

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

T.A.10 , T.A.11 and D.A. 160 of 1987

I. G.P. Mathur .. Applicant in TA 10/87

-Vs.-

1. The State of Rajasthan  
through the Chief Secretary  
to Govt. of Rajasthan, Jaipur

2. Union Public Service Commission,  
through the Chairman,  
Dholpur House, New Delhi .. Respondents in TA 10/87

3. The Union of India through  
the Secretary, Department of  
Personnel and Administrative  
Reforms, New Delhi

II. Ashokan Aggarwal .. Applicant in TA 11/87  
~~and 6 others~~

-Vs.-

1. The State of Rajasthan  
through the Chief Secretary  
to Govt. of Rajasthan,  
Jaipur

2. Union Public Service  
Commission, through the  
Chairman, Dholpur House,  
New Delhi .. Respondents in TA 11/87

3. The Union of India, through  
the Secretary, Home Department,  
Department of Personnel  
and Administrative Reforms,  
Govt. of India, Central  
Secretariat, New Delhi

III. Ajeet Singh Singhi .. Applicant in DA 160 of 1987

-Vs.-

1. Union of India through  
the Secretary, Department of  
Personnel and Training,  
Govt. of India, New Delhi

2. The UPSC through its Secretary,  
Dholpur House, New Delhi .. Respondents in DA 160/87

3. The State of Rajasthan through  
its Chief Secretary to  
the Govt. of Rajasthan, Jaipur

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4. Shri M.K.Saxena, Jaipur

5. Shri G.P.Nagar, at present working as the Revenue Appellate Authority, Jaipur

6. Shri K.M.Sahai, at present working as the Collector and District Magistrate, Sikar

7. Shri P.S.Maheswari, at present working as Dy. Secretary to Govt. of Rajasthan Jaipur

8. Shri Prageshwar Tiwari, at present posted as Addl. Collector (Dev.) Tonk

.. Respondents in  
BA 160 of 1987

9. Shri R.K.Saxena, Chairman, Rajasthan, Mines and Minerals Corporation, Udaipur (formerly the Chairman, Board of Revenue, Rajasthan, Ajmer)

10. Shri R.S.Gupta, s/o Shri Radhey Lal Gupta C-181/A, Bajaj Nagar, Jaipur

11. Shri J.S.Tanwar, at present posted as Deputy Secretary, Industries Department, Govt. of Rajasthan, Jaipur

12. Shri J.C.Sharma, s/o Late Pt.B.R.Shastri, D-20, Chonu House, Jaipur

13. Shri Madan Lal Gupta, C-67, Siwar Area, Bapu Nagar, Jaipur,

14. Shri J.S.Vadav, at present posted as Addl. Commissioner, Food and Supplies, Govt. of Rajasthan, Jaipur

15. Shri G.S.Darda at present, posted as Dy. Secretary (TAD), Govt. of Rajasthan, Jaipur

In person.

~~Counted for the Applicants~~ .. On behalf of applicants in JA 10 and JA 11 of 1987

Mr. Ajest Singh (Applicant in BA 160 of 1987) presented the case

Counsel for the respondents No.1 .. Mr. P.K. Bansal, Advocate

Counsel for the second and third respondents .. Mr. M.L. Verma, Advocate

Mr. N.L. Jain, Advocate General  
Govt. of Rajasthan

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CORAM: Hon'ble Shri S.P. MUKERJI, ADMINISTRATIVE MEMBER

and

Hon'ble SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

(ORDER PRONOUNCED BY Hon'ble Shri G. SREEDHARAN NAIR,  
JUDICIAL MEMBER

on 21.10.1987 )

