A

UNION OF INDIA
v.
MOHAN LAL CAPOOR & OTHERS

September 26, 1973

[K. K. MATHEW AND M. H. BEG, JJ.]

I.A.S./I.P.S. (Appointment by Promotion) Regulations 1955— *Regulation* B 4(1), 5(1), 5(2), 5(4) & 5(5)—*Effect of non-compliance with the mandatory duty imposed by Reg.* 5(5)—*If seniority should be dominant factor—Competence of State Government to pass reversion orders.*

Natural justice—Notice to superseded officers if necessary.

Regulation 4(1) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 provides for the Selection Committee to consider in every year the cases of all substantive members of the respective services who, on the first day of January of that C year, had completed not less than 8 years' of continuous service in a post of Deputy Collector/Deputy Superintendent of Police. Under reg. 5(1) the Committee has to prepare a list of such members as satisfied the condition in reg. 4 and as are held by the Committee to be suitable for promotion to the service. Regulation 5(2) enjoins that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority." Regulation 5(4) enjoins that the "List so prepared shall be reviewed or revised every year." Regulation 5(5) says that "if in the process of selection, D review or revision it is proposed to supersede any member of the State Civil/ Police Service the Committee shall record its reasons for the proposed supersession."

The respondents have been members of the U.P. Civil (Executive) Service/ U.P. State Police Service. They were brought on the respective select lists of I.A.S./I.P.S. in 1961 and 1962 and since then they officiated as District Magistrates/Superintendents of Police for a number of years. The respondents who were eligible for promotion came on the select list through the procedure for selection and continued on the select list until the list for 1968 was E prepared in 1967 when a number of junior officers in both cases, whose names did not figure in the select list of 1967 were added in the select list for 1968. The respondents were reverted to their substantive posts in the respective State Services. The reason sent to the Union Public Service Commission by the Selection Committee for the displacement of each of the respondents was that on an "overall assessment, the records of these officers were not such as to justify their appointment to the respective service at this stage in preference to those selected." The High Court quashed the respective select lists and held F (i) that the Selection Committee did not comply with the provision of reg. 5(5) imposing a mandatory duty upon it to record its reasons for the proposed supersession (ii) that seniority should be the dominant factor for making selection for inclusion in the list to be prepared under reg. 5(1) and that merit and suitability were only of secondary importance; (iii) that the State Government had acted on the wrong assumption that it was competent to pass reversion orders; (iv) that since the aggrieved officers were punished in the sense that they were, dealt with in an arbitrary fashion each of them should have G been supplied with the reasons for the supersession to enable them to make written representation to the UPSC.

Dismissing the appeal to this Court,

HELD : per Beg J., Mathew J. concurring : The mandatory provisions of reg. 5(5) were not complied with. It was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to record of others who were to be preferred particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that H had been done, facts on service records of officers considered by the Selection committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind was applied to the subject

matter for a decision whether it was purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way could opinions or decisions recorded be shown to be manifestly just and reasonable. It was not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. [820 C—E]

Associated Electrical Industries (India) Ltd., Calcutta v. *Its Workmen* A.I.R. 1967 S.C. 284 and *Collector of Monghyr & Ors.* v. *Keshav Prasad Goenka & Ors.*, [1963] 1 S.C.R. 98, referred to.

Per Mathew J: The High Court was wrong in saying that seniority was the determining factor and that it was only if the senior was found unfit that the junior could be thought of for inclusion in the list. What reg. 5(2) meant was that for inclusion in the list merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It was only when merit and suitability were roughly equal that seniority would be a determining factor, or, if it was not fairly possible to make an assessment *inter se* of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale. The purpose of an annual revision or review was to make an assessment of the merit and suitability of all the then eligible candidates and make a fresh list of the required number of the most suitable candidates from among them. When reg. 5(4) said that the list prepared in accordance with reg. 5(1) shall be reviewed or revised every year, it really meant that there must be an assessment of the merit and suitability of all the eligible members every year. Though the words used in reg. 5(4) were "review" and "revision", in the process of review or revision, a fresh assessment must be made of the merit and suitability of all the members remaining in the previous list and all other eligible members in the concerned service. If the criteria for selection were merit and suitability from among all the eligible members, then the field of selection must comprise of the entire category of eligible members of the service. Otherwise the selection would not be on the basis of merit and suitability among all the eligible members of the State service. There was no reason to give a go-bye to the word "all" in reg. 4(1) as the High Court had done. If merit and suitability should determine the choice and that seniority should become relevant only when merit and suitability were roughly equal, it was only proper that the field of choice should include all the eligible members of the service. When once the selection was made on the basis of merit and suitability with due regard to seniority, the fact that reg. 5(3) enjoined that the names must thereafter be arranged according to their seniority in State service was a definite pointer that the selection must primarily be on the basis of merit and suitability. The whole scheme of the regulations was to give preferential treatment to merit and suitability.

[801 C—D; 802 G; 803 ABD; 804 CD]

Sant Ram Sharma v. *State of Rajasthan & anr.* [1968] 1 S.C.R. 11 and *Mir Ghulam* v. *Union of India* A.I.R. 1973 S.C. 1138, referred to.

If the State Government could make an appointment under r. 9(2) of the Cadre Rules, there was no reason why it could not terminate it. The normal rule was that a power of appointment carried with it the power to terminate the appointment unless there was an express provision to the contrary. The enabling power lodged in the Central Government to direct the termination of the appointment when a report had been received did not mean that the State Government was denuded of that power. Rule 9(3) only showed that when a report was made under r. 9(2) the Central Government had power to direct the State Government to terminate the appointment. This would show that the power to terminate the appointment rested with the State Government otherwise, there was no reason for sub-r. (3) of r. 9 to say that the Central Government might direct the State Government to terminate the appointment. The fact that the State Government should terminate the appointment when the Central Government made the direction to do so, could be considered only as vesting a power to make the direction which it would not otherwise have but for the sub-rule. It did not mean that the State Government would lose its power to terminate the appointment if the Central Government did not make a direction. The vesting of the power in the Central Government to give a binding direction did not take away the power of the State Government as appointing authority to terminate the appointment. [805 H; 806 A—C]

A Inclusion of a name in the select list at best, could give a person only an inchoate right for appointment during the year which the select list would be current. When that period was over he had no right to be included in the select list for the next year. He had only a right to be considered for inclusion in it. It was not possible to lay down as a general proposition that whenever a selection was made on the basis of merit and suitability with due regard to seniority notice to a senior would be required if he was proposed to be passed over in favour of a junior on the ground of his greater merit and suitability. It would B not be expedient to extend the horizon of natural justice involved in the *audi alteram partem* rule to the twilight zone of mere expectations, however, great they might be. [806 FG; 807 EF]

