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A. K. KRAIPAK & ORS. ETC.

v.

UNION OF INDIA & ORS.

April 29, 1969

B [M. HIDAYATULLAH, C.J., J. M. SHELAT, V. BHARGAVA, K. S. HEGDE AND A. N. GROVER, JJ.]

Natural Justice—Applicability of principles to Administrative proceedings—Violation of principles by first authority—Effect on ultimate decision.

In pursuance of the Indian Forest Service (Initial Recruitment) Regu-
C lation, 1966, framed under r. 4(1) of the Indian Forest Service (Recruitment) Rules made under the All India Services Act, 1951, a Special Selection Board was constituted for selecting officers to the Indian Forest Service in the senior and junior scales from officers serving in the forest department of the State of Jammu and Kashmir. One of the members of the Board was the Chief Conservator of Forests of the State, as required by the Regulations. He was a Conservator of forests appointed as Acting Chief Conservator superseding another Conservator of Forests whose
D appeal to the State Government against his supersession was pending at the time the selections by the Board were made. The Acting Chief Conservator was also one of the candidates seeking to be selected to the Indian Forest Service. The Board made the selection of officers in the senior and junior scales. The Acting Chief Conservator's name was at the top of the list of selected officers, while the names of three conservators, (including the officer who was superseded), who were the Acting Chief Conservator's rivals, were omitted. The Acting Chief Conservator
E did not sit in the Selection Board at the time his name was considered, but participated in the deliberations when the names of his rivals were considered. He also participated in the Board's deliberations while preparing the list of selected candidates in order of preference. The list and the records were sent to the Ministry of Home Affairs and the Ministry of Home Affairs forwarded the list with its observations to the Union Public Service Commission, as required by the Regulations, and the U.P.S.C. examined the records of the officers afresh and made its recom-
F mendations. The Government of India thereafter notified the list. The three conservators, whose names were not included in the list, and other aggrieved officers filed a petition in this Court under Art. 32 for quashing the notification.

On the questions : (1) Assuming that the proceedings in the present case were administrative proceedings, whether principles of natural justice applied to them; (2) Whether there was a violation of such princi-
G ples of natural justice in the present case; (3) Since the recommendations of the Board were first considered by the Home Ministry and the final recommendations were made by the U.P.S.C., whether there was any basis for the petitioners' grievances; (4) Whether there were grounds for setting aside the selection of all the officers including those in the junior scales,

HELD : (1) The rules of natural justice operate in areas not covered
H by any law validly made, that is, 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. [468F-G; 469B-D] A

Suresh Koshy George v. *The University of Kerala*, [1969] 1 S.C.R. 317, *State of Orissa* v. *Dr. (Miss) Binapani Dei* [1967] 2 S.C.R. 625 and *In re : H. K. (An Infant)* [1967] 2 Q.B. 617, 630, referred to. B

(2) 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. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that enquiries must be held in good faith and without bias, and not arbitrarily or unreasonably, is now included among the principles of natural justice. [468G-H; 469D-E] C

In the present case, at the time of selection, the other members of the Board did not know that the appeal of the superseded conservator was pending before the State Government and hence there was no occasion for them to distrust the opinion of the Acting Chief Conservator. There was a conflict between his interest and duty and he was a judge in his own cause. Taking into consideration human probabilities and the ordinary course of human conduct, there was reasonable ground for believing that the Acting Chief Conservator was likely to have been biased. He did not participate in some of the deliberations of the Board, but the facts that he was a member of the Board and that he participated in the deliberations when the claims of his rivals were considered and in the preparation of the list, must have had its impact on the selection, as the Board, in making the selection, must necessarily have given weight to his opinion. In judging the suitability of the candidates the members of the Board must have had mutual discussions and though the other members filed affidavits stating that the Acting Chief Conservator in no manner influenced their decision, in group discussions, each member was bound to influence the others in a subtle manner and without their being aware of such influence. [466D-G; 467A-D] D E F

In the circumstances of the case, the selection by the Board, could not be considered to have been taken fairly and justly as it was influenced by a member who was biased. [470C-E]

(3) The Selection Board was undoubtedly a high powered body, and its recommendations must have had considerable weight with the U.P.S.C. The recommendation made by the U.P.S.C. could not be dissociated from the selection made by the Selection Board which was the foundation for the recommendations of the U.P.S.C. Therefore, if the selection by the Selection Board was held to be vitiated, the final recommendation by the U.P.S.C. must also be held to have been vitiated. [462G-H; 469G-H] G

Regina v. *Criminal Injuries Compensation Board, Ex Parte Lain*, [1967] 2 Q.B. 864, 881, applied. H

Sumer Chand Jain v. *Union of India*, W.P. No. 237 of 1966, dated 4-5-1967, distinguished.

