
(1973) 06 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 70 of 1970

A.N. Bhoil

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-06-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 171(3), 226

Citation : (1973) 2 ILR HP 523

Hon'ble Judges : R.S. Pathak, C.J;D.B. Lal, J;Chet Ram Thakur, J

Bench : Full Bench

Advocate : Chhabil Das and D.P. Sood, for the Appellant; P.N. Nag, for Respondent Nos. 1 ot 3, Sita Ram, General for Respondent No. 12, S. Malhotra and K.D. Sood for Respondent No. 6, Kuldeep Singh and R.S. Mangia for Respondents Nos. 7, 8 and 9, A.G. Sood, for Respondent No. 10 and Kailash Chand, for the Respondent

Judgement

R.S. Pathak, C.J

1. The Petitioner, Shri A.N. Bhoil, and the Respondents Nos. 6 to 8, Shri Kedarishwar, Shri Rampal Singh and Shri Tilak Raj Handa respectively, are Judicial Officers in the service of the Himachal Pradesh Government. Shri A.N. Bhoil applies for the quashing of (a) the notification dated October 12, 1966 appointing Shri Kedarishwar temporarily to officiate as Additional District Judge, Mandi, (b) the notification dated April 8, 1969 appointing Shri Kedarishwar as District and Sessions Judge, Mahasu and Shri T.R. Handa as Additional District and Sessions Judge, Dharamsala, District Kangra, and (c) the order dated November 26, 1969 reverting Shri Bhoil from Additional District and Sessions Judge, Mandi to his substantive post of Subordinate Judge. He also prays for a declaration that he is entitled to all the benefits of seniority, pay and allowances, attached to the post of Additional District and Sessions Judge with effect from the notification dated April 8, 1969 and, in any event, with effect from the date of his reversion.

2. During the hearing of the writ petition, Shri Chhabil Dass, learned Counsel for the Petitioner, stated that he did not press for relief against the notification dated October 12, 1966, and therefore we need not consider the validity of that notification.

3. It also appears that while the writ petition was pending, the Central Government finalised in July, 1970 the joint seniority list of District/Additional District and Sessions Judges and of the Subordinate Judges in Himachal Pradesh. The Petitioner challenges the correctness of the former list and contends that the name of Shri Kedarishwar should not have been shown therein.

4. The Punjab Re-organization Act, 1966 was enacted to provide for the re-organization of the existing State of Punjab. The re-organization was brought about with reference to an "appointed day", defined by Section 2(b) of the Act as "November 1, 1966". Two new States, the State of Haryana and the State of Punjab, and the Union territory of Chandigarh came into existence. By virtue of Section 5, certain territories in the existing State of Punjab were added to the Union territory of Himachal Pradesh. The "Successor State" in relation to the territories transferred to the Union territory of Himachal Pradesh was the Union of India. The Act made provision for the division and integration of the services among the successor States consequent upon the re-organization. Section 82 - 84 relate to services other than the All-India Services, and are relevant for the purposes of this case. Section 82(1) requires a person serving immediately before the "appointed day" in connection with the affairs of the existing State of Punjab to continue to serve provisionally on and from that day in connection with the affairs of the new State of Punjab unless the Central Government requires him to serve provisionally in connection with the affairs of any other successor State. Section 82(2) empowers the Central Government to determine the successor State to which every person serving in connection with the affairs of the existing State of Punjab should be finally allotted for service and the date with effect from which such allotment should take effect. Section 82(4) provides:

The Central Government may, by order, establish one or more advisory committees for the purpose of assisting it in regard to--

- (a) the division and integration of the services among the successor States; and
- (b) the ensuring of fair and equitable treatment to all persons affected by the provision of this section and the proper consideration of any representations made by such persons.

Section 82(6) declares:

Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the

appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

Section 83 provides:

Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority, in that successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office.

5. Section 84 empowers the Central Government to give such directions to the State Governments of Punjab and Haryana and to the Administrators of the Union territories of Himachal Pradesh and Chandigarh "as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part," and it requires the State Governments and the Administrators to comply with those directions.

6. The facts of this case follow a tortuous course, but in view of the submissions made it is necessary to set them out in some detail.

7. Before the Punjab Re-organisation Act, 1966 was enacted Himachal Pradesh consisted of the Districts of Mandi, Chamba, Mahasu, Bilaspur, Sirmur and Kinnaur. In August, 1966, the Judicial Commissioner, Shri Om Prakash, stood at the apex of the judicial hierarchy in Himachal Pradesh. Immediately below him in order of seniority stood:

(1) Shri diet Ram Thakur, holding the permanent post of District and Sessions Judge, Mandi and Chamba districts at Mandi.

(2) Shri Hem Chand, holding the permanent post of District and Sessions Judge, Mahasu, Bilaspur, Sirmur and Kinnaur districts at Simla.

(3) Shri B.D. Sharma, holding the temporary post
of Additional District Judge, Mandi.

(4) Shri A.S. Bhatnagar, Senior Subordinate Judge, officiating as Registrar in the Court of the Judicial Commissioner.

(5) Shri Kedarishwar, Respondent No. 6, holding the post of Subordinate Judge and Assistant Sessions Judge, Mahasu and Kinnaur districts, Simla.

8. Shri Om Prakash had decided a number of cases as District and Sessions Judge, and appeals in those cases had been taken to the Court of the Judicial

Commissioner. On his appointment as Judicial Commissioner he could not decide those appeals, and it became necessary to create the post of an Additional Judicial Commissioner for that purpose. The post was initially created in June, 1964, for a period of six months, and was thereafter extended from time to time. In January, 1965, Shri B.P. Puri, a retired District and Sessions Judge, was appointed to the post, but during a period of five months he was able to dispose of 48 appeals only. His services were terminated. As many as 84 appeals remained pending, and it was decided to appoint an officer still in service to dispose them of. It was estimated that their disposal would not take more than six months. Accordingly, by a letter dated December 2, 1965, the Central Government notified the revival of the post for a period of six months from the date it was filled.

9. Shri Chet Ram Thakur, then District and Sessions Judge, Mandi and Chamba, was appointed Additional Judicial Commissioner on August 2, 1966, and he actually took over four days later. In the vacancy so caused, Shri B.D. Sharma, then officiating as Additional District Judge, Mandi, was appointed to the post of District and Sessions Judge, Mandi. Shri A.S. Bhatnagar, then Senior Subordinate Judge officiating as Registrar in the Court of the Judicial Commissioner, was appointed officiating Additional District Judge, Mandi, in place of Shri B.D. Sharma by a notification dated September 9, 1966. Shri A.S. Bhatnagar, however, did not join that post, because shortly thereafter by a notification dated October 3, 1966, Shri Hem Chand, District and Sessions Judge, Mahasu, was granted leave preparatory to retirement with effect from October 10, 1966, and it was declared that upon the expiry of his leave he would stand retired from service. In consequence, by an order dated October 12, 1966, Shri A.S. Bhatnagar was appointed temporarily to officiate as District and Sessions judge, Mahasu, in place of Shri Hem Chanel. By the same notification, Shri Kedarishwar, then permanent Subordinate Judge was temporarily appointed to officiate as Additional District Judge, Mandi, in place of Shri B.D. Sharma. That was the position obtaining on November 1, 1966.

10. The position continued so constituted on the enactment of the Delhi High Court Act, 1966. It appears that the post of Additional Judicial Commissioner was extended for a further period from February 6, 1967 to April 13, 1967, or until the jurisdiction of the Delhi High Court was extended to Himachal Pradesh, whichever was earlier. The jurisdiction of the High Court of Delhi was extended to Himachal Pradesh as from May 1, 1967. The Court of the Judicial Commissioner was abolished, and the posts of Judicial Commissioner and Additional Judicial Commissioner ceased to exist. Some appeals before the Additional Judicial Commissioner still remained pending. Shri Om Prakash, the Judicial Commissioner, was raised to the Bench of the Delhi High Court. Shri Chet Ram Thakur reverted to his substantive post of District and Sessions Judge. Shri Kadarishwar worked as Additional District Judge, Mandi, upto May 10, 1967, and by a notification dated May 27, 1967, he was reverted to his substantive post and appointed as Deputy Registrar, Delhi High Court, Himachal Bench at Simla.

11. Meanwhile, in anticipation of the enactment of the Punjab Re-organization Act, which was then before Parliament, measures had been taken for maintaining continuing stability in the services so as not to prejudice the proper working of that Act. On July 21/28, 1966, the Chief Secretary (Integration Cell) of the Himachal Pradesh Government wrote to all the departments in Himachal Pradesh that, in view of the impending reorganisation of Punjab, recruitment to vacancies in Class I, II, III and IV posts, whether of a permanent or of a temporary nature, should be made on a purely temporary basis and persons should be appointed to those posts on that understanding only.

12. With effect from November 1, 1966, the "appointed day", a number of districts, including Simla and Kangra, were added to the Union territory of Himachal Pradesh. A number of judicial officers belonging to the Provincial Civil Service (judicial) of the erstwhile State of Punjab were provisionally allotted to Himachal Pradesh u/s 82(1) of the Punjab Re-organisation Act. They included the Petitioner, Shri A.N. Bhoil, who was then serving as Chief Judicial Magistrate-cum-Subordinate Judge First Class at Dharamsala, District Kangra, and the Respondent Nos. 7 to 11, Shri Rampal Singh, Shri T.R. Handa, Shri Onkar Nath, Shri A.L. Soni and Shri S.S. Mittal.

13. In April, 1967, two temporary posts of District and Sessions Judges were created by the Himachal Pradesh Government, one for the Kangra Sessions Division and the other for the Simla Sessions Division. Shri R.N. Aggarwal and Shri D.R. Dhameja, two allotted officers in the higher judicial service of the erstwhile State of Punjab, were appointed to them. Therefore, as on May 1, 1967, the District/Additional District and Sessions Judges of Himachal Pradesh consisted of:

- (1) Shri Clict Ram Thakur, District and Sessions Judge.
- (2) Shri R.N. Aggarwal, District and Sessions Judge.
- (3) Shri D.R. Dhameja, District and Sessions Judge.
- (4) Shri B.D. Sharma, District and Sessions Judge, and
- (5) Shri A.S. Bhatnagar, Additional District Judge.

14. Upon the Punjab Re-organisation Act having come into force, the Central Government entered upon the task of the division and integration of the services among the successor States required by Section 82 of that Act. Proceedings were initiated for finalising the list of officers to be allotted. The final allotment was conveyed by the Central Government to the Himachal Pradesh Government in October, 1968.

15. For bringing about the integration of the services, the Central Government wrote on February 4, 1967, to the Himachal Pradesh Government laying down the principles for that purpose. The integration of the services, it was pointed out, would involve two steps:

(a) Determination of equivalent posts, and

(b) Determination of relative seniority of persons holding equivalent posts but drawn from different integration units.

16. While those preparations were going on, in February, 1968 a temporary post of Additional District and Sessions Judge, Kangra at Dharamsala, was created for a period of six months in the first instance. Shri Kedarishwar was recommended by the Delhi High Court for that appointment. After some initial hesitation, the Himachal Pradesh Government accepted the recommendation on the basis that the appointment should not affect the seniority of any judicial officer. The Minister concerned and the Chief Minister agreed and the papers were signed by the Administrator (the Lt. Governor). But before the notification of appointment could be issued, the Respondents Shri Rampal Singh, Shri T.R. Handa and Shri S.S. Mittal, who claimed higher seniority represented against the proposal to appoint Shri Kedarishwar, and it appears that the matter was reconsidered and it was decided to refer the question of his appointment to the Central Government for its opinion.

17. While that question remained under consideration, the need arose to make an appointment to the post of Additional District and Sessions Judge, Mandi, in place of Shri A.S. Bhatnagar who was proceeding on leave preparatory to retirement from April 1, 1968. The name of Shri Rampal Singh, then Subordinate Judge, Mahasu, was recommended by the Delhi High Court. But the Delhi High Court insisted that the appointments of Shri Kedarishwar and Rampal Singh should be made simultaneously. On May 6, 1968, however, the Himachal Pradesh Government notified the appointment of Shri 1 Rampal Singh but not of Shri Kedarishwar. Upon this, the Delhi High Court declined to relieve Shri Rampal Singh from his post at Mahasu and he was therefore unable to join his new post immediately.

18. With the retirement of Shri D.R. Dhameja, District and Sessions Judge, at the end of December, 1968, the three posts of District and Sessions Judge, Mahasu, the Additional District and Sessions Judge, Mandi, and the Additional District and Sessions Judge, Kangra at Dharamsala, now lay vacant for those three posts, the Delhi High Court recommended the names of Shri Kedarishwar, Shri Rampal Singh and Shri T.R. Handa respectively. The Himachal Pradesh Government was reluctant to accept the recommendation in respect of Shri Kedarishwar on the ground that Shri A.N. Bhoil and Shri S.S. Mittal were senior to him, and addressed a letter dated December 14, 1968, to the Central Government expressing its difficulty in the matter. To resolve the impasse between the Himachal Pradesh Government and the Delhi High Court the Central Government suggested the constitution of a Committee for drawing up a panel for appointment to the post of District/Additional District Judges. The Committee met on February 6, 1969. Dua, C.J. presided, and the other members were Shri K.N. Channa, Chief Secretary, Himachal Pradesh Government, Shri Guru Datt, Registrar of the Delhi High Court and Shri Prakash Chand, Joint Secretary

(Appointments), Himachal Pradesh. After scrutinizing the character rolls of eligible judicial officers working in Himachal Pradesh, the Committee decided unanimously that the following persons should be kept on the panel for appointment:

1. Shri Chet Ram Thakur--| These persons were 2. Shri R.N. Aggarwal | already holding posts 3. Shri B.D. Sharma --| in the higher judicial service. 4. Shri Kedarishwar Very Good 5. Shri Rampal Singh Very Good 6. Shri A.N. Bhoil Very good 7. Shri T.R. Handa Good 8. Shri A.L. Soni Good

The minutes of the meeting also recited:

The Hon"ble the Chief Justice pointed out that he has already made certain recommendations in regard to the three vacant posts. Those recommendations should be taken into consideration in the first instance.

19. The question of seniority of the candidates from serial Nos. 4 to 8 inter se was left to be determined later. It was decided that at this stage their appointments to the higher judicial service will be without prejudice to the consideration of the said question.

Thereafter, the Himachal Pradesh Government issued the following notification dated April 8, 1969:

GOVERNMENT OF HIMACHAL PRADESH APPOINTMENT DEPARTMENT
NOTIFICATION Simla-2, the 8th April, 1969

No. 12-80/67-Apptt. (II).--In exercise of the powers vested in him under paragraph 17(1) of the Himachal Pradesh Courts Order, 1948, and in supersession of notification No. 2-14/63-Apptt. I, dated the 6th May, 1968, the Administrator (Lieut.-Governor), Himachal Pradesh, on the recommendation of the High Court, is pleased to order the appointment of the following judicial officers as officiating District and Sessions Judge/Additional District and Sessions Judges, in the pay scale of Rs. 900-50-1000-60-1600-50-1800 as indicated against the name of each with effect from the date of taking over as such till further orders:

(i) Shri Kedarishwar, District and Sessions Judge, Mahasu, Simla. (ii) Shri Rampal Singh, Additional District and Sessions Judge, Mandi.

(iii) Shri T.R. Handa, Additional District and Sessions Judge, Dharamsala and Kangra.

The Administrator (Lieut.-Governor), Himachal Pradesh is further pleased to order that their appointments to the posts of District and Sessions Judge/Additional District and Sessions Judges are made without prejudice to the inter se seniority of the judicial officers which is being determined. This order will not confer upon them any right of claim of seniority in the cadre of District and Sessions Judges.

Sd/- K.N. CIIANNA, Chief Secretary to the Himachal Pradesh Government.

20. It may be stated that on the question of seniority of Shri Kedarishwar the Union Home Minister had earlier written to the Chief Justice of the Delhi High Court on January 8, 1969, that according to the opinion of the Union Law Ministry the period from October 17, 1960, to April 30, 1967, during which Shri Kedarishwar had officiated in the post of Additional District and Sessions Judge, was served in a stop-gap arrangement and such an appointment did not confer any right on him to the said post, and that it appeared he was junior to some of the Subordinate Judges.

21. In April 1969, Shri diet Ram Thakur, District and Sessions Judge, Kangra, was granted leave to proceed abroad. By a notification dated April 19, 1969, the Himachal Pradesh Government appointed Shri A.N. Bhoil, then Subordinate Judge, Chamba, as District and Sessions Judge, Chamba, during the leave vacancy of Shri diet Ram Thakur. Subsequently, on the basis that Shri Bhoil could not be posted from Subordinate Judge to District and Sessions Judge directly, the notification of April, 1969 was superseded and on June 26, 1969, Shri B.D. Sharma, District and Sessions Judge, Mandi, was transferred as District and Sessions Judge, Kangra at Dharamsala. Shri Ranipal Singh, then Additional District and Sessions Judge, Mandi, was appointed as District and Sessions Judge, Mandi and Shri A.N. Bhoil was appointed as Additional District and Sessions Judge, Mandi, in place of Shri Rampal Singh. All the transfers were evidently intended to serve during the leave period of Shri diet Ram Thakur.

22. By this time, the Delhi High Court had drawn up two provisional joint seniority lists, and towards the end of July, 1969 it circulated the two lists. One list showed the seniority between District/Additional District and Sessions Judges of Himachal Pradesh, and the other list showed the seniority between the Subordinate Judges and the Subordinate Judges-cum-Magistrats of Himachal Pradesh. The lists were said to have been drawn up in accordance with the instructions contained in the Central Government's letter dated February 14, 1967. Copies of the lists were sent to the Himachal Pradesh Government on July 28, 1969. The Himachal Pradesh Government wrote to the Delhi High Court on August 29, 1969, pointing out that the lists had not been prepared by the High Court in accordance with the K.L.M. formula. The Himachal Pradesh Government itself then drew up the lists afresh according to the K.L.M. formula and forwarded them to the High Court for circulation among the officers concerned for inviting objections. The fresh lists were circulated and objections invited. It was also pointed out that in case oral representations were proposed a Committee of the High Court Judges would give a hearing to the officers on October 18, 1968.

23. The provisional joint seniority list prepared by the Himachal Pradesh Government of the District/Additional District and Sessions Judges as on November 1, 1966, according to the K.L.M. formula showed:

Dale of continuous service/ Deemed date of appointment or entry to the

appointment Name cadre of District and Sessions Judge 1. R.N. Aggarwal 9-9-1963 1-3-1960 2. Chet Ram Thakur 30-12-1961 30-12-1961 3. D.R. Dhameja 1-3-1960 9-9-1963 4. B.D. Sharma 4-7-1965 1-7-1965 5. A.S. Bhatnagar 13-10-1966 13-10-1966 6. Kedarishwar 17-10-1966 17-10-1966

24. It will be noticed that Shri Kedarishwar is shown in the list of District/Additional District and Sessions Judges with reference to the "appointed day". The provisional joint seniority list of the Subordinate Judges of Himachal Pradesh as on November 1, 1966, showed:

Name Date of Deemed date of appointment appointment 1. B.D. Sharma 15-4-1948 15-4-1948 2. A.S. Bhatnagar 15-4-1948 15-4-1948 3. Rampal Singh 7-11-1950 7-11-1950 4. T.R. Handa 28-3-1951 28-3-1951 5. Onkar Nath 16-4-1951 16-4-1951 6. A.N. Bhoil 9-11-1954 8-11-1954 7. I.P. Anand 8-11-1954 9-11-1954 8. A.L. Soni 11-11-1954 11-11-1954 9. Kedarishwar 12-9-1961 19-10-1956 10. S.S. Mittal 9-8-1958 9-8-1958

Objections to these lists were filed by Shri A.N. Bhoil and other judicial officers.

25. Meanwhile, Shri Chet Ram Thakur returned from leave in August, 1969, and the question arose whether Shri A.N. Bhoil should be reverted. His representation against reversion was referred to S.K. Kapur and Hardayal Hardy, JJ. The learned Judges expressed the view that Shri Kedarishwar and not Shri Bhoil should be reverted. Accordingly, the Delhi High Court informed the Himachal Pradesh Government on August 18, 1969, that Shri Kedarishwar should revert to his substantive post of Subordinate Judge and Shri Bhoil was allowed to continue as Additional District and Sessions Judge, Mandi. But on August 21, 1969, Shri B.D. Sharma, District and Sessions Judge, Kangra, proceeded on leave for 35 days and the High Court, in the changed circumstances, reconsidered its earlier decision and decided instead that Shri Kedarishwar should not revert but should continue as District and Sessions Judge, Mahasu, while Shri Chet Ram Thakur should take over from Shri B.D. Sharma as District and Sessions Judge, Kangra. On return from leave Shri B.D. Sharma was posted as District and Sessions Judge, Mahasu, and Shri Chet Ram Thakur remained as District and Sessions Judge, Kangra. Shri Kedarishwar proceeded on leave.