Per Beg. J : The correct view in conformity with the plain meanings of words used in the relevant rules was that the 'entrance' or inclusion test for a place on the select list, was competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee had an unrestricted choice of the best available talent, from C amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority was the governing factor. A simple reading of reg. 5(2) clearly indicated this to be the correct view. The required number had to be selected by a comparison of merits of all the eligible candidates of each year. But in making this selection seniority must play its due role. Seniority would, however, only be one of the several factors affecting assessment of merit as comparative experience in service should be. There could D be a certain number of marks allotted for purpose of facilitating evaluation, to each year of experience gained in the service. When the required number for the list was thus chosen, the respective roles of seniority and exceptional merit would be governed by reg. 5(3). [817 G—H; 818 AB]

[His Lordship did not consider it necessary to decide the questions (i) whether the State Government exceeded its powers in reverting the respondents and (ii) whether the concepts of justice, fairplay and reason required an opportunity being given to the respondents before the proposed supersession.]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 695 of 1971.

From the judgment and decree dated 27-3-1969 of the Allahabad High Court in Writ Petition No. 2771 of 1968.

CIVIL APPEALS NOS. 614-617 of 1971.

From the judgment and Decree dated the 27-3-69 of the Allahabad High Court at Allahabad in W.P. Nos. 1330 and 2771, 766 and 767 F of 1968, respectively.

L. N. Sinha, Solicitor General for India, *P. P. Rao* and S. P. *Nayar,* for the appellant (in C.A. No. 695/71).

O. P. Rana, for the appellant (in C.As. 614-617/71 and for respondents Nos. 2, 3, 6 and 7 in C.A. No. 605/71).

M. C. Chagla, R. A. Gupta and *J. P. Goyal,* for respondent No. 1 (in C.A. Nos. 695 and 616/71)

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R. A. Gupta and *J. P. Goyal* for respondent No. 1 (in C.A. No. 615/71).

R. K. Garg and *S. C. Aggarwal,* for respondent No. 1 (in C.A. No. 617/71).

The Judgments of the Court were delivered by

H MATHEW, J. I am in full agreement with the conclusion reached by my learned brother and the reasons for it. In view of the importance of certain questions which arise for consideration in this case, I think it meet that I should express my views upon those questions.

The first question for consideration is whether the High Court was right in its interpretation of Regulation 5 (2) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the "Promotion Regulations") framed under sub-rule (1) of rule 8 of the Indian Administrative Service Indian Police Service (Recruitment) Rules, 1954 (hereinafter called the "Recruitment Rules") that seniority should be the dominanant factor for making selection for inclusion in the list to be prepared under Regulation 5(1) and that merit and suitability are only of secondary importance.

Regulations 4 and 5 of the Promotion Regulations read :

"4(1) Each Committee shall meet at intervals not exceeding one year and consider the cases of all substantive members of the State Civil/Police Service who on the first day of January of that year, had completed not less than eight years of continuous service (whether officiating or substantive) in a post of Deputy Collector/Deputy Superintendent of Police.

(2) Notwithstanding anything contained in sub-regulation (1), the Committee shall not ordinarily consider the cases of the members of the State Civil/Police Service who have attained the age of 52 years on the first day of January of the year in which the meeting of the Committee is held:

Provided that a member of the State Civil/Police Service whose name appears in the Select list in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh select list to be prepared by the Committee even if he has in the meanwhile attained the age of 52 years.

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

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

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

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

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

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

Now, under Regulation 4(1) it is the duty of the Committee to consider in every year the cases of all substantive members of the B State Civil/Police Service who on the first day of January of that year, had completed not less than eight years' of continuous service (whether officiating or substantive) in a post of Deputy Collector/Deputy Superintendent of Police.

Regulation 5(1) makes it obligatory that the Committee shall prepare a list of such members as satisfy the condition in Regulation 4 and as are held by the Committee to be suitable for promotion to C the service.

And, when Regulation 5(2) says that the selection for inclusion in the list shall be based on merit and suitability in an respects with due regard to seniority, what it means is that for inclusion in the list, merit and suitability in all respects shsould be the governing conideration and that seniority should play only a secondary role. It is only D when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not farily possible to make an assessment *inter se* of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale. But, to say, as the High Court has done that seniority is the determining factor and that it is only if the senior is found unfit that the junior can be thought of for inclusion in the list is, with respect, not a correct reading of E Regulation 5(2). I do not know what the High Court would have said had Regulation 5(2) said : "Selection for inclusion in the select list shall be based on seniority with due regard to merit and suitability". Would it have said that the interpretation to be put upon the hypothetical Sub-regulation (2) is the same as it put upon the actual Sub-regulation ?

F As I said Regulation 5(1) makes it obligatory that the Committee shall prepare a list of such members who satisfy the condition laid down in Regulation 4 and as are suitable for promotion. Now, who are the members who satisfy the condition laid down in Regulation 4 ? All substantive members of the State Civil/Police Service who had completed not less than eight years' continuous service. And, who are the members who are suitable for promotion ? Those members G who were selected on the basis of their merit and suitability with due regard to seniority under Regulation 5(2). No doubt, the number of members included in the list shall not be more than twice the number of substantive vacancies expected to arise in the course of a period of twelve months from the date of the preparation of the list. The list so prepared has to be sent to the Union Public Service Commission under Regulation 7(2) by the State Government along with the H records of the members of the State Civil/Police Service included in the list as well as the records of all the members of the State Civil/ Police Service who are proposed to be superseded by the recommendation made in the list and the reasons as recorded by the Committee for

the proposed supersession by any member of the State Civil/Police Service and the observation of the State Government on the recommendation of the Committee. Regulation 7 provides that the Commission shall consider the list prepared by the Committee along with the other documents received from the State Government and unless it considers any change necessary, approve the list. And, if the Commission considers it necessary to make any changes in the list received from the State Government, the Commissoin shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government, may approve the list finally with such modification, if any, as may in its opinion, be just and proper.

The list as finally approved by the Commission shall form the select list of the members of the State Civil/Police Service.

The Regulation also states that the list shall ordinarily be in force until its review and revision effected under Regulation 5(4) is approved under Regulation 7(1) or, as the case may be, finally approved under Regulation 7(2). The proviso to Regulation 7(4) states that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil/Police Service included in the Select List, a special review of the select list may be made at any time at the instance of the State Government and the Union Public Service Commission may, if it so thinks fit, remove the name of such members of the State Civil/Police Service from the Select List.