In these applications, the applicants

who are members of the State Civil Service of

Rajasthan have challenged the proceedings of

the selection committee, constituted under Regulation 3

of the Indian Administrative Service (Appointment by

and Promotion) Regulations, 1955 (for short 'the regula-

tions'), at its meeting held on 18.12.1985 for

preparing the list of members of the State Civil

Service suitable for promotion to the ~~XXXXXX~~ Indian

Administrative Service, referred to hereinafter as

'the IAS', and the select list prepared by the Union

Public Service Commission (for short 'the UPSC') on

15.12.1986. The main ground urged is that the

selection stands vitiated being in violation of the

principles of natural justice, as Shri R.K. Saxena,

the ninth respondent, who was then the Chairman,

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Board of Revenue, Rajasthan, participated

in the proceedings of the Selection Committee

where the case of His sister's husband

Shri M.K. Saxena had to be considered and whose

name has actually been placed in the list. It

is alleged that participation of the ninth

respondent in the deliberations of the

selection committee was illegal and as such

the entire selection is void. Another ground

that is urged is that the committee has re-

commended the names of various State Civil

Service Officers against whom there were serious

charges. The third ground is that the Selection

Committee did not meet during the years 1981

to 1984 and that in the selection that was

done, the vacancies that arose during the

entire period were clubbed together so as to

enlarge the zone of consideration. The applicant

in DA 160 of 1987 has also raised the plea

that the adverse entry in his character roll

relating to the year 1983-84 was communicated

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to him only on 16.12.1985 and that the

said entry was subsequently expunged on

his representation on 22.8.1986, but the

Committee have taken note of the said

entry also. He has highlighted the fact

that his name was included by the selection

committee in the list prepared during the

years 1979 and 1980.

These applications are resisted by

the Union of India, the UPSC, the State of

Rajasthan and by some of the officers of the

State Civil Service, whose names have been

included in the select list. It is contended

that these applications are not maintainable

under Sec. 19 of the Administrative Tribunals

Act, as no order is under challenge. It is

also contended that these applications are bad

for non-joinder of necessary parties as all

the officers whose names have been included in

the select list are not brought on record.

There is also the plea of estoppel on the

ground that the applicants have not challenged

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the participation of the ninth respondent as a member of the selection committee at the time when the meeting of the committee was held and as such having come to know that their names are not included in the list, they are estopped from challenging the list. Apart from these preliminary objections, it is contended that there is no irregularity or illegality in the preparation of the select list. It is pointed out that after the amendment of sub-rules (4) and (5) to regulation 5 of the regulations, the selection of the officers by the committee is only on the basis of their service records, and as such, there is no scope for any arbitrariness. As per the regulations, the ninth respondent, who was the then Chairman of the Board of Revenue, had to participate as a member of the selection committee. The selection was made by the committee and the ninth respondent had no decisive role. The list is actually subjected to consideration at two stages, by the State Government and the UPSC. As regards the

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officers against whom there were disciplinary proceedings, their names have been included only subject to clearance in the proceedings. It is contended that it is not mandatory that the selection committee is to meet every year. It is pointed out that when the committee meets, it has to consider the existing vacancies. As regards the adverse entries, the contention is that it is wrong to say that the committee was not aware of the fact that the adverse remarks had been communicated and there was still time to make representations and has taken into account the adverse remarks.

Shri R.K.Saxena, the ninth respondent, has filed an affidavit stating that when the name of Shri M.K.Saxena, his brother-in-law, came up for consideration before the committee, he did not participate in the proceedings of the committee. That he was a member of the committee by virtue of his official capacity as chairman, Board of Revenue, Rajasthan, is admitted. He denies that he had played any decisive role in the proceedings of the committee

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<sup>states only</sup> ~~different~~  
and that he was one of the four ~~members~~ of

the committee which was presided over by a  
member of the UPSC.

The preliminary objections raised by  
the respondents may be disposed of first.

It was submitted that under Sec.19  
of the Administrative Tribunals Act, 1985, only  
a person aggrieved by an order pertaining to any  
matter within the jurisdiction of the Tribunal  
can make an application to the Tribunal. It was  
pointed out that the explanation to the section  
would clearly indicate that the order contemplated  
by the section is to be a final order. It was  
stressed by the counsel for the respondents that  
the challenge being only against the ~~xxxxxx~~ ~~xxxx~~  
selection proceedings and the select list, the  
applications cannot be maintained. By way of  
answer, it was submitted by the applicant in  
OA 160 of 1987 (who appeared in person and  
presented his case with considerable clarity)  
that the Administrative Tribunals Act has been  
passed to settle disputes relating to recruitment and

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conditions of service of the employees

falling within the purview of the Act.

