

the observations were made in the order of reference the same were only done to present the case from all its angles for consideration by a larger Bench. Now a reference to the Division Bench judgment in *Gurdial Singh's case* would show that it did not at all advert to the question of the applicability or otherwise of Order 7, rule 11(c) to the memoranda of appeals. There is indeed not a word of reference to it either expressly or implicitly. The Bench confined itself exclusively to section 149 of the Civil Procedure Code and overruled the earlier Single Bench judgments of the Lahore High Court and of our own Court on this point. That being so, it would be more than manifest that there is no conflict or divergence of opinion in the observations made in the Division Bench judgment of *Gurdial Singh's case* and that of the Division Bench judgment in *Jabar Singh's case* (supra).

17. In the light of the answer to the question of law rendered in paragraph 15 above, the case should now go back to the learned Single Judge for decision on merits. There will be no order as to costs.

*Rajendra Nath Mittal, J.*—I agree.

*Gokal Chand Mital, J.*—I agree.

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N. K. S.

FULL BENCH

Before Prem Chand Jain, D. S. Tewatia and Harbans Lal, JJ:

J. S. CHOPRA and others,—Petitioners

versus

UNION OF INDIA ETC.,—Respondents.

Civil Writ Petition No. 3363 of 1979.

May 8, 1980.

*Indian Administrative Service (Appointment by Promotion) Regulations 1955—Regulations 5, 6 (iii) and 7—Constitution of India 1950—Articles 16, 318 and 320—Clause (iii) of regulation 6 requiring forwarding of reasons by the Committee for superseding any member*

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*of the State Civil Service—Such clause—Whether mandatory—Select list drawn up under regulation 5 and forwarded to the Union Public Service Commission—Regulation 7—Whether visualises consideration of the list by all members of the Commission—Decision taken by two members later approved by other members by circulation—Such decision—Whether can be said to be a decision of the Commission—Regulation 5(4) read with regulation 7—Whether leaves any scope for arbitrariness in the finalisation of the select list.*

*Held*, that the provisions of clause (iii) of regulation 6 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 are directory in nature because of the fact that where the selection committee gave any reasons on account of the fact that it had taken into consideration not only the relative 'service record' of the officers concerned, but other facts also, such additional persons, if any, were required to be forwarded to the Commission, but where no such additional reasons had been given, then there was nothing that could have been required to be conveyed to the Commission by way of reasons beyond what the list itself spoke of. (Para 16).

*Held*, that it is no doubt true that the relevant provisions of the Constitution do not authorise in terms the Commission to frame its own rules and regulations and procedure for the regulation of its internal functioning but no such express mandate was necessary for doing so. Every autonomous body of the nature of the 'Commission' has the inherent jurisdiction to regulate its functioning, as also devise modes and methods for effective discharge of its functions so long the same do not militate against any express provision of law. The relevant constitutional provisions do not indicate that the Commission has to take its decision when meeting in a body or by circulation. In the circumstances, taking into consideration the nature of the given decision that it has to take, it is open to the Commission to devise its own procedure for taking such decisions. The procedure adopted for taking decision by circulation cannot be said to be one which either in law or in principle would militate against any constitutional provision. Moreover, even if the select list approved by the two members is forwarded to the State Government before it has been approved by circulation by the other members, the said list is subject to revision by the Commission in the event of the majority of the members of the Commission taking a view different from the members who had finalised the decision on behalf of the Commission. As such, a decision taken by circulation would be taken to be the decision of the Commission in terms of Regulation 7. (Para 7).

