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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. Ashkan Aggarwal .. Applicant in TA 11/87
and 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 Singh .. 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

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
RA 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.Tiwari, 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, Chomu House, Jaipur

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

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

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

~~Both the applicants are represented by their
Counsel for the Applicants ..~~ On behalf of applicants in
RA 10 and RA 11 of 1987
Mr. Ajit Singh (Applicant in
RA 160 of 1987) presented the
case

~~Mr. P.K.Bansal, Advocate~~

Bansal

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

No. 2 & 3 .. Mr. M.L.Verma, Advocate

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

Mr. N.L.Jain, Advocate General

Govt. of Rajasthan

Mr. N.L.Jain, Advocate General

Govt. of Rajasthan

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 21.09.1987)

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 regu-
lations'), at its meeting held on 18.12.1985 for
preparing the list of members of the State Civil

Service suitable for promotion to the XXXXX 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.Saksena,

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 BA 160 of 1987 has also raised the plea

that the adverse entry in his character roll

relating to the year 1983-84 was communicated

sent 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 and Civil 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

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
objection of the respondents, it is clear that

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against the ninth respondent and other 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 should 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 not correct to say 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 was 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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states only ~~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 ~~malafact~~ ~~list~~
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 Tribunals

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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guidelines relating to recruitment can only be gone into and redressed by this tribunal.

It cannot be disputed that the term ~~selection~~ 'selection' 'recruitment' takes in the process of recruitment as well. In these "applications", the challenge is actually against the recruitment by promotion to the IAS

IN VIEW OF THE PROVISIONS LAID DOWN IN THE
REGULATIONS BEFORE ISSUE OF A NOTIFICATION BY
THE GOVT. OF INDIA APPOINTING A STATE CIVIL OFFICER
WHO WOULD TAKE PART
TO THE IAS, HIS NAME HAS TO FIND A PLACE IN
THE SELECT LIST, WHICH MEANS THAT THE LIST
BEING PREPARED BY THE SELECTION COMMITTEE CONSTITUTED
WHICH APPROVED BY THE GOVT. OF INDIA, ^{OR} 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 PROCESS
IS VITIATED IN LAW. THERE IS NO SCOPE FOR THE
SELECTING COMMITTEE TO DECIDE OR ORDER ON SUCH AN ISSUE. IF
THE GOVT. OF INDIA WANTS TO APPOINT A STATE CIVIL OFFICER, IT
SHOULD DO SO BY A NOTIFICATION AS PROVIDED IN THE
REGULATIONS.

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plea

if 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 Tribunals Act was enacted.

The said Act furnishes 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 ~~comes~~ was

~~be issued~~ issued, and is liable to be given

The counsel for the respondents invited

your attention to the decision of the Madras Bench

of this Tribunal in N. Gunavijayan - vs. - The Aest.

dated 20-12-1986, 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 ~~in~~ that decision

that if an application is entertained against a mere

memo of show cause notice, everyone will rush to this

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 otios. 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
pertinent to any appointment or removal of any person.

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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
Sec.19(1) 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 ~~conspicuous~~ 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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Section 2: Information about the child and the family

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 of the selection.

proceedings, the officers who figured in

the select list, can at best be only ~~and~~

which are necessary parties, these applications.

cannot be said to be bad for non-joinder
as well as ~~of~~ ^{of} conspiracy participants only.

The third objection is based on

Conversely, *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 objections. This is

not a case where the applicants, by any act or

conduct on their part took part in the selection

proceedings or acquiesced in the same. If that

was the case, it can be contended that it is

not open to them to turn round and challenge the selection after the result thereof finding out that it was 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 ~~constitution~~ 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 given a ~~not~~ favourable recommendation from it. It was in this ~~in~~ ~~in~~ this circumstance the Supreme Court ~~had~~ 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. *L*

Coming to the merits, the main

question that falls to be determined is

whether the court is bound to decide
as to whether the proceedings of the
selection committee were fair and proper.

