officers and further the names of most of the Hyderabad officers were decided to be deleted from the list without giving them an opportunity of making representation. We do not think the objections of the kind are maintainable in view of the nature of the scheme, powers conferred and duties to be discharged by the Central Government under the relevant provisions of the State Reorganization Act. As already noticed, the Central Government was charged with the duty of division and integration of services and of ensuring fair and equitable treatment to all the persons affected and proper consideration of the representations made by such persons. Be it

noted no specific procedure was laid down for this purpose by the statute. All that is provided therein was that the Central Government may be assisted by some advisory committee or committees in this behalf. The Central Government was, therefore, at liberty to prescribe for it the procedure which in its opinion would effectively serve the purpose. It sought to get all the requisite material from the State Government. The State Government with the help of its own Advisory Committee prepared the provisional list and invited representations as against it from the officers in the list. The list and the representations were considered by the Central Advisory Committee, which made certain suggestions in relation to particular class of officers. Of course, the officers who had no objection to the list had no occasion to make any representation. The suggestions of the Advisory Committee however were sent to the State Government for comments, for it could meet all suggestions opposed to the list. It is then that the Central Government took decision. Any representation made by the affected person from time to time during the process of implementation was similarly dealt with. In other words, they were referred to the Advisory Committee, views of the

¹ AIR 1965 Ker 84

³ AIR 1965 Guj 23 at p. 36 (FB)

² AIR 1966 Mys 95

⁴ AIR 1961 Mys 210

State Government were ascertained and decision on the representation was taken. All representations and counter representations were thus considered and decisions thereon were communicated. Some decisions were, no doubt, tentative in nature and when no representations were received against them and if received were disposed of became final. Thus, it is clear that the procedure followed gave full opportunity for representation from the persons affected from time to time and provided fully for objective consideration of those representations by the advisory committee, and further decisions thereon were reached by the Central Government after receiving the comments of the State Government which was posted with full facts. Of course, notice of each representation was not given to other officers. Such officers may be many; but they had opportunity of making counter representation when they found themselves aggrieved by the decision. State Government's views were invariably considered before any decision was taken. It is true no one was given an opportunity of personal hearing, but that is not a procedural essentiality unless the statute makes it obligatory. The statute did not cast any such duty or obligation. We do not think the above safeguards provided in coming to decision were not adequate for ensuring justice and fair play in the process of integration. The petitioners cannot complain of want of notice when they could still make representations which would be properly considered. It is manifest that the Central Advisory Committee used to consider each representation in the light of the decision originally taken. Each representation was disposed of in view of and after full consideration of the previous decisions taken. If the fresh representations constituted counter representations, the previous representations against which they were aimed, the Advisory Committee's suggestions and the State's comments and the decision taken thereon were before the Government and were fully considered. Indeed the impugned decision of 6-1-65 was reached as a result of this process.

14. Thus it is clear that notwithstanding that on no occasion were the officers of any of the regions given personal hearing, their representations were fully considered as and when they were made by the officers who fell aggrieved by the decisions or steps taken in the process of integration. They were objectively considered and decisions were reached on the basis of the available material, suggestions of the Advisory Committee and comments of the State Government thereon. Likewise, though each decision was taken without calling for counter representations if any, it is, however, clear that on the counter representations of the parties

affected the matter was reconsidered and decided. That being the true state, it is difficult to accept the contention that there has been violation of principles of natural justice in reaching the decision dated 6-1-65. It cannot also be said that the decision taken on 6th January 1965 was basically different or inconsistent with the criteria laid down in the original decision taken by the Central Advisory Committee with regard to the matters connected with integration of services. Indeed, the common gradation list as prepared in consequence of the earliest decision of the Central Government is not in dispute at all. The criteria laid down still hold their sway. The integration process as it was noted was concerned with all the service personnel in the health services at various levels. Each level has its necessary relationship with the other, for the officers of the lower level can reasonably hope to achieve higher level in course of time. The close connection between the two cannot be ignored in the process of integration. Such being the circumstances of the service personnel the Central Government had to necessarily define or determine this relationship, so that it may be effectively reflected in the integration process. It had therefore laid down the general principle. Then arose controversy as to its scope and implication. The question was for purposes of appointment to the higher cadre i.e., Assistant Director of Public Health which cadre was also within the purview of the Central Government whether the Assistant Surgeons who had public health qualification and had worked in the health wing of the erstwhile Hyderabad State could be considered for promotion. As already noticed the principle in this behalf was recognized by the Advisory Committee and approved of by the Central Government, which had accepted its suggestions in toto. All that was required then could be a matter of mere clarification or of details. The Committee was from the very beginning of the view that for health purposes the service of Assistant Surgeons in both the wings cannot be taken into account. That is how their names were excluded from the list of Health officers, but for purposes of promotion, they were held entitled to be considered in case they were eligible and qualified. The question then arose whether for regulating the seniority as between the officers of the two regions for purposes of promotion, the entire period of service of the Telangana officers, who had worked in both the wings, should be taken into consideration. The State Government was inclined to the view that they could and on representation the Advisory Committee said in the negative and expressed the view that only the service in health wing should be considered. At some place the expression Health department also was used. The Government's decision used the word Health department. This word was understood by the State Government to mean and imply the service after Reorganization. The Central Government on representation explained it to mean as stated in the impugned decision dated 6-1-1965. The final decision in this behalf was reached after consideration of the representations on record of both the Andhra and the Telangana officers and the decisions taken earlier. Thus, it is clear what was decided was nothing new and it cannot be said to be opposed to previous decisions also. The question of detriment or violation of principles of natural justice does not therefore arise at all.

