

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH105  
VBO.A. No. 188 OF 1987  
Exxxxxx with  
(Caveat Appln. No. 9/87)

DATE OF DECISION 27-9-1991.

Virat M. Vora, Petitioner

Mr. Shailesh Brahmbhatt, Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors. Respondents

Mr. M.R. Raval for Mr. P.M. Raval & Advocate for the Respondent(s)  
Mr. Sandeep Shah for Mr. A.R. Dave,

## CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

6  
Virat M. Vora,  
Joint Secretary,  
Gujarat Public Service Commission,  
MS Building,  
Lal Darwaja, Ahmedabad.  
(Advocate: Mr. Shailesh Brahmbhatt)

..... Applicant.

Versus.

1. Union of India  
(Notice to be served through  
the Secretary, Ministry of  
Personnel, Public Grievances  
and Pension (Department of  
Personnel and Training)  
New Delhi).
2. State of Gujarat  
(Notice to be served through  
the Chief Secretary to the  
Govt. of Gujarat)  
Sachivalaya, Gandhinagar).
3. Union Public Service Commission  
(Notice to be served through  
its Chairman, Dholpur House,  
New Delhi-2).
4. Mr. R.V. Chandramouli,  
and/or his successor-in-office,  
Chief Secretary, Government of  
Gujarat, Sachivalaya,  
Gandhinagar.
5. K.V. Harihardas  
and/or his successor-in-office,  
Additional Chief Secretary to  
Government of Gujarat,  
Home Department, Sachivalaya,  
Gandhinagar.
6. A.K. Chakravorty  
and/or his successor-in-office  
Development Commissioner,  
Gandhinagar.
7. N. Gopalaswami  
and/or his successor-in-office  
Secretary to Government,  
Revenue Department,  
Sachivalaya, Gandhinagar.
8. Shri M.C. Joshi,  
District Development Officer  
Rajkot.
9. Kum. K.M. Chauhan,  
Deputy Secretary,  
Tribal Dev. Department,  
Sachivalaya, Gandhinagar.
10. Shri N.A. Vora,  
District Development Officer,  
Valsad.

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..... 3/-

11. Shri C.M. Leua,  
Additional Registrar of  
Co-operative Societies,  
Gandhinagar.

12. Shri K.K. Asrani,  
Deputy Secretary to Govt.  
Revenue Deptt. (Appeals)  
Ahmedabad.

13. Shri P.K. Valera  
Deputy Secretary,  
Urban Development and  
Urban Housing Department,  
Sachivalaya, Gandhinagar.

14. Shri K.P. Chanakya,  
Deputy Secretary,  
Social Welfare Department,  
Sachivalaya, Gandhinagar.

15. Shri D.K. Ladva,  
Deputy Secretary,  
Finance Department,  
Sachivalaya, Gandhinagar.

16. Shri S.M.F. Bukhari,  
Deputy Secretary,  
General Administration Deptt,  
Sachivalaya, Gandhinagar.

17. Shri Arun Kumar Nigam,  
District Development Officer,  
Surat. .... Respondents.

(Advocate: Mr. M.R. Raval for Mr. P.M. Raval  
for Respondent No. 1 & 3.  
Mr. Sandeep Shah for Mr. A.R. Dave  
for Respondent No. 2)

J U D G M E N T

O.A.No. 188 OF 1987  
with  
(Caveat Application No. 9/87)

Date: 27-9-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

Recruited by the Gujarat Public Service  
Commission in 1967 the applicant of this original  
application filed under section 19 of the Administrative  
Tribunals Act, 1985, started service as a member of  
Gujarat Administrative Service in 1967. He claims  
that he became eligible to be considered for appointment  
to the IAS by promotion in 1976. But the Selection  
Committee though required by provisions of Regulation 5

of IAS (Appointment by Promotion) Regulations 1955 (hereinafter Promotion Regulations) to meet every year did not so meet and met in 1979 when the applicant's name was not considered as his name could not figure in the number of officers considered by the selection committee. The Committee did not meet in 1980, 1981, 1982, 1983, 1984 and 1985. When it met in December 1986, applicant's juniors in Gujarat Administration Service came to be selected for appointment to IAS but the applicant was not selected. The applicant has questioned his nonselection in 1986 and sought six reliefs/directions.

2. The second, fourth, fifth, sixth and seventh respondents consisting of the State Government of Gujarat and its four officers who were, besides the member of the U.P.S.C. and a joint secretary of the Department of Personnel and Training, Government of India, members of the Selection Committee of 1986, filed one written statement in reply to the application. The third respondent, the UPSC, filed a separate written statement. The applicant filed his common rejoinder to both these written statements. We heard the learned counsel for the applicant and the appearing counsel for the respondents and perused the record. The eighth and after respondents filed no reply and did not, in person or through counsel, make appearance at the hearings. The Joint Secretary above has not been impleaded as a respondent though other members of the Selection Committee have been.

3. At the start of our consideration of the rival pleadings and submissions, we may take up the applicant's foundational allegations made relying upon the provisions of regulation 5(1) of the Promotion Regulations that the Selection Committee is

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20

required to meet every year and the respondents violated the mandatory provision by not holding the Selection Committee meeting every year. That the Committee did not meet every year is undisputed. According to the respondents, the statutory regulation provides that the Committee shall 'ordinarily' meet every year. Why it could not meet every year even after 1979 and before 1986 is sought to be explained by the seniority list of the Gujarat Administrative Service Officers remaining in dispute in the Court and interim injunctions. Consolidated information produced as Annexure 1 to State Government respondents' reply reproduced below gives some idea of the tier upon tier of litigation on the subject of seniority and interim orders in them even since 1972 :

"Stay order from the courts of Law on operation of seniority list and convening the Selection Committee for IAS.