*Held*, that the amendment of sub-regulation (4) of regulation 5 of the Administrative Regulations does not leave anything to subjective satisfaction of the Selection Committee. It has to confine to the 'service record' of each candidate and then decide as to who out of them is 'outstanding', 'very good', 'good' or 'unfit'. If in a given case

it takes into consideration anything outside the service record of the officers concerned, without giving its reasons or without furnishing such reasons, if any, to the Commission, and if its categorisation of the candidates does not accord with their 'service record', then the Commission, which has to confine itself to the 'service record' for considering the merit of the candidates, would certainly modify the Select List and bring it in accord with the comparative service record of the candidates. When so viewed, it cannot be said that the provisions of sub-regulation (4) read with regulation 7 leaves any scope for arbitrariness in the finalisation of the select list on the basis of the service records of the candidates. (Para 17).

*Case referred by Hon'ble Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice I. S. Tiwana, on 8th February, 1980 to a larger Bench for decision of an important question of law involved in the case. The larger Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Harbans Lal finally decided the case on merits on 8th May, 1980.*

*Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents :—*

- (i) to produce the complete records of the case ;
- (ii) the Select List as finally approved, may kindly be summoned from the records of the Government, and quashed in so far as it relates to Respondents Nos. 5 to 8. The List is a confidential document and is, therefore not available to the petitioners for production in this Hon'ble Court ;
- (iii) a writ of mandamus be issued directing the respondents to consider the claims of the petitioners in accordance with the provisions of the rules ;
- (iv) it be declared, that the exclusion of the petitioners from the Select List as prepared in the year 1978 and finalised in the year 1979 was wholly illegal ;
- (v) in pursuance of the Select List, the respondents are reverting the petitioners from the senior posts and proceeding to promote Respondents Nos. 5 to 8. If this is allowed to happen, the petitioners would suffer a heavy and irreparable loss. The benefit of the period during which the petitioners have officiated in the higher posts would be completely lost. It is, therefore, in the interest of justice that the reversion of the petitioners is stayed during the pendency of the writ petition. It is, therefore, respectfully prayed that pending the disposal of the writ petition, the reversion of the petitioners be stayed ;

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- (vi) the provisions of Regulations 5(4) be declared ultra-vires the Constitution and quashed ;
- (vii) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case and grant all the consequential reliefs in the nature of salary, seniority etc. etc. ;
- (viii) the costs of this writ petition may also be awarded to the petitioners.

J. L. Gupta, Advocate with Pardeep Gupta, Advocate, for the Petitioner.

Bhoop Singh, Additional A.G. (H), for Respondents 3 & 4.

M. R. Agnihotri, Advocate, for Respondents 5 to 8.

Kuldip Singh, Bar-at-Law, for Respondents 1 & 2.

#### JUDGMENT

*D. S. Tewatia, J. (Oral).*

(1) Whether clause (iii) of regulation 6 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the 'Administrative Regulations') is mandatory or directory in character and whether all the members of the Union Public Service Commission (hereinafter referred to as the 'Commission') in a meeting have to consider and approve the Select List, in terms of regulation 7, prepared by the Selection Committee in terms of regulation 5 of the Administrative Regulations are the significant questions that are projected for determination in this writ petition at the instance of the three petitioners who, at the relevant time, were substantive members of the Haryana Civil Service (Executive), as were respondents 5 to 8.

(2) The petitioners' claim, which is not in dispute, is that they were senior to respondents 5 to 8 in the Service. It is alleged that in accordance with the provisions of the Administrative Regulations, which would be presently noticed, the Selection Committee while formulating the list under regulation 5 for the year 1977 classified the petitioners as 'very good'. The Commission approved the list in regard to the petitioners and their names were put on the Select List in preference to the names of respondents 5 to 8 whose claim for inclusion in the Select List in comparison to the petitioners was not found preferable. Since the Select List so finalised remains in force till it is reviewed or revised and has to be