He invited our attention to Sec. 14 of the

Act, defining the jurisdiction, powers

and authority of the tribunal and has also

placed reliance on the decision of the

Supreme Court in Sampathkumar's case, that

the Administrative Tribunal is a substitute

for the High Court and submitted that the

objection of the respondents should not be

accepted. We are inclined to agree with him.

In appreciating the contention, we cannot

ignore the object of the Administrative Tribunal's

Act and its scheme. After coming into force of

the Act, no other Court, except the Supreme Court,

shall have the jurisdiction to entertain the

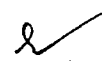
grievance of an employee when it relates to a

dispute relating to recruitment or the conditions

of service. When it is settled that the tribunal

is a substitute for the High Court in relation

to adjudication of such cases, any grievance



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challenge relating to recruitment can only

only  
be gone into and redressed by this tribunal.

It cannot be disputed that the term <sup>'selection'</sup> ~~recruitment~~ 'recruitment'

takes in the process of recruitment as well. In

these applications, the challenge is actually

against the recruitment by promotion to the IAS

from the Rajasthan State Civil Service Officers.

In view of the provisions laid down in the

regulations, before issue of a notification by

Govt. of India appointing a State Civil Officer

to the IAS, his name has to find a place in

the select list, which means that the list

prepared by the selection committee constituted

by the Govt. of India, <sup>on</sup> ~~gets~~ its approval from by

the UPSC. Admittedly, the select list was issued

on 15.12.1986. These applications have been

filed only thereafter, alleging that the select

list is illegal and void as the selection proceedings

is vitiated in law. There is no scope for the

passing of any order or such on this matter. If

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 this of the respondents is accepted, the

applicants will be bereft of remedy. It

cannot be comprehended that such a situation

was contemplated by the Parliament when the

Administrative Tribunal Act was enacted.

As far as these cases are concerned,

the objections are totally devoid of merit, for

when once it is admitted that the UPSC has approved

the list, sent by the State Government, it has

to be taken that there is an order. It is only on

such order of approval that the select list ~~came~~ <sup>was</sup>

~~was~~ issued.

The counsel for the respondents invited

our attention to the decision of the Madras Bench

of this Tribunal in N. Gunavijayan - Vs. - The Asst.

Director of Census Operations (ATR 1986(2)-CAT-603).

That was a case dealing with the challenge against

the memorandum issued to the applicant, calling upon

him to explain as to why disciplinary action should

not be taken against him. It was held <sup>in</sup> that decision

that if an application is entertained against a mere

memo ~~of~~ <sup>by</sup> show cause notice, everyone will rush to this

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Tribunal at the initial stage of issue of  
a memo or a show cause notice, without  
waiting for the final order to be passed in  
the matter and in such a case, Sections 20  
and 21 will become practically otiose. The  
facts here are entirely different. When  
the proceedings of the selection committee  
are approved by the UPSC and the select list  
is prepared, the selection process is practically  
complete. What remains is only the issue of a  
formal notification, appointing the persons in  
the select list. In this context, the decision  
of the Calcutta Bench of the tribunal in Ashok Kumar  
Gupta - Vs. - General Manager (ATR 1986(2)-CAT-119)  
has to be noticed. It was held therein that since  
the protection provided under the provisions of  
the Constitution to Govt. servants has now been  
removed from the jurisdiction of all Courts, except  
the Supreme Court, and are vested with the tribunal,  
the tribunal is now vested with that power, including  
powers to redress of any apprehension that might be

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arising in the minds of the Govt. servants

and that being so, the limitation of Sec.19(1)

that an employee can approach the tribunal

only when there is a grievance, would not be

valid and the tribunal is not bound by any

limitation as such.