26. Earlier, Shri S.S. Mittal, had filed a civil writ-petition No. 44 of 1969 before the Himachal Bench of the High Court for quashing the appointment of Shri Kedarishwar as District and Sessions Judge. On November 24, 1969, when the writ petition was fixed for final hearing, the Registrar of the High Court, Shri Guru Datt, as one of the Respondents to the writ petition, filed an affidavit dated November 14, 1969, in which he pointed out that the Delhi High Court had decided to revert Shri Kedarishwar. Accordingly, the writ petition was withdrawn by Shri S.S. Mittal.

27. About this time, a Committee of Judges of the Delhi High Court consisting of Hardayal Hardy, Jagjit Singh and Om Prakash, JJ. was constituted to consider the oral and written representations of the judicial officers against the provisional

seniority lists. After hearing those who appeared personally and taking into account all the written representations, the Committee drew up a report covering eleven pages on November 17, 1969. In respect of Shri Kedarishwar, it held that his appointment as Additional District and Sessions Judge, Mandi, in October, 1966 was not made in a stop-gap arrangement nor could it be regarded as fortuitous, that it was not a malafide act but was made in the normal course in connection with the appointment of Shri Chet Ram Thakur as Additional Judicial Commissioner for disposing of certain appeals, and that "if the jurisdiction of the High Court had not been extended to Himachal Pradesh the post of Additional Judicial Commissioner would have continued at least till all the cases which could not be heard by the Judicial Commissioner had been disposed of and in the meantime Shri Bhatnagar was likely to retire from service and Shri Kedarishwar would have continued as officiating District/Additional District and Sessions Judge". Accordingly, the Committee observed, Shri Kedarishwar was entitled to the advantage of the officiating appointment as additional District and Sessions Judge on November 1, 1966, and his name should be included in the list of District/Additional District and Sessions Judges. The Committee also commented that therefore Shri Kedarishwar would be entitled to be considered for appointment as officiating District/Additional District and Sessions Judge "in preference to the Sub-Judges who were not officiating as District/Additional District and Sessions Judge on November 1, 1966".

28. The Committee's report was considered on November 21, 1969, at a Full Court meeting of the Delhi High Court. The minutes of the meeting show that the report was perused and it was decided that the recommendations to the Government be made in accordance with the report. As a matter arising out of the report, the High Court also decided at the Full Court meeting that on return from leave Shri Kedarishwar be appointed as Additional District and Sessions Judge, Dharamsala, Shri T.R. Handa, who was officiating as Additional District and Sessions Judge, Dharamsala, be posted as Additional District and Sessions Judge, Mandi, and Shri A.N. Bhoil, who is the junior-most officiating Additional District and Sessions Judge be reverted to his substantive appointment". A notification dated November 26, 1969, was issued by the High Court. The High Court also requested the Himachal Pradesh Government to issue orders for the reversion of Shri A.N. Bhoil.

29. The Himachal Pradesh Government now wrote to the Delhi High Court suggesting that the recommendations in regard to the reversion may be reviewed, because according to the gradation determined at the meeting held on February 6, 1969, presided over by the Chief Justice and attended by the Chief Secretary, Shri A.N. Bhoil, who had been graded as "Very Good" should have precedence over Shri T.R. Handa who had been graded as merely "Good". On December 19, 1969, the Administrative Committee of the Delhi High Court, consisting of H.R. Khanna, C.J., Hardayal Hardy and Andley, JJ. directed that a reply be sent to the Himachal Pradesh Government inviting its attention to the recital in the minutes of the meeting of February 6, 1969, that the appointments

would be made to the three vacant posts in accordance with the recommendations already made by the Chief Justice leaving the question of seniority of the officers at Nos. 4 to 8 to be decided later on, and that the Court had since considered that question and according to the recommendations made by it Shri Handa ranked senior to Shri Bhoil.

30. The Petitioner made a representation on December 26, 1969, against his reversion and the Himachal Pradesh Government also pressed for reconsideration of the decision. Both matters were considered by a Committee consisting of Hardayal Hardy, T.V.R. Tatachari and Jagjit Singh, JJ. on March 12, 1970, and the Petitioner was heard at length in support of his representation. The learned Judges on the representation of the Petitioner, expressed the view that no ground had been made out for reviewing the earlier decision regarding the fixation of seniority, and on the communication received from the Himachal Pradesh Government they declared that the Court had no reason to reconsider the earlier decision of December 19, 1969, and the Government should issue the orders reverting Shri Bhoil "who is the junior-most officiating Additional District Judge to his substantive post". It appears, however, that no order of reversion was ever passed thereafter by the Himachal Pradesh Government. The Petitioner then filed the present writ petition.

31. Thereafter, it appears that the recommendations of the High Court in regard to the constitution of the joint seniority lists were conveyed to the Punjab Re-organisation (Himachal Pradesh) Advisory Committee. The Advisory Committee met from June 29 to July 3, 1970. Its minutes show that the Advisory Committee approved the revised seniority lists drawn up by the High Court. The Advisory Committee considered the individual representations made by the several judicial officers, and in regard to the representation of Shri A.N. Bhoil, "the Committee recommended the rejection of Shri Bhoil's representation against showing the name of Shri Kedarishwar in the list of District/Additional District and Sessions Judges". It further observed that Shri Kedarishwar's seniority as a Subordinate Judge had been correctly fixed by the High Court and that he was also District/Additional District and Sessions Judge since he was working as such on November 1, 1966.

32. On August 4, 1970, the Himachal Pradesh Government (Integration Department) forwarded to the Delhi High Court the relevant extract of the minutes of the meeting of the Advisory Committee and conveyed the direction "that the provisional seniority lists of the categories concerned as approved by the Committee/Government of India after careful consideration of the representations be declared final after incorporating the decision of the Advisory Committee on each representation...."

33. We have decided to permit the Petitioner to pray for relief against the joint seniority list of the District/Additional District and Sessions Judges finalised by the Central Government, and we have come to that decision over-ruling the objections of some of the Respondents that the Petitioner should not be allowed

to do so.

34. The case of the Petitioner before us falls into two parts. One part consists of the Petitioner's challenge to the inclusion of the name of Shri Kedarishwar in the seniority list finalised by the Central Government relating to the District/Additional District and Sessions Judges. The other part consists of his challenge to the appointments made by the notification dated April 8, 1969, of Shri Kedarishwar and Shri T.R. Handa as District/Additional District and Sessions Judges and the order in the notification dated November 26, 1969, which is said to have reverted him.

35. On the first part of the Petitioner's case, the question which immediately arises is whether the Petitioner is entitled to challenge the correctness of the seniority list finalised by the Central Government. It will be noted that the seniority list was finalised by the Central Government in the exercise of its powers u/s 82(2) of the Punjab Re-organisation Act. The point for consideration is whether the powers conferred by that provision are of a purely executive nature, and a decision of the Central Government in the exercise of those powers can be questioned on its merits.

36. The Punjab Re-organisation Act is concerned with carving out from the existing State of Punjab the two new States of Haryana and Punjab, the Union territory of Chandigarh and transferring certain territories to the Union territory of Himachal Pradesh. Provision had, therefore, to be made for the constitution of new legislative bodies and a new High Court, for the authorisation of public expenditure and the distribution of public revenues, for the apportionment of assets and liabilities between the successor States and for the division and integration of the services. A perusal of the Act shows that Parliament anticipated that competing claims and differences could arise between the successor States in respect of some of those matters, and therefore, it appointed the Central Government as the sole and final arbiter in such matters. In this connection reference may usefully be made to Sections 48, 49, 53, 54, 59, 60, 61 and 63 of the Act.

37. It was found necessary to provide in the Act for the division of the services between the successor States and for the integration of the allotted officers into the existing services of the receiving State. Under Sections 82 - 84, Parliament armed the Central Government with power to make allotment of officers, first provisionally and then finally, to each successor State and authorised the Central Government to establish Advisory Committees for the purpose of assisting it in regard to the division and integration of the services and for ensuring fair and equitable treatment to all persons affected thereby. Parliament also armed the Central Government with power to give such directions to the State Governments of Punjab and Haryana and the Administrators of the Union territories of Himachal Pradesh, as it considered necessary, for the purpose of giving effect to the division and integration of the services. It specifically required the State Governments and the Administrators to comply with those directions. In a case

where the successor States concerned did not agree upon the day from which a person allotted to one of the States should be made available for serving in that State, the Central Government was made the deciding authority. Certain guarantees were also provided for the Government servants affected, and as we shall see later, they were limited to specifically defined areas of individual rights.

38. At the outset, it will be noticed that the Act is silent as to the principles upon which the division and integration of the services ought to be carried out by the Central Government. No basis whatever has been specifically laid down. There is only a brief indication that whatever is done should ensure fair and equitable treatment to the Government servants affected. In passing, it may be pointed out that the Government servants affected would be not only those allotted under Sections 82(1) and 82(2) but also those already serving in the receiving State, the expression "persons affected" being of wider comprehension than the expression "persons allotted" used in Sections 82(1) and 82(2).

39. The absence of any statement of principles in the Act for the division and integration of the services must be considered a deliberate omission on the part of Parliament. Parliament impliedly indicated that it left it entirely to the Central Government to employ what norms and standards it chose and what procedures it preferred in carrying out the responsibility entrusted to it. In the nature of that responsibility a large number of varying considerations could come into play. Those considerations could relate to matters of policy pertaining to the requirements of the different States inter se as well as pertaining to considerations individual to the Government servants. The matter had to be looked upon not as one merely between the Government servants inter se, those allotted and those already serving, or those preferring one successor State while the others preferring another, but on considerations transcending the individual plane. The competing requirements of the successor States be they in relation to the field of civil administration, of public services, of development programmes and engineering projects and technology, called for a balancing of interests at the State level, on a plane where State policies and programmes had to be taken into account while dividing and integrating the services. That there could be competing interests between the States in this matter is evidenced, as an example, by the need to provide by Section 82(3) that the Central Government would determine, upon disagreement between the States concerned, the date from which an allotted Government servant would be released by one State for service in the other. If considerations of policy could play a role in the division and integration of the services, that role had to be played in the shaping of the entire scheme of division and integration. While division would cover the allotment of officers, integration would include such matters as the equation of posts and the determination of relative seniority. There is no reason why considerations of policy could not inform the entire process of integration. That such matters as seniority could be affected by considerations of policy is indicated by the adoption of what has popularly come to be known as the "K.L.M. formula". The K.L.M. formula was not brought in by statute or legislative rule. It

was the result of purely executive policy.

40. Now embraced within the task of the division and integration of services was the consideration that the interests of the Government servants affected should also be taken into account. They were individuals caught up in the vital changes proceeding around them. They were involved intimately in those changes. In order that the scheme of division and integration should also take into account considerations individual to the Government servants the Act recognised a right in them to make representations to the Central Government. But it would be erroneous to infer therefrom that each Government servant was thereby granted an enforceable right to claim a specific status or seniority in the process of division and integration. That is an inference wholly opposed to the paramount nature of the powers entrusted to the Central Government u/s 82 of the Act. It will be observed that where Parliament considered it necessary to guide the Central Government in such matters it did so by making express provision. As an instance, Section 83 provides that a person who immediately before the "appointed day" is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Punjab in an area which on that day falls within any of the successor States, would continue to hold the same post or office in that successor State, and he would be deemed, on and from the appointed day, to have been duly appointed to the post or office by the Government of, or appropriate authority in that successor State. The other limitation is that the conditions of service applicable immediately before the appointed day to the case of a person allotted under Sections 82(1) and 82(2) would not be varied to his disadvantage except with the previous approval of the Central Government. It may be pointed out at this stage that those conditions of service could be only those enjoyed immediately before the appointed day, and they could not apply in relation to persons already serving in the State of allotment since there could possibly have been no relationship between the allotted Government servant and the existing Government servant before the appointed day.

41. In my opinion, Sections 82 - 84 of the Act empower the Central Government to prepare and put into effect a scheme for the division and integration of the services among the successor States, beginning with the provisional allotment of persons u/s 82(1) and culminating in the final allotment of such persons to a successor State, and subject to such seniority and conditions of service as it; may consider appropriate, having regard to the competing requirements of the individual States and the need to ensure fair and equitable treatment to the persons affected by the scheme and subject also to Section 83 and the proviso to Section 82(6).

42. The scheme is a single indivisible scheme representing the ultimate decision of the Central Government taken upon a composite consideration of interests at two different levels, the State level and the individual level. It is a scheme in which policy as well as accepted principles play equally important roles.

Advisedly, therefore, Parliament left the widest amplitude of discretion to the Central Government under the Act in regard to the division and integration of the services. Executive discretion was contemplated, and not the judgment of a quasi-judicial authority. The decisions incorporated in the scheme, since they flow from the composite consideration of interests at the State level and at the individual level, are not capable of analytical division solely with reference to the one level or the other. A decision such as this is not open to examination on the merits by a court of law.

43. It is urged on behalf of the Petitioner that the "ensuring of fair and equitable treatment" and the "proper consideration of any representations" referred to in Section 82(4) of the Act, indicates that the function of the Central Government is quasi-judicial in nature. I do not think so. As regards the expression "fair and equitable treatment", it has been pointed out by Freund *Administrative Powers over Persons and Property* 71 (1928), cited in M.P Jain: *Principles of Administrative Law*, 219 (1971)

When we speak of administrative discretion, we mean that a determination may be reached, in part at least, upon the basis of considerations not entirely susceptible of proof or disproof. A statute confers discretion when it refers an official for the use of his power to beliefs, expectations, or tendencies instead of facts, or to such terms as..."equitable", "fair".... These lack the degree of certainty....

It is now settled law that courts are concerned with the legality rather than the merits of an administrative order, and accordingly I do not see how the decision of the Central Government u/s 82 can be questioned in court by a Government servant on its merits.

44. As regards the requirement that representations made by individual Government servants should be considered, it seems to me that having regard to the general nature of the functions entrusted to the Central "Government under Sections 82 - 84, and the responsibility for which it has been designed, the provision for such representations is intended merely by way of consultation. It provides for consultation of the interests affected for the purpose of ensuring fair and equitable treatment in the scheme proposed by the Central Government. It has long been recognised that a consultative technique is useful in balancing individual interests and administrative exigency. Consultation with such interests as are likely to be affected by the authority ensures that the authority will be apprised of all facets of the problem and enables it to secure an over all appreciation of the problem. The consultation technique has been employed in England in matters arising under the Housing Act, 1936, where provision has been made for the filing of objections by owners of land comprised in a compulsory purchase order, which objections are considered by the Minister before confirming the purchase order. It was held by the Court of Appeals in *D. Johnson and Co. (Builders) Ltd. v. Minister of Health* 1947 (2) A.E.L.R. 395 that the confirmation of the order was essentially an administrative act and the mere

circumstance that the owners were entitled to file objections did not make it quasi-judicial. Lord Greene, M.R., observed that:

There is nothing...in the Act, which imposes on the Minister any obligation with regard to the objections, save the obligation to consider them. He is not bound to base his decision on any conclusion that he comes to with regard to the objections, and that must be so when one gives a moment's thought to the situation. The decision whether to confirm or not must: be made in relation to questions of policy, and the Minister, in deciding whether to confirm or not, will, like every Minister entrusted with administrative duties, weigh up the considerations which are to affect his mind, the preponderating factor in many, if not all, cases being that of public policy, having regard to all the facts of the case....

The learned Master of the Rolls proceeded to analyse the function of the Minister and pointed out that even though at a particular stage and for a particular and limited purpose there was super-imposed on his administrative character a quasi-judicial obligation to consider the objections, the administrative character of his act remained unaffected because at the time of deciding the matter he had to take into account considerations of policy.

45. The purpose of the representations contemplated by Section 82(4) is to inform the mind of the Central Government and not to consider any issue between it and those who filed the representations. The Act regards the representations as material relevant to the scheme for the division and integration of the services proposed by the Central Government, material to be taken into account even while giving weight to considerations of policy. The only right conceded to a Government servant in the preparation of the scheme contemplated by Section 82 is a right of representation and nothing more. There is no right to a particular result or decision. The re-organisation of a State is a function performed at governmental level, and it cannot be contemplated that in the process of re-organisation an individual should be considered to have a right or claim to assert in that process. For this reason, a statutory provision was necessary to give a right of representation to the Government servant. Except for that right, there is nothing more he can do in the process of re-organisation.

46. I find myself in agreement with the observations of the Shaligram Anantram Chaturvedi Vs. Union of India (UOI), where considering the analogous provisions of Sections 115 and 116 of the States Re-organisation Act, he pointed out:

Looking at the provisions of Section 115 and 116 of the States Re-organisation Act, it appears to me that the Central Government was not charged with any duty to decide *lis inter partes* or to determine any fact judicially. The Central Government is required only to make adjustments in view of the formation of the new State and to determine the successor State to which persons serving in the merged State shall be finally allotted for service. In doing so, the Central Government may have to consider various aspects and would to a very large

extent be guided by the policy that may have to be adopted in the integration of services. It may be pointed out that no right is given to the employees to require the Central Government to carry out the adjustment or integration in a particular manner. It has been left entirely to the Central Government as to how best it is to be achieved. In my view, the mere fact that the Central Government has been empowered to establish Advisory Committees for the purpose of assisting it in the proper consideration of representations made by the employees is no ground for holding that it is required to act judicially....

(Emphasis mine).

That decision received the approval of the Punjab and Haryana High Court in *K.C. Gupta and Others Vs. Union of India and Others*, Declining to be drawn into an examination of the decision of the Central Government on its merits, the learned Judge observed:

Whether a better or different decision could be arrived at or not, and whether the equation approved of by the Central Government was on merits proper or not, is outside the scope of the enquiry before me in this writ petition, as this Court is not expected to sit in appeal over the said decision on merits.

The same view, on principle, was taken by a Division Bench of that Court in regard to Section 82 of the Punjab Re-organization Act in *Beant Singh v. Union of India* 1969 S.L.R. 327.

47. Another single Judge of the same court held in *Shri Bhagwali Parsan Singh Gupta v. The Union of India* 1971 (62) P.L.R. 899 that the preparation of joint seniority lists of the integrated services was an administrative function performed by the Union of India u/s 115(5) of the States Re-organisation Act, and it was not a quasi-judicial act. The Madhya Pradesh High Court, in *Vinod Kumar Radhika Prasad Vs. State of Madhya Pradesh and Others*, held upon a consideration of Sections 115 and 116 of the States Re-organisation Act, 1956, that the decision of the competent authority about the equation of posts in integration was an administrative decision which cannot be interfered with by the court in proceedings under Article 226 of the Constitution. A contrary view was taken by the Mysore High Court in *G.B. Mudambabithaya v. The Union of India* AIR 1969 Mys. 362. The learned Judges held that the court had power to investigate the question whether the equation and determination of the inter se seniority lists u/s 115 of the States Re-organisation Act had been made by the application of the relevant criteria laid down in the Conference of the Chief Secretaries of States, 1956, and if it transpired that the equation did not rest upon a proper application of the four principles upon which the equation could have rested the court could disturb the equation on which the impugned seniority lists depended. The learned Judges dissented from *K.C. Gupta's* case (supra) because, in their opinion, the view taken there could not be supported after the decision of the Supreme Court in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, where importance was attached to the four principles evolved during the Chief

Secretaries Conference. There is no doubt that in *P.K. Roy (supra)*, the Supreme Court referred to the principles laid down at a meeting of the Chief Secretaries. It did so when setting out the events which had preceded the finalisation of the impugned seniority lists. But the question which it considered for decision was whether the lists were vitiated because they were prepared by the State Government and not by the Central Government. The Supreme Court held that there had been no delegation by the Central Government or any of its essential functions to the State Government. The other question considered by the Supreme Court was whether the Respondents were entitled to a second opportunity to make a representation regarding the inter se seniority lists to the Central Government, and it held upon the facts of that case that they were. The Supreme Court observed that the statutory requirement providing for representations embodied a principle of natural justice. But the Supreme Court, it will be noticed, did not hold that the decision of the Central Government could be examined on the merits by a court of law. In two successive cases, the Supreme Court has left the question open whether the decision of the Central Government is quasi-judicial. In the first, *Union of India v. G.M. Shankariah* 1969 S.L.R. 1 which was an appeal against a decision of the Mysore High Court, the High Court had held that the writ petitions were premature, but it had gone on to observe that the jurisdiction of the Central Government u/s 115 was quasi-judicial and not administrative. The Supreme Court pointed out that those observations were not necessary when the writ petitions had been held to be premature, and it specifically pointed out that it should not be understood to have expressed any opinion on the question whether the function u/s 115 was quasi-judicial or administrative. It appears that in another appeal from a decision of the Mysore High Court, *Union of India v. S.R. Dhareshwar* 1971 C.W.R. 831 the Supreme Court did not endorse the view taken by the Mysore High Court that the jurisdiction of the Central Government u/s 115 was quasi-judicial, and again left the question open. It referred to what it had said in *G.M. Shankanah (supra)*, pointing out:

This Court also made some observations on the interpretation of Section 115 of the Act as given by the High Court to the effect that the power contained therein was quasi-judicial and not administrative, and that, therefore, it had to be discharged in conformity with the principles of natural justice. It was observed that inasmuch as the High Court held that the writ petitions were premature as the impugned decision was only provisional, these observations were not necessary.