Whether the selection committee is qualified on account

of the ninth respondent being a member thereof,
whether the court is bound to decide whether

such a member and, if so, it will also have to be determined

whether the court is bound to decide whether
whether the select list issued on the strength

of the recommendations of the selection

committee can be sustained.

Whether the court is bound to decide

whether the court is bound to decide whether

"No man can be a judge in his
own cause" — 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

be manifestly and undoubtedly seen to have been

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

Sugden, Justices ex parte Mc. Carthy (L.R. 1924(1)

1924(1) 2 K.B. 256 — *Lord Hawart, 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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Sect. 17 of the Code of Civil Procedure

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".

See also *In re Maniklal vs. Dr. Prem Chand Singhvi*

(AIR 1957-SC 425) the Supreme Court held that

this principle applied not only to judges, but to

all other ~~and~~ ^{and} bodies having a jurisdiction to determine the

judicial rights of the parties and laid down that

is whether the test is whether one could reasonably apprehend

that a bias attributable to a member of the Body

had been ~~has~~ ^{had} been operated against him in its final decision.

See also *Shri D. R. Dhar vs. State of Bihar*

(AIR 1957-SC 122) following the

Administrative and Quasi-judicial power

Administrative and Quasi-judicial power

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Administrative and Quasi-judicial power

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

Administrative power is now considered as

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 ~~now~~ ~~now~~ is being

gradually obliterated and for determining whether

the power is administrative 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

notified in 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,

constituted under the Indian Forests

Service (Initial Recruitment) Regulations

1966, for the purpose of making selection
which was to be done by the Central Govt.
to the State cadre, on the basis of which
a decision was to be taken as to whether the said
appointment had to be made by the Central
Govt. or by the State Govt. In this connection
Govt. after obtaining the advice of the
Central Public Service Commission, appointed
the UPSC, when he was one of the persons to be
considered for selection. Though he did
not participate in the deliberations of the
selection committee, it is clear that he
was considered for selection. Though he did
not participate in the deliberations of the
selection committee when his name was considered, it
cannot be denied that the fact that he
was considered that the very fact that 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
mainly on the ground that he had
acted as a judge in his own case, &
undoubtedly acted as a judge in his own case, &
the circumstance which was stated as abhorrent
to the concept of justice."

In **Mr.D.K.Khanna - Vs. - Union of
India(1973(1)-SLR-80)**, the son-in-law of a candidate
had the right to nominate his son-in-law as
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
relationship of son and father-in-law
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 the

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the cause of his own.

In Surinder 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

committee had done elaborate enquiry and

was quashed by the High Court of Punjab and Haryana.

4. A. K. Kraipak's case

The question again came up before the

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

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

judgement, reference has been made to the aforesaid

and of the High Court of Himachal Pradesh,

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

of the judgement, 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 "set a new standard of administrative law"

and as having contributed in a large measure to the

development of administrative law in India."

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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 Bhagawati (Him 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, he can withdraw from the selection if 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 Ashokumar 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, which was constituted for that purpose, but was done by the Haryana Public Service Commission, which had constitutional authority. It was pointed out that if a member of the Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative is appearing for selection, sometimes 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 Supreme Court has affirmed beyond doubt that the proposition of law enunciated in A.K. Kraipak's case and

which was also relied upon in the case followed in D.K.Kenna's case and Sundernath

which is the case of Sundernath Vs. State of Bihar and Goyal's case.

At this juncture, reference has to be

made to the decision of the Supreme Court in

Daved 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

and the presiding officer, who was the

father of the girl, that he would not have anything to do with the

selection committee and that he had given a

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

an independent examination were 90 per cent

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and that she had been admitted

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the written test were not even known
or even asked to the girl concerned

when she was interviewed and as such
there is no bias

when the other candidates were interviewed,
the girl concerned was not asked

the father of the girl had no occasion to
know the marks obtained by his daughter

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
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 premise, it
was held that there was no violation of principles
of natural justice. The endorsement of the

aforsaid observations in the judgement of Ashok
and Kumar in the present case can be cited as follows:

Kumar Yadav's case had in no way goes against
the principles of natural justice that held in

the seal of approval to the principle laid down
in the case of 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.