There is the important circumstance, that

sub-sec.(1) of Sec.19 begins with the words

"subject to the other provisions of the Act".

As such, interpreting what is laid down in the

sub-section, it cannot be viewed in isolation,

but has to be done on a conspectus of the

other provisions of the Act as well. When so

done, we have no hesitation to hold that the

objection raised by the respondents has to be

over-ruled.

The second preliminary objection relates

to non-joinder of all State Civil Service Officers

whose names are included in the select list. It is

not disputed that the select list is a confidential

document. As such, the applicants cannot be expected

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to know about the names of all those who

have been included in the select list.

Apart from that, when the challenge is

based on the legality <sup>of</sup> the selection

proceedings, the officers who figured in

the select list, can at best be only said

to be proper parties. They not being the

necessary parties, these applications

cannot be said to be bad for non-joinder

of necessary parties.

The third objection is based on

the principle of estoppel. It was submitted

that as the applicants have challenged the

selection proceedings, only after understanding

that their names have not been included in the

select list, they are stopped from doing so.

There is no merit in the objection. This is

not a case where the applicants by any act or

conduct on their part took part in the selection

proceedings or acquiesced <sup>in</sup> the same. If that

was the case, it can be contended that it is

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not open to them to turn round and challenge

the selection after the result thereof finding

out that it ~~was~~<sup>is</sup> against them. The counsel

for the respondents placed reliance on the

decision of the Supreme Court in Dr. Sarana, G.

-Vs.- University of Lucknow (1976(2)-SLR-509).

That decision cannot be pressed into service

here as that was a case where the appellant

therein knowing all the relevant facts about

the ~~situation~~ constitution of the committee

did not, before appearing for the interview or

at the time of interview, raise objection against

the same, but instead, voluntarily had appeared

and before the committee and took a chance of having

a favourable recommendation from it. It was in

this circumstance the Supreme Court ~~has~~ said

that having done so, it is not open to him after

the results are out, to turn round and question

the constitution of the committee.

It follows that none of the preliminary

objections raised on behalf of the respondents is

sustainable.

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Coming to the merits, the main

question that falls to be determined is

as to whether the proceedings of the

selection committee is vitiated on account

of the ninth respondent being a member thereof,

and if so, it will also have to be determined

whether the select list issued on the strength

of the recommendations of the selection

committee can be sustained.

"Nemo debet esse iudex in propria

sua causa" -- No man can be a judge in his

own cause, is one of the well recognised

doctrines relating to natural justice. That

justice should not only be done, but must

manifestly and undoubtedly seek to have been

done, is an extension of this doctrine. In R - Vs. -

Sugger, Justices ex-parte Mc Carthy (L R - 1924(1)

K B 256) Lord Hewart, Chief Justice, said,

"There is no doubt, as has been said

in a long line of cases, that it is not

merely of some importance, but of fundamental

importance that justice should both be done

and manifestly seen to be done. The question

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is not whether in this case this gentleman, when with the Justices made any observation or offered any criticism which he could not properly make or offer, the question is whether he was so related to the case by reason of the civil action as to be unfit to act for the Justices in the criminal proceedings. The answer to that question depends not on what actually was done but on what might appear to be done. The rule is that nothing is to be done which creates such a suspicion that there has been an improper interference with the course of justice. In *Maniklal - Vs - Dr. Prem Chand Singhai* (AIR 1957-SC 425) the Supreme Court held that this principle applied not only to judges, but to all Bodies having a jurisdiction to determine the judicial rights of the parties and laid down that the test is whether one could reasonably apprehend that a bias attributable to a member of the Body has been in fact or has operated against him in its final decision.