48. It is contended for the Petitioner that the distinction between administrative power and quasi-judicial power has lost its significance inasmuch as the dividing line between the two powers has been held to be very thin. We are referred to *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, The Petitioners there were aggrieved by a selection made among the officers of the Forest Department of the State of Jammu and Kashmir to the Indian Forest Service. The selection was governed by the All India Services Act, 1951, and an elaborate

body of rules and regulations. Moreover, nowhere did the Supreme Court lay down in that case that a court of law could examine the impugned order on its merits.

49. Reliance has also been placed on *S.K. Ghosh v. Union of India* 1968 S.L.R. 741. That case did not raise any question concerning the States Re-organisation Act or the Punjab Re-organisation Act. We were also referred to *Gurcharan Dass Vaid v. State of Punjab* 1972 S.L.R. 4. From a perusal of the judgment in that case it does not appear that the specific question as to the nature of the decision of the Central Government u/s 115 of the States Re-organisation Act and whether it could be examined on the merits was considered.

50. It is urged that a distinction must be drawn between a decision of the Central Government on the equation of posts and a decision on the fixation of seniority. It is said that whereas the former is a matter for administrative decision, the latter is essentially a quasi-judicial function inasmuch as it affects the rights of the Government servant. In my opinion, there is no basis for drawing that distinction so far as the function of the Central Government u/s 82 of the Punjab Re-organisation Act is concerned. There is nothing in the Act to suggest such a distinction. The equation of posts affects the Government servant as much as the fixation of his seniority. Both are equally involved in the process of integration. And the right of representation recognised by Section 82(4) does not contemplate such a distinction. As I have already said, the ultimate decision of the Central Government is a composite determination by reference to interests at two different levels, the State level and the individual level and not capable of division by reference to each level separately. Even if the decision is expressed in two parts, one relating to the allotment of the Government servants and the other fixing their seniority, the nature of the function of the Central Government remains the same throughout. The administrative action taken by the Central Government preserves its indivisibility as regards its nature, and it would not be right in law to destroy that indivisibility by reference to different stages evolved to meet the procedural needs of the determination.

51. Essentially, the case of the Petitioner is that the decision of the Central Government to include the name of Shri Kedarishwar in the list of District/Additional District and Sessions Judges does not conform to the principles laid down in the letter dated February 14, 1967. It is pointed out that the period between October 1966 to May 1967, during which Shri Kedarishwar officiated as Additional District Judge, Mandi had to be excluded inasmuch as the service was in a purely stop-gap or fortuitous arrangement. As I have already pointed out, it is not open to this Court to examine the decision of the Central Government on its merits. It is also urged on behalf of the Petitioner that as the principles laid down in that letter are capable of objective application, the function of the Central Government while applying those principles is quasi-judicial. I am unable to agree. Whether the function of the Central Government is quasi-judicial or purely administrative has to be determined upon the provision of the Act which

invests the Central Government with that function, and not by reference to the guidelines or principles adopted by the Central Government in the discharge of that function. The adoption of certain standards or norms by the Central Government cannot affect the real nature of its decision. It is a decision for which the Act provides, and its nature must "be determined by reference to the provisions of the Act.

52. It cannot also be said that the decision of the Central Government is arbitrary. Different opinions have been expressed by different authorities, and sometimes by the same authority at different stages, on the question whether the period of service from October 1966 to May, 1967 of Shri Kedarishwar as Additional District Judge, Mandi, should be treated as served in a purely stop-gap or fortuitous arrangement. The Himachal Pradesh Administration appears at one time to have thought that it was, but the provisional seniority list of the District/Additional District and Sessions Judges drawn up by it showed the name of Shri Kedarishwar therein and even before us the return filed by the Himachal Pradesh Administration in this writ petition specifically avers:

The appointment of Shri Kedarishwar was not purely a stop-gap/fortuitous arrangement but he had been appointed against a vacancy which fell vacant on the appointment of Shri Chet Ram as officiating Additional Judicial Commissioner, Himachal Pradesh. Since the question whether Shri Chet Ram, officiating Additional Judicial Commissioner, would have again reverted to his substantive post of District Judge is merely hypothetical, it cannot be said that the appointment of Shri Kedarishwar as Additional District Judge could not have lasted beyond the period Shri Chet Ram officiated as Additional Judicial Commissioner as his appointment depended on a number of circumstances, for example, pendency of appeals, etc. It is quite possible that Shri Chet Ram could have continued to officiate as Additional Judicial Commissioner and Shri Kedarishwar could also have continued to work as Additional District Judge if the exigencies of the work so required.

53. Two Judges of the Delhi High Court, S.K. Kapur and Hardayal Hardy, JJ., considered the period as having been served in a stop-gap or fortuitous arrangement. That opinion was expressed without considering the representations of the officers concerned or hearing them orally, and was for the purpose of considering which officer should be reverted. It will be noticed that the opinion was qualified by the reservation that it was open to Shri Kedarishwar to establish his claim to seniority in the final seniority list. At the stage of final determination of the seniority list in the High Court, the matter was considered by a Committee of three Judges, Hardayal Hardy, Jagjit Singh and Om Prakash, JJ., and after considering the representations and hearing the judicial officers personally they came to the view that the appointment was not in a stop-gap or fortuitous arrangement. It will be observed that Hardayal Hardy, J. now altered his previous opinion after hearing the officers concerned and considering the representations. The report of the three Judges was considered by a Full Court

Meeting of the Delhi High Court on November 21, 1969, and after perusing it they decided to accept its findings. The matter was thereafter considered by the Advisory Committee, and the Advisory Committee came to the same opinion after considering the representations. Thereafter, the Central Government accepted the recommendations of the Advisory Committee. It cannot be said, in the circumstances, that the decision of the Central Government to include the name of Shri Kedarishwar in the list of District/Additional District and Sessions Judges as on November 1, 1966, was arrived at arbitrarily. In the exercise of writ jurisdiction I cannot interfere with that decision.

54. It is also contended on behalf of the Petitioner that the decision of the Central Government and of the Advisory Committee is vitiated in law because it does not disclose any reasons. Reference has been made to Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, . As I have come to the conclusion that the decision is of a purely administrative nature and not quasi-judicial, the question of disclosing the reasons does not arise.

55. Reference may also be made to the contention of the Petitioner that the deliberations of the Advisory Committee were vitiated because it delegated its function to the High Court in the matter of fixation of seniority. There is no substance in that contention. The Advisory Committee was entitled to take the assistance of the High Court in the matter. The High Court was appropriately situated to examine the question of seniority of judicial officers. There is no question of delegation of its functions by the Advisory Committee. The report of Hardayal Hardy, Jagjit Singh and Om Prakash, JJ. along with the record of the deliberations of the High Court on November 21, 1969, as well as the representations made by the judicial officers were all before the Advisory Committee when it decided upon its recommendations to the Central Government. It was observed by the Supreme Court in Union of India v. P.K. Roy (supra) that if a statutory authority empowers a delegate to undertake the preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it had been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own.

56. I am of the view that the seniority list of District/Additional District and Sessions Judges as on November 1, 1966, finalised by the Central Government cannot be questioned on the merits before us. That could have been only if it could be shown that it was prepared in contravention of the statute, for example, if the seniority list was prepared without affording to a Government servant affected the right of representation recognised by Section 82(4) of the Act. It could also be questioned if it was vitiated by malafides. In other words, it is vulnerable only so far as an administrative act is. The Petitioner, in my opinion, has failed to make out a case for interfering with the decision of the Central Government to include the name of Shri Kedarishwar in the list of District/

Additional District and Sessions Judges, and therefore that list cannot be disturbed.

57. The second part of the Petitioner's case can be further divided into two parts. One concerns the validity of the appointment by the notification dated April 8, 1969, of Shri Kedarishwar as District and Sessions Judge, Mahasu Division, and of Shri T.R. Hancla as Additional District and Sessions Judge, Dharamsala. The other concerns the validity of the "reversion" of the Petitioner from the post of Additional District and Sessions Judge, Mandi, to his substantive post of Subordinate Judge, which is said to have been effected by the order dated November 26, 1969.

58. The principles governing the appreciation of facts are well settled. A fact cannot be considered in isolation. No fact is born of itself it is conceived from other facts. A fact also takes its proper meaning from its place in the mosaic of co-existing facts. In its meaning and purport therefore a fact is influenced both by heredity and environment. It is this perspective which, in my opinion, should determine the consideration and evaluation of the facts relevant to the impugned appointments and reversion.

59. It is also appropriate to observe at this stage that during the course of arguments before us learned Counsel for the parties placed the relevant original records of the Delhi High Court and the Himachal Pradesh Government before us and referred freely to several documents in those records. We have found it necessary to permit them to do so in order to enable us to arrive at a true decision of the serious questions raised in this case.

60. The following material appears from a perusal of the affidavits of the parties and the original records produced before us as regards the events leading up to the impugned appointments made by the notification dated April 8, 1969. Reference has had to be made to the notings in the original records, because in many cases the decisions of the High Court and the orders of the Chief Justice as well as the decision of the Government and the appointments made by the Lt. Governor can only be fully understood in the light of those notings.

61. The post of Additional District and Sessions Judge, Kangra at Dharamsala was created for a period of six months from the date it was filled up. It was a temporary post for a fixed period. In February 1968, when the High Court took up the question as to who should be appointed to that post, the integrated seniority list of judicial officers had not yet been finalised by the Central Government. Obviously, until the seniority of the judicial officers, those already serving in Himachal Pradesh and those allotted from Punjab, was determined it was not possible on any authoritative basis to go by their inter se seniority. Both sets of officers had held clearly defined positions of seniority in their own services before the "appointed day", but what would be their joint seniority inter se as from that day had yet to be determined by the Central Government to whom alone that task had been entrusted by the Punjab Re-organisation Act. The

Central Government's letter dated February 14, 1967, to which reference has been made earlier had been received. On February 17, 1968, the Registrar of the Delhi High Court made a note suggesting with reference to the principles laid down in that letter that Shri Kedarishwar who had held the post of Additional District and Sessions Judge on the "appointed day", would be deemed to be holding a superior post to that of Subordinate Judge and for this reason the other Subordinate Judges could not claim seniority over him. In the circumstances, it was pointed out no question of seniority could arise between him and the other Subordinate Judges. Assuming that the question did arise, he observed, the post of Additional District and Sessions Judge was a superior judicial post and "while making appointments thereto seniority will not be the test; the criterion will be selection". It is material to note that seniority was not taken as the test. The consideration was that he had held the post of Additional District and Sessions Judges on the "appointed day", that is November 1, 1966; in other words that he had held a superior post on that day and should therefore be selected. The significance of that fact will be considered later. Apparently, the matter was discussed with the Chief Justice, and it was decided to make a reference to the Central Government in the matter. Meanwhile, "while that reference was pending the High Court on February 22, 1969, wrote to the Himachal Pradesh Government that Shri Kedarishwar be appointed as a 1 purely temporary and interim arrangement against the temporary post of Additional District and Sessions Judge, Kangra at Dharamsala. The Himachal Pradesh Government noted that upon a comparison of their respective service particulars from the point of view of seniority Shri Kedarishwar was junior to five judicial officers allotted from Punjab. But in the note of February 27, 1968, the Joint Secretary (Appointments) observed that while the Government had not been generally agreeing to ad hoc appointments were joint seniority lists had not been finalised it was possible "that because of the time clement the High Court may find an ad hoc appointment inescapable". In a later note dated February 29, 1968, he observed that although Shri Kedarishwar was junior to the five allotted Punjab officers, the High Court may have decided to recommend Shri Kedarishwar for an ad hoc promotion on the ground that the joint seniority list would take a long time to be finalised, "and till then claims for ad hoc appointments on the basis of seniority should not carry weight". The Law Minister took the view that as the High Court was proceeding on the basis that the appointment was purely temporary and by way of an interim arrangement it should not affect any body's seniority and he suggested that the Government should agree with the High Court's recommendation. The Chief Minister agreed with that view on March 5, 1968, and the recommendation received the approval of the Lt. Governor on March 16, 1968. As has been mentioned already, the notification effecting the appointment was not issued on account of the representations made by some of the allotted officers from Punjab.

62. On February 22, 1968, the Registrar of the High Court had made a reference to the Central Government mentioning that "a question has, however, arisen as

to how the position of a person holding a superior post i.e. the post higher than his substantive permanent post on the appointed day, in officiating capacity is to be determine. To be specific, an officer belonging to the erstwhile Himachal Subordinate Judicial Service was officiating as Additional District and Sessions Judge on the "appointed day" against a temporary post and continued to officiate as such till May, 1967, and would have continued in that post but for the fact that consequent upon the extension of jurisdiction of this Court that post ceased to exist", and he asked for advice on how the seniority of such an officer fell to be determined. There is dispute between the parties whether the facts set out by the Registrar were correct, but that is a matter to which reference will be made later. The Central Government in its reply dated March 11, 1968, expressed the opinion that the name of such an officer had to be included in both cadres, that of District/Additional District and Sessions Judge and that of Subordinate Judges, the rank of the officer being in each of the gradation lists as on November 1, 1966.

63. Upon this, the High Court wrote to the Himachal Pradesh Government that because of the clarification received from the Central Government that the name of Shri Kedarishwar would be included in both cadres, he would have precedence while making an appointment to the post of Additional District Judge. It will be seen that although the High Court wrote to the Central Government for advice on the question of seniority it really had in mind the question whether Shri Kedarishwar had occupied a post superior to the other Subordinate Judges on November 1, 1966. The implications of this criterion will be discussed subsequently.

64. Meanwhile, Shri A.S. Bhatnagar who was due to retire on July 1, 1968, was proceeding on leave preparatory to retirement, and the High Court noted that on the basis of length of service and date of confirmation Shri Rampal Singh appeared to be the senior-most officer and as his record was consistently good he should be recommended to officiate as Additional District and Sessions Judge, Mandi, in place of Shri Bhatnagar, the arrangement being subject to the determination of seniority between Shri Kedarishwar, Shri Rampal Singh and Shri T.R. Hancla. Shri Rampal Singh was accordingly recommended by the High Court to the Himachal Pradesh Government for that appointment.

65. The representations made by some of the allotted officers against the proposal to appoint Shri Kedarishwar were examined by one of us as Judicial Secretary to the Himachal Pradesh Government. The Judicial Secretary considered seniority as the criterion for the appointment, and observed that the appointment of Shri Kedarishwar in preference to the allotted officers from Punjab could amount to a variation of the latter's conditions of service to their disadvantage and therefore the proviso to Section 82(6) of the Punjab Re-organisation Act was attracted, requiring the approval of the Central Government. Accordingly, he recommended that a reference be made by the Himachal Pradesh Government to the Central Government drawing its attention

to Section 82 of the Act and seeking its approval, and that meanwhile Shri Kedarishwar be promoted as an Additional District and Sessions Judge "on ad hoc basis" on the understanding that he would be reverted in case the Central Government found against him on the question of seniority. It will be noticed that while the High Court was proceeding on the basis of Shri Kedarishwar having been Additional District and Sessions Judge on November 1, 1966, and his name being included on that ground in the list of District/Additional District and Sessions Judges, as on that date, the Government was proceeding on the basis of seniority.

66. When subsequently on May 6, 1968, the Himachal Pradesh Government notified the appointment of Shri Rampal Singh but not of Shri Kedarishwar and the High Court took exception to this, the Himachal Pradesh Government assured the High Court that the appointment of Shri Rampal Singh was on "an ad hoc basis" and his seniority in relation to Shri Kedarishwar would be determined later in the higher grade, and that the case of Shri Kedarishwar was yet under consideration and a reference had been made to the Central Government in the matter. Upon receipt of the reference, the Central Government advised the Himachal Pradesh Government to take up the matter with the High Court. From the note dated September 2, 1968, in the High Court file it appears that the High Court was alive to the consideration that Shri Kedarishwar had reverted to his substantive post of Subordinate Judge from the post of Additional District Judge, and the question was whether he should not be preferred because he had officiated earlier in that post, and support for that position was sought from the inclusion of his name in the list of District/Additional District and Sessions Judges. On September 7, 1968, the High Court wrote to the Himachal Pradesh Government requesting that appointment orders in favour of Shri Kedarishwar and Shri Rampal Singh should be issued in the light of its earlier recommendations and further "that the present appointments will be purely temporary and will not as such confer any preferential right on these two persons to be absorbed on the permanent higher judicial cadre of Delhi and Himachal Pradesh which is now in the making".

67. Meanwhile, correspondence ensued between the Himachal Pradesh Government and the Central Government on the question whether Shri Kedarishwar should be appointed, and we find in the letter dated November 25, 1968, from the Himachal Pradesh Government reference to paragraph 4 of the Central Government's letter dated February 14, 1967, that pending finalisation of common seniority lists no irrevocable changes should be made in the present status of Government servants affected by the re-organisation and that "the promotions and reversions which may have to be made to meet urgent administrative requirements should specially be made subject to review in accordance with the position which may be accorded to the officers concerned in the final seniority list." Then, there is a reference to the vacancies in the grade of Additional District and Sessions Judges, followed by the comment that "since the integrated seniority list of the officers belonging to these services has not been

finalised the intention is to fill these vacancies on ad hoc basis". Clearly, therefore, in the mind of the Himachal Pradesh Government also, as in the case of the High Court, the appointments contemplated were ad hoc appointments.

68. While this matter was pending, a third vacancy was expected to arise. Shri D.R. Dhamcja, District and Sessions Judge, Mahasu, was retiring in December, 1968. The High Court suggested the appointment of Shri T.R. Handa to one of the three vacancies. Shri Handa was recommended on the basis that he was the next senior officer and "his service record was not bad".

69. The Himachal Pradesh Government still maintained that some allotted Punjab officers were senior to Shri Kedarishwar and they should be considered instead of him. It seems from the notings in the original records that the Himachal Pradesh Government took the view that the period of service of Shri Kedarishwar as Additional District and Sessions Judge from October, 1966 to May, 1967 was a stop gap arrangement and no right accrued to him pursuant to it.

70. As the entire controversy had now reached a stalemate the Central Government decided on the Committee, referred to earlier, for selecting a panel of candidates for appointment to the higher judicial service in Himachal Pradesh. The proceedings of that Committee have already been set out. It is clear from those proceedings that the character rolls of the eligible judicial officers were scrutinised and the Committee unanimously graded Shri Kedarishwar, Shri Rampal Singh and the Petitioner as "Very Good" and Shri T.R. Handa and Shri A.L. Soni as "Good". It is also clear that the Chief Justice, who presided in the Committee, required that the recommendations already made by the High Court should be taken into account in the first instance and that was accepted by the Committee. The question of seniority of the judicial officers mentioned above was left to be determined later, and it was decided that at that stage their appointments to the higher judicial service would be without prejudice to the consideration of that question. In the circumstances, the Himachal Pradesh Government after noting that upon a comparison of the character rolls of the officers in the field of eligibility Shri Kadarishwar had been classed as "Very Good" on the basis of his record and had therefore "come up in the panel in comparison to his seniors", accepted the recommendations of the High Court. The Notification dated April 8, 1969, followed.

71. The specific challenge made by the Petitioner to the appointment of Shri Kedarishwar and Shri T.R. Handa may now be considered. That challenge is directed to the validity of the recommendations concerning them made by the Delhi High Court.

72. The Petitioner contends that when the High Court recommended Shri Kedarishwar and Shri T.R. Handa for promotion it did not consider the cases of the other eligible Subordinate Judges, including the Petitioner, and therefore Articles 14 and 16 of the Constitution were contravened. It is apparent that at the time of recommending Shri Kedarishwar, Shri Rampal Singh and Shri T.R.

Handa, and even the Petitioner subsequently, the High Court did not make a comparative appraisal of the merits of all the eligible officers. In that it followed a uniform pattern throughout. The question is whether in the circumstances in which those recommendations were made it was obligatory to do so.

73. It is important to bear in mind that when the High Court took up the question in early 1968 and for a considerable period thereafter it was faced with an abnormal situation. It did not have an integrated seniority list of the judicial officers before it, because that list was still in the process of preparation. Even the final allotment of judicial officers from Punjab to Himachal Pradesh had not been made by the Central Government it was communicated only in October, 1968. The proceedings for equation of posts and determination of relative seniority had been set out by the Central Government in its letter dated February 14, 1967, but the task of drawing up the provisional seniority lists was taken up in July, 1969 only. The Central Government was aware that the needs of Government Departments would require appointments and promotions from time to time while the process of integration was still in hand. The integration had to be made as on the "appointed day", i.e. November 1, 1966. The process could take an appreciable period of time and extend to a date much beyond the "appointed day" and until then neither time nor administrative requirements would standstill. It was a case where the ever recurring needs of an effective administration had to be met, and yet because the integration had to be referred to a fixed date, November 1, 1966, care had to be taken to protect the rights of the officers concerned against prejudice and jeopardy from appointments and promotions made in the interregnum. It was for this purpose that on July 21/28, 1966, the Chief Secretary (Integration Cell) of the Himachal Pradesh Government wrote to all the departments in Himachal Pradesh that, in view of the impending re-organisation of Punjab, recruitment to vacancies should be made on a purely temporary basis and persons should be appointed to those posts on that understanding only. The Central Government's letter dated February 14, 1967, also demonstrated its awareness of the abnormal situation prevailing, and therefore paragraph 4 of that letter directed that pending finalisation of the seniority lists no confirmation should be made in any post which may be involved in the process of integration and the promotions and reversions which may have to be made to meet urgent administrative requirements should specifically be made subject to review and in accordance with the position which may be accorded to the officers concerned in the final seniority lists.