reviewed and revised every year, the list prepared in the year 1977 came under review of the Selection Committee which met on December 11, 1978. The said Committee considered the claims of the petitioners, as also respondents 5 to 8, alongwith other eligible candidates. This Committee selected respondents 5 to 8 in preference to the petitioners, though between the time that the previous year's Select List was finalised by the Commission and the meeting of the Selection Committee which took up review of the Select List for the year 1978 on December 11, 1978, the petitioners earned 'very good' reports for the year 1977-78 and their performance had not deteriorated in any manner whatsoever, while respondents 5 to 8 had not improved their previous position in any extraordinary manner as to warrant their preference over the petitioners for inclusion in the impugned Select List prepared by the Selection Committee. The State Government in its comments contained in the letter dated 1st August, 1979 that it had forwarded to the Commission, in terms of clause (iv) of regulation 6, observed that there were no valid grounds for the Selection Committee for superseding the petitioners and urged the Commission not to approve the action of the said Committee. Despite the said comments of the State Government, it is lastly urged, the Select List prepared by the Selection Committee was considered and approved on behalf of the Commission only by two members thereof, out of whom one was a member of the Selection Committee itself, with the result that virtually only one member of the Commission did what, under regulation 7, the entire Commission as a body was required to do.

(3) Before attempting to consider the contentions advanced from both sides, it is necessary to take note of what led to the framing of the Administrative Regulations and also for facility of reference, to take notice of the relevant provisions of the Administrative Regulations. The members of the Provincial Service are eligible for appointment to the Indian Administrative Service (hereinafter referred to as 'Service'), recruitment to which is governed by the rules called Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as the Rules). Rule 4 *inter alia* provides that recruitment to 'Service' shall be made by "Promotion of substantive members of a State Civil Service". Rule 8 provides that the Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission and in

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accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission from time to time make, recruit to the 'Service' persons by promotion from amongst the substantive members of a State Service.

(4) In pursuance to the provisions of rule 8, Regulations called the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 were promulgated. Regulation 2(1) (c) defines the 'Commission' to be the 'Union Public Service Commission'. Relevant provisions of regulation 3, which deals with the constitution of the Committee is in the following terms :—

3. (1) There shall be constituted for a State cadre or a Joint cadre specified in column 2 of Schedule, a Committee consisting of the Chairman of the Commission or where the Chairman is unable to attend, any other members of the Commission representing it and other members specified in the corresponding entry of column 3 of the said Schedule :

Provided that—

- (i) no member of the Committee other than the Chairman or the member of the Commission shall be a person who is not a member of the Service;
- (ii) the Central Government may after consultation with the State Government concerned, amend the schedule.

(2) The Chairman or the member of the Commission shall preside at all meetings of the Committee at which he is present.

(3) The absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended its meetings.

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Regulation 5, which deals with the preparation of the list of suitable officers has been subject to frequent amendments and since the unamended provisions have a bearing upon the contention advanced on behalf of the petitioners and the respondents, so the relevant portion thereof both before amendment and after amendment shall

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require notice. Before the amendment, regulation 5 was in the following terms :—

“5. (1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service as are held by them 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 preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules, or 10 per cent of the Senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The Committee shall consider, for inclusion in the said list, the cases of members of State Civil Service in order of seniority in the State Civil Service upto a number not less than five times the number referred to in sub-regulation (1) :

Provided that, in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded:

Provided further that a Committee shall not consider the case of a member of the State Civil Service unless, on the first day of the January of the year in which it meets, he is substantive in the State Civil Service and has 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.

(3) 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 it meets :

Provided that a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting of the Committee shall be considered

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for inclusion in the fresh list, to be prepared by the Committee even if he has in the meanwhile attained the age of 52 years.

- (4) The Selection for inclusion in such list shall be based on merit and suitability in all respects :

Provided that where the merits of two or more officers are found to be equal, seniority shall be taken into account.

- (5) The names of the officers included in the list shall be arranged in order of seniority in the State Civil Services:

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.

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

- (7) 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”.

Sub-regulations (4) and (5) of regulation 5 were amended,—*vide* notification, dated 3rd June, 1977 and after amendment it reads thus:—

“(4) The Selection Committee shall classify the eligible officers as ‘outstanding’, ‘very good’, ‘good’ or ‘unfit’ as the case may be, on an overall relative assessment of their service records.