Now, Regulation 5(4) makes it clear that, as far as possible, there should be a revision or review of the select list every year. The purpose of an annual revision or review is to make an assessment of the merit and suitability of all the then eligible candidates and make a fresh list of the required number of the most suitable candidates from among them. In other words, the purpose of the annual review or revision of the select list is to prepare a list and to include therein the required number of the most suitable persons from among all the then eligible candidates.

Proviso to Regulation 4(2) makes it abundantly clear that there must be a fresh select list every year by making a review or revision of the previously existing select list. By Regulation 4(2), a person who has attained the age of 52 years shall not be considered as an eligible candidate notwithstanding the fact that he is a substantive member of the service. Then the proviso to Regulation 4(2) says that if his name has been entered in the select list for the previous year, he might be considered for inclusion in the *fresh* select list for the next year, even if he has passed the age of 52 years. When Regulation 5(4) says that the list prepared in accordance with Regulation 5(1) shall be reviewed or revised every year, it really means that there must be an assessment of the merit and suitability of all the eligible members every year. The paramount duty cast upon the Committee to draw up a list under Regulation 5(1) of such members of the State Civil/Police Service as satisfy the condition under Regulation 4 and as are held by the Committee to be suitable for promotion to he service would be

discharged only if the Committee makes the selection from all the eligible candidates every year.

I see no reason to give the go-bye to the word 'all' in Regulation as the High Court has done. I preceive no reason, when Regulation 4(1) uses the word 'all' why I should not give effect to it. I am unable to see the anomaly which would result if the word is retained. If merit and suitability should determine the choice and that seniority should become relevant only when merit and suitability are roughly equal, it is only proper that the field of choice should include all the eligible members of the State Civil/Police service. It is rather curious that the High Court should have thought the use of the word 'all' in Regulation 4(1) to be "loose or inaccurate" because inapt expressions like "the fresh select list", "the list so prepared" have been used in the proviso to Regulation 4(2) and in Regulation 5(4) respectively. Assuming for the moment that these expressions are inapt in the context, I do not think that a sufficient reason for disregarding the effect of the word 'all' in Regulation 4(1). On the other hand, I think it would have been anomalous if the field of choice had not embraced the whole category of the eligible members of the State Civil/Police Service, as the basis of the selection for inclusion in the list is primarily merit and suitability. Nor does the fact that the number of members to be selected for inclusion in the list is limited by the number of vacancies expected to arise in the succeeding year a sufficient ground, as the High Court has thought for limiting the field of choice.

Though the words used in Regulation 5(4) are 'review' and 'revision', in the process of review or revision, a fresh assessment must be made of the merit and suitability of all the members remaining in the previous list and all other eligible members in the State Civil/Police Service. If the criteria for selection are merit and suitability from among all the eligible members, then the field of selection must comprise of the entire category of eligible members of the service. Otherwise, the selection will not be on the basis of merit and suitability from among all the eligible members of the State service. In other words, the inclusion of the name of a member in the select list for a year will not be an entitlement for inclusion in the select list for the suceeding year. A *fortiori* a member who has been assigned a rank in the select list for a year can have no claim for the same rank in the next year.

Mr. Chagla, appearing for one of the respondents, contended that there is a distinction between promotion and selection. He said that under rule 9 of the Recruitment Rules, 25 per cent of the posts in the Indian Administrative Service/Indian Police Service are reserved for the members of the State Civil and Police Services to be filled by promotion and that this will have no meaning unless the promotions are made on the basis of seniority subject to fitness. According to counsel, though merit and suitability would be the criteria for selection from the open market for the remaining 75 per cent, for promotion to the 25 per cent quota from the members of the State service, seniority subject to fitness should be the sole criterion. I am unable to understand the logic of the distinction when considering the meaning to be

put upon Regulation 5(2). It is true that 25 per cent of the posts are reserved for being filled by promotion and the rest by selection, but, what follows? Is it necessary that promotion should be on the basis of seniority subject to fitness and not on the basis of merit and suitability with due regard to seniority. The very idea of a selection from all the eligible candidates on the basis of merit and suitability with due regard to seniority under Regulation 5(2) is to find out the members who are suitable to be promoted for filling the 25 per cent quota reserved to the two State services. The mere fact that the word 'promotion' is used in rule 9 of the Recruitment Rules would not indicate that selection from among the eligible members of the State services for promotion should be on the basis of seniority subject to fitness.

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

Regulation 5(3) says that the names of the officers included in the list shall be arranged in the order of seniority in State service. The provision might not have been necessary if the selection was on the basis of seniority subject to the condition of fulfilling the criteria of merit and suitability. In other words, when once the selection is made on the basis of merit and suitability with due regard to seniority, the fact that Regulation 5(3) enjoins that the names must thereafter be arranged according to their seniority in State service is a definite pointer that the selection must primarily be on the basis of merit and suitability. And even when arranging the names of officers according to the order of seniority in State service, exceptional merit is given preferential treatment, as the proviso says that a junior officer who is of exceptional merit and suitability must be assigned a place in the list higher than that of officers senior to him. This is an unmistakable indication to show that the whole scheme of the Regulation is to give preferential treatment to merit and suitability.

In *Sant Ram Sharma* v. *State of Rajasthan and Another*(1) this Court said that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority and that the principle is that when the claim of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available. These observations were relied on in *N. P. Mathur and Others* v. *State of Bihar and Others*(2) for understanding the scope of the rule under consideration in that case which ran as follows:

> "Appointment to the Selection Grade and to posts carrying pay above the time scale of pay in the Administrative Service shall be made by selection on merit with due regard to seniority."
>
> (Rule 3(2-A) of the Indian Administrative Service (Pay) Rules, 1954)

(1) [1968[1 S. C. R. 111, at 118.

(2) A. I. R. 1972 Patna 93.

A The Court said:

> "It is agreed on all hands that the post of Chief Secretary is a selection post from the officers in the super-time scale of pay and it is also agreed that rule 3(2-A) of the Pay Rules applies. In those circumstances, it is clear that selection to the post of Chief Secretary will depend on merit, irrespective of seniority. In my opinion, the principle laid down by their Lordships of the Supreme Court in *Sant Ram Sharma's* case (AIR 1967 SC 1910) makes this position clear".

In *Mir Ghulam* v. *Union of India*(1) this question was incidentally considered that it would appear from the observations in the judgment that the preparation of the list under Regulation 5(1) must primarily be on the basis of merit and suitability, seniority being only one of the relevant considerations in making the selection.

The next question is whether the State Government was competent to terminate the officiating appointments of the respondents, on the basis that, although their names were in the select lists from 1962 onwards, they were removed from the select list prepared in 1968.