15. That apart, as already noticed, it cannot also be said that the procedure followed is opposed to principles of justice and fair play. If the Committee or the Government gave no opportunity of personal hearing that would not be fatal when the representations were properly considered. Having regard to the multifarious matters involved in the process of division and integration and the vast number of persons interested therein, it may not be possible for the Central Government to give notice to all or give opportunity of personal hearing before coming to a final conclusion. The procedure detailed above as followed cannot be open to question as it is calculated to subserve the interest of the maximum number possible.

16. It is no doubt argued on behalf of the respondents by Mr. Narsa Raju that the power conferred on the Central Government in dealing with the questions is not quasi-judicial but only administrative and hence no question of holding an enquiry or hearing the service persons would arise. This probably proceeds on the basis that all the service personnel hold their office at the pleasure of the Governor and it is perfectly open to the State Government to deal with them in whatsoever manner it chooses without infringing any of the constitutional safeguards provided for their benefit. The function of the Central Government, it is urged, in the matter of dividing and integrating the services, is purely administrative and in no sense quasi-judicial. On the other hand, it has been contended by the learned counsel, Mr. P.A. Chowdary, that having regard to the nature of the duties, the principles of natural justice must necessarily be followed. It is further contended that even assuming that the original order was in exercise of administrative power, review of that order will be a quasi-judicial act for the original order had vested in the officers certain rights and therefore their variation without notice and giving opportunity to be heard is invalid. It was further urged that since the present order is an order passed deciding the rights of the parties, it must be held that there was a lis and the Central Government being the deciding authority must, therefore, observe principles of natural justice. It is unnecessary for us to enter into a detailed discussion as to the exact nature of the duties and functions of the Central Government. There can be no doubt that the Central Government was charged with the duty of considering the representations. We have already pointed out that the Central Government has not violated any of the principles of natural justice by passing the impugned order. When a decision has been reached by a statutory body in full cognizance of its powers and observance of rules of justice and fair play, no interference is justified save on grounds of violation of constitutional or fundamental rights.

17. It has been said that by reason of the impugned decision the Andhra Officers have been subjected to invidious discrimination and thus there has been contravention of Article 16 of the Constitution. We do not think that this contention is well founded. Article 16(1) gives effect to the equality before law clause guaranteed by Article 14. It guarantees equality of opportunity to all citizens who enter service. Article 16(2) prohibits discrimination guaranteed by Article 15(1) (sic) and assures effective enforcement of fundamental right of equality of opportunity guaranteed by Article 16(1). Article 16(3) however, provides some exception by authorising Parliament to make any law prescribing in regard to a class or classes of employment or appointments to an office under the Government or local or other authority within a State or Union territory. The equality of opportunity in matters of promotions must mean as between members of the same class of employees and not equality between members of separate and independent classes. We do not think the principle laid down by the Central Government that for purposes of promotion to the post of Assistant Directors of Public Health, the class II officers of the erstwhile Hyderabad may count their continuous service in the Health Wing if there was any such distinct wing in the Hyderabad State, and the Andhra Officers may count their service in the health department, in any way, offends the provisions of Article 16 of the Constitution. There is nothing arbitrary in the rule and no question of purposeful or invidious discrimination does arise. We have already noticed that there was a health wing in Hyderabad State immediately before the reorganization of States and prior to that there was a separate department also and there are Hyderabad Officers who had worked exclusively in the health wing or department, some from the very beginning of the time of their recruitment and some thereafter. The Services of these persons cannot be ignored on the basis that immediately before the reorganization of States in 1956, the health wing - though full-fledged - was but a compartment and not a separate

department in the Hyderabad State and further that there might have been a separate department also previously that cannot be a matter for consideration.

18. For the reasons shown above, we are clear in our mind that this writ petition is not sustainable. We therefore dismiss the same with costs of Respondents 1 and 2. Advocate's fee Rs. 200.

Petition dismissed.