<u>1972</u>	<u>date of order.</u>	<u>SCA 1401/1972.Guj. High Court.</u>	<u>Period of operation.</u>
1.	22-9-72	Govt. of Guj. will not send seniority list to Govt. of India and UPSC. (Seniority list of Dy. Collectors)	22-9-72 to 30-11-73
2.	12-2-73	1.SCA. 118/73 GHC 2.SCA.119/73 (GAS) Names will not be sent to UPSC	12-2-73 to 2-7-75
3.	12-7-74	BPA.113/74 in SCA 1401/72 GHC (Seniority of Dy. Collectors) "Restrained from sending names to UPSC for IAS.	12-7-74 to 12-11-75
4.	25-3-75	SCA 339/75 GHC Govt. shall give intimation to petitioner's Advocate before sending names for selection committee.(GAS)	25-3-75 to 8-5-76
5.	24-4-75	Before finalising the select list, Govt. shall give notice to the advocate of the(GAS)	24-4-75 to 10-8-75

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6. 8-4-76 CA 463 of 1976 supreme court 8-4-76 to  
against the decision in LPA 10-8-76  
113/74 in SCA 1401/72 of  
Guj.High Court.

Govt. will prepare the final  
seniority list but shall not  
operate the same

7. Govt. revised the seniority Between  
list of Deputy Collectors. 10-8-76  
19-1-78

as per Deodhar's Judgment  
delivered in 1973 based on  
seniority readjusted by i.m. as on  
Government of Maharashtra 1-5-60  
received in August, 1977.

as per Supreme Courts' ii. 1960 to  
judgment in Sr.No.5 above. 1966

8. 19-1-78 Govt. published the revised  
seniority list as per  
directives in supreme Court's  
final order dtd. 10-8-1976.

9. 17-8-78 SCA.1407/78 GHC seniority list  
prepared as per the supreme  
court judgment dtd. 10.8.76  
not to be operated.

10. 13-10-78 State Government upon filing  
as application in SCA 1407/78  
GHC obtained conditional  
permission to :-

1. Prepare provisional  
Sr.list of the State  
Civil Service

2. to convene selection  
committee for IAS

3. to draw a select list  
for IAS.

4. to make officiating  
appointments on the IAS  
cadre post from that  
select list

with a stipulation not to  
nominate any officer to the  
IAS.

11. 19-2-79 Govt. prepared provisional  
Sr.list of the State Civil  
Service (GAS).

12. Govt. convened selection committee  
for IAS and prepared the  
select list.

13. UPSC approved the select list."

The above sufficiently explains why the selection committee  
could not meet before 1979 and even when it met in 1979  
could prepare only a provisional select list. The

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developments after 1979 are covered in State Govt. respondents' reply as follows :-

"The selection committee therefore could meet in June 1979 and prepared a provisional select list of 42 officers, as against the 21 substantive vacancies. The applicant was not eligible for consideration at the time of preparing this select list.

In March, 1980 SCA No. 1407/78 was decided by the Gujarat High Court. During the pendency of this SCA, permission to prepare and operate the provisional select list was granted by the Gujarat High Court subject to certain conditions. The permission to prepare and operate the provisional select list also came to an end with the finalisation of SCA 1407/78 in March, 1980 and as a consequence :-

1. The R.D. prepared a fresh seniority list of Dy. Collectors, appointed during 1960-66.
2. The R.D. was to revise the seniority list for the period from 1966 to 71 and 1971 to 74 also.
3. On the final seniority position of Dy. Collectors that may emerge after implementation of the court judgments, the GAS seniority list as on 7-11-1974 comprising the officers of two former cadres, viz. State Civil Service Cl.I (Dy. Collectors) and State Deve. Service Class-I (Dy.D.D.O.s) was also to be revised and finalised.
4. After making the final seniority position of GAS officers as on 7-11-1974, meeting of the selection committee could have been convened and a fresh select list based on final seniority list could have been drawn and operated upon.

However in the meanwhile, the Gujarat High Court decision, quashing the seniority list of Dy. Collectors (1960-66), was appealed against by the RD and promoted Dy. Collectors and the Govt. of Gujarat in GAD intercepted that appeal before Supreme Court and requested for its permission ;

H. K. J.

21

- (A) to operate provisional seniority list of GAS.
- (B) to operate select list for appointment to IAS cadre posts with the same conditions as laid down while granting such permission by the Gujarat High Court.

The Hon'ble Supreme Court under their order dtd. 19-12-1980 granted such permission to be operative during the pendency of the appeal.

In 1983, a clarification was also sought from the Supreme Court whether the IAS selection committee could be convened every year on the basis of provisional seniority list of GAS officers and the Supreme Court had clarified its earlier order dated 19-12-1980 by its order dated 14-12-1983.

In the light of the clarification of the Supreme Court a proposal was sent to the UPSC on 4-9-1985 for convening meeting of the selection committee for preparing further select list of GAS officers fit for promotion to IAS. The question of feasibility of convening the meeting of the selection committee on the basis of provisional list of GAS, however remained under correspondence with the UPSC, and therefore the meeting of the selection committee could not be held.