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With the increase of power of the

Administrative Bodies, the concept of quasi-

judicial power itself has undergone a considerable

change and what was treated merely as exercising of

the administrative power is now considered as

that of a quasi-judicial power. As has been

pointed out by the Supreme Court in A.K. Kraipak-

Vs. - Union of India(1969-SLR(3)-445), "the dividing

line between the administrative power and a quasi-

judicial power is quite thin and ~~has been~~ is being

gradually obliterated and for determining whether

a power is administrative power or a quasi-judicial

power, one has to look to the nature of the powers

conferred, the person or persons on whom it is

conferred, the framework of the law conferring that

power, the consequences ensuing from the exercise

of that power and the manner in which that power

is expected to be exercised. The Supreme Court was

dealing with the case of the Chief Conservator

of Forests in the State of Jammu and Kashmir, acting

as one of the members of the Selection Board,

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constituted under the Indian Forests

Service(Initial Recruitment)Regulations

1966,for the purpose of making selection

to the State cadre, on the basis of which

appointment had to be made by the Central

Govt. after obtaining the advice of the

UPSC, when he was one of the persons to be

considered for selection. Though he did

not participate in the deliberations of the

committee when his name was considered, it

was considered that the very fact that he

he was a member of the selection board must

have had its own impact on the decision

of the Board. The selection was set aside

by the Court on the ground that he had

undoubtedly acted as a judge in his own case, &

the circumstance which was stated as abhorrent

to the concept of justice."

In Sr.D.K.Khanna - Vs. - Union of

of a candidate  
India(1973(1)-SLR-80), the son-in-law, was

one of the members of the selection committee

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constituted for considering the cases of  
the members of the State Civil Service for  
promotion to the IAS. Despite an affidavit  
having been filed by him before the Court, when  
the selection was challenged, that during the  
deliberations when the case of his father-in-law  
was taken up for consideration, he refrained from  
expressing any opinion, the High Court of  
Himachal Pradesh had held that the select list  
is invalid. Chief Justice R.S. Pathak (as His  
Lordship then was) held that the relationship  
was sufficiently close to bring the doctrine  
against bias into play and that the nearness of  
the relationship could reasonably give the  
impression to the other candidates that there  
was a real likelihood of the son-in-law espousing  
his father-in-law's cause, as his own. It was  
laid down that in the case of family relationship  
the challenge to the proceeding need only establish  
so close a degree of relationship as to give rise  
to the reasonable likelihood of the judge espousing  
the cause of his

the cause of his own.

In **Sunder Nath Goyal - Vs. - State of**

**Punjab(1973(1)-SLR 690)**, the selection to the

**Post-graduate Training and Research Course of**

**the Govt. of Ayurvedic College of Patiala, was**

**challenged on the ground that two of the candidates**

**were related to one of the members of the selection**

**committee. Accepting the challenge, the selection**

**was quashed by the High Court of Punjab and Haryana.**

The question again came up before the

**Supreme Court in Ashok Kumar Yadav - Vs. - State of**

**Haryana(AIR 1987 -SC-454). In para 17 of the**

**judgement, reference has been made to the aforesaid**

**two decisions of the High Court of Himachal Pradesh,**

**and of the High Court of Punjab and Haryana. In Para 18**

**of the judgement, <sup>the</sup> earlier decision of the Supreme Court**

**in A.K.Kraipak's case has been referred to as**

**" a landmark in the development of administrative law"**

**and as having contributed in a large measure to the**

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strengthening of the rule of law in this

country. It was stated: "We would not

like to whittle down in the slightest measure

the vital principle laid down in this decision

which has nourished the roots of the rule of law

and injected justice and fairplay into legality".

Justice Bhagwati (as His Lordship then was)

stated further,

"There can be no doubt that if a

selection committee is constituted

for the purpose of selecting candidates

on merits and one of the members of the

selection committee is closely related

to a candidate appearing for the selection,

it would not be enough for such member merely

to withdraw from participation in the

interview of the candidate related to

him but he must withdraw altogether from

the entire selection process and ask the

authorities to nominate another person

in his place on the selection committee,

because otherwise all the selections

made would be vitiated on account of

reasonable likelihood of bias affecting

the process of selection".