- (5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as ‘outstanding’, then from amongst those similarly classified as ‘very good’ and thereafter from amongst those similarly classified as ‘good’ and the order of names *inter se* within each category shall be in the order of their seniority in the State Civil Service.”

Sub-regulation (7) of regulation 5 was deleted,—*vide* notification, dated 3rd June, 1977.



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Regulation 6, which deals with the 'Consultation with the Commission', is in the following words:—

- "6. This list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government along with—
- (i) the records of all members of the State Civil Service included in the list ;
  - (ii) the records of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list ;
  - (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."

Clause (iii) of regulation 6 was deleted by notification, dated 3rd June, 1979.

(5) The relevant provisions of regulation 7, which deals with the finalisation of the Select List, is in the following terms :

- "7. (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 same.
- (2) If the Commission considers it necessary to make any 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.
  - (3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.
  - (4) The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of

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regulations 5, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2) :

Provided \* \* \* \* \*

Provided further 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."

The parties are not at issue on material questions of facts such as that the petitioners were senior to respondents 5 to 8, that the petitioners' names after comparison with the claim of respondents 5 to 8 were included in the Select List for the year 1977, that all the petitioners except Shri S. N. Goel, whose grading was only 'good' had earned 'very good' reports for the year 1977-78, that the Selection Committee for the year concerned struck off their names from the Select List and instead selected respondents 5 to 8, that the State Government urged the Commission not to approve the Select List formulated by the Selection Committee, and that out of nine members of the Commission only two members had in the first instance considered and approved the said List forwarded to it in terms of regulation 7 and one of the said two members was the one who had presided over the meeting of the Selection Committee which prepared the Select List in terms of regulation 5.

(6) The Commission, respondent No. 2, was permitted to file an additional affidavit, in which it was stated that the Commission consists of one Chairman and eight members and has to deal with thousands of cases (disciplinary, promotion, confirmation, seniority, recruitment, selection etc.), every year and, therefore, it was considered by the Commission impracticable to sit together in a body in a meeting and consider each and every case individually; and that in the circumstances ever since the establishment of the Commission in the year 1926 for coping with the work, it adopted certain practices, according to which, decisions in certain types of cases are

taken after these are seen by all the members and Chairman but in some other cases decisions are left to one or more members or Chairman. The cases in which decisions are taken without discussions in the Commission meetings are reported to the Commission in three different manners. These cases are :

- (a) cases for record ;
- (b) cases for agreed business ; and
- (c) mention cases.

Cases for record are the cases in which reports of interview boards are placed on record in the proceedings of the Commission after finalisation of each recruitment by selection; cases for agreed business are those in which two or more members of the Commission including the Chairman take a decision on behalf of the Commission such cases are reported to the Commission as 'agreed business', and the cases in which the Secretary or one member of Chairman takes a decision on behalf of the Commission, such cases are reported to the Commission as 'mention cases' — the cases which the Commission has to take up in terms of regulation 7 fall into the category of 'agreed business'. In such cases after a decision is taken in the manner already mentioned in regard to 'agreed business', the decision so taken along with the similarly other listed cases is referred to all the members of the Commission by circulation. Prior to 9th September, 1974, the ratification used to be done by the Commission in a meeting but after that date, the ratification is got done by circulation to each member. That the decision of the Chairman and a member in the present case was duly ratified by the Commission on 7th November, 1979 by circulation. The decision taken by the Commission on 9th September, 1974, annexed to the additional affidavit as R. 2/2, is in the following terms :—

In accordance with the existing practice, lists pertaining to cases for 'report recording', 'agreed business' and 'mention' are sent by the various sections for submission at Commission's meeting. A decision has since been taken by the Commission that the above cases need not be submitted for the meeting of the Commission; instead, disposal of such cases should be arranged weekly through circulation. In future, two copies of lists for the aforesaid types of cases without the files should be sent to