The appeal in the Supreme Court was, finally, decided on 6-4-1986, and after receipt of the Supreme Court judgment dated 6.4.1986, the RD had taken urgent action for issuing final seniority list of Dy. Collectors under their two Govt. Circular memorandum dated 8-7-1986 and 9-7-1986, after considering certain judgments of the Gujarat High Court in respect of seniority disputes in the feeder cadres of Mamatdars Class-II. Thereafter, GAD took urgent actions for finalising the provisional seniority list of the officers belonging to Gujarat Administrative Service, Class-I, which was constituted with effect from 7-11-1974 after amalgamating two former cadres viz. State Civil Service Class-I (i.e. Dy.D.D.Os) incorporating changes made in the final seniority list of Dy. Collectors and then published final seniority list of GAS officers under GR GAD dated 19-7-1986.

In the above circumstances during the period from 1980 to 1986 it was not possible to convene the selection committee meeting for preparation of

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select list of S.C.S. officers fit for proportion  
to IAS." 18

It is not the contention of the applicant that the above information is not correct. His contention is that despite the Court cases and orders came to exist gaps of time not filled by any court stay during which gaps the respondents ought to have held the meeting of the Selection Committee. The applicant not having identified such gaps and their duration, presuming some came to arise, the work of holding a meeting of the Selection Committee cannot be performed as a whistle start kind of work. It has to be taken up after serious preparation and consideration of all aspects and implications of court cases and orders in them for which a span of time and not mere chance gap in the spread and scatter of Court orders should be available. We therefore see no convincing reason advanced by the applicant to disbelieve or doubt the respondents' contention that the meeting of the Selection Committee could not be held prior to 1986 because of court cases and orders taking which into account for implementation, the final seniority list could be published in July 1986 and before that only a provisional seniority list could have been considered, if at all. In fact even the 1979 meeting as would be seen, could be held only under special permission of the court and only to prepare a provisional select list imperatively implying that even in 1979 the respondents could not prepare a final select list because of court cases and orders. No provision in the rules, regulations and precedents has been shown to us which says or implies that if the Government fails to hold the selection committee meeting every year, the officers liable to be considered should, as a result of the failure, are to be automatically included in the select list. The gaps arguments of the applicant therefore holds out no benefit to the applicant even if presumed to be correct as above said. The same about the alleged breach of regulation 5(1) of the Promotion regulation. There is also / 18

selection committee did not meet for the motivated reason of jeopardising the chances of the applicant to make for the select list.

4. At this juncture we may consider the pleadings and submissions of the applicant about the 1979 select committee meeting and the provisional select list prepared on the basis of a conditional permission obtained by the State Government from the court. We are of the opinion that the 1979 matters could properly be challenged by the applicant at proper time separately and not by including them in the challenge against 1986 select list in the manner of a pouch of challenge attached to the body of the challenge to 1986 select list. Besides being barred by time, because of multitudinous court litigation as above accounted, we may, in our considering the matter, unknowingly come to observe on any matter already finalised or, may be, pending finalisation in the absence of details of all these matters and judgments in them.

5. We may also at this juncture consider the applicant's allegation that one of the members of the Selection Committee of 1986 was nominated at the last minute thereby implying the allegation that he had no time to go through the voluminous service record of the large number of officers whose cases were considered by the committee. We may examine this allegation in the light of the provisions/3(3) of the Promotion regulations. This regulation says that 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 meeting. Presuming that the applicant's allegation is correct, it implies that the member so nominated remaining present would have sat as a dummy but

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nevertheless signed the proceedings. If the number of other members was more than half the members of the Committee, this situation, even if true, would not vitiate the proceedings. The minutes of the Selection Committee show that six members, including a member of the UPSC and a Joint Secretary of the Personnel Department of Government of India, were present. If one of them is not counted for reason that he impliedly allegedly played a dummy, their number stands reduced to five which is larger than half the number prescribed in regulation 3(1) of the Promotion regulations read with Col. 3 of the Schedule of this Regulation. Col. 3 against Gujarat contains five officers besides the Chairman or member of the UPSC. Thus with six members attending, even if one played a dummy as impliedly with alleged/ five effective members available. There remains no rational reason to hold that the proceedings suffered in substance or quality thereof or even legally. The allegation of the applicant is thus immaterial and jejune and therefore to be ignored.

6. We may now consider the applicant's arguments against the constitutionality of regulation 5(4) and based on and about the Gujarat Government by order of 1977, discontinuing the classification/ officers as outstanding, very good, good and unfit in their annual confidential reports. One relevant question in this regard/whether the Promotion regulations lay down that such classification shall appear in the annual confidential reports to be considered by the Selection Committee. No such regulation has been shown to us. Then arises the question as to what the Promotion regulations lay down about the categorisation. Sub: 5(4) of the Promotion regulations introduced by the amendments of the year 1977 reads as follows:

"(4) The Selection committee shall classify

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16

the eligible officers as "outstanding", "very good", "good" or "unfit" as the case may be on an overall relative assessment of their service record."

It is clear from a plain reading of the above provision in the statutory regulations that the classification is required to be done by the selection committee on an overall relative assessment of service record of the officers. The applicant has sought the declaration that the above regulation is unconstitutional, null and void.