Rule 9 of the Indian Administrative Service/Police Service (Cadre) Rules, 1954 provides :

"9(1) A cadre post may be filled by a person who is not a cadre officer if the State Government satisfied :

(a) That the vacancy is not likely to last for more than three months; or

(b) that there is no suitable cadre officer available for filling the vacancy.

(2) Where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

(3) On receipt of a report under Sub-rule(2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto."

The High Court was of the view that the Central Government alone was competent to terminate the appointment of the respondents as the power in that behalf was vested in the Central Government only.

If the State Government can make an appointment under rule 9(2) of the Cadre Rules, there is no reason why it cannot terminate it. The normal rule is that a power of appointment carries with it the power to terminate the appointment unless there is an express provision to the contrary. The enabling power lodged in the Central

(1) A. I. R. 1973 SC 1138.

Government to direct the termination of the appointment when a report has been received does not mean that the State Government is denuded of that power. Rule 9(3) only shows that when a report is made under rule 9(2), the Central Government has power to direct the State Government to terminate the appointment. This would show that the power to terminate the appointment rests with the State Government; otherwise, there is no reason for sub-rule (3) of rule 9 of the Cadre Rules to say that the Central Government may direct the State Government to terminate the appointment. The sub-rule could very well have said that the Central Government may terminate the appointment. The fact that the State Government should terminate the appointment when the Central Government makes the direction to do so, can be considered only as vesting a power to make the direction which it would not otherwise have but for the sub-rule. It does not mean that the State Government would lose its power to terminate the appointment if the Central Government does not make a direction. In other words, the vesting of the power in the Central Government to give a binding direction does not take away the power of the State Government as appointing authority to terminate the appointment. In the light of our conclusion, I do not think it necessary to express any opinion on the question whether the removal of the names of the respondents from the select list of 1968 was *per se* sufficient for the State Government to terminate their officiating "appointment" to the Cadre posts.

It was contended on behalf of respondents that before they were superseded, notice should have been given to them and their explanation asked for. It was argued that rules of natural justice required that before the name of a member is removed from the select list, he should be given notice to show cause why his name should not be removed and unless that is done, the decision to remove his name from the select list would be bad.

I am not impressed by the argument that rules of natural justice require that when a senior is proposed to be superseded, he should be given notice and his explanation called. Inclusion of a name in the select list, at best, can give the person only an inchoate right for appointment during the year when the select list would be current. When that period is over, he has no right to be included in the select list for the next year. He has only a right to be considered for inclusion in it. In other words, inclusion of a person's name in the select list in a year does not give that person a vested right to have his name included in the select list for the succeeding year. As already stated, a fresh list will have to be prepared for the succeeding year after considering the merit and suitability of all the eligible candidates. Regulation 5(5) of the Promotion Regulations makes it clear that there can be supersession when making the selection, or in reviewing or revising the select list. When making a selection for the first time, the expression "supersession" can mean only passing over the claim of a senior according to the State service for inclusion in the list, for, *ex hypothesi,* no previous select list exists. In that context, the word "supersession" can denote only the selection of a junior in preference

A to a senior according to their rank in the State service. There is no reason to give a different meaning to the expression in the context of review or revision of the select list. The expression "supersession" does not mean removal of the name of a person whose name appeared in the previous list from the subsequent list or his demotion in rank in
B the subsequent list. As there is to be a fresh assessment of merit and suitability when a fresh list has to be drawn up, and that, as far as possible, has to be done every year, the word "supersession" can only mean overlooking the seniority in the State service for inclusion in the list. I should have thought the expression "supersession" in the context is quite inapt, as it has overtones that senioirty *per se* has
C some claim for preferential treatment. When you talk of supersession, it normally means that the person superseded has a preferential claim. But, *ex hypothesi* the selection is primarily on the basis of merit and suitability. Therefore, though strictly speaking, there can be no question of supersession when a senior is passed over, as the selection is based primarily on merit and suitability, the expression was used
D probably to indicate that seniority is a factor of great weight to be taken into consideration for inclusion in the select list. Whatever that be, I do not think that in making selection or in reviewing or revising the select list, as a fresh list has to be prepared on the basis of merit and suitability of all eligible candidates including those whose names
E remain in the previous list, with due regard to seniority, there is no question of notice being given to a senior when he is proposed to be passed over. No vested right is involved; no interest recognized and protected by law is in jeopardy. I am not prepared to lay down as a general proposition that whenever a selection is made on the basis of merit and suitability with due regard to seniority, notice to a senior
F will be required if he is proposed to be passed over in favour of a junior on the ground of his greater merit and suitability. No precedent has been cited in support of the proposition. On a balance of all the relevant factors, I do not think it expedient to extend the horizon of natural justice involved in the *audi alteram partem* rule to the twilight zone of mere expectations, however great they might be.

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BEG, J.—The five appeals before us—one by the Union of India and four by the State and the Chief Secretary to the Govt. of Uttar Pradesh —are directed against a common judgment given by Division Bench of the Allahabad High Court, on two Writ Petitions, one by M. L. Capoor and the other by K. N. Misra, and two special appeals, one
H by Ganesh Singh Seth and the other by Basant Kumar Joshi. As all the cases, resting upon similar facts, raised common questions of law they were heard together and disposed of by a common judgment which has come up before us on grant of certificates of fitness of the

cases by the Allahabad High Court under Article 133(1)(c) of the Constitution of India for appeal to this Court. A

M. L. Capoor ad K. N. Misra have been members of the U.P. State Police Service who were brought on a select list for promotion to the Indian Police Service in 1961 and 1962 since when they officiated on cadre posts of the Indian Police Service as Superintendents of Police for a number of years. They were eligible to be considered for promotion under Regulation 4 of Indian Police Service (Appointment by Promotion) Regulations, 1955, and came on the select list through the procedure for selection by a Select Committee confirmed by the Union Public Service Commission, and, finally approved by the State Govt. The whole procedure is set out in Regulations 4 to 7 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, under which the select lists are to be revised and reviewed every year. Both M. L. Capoor and K. N. Misra continued on the select list until the list for 1968 was prepared in December, 1967, when they were suddenly dropped from this list. Consequently, they filed petitions under Art. 226 of the Constitution in the Allahabad High Court for quashing orders of alleged reversion. These Writ Petitions were referred to a Division Bench which decided them with the special appeals of Ganesh Singh Seth and Basant Kumar Joshi involving the same questions of law on similar facts. B C D