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In Ashokkumar Yadav's case, the

principle was not extended by the Supreme

Court on the ground that the case did not

relate to selection by any selection committee,

constituted for that purpose, but was done

by the Haryana Public Service Commission,

a Constitutional authority. It was pointed

out that if a member of the Public Service Commi-

ssion were to withdraw altogether from the

selection process on the ground that a close

relative of his is appearing for selection, some

times it may happen that no member is available

to take the place of such a member and the

functioning of the Public Service Commission

may be affected. It is to be emphasised that

so far as the selection by the selection committee

is concerned, the selection committee Supreme

Court has affirmed beyond doubt that the proposition

of law enunciated in A.K. Kraipak's case and

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followed in D.K.Kanna's case and Sundernath

Goyal's case.

At this juncture, reference has to be

made to the decision of the Supreme Court in

Javed Rasool - Vs. - State of Jammu and Kashmir

(AIR 1984-SC-873), as the observations laid down

in the said decision have been endorsed in Ashok

Kumar Yadav's case. In that case, the Principal

of the Medical College, Shrinagar, whose daughter

was one of the candidates for admission to the

college, had informed the selection committee

at the very outset about the fact and told them

that he would not have anything to do with the

written test and that he would not be present when

his daughter was interviewed, which suggestion was

accepted by the other members. Pointing out that

the father of the girl was not present when she

was interviewed, and that she was one among the

several hundreds of candidates and also taking into

account the fact that the marks obtained by her in

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the written test were not even known  
when she was interviewed and as such  
when the other candidates were interviewed,  
the father of the girl had no occasion to  
know the marks obtained either by his daughter  
or by any of the candidates, it was held  
that there was no occasion to suspect the  
bonafides of the father, the principal of  
the college, and as such there was no reasonable  
likelihood of bias. On the above premises, it  
was held that there was no violation of principles  
of natural justice. The endorsement of the  
aforesaid observations in the judgement of Ashok  
Kumar Yadav's case had in no way goes against  
the seal of approval to the principle laid down  
in A.K. Kraipak's case.  
It is in the above backdrop of the  
settled position of law that the challenge in these  
applications to the validity of the proceedings  
of the selection committee has to be assessed.  
When so done, we have the least hesitation to  
hold in favour of the applicants.

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It is not disputed that Sri R.K.Saxena, the ninth respondent, was one of the members of the selection committee and that he was the senior most among the members, including the Chief Secretary, as well. The relationship between him and Shri M.K.Saxena, one of the candidates to be considered by the committee is also admitted.

No doubt it was in his capacity as the Chairman of the Board of Revenue, that the ninth respondent has functioned as member of the Committee, but when there is a conflict of duty and interest, the possibility of bias cannot be ruled out and as such if his participation in the proceedings has engendered the feeling in the minds of the applicants that their claims have not been assessed in the proper background, as the ninth respondent being a member of the Committee was espousing the cause of Sri M.K.Saxena, it cannot be ignored as totally unfounded.

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The counsel for the respondents  
placed considerable reliance on the affidavit  
filed by the ninth respondent before this  
tribunal wherein he has stated that when the  
name of Sri M.K.Saxena came up for consideration  
he did not participate in the proceedings of  
the selection committee in any manner. We are  
afraid that we cannot place reliance on the  
said statement in the affidavit for two reasons.  
Firstly the minutes of the meeting of the selection  
committee made available for our perusal by the  
counsel for the respondents 1 and 2 does not  
indicate that the ninth respondent had nothing  
to do with the assessment of the suitability of  
M.K.Saxena. The entire proceedings are stated to  
be the proceedings of the committee consisting of  
all five members including the ninth respondent.  
The records of all the officers, including  
that of Sri M.K.Saxena, were examined by the  
committee as a result of which the committee  
selected twenty of them. We are not able to find  
anything in the minutes of the meeting to ~~indicate~~