(Emphasis mine).

This direction was made u/s 84 of the Punjab Re-organisation Act, and the Himachal Pradesh Government was bound to comply with it. Any promotions and reversions effected by it had to be made within the framework and context of that direction. The promotions and reversions could only be tentative. They could endure only for the interim period until the matter was taken up by the appropriate authority after the finalisation of the seniority lists by the Central

Government. The promotions and reversions had, therefore, to be of an ad hoc nature. They could confer no rights on the officers promoted or any liability on those reverted until they had been reviewed after the determination of the final seniority lists.

74. It is not always that a promotion in the normal sense can be made. A normal promotion is possible where normal conditions obtain. In the case of an emergency or a sudden exigency it may not be possible to consider the cases of all eligible officers, and an ad hoc appointment has to be contemplated. A Division Bench of the Orissa High Court in *Dr. Ramnath Misra v. State of Orissa* 1970 LIC 1476 observed:

Ad hoc appointments, meant only for a temporary period, are mostly made to meet immediate needs and exigencies of service, and as such we cannot lay down as a rule that before making any such ad hoc appointments due consideration of the cases of all eligible candidates must be made as of principle. There is no sanction in law for such a proposition, and in our opinion, such an imperative rule would adversely affect the management of public institutions by disabling them from urgently filling up important and emergent vacancies which might arise at time due to various contingencies.

This statement of the law received the approval of the Delhi High Court in *Inder Raj Kakar v. Delhi Transport Undertaking* 1972 S.L.R. 39 . The principle of ad hoc appointments can contemplate in its sweep cases of so many different kinds. One may be a case where the need to appoint is so immediate that cases of all eligible candidates cannot be considered. Another may be a case where the conditions necessary for making an appointment in the normal sense have not yet settled, and the settled structure is not expected to be available within the time permitted by the exigency for making the appointment. Ad hoc appointments are not uncommon. The exigencies of service necessarily contemplate them. An ad hoc appointment is called for because an appointment in the normal sense is not possible, and yet the particular administrative requirement necessitates an appointment. The practice of making ad hoc appointments is well accepted. Reference may be made to those cases where a promotion is made and the case is referred meanwhile to the Union Public Service Commission or the State Public Service Commission, as the case may be, and thereafter in case the appointment receives the approval of the Public Service Commission it is "regularised". In *Mangal Singh and Another Vs. Union of India (UOI)*, the Supreme Court referred to the ad hoc test employed by Parliament in Section 13 of the Punjab Re-organisation Act, 1966, the Act with which we are concerned. It was contended before the Supreme Court that Section 13 violated Article 171(3) of the Constitution. The Supreme Court observed:

On the re-organisation of the old State of Punjab, adjustments had to be made in the membership of the Legislative Council. No such adjustment as would strictly conform to the requirements of Article 171(3) could however be made without

fresh elections. The Parliament therefore adopted an ad hoc test and unseated members who were residents in the territories of Haryana and Himachal Pradesh.

It may be as was held by the Delhi High Court in *Romesh Chander v. Delhi Electricity Supply Undertaking* 1970 ILR Del. 310 and by the Allahabad High Court in *Narendra Bhadur Srivastava v. Public Service Commission* 1971 (2) S.L.R. 414 that an appointment, though described as "ad hoc", is nevertheless in its true nature an appointment in the normal sense. The courts will not hesitate in such cases to define them by their true nature. To be an ad hoc appointment, it must have been made in the bona fide belief at the time of making it that it was of that nature.

75. In the case before us, it is clear that promotions in the normal sense could not be made at the time. Such a promotion calls for consideration of the merit and seniority of all eligible officers. Both factors merit and seniority must be available for consideration. It is true that merit may play a dominant role and, as has sometimes been said, be of primary consideration. But the factor of seniority must also be known. When the appointments of Shri Kedarishwar, Shri Rampal Singh and Shri T.R. Handa were made, in April 1961), the integrated seniority lists of the judicial officers had not yet been determined but in view of the correspondence between the Central Government and the Himachal Pradesh Government it was known that the task of drawing up of those lists was being undertaken and it could reasonably be expected that the task would be completed within a few months. One vacancy was pending from February, 1968, the second from April, 1968 and a third vacancy arose in December, 1968. The three vacancies remained pending, and the original records of the High Court and the Himachal Pradesh Government show that public pressure was building up for filling them up urgently. Ad hoc appointments alone were possible and the material, to which I have referred earlier, shows that throughout both the High Court and the Himachal Pradesh Government understood the proposed appointments as ad hoc appointments. The appointments were referred to "as purely temporary and by way of interim arrangement", there was the comment that "because of the time element an ad hoc appointment was inescapable", it was also said that "by those appointments the seniority of the judicial officers should not be affected", and repeatedly the expression "ad hoc" was used by both the High Court and the Himachal Pradesh Government when referring to the appointments. The High Court even said on September 7, 1968, that the appointments "will not as such confer any preferential right on these two persons (Shri Kedarishwar and Shri Rampal Singh) to be absorbed in the permanent higher judicial cadre of Delhi and Himachal Pradesh, which is now in the making". The notification which made the impugned appointments, dated April 8, 1969, itself demonstrates by the reservations qualifying the appointments that they were of an ad hoc nature.

76. In my opinion, the only conclusion possible is that the promotions recommended by the High Court and made by the Himachal Pradesh Government

were ad hoc appointments. Appointments in the normal sense could not be contemplated because the integrated seniority of the judicial officers had yet to be determined, and a settled structure embodying the conditions for making such appointments was not yet available. As appointments in the normal sense were not possible it was not obligatory to apply the usual procedure of a comparative appraisal of the merit of all the eligible officers, and when there was no such obligation it cannot be said that Articles 14 and 16 of the Constitution were contravened.

77. Further, it cannot be said that at the time when it made the recommendations the High Court believed that it was not recommending "ad hoc" appointments and that therefore the recommendations were not made bonafide. No such allegation has been made by the Petitioner against the High Court.

78. A contention raised on behalf of Shri Kedarishwar may be noticed at this stage. It was urged that the Committee presided over by Dua C.J. and attended by the Chief Secretary of the Himachal Pradesh Government and others on February 6, 1969, had considered the cases of the eligible judicial officers and it classed Shri Kedarishwar as "Very Good", and that the proceedings of the Committee had been placed before the High Court. I have been unable to find any material to show that those proceedings were placed before the High Court before the impugned appointments were made. Apart from that, the decisions of that Committee could not bind the Delhi High Court. Under the law, promotions to the higher judicial service have to be made by the Government in consultation with the High Court. Although Dim, C.J. presided over the meeting and participated in it, it cannot be said that he represented the High Court. The law laid down by the Supreme Court in *Chander Mohan v. State of U.P.* AIR 1966 S.C. 1987 and *Prem Nath and Others Vs. State of Rajasthan and Others*, negatives the contention that the panel drawn up by the Committee can be said to represent the view of the High Court in respect of the officers mentioned therein. The deliberations of that Committee have no legal significance. Moreover, the recommendations which had already been made by the High Court to the Himachal Pradesh Government for filling up the three vacancies were not subject to reconsideration by the Committee.

79. Upon the considerations which have found favour with me, I hold that the appointments of Shri Kedarishwar and Shri T.R. Handa affected by the notification dated April 8, 1969, cannot be successfully assailed on the ground that when recommending their appointments the High Court did not make a comparative estimate of the merit of all eligible officers.

80. It may be observed that this contention of the Petitioner, that the comparative merit of all the eligible officers was not considered, does not affect Shri Kedarishwar and Shri T.R. Handa alone. It also affects the Petitioner, because that circumstance was also wanting in his appointment of April, 1969 and June, 1969 and, had the opinion been that the consideration of comparative

merit was obligatory, the Petitioner would not have been entitled to claim relief against the "reversion" in November, 1969 because, after all, an officer aggrieved by an order of "reversion" must be shown to have been validly promoted at the outset.

81. The next submission of the Petitioner may now be considered. I have already adverted to material showing that from the outset the High Court recommended the name of Shri Kedarishwar for promotion on the basis that he had held the post of District and Sessions Judge, Mandi, on the "appointed day" and that his name should be included in the list of District/Additional District and Session Judges as on that date. Reference has been made by me to the note of the Registrar, dated February 17, 1968, and the notes and orders in the High Court file thereafter. It is also abundantly clear that seniority was not the basis for the recommendation. Indeed, a closer examination will show that the factor of seniority could possibly have no relevance if the basis was the one adopted by the High Court. The factor of seniority can operate as between Subordinate Judges only with reference to their position in the cadre of Subordinate Judges. The circumstance that one of them had earlier served as Additional District and Sessions Judge, a post outside that cadre, has no relevance whatever when referring to the seniority of that officer in that cadre. The significance of having served in that post can only be that the particular officer had held a post of a higher status, and had previous experience of that work, which the other Subordinate Judges could not claim to have. The High Court considered that as Shri Kedarishwar had served earlier as Additional District and Sessions Judge, he should be preferred over the other Subordinate Judges. The High Court, in addition, attached significance to the circumstance that the post was held by Shri Kedarishwar on November 1, 1966, and that his name would find place in the list of District/Additional District and Sessions Judges as on that date. The Petitioner submits that after Shri Kedarishwar had reverted that circumstance could be of no avail. The Petitioner would be correct if that circumstance was employed conferring a right on Shri Kedarishwar to future promotion. No right to future promotion can be inferred merely because Shri Kedarishwar had earlier served as Additional District and Sessions Judge and because his name found place in the list of District/Additional District and Sessions Judges as on November 1, 1966. But the circumstance could be considered as a legitimate criterion for deciding whether he should be promoted. The High Court was not bound to recommend his name for higher promotion because of that circumstance, but when deciding in its discretion whether it should recommend him it could take that circumstance into consideration. It was a factor which could influence, but not bind, the decision of the High Court. Now, as I read the notes and decisions in the records before me it is evident that the circumstance of Shri Kedarishwar having held the post of Additional District and Sessions Judge on November 1, 1966, was understood by the High Court as merely a legitimate criterion for considering him for promotion. It was not treated as conferring any right in Shri Kedarishwar binding the High Court to recommend him for appointment.

82. There was serious controversy between the High Court and the Himachal Pradesh Government on the question whether Shri Kedarishwar could be included in the list of the District/Additional District and Sessions Judges as on November 1, 1966. It is apparent that both attached considerable significance to that circumstance. I confess that I have found it difficult somewhat to understand why. Why did the High Court consider it desirable to rely upon the circumstance that Shri Kedarishwar's name would be included in the list of District/Additional District and Sessions Judges as on November 1, 1966? A possible answer may lie in what that list imported in the context in which it stood. The Central Government had been entrusted by the Punjab Re-organisation Act with the task of integrating the services. It was the only authority recognised by law for that purpose. A scheme of integration proposed by it alone would have statutory sanction, and the position in which that scheme showed the different officers affected, both already serving and those allotted, could alone be entitled to recognition in law. The Central Government, for the purpose of drawing up the scheme of integration, had laid down certain principles in its letter of February 14, 1967. Those principles provided the basis on which the integrated judicial structure was to be raised. The joint seniority lists drawn up on the basis of those principles demonstrated the composition of that integrated judicial structure. Each of the lists showed:

(a) the status of the officer included in it, for example the list of District/Additional District and Sessions Judges showed that an officer mentioned in it was a District and Sessions Judge or an Additional District and Sessions Judge, and

(b) the position of seniority inter se between the officer in that List.

83. Now, because the list was drawn up in accordance with the scheme of integration laid down by the Central Government, the status of the officer mentioned in it was a status recognised authoritatively in the scheme of integration. In other words, in relation to all the officers involved in the integration the officer shown in the list had, in the authoritative recognition of the Central Government, the status shown therein. It was a status which could not be disputed by any of the officers involved in the integration.

84. The list was prepared with reference to "the appointed day", that is November 1, 1966. Therefore, if Shri Kedarishwar was shown as Additional District and Sessions Judge in the list of District/Additional District and Sessions Judges, it was authoritative proof that within the scheme of integration he was recognised by the Central Government, and as against all those affected by the integration, that he held that status on November 1, 1966. The inclusion of his name in that list was evidence that according to the principles laid down by the Central Government itself, the authority entrusted by the statute with the task of integration, he had to be considered as holding the post of Additional District and Sessions Judge on November 1, 1966, a post superior to that held by those whose names were placed only in the list of Subordinate Judges. It is worthy of

emphasis again that, for the purpose of the point before us, inclusion in the list was a matter relevant to Shri Kedarishwar's status and not his seniority. The status was relevant because it was being compared with the status of other Subordinate Judges as on November 1, 1966. As regards seniority, the presence of the name in the list of District/Additional District and Sessions Judges could be relevant only in respect of the other officers mentioned in that list. The question was never whether Shri Kedarishwar was senior or junior to the officers in that list.

85. Therefore, in relying upon the inclusion of Shri Kedarishwar's name in the list of District/Additional District and Sessions Judges, the High Court relied upon the circumstance that in relation to all the officers affected by the integration, including the allotted officers, Shri Kedarishwar would authoritatively be treated as holding a superior status to that of the other Subordinate Judges as on November 1, 1966. The High Court chose the list as a criterion because, in the unsettled state of things at that time, it afforded a sound standard for determining whether the post of Additional District and Sessions Judge, Mandi, held by Shri Kedarishwar had a status which could be authoritatively said to be superior to that of the Subordinate Judges. The High Court was concerned with seeking a standard which could relate the status of that post with the posts held by all the judicial officers, including the allotted officers. The list provided the only standard which could then be postulated in the context of the process of integration.

86. Why did the High Court prefer to consider Shri Kedarishwar holding the post on November 1, 1966, and not in October, 1966, when he was actually appointed to it? Because November 1, 1966, was the "appointed day". It was the date which marked a new composition of the Himachal Pradesh judiciary. It now included not only judicial officers already serving in Himachal Pradesh but also judicial officers allotted from Punjab. For the first time, the two sets of officers were brought into relationship with each other as members of a single judiciary. It cannot be disputed that when considering the position of all the officers inter se the earliest date would be November 1, 1966. In this context, whatever may have been the position flowing from the post being held by Shri Kedarishwar before the "appointed day", his holding the post on the "appointed day" gave it an indisputable relevance in relation to all the judicial officers including the allotted officers.

87. It should be observed that the consideration which prevailed with the High Court in regard to Shri Kedarishwar held true on the date when his name was under consideration, and even though he had been reverted from the post of Additional District and Sessions Judge, Mandi, in May, 1967 to his substantive post as Subordinate Judge it continued to remain valid thereafter as a criterion for consideration. Indeed, that consideration could arise only if he was a Subordinate Judge on the date when he was being considered for promotion; it would have been meaningless if he had already been at that time serving as

District/Additional District and Sessions Judge.

88. The Petitioner next urges that the Delhi High Court erred in proceeding on the view that the name of Shri Kedarishwar should find place in the list of District/Additional District and Sessions Judges because, the Petitioner says, on November 1, 1966, Shri Kedarishwar held the post of Additional District and Sessions Judge in a "purely stop-gap or fortuitous arrangement".

89. In this connection, it has been contended that the opinion of the Central Government sent on March 11, 1968, to the Delhi High Court that an officer (in the position of Shri Kedarishwar) should be placed in the gradation lists of both cadres, of the District/Additional District and Sessions Judges as well as of the Subordinate Judicial Service, was obtained by the Registrar of the High Court on a deliberate mis-representation of facts. It is pointed out that the Registrar mis-quoted the principles set out in the Central Government's letter, which, according to the Petitioner, refers to--

length of continuous service on 1-11-1966 whether permanent or temporary in that particular or other post and of the same cadre; this should exclude the period for which an appointment is held in a purely stop-gap or fortuitous arrangement.

It is alleged that the Registrar when quoting that extract did not refer to the requirement that the post should be "of the same cadre". Now, the letter addressed by the Registrar to the Central Government referred also to the Central Government's letter dated February 14, 1967, and a perusal thereof will show that the extract quoted by the Registrar is in exact terms with that set out in the Central Government's letter. It is then pointed out that the post to which Shri Kedarishwar was appointed in October, 1966 was a temporary post and not a cadre post, and the Central Government was misled into believing that it was a cadre post. It appears to me that a temporary post created to perform the ordinary work for which permanent posts already exist in a cadre is generally considered as a temporary addition to that cadre Chaudhuri's Compilation of the Fundamental Rules, 5th Edition, 1971, Vol, I.P. 151 The Himachal Pradesh Government itself considered that a temporary post was included in the strength of District and Sessions Judges, and that appears from its letter dated November 25, 1968, to the Central Government. It would seem therefore that the post of Additional District and Sessions Judge, Mandi, was rightly treated as included in the cadre of District and Sessions Judges. It is then stated that the Registrar was wrong when he said that Shri Kedarishwar would have continued to occupy the post of Additional District and Sessions Judge, Mandi, but for the extension of the jurisdiction of the Delhi High Court to Himachal Pradesh. As to this, it will be noted that some appeals still remained pending before the Additional Judicial Commissioner when the jurisdiction of the Delhi High Court was extended to Himachal Pradesh and, therefore, if that jurisdiction had not been extended it is probable that Shri Chet Ram Thakur would have continued for sometime more as Additional Judicial Commissioner and, therefore, Shri Kedarishwar would have

continued accordingly as Additional District and Sessions Judge, Mandi. Having regard to the limitations of the writ jurisdiction exercised by us in this case, all that needs to be pointed out is that while earlier S.K. Kapur and Hardyal Hardey JJ. had taken the view that the appointment of Shri Kedarishwar as Additional District and Sessions Judge, Mandi, was in a stop-gap and fortuitous arrangement, thereafter upon considering the representations of the judicial officers concerned and hearing them orally the Committee consisting of Hardyal Hardy, Jagjit Singh and Om Parkash JJ. took a wholly contrary view in their report dated November 17, 1969. The three learned Judges held that the appointment of Shri Kedarishwar as Additional District and Sessions Judge, Mandi, was not in an ad hoc or fortuitous arrangement. It will be noted that the report of the three learned Judges was endorsed by the entire body of Judges of the Delhi High Court in the meeting of November 21, 1969. So far as the Central Government is concerned, subsequent to the opinion expressed by it on March 11, 1968, to the High Court the Law Ministry expressed the view that Shri Kedarishwar held the post in a fortuitous or stop-gap arrangement. But thereafter the Advisory Committee, after considering the representations of the judicial officers, came to the opinion that the name of Shri Kedarishwar should be included in the List of District/Additional District and Sessions Judges, and the Central Government accepted that view. It may also be recalled that although the Himachal Pradesh Government insisted that the post held by Shri Kedarishwar in October, 1966 was not in a stop-gap or fortuitous arrangement, nevertheless when drawing up the integrated seniority list of the District/Additional District and Sessions Judges and forwarding it to the High Court on July 19, 1969, it included the name of Shri Kedarishwar in that list. It is apparent that when the High Court proceeded on the basis that the post held by Shri Kedarishwar was not a "purely stop-gap or fortuitous arrangement" and that therefore his name should be included in that list it acted on a view which, it is clear from what has been set out above, was possible in the minds of reasonable men, and the mere circumstance that a different view was also possible would not justify interference by this Court in the exercise of its writ jurisdiction.

90. As regards the validity of the recommendation of the High Court concerning Shri T.R. Handa, it will be noticed that the High Court took into account that the length of his service was greater than that of other Subordinate Judges. That, it cannot be disputed, is a reasonable criterion.

91. Another contention raised by the Petitioner is that the appointment of Shri Kedarishwar and of Shri T.R. Handa were contrary to the directions contained in the letter dated July 21/28, 1966, from the Chief Secretary (Integration Cell) to the H.P. Administration to the departments in Himachal Pradesh. In the opinion that the appointments were ad hoc appointments, I am unable to see how that can be said to contravene anything laid down in that letter, even if we were to assume that the directions contained therein applied to judicial officers. In the circumstances *Jagtar Singh and Others Vs. State of Punjab and Others*, on which the Petitioner relies, does not apply.

92. In my opinion, the Petitioner has failed to establish that the appointment of Shri Kedarishwar and of Shri T.R. Handa by the notification of April 8, 1969, are invalid.