Ganesh Singh Seth and Basant Kumar Joshi have been members of the U.P. Civil (Executive Service). They were brought on the select list of the Indian Administrative Service in 1961 and 1962, under Regulations 4 to 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. These two officers, who had officiated as District Magistrates for a number of years, had also been dropped from the select list for 1968 prepared in December 1967, after having continued in that list since 1961 and 1962. They had filed Writ Petitions against their alleged reversions which were dismissed by a learned Judge of the Allahabad High Court on 23-5-1968. Their special appeals were heard by a Division Bench with Writ Petitions of M. L. Capoor and K. N. Misra, because, as already observed, common questions of law were involved. These appeals were allowed by the common judgment now under appeal before us. E F

The Division Bench had quashed the select lists of the Indian Administrative Service and the Indian Police Service for the year 1968 and the orders reverting the four officers concerned to their substantive posts in the State Services. For considering the questions of law raised before us it is enough to set out the relevant regulations of the Indian Administrative Service. The only material differences between the two otherwise identical sets of regulations are that different appellations—*e.g.* 'civil service" and "police service" are used in respective regulations for recruitment by promotion to the All India Service concerned and there are certain special provisions in Explanations to Regulation 4 in each of the two sets, which we are not concerned, and they are only applicable to officers of the respective services dealt with there. Our interpretation of one set of the relevant parts of regulations will, therefore, be equally applicable to the corresponding provisions of the other set. G H

A Regulations 4 to 9, to the extent they are relevant for the arguments advanced before us, read as follows .

"4. Conditions of Eligibility for promotion.—(1) Each Committee shall meet at intervals ordinarily not exceeding one year and consider the cases of all substantive members of the State Civil Service who on the first day of January of
B that year, had completed not less than eight years of continuous service (whether officiating or substantive) in a post of Deputy Collector or any other post or posts declared equivalent thereto by the Government.

Explanation. xxx xxx xxx

(2) Notwithstanding any thing contained in sub-regu-
C lation (1), the Committee shall not ordinarily consider the cases of the members of the State Civil Service who have attained the age of 52 years on the first day of January of the year in which meeting of the Committee is held :

Provided that a member of the State Civil Service whose name appears in the Select List in force immediately before
D the date of the meeting of the Committee shall be considered for inclusion in the fresh Select List to be prepared by the Committee even if he has in the meanwhile attained the age of 52 years.

(5) Preparation of a list of suitable officers.—(1). The Committee shall prepare a list of such members of the
E State Civil Service as satisfy the condition specified in regulation 4 and as are held by the Committee to be suitable for promotion to the service. The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the preparation of the list in the posts
F available for them under rule 9 of the Recruitment Rules or 10 per cent of the senior duty posts borne on the cadre of the State or group of States whichever is greater :

Provided that, in the year ending on the 31st December, 1969, the maximum limit, imposed by this sub-regulation, may be exceeded to such extent as may be determined by the Central Government in consultation with the State
G Government concerned.

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

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

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

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

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

6. Consultation with the Commission.—The list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government along with— B

(i) The records of all members of the State Civil Service included in the list;

(ii) the record of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list; C

(iii) the reasons as recorded by the Committee for the proposed supersession of any member of the State Civil Service; and

(iv) the observations of the State Government on the recommendations of the Committee. D

7. Select List.—(1) The Commission shall consider the list prepared by the Committee along with the other documents received from the State Government and, unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make changes in the list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government, may approve the list finally with such modification, if any, as may, in its opinion, be just and proper. E

(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service. F

(4) The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of regulation 5, is approved under sub-regulation (1), or, as the case may be, finally approved under sub-regulation (2): G

Provided that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the Select List: H

8. Appointment to cadre Posts from the Select List..... Appointments of members of the State Civil Service from the

A Select List to posts borne on the State Cadre or the joint Cadre of a group of States, as the case may be, shall be made in accordance with the provisions of rule 9 of the Cadre Rules. In making such appointments the State Government shall follow the order in which the names of such officers appear in the Select List :

B Provided that where administrative exigencies so require, a member of the State Civil Service whose name is not included in the Select List or who is not next in order in that Select List may, subject to the aforesaid provisions of the Cadre Rules, be appointed to a Cadre post if the State Government is satisfied.....

C (i) that the vacancy is not likely to last for more than three months;

(ii) that there is no suitable cadre officer available for filling the vacancy.

9. Appointments to the Service from the Select List—
(1) Appointment of members of the State Civil Service to
D the Service shall be made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Civil Service appear in the Select List for the time being in force.

(2) It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless dur-
E ing the period intervening between the inclusion of the name of a member of the State Civil Service in the Select List and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Civil Service which, in the opinion of the State Government, is such as to render him unsuitable for appointment to the service".

F Before interpreting these Regulations two more common features of the cases before us may be mentioned. Firstly, in each of the four cases, a number of officers (ten in the case of K. N. Misra, nineteen in the case of M. L. Capoor, and fourteen in the cases of Ganesh Singh Seth and Basant Kumar Joshi), who were junior to the aggrieved officers, were added in the select list of 1968, although their names did
G not figure at all in the Select List of 1967. Some of the officers, who were lower down in the select list of 1967, were actually appointed in 1968. Secondly, the reason sent to the Public Service Comission by the Selection Committee for 1968 for the displacement of each of the Respondents from the lists of 1968 was uniform. The Division Bench has set out the stock reason given by the Select Committee as follows:

H "On an over all assessment, the records of these officers are not such as to justify their appointment to the Indian Administrative Service/Indian Police Service at this stage in preference to those Selected."

Each purported statement of reasons mentioned the appropriate service (*i.e.* either administrative or police service) as the case may be. A

The question we may first consider, from amongst those argued before us, is whether the function of the Selection Committee in preparing the list, which could involve proposals for supersession, is purely administrative or is quasi-judicial. It was pointed out, on behalf of the Union of India and the State of U.P., that each Committee had to consider "the cases of all substantive members of the State service concerned", under Regulation 4, to determine whether they were eligible, and, thereafter, whether they should be brought on the select list for the particular year. Regulation 3 provided that the Committee, which had to prepare the Select list, will be composed of persons mentioned in a schedule. These were Members of the Service (*i.e.* service to which the promotion was to be made), except the Chairman who was to be either the Chairman or a Member of the Union Public Service Commission. It was urged that the entire process consisted of selection on the basis of service records assessed by experts. It is difficult to conceive of any "list" between each candidate and all the others. Indeed the process of selection could hardly be spoken of as akin to the process of litigation, where two or more parties, who prefer claims to the same subject matter, have to be informed of each other's cases and issues on points in dispute are framed and then decided. Even if such a process of selection by assessment of merits could conceivably be viewed as a whole series of disputes as to comparative claims it is quite impracticable to hear each candidate as against all the others after giving each the results of assessments of merits of all the others with access to the materials on which these are based. Candidates are not expected to sit in judgment over evaluations of their own merits and of others. The "Cult of the Quasi", as it has been derisively called by those who are skeptical of its extensions beyond certain reasonable and practical limits, cannot be carried to such absurd lengths as to make it necessary for candidates at an examination to put forward their own assessments of their own merits as aainst those of rival candidates. Just as the answers given by candidates at a written test reveal respective merits so also the service records, during the preparation of lists by selection, speak for those whose records are examined. The process of selection by evaluation of respective records of service is more akin to that of an examination of candidates than to any quasi-judicial proceeding. B C D E F G