7. It is contended by the applicant that the Selection Committee classifying officers as outstanding, very good, good or unfit from such confidential reports which do not contain the categorisation, to quote from the application, does not "have any material to classify an officer as outstanding, very good, good or unfit, except the confidential report of the officers each of which contains 20 columns, 4 of which relate to self-appraisal of the officers." It is further argued that there being no guidelines for the selection committee for making such classification, it is alleged that Regulation 5(4) confers "unfettered discretion" on the Selection Committee to come to conclusion regarding classification of an officer and therefore unconstitutional, null and void. As this allegedly becomes arbitrariness, it is violative of Article 14 and 16 of the Constitution in the absence of rational and relevant norms of quantification of the entries in the annual confidential remarks prescribed in advance for classifying the eligible officers and making the norms known to all the members of the Committee. The applicant relied on Gujarat High Court judgment in A.K.Shimpi V/s. State of Gujarat, 1983 G.L.H. 36 in which one of the considerations to be kept in view when selections are challenged is whether the adjudgement of the suitability of the competing candidates is shown to have been made according to some rational and relevant norms which were

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19

prescribed in advance and made known to all the members of the Selection Committee. Also, annual confidential reports of State Government of officers of Gujarat State before 1977 orders/ will contain the classification but these after 1977 will not contain the classification. Because these two kinds of reports have to be considered by the Selection Committee, it is further contended that the selection committee therefore ought to have evolved a procedure of their assessment of these two kinds of reports. It is also averred that though the Confidential reports were, (as figuring in the reply of answering respondents) sent to the members of the Selection Committee in advance the members had no occasion to confer in advance and therefore notes prepared by each member of the Committee on the classification would be relevant for coming to conclusion about the classification of one officer.

8. In the written statement/ the stand is that though the State Government has abolished the earlier practice of recording grading in the annual confidential reports, the remarks against the various items of the proforma of the report enable the selection committee to objectively decide the efficiency category of each officer considered and absence of the grading does not vitiate the selection committee proceedings. The averment of the respondents thus on the contrary is that with no grading appearing in the confidential reports, "the grading which may be decided by the Selection Committee consisting of high level officers would be more objective than the one which might have been given by the reporting officers". It is also averred that 86 names were considered by the Committee in December 1986 and their service records were forwarded to the UPSC two months before the meeting of the Selection Committee and there was therefore enough time for UPSC to examine the record of each and all. It is averred

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that "The member UPSC had done this exercise and he was prepared with the assessments of these officers on 16th December, 1986 when the Committee met". It is also averred that xerox copies of the record were forwarded in advance to the other members of the Committee to enable them to prepare themselves for evaluating their assessment before coming for the meeting. It is therefore averred that "Thus during the discussion in the meeting on 16.12.86, it was very easy for the members of the Committee to arrive at a particular grading out of outstanding, very good, good or unfit in respect of these 86 State Civil Service Officers".

9. In the reply of ~~third~~ respondent, the observations of the Guwahati High Court in the petition filed by M.M. Lal have been reproduced as follows :

"The rule making authority has curtailed the discretion of the Committee to a great extent. It has given very clear cut and precise guidelines for selection. Sub-regulation (4) of Regulation 5 of the Promotion Regulations provides that Selection Committee has to classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' on an overall assessment of their service records. Now it may be pertinent to point out that the Selection Committee consists of very senior officers of the State Government. Chairman or Member of the Union Public Service Commission presides over the meeting. These officers are expert in the art of governance and administration. Hence, grading of service records have very clear connotations".

The allegation that there are no guidelines and norms for the Selection Committee to follow have been specifically denied. This reply also extensively gives extracts from the judgment of the Supreme Court in the case R.S. Dass Vs. Union of India (AIR 1987 SC 593, 1986(2) SCALE 1012) by which judgment the Supreme Court

*H. H. J.*

20

according to the reply, reviewed its judgment in case of Union of India Vs. M.L. Kapoor (AIR 1974 SC 87) having regard to the subsequent amendments in Promotion Regulations. We reproduce below the parts of the judgment of the Supreme Court in R.S. Dass case from the reply :

(A) "Regulation 5 minimised the role of seniority in the process of selection and importance and primacy was given to merit. This indeed is a laudable object and helps in having the best for the country. It is also true that if selection is made on merit alone for promotion to higher service, selection of such an officer though junior in service in preference to his senior does not really amount to supersession. If promotion is made on merit alone, the senior officer per-se has no legal right to promotion and if promotion is made on merit, it cannot be said that senior officer has been superseded.....

.....

(B) Under the amended Regulations the Committee is required to categorise officers in four categories on the basis of overall assessment of service record of officers. After categorisation the Committee is required to place the name of those officers first on the list who may be categorised as "Outstanding" and thereafter names of those officers shall be included who are found to be "Very Good". And only thereafter the names of those officers shall be included who may be categorised "Good". If in this process any senior officers are superseded the amended Regulation 5(5) does not require the Committee to record reasons for the supersession. The amended Regulations have brought in significant change and now the process of Selection as contemplated by Amended Regulations do not require the Selection Committee to record reasons for the supersession of officers of the State Civil Service.....

(C) Article 16 ensures equality in matters relating to appointment and promotion to an officer or post

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under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the Indian Administrative Service has right to be considered alongwith others for selection for promotion. If eligible officers are considered on merit, in an objective manner no Government servant has any legal right to insist for promotion nor any such right is protected by Article 16 or 16 of the Constitution. Article 16 does not insist that reasons should be recorded for non-selection of a member of a State Service.....

.....

(D) Having regard to the Legislative history and the purpose and the object which was sought to be achieved by the amendments there could be no mandatory legal obligation on the Committee to record reasons.....

(E) Principles of natural justice do not require on administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person. In the absence of statutory provision to all administrative authority is under no legal obligation to record reasons in support of its decision. There is no scope for applying principles of natural justice in matters relating to selection of suitable members of State Service for promotion to a higher service.....