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indicating that the consideration of the case of  
Mr. M.K. Saxena was only by the other  
members of the committee, excluding the  
ninth respondent. Secondly, there  
is no affirmation in the reply filed by  
respondents 1 and 2 that the assessment of  
the records relating to Sri M.K. Saxena was  
not done by the ninth respondent, but was  
done only by the other four members of the  
Committee. The absence of such a plea is  
significant when the entire proceedings have  
been made the target of attack mainly on the  
ground of bias in view of the participation  
of the ninth respondent, as a member of the selection  
committee.  
Advocate Mr. P.P. Gupta, appearing for some  
of the respondents made a strenuous attempt  
to impress upon us that after the amendment to  
the regulation 5 by notification of 3.6.1977, there  
is no scope for exercise of any discretion by the members of  
the selection committee in the matter of

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selection of the candidates, and as such,  
the ~~part~~ participation of the ninth ree-  
pondent is of no consequence. It was  
submitted by him that the decisions rendered  
by the Supreme Court and by the High Courts  
prior to the amendment have at present no  
relevance. We have given a careful thought  
to this submission, but we are not persuaded  
to agree.

Formerly, the selection for inclusion  
in the list ~~is~~ to be done on merit and suitability  
all  
in that respect and if in the process of selection  
it was proposed to supersede any member of the  
State Civil Service, the committee was bound to  
record its reason for the proposed supersession.

~~Notwithstanding the provisions of the~~ By the  
amendment it has been laid down that the  
selection committee shall classify the eligible  
officers as 'outstanding', 'very good', 'Good'  
or 'unfit' as the case may be on an overall

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relative <sup>assessment</sup> ~~assessment~~ of their service

records. The core of the submission of

the counsel was that while earlier merit

and suitability had to be assessed in all

respects, after the amendment it can be

done only by an overall relative assessment

of the service records of the candidate. We

are not prepared to hold that by virtue of

the amendment, there has been any substantial

change in the role of the selection committee and

the perspective to be had by it. In this

the context, <sup>the</sup> circumstances under which the amendment

was made may be taken note of. The Supreme

Court in its decision, Union of India - Vs. -

Mohanlal Kapur (AIR 1974-SC-87) had held that

if a senior officer was superseded, the committee

was under a mandatory legal obligation to record

the reasons in a manner which would disclose as

to how the record of each officer stood superseded

in relation to the record of others, who were to be

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preferred. It was emphasised that recording

of reasons was necessary as it provided a visible

safeguard ~~xxxxx~~ against possible injustice

and arbitrariness in making the selection.

Since the selection committee felt difficult

in recording the reasons in the manner suggested

by the Court, at a conference of the Chief

Secretaries held in May 1976, the Committee was

appointed to go into the question which reported

that the system of categorisation of the officers

for promotion to the higher post should be followed

in the case of All India Services also and it

was on this basis that the amendment was introduced,

by the Central Govt. in consultation with the UPSC.

In R.S.Das - Vs. Union of India (AIR 1987-SC -

593), there was a challenge against this amendment

on the ground that it will lead to ~~xxxxxx~~ arbitrariness,

but it was found against. It was pointed out by the

Supreme Court that the selection committee includes

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persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. Thus it is clear that the responsibility for adjudging the suitability of the officers was with the committee even after the amendment to regulation 5 of the regulations. It is also to be emphasised at this stage that the decision <sup>in</sup> of Ashok Kumar Yadav's case was given by the Supreme Court long after the amendment and even then the judgement of the High Court, Himachal Pradesh, in D.K. Khanna's case was referred to with approval.

Another point that was stressed by the counsel for the respondents was that in so far as the recommendation of the selection committee is being subjected to examination by two other forums - viz. the State Govt. and the UPSC, the proceedings cannot be said to be vitiated on account of participation in the selection committee of a close relative of one of the candidates. This submission in the very

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same form was urged in A.K.Kraipak's case,

but did not find favour with the Supreme

Court. It was held that "looking at the

position of the Board and the nature of the

duties entrusted to, we have no doubt that

its recommendations should have carried

considerable weight with the UPSC" and that

"if the decision of the selection board is

held to have been vitiated, it is clear to

our mind that the final recommendation made

by the commission must also be held to have

been vitiated".