Prof. S. A. de Smith in his "Judicial Review of Administrative Action" (2nd Edn—p. 64 to 76) has given a number of useful tests for distinguishing between administrative and judical actions. These may be summarised as follows: firtsly, whether the performance of the function terminates in an order which has a conclusive effect or the force of law or is merely advisory, deliberative, investigatory, or conciliatory in character which has to be confirmed by another authority before acquiring a binding force; secondly, whether there are prescribe procedural attributes of the proceeding such as its H

A invitation by a party opposed to another, so that there is a *lis* or dispute, a public hearing, a power to compel attendance of witnesses, prescribed rules of evidence and modes of relief; thirdly, whether the decision imposes obligations by defining, conferring, varying, extinguishing, or recognising rights and liabilities; and fourthly whether the function involves application of objective criteria defined by law, to B impartially ascertained facts or is merely the exercise of a subjective power to act without reference to justiciable standards. Cases where valuable rights of individuals are affected by decisions of administrative authorities, even in the course of carrying out a scheme embodying a policy, may have to be decided quasi-judicially, or, in other words, as though the basic norms of judical action are applicable by implication.

C

The learned Single Judge who dismissed the two Writ Petitions which came up in special appeal before the Division Bench had held that, as there was no *"lis"* between eligible candidates, in the legally accepted sense of the term, there could be no question of a quasi-judicial function either when a select list was prepared or when it was D reviewed or revised in such a way as to supersede some eligible candidate. The learned Judge held that the words "review" and "revision" were used in Regulation 5(4) and (5) in a non-technical broad sense of annual fresh preparations of the lists. According to the learned Judge, the second test mentioned above, that of a *"lis"*, was lacking here. The Division Bench had also held that the function of the Selection Committee was not quasi-judicial because it was E simply recommendatory or advisory. This meant that the process failed to satisfy the first test mentioned above of judicial or quasi-judicial action. Both these grounds for distinguishing the process undergone from quasi-judicial action are sound.

F It was urged that the Division Bench had over-looked the effect of Regulation 7, sub-Regs.(3) and (4) which made the list final when approved by the Commission and that it was to remain in force until it was reviewed and then revised by another finally approved list. Hence, it was contended, on behalf of the Respondents, that the function acquired attributes of a quasi-judicial action at least when the matter was sent to the Public Service Commission in the form of G a proposal made by the Selection Committee involving a supersession. The argument was that, at least in a case of supersession, the person whose name was already on the list had a right to be informed of the reasons recorded under Regulation 5. sub-reg. (5) in support of a proposed supersession. Reliance was placed, for advancing this proposition, on cases dealing with general principles on which a duty to act quasi-judicially is inferred. They were : *State of Punjab* Vs. *K. R.* H *Erry & Sobhag Rai Methta*(3); *Madan Gopal. Agarwal* vs. *District Magistrate Allahabad & Ors.*,(2) *P. L. Lakhanpal vs. The Union of*

(1) AIR 1973 SC 834.

(2) AIR 1972 SC 2656.

India & Anr.,(1) where it was observed that there may be a duty to act quasi-judicially even without a *lis* and previous case law on the subject was reviewed; *Unikant Sankunni Menon* Vs. *the State of Rajasthan*(2); *State of Orissa* Vs. *Dr. (Miss) Binapani Dei & Ors.*(3); *Shri Bhagwan & Anr.* Vs. *Ram Chand & Anr.*(4); *Board of High School & Intermediate Education, U.P. Allahabad* Vs. *Ghanshyam Das Gupta & Ors.*(5); *Shivaji Nathubhai* Vs. *the Union of India & Ors.*(6); *A. K. Kraipak & Ors. etc.* Vs. *Union of India & Ors.*(7); *Karunakaran (K. K.)* Vs. *Director, Bureau of Economics & Statistics & Ors.*(8); *Malloch* Vs. *Aberdeen Corporation.*(9)

In some of the cases mentioned above, decided on general principles, the exercise of powers of "Review" and "Revision" has been considered and held to be quasi-judicial. It will be noticed that, out of these cases, only *Kraipak's* case (supra) had dealt with the functions of a Selection Board which, though held to be administrative, had to be exercised fairly and impartially, and, therefore, the membership of the Board had to be free from persons who could be presumed to be biased. It may be recalled here that examiners, appointed to assess the answers at a written test, are generally called upon to make declarations showing that no relation of theirs is an examinee obviously because suspicion of bias on the part of an examiner has to be eliminated. In other words, all such evaluations have to be so made as to be above suspicion of unfairness or bias although they do not require a quasi-judicial proceeding to ensure such a result.

On behalf of the Union of India and the State of U.P., it was urged that a person whose name is brought on the select list for a particular year does not acquire any right except to remain on the list until it is reviewed and revised. It was submitted that this was not an absolute or unconditional or indefeasible right to remain on the list and that no quasi-judicial proceeding could be demanded to defend a right which did not exist or was so fluid or transitory in character. It was urged that, as the criteria for being placed on the selection list were entirely subjective, no candidate could claim a right to have his merits assessed every year by applying the same uniform, invariable, objective tests.

The Solicitor General relied on cases where it had been held that appointment to selection posts was not a matter of right. These were : *Sant Ram Sharma* Vs. *State of Rajasthan & Anr.*(10); *Guman Singh & Ors.* Vs. *State of Rajasthan & Ors.* (11); *Mir Ghulam Hussan & Ors. Vs. the Union of India & Ors.*(12). *The Divisional Personnel Officer, Southern Railway, Mysore* Vs. *S. Raghavendrachar;*(13) *N. P. Mathur & Ors.* Vs. *State of Bihar & Ors.*(14)

(1) [1967] (3) SCR 114 at 120.
(2) [1967] (3) SCR 430.
(3) [1967] (2) SCR 625.
(4) [1965] (3) SCR 218
(5) [1965] Suppl (3) SCR 36.
(6) [1960] (2) SCR 775.
(7) [1970] (1) SCR 457.
(8) [1966] (2) LLJ 221.
(9) [1971] (1) Weekly Law Reports 1578.
(10) [1968] (1)SCR 111, 114 & 118.
(11) [1971] (2) SCC 452.
(12) AIR 1973 SC 1138.
(13) [1966] (3) SCR 109.
(14) AIR 1972 Patna (FB) 93.