93. The Petitioner's case which now remains to be considered concerns the validity of his "reversion" by the High Court order dated November 26, 1969. The relevant facts in respect of this part of the case have been set out earlier. Upon Shri Chet Ram Thakur, then District and Sessions Judge, Kangra, proceeding on leave a chain of transfers was necessitated by the leave vacancy. Shri B.D. Sharma, then District and Sessions Judge, Mandi, was appointed District and Sessions Judge, Kangra Shri Rampal Singh, then Additional District and Sessions Judge, Mandi, was designated District and Sessions Judge, Mandi, and the Petitioner was appointed Additional District and Sessions Judge, Mandi. On the return of Shri Chet Ram Thakur from leave in August, 1969, the High Court took the view that Shri Kedarishwar should be reverted and not the Petitioner. Before the Himachal Pradesh Government could pass the order of reversion, Shri B.D. Sharma proceeded on leave, and in the circumstances the recommendation for reversion was recalled by the High Court and Shri Kedarishwar was permitted to continue as District and Sessions Judge, Mahasu. Reference has already been made to the report dated November 17, 1969, of the Committee of Hardyal Hardy, Jagjit Singh and Om Parkash JJ. and to the decision of the High Court at a Full Court Meeting on November 21, 1969, to recommend the reversion of the Petitioner. The Himachal Pradesh Government pressed for reconsideration by the High Court of that recommendation. The Petitioner also represented against it. The High Court, for the reasons given by it, declined to alter its decision. Up to the date when the Petitioner filed this writ petition the Himachal Pradesh Government was still persevering in its attempt to persuade the High Court to reconsider the decision taken in the Full Court Meeting of November 21, 1969, to revert the Petitioner.

94. Now, it is necessary to note that the relief claimed here by the Petitioner is confined to relief against his "reversion". At the outset, it may be observed that the High Court order of November 26, 1969, does not of itself revert the Petitioner. It is a "transfers and postings" order. It assumes that the Petitioner is being reverted to his substantive post of Subordinate Judge. The original records before us show that the High Court on that date, and subsequently again and again, wrote to the Himachal Pradesh Government requesting it to issue an order for the reversion of the Petitioner. That clearly demonstrates that when the High Court made the order dated November 26, 1969, it was aware that the order made by it was not an order of reversion and that the order of reversion had to be passed by the Himachal Pradesh Government. Nevertheless, although no order of reversion was passed by the Himachal Pradesh Government the Petitioner was directed by the High Court to hand over charge as Additional District and Sessions Judge, Mandi, and was posted as Senior Subordinate Judge, Sirmur at Nahan. So far as the direction to hand over charge as Additional District and Sessions Judge, Mandi, was concerned, it lay within the powers of

the High Court to make that direction. It was open to the High Court to post the Petitioner as Additional District and Sessions Judge elsewhere or perhaps even not to give him a fresh charge immediately, provided his status in the higher judicial cadre was maintained. The High Court exceeded its powers when it posted the Petitioner as Senior Subordinate Judge. In my opinion, the High Court could not do so unless the Petitioner had been reverted by the Himachal Pradesh Government. The High Court order of November 26, 1969, was essentially a "transfers and postings" order. Transfers and postings of judicial officers, it cannot be disputed, lie within the powers of the High Court. Whether it should or should not have made the transfers and postings mentioned in the order of November 26, 1969, was a matter lying within the administrative discretion of the High Court. By that order Shri Kedarishwar, who it may be noted was never reverted by the Himachal Pradesh Government when handing over charge as District and Sessions Judge, Mahasu, was posted as Additional District and Sessions Judge, Kangra at Dharamsala, and Shri T.R. Handa was transferred from the post of Additional District and Sessions Judge, Kangra, to the post of Additional District and Sessions Judge, Mandi, and the Petitioner was required to hand over charge of the latter post. It will be clear that these transfers and postings lay within the powers of the High Court. What it could not do after requiring the Petitioner to hand over charge as Additional District and Sessions Judge, Mandi, was to post him as Senior Subordinate Judge. The order of reversion could be passed by the Himachal Pradesh Government only, and so long as that order was not passed the Petitioner was entitled to continue in his status in the higher judicial cadre. The order of reversion had not yet been passed by the Himachal Pradesh Government, and consequently the High Court order posting the Petitioner as Senior Subordinate Judge was in excess of its powers and, therefore, invalid.

95. Accordingly, I hold that the order of the High Court posting the Petitioner as Senior Subordinate Judge, Sirmur at Nahan, is invalid.

96. It is urged by some of the Respondents that the Petitioner was appointed to a leave vacancy and therefore automatically reverted in November, 1969. There is no doubt as appears clearly from the record, that the Petitioner was appointed as Additional District Judge in the chain of transfers brought about by Shri Ghet Ram Thakur proceeding on leave. But when Shri Ghet Ram Thakur returned from leave the continuation thereafter of the Petitioner as Additional District and Sessions Judge cannot be ascribed to that leave vacancy. On the contrary, the High Court decided to revert Shri Kedarishwar, and Shri Kedarishwar continued because Shri B.D. Sharma proceeded on leave. Thereafter, Shri Kedarishwar himself applied for and was granted leave. The position remained fluid until the High Court took up the matter on November 21, 1969, and decided to recommend the reversion of the Petitioner. In my opinion, it cannot be said that when the High Court took that decision the Petitioner was serving in a leave vacancy.

97. Accordingly, I hold that the order of the High Court posting the Petitioner as Senior Subordinate Judge, Sirmur at Nahan, is invalid. It may be mentioned that although the Petitioner has misconceived the relief which was available to him, the Court is empowered in a proper case to grant the appropriate relief. Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another,

98. Before concluding, two further contentions remain to be noticed. One contention raised by the Petitioner is that Shri Guru Dutt, Registrar of the Delhi High Court, was biased in favour of Shri Kedarishwar and acted mala fide against the Petitioner, and, therefore, the appointments of Shri Kedarishwar and Shri T.R. Handa as well as the subsequent "reversion" of the Petitioner are vitiated. It is necessary to remember that the appointments and "reversion" were considered and decided by the Chief Justice and the other Judges of the Delhi High Court and it is not possible to believe that they did not exercise their independent judgment in those matters. No allegation of bias or mala fides has been made against them.

99. It is urged on behalf of some of the Respondents that the writ petition should fail on the ground of laches. As I am of opinion that the Petitioner's challenge to the appointments of Shri Kedarishwa and Shri T.R. Handa in April, 1969 has failed, it is not necessary to consider the question of laches in respect of that part of the Petitioner's case. As regards the Petitioner's case that he has been illegally "reverted", I am unable to hold that he is guilty of laches. The writ petition was filed in June, 1970, but between the High Court order complained of and the filing of the writ petition the Petitioner and the Himachal Pradesh Government were still attempting to persuade the High Court to reverse its recommendation.

100. All that remains now is to decide what relief should be granted to the Petitioner on this writ petition.

101. As, in my opinion, the Petitioner, has failed to establish that the appointment of Shri Kedarishwar and Shri T.R. Handa by the notification dated April 8, 1969, is invalid relief in that regard must be refused.

102. The Petitioner also claims relief against the order of "reversion" contained in the Delhi High Court's letter dated November 26, 1969. That letter, as I have already said, does not revert the Petitioner. It contemplated an order of reversion by the Himachal Pradesh Government and such an order has not been passed by the Himachal Pradesh Government. That relief must also be refused. But the Petitioner is entitled to relief against the order of the High Court posting him as Senior Subordinate Judge, Sirmur at Nahan.

103. The Petitioner has also claimed a declaration that he is entitled to "all the benefits of seniority, pay and allowances etc. of the post of Additional District and Sessions Judge with effect from the date Respondent Nos. 6 and 8 (Shri Kedarishwar and Shri T.R. Handa) took over as District/Additional District and Sessions Judge, and in any case with effect from December 1969--the date when

the Petitioner handed over charge of the post of Additional District and Sessions Judge, Mandi, as may be admissible under the rules." As regards the first part of the relief, it is apparent that so far as this writ petition is concerned the Petitioner can get no relief. The relief has been sought on the footing that the appointments of Shri Kedarishwar and Shri T.R. Handa on April 8, 1969, are invalid. As I am of opinion that those appointments are not invalid no question of granting that relief can arise on that basis. What consequences, if any, will flow from the finding that the appointments are ad hoc appointments is a matter which may arise later before the appropriate authority. Any status or benefit which rightfully belongs to the Petitioner in consequence is a matter to be considered then, and in my opinion, it is not for us in this case to discuss the merits of the Petitioner's claim in that regard. If it is found then that the Petitioner is entitled to some status or benefit, there is no reason to apprehend that the appropriate authority will not grant him that status or benefit. I am firm in the view that the question does not arise in this writ petition. The questions which fall for consideration in this writ petition are those which arise upon the cause of action pleaded by the Petitioner. On the point whether the Petitioner was entitled to be considered for appointment in the higher judicial cadre as on the date in April, 1969 when Shri Kedarishwar and Shri T.R. Handa were appointed, the case of the Petitioner was that these appointments were invalid. It was never his case that if the appointments were ad hoc appointments and therefore valid, nevertheless he was still entitled to be considered for appointment with reference to those dates in the higher judicial cadre. That is a question which cannot arise in this writ petition because, as I have held ad hoc appointments alone were permissible until the seniority lists were finalised by the Central Government and the seniority lists, it will be noted, were finalised after the writ petition had been filed. The cause of action on which the writ petition was filed could not have contemplated any claim by the Petitioner that he should be considered for appointment to the higher judicial cadre even on the footing that the appointments of Shri Kedarishwar and Shri T.R. Handa in April, 1969 were valid. In issuing any direction in this writ petition requiring the appropriate authority to consider that claim of the Petitioner we would be anticipating a cause of action which has yet to arise. In a writ petition a direction should be issued generally only if a statutory authority has failed to perform its statutory duty. As the occasion for that authority to perform its functions has yet to arise, and it has not refused to perform its duty, no direction can be issued. The High Court in its extraordinary jurisdiction under Article 226 of the Constitution should issue orders or directions only when they are called for.

104. Moreover, in my opinion, it will be against proper principle to foreshadow decisions on matters which have not yet arisen for determination. Any attempt to the contrary could prejudice the fair determination of those matters and could possibly fetter the exercise of the administrative jurisdiction of the appropriate authority. It has been laid down consistently that a court should strictly confine itself to the decision of issues which properly arise before it, and observations or

decisions in respect of issues which have yet to arise have uniformly received disapproval.

105. As regards the latter part of the relief claimed by the Petitioner, namely that he is entitled to the benefits of seniority, pay and allowances etc. of the post of Additional District and Sessions Judge with effect from December 1969, when he handed over charge of the post of Additional District Judge, Mandi, in my opinion he is entitled to relief with effect from the date on which he was posted and took charge as Senior Subordinate Judge, Sirmurat Nahan, the relief being such as is admissible under the rules applicable to him.

106. The Petitioner has also contended that he is entitled to the quashing of the decision of the High Court in its Full Court meeting of November 21, 1969, recommending the reversion of the Petitioner. It is obvious that the proceeding for reversion is still incomplete. The proceeding was initiated by the decision of the High Court to recommend the reversion of the Petitioner, but so long as it is not completed by an order of reversion by the Himachal Pradesh Government, the proceeding remains incomplete. The Himachal Pradesh Government has not yet passed an order of reversion and the position remains inchoate. The matter is still pending with the Himachal Pradesh Government. Therefore, in my opinion, no relief can be granted at this stage against that recommendation.

107. But assuming that the Petitioner is entitled at this stage to pray for relief against the validity of the decision of the High Court recommending his reversion, in my opinion, he has no right to challenge the validity of that decision. The original records disclose clearly that the appointment of the Petitioner by the orders dated April 1969 and June 1969 was an ad hoc appointment. As I have already pointed out, ad hoc appointments alone were possible during the unsettled state of things pending the finalisation of the seniority lists. Reference may be made to the Central Government's letter dated February 14, 1967. The appointment of the Petitioner being an ad hoc appointment, no right vested in the Petitioner to insist on continuing in his appointment. Unless such a right can be said to vest in him, it is not open to him to complain of the contravention of Articles 14 and 16, and of Article 311(2), of the Constitution. The remedy open to the Petitioner lay in approaching the High Court not on the judicial side but on its administrative side.

108. Towards the end a few observations may be made. The case has raised issues of serious importance concerning the judicial officers of Himachal Pradesh. Because of its importance, we heard counsel for the parties at length and then as we considered that certain serious issues called for further arguments, we heard the parties again in greater detail. Learned Counsel have throughout put the case very fairly on behalf of their respective clients and their submissions have been distinguished as much by their industry and learning as by their eloquence.

109. The writ petition is allowed insofar as the High Court order made in November, 1969 posting the Petitioner as Senior Subordinate Judge, Sirmur, at

Nahan is (plashed. The Petitioner will be entitled to consequential reliefs arising upon the quashing of that order so far as they are admissible to him under the rules. The remaining reliefs are refused. In the circumstances, the parties will bear their own costs.

D.B. Lal, J.—In this petition filed under Articles 226 and 227 of the Constitution, Shri A.N. Bhoil, a member of the higher judicial service of Himachal Pradesh, has called in question two notifications one dated 12-10-1966 of the Government of Himachal Pradesh wherein Shri Kedar Ishwar Senior Sub-Judge (Respondent No. 6) was promoted temporarily to officiate as Additional District Judge and the other dated 8th April, 1969, of the Government of Himachal Pradesh wherein Shri T.R. Handa Senior Sub-Judge (Respondent No. 8) who according to the Petitioner was not eligible and Shri Kedar Ishwar Senior Sub-Judge (Respondent No. 6) who according to the Petitioner was junior to him in the gradation-list, were promoted as District Judges, and the order of reversion contained in Delhi High Court's letter dated 26th November, 1969, wherein the Petitioner was reverted from the post of District judge and was posted as Senior Sub-Judge. In addition to the quashing of the two notifications and the said reversion order, the Petitioner claims directions in his favour so that his seniority is determined enabling him to get all benefits of pay, allowance, selection grade, etc., from the date the Respondents 6 and 8 were promoted as District Judges.

2. The Petitioner Shri A.N. Bhoil was appointed in the Punjab Civil Service (Executive) on 19-11-1954. Thereafter he was transferred to the Judicial Branch of that Service and was confirmed as Subordinate Judge on 9-11-1957. Just before the date of integration, i.e. on 1-11-1966, he was posted as Chief Judicial Magistrate Kangra. His services were allocated permanently to the State of Himachal Pradesh. According to Petitioner, the Respondent No. 6 became member of the Subordinate Judicial Service of Himachal Pradesh on 12-9-1961, and was confirmed on the very same date. Before 1-11-1966, the cadre of the Higher Judicial Service of Himachal Pradesh, according to Petitioner, was of 2 permanent posts of District Judges. Besides them, there was one temporary post of Additional District Judge. The incumbents against these posts were Thakur diet Ram (at present Judge of this Hon"ble Court), Shri Hem Chand and Shri B.D. Sharma. According to Petitioner, Shri Om Prakash District Judge (who later on became a Judge of Delhi High Court) was promoted sometimes before July, 1966, as Judicial Commissioner of Himachal Pradesh. The Government stood in the need of appointing an Additional judicial Commissioner to dispose of the appeals etc. that were pending from the decisions given by Shri Om Prakash. Therefore, on 8th July, 1966, Thakur diet Ram was appointed and took over as Additional Judicial Commissioner. His post was initially created for six months and the specific purpose for which he was appointed was to dispose of the pending judicial work from the decisions of Shri Om Prakash. On 10th October, 1966, Shri Hem Chand applied for leave preparatory to retirement which, in his case, was due on 6th February, 1967. The Judicial Commissioner of Himachal Pradesh appointed the Respondent No. 6 in that leave arrangement and on 17-10-1966

the Respondent No. 6 took charge of the post of the Additional District Judge and as his notification indicated, he was "temporarily to officiate" against that post. On 1st May, 1967, the jurisdiction of Delhi High Court was extended to Himachal Pradesh. The result was that Thakur Chet Ram had to revert back as District Judge. The other consequence was the reversion of the Respondent No. 6 on 27th May, 1967. He was posted as Senior Sub-Judge and was given the special post of Deputy Registrar to Delhi High Court. According to Petitioner, the appointment of the Respondent No. 6 for the period between 17-10-1966 and 27th May, 1967, was fortuitous and stop-gap and did not confer upon him any right as to seniority in the gradation-list of District Judges. The Himachal Pradesh Government upon advice from the Central Government had also issued a directive dated 28th July, 1966, to all Heads of Departments including the Judicial Commissioner, not to make any appointment or promotion conferring any right or claim upon officers. That was done because of the impending integration, when senior officers were likely to be allocated from Punjab and their seniority was to be safeguarded. Despite this ban, contends the Petitioner, the Respondent No. 6 was promoted in the stop-gap and fortuitous arrangement with the avowed object of defeating the claim of the senior officers being allocated from Punjab. After the date of integration, two permanent District Judges were allocated from Punjab, namely Shri R.N. Agarwal and Shri D.R. Dhameja. These two officers came along with their posts which were the Sessions Divisions of Simla and Kangra.

3. In February, 1968, an addition post of District Judge was created for Kangra, and according to the Petitioner, the selection was to be made on merit-cum-seniority. The recommendation of the High Court was sent for and the Respondent No. 6 was recommended because he was considered the senior-most Sub-Judge as his name was included in the list of District Judges which was framed with reference to the integration date, i.e. 1st November, 1966. The Respondent No. 6 had temporarily officiated as District Judge before that date and so his name was included in that list. The High Court considered him the senior most officer for that reason and recommended his promotion in February, 1968. The Petitioner and others raised objections to his seniority. Upon that the State Government did not issue any notification of the appointment of Respondent No. 6. The then Registrar of Delhi High Court, namely, Shri Guru Dutta, according to Petitioner, wanted to help the Respondent No. 6 who was his Deputy Registrar and on 22nd February, 1968, he made a reference to Shri B. Shukla, Deputy Secretary, Ministry of Home Affairs. The Registrar made a query in his letter, as to whether an officer who was officiating in a higher cadre on the date of integration and was likely to continue to officiate but for the extension of jurisdiction of Delhi High Court, could be included or not in the gradation-list of District Judges. According to Petitioner, Shri Guru Dutta did not place correct facts before the Home Ministry. It was wrong to state that the Respondent No. 6 was officiating against a cadre post, nor could it be stated that he was likely to continue against the higher post but for the extension of jurisdiction of Delhi

High Court. The Petitioner submits that the posting of Respondent No. 6 could last only upto the disposal of appeals etc., pending before the Additional Judicial Commissioner and hence he could not be considered to continue in service for any indefinite period. The reply of the Ministry of Home Affairs was received on 11-3-1968. It was to the effect that in the hypothetical case set out by the Registrar before the Deputy Secretary, the name of such officer should be shown in both the lists--one for the higher post of District Judges and the other for the lower post of subordinate Judges. Being reinforced by this opinion of the Ministry of Home Affairs, the Registrar pressed into service the claim of the Respondent No. 6. However, the opinion at the level of the Government was against the promotion of Respondent No. 6 who was considered junior to the Petitioner. The Petitioner and other Respondents who were senior officers made representations to the High Court and called in question the seniority of Respondent No. 6. According to Petitioner, the High Court, nevertheless, considered the Respondent No. 6 senior because of the inclusion of his name in the gradation-list of the District Judges. On 29th April, 1968, the Respondents 7 to 9 and 11 met the Chief Justice (Mr. Justice I.D. Dua). According to Petitioner, the Chief Justice reiterated the stand of the High Court which was based on the seniority of the Respondent No. 6. The State Government wrote down two letters one on 25th May, 1968 and the other on 14th December, 1968, to the Central Government setting out very squarely the cases of respective parties and asking for the opinion regarding their seniority. It was specifically pointed out in the two letters that the Petitioner was senior to Respondent No. 6 and could not be ignored for promotion. On 3rd May, 1968, Shri A.S. Bhatnagar, District Judge, retired from service and as such another post was available for promotion. The Delhi High Court recommended Shri Ram Pal Singh, Senior Sub-Judge (Respondent No. 7) for promotion against that post and the State Government also accepted the recommendation. Accordingly a notification was issued on 6th May, 1968, appointing Shri Ram Pal Singh as District Judge. The High Court, according to Petitioner, subsequently did not relieve Shri Ram Pal Singh and took up the stand that until Respondent No. 6 was promoted, no officer could get precedence over him. That decision was again based on the seniority of the Respondent No. 6 which, according to the Petitioner, never existed. In the second week of December, 1968, Shri Dhameja another District Judge retired and in this manner upto that date one post of permanent District Judge and two posts of Additional District Judges lay vacant to be filled by promotion. The High Court recommended, as a result to their decision made on 18th December, 1968, that Shri Kedarishwar (Respondent No. 6), Shri Ram Pal Singh (Respondent No. 7) and Shri T.R. Handa (Respondent No. 8) be promoted against these three posts. The State Government took exception to the promotion of Respondent No. 6 and, as I have stated before, they had already referred the matter to the Central Government by their letter dated 14-12-1968. In order to relieve the tension that existed between the High Court and the State Government, the Chief Justice agreed to have a joint meeting with the Chief Secretary, which has been pressed into service during arguments as departmental promotion committee (D.P.C.).