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(4) The selections to both senior and junior scales were made from the same pool and so, it was not possible to separate the two sets of officers. Therefore, it was not sufficient to merely direct the Selection Board to consider the cases of the three conservators who were excluded, but all the selections had to be set aside. [470G-H; 471A]

ORIGINAL JURISDICTION : Writ Petitions Nos. 173 to 175 of
B 1967.

Petition under Art. 32 of the Constitution of India for enforcement of the fundamental rights.

A. K. Sen and *E. C. Agrawala*, for the petitioners (in W.P. No. 173 of 1967).

C *Frank Anthony, E. C. Agrawala* and *A. T. M. Sampat*, for the petitioners (in W.P. No. 174 of 1967).

C. K. Daphtary, E. C. Agrawala, A. T. M. Sampat, S. R. Agarwala and *Champat Rai*, for the petitioners (in W.P. No. 175 of 1967).

D *Niren De, Attorney-General, N. S. Bindra* and *R. N. Sachthey*, for respondents Nos. 1 to 6 (in all the petitions).

H. R. Gokhale and *Harbans Singh*, for respondents Nos. 7 and 26 (in all the petitions).

The Judgment of the Court was delivered by

E **Hegde, J.** These petitions are brought by some of the Gazetted Officers serving in the forest department of the State of Jammu and Kashmir. Some of them are serving as Conservators of Forests, some as Divisional Forest Officers and others as Assistant Conservators of Forests. All of them feel aggrieved by the selections made from among the officers serving in the forest department
F of the State of Jammu and Kashmir to the Indian Forest Service, a service constituted in 1966 under s. 3(1) of the All India Services Act, 1951 and the rules framed thereunder. Hence they have moved this Court to quash notification No. 3/24/66-A-15(IV) dated the 29th July 1967 issued by the Government of India, Ministry of Home Affairs, as according to them the selections notified in the said notification are violative of Arts. 14 and 16 of
G the Constitution and on the further ground that the selections in question are vitiated by the contravention of the principles of natural justice. They are also challenging the *vires* of s. 3 of the All India Services Act, rule 4 of the rules framed under that Act and Regulation 5 of the Indian Forest Service (Initial Recruitment) Regulations 1966, framed under the aforementioned
H rule 4.

Section 2(A) of the All India Services Act, 1951 authorises the Central Government to constitute three new All India Services

including the Indian Forest Service. Section 3 provides that the Central Government shall after consulting the Government of the States concerned including that of the State of Jammu and Kashmir to make rules for the regulation of recruitment and the conditions of service of persons appointed to those All India Services. Sub-s. (2) of s. 2 prescribes that all rules made under that section "shall be laid for not less than fourteen days before Parliament as soon as possible after they are made. and shall be subject to such modifications, whether by way of repeal or amendment, as Parliament may make on a motion made during the session in which they are so laid."

In pursuance of the power given under s. 3, rules for the recruitment to the Indian Forest Service were made in 1966—Indian Forest Service (Recruitment) Rules, 1966. The only rule relevant for our present purpose is rule 4(1) which reads:

> "As soon as may be. after the commencement of these rules, the Central Government may recruit to the service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such Regulations as the Central Government may make in consultation with the State Governments and the Commission."

The Commission referred to in the above rule is the Union Public Service Commission. The Proviso to that sub-rule is not relevant for our present purpose. We may next come to the Regulations framed under rule 4(1). Those Regulations are known as the Indian Forest Service (Initial Recruitment) Regulations, 1966. They are deemed to have come into force on July 1, 1966. Regulation 2 defines certain expressions. Regulation 3 provides for the constitution of a special selection board. It says that the purpose of making selection to State cadre, the Central Government shall constitute a special selection board consisting of the Chairman of the Union Public Service Commission or his nominee, the Inspector General of Forests of the Government of India, an officer of the Government of India not below the rank of Joint Secretary, the Chief Secretary to the State Government concerned or the Secretary of that Government dealing with the forests and the Chief Conservator of Forests of the State Government concerned. Regulation 4 prescribes the conditions of eligibility. That Regulation contemplates the formation of a service in the senior scale and a service in the junior scale. Regulation 5 is important for our present purpose. It deals with the preparation of the list of suitable candidates. It reads:

> "(1) The Board shall prepare, in the order of preference, a list of such officers of State Forest Service who

A satisfy the conditions specified in regulation 4 and who are adjudged by the Board suitable for appointment to posts in the senior and junior scales of the Service.