A Learned Counsel for the Respondents tried to distinguish the rulings cited on behalf of the Union of India and the State of U.P. on the ground that they did not apply to cases of "promotion" to posts which have to take place in accordance with certain rules which gave seniority "due" importance. It was contended that in matters of promotion according to rules, which laid down the criteria for selection so as to be promoted to higher cadre posts, every candidate had a B right to insist that proper tests were employed. According to the Respondents, these criteria were objective and the most important objective fact, in assessing merits, could only be seniority for which "due regard" was imperative. The others were also capable of being formulated and applied to material on service records. This aspect of the cases before us brings us to the question whether Regulation C 5(4) had been properly understood and applied by the Selection Committee and the Union Public Service Commission. A decision of this question would determine the validity of the impugned lists irrespective of the nature of the processes of preparation, review, and revision of the final list that is to say, whether they be purely administrative in every situation which may arise or involve any elements of the quasi-judicial atleast where a proposal for supersession is sent to the Union Public Service Commission. Even an authority acting in D a purely administrative capacity could be controlled so that it may not exceed its powers by misapprenhending their meaning, their legal scope, and their purpose. They could not be used to defeat the purpose of the powers conferred. We may, therefore, now examine this crucial question.

E It is true that learned Single Judge in dealing with two Writ Petitions before him had rather brusquely brushed aside the contention that Regulation 5 implied some limitations on the powers of selection. The Division Bench, while holding that these powers were to be exercised in an administrative and not quasi-judicial capacity erected the imperative need for "due regard to seniority", laid down in Regulation 5 clause (2), into a sheet anchor of an over-riding claim of seniority F which, in its opinion, was to prevail subject only to the claims of "exceptional merit and suitability" mentioned in the proviso to clause (3) of Regulation 5. It is submitted by the appellants that, in doing so, it unduly enlarged the claims of seniority and made it a barrier in the path of promotion of meritorious individuals in service. Seniority can certainly not be over-looked, as the basis of a claim, in view of Regulation 5, clauses (2) & (3). But, to hold that seniority is practi- G cally the governing or decisive factor in all cases of promotion under these regulations, subject only to the claims of exceptional merit and suitability, would, it was urged on behalf of appellants, minimise the importance of merit.

Merit is certainly an elusive factor capable of being judged very differently from different angles, or, by applications of varying tests of it by diferent persons, or, by the same persons, at different times. H It was submitted on behalf of the respondents that to make supposed merit the sole test for selection would be to leave the door wide open for nepotism to creep into selections for higher rungs of public service

by promotion and that this would undermine the morale of members of the State services and weaken incentives for honest work and achivement of better standards of proficiency by them. A

The following passage, from Leonard D. White's "Introduction to Public Administration" (4th edn. pages 380, 383), cited with approval by this Court in *Sant Ram Sharma's* case (Supra), was quoted by the Division Bench (at page 122): B

> "The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit, for the merit system ought to apply as specifically in making promotions as in original recuitment. C
>
> .....
>
> Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true". D E

We fail to see why administrative machinery which secures for the most meritorious chances of superseding their seniors, in promotions to higher posts, should have an adverse and not beneficial effects upon the moral of members of State services or upon incentives for better work and efficiency. No doubt, care has to be taken that it is so operated as to really secure the choice of the most meritorious by honest and rigorous applications of correct and proper tests. F

It is true that, where merit, which is difficult to judge, is laid down as the sole test for promtion, the powers of selection become wider, and, they can be abused with less difficulty. But, the machinery provided for preparation of select lists for promotion to All India Services, so as to ensure impartiality, cannot be assumed to so operate as to produce uniust results. The wider the powers entrusted to an administrative authority, the more should be the consciousness of responsibility on its part for their due discharge fairly and impartially. The presumption is that the authority concerned will discharge its obligations with full realization of its implications and honestly. We have, however, G H

A to determine here whether the Selection Committee and the Union Public Service Commission performed their functions on a correct interpretation of the relevant regulations and not whether they acted honestly about which we entertain no doubt whatsoever.

The Division Bench had held "merit and suitability" to be a sort
B of an admission test for a place on the select list just as the conditions for eligibility laid down in Regulation 4 operated as test operating at the out-set for inclusion in the list of eligible persons. Furthermore, it held that, even in judging "merit", seniority was the most important consideration in cases of promotion and that this followed from the requirement of Regulation 5(2) that it be given due regard. It held that, after satisfying a minimum standard of individual merit and suita-
C bility for inclusion in the list, comparable to pass marks at an examination, in which seniority played the dominant role, seniority also determined the order on the list according to which the officers selected were to be promoted to the All India Services. It referred to Regulation 5(3), which requires the arrangement of selected officers "in order of seniority in the State Civil Service" to justify its interpretation. Thus, it came to the conclusion that seniority was really the dominant or governing
D factor in determining who should be placed on the select list as well as the order in which they were to be appointed. Although Regulation 5(2), considered by itself, does not lead to this conclusion, Regulation 5(3) would, perhaps to some extent, support tne reasoning of the Division Bench. If a omparative test of merit is to be applied throughout to all candidates, by comparing each with all the others, at every stage, it should, logically, determine not only selections
Σ but also positions of officers on the list, just as the position of each examinee on, a written test is determined by the total number of marks secured by him as compared with marks secured by other candidates. If that was to be the logically applied test throughout, Regulation 5(3) laying down that names on the list must be arranged in the order of seniority in their State Service, could not have been there. This Regu-
F lation suggests that merit ordinarily operates only at the stage of applying an "inclusion" test. But, Regulation 5(3) does not support the further conclusion reached by the Division Bench that a mininmum standard of merit is sufficient as a test for inclusion on the list and the rest is regulated by seniority. There is no doubt that, after applying the properly applicable inclusion test for a place on the list, the exact place in the select list is determined by seniority, as laid down
G by Regulation 5(3), subject to claims of exceptional merit.

Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant rules, is that the "entrance" or "inclusion" test, for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unres-
H tricted choice of the best available talent, from amongst eligible candidates. determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor. A simple

reading of the Regulation 5(2) clearly indicates this to be the correct view. The required number has thus to be selected by a comparison of merits of all the eligible candidates of each year. But, in making this selection, seniority must play its due role. Seniority would, however, only be one of the several factors affecting assessment of merit as comparative experience in service should be. There could be a certain number of marks allotted, for purposes of facilitating evaluation, to each year of experience gained in the service. When the required number for the list is thus chosen, the respective roles of seniority and exceptional merit would be governed by Regulation 5(3). This seems to be the correct interpretation of rules as they stand.