The members for that meeting were: the Chief Justice Mr. Justice I.D. Dua; Shri K.N. Channa, Chief Secretary; Shri Guru Datta, Registrar; and Shri Prakash Chand, Joint Secretary (Appointment). The D.P.C. met on 6th February, 1969, and considered the service records of eligible officers. They drew up a panel and graded the Petitioner along with the Respondents 6 and 7 as "Very Good". They graded the Respondent No. 8 as "Good". In that meeting, the Chief Justice however, expressed that the three officers already recommended by the High Court on 18th December, 1968, for promotion, should be posted in the first instance. In other words, he insisted that the recommendations of the High Court shall stand independent of the decision of the D.P.C. Although the State Government had serious objection to the promotion of Respondent No. 6 who was graded as "Very Good" as compared to the Petitioner who too was graded "Very Good" and was senior to him, yet in deference to the wish of the High Court they agreed to promote the three officers on ad hoc basis with a clear understanding that the seniority inter se of the officers was not to be disturbed. This resulted in the impugned notification dated 8th April, 1969. A paragraph was given at the end of the notification to the effect that the appointments were made "without prejudice to the inter se seniority of the judicial officers" which was being determined. The order was not to confer upon these officers any right to seniority in the cadre of District Judges. The Petitioner has contended that this order clearly violated Articles 14 and 16 of the Constitution. On that date, the Petitioner had a longer length of service as compared to Respondent No. 6 and was also graded "Very Good" along with him by the D.P.G. The Respondent No. 1) was graded merely "Good" and could not be preferred against the Petitioner. Therefore, a case of discrimination under Article 14 was made out and the said Article was violated. Besides it, equal opportunity for promotion was denied to the Petitioner under Article 16. It is further contended that Article 311(2) would also be invoked by the Petitioner as he was removed from being posted as District Judge and continued as Senior Sub-Judge which was a penalty in his case.

4. In April, 1969, Thakur diet Ram went on ex-India leave for four months. This enabled the promotion of the Petitioner and the Government by its notifications dated 19th April, 1969, and 26th June, 1969, promoted the Petitioner as District Judge. The subsequent notification had cancelled the previous one, as some technical mistake was detected relating to the places of posting of officers. In July, 1969 two provisional seniority lists--one for District Judges and the other for Subordinate Judges--were circulated and objections were invited. In the seniority list of District Judges the name of the Respondent No. 6 was shown. Besides that list, his name was also shown at No. 9 in the seniority list of Subordinate Judges. The Petitioner filed his objections against the seniority list in July, 1969, and questioned the inclusion of the name of Respondent No. 6 in the list of District Judges. The previous representation of the Petitioner to this effect was dated 30th July, 1968, but the High Court, as I have stated before, decided on 18-12-1968 that the three promotions be made on ad hoc basis without disturbing inter se seniority of officers. The second representation of the

Petitioner of July, 1969, was also considered by the High Court sometimes in August, 1969. The question of reversion arose in August, 1969, because of the return of Thakur Chet Ram from leave. In August, 1969, a committee of the High Court Judges consisting of Mr. Justice Hardayal Hardy and Mr. Justice S.K. Kapoor met to consider the question of reversion of the Petitioner and on 7th August, 1969, decided that the Respondent No. 6 should be reverted being junior to the Petitioner. "The Court approved the decision of the learned two Judges and a letter was issued by the Registrar to the Government on 18-8-1969 that the Respondent No. 6 be reverted and that the Petitioner would continue as District Judge. At that time, a writ petition No. C.W.P. 44/69 filed by Shri S.S. Mittal, Senior Sub-Judge Respondent No. 11 and which related to this very question of seniority, was pending in the High Court. 26th November, 1969 was fixed for hearing in that petition and the Registrar submitted his affidavit before the High Court. In that affidavit, the decision of the Court reverting Respondent No. 6 was reiterated and it was also pleaded that the writ petition had become in fructuous. Shri Mittal accordingly withdrew his writ petition on 24th November, 1969. According to Petitioner, the Respondent No. 6 was in the danger of being reverted soon after 18th August, 1969, and therefore, he prevailed upon Shri B.D. Shanna, District Judge to take leave. The Respondent No. 6 was accommodated and Shri B.D. Shanna applied for 35 days leave from 21st August, 1969. A letter was immediately sent by the Registrar to the Government, cancelling the previous letter asking for reversion of Respondent No. 6. It was stated that the Respondent No. 6 would continue as District Judge. This letter was dated 20th August, 1969 i.e. two days after the issuance of the previous letter asking for the reversion of Respondent No. 6.

5. Subsequently the High Court chose to re-consider the decision of the learned two Judges who had decided for the reversion of the Respondent No. 6, as according to them he was junior to the Petitioner. The representation of the Petitioner of July, 1969, was already pending with the High Court and a committee of three Judges consisting of Mr. Justice Hardayal Hardy, Mr. Justice Jagjit Singh and Mr. Justice Om Prakash was appointed to decide about the representations submitted by the Petitioner and other officers senior to the Respondent No. 6. On 18th October, 1969, the officers were given a hearing by the learned three Judges. The Petitioner was, however, not given a hearing and we are not aware as to what were the reasons for that. On 19th November, 1969, the learned three Judges gave their report. The pointed issues before the learned Judges were: the nature of the appointment given to Respondent No. 6 in October, 1966, with reference to its alleged stop-gap or fortuitous nature and the application of what they called "K.L.M." formula, a device to procure fictitious seniority to officers so that their inter se seniority in the same cadre is not disturbed. The learned three Judges decided that the appointment of Respondent No. 6 on 17th October, 1966, was not stop-gap or fortuitous and that he could be considered senior for future promotions against all the senior Sub-Judges. According to Petitioner, that was a decision by the High Court against the

seniority of the Petitioner and of Respondents Nos. 7 and 8. The Respondent No. 6 had claimed before the learned three Judges that he was functioning as Assistant Sessions Judge and Senior Sub-Judge from a date prior to the dates the Petitioner, or Respondents 7 and 8, functioned as such and, therefore, his post could only be equated with District Judge and not with Subordinate Judge. The learned three Judges held that the equation of post was validly made and that the Respondent No. 6 could not claim seniority on the basis of any wrong equation of post. However, they held that the appointment of Respondent No. 6 was not stop-gap and fortuitous and, therefore, his name was rightly included in the seniority list of District Judges. They further held that he was entitled to promotion in preference to the Petitioner and Respondents 7 and 8. The Petitioner contends that no decision was given by the learned three Judges as to the merit of the Respondent No. 6, nor any comparative study was made upon merit so that the Petitioner or the Respondents 7 and 8 could be stated to have been superseded. The Full Court met on 21st November, 1969, and confirmed the report of the learned three Judges. Subsequently the Advisory Committee set up by the Government u/s 82(4) of the Punjab Re-organisation Act, 1966, also confirmed this decision of the High Court and held that the inclusion of the name of Respondent No. 6 in the list of District Judges as it existed on 1st November, 1966, was correct. The Advisory Committee further held that the name of Respondent No. 6 was correctly shown at No. 9 in the seniority list of Sub-Judges. It was also observed very significantly that subsequent reversion or promotions were administrative matters with which they were not concerned. According to Petitioner, the decision of the Advisory Committee was liable to be challenged u/s 82(6) proviso of the Punjab Re-organisation Act, 1966, on the ground that the service conditions of the Petitioner were altered to his disadvantage, without prior sanction of the Central Government. The Petitioner contends that the High Court imposed its decision upon the Advisory Committee and a delegation of power took place which was not authorised under law. The Petitioner was accordingly reverted on 26th November, 1969, and the order of reversion was made by the High Court. He has challenged the order of reversion under Articles 14, 16 and 311. He has further challenged the reversion order under Article 233 read with paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948. This he did because the State Government did not condescend with the High Court in reverting the Petitioner. The Petitioner made a representation again to the High Court in March, 1970, against his reversion. The aforesaid three learned Judges who decided about the seniority, again sat to consider his representation. They held that no ground was made out to revise that decision. It was finally decided on 21st March, 1970, that the Petitioner being junior to Respondent No. 6 was rightly reverted to the subordinate post.

6. The Petitioner accordingly seeks to quash the aforementioned two notifications and the reversion order and also prays for a direction that he should be deemed promoted with effect from 8th April, 1969, and be given all benefits of seniority including the benefits regarding pay, allowance and selection grade.

7. The Respondents 1 to 3 who are the Union of India, the Lt. Governor, Himachal Pradesh and the Chief Secretary to that Government, have filed their joint return. Their stand is more or less neutral and they have alleged in the last paragraph of their return that the Petitioner may be granted the relief in accordance with the averments made by him in the petition. However, these Respondents have also urged that the appointment of Respondent No. 6 on 17th October, 1966, was not a stop-gap and fortuitous arrangement. At the same time, the said appointment would not give the Respondent No. 6 any right to hold that post. His case was to be decided in accordance with the seniority lists which were subsequently issued by the Government. These Respondents have also admitted that the High Court had insisted in May, 1968, that the Respondent No. 7 could only be appointed if Respondent No. 6 was given the promotion. Subsequently in December, 1968, the High Court insisted that all the three officers should be given simultaneous promotion on one and the same date and the Respondent No. 6 should be made senior to all the three. As to the promotion of Petitioner in April, 1969, these Respondents contend that he was promoted in a leave vacancy and was, therefore, liable to be reverted after the leave of the incumbent was over. The Respondents have no comment regarding the work of the Petitioner which was considered "thoroughly satisfactory" and he was graded " as "Very Good" before the D.P.C. About the reversion of the Petitioner, these Respondents contend that he could not be reverted in view of the panel drawn up by the D.P.C. and that is why the State Government never conceded his reversion.

8. The Respondents 4 and 5 which are the High Court and the Registrar, have contested on the grounds, that the appointment of the Respondent No. 6 on 17th October, 1966, was not stop-gap or fortuitous, but a regular appointment. However, he was appointed "temporarily to officiate"; but nonetheless the promotion was regular. These Respondents have reiterated the opinion which they had obtained from the Home Ministry culminating in the reply received from Shri R.C. Jain, Deputy Secretary, dated 11th March, 1968. The High Court recommended the Respondent 6 for promotion in February, 1968, against the newly created post on the basis of that advice received from the Central Government. According to these Respondents, the seniority of the Respondent No. 6 was assured because of inclusion of his name in the seniority list of District Judges. The representations of the Petitioner were disposed of in the meeting of the learned three Judges who gave personal hearing to Respondents on 18th October, 1969, and submitted a report of their deliberations on 19-11-1969. Their report was confirmed by the Full Court on 21st November, 1969. The decision was approved by the Advisory Committee on 4th August, 1970. As such the process u/s 82 of the Punjab Re-organisation Act, 1966, was completed and the Petitioner could not re-open the question, as it was administrative in nature. It was affirmed that the learned two Judges of the Court gave their opinion regarding reversion of Respondent No. 6 in August, 1969, and that is why the letter dated 20th August, 1969, was sent to the Government, but subsequently

this letter was withdrawn when Shri B.D. Sharma applied for leave and another post was created in which Respondent No. 6 could be accommodated. Finally the seniority of the Petitioner was determined by a committee of three Judges and the report was received on 19th " November, 1969, which was subsequently approved by the Full Court as well as by the Advisory Committee. It was finally decided that the Petitioner was junior to Respondent No. 6 and therefore his order of reversion was issued on 26th November, 1969. The Respondent No. 7 was not reverted because he was senior to the Petitioner. The Respondents averred that the D.P.C. did meet on 6th February, 1969, and was presided over by the Chief Justice. The gradation given by the D.P.C. was also accepted, but it was averred that the Court had already decided in December, 1968, that the three recommendations should be adhered to and promotions be made on ad hoc basis. That was the reason why the notification was issued on 8th April, 1969 and the three officers were promoted in order of their seniority. Subsequently on 21st November, 1969, the Full Court decided about the seniority of the Respondent No. 6 and a subsequent representation of the Petitioner date March, 1970, was rejected by another committee of learned three Judges who did not find any reason to review their previous decision regarding seniority. Accordingly the Respondents contended that the reversion order of the Petitioner was justified and could not be assailed on any ground.

9. The Respondent No. 6 was obviously the main contestant, and his grounds are, that the petition suffers from laches, because the promotion order of 1969 could not be quashed late in 1970 when the petition was filed. It is averred by him that he was Assistant Sessions Judge and Senior Sub-Judge as compared to the Petitioner and the Respondents 7 and 8, who were only Subordinate Judges in Punjab. As such the Respondent No. 6 could only be equated with the District Judges. The Respondent No. 9 Shri Onkar Nath and the Respondent No. 10 Shri A.L. Soni, although senior to him in the gradation list, were unconfirmed and as such could not derive precedence over him. It is stated by the Respondent that his promotion as District Judge on 17th October, 1966, was not a stopgap and fortuitous arrangement. It was rather a regular appointment which conferred upon him a right to the post and he could not be ignored for promotion. The Respondent, however, admitted that he was reverted in May, 1967. About the so-called ban for promotion imposed by the State Government before 1st November, 1966, the Respondent contended that no statutory embargo was placed and regular promotions could be made. The Respondent averred that no rules existed for the promotion of District Judges and paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948, applied. The basis was, of course, merit-cum-seniority and he was recommended for promotion in February, 1968, on both these accounts. In fact, the recommendation was accepted by the Government, but the Petitioner and others managed to postpone the issuance of the notification and, according to Respondent, they succeeded in getting the "matter re-opened" by the Government. The Respondent contended that Shri Ram Pal Singh (Respondent No. 7) was recommended for promotion by the High Court in

May, 1968, and the notification was accordingly issued by the Government on 6-5-1968. Since the Respondent No. 6 was not appointed, the High Court withheld its consent and stopped the promotion which was effected only on 8th April, 1969, along with the Respondent No. 6.

10. According to Respondent No. 6, the reversion order of the Petitioner could not be assailed because his promotion itself was meant for the leave vacancy of Thakur Chet Ram and after expiry of leave, the Petitioner was rightly reverted. He contended that his name should not have appeared in the list of Subordinate Judges. At any rate, his place could be at No. 3 and not at No. 9 because he was senior to the Petitioner and Respondents 7 and 8. The reversion of the Petitioner, according to Respondent, was automatic and the consent of the State Government was not even required.

11. The Respondent No. 8 in his return alleged, that the Respondent No. 6 could not be classified as senior to the Petitioner or to the Respondents 7 and 8. While he was promoted on 17th October, 1966, he was neither in the cadre of District Judges nor was his appointment regular. According to him, the appointment was barely stop-gap and fortuitous and could not confer upon him any right to the post. The strength of the cadre was only two permanent District Judges and the third post of Additional District Judge was temporary for limited period. It was not included in the cadre and, therefore, the promotion of Respondent No. 6 could not be against a cadre post. That is how a mis-statement of fact was made in the letter written by the Registrar to Shri B. Shukla on 22nd February, 1968. Besides this, the Respondent No. 6 could not have continued against that post after the judicial work entrusted to the Additional Judicial Commissioner was disposed of. The reversion was thus a certainty and it was again a mis-statement of fact committed by the Registrar when he stated in this letter to the Home Ministry that the Respondent No. 6 would have continued had not the jurisdiction of Delhi High Court extended to Himachal Pradesh. The Respondent No. 8 contended that the Home Ministry had obtained the opinion of the Ministry of Law in January, 1969, and a letter was even written by the Home Minister Shri Y.B. Chavan to the Chief Justice Mr. Justice I.D. Dua on 8-1-1969 that the Respondent No. 6 could not be promoted because his claim for seniority was not established against the Petitioner and the Respondents 7 and 8. Despite this, the High Court went on insisting that the promotion of Respondent No. 6 must be ordered and the State Government took the obvious stand to the contrary. After his reversion, contends Respondent No. 8, the Respondent No. 6 fell within the rank of Subordinate Judges and took up his position at No. 9 in the list according to his seniority. As such he lost his claim for the previous service and being junior to the Petitioner and Respondents 7 and 8, could not be promoted earlier than any of them. He was to be promoted as District Judge according to his rank and position in the seniority list of Subordinate Judges.

12. The Respondent No. 8 contended that the D.P.C. was illegally constituted and no gradation could be made by such a committee binding upon the High Court.

The constitutional position under Article 233 read with Paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948, was that the appointment was to be made by the State Government after consultation with the High Court. The Chief Justice never constituted the High Court when he presided over the D.P.C. and affirmed that gradation amongst officers. Moreover, the High Court itself, and for that matter the Chief Justice also, very much adhered to the previous recommendations made in December, 1968, for promotion of three officers including the contesting Respondent. Therefore, the decision of the D.P.C, besides being illegal, was not binding nor did it hold good for promotion. Thus the promotion of Respondent No. 8 could not be assailed by the Petitioner on the ground of gradation made before the D.P.C. At any rate, the Respondent contended that his promotion with effect from 8th April, 1969, could not be questioned.

13. The Respondent No. 9 urged in his return that he was also senior to the Petitioner as well as Respondent No. 6. He very much affirmed that the name of Respondent No. 6 could not be shown in the list of the District Judges. At any rate, after his reversion, the Respondent No. 6 lost his right to claim seniority. The Respondent contended that the D.P.C. was illegally constituted. Besides that, the case of Respondent No. 9 was never considered by the D.P.C. and as such the decision was violative to Articles 14 and 16. He averred that if the Petitioner was promoted in April, 1969, because of the decision of the D.P.C. his promotion was bad and could not be sustained. He very much affirmed that he being senior to the Petitioner and Respondent No. 6, should have been considered instead, for promotion.

14. The Respondents 10 and 11 besides supporting the Petitioner on nearly every ground contended that they too were senior to the Respondent No. 6 and should have been considered for promotion in April, 1969. The Respondent No. 11 contended that the D.P.C. was illegally constituted and its decision was not binding on either party. He further stated that he had withdrawn his petition C.W.P. 44 of 1969 because the Registrar gave an affidavit very much affirming that the Respondent No. 6 was being reverted, and the petition had become in fructuous on that account.

15. In his rejoinder, the Petitioner submitted that no laches was committed by him because his reversion took place in November, 1970, and he hastened to file the writ petition. As to the equation of posts, he averred that only two posts were recognised in Himachal Pradesh--that of the District judge and that of the Subordinate Judge. Considering the nature, powers and responsibilities of the posts of Senior Sub-Judges who were ex-officer Assistant Sessions Judges also for specified places in Himachal Pradesh, the equation could only be made with the posts of Subordinate Judges of Punjab. After his reversion, the Petitioner contended, the Respondent No. 6 lost his right of seniority. He reverted back as Senior Sub-Judge and took his appropriate position in the gradation list for that post. For future promotion, he was to take his turn along with other Senior Sub-

Judges. The Petitioner did not question the promotion of Respondent No. 7 who was both senior and eligible as compared to him. About the D.P.C. the Petitioner contended that the same was validly constituted and as such he could be given preference over Respondent No. 8 due to his gradation. About his promotion in leave-arrangement, the Petitioner contended that the second notification of 26th November, 1969, was issued under paragraphs 16 and 17 of the Himachal Pradesh (Courts) Order 1948, and as such it was a regular promotion in his turn and lie could not be reverted after the expiry of the leave vacancy. Rather the Respondent No. 6 should have been reverted being the junior-most as compared to the Petitioner and Respondents 7 and 8. The Respondents 9 and 10 being unconfirmed officers could not claim seniority over the Petitioner and hence their claim for seniority was not sustainable.

16. The history of the case spreads into four years right from 1966 upto the beginning of 1970. This period, with reference to important events which took place, can be sub-divided into three: (1) before 1968, (2) during 1968, and (3) after 1968. The pre-eminent features of the case can be pointed out with reference to individual periods and during the course of discussion it would be ascertained as to what were the points of contention and how these are to be met with on merit.

17. The important events which took place during the first period, i.e., before 1968, are: the appointment of Thakur diet Ram, District Judge as Additional Judicial Commissioner, the leave taken by Shri Hem Chand with effect from 10th October, 1966, preparatory to retirement, the so-called ban imposed by the Central Government upon promotions and the letter issued in that connection, the appointment of Respondent No. 6 in the leave vacancy of Shri Hem Chand on 17th October, 1966, the integration that took place and the allocation made of the Petitioner and Respondents 7 and 8 to Himachal Pradesh, the reversion of the Respondent No. 6 on 27th May, 1967, and the recommendation made by the High Court for the vacancy which fell in February, 1968. There is no dispute regarding the appointment of Thakur diet Ram as Additional Judicial Commissioner and he took charge of that post in August, 1966. It is also conceded that the post was initially created for 6 months and was subsequently extended, the last extension being upto 30th April, 1967 or earlier till the jurisdiction of the High Court of Delhi was extended to Himachal Pradesh (Annexure R. 2). The date of retirement of Shri Hem Chand was 6th February, 1967, and he could be called back any time before that date. It is also manifest that the post of Additional Judicial Commissioner was created to dispose of the pending judicial work of Shri Om Prakash who was appointed Judicial Commissioner. The State Government had circulated a letter dated 29th July, 1966, (Annexure PE) to all Heads of Departments and it was advised that promotion should be made only on temporary basis. Being governed by these considerations, the appointment of Respondent No. 6 on 12th October, 1966, was made in the following terms:

Himachal Pradesh Rajpatra Dated Simla, Saturday, 29th October, 1966
APPOINTMENT DEPARTMENT NOTIFICATION Simla A, the 12th October, 1966

No. 1-32/66-Applt.--In partial modification of this Department notification of even number, dated the 7th September, 1966, the Administrator (Lieutenant Governor), Himachal Pradesh, on the recommendations of the Judicial Commissioner, is pleased to order the following promotions and appointments with immediate effect, till further orders:

1. x x x

2. Shri Kcdar Ishwar, permanent Senior Sub-Judge is appointed temporarily to officiate as Additional District Judge, Mandi in the scale of Rs. 900-50-1000-60-1600-50-1800 vice Shri Bansi Dhar appointed to officiate as District and Sessions Judge, vide notification of even number, dated 7th September, 1966.