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

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

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

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

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

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Regulation 6 stipulates that the officers recommended by the Commission under sub-r. (3) of Regulation 5 shall be appointed to the service by the Central Government subject to the availability of vacancies in the State cadre concerned.

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In pursuance of the Regulation mentioned above, the Central Government constituted a special selection board for selecting officers to the Indian Forest Service in the senior scale as well as in the junior scale from those serving in the forest department of the State of Jammu and Kashmir. The nominee of the Chairman of the Union Public Service Commission, one M. A. Venkataraman was, the Chairman of the board. The other members of the board were the Inspector General of Forests of the Government of India, one of the Joint Secretaries in the Government of India, the Chief Secretary to the State Government of Jammu and Kashmir and Naqishbund, the Acting Chief Conservator of Forests of Jammu and Kashmir.

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The selection board met at Srinagar in May, 1967 and selected respondents 7 to 31 in Writ Petition No. 173 of 1967. The cases of respondents Nos. 32 to 37 were reserved for further consideration. The selections in question are said to have been made solely on the basis of the records of officers. Their suitability was not tested by any examination, written or oral. Nor were they interviewed. For several years before that selection the adverse entries made in the character rolls of the officers had not been

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communicated to them and their explanation called for. In doing so quite clearly the authorities concerned had contravened the instructions issued by the Chief Secretary of the State. Sometime after the afore-mentioned selections were made, at the instance of the Government of India, the adverse remarks made in the course of years against those officers who had not been selected were communicated to them and their explanations called for. Those explanations were considered by the State Government and on the basis of the same, some of the adverse remarks made against some of the officers were removed. Thereafter the selection board reviewed the cases of officers not selected earlier as a result of which a few more officers were selected. The selections as finally made by the board were accepted by the Commission. On the basis of the recommendations of the Commission, the impugned list was published. Even after the review Basu, Baig and Kaul were not selected. It may also be noted that Naqishbund's name is placed at the top of the list of selected officers.

Naqishbund had been promoted as Chief Conservator of Forests in the year 1964. He is not yet confirmed in that post. G. H. Basu, Conservator of Forests in the Kashmir Forest Service who is admittedly senior to Naqishbund had appealed to the State Government against his supersession and that appeal was pending with the State Government at the time the impugned selections were made. M. I. Baig and A. N. Kaul Conservators of Forests also claim that they are seniors to Naqishbund but that fact is denied by Naqishbund. Kaul had also appealed against his alleged supersession but it is alleged that appeal had been rejected by the State Government.

Naqishbund was also one of the candidates seeking to be selected to the All India Forest Service. We were told and we take it to be correct that he did not sit in the selection board at the time his name was considered for selection but admittedly he did sit in the board and participate in its deliberations when the names of Basu, Baig and Kaul, his rivals, were considered for selection. It is further admitted that he did participate in the deliberations of the board while preparing the list of selected candidates in order of preference, as required by Regulation 5.

The selection board was undoubtedly a high powered body. That much was conceded by the learned Attorney-General who appeared for the Union Government as well as the State Government. It is true that the list prepared by the selection board was not the last word in the matter of the selection in question. That list alongwith the records of the officers in the concerned cadre selected as well as not selected had to be sent to the Minis-

try of Home Affairs. We shall assume that as required by Regulation 5, the Ministry of Home Affairs had forwarded that list with its observations to the Commission and the Commission had examined the records of all the officers afresh before making its recommendation. But it is obvious that the recommendations made by the selection board should have weighed with the Commission. Undoubtedly the adjudging of the merits of the candidates by the selection board was an extremely important step in the process.

It was contended before us that s. 3 of the All India Services Act, rule 4 of the rules framed thereunder and Regulation 5 of the Indian Forest Service (Initial Recruitment) Regulations 1966 are void as those provisions confer unguided, uncontrolled and uncanalised power on the concerned delegates. So far as the *vires* of s. 3 of the Indian Administrative Act is concerned, the question is no more *res integra*. It is concluded by the decision of this Court in *D. S. Garewal* v. *The State of Punjab and Anr.*(1) We have not thought it necessary to go into the question of the *vires* of rule 4 and Regulation 5 as we have come to the conclusion that the impugned selections must be struck down for the reasons to be presently stated.