The Division Bench also held that, after arranging names in the order of seniority in the State service, as required by Regulation 5(3), the place of an officer on the list could not be disturbed suddenly by placing him below new entrants or new candidates of a succeeding year or throwing him out of the list altogether unless the process of review and revision of the list for a subsequent year revealed that he deserved such treatment either due to deterioration of his work or the sudden influx of a number of officers of exceptional merit who may have become eligible for the year in which he is expelled from the list. In other words, a sudden fall in the assessment of an officer's merit, without any reasonable and probable, and, therefore, acceptable explanation for such an assessment, so that new candidates, who were not even selected in previous years, supersede him in a new list and become his seniors, is not contemplated by the rules. The view of the Division Bench seemed to be that a candidate so treated would be virtually punished. If this was correct, he would deserve to be given an opportunity to defend himself against whatever was operating against him. But, as already observed, the Division Bench held that the process itself was really administrative. On the view taken by the Division Bench fresh selection would be confined annually to the needs of new vacancies created. Otherwise, the list prepared in a particular year would hold good until reviewed or revised.

A glance at Regulation 5 clause (5) would show that even the process of selection may involve "supersession". The rule indicates that "supersession" here only means the preference given to juniors over the "superseded" officer for a place on the select list. The superseded officer may be given a position lower on the select list than his juniors in the State service or he may be excluded altogether from the list by his juniors. According to learned Counsel for the respondents, such supersession would always imply punishment. If the reasoning of the Division Bench is followed to its logical conclusion, such supersession would appear to be penal, and, therefore, involve compliance with minimal requirements of natural justice, atleast so far as communication of reasons for a proposed supersession to the officer proposed to be superseded is concerned, before the approval of the Union Public Service Commission, which, according to Regulation 7(3), makes the list final. Logically, if the view taken by the Division Bench is correct, that the aggrieved officers were, apparently, punished in the sense that they were dealt with in an arbitrary fashion, each should

A have been atleast supplied with the reasons for the assessment involving his supersession, after the Selection Committee had decided to recommend the supersession, so that he could make written representations to the Union Public Service Commission before the select list was approved. Such a rule of fairness need not make the process of approval unduly cumbersome and dilatory. On the other hand, it could prove helpful. I am doubtful whether such an extension of rules of
B natural justice to a case of "selection" is warranted by authorities as they stand.

A place on the approved select list certainly confers a right to be appointed, according to Rules 8 and 9, to cadre posts. Although, the process of assessment by the Selection Committee, and, thereafter, approval by the Union Public Service Commission does not involve
C observance of the *"audi alteram partem"* rule in all its rigour and with all its implications, yet, it seems unfair to deprive a person suddenly of either an expectation to be placed, and, even more, of a place on a finalised select list, which confers certain valuable rights on him, without informing him of even the reasons for his proposed supersession before its approval. At any rate, Article 16 of our Constitution gives rights to Govt. servants to be treated fairly and squarely, reasonably
D and impartially in matters relating to service.

It was held in *Kraipak's* case (supra) that even bodies functioning administratively may have to observe certain minimal rules of reason, justice, and fair play. It has been repeatedly pointed out that the extent of hearing to be given must vary with the situation on the facts and circumstances of each case. Therefore, speaking entirely for myself on this question, I was inclined to hold that, although the
E process of approval by the Union Public Service Commission is not such as to be characterised as quasi-judicial and that supersessions in the course of preparations and finalisations of select lists could not be strictly and legally held to be penal, so as to attract an application of Article 311 of the Constitution, a minimal requirement of just and fair treatment in such a situation would be to inform the officer to be superseded of reasons recorded for his proposed supersession so
F as to enable him to make such representations against the proposal, before its approval by the Union Public Service Commission, as he may desire to make. But, as I have observed above, I am doubtful whether, on authorities as they stand today, such an expansion of the scope of natural justice is justified. After having had the benefit of the views expressed by my learned Brother Mathew, for which I have the greatest respect, I do not think that I could embark singly, in the cases
G before us, upon what may appear to be a new extension of concepts of justice, fairplay, and reason, in the realm of administrative law, particularly as the cases before us can be decided on the next question on which our views coincide.

We next turn to the provisions of Regulation 5(5) imposing a mandatory duty upon the Selection Committee to record "its reasons
H for the proposed supersession". We find considerable force in the submission made on behalf of the respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most

that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. This apology for reasons to be recorded does not go beyond indicating a conclusion in each case that the record of the officer concerned is not such as to justify his appointment "at this stage in preference to those selected"

In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with. We think that reliance was rightly placed by respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were : *Associated Electrical Industries (India) Pvt. Ltd. Calcutta* vs. *Its Workmen*;(1) and *the Collector of Monghyr & Ors vs. Keshav Prasad Goenka & Ors.*(2)

Lastly, I may refer to another question mooted before us. It was whether the orders of the State Govt. reverting the officers concerned to their State service posts simply because their names had not been included in the select list of 1968 were illegal for contravening the provisions of Regulation 9 set out above. The Division Bench had not only held that no directions were given by the Central Government under Rule 9(3) of the Cadre Rules, but, that the State Govt., which had itself not considered the question of the fitness of the aggrieved officers, had acted on the wrong assumption that it was bound to pass reversion orders simply because the names of the officers concerned had ceased to find a place on the select list.

The powers of the State Govt. to act under Regulations 8 and 9 are limited. It has to report under Regulation 9(2), set out above, which corresponds with Rule 9(2), of the Indian Administrative Service (Cadre) Rules, 1954, to the Central Govt. with reasons for making

1) AIR 1967 SC 284. (2) [1963] (I) SCR 98.

A an appointment to a cadre post of an All India Service in a State. The cadre post is defined as a post specified in a schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. It is true that it is the Central Govt. alone which can direct the termination of service under Regulation 9, as the Central Government is ordinarily the appointing authority. The State Govt. has powers, B conferred by Rule 8, of making appointments only in certain contingencies. If it exceeds these powers of making appointment, the appointments may be vitiated. I am, however, not satisfied, on the materials placed before us, that the State Govt. either exceeded its powers or that an order of the Central Govt. to terminate a service was needed. However, as we agree with the conclusion of the Division Bench, for other reasons already given, that the impugned select lists of 1968 and reversion C orders passed by the State Government should be quashed, I prefer not to decide this question in these cases.

The result is that, for the reasons given above, these appeals are dismissed. But, in circumstances of the cases before us, the parties will bear their own costs in this Court.

P.B.R. *Appeals dismissed.*