18. The contentions of Respondents 4, 5 and 6 have been that the appointment of the Respondent No. 6 was regular and not stop-gap and fortuitous. The Committee of Judges later on in November, 1969, also held it to be a regular appointment. The decision of the Committee was approved by the Full Court as well as by the Advisory Committee constituted u/s 82(4) of the Punjab Re-organisation Act, 1966. Be it as it may, the appointment was officiating and temporary. The language used in the notification was "temporarily to officiate" and it is abundantly clear, no right to post was created as a result to that appointment. That is so because of the reversion of the Respondent No. 6 vide notification dated 27-5-1967 (Aimcxurc PD). He was reverted to his substantive post of Senior Sub-Judge. It appears that the controversy regarding "stop-gap and fortuitous" appointment lost its import because after his reversion no right to post could survive in favour of Respondent No. 6. The entire controversy, therefore, as to the legal sanctity of the decision of the High Court as well as of the Advisory Committee in this respect, with reference to Section 82(4) of the Punjab Re-organisation Act, 1966, and as to that decision being administrative in nature and hence unquestionable on the judicial side, is in my opinion of no significance. After reversion of the Respondent No. 6, he was naturally sent back to his substantive post in the list of Subordinate Judges.

19. The appointment being temporary and officiating, the Respondent No. 6 did not derive any right to post. There is formidable array of judicial authority in support of this proposition (see: The State of Rajasthan Vs. Ram Saran, ; G.R. Baqual Vs. State of Jammu and Kashmir, and Union of India (UOI) and Another Vs. Gajendra Singh, etc., etc., In the last case, the Supreme Court made the following observation:

Appointment to a post on an officiating basis is, from the nature of employment, itself of a transitory character and in the absence of any contract or specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time. The Government servant so

appointed acquires no right to the post.

On matters of promotion and ranking the substantive post matters and not the temporary post held on officiating basis which only grants an incumbent a privilege held temporarily which does not confer upon him any right to continue in the post. It is, therefore, abundantly clear that Respondent No. 6 did not derive any seniority by virtue of his officiating appointment made on 17th October, 1966.

20. When a new vacancy occurred in February, 1968, the dispute started because a claim of seniority was set up on behalf of Respondent No. 6 and the said claim was controverted by the Petitioner.

21. The second period which lasted for the duration of 1968 is more important. During this period, the prominent events were: recommendations of the Respondent No. 6 for the vacancy of February, 1968, although the notification was not issued by the Government, the consultation made by the High Court with the Central Government culminating in the opinion of Shri R.C. Jain, Deputy Secretary, dated 11-3-1968 (Annexure R. 3), the reference made by the State Government to the Central Government on 31st May, 1968, (Annexure PK) asking their opinion regarding seniority, the retirement of Shri A.S. Bhatnagar with effect from 3rd May, 1968, and the ensuing vacancy, the appointment of Respondent No. 7 by notification dated 6th May, 1968, the retirement of Shri D.R. Dhameja, District Judge in the second week of December, 1968, the decision of the High Court in December, 1968, to promote all the three officers simultaneously and not to relieve Respondent No. 7 for an individual posting, and a tussle that existed between the State Government and the High Court as to the seniority of Respondent No. 6. In that connection, another reference was made by the State Government on 14-12-1968 (Annexure PO) to the Central Government.

22. The case of the Petitioner is that the seniority of Respondent No. 6 was assumed because of the inclusion of his name in the list of District Judges. Any claim to that post he had lost by virtue of his reversion to the substantive post of Sub-Judge. On the other hand, the Respondent No. 6 contends that he was recommended in December, 1968, both on grounds of seniority and eligibility. Therefore, says the Respondent No. 6, his appointment of February, 1968, which was reflected later on in the notification of April, 1969, is unassailable. The contention of the Respondent No. 6 can be thrown over board by simply stating that the notification of 8th April, 1969, (Annexure PP) itself left the question of seniority undetermined and was really a stop-gap arrangement without prejudice to the inter se seniority of the judicial officers which was being determined. The notification further provided that the appointment would not confer upon the three officers any right to claim seniority. Therefore, the contention of the Respondent No. 6 that he got a right to seniority by the recommendation made in his favour in February, 1968, or as a result to the notification issued on 8th April, 1969, is not sustainable.

23. Nevertheless the period during 1968 assumes importance because it contains the genesis of the conception of seniority in favour of Respondent No. 6. As that conception regarding seniority was ultimately reflected in the impugned notification (Annexure PP) of 8th April, 1969, I consider it proper to discuss in detail, as to whether a claim for seniority could be made out in favour of the Respondent No. 6. When the recommendation was made by the High Court in February, 1968, the Petitioner and other senior officers raised a furore. The Registrar of the High Court was prompted to take the opinion of the Central Government and he wrote down the letter (Annexure Pj) to Shri B. Shukla, Deputy Secretary in the Home Ministry. This letter may be reproduced as below:

D.O. No. 110/RHC/F. Judl. I (c)(HIM) New Delhi, the 22nd February, 1968

Subject.--Fixation of seniority inter se between the officers belonging to (Old) Himachal Pradesh and the officers allocated from Punjab.

My dear Shri

On the eve of the re-organisation of Punjab, the Government of India, Ministry of Home Affairs, issued orders vide notification No. 22/6/(3)/66-SR (S), dated 17th October, 1966, requiring some of the officers belonging to the Punjab Civil Service (Judicial Branch) to serve provisionally as from the appointed day, in connection with the affairs of the Union territory of Himachal Pradesh. Later on, vide their letter No. 3869/JS (UT)/66, dated the 3rd October, 1966, and No. 14th February, 1967, the Government of India issued instructions of relative seniority. The instructions contemplate that:

(1) length of continuous service, whether temporary or permanent in the equivalent post; this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement; and

(2) age of the person; other factors being equal for instance seniority may be determined on the basis of age,

should be taken into consideration for determining seniority inter se as between the officers belonging to old Himachal Pradesh and the officers allocated from Punjab.

A question has, however, arisen as to how the position of a person holding a superior post, i.e. the post higher than his substantive permanent post on the appointed day, in officiating capacity is to be determined. To be specific, an officer belonging to the erstwhile Himachal Subordinate Judicial Service was officiating as Additional District and Sessions Judge on the "appointed day" against a temporary post and continued to officiate as such till May, 1967, and would have continued in that post but for the fact that consequent upon the extension of jurisdiction of this Court, that post ceased to exist.

I will, therefore, be obliged if you kindly forward to me a copy of instructions, if any, as to how the cases of type ([noted above are to be treated. Whether in

such cases the seniority is to be determined with reference to the post held by a particular officer in officiating capacity on the "appointed day" or, his seniority is to be determined with reference to his substantive permanent post.

An early reply will be very much appreciated.

Yours sincerely, Sd/-GURU DUTTA, Registrar.

Shri B. Shukla, Dy. Secretary to Government of India, Ministry of Home Affairs, New Delhi-11.

The Petitioner has taken exception to the words "would have continued in that post but for the fact that consequent upon the extension of jurisdiction of this Court that post ceased to exist". Verily the post would not have continued even up to the extension of jurisdiction of Delhi High Court, provided the judicial work pending before the Additional Judicial Commissioner had finished. Therefore, it was incorrect to state that the post would have continued, in any event up to the extension of jurisdiction of that Court or even afterwards for indefinite period. The reply that was received from Shri R.C. Jain (Annexure R.3) gave out an entirely different answer. The said reply is reproduced below:

"R.C. Jain,

D.O. No. 3/43/66-HMT.

Deputy Secretary.

GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS New Delhi-I, Dated March 11, 1968

Dear Shri Guru Datta,

Please refer to your demi-official letter No. 110/RHC/F. Judl. I (c)(HIM), dated the 22nd February, 1968, regarding the fixation of seniority between the officers belonging to old Himachal Pradesh and the officers allocated from the erstwhile State of Punjab.

2. In cases where an officer holds a substantive appointment in one cadre and an officiating appointment in another, his name has to be included in the gradation lists of both the cadres. For instance, in the case of an officer belonging to the Subordinate Judicial Service and officiating as Addl. District and Sessions judge on 31-10-1966, his name should be included in the gradation list of Subordinate Judicial Service as well as in the gradation list of Additional District and Sessions Judges as on 1-11-1966. The principles laid down for fixing seniority should be followed in fixing his rank in each of the gradation lists.

Yours sincerely, Sd/- (R.C. JAIN).

Shri Guru Datta, Registrar, High Court of Delhi, New Delhi.

It is significant that the reply was given for an officer who is officiating in another

cadre. The Respondent No. 6 was not officiating in a cadre post of District Judges. Therefore, upon the very wordings of this reply his name could not be included in the list of the District Judges.

24. The High Court was of the opinion that the inclusion of the name of Respondent No. 6 in that list conferred upon him the right to seniority. This was a wrong assumption. There was all along emphasis on seniority and not on eligibility alone. It was rather casually mentioned that the Respondent No. 6 was also eligible besides being senior. It is more than clear from the return submitted by the High Court and the Registrar that merit was not the sole consideration for promotion of Respondent No. 6. The primary consideration was seniority and in case the claim for seniority was knocked off, the promotion of Respondent No. 6 could not stand merely on the ground of merit or eligibility. Neither the High Court or its Registrar nor the Respondent No. 6 have submitted that a comparative study of merit was made vis-a-vis the Petitioner and the Respondent No. 6, and the latter was found more eligible. On the other hand, evidence docs exist to indicate that the Petitioner was as much eligible as the Respondent No. 6 because the Chief Justice who presided over the D.P.C. graded both of them as "Very Good". The decision of the D.P.C. was not binding for seniority or even for the order in which the promotions were made, for reasons which I shall state presently, nonetheless, the decision of the D.P.C. could be utilized for a collateral purpose by the Petitioner, of exhibiting his merit in comparison to the Respondent No. G. At any rate, it cannot be stated that the Petitioner was found unfit for promotion at any stage. In the return of the Respondents 4 and 5, paragraphs 17 to 19 are relevant in this respect. In paragraph No. 17 of the return, the Registrar of the High Court has contended that the name of Respondent No. 6 was recommended "after obtaining advice from the Government of India" which was contained in the letter of Shri R.C. Jain dated 11th March, 1968 (Annexure R. 3). That letter never dealt with the eligibility of any officer. The said letter asked for the inclusion of the names in the two lists, and the only inference that could be drawn was seniority of the person included in the list of the District Judges. Therefore, the contention made by the Respondents 4 and 5 in para 17 lead only to this inference that seniority was the sole criterion for recommendation. In their para 18, the Respondents 4 and 5 referred to the decision of the learned three Judges' committee of which the report is dated 17th November, 1969. In that report again, the question of eligibility was not considered and it was never held that the Respondent No. 6 could be promoted solely on that ground, without regard to seniority. Rather the pointed decision was made that his appointment in 1966 was not stop-gap and fortuitous and that his name was rightly included in the list of District Judges. The learned three Judges further held that he would be entitled to be considered for appointment as officiating District/Additional District and Sessions Judge in preference to the Sub-Judges who were not officiating as District/Additional District and Sessions Judges on November, 1966. This observation clearly indicates that the question of seniority was the sole criterion for promotion. In

para 19 of their return, the Respondents 4 and 5 again referred to the seniority of Respondent No. 6 which, according to them, was fixed by the Central Government which had accepted the report of the learned three Judges. In para 37 of their return, the Respondents 4 and 5 submitted that the reversion order of the Petitioner was made because he was the junior-most person and that would indicate that the reversion was not made because of merit but because of position in the seniority list. Therefore, seniority was all along emphasized in favour of Respondent No. 6.

25. The contention of the Respondent No. 6 has been that he could be deemed senior to the Petitioner because he was acting as Assistant Sessions Judge or Senior Sub-Judge on a date prior to the Petitioner. In that connection, he has submitted Annexure R. 6. A3 and R. 6. A4. These are notifications dated 31st May, 1958, and 20th October, 1959. The Subordinate Judges who happened to be posted in the specified districts were appointed ex-officer Senior Subordinate Judges or Assistant Sessions Judges. It is, therefore, evident that the conferment of additional powers upon such officers was only so long as they remained posted in these districts. It could not be stated that any personal qualification was added to these officers. Besides that, considering the nature, powers and responsibilities of the posts, the officers temporarily functioning as Senior Subordinate Judges or Assistant Sessions Judges could not be stated to be holding superior posts. For historical, geographical and administrative reasons, the arrangement was made by the State Government. In the Himachal Pradesh (Courts) Order 1948, no post as such of Senior Subordinate Judge or Assistant Sessions Judge was recognized. The only two categories of posts recognized were those of District Judges and Subordinate Judges. This question regarding equation of post, to my mind, was also finalized by the Advisory Committee set up by the Government u/s 82(4) of the Punjab Re-organisation Act, 1966. The committee of three-Judges in their report dated 17th November, 1969, considered this question and rejected the contention of Respondent No. 6 that he could be made senior to these officers because he was holding any superior charge with reference to such posts. The Advisory Committee rejected the representation of Respondent No. 6 and did not hold him senior because of his having acted as Senior Subordinate Judge or Assistant Sessions Judge from a date prior to the Petitioner. Therefore, to my mind, it cannot be stated on facts established that the Respondent No. 6 was senior to the Petitioner because of his having held the post of Assistant Sessions Judge or Senior Subordinate Judge. Besides this, the equation of post was an administrative matter decided by the Advisory Committee set up u/s 82(4) of the Punjab Re-organisation Act, 1966, and cannot be made a subject-matter of judicial decision.

26. The Registrar sent the letter dated 26th March, 1968, to the Chief Secretary (Annexure PM). In that letter he quoted the opinion of Shri R.C. Jain dated 11th March, 1968, and stated that the Respondent No. 6 would have precedence over other officers because his name was included in the list of District Judges. That was again a decision conveyed to the Government regarding the seniority and

the precedence was not given on merit. The State Government did not agree and on 25th May, 1968, (Annexure PK) sent a statement of case to the Central Government for opinion regarding seniority. The Petitioner gave his representation on 30th July, 1968, (Annexure PL) and stressed his seniority upon the Respondent No. 6. In this representation, he also mentioned that on merit also he could not be ignored as compared to the Respondent No. 6. Thereafter on 14th December, 1968, (Annexure PO), the Chief Secretary again wrote to the Central Government and pointed out that on question of seniority the Petitioner could not be ignored. All this correspondence indicates that seniority was the sole basis upon which the High Court was sponsoring the case of Respondent No. 6. The root of that seniority was the inclusion of the name of Respondent No. 6 in the list of District Judges. The weight age could be given in favour of the Respondent No. 6 for having functioned as District Judge for howsoever a short period, but in that case the Petitioner should have been superseded and that was not done, at any rate up to April, 1969. Later on when a decision was finally made regarding his seniority, he was definitely superseded by the Respondent No. 6 and the order of reversion was made which he has challenged in this petition.

27. The retirement of Shri A.S. Bhatnagar in May, 1968, and that of Shri Dhameja in December, 1968, gave the High Court two vacancies to be filled up. The third vacancy already existed from before for which the dispute had arisen. The Respondent No. 7 was appointed and a notification dated 6th May, 1968, was issued by the Government after concurrence of the High Court. That was a valid appointment and satisfied the requirement of paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948. The Petitioner has not challenged that appointment. The Respondent No. 6 has merely stated that the High Court did not agree with that appointment because he was considered senior to Respondent No. 7 and was not being appointed by the Government. Be it as it may, the fact of the matter is, that the appointment made in May, 1968, was kept pending for about one year uptill April, 1969, and was released only when the Respondent No. 6 was included in the list of appointees. In the meantime, in December, 1968, the High Court which already had before it the representation of the Petitioner dated 30th July, 1968 (Annexure PL), in disgust, refused to decide about seniority and proposed for ad hoc appointment. This is so clear from the decision of the Court quoted by the Respondents 4 and 5 in paragraph 36 of their return. The said decision is in the following terms:

A reply be sent to the Himachal Pradesh Administration inviting its attention to the minutes of the meeting held on 18-12-1968, wherein it is clearly stated that the appointment to the three vacant posts shall be made in accordance with the recommendations which had already been made by the Hon'ble the Chief Justice and had already been conveyed to the Administration; only the question of seniority of officers at serial No. 4 to 8 was left to be decided later. This Court has since considered that question and has made its recommendations. According to the said recommendations, Shri T.R. Handa ranks senior to Shri

A.N. Bhoil. In the circumstances, no reconsideration of the matter is called for effects may now be given to the proposals made in this Court's letter, dated 26-11-1969.

The decision referred to the meeting of the Court held on 18th December, 1968, wherein it was decided that the three vacant posts be filled up presumably on ad hoc basis because the question regarding the seniority of the Petitioner and Respondents 6 to 8 was left to be decided later on. This decision further indicates that the question of seniority was finalized subsequently in the meeting of the Full Court which accepted the report of the three learned Judges on 21st November, 1969. The Petitioner was reverted thereafter on 26th November, 1969 (Annexure PU). Therefore, it was really much ado about nothing and the question of seniority was left undecided uptill 8th April, 1969, when the impugned notification was issued. That is the reason why the last paragraph was given to that notification, which can profitably be quoted below:

The Administrator (Lieut.-Governor), Himachal Pradeshis further pleased to order that their appointments to the posts of District and Sessions Judge/Addl. District and Sessions Judges, are made without prejudice to the inter se seniority of the judicial officers which is being determined. This order will not confer upon them any right of claim of seniority in the cadre of District and Sessions Judges.

28. It is, therefore, evident that the Respondent No. 6 was considered senior merely because his name was included in the list of the District Judges. That inclusion, with whatever effects, lost its significance no sooner the Respondent No. 6 was reverted to the substantive post of Subordinate Judge. Therefore, the said inclusion could not form the basis of seniority. It is also incorrect to say that the Petitioner was superseded at any time on the ground of eligibility.

29. The third and the last period which relates to events subsequent to the year 1968 is significant because the appointment of the Petitioner was made against another vacancy and he was subsequently reverted, which gave him a cause for the present petition. During this period, in order to resolve the deadlock the High Court agreed for a D.P.C. which was held on 6th February, 1969, and was presided over by the Chief Justice. In the decision of that D.P.C. the three recommendations made by the High Court in December, 1968, were left unaffected. Thereafter the notification dated 8th April, 1969, (Annexure PP) was issued and the appointments were made. The other event of importance which fell during this period, was ex-India leave applied for by Thakur Chet Ram. He went on leave in April, 1969, and returned in August, 1969. During this period, the Petitioner was recommended by the High Court and was accepted by the Government for appointment as District Judge. Accordingly the notification appointing the Petitioner was issued on 19th April, 1969 (Annexure PQ) which was subsequently cancelled and another notification was issued, dated 26th June, 1969 (Annexure PR). The Central Government issued the provisional seniority lists in July, 1969, and the Respondent No. 6 was shown at No. 9 in the list of Subordinate Judges. The Petitioner objected to the inclusion of the name of

Respondent No. 6 in the list of District Judges and sent his representation to the High Court. As a result to this representation, two of the learned Judges of the High Court decided on 7th August, 1969, to revert the Respondent No. 6. On 18th October, 1969, the decision of the Court was conveyed to the State Government (Annexure PS). The contention of the Respondent No. 11 is that he had withdrawn his C.W.P. 44/69 because of the affidavit submitted by the Registrar that the Respondent No. 6 was being reverted and the writ petition had become in fructuous. The writ petition was withdrawn on 24th November, 1969. In the meantime, a three-Judges Committee of the High Court heard the Respondent No. 6 and other officers, excluding the Petitioner, on 18th October, 1969. The report was submitted on 17th November, 1969, which I have discussed above, and the Full Court in its meeting held on 21st November, 1969 approved that report. Finally the Advisory Committee set up by the Central Government gave its decision on 4th August, 1970 which was confined to the validity of the inclusion of the name of Respondent No. 6 in the list of District Judges and the decision regarding the application of what they called "K.L.M." formula while fixing the seniority of the Sub-Judges. It was specifically mentioned that subsequent reversion or promotion were administrative matters and did not concern the Advisory Committee. Although the Advisory Committee approved the inclusion of the name of the Respondent No. 6 in the list of District Judges, yet did not make the Respondent No. 6 senior most amongst the Subordinate Judges. As such the Advisory Committee did not accept the decision of the Full Court dated 21-11-1969 wherein the Respondent No. 6 was made senior-most amongst the Subordinate Judges. It would, therefore, be futile to argue, in my opinion, that the question of promotion of Respondent No. 6 was also confirmed by the Advisory Committee and could not be a matter for judicial decision with reference to Section 82 of the Punjab Re-organisation Act, 1966. During this period, with which I am dealing, the High Court decided on 21st November, 1969, about the final seniority of the Petitioner vis-a-vis the Respondent No. 6. He was held junior to him and the natural consequence was his subsequent reversion upon expiry of the arrangement as a result to the leave taken by Thakur diet Ram. After his reversion, the Petitioner again made a representation to the High Court in March, 1970, and the three-Judges' Committee sat on 12th March, 1970, and rejected his representation. The decision was conveyed to the Petitioner on 21st March, 1970 (Annexure PW) which clearly mentioned that the Court was not prepared to revise its earlier decision regarding the fixation of seniority.