(F) If during the process of selection a senior officer is proposed to be superseded by virtue of not being included in the Select List, and if opportunity is afforded to him to make representation and only thereafter the list is finalised, the process would be cumbersome and time consuming. In this process it will be difficult for the Committee to prepare and finalise the select list within a reasonable period of time and the very purpose of preparing the Select List would be defeated. Scheme of the Regulations, therefore, clearly warrants exclusion of principle of audi-alteram-partem. No vested legal right of a member of State Civil Service who after being considered, is

56

is not included in the Select List, is adversely affected. Non-inclusion in the Select List does not take away any right of a member of the State Civil Service that may have accrued to him as a Government servant, therefore, no opportunity is necessary to be afforded to him for making representation against the proposed supersession.

(G) ..... The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendation of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has the power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government alongwith the records of officers, before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily."

10. Interestingly, the applicant's rejoinder also relies on the judgment of the Supreme Court in the same R.S. Dass case but on a part other than relied upon by the respondent No. 3 above. We reproduce it also below from the rejoinder :

"We are informed by Counsel for the Union Government during the hearing of the cases that under instructions issued by the Union Government all the State Government are following similar pattern in categorising members of the State Civil Service in the annual remarks made in their confidential records. This has brought uniformity in the character roll entries. Since category of members of State Civil Service is available in their service record, the Committee has no

M. N. J.

discretion to disregard the same. The Committee has to categorise the members of the State Service on the basis of entries available in their character roll and thereafter to arrange their names in the proposed list in accordance with the principles laid down in regulation 5. There is no scope for applying different standard of test in preparing the list, or to practice discrimination. We, therefore, find no merit in the submission that regulations 3 and 5 are discriminatory and they violate Articles 14 and 16 of the Constitution."

It is alleged in the rejoinder that the information furnished by the counsel for the Union Government above was not true so far as the practice in the State of Gujarat from 1977 is concerned. The rejoinder also refers to a judgment of the Supreme Court in R. Das Vs. State of Haryana but without mentioning where the judgment has been reported and without producing its copy or parts relied upon. However, it appears from the contention taken that the applicant only has above appearing in the judgment in R.S.Dass case in mind.

11. The Supreme Court judgment in the above R.S.Dass case exhaustively deals with several serious issues on the subject of appointment by promotion to and constitutionality thereof I.A.S/ besides similarly dealing with the issues whether natural justice and the principle of recording of reasons for decision have application to cases of those not figuring in the select list. Reported in the AIR, the head notes of the <sup>judgment</sup> cover four pages. The judgment contains 37 paras. While relying upon parts from such an exhaustive judgment by incorporating them in their respective pleadings, both parties should have considered it necessary to mention the paragraph(s) numbers of the judgment in which the part(s) <sup>of</sup> the judgment relied upon figured. This has not been done even in

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the reply filed on behalf of the Third respondent, the UPSC, [REDACTED] filed and verified by a highranking officer, a Joint Secretary in the UPSC. We therefore attempted to identify the paragraph(s) in number(s) [REDACTED] which the parts relied upon figure. To facilitate relating of the part(s) relied upon with the para(s) of the judgment in which it figures, we have given alphabetical identification to the various parts furnished in the third respondent's reply. Part (A) appears to have been lifted from para 4 of the judgment, but the words "Indeed the amended provision" which appear in the sentence before the word Regulation have been omitted and thus complete sentence has not been extracted, part (B) [REDACTED] from para 15; part (C) from the headnotes on page 594 of the AIR; part (D) is lifted from para 27; part (E) from para 21; part (F) from para 25; and part (G) is lifted from para 28 of the judgment. The part of the judgment relied upon by the applicant is lifted from para 30 of the judgment except that instead of "are" the text as published contains the word "were" after the word "we".

12. We may now look at the above conflicting rival pleadings and submissions abstractly first. The based on Gujarat Govt. order of 1977 substance of the applicant's argument seems to amount to saying that the classification of an officer as Outstanding, Very Good, Good or Unfit made by the prescribed reporting officer becomes the classification to the Selection Committee has no option but accept and, in turn, to give to the officer as the Committee's classification for the select list. This raises the question as to what is the basis of the reporting officer's classification ? The applicants only reply to this question, seeing his line of arguments, should and can be that the remarks against various items in the annual

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51

confidential report made by the reporting officer provide him the basis for the classification. Now, the same basis is, undeniably even according to the applicant, available to the Selection Committee also for the annual confidential report file is what is placed before the Selection Committee as the record for its consideration. But to the classification the Selection Committee gives on the very material on which the reporting officer gives the classification, the applicant has given the label of unfettered and arbitrary discretion bereft of rational norms of quantification of the entries. At this stage, the question arises what norms of quantification of entries reporting officer himself. The records are available to the reporting officer ? No such norms have been placed before us. If no such quantification exists for the reporting officer also as the same allegedly does not exist for the members of the Selection Committee also, the outcome of their respective exercises of classification should suffer from the same weaknesses or strengths so far as the legalities are concerned. But the applicant would like us to believe that classification by the reporting officer is fettered and not arbitrary but done by the Selection Committee it is unfettered and arbitrary. In our view, the applicant's such arguments suffer from the fallacy of arguing in a circle and amount to saying: "Classification made by the reporting officer is correct and it must be correct because it is made by the reporting officer." It is too well known that rules about annual confidential remarks also provide for entering of reviewing and accepting officers remarks on the reporting officers. They are responsible for impartially scrutinising the remarks, be they be with classification as they generally must be, as informed by the Union of India's counsel before the Supreme Court