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Secretary on every Monday. Files pertaining to the lists should be kept handy in the sections. One copy of the list will be circulated to members/Chairman. After the circulation is completed, the files will be called for by Senior P. A. to Secretary for the purpose of endorsing the appropriate record on the respective files. Senior P. A. to Secretary will send the second copy of the list to Services I section for record. Consequent upon the above revised procedure, the heading of the last column of the Register for 'mention cases', 'agreed business cases' and 'report recording cases' as prescribed in the O & M circular No. 10 (FI/12/70-OM & WS, dated 24th June, 1971, viz. 'Date of Commission's meeting at which reported' may be substituted by 'date on which reported to Commission. The procedure indicated above will come into force with immediate effect and should be carefully observed by all concerned."

Mr. J. L. Gupta, learned counsel for the petitioners, has contended that the expression 'Commission' occurring in regulation 7 comprehends the 'Commission in its entirety' and not confined to one or two members and, therefore, the Commission as a whole had to consider and approve the list forwarded to it and the decision of two members which had actually considered and approved the list, by no stretch of imagination can be considered to be the decision of the Commission. Dealing with the additional affidavit filed on behalf of the Commission, Mr Gupta canvasses that neither of the provisions of articles 318 or 320 in terms authorise the Commission to frame its own rules and regulations/procedure for performing its functions and, therefore, for one thing, the procedure adopted by the Commission mentioned in the additional affidavit does not have the sanction of law and for another, the impugned Select List having been forwarded to the State Government before the decision of the two members, who had finalised the said list, had been approved by the Commission by circulation, it cannot be said that the Select List that had been forwarded to the State Government was the one which had been finalised as a result of consideration and approval by the Commission.

(7) It is no doubt true that the relevant provisions of the Constitution do not authorise in terms the Commission to frame its own rules

and regulations — procedure for the regulation of its internal functioning, but the question arises whether any such express mandate was necessary for doing so. Every autonomous body of the nature of the 'Commission' has the inherent jurisdiction to regulate its functioning, as also devise modes and methods for effective discharge of its functions so long the same do not militate against any express provision of law. The relevant constitutional provisions do not indicate that the Commission has to take its decision when meeting in a body or by circulation. In the circumstances, taking into consideration the nature of the given decision that it has to take, it is open to the Commission to devise its own procedure for taking such decisions. In the given case, we do not think the procedure adopted for taking decision by circulation can be said to be one which either in law or in principle would militate against any constitutional provision. In the circumstances, the decision in the present case in regard to the Select List in question would be taken to be the decision of the Commission in terms of regulation 7.

(8) As for the further contention that when the Select List was forwarded to the State Government the decision by circulation had not been completed and, therefore, in fact, the Select List in question was not approved by the Commission, it may be observed that in the nature of things it takes time in completing the decision by circulation and, therefore, in the circumstances the Select List as approved by the deputed members of the Commission may remain withheld for a considerable time and, therefore, the Select List as approved by the two members is forwarded to the State Government subject to revision by the Commission in the event of majority of the Commission taking a view different from the members who had finalised the decision for the Commission. There is, however, no gainsaying the fact that it would certainly be more desirable that the remaining members of the Commission should consider and take a decision on the List circulated to them and it is the List which accords with the decision so taken by the Commission that is sent to the State Government in order to avoid complication.

(9) Now coming to the primary contention urged by Mr. Gupta the clause (iii) of regulation 6 incorporates a mandate in regard to the forwarding of the reasons of the Committee, it may be observed that an identical question was posed to a Division Bench of this Court in Civil Writ No. 3336 of 1978 (*Baldev Kapoor P.C.S., Joint Manager Vigilance and Security*) v. *The Union of*