In D.K.Khanna's case also, such an

argument was repelled. Reference may be made

in this context to a passage in "Judicial

review of Administrative Action (third Edition), Page 225, where

S.A.De Smith, has stated as follows with regard to

Reports and Preliminary decisions:

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"The case law on the point is thin, but on principle it would seem that where a report or determination lacking final effect may nevertheless have a seriously judicial effect on the legally protected interests of individuals (e.g. when it is a necessary prerequisite of a final order) the person making the report or preliminary decision must not be affected by interest or likelihood of bias".

Considerable reliance was placed by the counsel for the respondents on the decision of the Supreme Court in Javed Rasool's case. The circumstances under which in that decision the Supreme Court held that the proceedings of the selection committee are not vitiated have been adverted to earlier which show that the decision cannot be applied to the instant case. There is also the fact that even after taking note of the said decision, the Supreme Court held in Ashok Kumar Yadav's case that the principle laid down in A.K. Krupak's case cannot be allowed to be whittled down.

Before parting with this question, we would like to refer to the provision in regulation(3) of the regulations with respect to the constitution of the selection committees. Sub-rule(1) of regulation(3) makes provision for the constitution



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of the committee composed of members specified  
in the corresponding entry of column(3) of the  
schedule. **Class(ii)** of the proviso to the said  
sub-rule, empowers the Central Government to  
**amend the schedule.** *As such,* ~~that~~ instead of the ~~Chairman~~

Chairman of the Board of Revenue, any other officer  
can be brought into the committee. Besides, if  
more than half the members of the committee, including  
the chairman, attend the meeting there is sufficient  
quorum. If a member of the committee is aware that  
the case of one of his close relatives is to be  
considered by the committee, he can very well remain  
absent from the entire deliberations which will  
in no way affect the proceedings of the committee.

We hold that the selection of committee  
proceedings relating to the selection of State Civil  
Service Officers are vitiated on account of participation  
of the ninth respondent as a member of the selection  
committee and as such the select list, so far as it  
relates to State Civil Service Officers of Rajasthan,  
based on such recommendations cannot be sustained.

*[Signature]*

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There is another weighty reason for

interference urged by the applicant in OA 160 of 1987.

Admittedly, the adverse entries in his confidential report relating to the period 1983-84 <sup>was</sup> ~~was~~ communicated

to him only on 16.12.1985. It is alleged that the communication ~~itself~~ <sup>met</sup> itself was sent through a special messenger. The selection committee <sup>met</sup> on 18.12.1985.

The minutes of the committee reveals that while assessing the suitability the committee noted that the adverse remarks in the annual confidential reports of the officers have been communicated to them. Actually

the applicant had preferred a representation against the said adverse entries and it has later been expunged.

It is on record that the selection committee

<sup>five</sup> considered the case of officers who do not belong to the State Civil Service, but have been serving in connection

with the affairs of the State against the quota fixed

for promotion for such officers and that they have

recommended the case of the tenth respondent. The counsel

for the tenth respondent submitted that pursuant to

the select list, notification has been issued by the

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Govt of India appointing the tenth

respondent to the IAS. It was submitted by him  
that his selection can in no way be assailed.  
The applicants fairly conceded this. Even  
otherwise since the consideration of the five  
officers by the selection committee was made  
independently and had nothing to do with the  
consideration of the State Civil Service Officers  
in which category Mr. M.K. Saxena fell, that  
part of the proceedings of the committee can  
well be severed and sustained so as to uphold  
the selection of the tenth respondent, and we do so.  
In the result, the select list  
dated 15.12.1986 relating to the selection of  
State Civil Service Officers for promotion  
to the IAS is quashed. The respondents 1 to 3  
shall take immediate steps to have a fresh select list  
prepared in respect of the vacancies as on 18.12.1985.  
These applications are disposed of as above.

(G. SREEDHARAN NAIR)  
JUDICIAL MEMBER

21.10.1987

(S.P. MUKERJI)  
ADMINISTRATIVE MEMBER