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in R.S. Dass case, supra, or perhaps, as an exception, without classification in some States like Gujarat, and entering their own remarks when they have reasons and grounds to differ from the reporting officer's remarks. In such cases, the reviewing, or as the case may be, accepting, officer's remarks hierarchically prevail and not the reporting officers. Of course, the adverse parts including of reviewing and accepting officers' remarks have also to be communicated as per rules for representation against, if any. Thus there is no basis, in the rules for the contentions of the applicant that the reporting officers' classification is indefeasible even for the higher hierarchical formations like the reviewing and accepting authorities. The same should be, on the same reasoning, not be so for a high powered committee of senior officers, compulsorily included in which as a member is the Chairman or a member of UPSC, experienced and impartial as arrangement to make classification from the overall service record. If the annual confidential record is not the product of unfettered discretion and arbitrariness <sup>for</sup> the reason that there are reasonable built-in checks against it in the rules consisting of review and of acceptance of remarks and communication of adverse remarks and provision of representation against the same, there is no reason why a committee of experts considering such annual confidential remarks cannot be relied upon or trusted to come to objective classification on the basis of the overall annual confidential record. The service record placed before the Committee is expected to act as the guiding predictable material before the committee for consideration for coming to classification from it.

13. We have carefully and with utmost respect gone through the parts of the judgment of the Supreme Court R.S. in the Dass case, supra, respectively reproduced by the M. - 4 L

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rival parties. We have also similarly gone through the full text of the judgment as reported. The essence of the parts of the judgment extracted by the third respondent in the reply can be said to be that the Supreme Court found no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. The part of the judgment extracted by the applicant in his rejoinder is specifically on the subject of categorisation and the reasoning is based on the information furnished at the hearing by the counsel for the Union Government that State Governments, instructed by the Union Government, follow similar pattern in categorising the annual confidential remarks of the members of the State Civil Service and that this uniformity has brought L in the character role entries. The situation of categorisation no more figuring in the annual confidential remarks of the members of the State Civil Service of Gujarat after the orders of 1977 of the State Government of Gujarat was not placed before the Supreme Court. We can therefore not speculate as to how the Honourable Bench would have viewed it. In the absence of such views of the Supreme Court in R.S. Dass case, supra, in the absence of such views of the Supreme Court and High Court <sup>or</sup> of any bench of Central Administrative Tribunal taken in any case placed before us, we have to examine the matter without the guidance of any precedent. While doing so, we also have to keep in mind the position according to statutory rules that the civil servants of a State are eligible for consideration to the promotion quota of the IAS of the same State and not of any other State. The statutory rules do not provide for an all India pool of such officers from all the States of the Union for consideration against a pool of promotion quota of the IAS worked out on a All India basis, whose cases are to be H H L

placed before the Selection Committee for consideration. We have underscored the last few words of the sentence in order to underscore their corollary that the State Civil Servants of a State are in competition for a place in the promotion quota of the IAS only with the eligible colleagues of their own state the annual confidential remarks of all of whom would contain information on uniform items <sup>number of</sup> contained in the proforma in that regard prescribed by the Government of their respective State. Of course, the proforma is liable to undergo modifications and changes as may be ordered by the State Government concerned as seen in the case herein that classification required to be given in the proforma was discontinued by State Govts. orders of 1977. The members of the State Civil Services of each State thus form a separate class from the members of the State Civil Services of all other States of the Union for consideration for placement in the IAS promotion quota of their respective State. There is no allegation before us that for different members of the Civil Service of Gujarat different proformas have been prescribed. Whatever changes <sup>came to be</sup> ordered by the State Government, became applicable and applied to all members. There is no allegation that the Union Government prescribed by statutory rules a proforma of annual confidential remarks of all members of State Civil Services which was not adhered to in Gujarat. Such being the case, the very reasoning in the S.R. Dass case relied upon by the applicant also becomes applicable to the case of members of Gujarat Civil Service, namely "similar pattern" albeit with categorisation before 1977 orders and without categorisation after 1977 orders, of the annual remarks which has "brought uniformity in character

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roll entries". The contention of the applicant would definitely have had considerable force and perhaps even validity had the statutory rules prescribed that the eligible State Civil Service members of all States of the Union would constitute a pool for the selection committee to categorise each officer of the pool under consideration where categorisation appearing in the annual confidential reports of most officers not appearing in the case of some officers would have given rise to lack of uniformity of columns of the annual confidential report from which Selection Committee has to make its categorisation. Similar would perhaps have been the case if the Union Govt. had prescribed a proforma by statutory rules. As long as the members of the State Civil Service of each State form their separate class for consideration for promotion to the IAS against the quota of their own State and no statutory proforma prescribed by the Union Government placed before us, any variations, in details of the annual confidential report proforma and information on it between states, will not make the selection to the promotion quota of the State suffer from the vices arising from a disregard of the provisions of Articles 14 and 16 on equality before the law and of equal opportunity in matters of public employment which, in the case before us, is of being considered for opportunity of appointment to IAS by promotion.

14. We may at this juncture also examine the implications of classification figuring in annual confidential reports of Gujarat before the orders of 1977 and not figuring after the orders of 1977. Presuming in the absence of any information on the point that the Selection Committee took into consideration the total service record of each officer for

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overall relative assessment of the service records, as the items of information on which this relative assessment is to be based remained the same upto before the order of 1977 and after the order of 1977, we have to hold that all officers under consideration were in competition as a class on the basis of uniformity of information in their service record all along, upto order of 1977 one uniformity and all along after order of 1977 another uniformity.

15. Examined as above, all the contentions, pleadings and submissions for the applicant based on State Government order of 1977 and absence of norms of qualification before the Selection Committee because of absence of categorisation have to be held as intrinsically lacking in substance.