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*India and others* (1), which repelled the contention holding that clause (iii) of regulation 6 is directory in character. When the present writ petition came up for the hearing before a Division Bench of this Court consisting of myself and Tiwana, J. Mr. Gupta canvassed that when viewed in the light of the latest pronouncement of the Supreme Court in *Union of India v. H. P. Chothia and others* (2), the Division Bench decision in *Baldev Kapoor's case* (supra) required reconsideration, for their Lordships, while considering the provisions of regulation 5(2) of the Indian Forest Service (Initial Recruitment) Regulations 1966 (hereinafter referred to as the Forest Regulation), which according to him, were *pari materia* with regulation 6(iii) of the Administrative Regulations, held that the said sub-regulation (2) of regulation 5 of the Forest Regulations was mandatory in character and that if reasons envisaged in the said sub-regulation (2) were not forwarded to the Commission, then the decision of the Commission under sub-regulation (3) of regulation 5 of the Forest Regulations would stand vitiated.

(10) Before embarking upon the consideration of the contention advanced by Mr. Gupta, counsel for the petitioners, the relevant provisions of the Forest Regulations deserve to be taken notice of, as these have a bearing upon the question as to whether the decision in the case of *H. P. Chothia and others* (supra), would warrant a conclusion that the Division Bench of this Court in *Baldev Kapoor's case* (supra), had not laid down a correct law when it held that the provisions of clause (iii) of regulation 6 of the Administrative Regulations are directory in nature.

(11) Regulation 5 of the Forest Regulations is in the following terms :

- (5) (1) The Board shall prepare, in the order of preference, a list of such officers of State Forest Service who 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 service.

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(1) CW 3336/78, decided on 20th November, 1979.

(2) A..I.R. 1978 S.C. 1214.

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- (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—
- (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."

(12) On behalf of respondents 5 to 8, it has been contended that the provisions of sub-regulation (1) of regulation 5 of the Forest Regulations dealing with the preparation of list of suitable officers are not identical with the corresponding amended sub-regulation (4) of regulation 5 of the Administrative Regulations—the difference being that while sub-regulation (1) of regulation 5 of the Forest Regulations does not indicate any definite objective material which was to be taken into consideration for adjudging a person as suitable in preference to another person, sub-regulation (4) of regulation 5 of the Administrative Regulations left no scope for any subjective approach and expressly indicated the material which has to enter into the decision of the Selection Committee and the reasons for preferring one to another in that sub-regulation (4) of regulation 5 of the Administrative Regulations envisages that selection Committee would classify the eligible officers as 'outstanding', 'very good', 'good' or 'unfit', as the case may be, on an overall relative assessment of their service record. That means, the material that the Selection Committee has to take into consideration is the service records of the officers concerned and after assessing the service record of one better than other, it would categorise the officers as 'outstanding', 'very good', 'good' or 'unfit'. When a given Selection Committee happens to categorise a person as 'outstanding', it means to say that the officer concerned, because of his service record, is 'outstanding'. In the case of sub-regulation (1) of regulation 5 of the Forest Regulations, there is no material which can be pinpointed and which has to be taken into consideration for coming to a decision by the Board and which the Commission could refer to for seeing as to whether the decision of the Board in adjudging an officer suitable or unsuitable is or is not warranted. In such a case, unless the Board gave its

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reasons for adjudging a particular officer as suitable or unsuitable, **the Commission, when formulating its own recommendations**, would be grouping in the dark and would have no means to check as to what had weighed with the Board in adjudging a given officer as suitable or unsuitable. A reference to the record of the eligible officers despatched to it under clauses (a) and (b) of sub-regulation (2) of regulation 5 of the Forest Regulations would put the Commission in no wiser position, for even if the record of a given officer adjudged as unsuitable was found to be good, the Commission would not be in a position to say that the officer was suitable, for there may have been something apart from the record which may have weighed with the Board in coming to the conclusion that the officer in question was unsuitable. It is in the context of such a situation that their Lordships held clauses (a) and (b) of sub-regulation (2) of regulation 5 of the Forest Regulations to be mandatory in character. However, no such problem appears to arise for the Commission, while dealing with the consideration of the Select List prepared by the Selection Committee under the Administrative Regulations. This apart, one has to further look into the history of the relevant provisions of regulations 5 and 6 of the Administrative Regulations.