There was considerable controversy before us as to the nature of the power conferred on the selection board under rule 4 read with Regulation 5. It was contended on behalf of the petitioners that that power was a quasi-judicial power whereas the case for the contesting respondents was that it was a purely administrative power. In support of the contention that the power in question was a quasi-judicial power emphasis was laid on the language of rule 4 as well as Regulation 5 which prescribe that the selections should be made after adjudging the suitability of the officers belonging to the State service. The word 'adjudge' we were told means "to judge or decide". It was contended that such a power is essentially a judicial power and the same had to be exercised in accordance with the well accepted rules relating to the exercise of such a power. Emphasis was also laid on the fact that the power in question was exercised by a statutory body and a wrong exercise of that power is likely to affect adversely the careers of the officers not selected. On the other hand it was contended by the learned Attorney-General that though the selection board was a statutory body, as it was not required to decide about any right, the proceedings before it cannot be considered quasi-judicial; its duty was merely to select officers who in its opinion were suitable for being absorbed in the Indian Forest Service. According to him the word 'adjudge' in rule 4 as well as Regulation 5 means "found worthy of selection".

(1) [1959] 1 Supp. S.C.R. 792.

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours, it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J. in *Regina* v. *Criminal Injuries Compensation Board, Ex. Parte Lain*(1) are instructive.

> "With regard to Mr. Bridge's second point I cannot think that Atkin, L.J. intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case, the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from *Rex.* v. *Postmaster-General, Ex-parte Carmichael*(2) and *Rex.* v. *Boycott Ex parte Keasley*(3) the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.
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> The position as I see it is that the exact limits of the ancient remedy by way of *certiorari* have never been and ought not to be specifically defined. They have varied

(1) [1967] 2 Q.B. 864, 881. (2) [1928] 1 K.B. 291.
(3) [1939] 2 K.B. 651.

A from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a *lis* inter parties. Later again it extended to cases where there was no *lis* in the strict sense of the word but where immediate or subsequent
B rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of *certiorari* since their authority is derived solely from contract, that is, from the agreement of the parties concerned.

C Finally, it is to be observed that the remedy has now been extended, see *Reg.* v. *Manchester Legal Aid Committee, Ex parte R. A. Brand & Co. Ltd.*(1) to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this court
D has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of *certiorari* can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a
E duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is as Mr. Bridge said, 'a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown.' It is clearly, therefore, performing
F public duties."

The Court of Appeal of New Zealand has held that the power to make a zoning order under Dairy Factory Supply Regulation 1936 has to be exercised judicially, see *New Zealand and Dairy Board* v. *Okita Co-operative Dairy Co. Ltd.*(2). This Court in
G *The Purtabpore Co. Ltd.* v. *Cane Commissioner of Bihar and Ors.*(3) held that the power to alter the area reserved under the Sugar Cane (Control) Order 1966 is a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it
H does not become a new despotism, courts are gradually evolving

(1) [1952] 2 Q.B. 413;
(2) [1953] New Zealand Law Reports p. 366.
(3) [1969] 2 S.C.R. 807.

the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. But for the purpose of the present case we shall assume that the power exercised by the selection board was an administrative power and test the validity of the impugned selections on that basis.

It is unfortunate that Naquishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered He was also party to the preparation of the list of selected candidates in order of preference. At every stage of this participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member

A of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the B candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that C Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund.

This takes us to the question whether the principles of natural D justice apply to administrative proceedings similar to that with which we are concerned in these cases. According to the learned Attorney General those principles have no bearing in determining the validity of the impugned selections. In support of his contention he read to us several decisions. It is not necessary to examine those decisions as there is a great deal of fresh thinking on E the subject. The horizon of natural justice is constanlty expanding. The question how far the principles of natural justice govern administrative enquiries came up for consideration before the Queens Bench Division in *In re : H. K. (An Infant)* (1). Therein the validity of the action taken by an Immigration Officer came up for consideration. In the course of his judgment Lord Parker, C.J. observed thus :

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> "But at the same time, I myself think that even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant G can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly. Good administration and an honest or *bona fide* decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the H limited extent that the circumstances of any particular case allow, and within the legislative framework under

(1) [1967] 2 Q.B. 617, 630.

which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it may be said that one is going further than is permitted on the decided cases because heretofore at any rate the decisions of the courts do seem to have drawn a strict line in these matters according to whether there is or is not a duty to act judicially or quasi-judicially."