16. We have above, in dealing with the implications of Gujarat Government's order of 1977, simultaneously also surveyed the grounds of challenge to the ~~vires of regulation~~ 5(4) of the Promotion Regulations. In view of the judgment in the R.S.Dass case reported in 1987 being specifically on the subject of Promotion Regulations, we need not refer to Gujarat High Court judgment in A.K. Shimpi case, supra, also relied upon by the applicant. The judgment was on the subject of selection for promotion of Head Constables of the Police Department of Gujarat State to the rank of Police Subinspectors and no statutory rules existing. In R.S.Dass case the Supreme Court quoted regulation 5(4) of the Promotion Regulations in para 14 of the judgment. The Supreme Court examined this provision along with regulation 5(5) from various legal angles and appreciated, in para 19 of the judgment, their having "brought in sufficient change" in the process of Selection. In para 19 of the judgment, the Supreme Court categorically found "no merit in the submission" that if reasons for supercession are recorded, ~~will~~ objectivity and impartiality be ensured. The applicant's arguments about norms of quantification of confidential reports of officers substantially amounts to saying that

K. N. J.

35

reasons why a report is classified as outstanding, very good, good or unfit should be known. Hon'ble Justice Sabyasachi Mukherji, in his separate views observes in para 5 that " in order to rule out any grievance actual or fancied, some objective basis for the categorisation in the manner indicated should be laid down". He, however, hastened to add in para 7 of his views in the judgment that "justice has been done in accordance with the rules to the officers concerned....." There is no indication in the judgment that regulation 5(4) of the Promotion Regulations suffers from any legal infirmity or, as a provision, productive of such results. We have also above examined the contentions of the applicant and found no grounds for holding the regulation unconstitutional, null and void.

17. We may now consider the applicant's allegation that the substantive vacancies were wrongly worked out for the 1986 selection committee meeting as were included in it 20 vacancies against which noncadre officers had been working for two to seven years. It is alleged that on account of such wrong calculation of vacancies, cases of 90 officers came to be considered by the Selection Committee instead of 60 which allegedly illegally increased the number of the competing officers for selection. The respondent State's reply explains that the vacancies calculated for the 1986 Selection Committee meeting consisted of existing vacancies and vacancies anticipated to arise in the next 12 months. It is explained that 162 senior posts were borne on the IAS cadre of Gujarat and 46 vacancies existed in the promotion quota. Out of 46, 19 were already filled in by formal nomination of SCS officers to the IAS. This left 27 existing vacancies and with 2 anticipated to arise in the next 12 months, the Selection Committee met in December 1986 to prepare the Select list for  
H. M. J.

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29 vacancies and prepared a select list of 58, double the number of vacancies as per statutory rules. It is the contention of the applicant in the rejoinder that the respondents ought not have considered 21 vacancies which were already covered by the 1979 provisional select list and the 1986 vacancies should therefore, it seems from the rejoinder, have been 8 only. But this part of the rejoinder ignores the undeniable position arising from Gujarat High Court orders that preparation of only a provisional select list was allowed by the High Court. As the contents of the order of the High Court, will clarify its terms, we reproduce its relevant parts below :

"(iv) The Union Government will convene a Selection Committee and the said Committee shall select officers out of the combined seniority list prepared as aforesaid and prepare a select list according to the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955,

(v) The State Government will make appointments to cadre posts from the said select list but those officers will not be given appointment in I.A.S. till this litigation ends in this Court.

(vi) The Selection and appointments to cadre posts will be expressly provisional and subject to the result of this litigation in this High Court.

(vii) For the purpose of determining seniority under Rule 3 of the Indian Administrative Service (Regulation of seniority) Rules, 1954 only legal continuance officiation will be taken into account and the officers in select list will not be entitled to the benefit of illegal officiation that is to say, if they petitioners in Special Civil Application No. 1407 of 1973 succeed and as result thereof it is found that the person selected and appointed to cadre posts could not have been

W. H. J.

so appointed. Their officiation in such post will not be taken into account for the purpose of determining their seniority."

When the seniority list could become final in 1986 at the end of protracted litigation as already referred to earlier, it is evident that what was done under interim orders of the High Court on a provisional basis should be done on a final basis on the basis of the finalised select list. The applicant's contentions in this regard appear to be most unreasonable and unacceptable when juxtaposed to the above figuring in the High Court order. The contentions have therefore to be rejected.

18. Then the applicant has contended that the 1986 selection committee considered the names of some officers who were above 54 years of age whereby the rule 5(3) of the Regulations was violated and the number of competitors illegally increased. The third respondent's reply deals with this contention in the following words :

"11. Referring to ground (d) of the application, it is submitted that Regulation 5(3) of the Promotion Regulations lays down that the Committee shall not ordinarily consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets. It is, however, 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 for inclusion in the fresh list, to be prepared by the Committee even if he has in the meanwhile attained the age of 54 years. It is further provided that a member of the State Civil Service who has attained the age of 54 years on the first day of January of the year in which the Committee meets shall

28  
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be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years.

It is further submitted that a meeting of the Selection Committee in respect of the State Civil Service Officers of Gujarat for promotion to the Indian Administrative Service was held on 28th and 29th June, 1979 and thereafter the meeting of the Selection Committee could not be held during the year 1980-85 as the seniority list of the State Civil Service Officers of Gujarat was under dispute. In the meanwhile a few of the State Civil Service officers became more than 54 years on first day of January, 1986 but their cases were considered under the first and second proviso of Regulation 5(3) of the Promotion Regulation as quoted above. The contention of the applicants as made in subparagraph (d) is therefore, incorrect and is rebutted."

We are of the view that the above reply is both in the light of the statutory rules, explicit and correct. We therefore reject the applicant's contentions in this regard as baseless and against the relevant statutory regulations quoted in the above reply.