(13) By a notification, dated 3rd June, 1977, the existing regulations 5 and 7 of the Administrative Regulations were deleted and regulation 4 was recast. Existing sub-regulation (7) of regulation 5 of the Administrative Regulations required the Committee in mandatory terms to record its reasons if it proposed supersession of any member of the State Civil Service in the process of selection, review or revision of the list. The question arises as to why sub-regulation (7) was deleted. The reason is apparent. Before the amendment was carried out of regulation 5 of the Administrative Regulations as a result of notification dated 3rd June, 1977, sub-regulation (7) had a purpose to serve in that sub-regulation (4), as it stood, was almost *pari materia* with the existing sub-regulation (1) of regulation 5 of the Forest Regulations in that it indicated no material which had to be taken into consideration by the Selection Committee for adjudging a person as suitable or unsuitable. The recasting of sub-regulation (4) of regulation 5 of the Administrative Regulations, as a result of the said notification, rendered sub-regulation (5), as also sub-regulation (7) thereof, redundant in that sub-regulation (4), as recast, not only indicated the



material which had to enter into the consideration of the Selection Committee for judging the merit of an officer but also indicated that the merit shall be expressed in terms of 'outstanding', 'very good' 'good' or 'unfit', and the 'outstanding' would take the first place, second place would be taken by the 'very good', third by the 'good', and in the respective categorisation if more than one officer is categorised as 'outstanding', 'very good' and 'good', then seniormost out of them would be put at No. 1 in the given category. The list thus prepared in accordance with amended sub-regulation (4) of regulation 5 of the Administrative Regulations speaks for itself. To illustrate: for example, there were two substantive vacancies anticipated in the course of the period of 12 months, regarding which Select List was to be prepared. In view of sub-regulation (1) of regulation 5 of the Administrative Regulations, four persons were to be brought on the list and if for instance, out of 20 members of the State Civil Service, whose cases in order of seniority have to be considered in terms of sub-regulation (2) of regulation 5 of the Administrative Regulations, two officers have been categorised as 'outstanding', 2 as 'very good' and the remaining as 'good', then those two, who are 'outstanding', and two, who are categorised as 'very good', would be put on the Select List, and when the two adjudged as 'outstanding' and 'very good' happen to be junior to those who are categorised as merely 'good', the result would be that the senior ones would find no place on the list so prepared. If one was to ask as to why the senior ones were not included in the list, the list itself would speak out the reason that they were not included in the list because their service record when compared with the service record of those, whose names had been placed on the Select List, did not warrant their categorisation either as 'outstanding' or as 'very good'. In such a situation, the existing sub-regulation 7 of regulation 5 of the Administrative Regulations was to serve no purpose as the purpose which this sub-regulation was intended to service stood served by amended sub-regulation (4) itself.

(14) Mr Jawahar Lal Gupta nevertheless argued that if such was the case, then why was it that clause (iii) of regulation 6 of the Administrative Regulations was also not deleted, as that clause also became redundant.

(15) We do not think there is any merit in what Mr Gupta says. That by a latter notification in the year 1979, clause (iii) of

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regulation 6 had been deleted would show that, in fact, the said provision had become redundant after the amendment of sub-regulation (4) of regulation 5 and that it remained part of regulation 6 in between either for the reason that, perhaps, by inadvertence, it escaped attention of the authors of the amendment or (taking a more charitable view) that the said provision was spared amendment earlier for the reason that in case the Selection Committee had recorded any additional reasons on account of any circumstance in addition to the service record of a given officer having weighed with it, then the Committee was not prohibited from giving additional reasons in that regard and if it gave such additional reasons, then it was only natural that it should have been required to be conveyed to the Commission and clause (iii) was intended to serve the said purpose. It appears that its existence merely served to create confusion and complication rather than to serve the useful purpose of the kind indicated already, so the framers of the Administrative Regulations acted to stem the confusion by deleting clause (iii) of regulation 6 of the Administrative Regulations.