In the same case Blain, J. observed thus :

"I would only say that an immigration officer having assumed the jurisdiction granted by those provisions is in a position where it is his duty to exercise that assumed jurisdiction whether it be administrative, executive or quasi-judicial, fairly, by which I mean applying his mind dispassionately to a fair analysis of the particular problem and the information available to him in analysing it. If in any hypothetical case, and in any real case, this court was satisfied that an immigration officer was not so doing, then in my view *mandamus* would lie."

In *State of Orissa* v. *Dr. (Miss) Binapani Dei and Ors.*[1] Shah, J. speaking for the Court, dealing with an enquiry made as regards the correct age of a government servant, observed thus :

"We think that such an equiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State . . . . . ".

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can 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. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily

(1) [1967] 2 S.C.R. 625.

A or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now ques-
B tioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-
C judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George* v. *The University of Kerala and Ors.*(1) the rules of natural justice are not em-
D bodied rules. 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 body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the obser-
E vance of that rule was necessary for a just decision on the facts of that case.

It was next urged by the learned Attorney-General that after all the selection board was only a recomendatory body. Its recommendations had first to be considered by the Home Ministry
F and thereafter by the U.P.S.C. The final recommendations were made by the U.P.S.C. Hence grievances of the petitioners have no real basis. According to him while considering the validity of administrative actions taken, all that we have to see is whether the ultimate decision is just or not. We are unable to agree with the learned Attorney-General that the recommendations made by
G the selection board were of little consequence. Looking at the composition of the board and the nature of the duties entrusted to it we have no doubt that its recommendations should have carried considerable weight with the U.P.S.C. If the decision of the selection board is held to have been vitiated, it is clear to our mind that the final recommendation made by the Commission must also be held to have been vitiated. The recommendations
H made by the Union Public Service Commission cannot be dissociated from the selections made by the selection board which

(1) [1969] 1 S.C.R. 317.

is the foundation for the recommendations of the Union Public Service Commission. In this connection reference may be usefully made to the decision in *Regina* v. *Criminal Injuries Compensation Board Ex. Parte Lain*(1). A

It was next urged by the learned Attorney-General that the mere fact that one of the members of the Board was biased against some of the petitioners cannot vitiate the entire proceedings. In this connection he invited our attention to the decision of this Court in *Sumer Chand Jain* v. *Union of India and another*(2). Therein the Court repelled the contention that the proceedings of a departmental promotion committee were vitiated as one of the members of that committee was favourably disposed towards one of the selected candidates. The question before the Court was whether the plea of *mala fides* was established. The Court came to the conclusion that on the material on record it was unable to uphold that plea. In that case there was no question of any conflict between duty and interest nor any members of the departmental promotion committee was a judge in his own case. The only thing complained of was that one of the members of the promotion committee was favourably disposed towards one of the competitors. As mentioned earlier in this case we are essentially concerned with the question whether the decision taken by the board can be considered as having been taken fairly and justly. B C D

One more argument of the learned Attorney-General remains to be considered. He urged that even if we are to hold that Naqishbund should not have participated in the deliberations of the selection board while it considered the suitability of Basu, Baig and Kaul, there is no ground to set aside the selection of other officers. According to him it will be sufficient in the interest of justice if we direct that the cases of Basu, Baig and Kaul be reconsidered by a Board of which Naqishbund is not a member. Proceeding further he urged that under any circumstance no case is made out for disturbing the selection of the officers in the junior scale. We are unable to accept either of these contentions. As seen earlier Naqishbund was a party to the preparation of the select list in order of preference and that he is shown as No. 1 in the list. To that extent he was undoubtedly a judge in his own case, a circumstance which is abhorrent to our concept of justice. Now coming to the selection of the officers in the junior scale service, the selections to both senior scale service as well as junior scale service were made from the same pool. Every officer who had put in a service of 8 years or more, even if he was holding the post of an Assistant Conservator of Forests was eligible for being selected for the senior scale service. In fact some E F G H

(1) [1967 2 Q.B. 864.

(2) Writ Petition No. 237/1966 decided on 4-5-1967.

A Assistant Conservators have been selected for the senior scale service. At the same time some of the officers who had put in more than eight years of service had been selected for the junior scale service. Hence it is not possible to separate the two sets of officers.

B For the reasons mentioned above these petitions are allowed and the impugned selections set aside. The Union Government and the State Government shall pay the costs of the petitioners.

V.P.S. *Petitions allowed.*