19. Coming to the applicant's questioning the clubbing of the vacancies for several years for Selection Committee meeting in 1986 which enlarged the number of competitors than would have been the case in preparing a Select list for every year for 1980, 1981, 1982, 1983, 1984 and 1985, it is clear from what we have earlier seen that even the 1979 the Selection Committee, though meeting for the first time after 1973 could, under the permission of the High Court of

K. M. J.

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Gujarat, prepare a provisional select list only. The provisional select list had to be considered for finalisation in 1986 to the extent possible because of the passage of time during which some officers even and final seniority list prepared. retired or crossed the age of 54 years. In fact the 1986 Selection Committee could prepare the final select list for the first time after 1973, after a gap of 13 years. The reason and purpose of holding Selection Committee meeting annually is that each annual proceeding is independent of the other because of which soon as the proceedings of the new Selection Committee held annually are approved by UPSC, the proceedings of the Selection Committee before it become inoperative. The proceedings of various Selection Committees therefore enjoy no manner of continuity when the Selection Committee meets annually. Yet they enjoyed continuity in Gujarat as we have seen earlier because the seniority list of Gujarat Administrative Service could be finalised only in 1986 and not before for reasons of persistent protracted litigation. One result of this obviously must have been that the select list of 1973 and the provisional select list of 1979 came to enjoy much longer continuity than ordinarily enjoyed.

20. We have to examine the applicant's contentions against clubbing of the vacancies of several years in the above background. We have earlier examined the role of the word "ordinarily" appearing in the Promotion Regulation 5(1) and the State Government and UPSC held back from holding Selection Committee meetings because of litigations and court orders. It thus became very difficult if not altogether impermissible and impossible to hold a proper Selection Committee meeting to prepare a final select list from a final seniority list once every year and when such meeting could be held in 1986, all the vacancies of all the  
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years clubbed together for a final select list.

21. The applicant principally advances two reasons for pressing year to year basis of preparation of select list. The first is the judgment dated 2.2.90 of Ahmedabad Bench in T.A.No. 43 of 1986 in the case of V.P. Shah Vs. Union of India & Ors. In that case, for the twin reasons of clubbing of vacancies and wrong application of the 1977 amended promotion regulations to the cases which became due for consideration for promotion before 1977, the application was allowed. In the case before us, question of application of the rules prior to 1977 amendment is not involved. Hence one reason does not exist and only the reason of clubbing exists. Against this judgment, was filed petition for Special Leave to Appeal No. 9669/90. On this petition, the Supreme Court ordered that "since the respondents have already retired from service, we do not consider it fit to interfere" and the petition was dismissed without the Supreme Court expressing any opinion on the merits of the contentions raised in the petition.

22. We should, in the context of applicant's second relief which is for quashing the select list of 1986, observe that several figuring in the select list of 1986, seeing their dates of birth, have retired. The second prayer of the applicant is for quashing the select list which, as noticed earlier, contains 58 names whereas the applicant has chosen to implead as respondents only 10 of them whose names came to be notified for appointment against IAS cadre post by notification dated 20.1.87 which is also sought to be quashed by the fifth relief sought by the applicant.

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23. The applicant has also relied upon office memorandum dated 24.12.80 on the subject of "principles for promotion to selection post" issued by the Department of Personnel, Government of India. The need for issue of this office memorandum appears to have arisen because of clarifications sought by the various Ministries/Department on various aspects while preparing a panel for post to be filled on the basis of selection. The clarifications given on the subject of promotion to selection post may in fact be dealing with the cases of employees who happen to belong to class other than those to be appointed by promotion which is the subject of the case before us as the applicant is governed by IAS (Appointment by Promotion) Regulations which should be different from those applicable to promotion to selection post. The applicant's favourable arguments based on this office memorandum dated 24.12.80 therefore have no relevance to the case before us.

24. When the authority, in order to comply with court orders, cannot hold the Selection Committee meeting annually for several years though should normally hold it annually and statutory rules themselves not completely rule out departure from the normal by use of the word "ordinarily" implying situation of not holding the meeting annually for special reasons, a highly exceptional situation develops. In such a situation, to direct the authority to break the vacancies on yearly basis and to hold afresh meetings of the Selection Committee is, in the background of the protracted litigation, to unsettle what came to be settled at long last after 13 years of disputing with its inevitable consequences on morale and performance of the Public Service and on the large number of the members of the service who, for the first

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133  
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time after 1973 in 1986, came to find place in a final select list prepared on the basis of a final seniority list. Before thinking of doing so, we should examine whether clubbing is always a disadvantage to a competitor. There can be no dispute that with such clubbing, the number of vacancies increases even as the number of competitors increases as the latter is a multiple of the former. When the vacancies are yearwise, their number naturally will remain small even as the number of competitors will remain small. It can therefore not be said as an inexorable conclusion that participation in a enlarged competition where larger number is destined to win works as a definite disadvantage to participants than participation in a competition with smaller number destined to win and proportionately smaller number of competitors. It therefore cannot be definitely said that the applicant came to be put to a disadvantageous position because of clubbing. In view of the above circumstances discussed we are of the opinion that the decision in V.P. Shah's case is of no help to the applicant. Hence we do not consider it proper and advisable to quash the select list and to direct the preparation of a fresh select list.

25. For reasons of our detailed consideration above the application cannot be allowed. The application is therefore dismissed with no orders as to costs.

  
(S. Santhana Krishnan)  
Judicial Member

  
27/9/91.  
(M.M. Singh)  
Administrative Member