(16) It is because of the fact that where the Selection Committee gave any reasons on account of the fact that it had taken into consideration not only the relative 'service record' of the officers concerned, but other facts also, such additional reasons, if any, were required to be forwarded to the Commission, but where no such additional reasons had been given, then there was nothing that could have been required to be conveyed to the Commission by way of reasons beyond what the list itself spoke of, that this Court in *Baldev Kapoor's case* (supra) held, and with respect rightly, the provisions of clause (iii) of regulation 6 of the Administrative Regulations to be directory in nature.

(17) The related contention advanced on behalf of the petitioners is that the provisions of regulations 5 and 6 of the Administrative Regulations when stripped off the provisions which required giving of reasons for superseding any member of the State Civil Service would open flood-gates of arbitrariness, and therefore would be subversive of the principle of due consideration envisaged in Article 16 of the Constitution. The learned counsel for the petitioners, Mr J. L. Gupta, therefore, urged that even when sub-regulation (4) of regulation 5 expressly did not provide for giving of reasons for superseding a given member of the State Civil Service, such a requirement should be read into the rules by reason of the provisions of

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Article 16 of the Constitution. He sought to sustain this broad proposition from the following observations of Beg, J., made in *Union of India v. Mohan Lal Capoor and others* (3), in the context of supersession of a substantive member of State Civil Service when finalising the Select List in terms of regulation 7 of the Administrative Regulations :

“..... Therefore, speaking entirely for myself on this question, I was inclined to hold that, although the 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 minimum requirement of just and fair treatment in such a situation would be to inform the officer 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.....”.

Beg, J., in making the above observations was not reflecting the Court's view, as will be clear from his following observations:

“But, as I have observed above, I am doubtful whether, on authorities as they stand today, such as 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 before us, upon what may appeal to be a new extension of concepts of justice, fairplay, and reason, in the realm of administrative law.....”

Surely, where the Supreme Court was wary to step in, discretion would warrant restraint on the part of this Court also. What is more, in our view, the amendment of sub-regulation (4) of regulation 5 of the Administrative Regulations does not leave anything to subjective satisfaction of the Selection Committee. It has confine to the 'service record' of each candidate and then decide as to who out

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of them is 'outstanding', 'very good', 'good' or 'unfit'. If in a given case, it takes into consideration anything outside the service record of the officers concerned without giving its reasons or without furnishing such reasons, if any, to the Commission, and if its categorisation of the candidates does not accord with their 'service record', then the Commission, which has to confine itself to the 'service record' for considering the merits of the candidates, would certainly modify the Select List and bring it in accord with the comparative service record of the candidates. When so viewed it cannot be said that amended provision of sub-regulation (4), read with regulation 7, leaves any scope for arbitrariness in the finalisation of the Select List on the basis of the 'service records' of the candidates.

(18) For the reasons aforementioned, we hold that this Court in *Baldev Kapoor's case* (supra) had laid down the law correctly, and finding no merit in the writ petition, we dismiss the same, but in the circumstances of the case make no order as to costs.

Prem Chand Jain, J.—I agree.

Harbans Lal, J.—I agree.

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**N. K. S.**

FULL BENCH

*Before S. S. Sandhawalia, C.J., Prem Chand Jain and D. S. Tewatia, JJ.*

AMAR BIR SINGH and others,—*Petitioners.*

*versus*

MAHA RISHI DAYANAND UNIVERSITY ROHTAK and others,—  
*Respondents.*

*Civil Writ No. 2459 of 1979*

May 9, 1980.

*Constitution of India 1950—Articles 14 and 15 (4)—Candidates in common rural schools as compared to urban schools handicapped.—Such candidates sought to be uplifted to give parity with those educated in urban schools—Seats reserved in a medical faculty for candidates educated in rural schools—No stipulation that such candidates*