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 beyond question. His participation 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 interest or when there is a question of his personal bias and interest, the possibility of bias cannot be ruled out and as such if his participation in the proceedings has engendered the feeling in applicants that the application will not be 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.

It is also to be noted that the

disposition of the application

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

records relating to Sri M.K.Saxena 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

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 ~~xxx~~ participation of the ninth re-

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

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in the list is to be done on merit and suitability

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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.

~~xxx~~ despite of those provisions, 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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assessment
relative to continuation 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

context, /circumstances under which the amendment

was made may be taken note of. The Supreme

Court in its decision Union of India - Vs. -

Mohaniel 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 ~~against~~ against possible injustices 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 maximum arbitrariness,

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

Supreme Court that the selection committee includes

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1970-1971, and 1971-1972, and 1972-1973

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persons having requisite knowledge, experience

and expertise to assess the service records and

ability to adjudicate 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 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 of 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 statement of 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 is 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:

Reported 1932 and 1933 with the following observations:

"In this case the court has held that the Board's

recommendation is not a final decision but a preliminary

recommendation of the Commission of Selection and that the

"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 R-soul'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

advised that they had no objection and had no objection
adverted to earlier which show that the decision

These findings indicate that the following and much more
cannot be applied to the instant

also the fact that even after taking note of the

Said decision, the Supreme Court held in Ashok

not being allowed to do so in A. K. Karpurpal's case, cannot be allowed to be whittled down.

Before parting with this question, we

21.12.1977 would like to refer to the provision in regulation(3)

and whether the said regulations are in accordance with the constitution
of the regulations with respect to the constitution

and to be subject to the control of the Selection Committees. Sub-rule(1) of

regulation(3) makes provision for the constitution

காலாந்தூர் மாவட்டத்தில் உள்ள பால்வாடி கிராமம் கூடும் பால்வாடி வட்டத்தில் உள்ளது.

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 were communicated
to him only on 16.12.1985. It is alleged that the
communication ~~itself~~ was sent through a special
authorized passenger. The selection committee met
on 18.12.1985. The minutes of the committee reveal that while
assessing the suitability the committee noted that
the adverse remarks in the annual confidential reports
of the officers had been communicated to them. Actually
as few as 4 out of the officers have been communicated to them. Actually
said 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
had considered the case of officers who do not belong to
the State Civil Service, but have been serving in connect
with the affairs of the State against the quota fixed
for the State Civil Service.

recommended the case of the tenth respondent. The counsel

for the tenement property, submitted that the

Section 10 of the Act has been issued by the

the select list, notification has

Govt of India appointing the tenth

Govt of India appointing the tenth respondent to the IAS. It was submitted by him

that it is well known that his selection can in no way be assailed.

1. The 10th respondent fairly conceded this. Even though he was not a member of the selection committee, he was not otherwise since the consideration of the five

1st and 2nd batch officers by the selection committee was made

independently and independently and had nothing to do with the

selection of the 10th respondent. The State Civil Service Officers

had sent a affidavit in which category Mr. M. K. Saxena fell, that

he was not a member part of the proceedings of the committee can

not be severed and sustained so as to uphold

the 10th respondent. We do so, and we do so.

2. The 10th respondent is not in the result, the select list

under section 15 of the Civil Service Commission Act, 1963, relating to the selection of

combined candidates and State Civil Service Officers for promotion

and position can be due to the IAS disquashed. The respondents 1 to 3

and 5 to 8 are not in the result, the select list

under section 15 of the Civil Service Commission Act, 1963, relating to the selection of

combined candidates and State Civil Service Officers for promotion

21-X-1987

(G. SREEDHARAN NAIR)
JUDICIAL MEMBER

S. P. MUKERJI
ADMINISTRATIVE MEMBER

21.10.1987