30. The D.P.C. which was held on 6th February, 1969, was really a device to resolve the controversy between the High Court and the State Government. It was presided over by the Chief Justice and its members were: the Chief Secretary, the Registrar and the Joint Secretary (Appointment). Under paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948, the appointment was to be made by the Governor and consultation was to be had with the High Court. The Chief Justice, obviously, did not constitute the High Court. Therefore, the

constitution of the committee was illegal and its decision could not be imposed upon the High Court. In fact, there is no material to substantiate that the report of the D.P.C. was even upheld by the High Court. Therefore, that decision was not the decision of the High Court. I am, therefore, firm in my opinion that the report of the D.P.C. could not form the basis of either seniority or promotion in consequence thereof.

31. It is also evident from the report of the D.P.C. that the Chief Justice kept aloof from the deliberation of that committee, the three recommendations already made by the High Court. Therefore, the decision of the Court which was arrived at in its meeting held in December, 1968, was kept independent and enforceable, and the Chief Justice insisted that the three appointments were to be made in accordance with that recommendation. Therefore, in my opinion, the report of the D.P.C. would not help the Respondent No. 6 or the Respondents 7 and 8. The Petitioner thus cannot assail the appointment of Respondent No. 8 by the impugned notification dated 8th April, 1969, on the ground, that the D.P.C. had categorized him merely "Good", while the Petitioner "Very Good". It is a different matter that the Petitioner or the Respondents 6 to 8 may avail the proceedings of that committee to substantiate their individual plea regarding eligibility. At my rate, the committee incorporated the opinion regarding eligibility of the learned Chief Justice who presided over it.

32. The Respondent No. 6 has challenged the appointment of the Petitioner on the ground that it was a temporary arrangement in the leave vacancy and was liable to be automatically set aside after the leave was over. In fact, the second notification that was issued on 26th June, 1969, (Annexure PR) did not mention about the leave vacancy and was very much an appointment made under para 17(1) of the Himachal Pradesh (Courts) Order, 1948. It could not be stated that the appointment was made for a limited period. The appointment satisfied all the conditions laid down in para 17(1). It is also abundantly clear that the reversion of the Petitioner was made because a definite decision was given by the Court that he was junior to the Respondent No. 6. This is evident from para 36 of the return of Respondents 4 and 5 which contains an extract of that decision of the Court. I have already quoted above the said decision. The Court observed that they had already considered the question regarding seniority and made its recommendations. According to that recommendation, the Respondent No. 6 being the senior-most was given the first appointment. Further the Respondent No. 8 was also senior to the Petitioner. Thus the learned three-Judges revised the previous decision of the learned two Judges of the said Court and according to them the Respondent No. 6 was senior to the Petitioner and Respondents 7 and 8. In their report they made the following observation which is reproduced below:

The name of Shri Keilar Ishwar should, therefore, appear at the end of the list of District/Additional District and Sessions Judges and so long as he is not confirmed as such, his name should also be shown, at its proper place, in the list of Sub-Judges. The result of this would be that Shri Kedar Ishwar would be

entitled to be considered for appointment as officiating District/Additional District and Sessions Judge in preference to the Sub-Judges who were not officiating as District/Additional District and Sessions Judges on November 1, 1960.

This decision was subsequently confirmed in the Full Court meeting of 21st November, 1969. The Petitioner was reverted on 26th November, 1969, (Annexure PU) and actually took over against a subordinate post. He has filed the writ petition as Senior Sub-Judge, Nahan, and was acting as such on the date he filed the petition. In my opinion, that was the final decision taken by the High Court regarding the seniority of the Petitioner.

33. The Petitioner has questioned his reversion on a variety of grounds. He has called for his aid Articles 14, 16 and 311 of the Constitution. He has further sought the aid of paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948. The Petitioner has claimed the relief of getting quashed his reversion order and at the same time wants a direction from the Court as to his seniority conferring upon him the resultant benefits of pay, allowance, selection grade etc. The period for which such a claim can be made, decidedly commences from 8th April, 1969, when the Respondent No. 6 was appointed District Judge and the Petitioner has sought the relief of quashing that notification as well. The case of the State Government in para 38 of their return is that although the High Court had issued the order of reversion, yet the Government did not issue any such order because, according to them, the reversion order was not in accordance with the panel drawn by the D.P.C. The plea is ill-founded, no sooner it is held that the D.P.C. was illegally constituted and its report could not lead to any reversion order. Although the condition of acceptance of reversion by the State Government is not fulfilled, yet it has now remained an idle formality because the reversion order was already operated upon and the Petitioner was demoted to the lower post of Subordinate Judge. Therefore, the Petitioner has every right to question the reversion order on the ground of violation of his fundamental rights and also on the ground of violation of Article 311.

34. The following propositions are clearly established in favour of the Petitioner:

- (a) the seniority was given by the High Court to the Respondent No. 6 barely on the basis of the inclusion of his name in the list of District Judges;
- (b) that the said inclusion of name lost its sanctity after the reversion of the Respondent No. 6 in May, 1967;
- (c) that the Full Court which adopted the report dated 17th November, 1969, of the learned three-Judges, did not supersede the Petitioner on ground of eligibility; and
- (d) that the High Court nonetheless gave a decision against him regarding seniority on 21st November, 1969, and placed him junior to Respondent No. 6.

In such a situation, we have to consider whether Articles 14 and 16 of the Constitution have been violated. It has been held by the Supreme Court in Ganga

Ram v. Union of India 1970 S.L.R. 755 with reference to Articles 14 and 16 that equality of opportunity in service matters takes within its fold all stages of service from initial appointment to its termination including promotion. Therefore, the Petitioner can point out at this stage of his promotion, as to whether he has been discriminated in comparison to the Respondent No. 6. The provisional seniority list was already there which has since been confirmed by the Central Government. It is so stated in the rejoinder of the Petitioner and not controverted by the Respondent No. 6. As held in *State of Mysore v. M.V. Bhagwat* 1971 S.L.R. 1 (S.C.) , in a case of integration, the seniority fixed by the Central Government is binding upon the State Government. At this stage, it would be useful to dispose of the objection of the Respondent No. 6 regarding his position in the seniority list of Subordinate Judges. He has contended that his place should have been at No. 3 and not at No. 9. The reason, according to him, is his seniority over the Petitioner and Respondents 7 and 8. That seniority is the subject-matter of the present dispute and, therefore, it is too early in the day for him to contend that he should have been shown at No. 3 and not at No. 9. I have already discussed above his objection regarding equation of posts. Beyond these feeble contentions, the Respondent No. 6 does not question the seniority list of Subordinate Judges. If the very basis of seniority claimed by the Respondent No. 6 is held to be invalid, he should not have been ordinarily promoted even for ad hoc arrangement on 8th April, 1969. In *G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore*, the Supreme Court was considering a case where the seniority was not finalized and a provisional integrated seniority list was issued. The observation was that ordinarily for promotion on officiating basis, the provisional seniority forms the basis, of course subject to fitness for promotion. Keeping regard to this principle, it is not difficult to hold that the Respondent No. 6 was promoted on 8th April, 1969, despite he being junior to the Petitioner. When the Petitioner was reverted, due regard should have been made regarding his seniority in the list of Subordinate Judges. The phrase "due regard to seniority" was the subject-matter of decision in *Ram Gopal v. Union of India* 1972 S.L.R. 258. In that case, the D.P.C. found a person very junior and of more merit, eligible for supersession of a senior person. The learned Judge observed that the selection was to be made on the basis of merit with due regard to seniority. This obviously meant that even if the D.P.C. was to find that a person very junior had much more merit than a person with a longer service, it did not necessarily mean that the former person was to be placed senior to the latter. By due regard to seniority means that the selection authority owes a duty under law to pay attention and show consideration to the seniority of the person concerned. This has not been done in the case of the Petitioner, and both Articles 14 and 16 are attracted.

35. In *S.K. Ghosh v. Union of India* 1968 S.L.R. 741 (S.C.) , the Supreme Court was considering a case where there was no justification for revision of seniority which was made without any rule or appropriate principle and in the circumstances held that the reversion order must be held to be totally arbitrary.

Such an arbitrary order which affects the civil rights of the Petitioner in respect of future promotion is, therefore, to be struck down as violating Article 16 of the Constitution. *State of Mysore Vs. P.R. Kulkarni and Others, etc.*, is again a case where their Lordships of the Supreme Court were considering the reversion of an employee allotted to new State after re-organisation. The vacancy was filled by an employee junior to the Petitioner. It was held that the reversion orders were passed for extraneous purpose and resulted in unjustifiable discrimination. The reversion order was therefore struck down by Articles 14 and 16. Wherever the State Government exercises a power to keep the consideration of the eligibility of a Government servant for promoting in abeyance or to postpone it, its power in essence infringes the right of the Government servant and also violates the constitutional protection guaranteed to a public servant under Articles 14 and 16 see: *Inspector-General of Police, J & K. v. Sardar Narinder Singh* 1972 S.L.R. 606 . In the instant case, the promotion of the Petitioner was kept in abeyance from 8th April, 1969, and in November, 1969, he was declared junior to the Respondent No. 6. If it is found that the Petitioner was senior to the Respondent No. 6 and could not be reverted, he has to be given the benefit right from the beginning when his junior was promoted, i.e. 8th April, 1969. The Government has a power to make an appointment with retrospective effect in order to give relief to a Petitioner under Article 16, if the order of the Government would not affect adversely the right of anybody else. This retrospective appointment has been upheld in *N.P. Mathur v. State of Bihar* 1971 S.L.R. 335 . Once the Court is satisfied that an employee entitled for consideration has been left out, a case is made out for interference for breach of the guarantee conferred under Article 16 of the Constitution of the employee see *Anil Chandra Mitra v. State of Orissa* 1970 S.L.R. 103.

36. It has been stated that no rules were framed for appointment to the post of District Judge. As I have stated above, the provisional seniority list was there. At any rate, it was known right from the beginning as to whose length of service was more as compared to the other. Guarantee of equality under Articles 14, 15 and 16 is always available in matters of promotion even if service rules are absent. The guarantee is violated where appointing authority brings in arbitrariness in exercise of its power and denies to any individual officer in the same class and similarly situated, his right to be considered for that post. Assistance can be taken for this from a Full Bench decision of Punjab and Haryana of which the report is *Dr. Kartar Singh Rai v. The State of Punjab* 1969 S.L.R. 79. Therefore, whatever discussion I have made above, affords me a firmer ground to hold that the reversion of the Petitioner, which in other words leads to denial of promotion, was clearly discriminatory. Articles 14 and 16 of the Constitution were attracted and the reversion order is liable to be quashed.

37. Besides this, Article 311 is also attracted because the reversion to a subordinate post was clearly a penalty. Regard will be had to attendant circumstances, and reduction in rank took place. The order is also liable to be quashed under Article 311(2). Loss of seniority has been held to sustain penal

consequence. Reliance could be placed by the Petitioner for this upon a decision of the Supreme Court reported in *Appar Apar Singh v. The State of Punjab* 1971 S.L.R. 71.

38. There is yet another objection which is sustainable on behalf of the Petitioner. The order of reversion was not acceded to by the Governor. In fact, under paragraphs 16 and 17 of (he Himachal Pradesh (Courts) Order, 1948, read with Article 233 of the Constitution, it was the State Government which had to make the order of reversion. Although the effect of reversion was completed, inasmuch as the Petitioner was demoted and actually took over as subordinate officer, yet this formal defect remained to be fulfilled. The order of reversion is liable to be quashed also on this ground.

39. Once I quash the reversion order dated 26th November, 1969 (Annexure PU), I necessarily give the benefit to the Petitioner of sustained service during the period he remained demoted. For this, a decision would have to be given as to his seniority. That issue cannot be avoided. In that connection, I have already held the seniority list of Subordinate Judges to be valid and binding. Whatever objection the Respondent No. 6 had for that seniority list, I have rejected the same. A direction can, therefore, be given that the seniority of the Petitioner was undisputed and it was to be reckoned in accordance with the provisional seniority list of Subordinate Judges which has since been finalized (Annexure PH). The promotion of the Petitioner was validly made by the State Government on 26th June, 1969, (Annexure PR) and the said promotion could not be set aside for any objection submitted by Respondent No. 6. The decision in that regard has already been given by me.

40. At this stage, another question necessarily crops up and that relates to the quashing of the notification (Annexure PP) dated 8th April, 1969. It can be successfully contended on behalf of the Respondents that the said appointments were only ad hoc and for a limited period until the seniority was determined. This is so clear from the last paragraph of the notification (Annexure PP). Regarding ad hoc appointment, there are no two opinions that such appointments are made by the Government for a limited period to meet exigency of situation. In *Narendra Bahadur Srivastava v. Public Service Commissioner, U.P.* 1971 S.L.R. 414, a learned Judge of Allahabad High Court very aptly described ad hoc appointment. His observation may usefully be quoted:

An appointment can be said to be on ad hoc basis only when it is known at the time of the appointment that the appointments is for a specified period, on a temporary post being created for a specified period of an officiating or temporary appointment being made in a leave vacancy or an officer going on deputation or for some similar reasons. Where a person appointed to the post, whether permanent or temporary, has the expectation to remain in service for an unspecified period, his appointment cannot be said to be on ad hoc basis.

The initial purpose of the appointment in the instant case was decidedly ad hoc,

as the posts were being filled up for a specified period until the seniority was determined. It necessarily follows from the ad hoc nature of the notification (Annexure PP) that senior officer found eligible would be given benefit from the date of appointment made under the notification. If that was not so, what was "the purpose of making the appointment ad hoc? If seniority is given to the Petitioner without giving him the benefit of promotion, it would amount to permitting a situation which can never exist in service matters. If the Petitioner is held senior and eligible, he cannot be denied promotion from 8th April, 1969. In other words even if I do not quash the notification (Annexure PP) and held it to be "ad hoc, I cannot deny the benefits to the Petitioner. For this I have to give a direction to the Petitioner as to his seniority and another direction in his favour so that his [case is considered by the competent authority for eligibility. In *Index Raj Kakar v. Delhi Transport Undertaking* 1972 S.L.R. 39, a learned single Judge considered a case of ad hoc appointment. In that case, an emergent, vacancy was filled up by ad hoc appointment and it was held that due consideration to all eligible candidates was not required to be given. In other words the ad hoc appointment made in favour of a person may not be set aside. But that would not mean to say, and the learned Judge also held in that case, that if subsequently any other person is found eligible to the post, he would not be granted the benefit with effect from the date of ad hoc appointment. That relief naturally flows from the subsequent decision made in his favour. It cannot be disputed in the present case that the Respondent No. 6 did not derive any benefit so as to defeat the claim of the Petitioner as a result to his ad hoc appointment see: *B.S. Vadera and G.S. Chaggar v. Union of India* 1969 S.L.R. 7 (S.C.).

41. The Respondent No. 6 has also taken up the plea of delay or laches, and seeks relief of dismissal of the petition on that ground. It is manifest the order regarding seniority was left undecided uptill November, 1969, when it was finally decided against the Petitioner. Immediately thereafter the Petitioner was demoted and he filed the writ petition. As such there was no ground of any delay or laches on his part. The Respondents 9 and 10 were admittedly unconfirmed as compared to the Petitioner and the Respondent No. 6. As such they could not be held senior to them. Their seniority will, of course, be decided with reference to their date of confirmation. It has not been pointed out by them that they were confirmed on a date prior to the confirmation date of the Petitioner or Respondent No. 6.

42. There should be no difficulty under Article 226 for a direction which enables the Petitioner to get relief from a deeming date, In *Gurcharan Dass Vaid v. The State of Punjab* 1972 S.L.R. 4 (S.C.) the promotion was delayed due to error in seniority list, it was held by the Supreme Court that promotion and confirmation could be given from deemed date. In that case also, violation of Articles 14 and 16 was detected. In *State of Mysore v. P.N. Nanjundiah* 1969 S.L.R. 346 (S.C.), the Supreme Court held that the High Court may not issue a writ of mandamus directing Government to promote aggrieved official from a retrospective date, but nonetheless, the High Court can issue under Article 226 writ directing the

Government to consider the suitability of the officer for promotion. In the instant case, I propose to do exactly the same. In *Tark Nath Ghosh v. The State of Bihar* 1968 S.L.R. 229, in a petition under Article 226, directions for payment of salary was even issued by the High Court. I am only enabling the Petitioner to get the accumulated salary which is the resultant benefit of seniority. In another case of which the report is *K.K. Jaggia v. The State of Haryana* 1972 S.L.R. 578, a learned Judge of the Punjab High Court while deciding a petition under Article 226, granted promotion from back date and ordered for payment of arrears of salary although alternative remedy by a civil suit was available. That was, in fact, a promotion from a deemed date. The Petitioner in this case is unable to perform his duties on a higher post, as he was illegally not promoted when his promotion was due. The legal fiction, therefore, has to be extended so as to make the situation to its logical conclusion that the Petitioner would be deemed to have worked against the higher post from the date he was due for promotion. I am, therefore, fortified to issue appropriate directions in this regard.

43. In the last, I must express my regret for entertaining a misgiving against the judgment delivered by the learned Chief Justice, which I had the advantage of reading. I have already stated that the question regarding ad hoc or fortuitous appointment of the Respondent No. 6 does not arise in the present case, because after his reversion in May, 1967, he lost his claim of seniority with reference to the appointment in the higher post which was given to him on 17th October, 1966. I have my own doubts if it could be held that any decision of whatever nature arrived at u/s 82 of the Punjab Re-organisation Act, 1966, would be an administrative decision and not a quasi-judicial decision open for interference by Court. If a decision as to the determination of seniority u/s 82 violates fundamental rights of any person granted by the Constitution or negatives a statutory provision or is not sustainable otherwise for reasons of natural justice, I think such a decision is questionable in a court of law.

44. These observations which I have made above, pointedly relate to the question of ad hoc and fortuitous appointment of Respondent No. 6 claimed by the Petitioner and decided against him by the Advisory Committee. In fact, the decision of the Advisory Committee u/s 82 does not stand in any manner in the way of the Petitioner for getting the relief claimed by him, and as such it is not necessary in this case to decide as to whether the decision of the Advisory Committee is administrative or quasi-judicial in nature. Even if it is held that the decision of the Advisory Committee regarding ad hoc and fortuitous is administrative and as such binding on the Petitioner, even then, as I have held above, the Respondent No. 6 does not get the benefit because he was subsequently reverted and lost his claim for seniority. The Advisory Committee prima facie did not agree with the decision of the High Court dated 21-11-1969 wherein the Petitioner was permanently held junior to the Respondent No. 6. That was a decision which was final so far as the High Court on the administrative side was concerned. As a result to that decision, the Petitioner was demoted and, in my opinion, the administrative decision of the High Court

can be quashed by us sitting on the judicial side. The Government, no doubt, did not agree with the decision of the High Court. But without waiting for a decision by the Government, the High Court actually reverted the Petitioner who took over charge of the subordinate post. All these steps can only be considered cumulatively, and the Petitioner has definitely asked for quashing that administrative decision of the High Court as it violated Articles 14, 16 and 311(2) of the Constitution. The Petitioner has also sought the quashing of that decision with reference to paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948. The decision of the Full Court dated 21-11-1969, unless reviewed, is binding upon this High Court on the administrative side. It is manifest, that decision is staring at the Petitioner and unless a direction is given to the High Court and the Government to re-consider that decision having regard to the seniority and eligibility of the Petitioner, no benefit can be given to the Petitioner. He should not be made to depend upon the High Court in a distant hope to get a review suo motu of that decision for which there may not arise any occasion in future.

45. It is further clear that once we quash the reversion of the Petitioner on any of the grounds set out by him in his favour, we cannot refuse the resultant relief of higher service during the disputed period. The said relief " must in turn be defined by the High Court so that a definite decision is taken in favorer against the Petitioner. In order to give that resultant relief, the decision regarding seniority of the Respondent No. 6 having been made senior-most Subordinate Judge, will have to be reviewed. There was no additional vacancy of District Judge lying to be filled up in November, 1969, and if the Petitioner is held eligible, the Respondent No. 6 would not continue to be posted as District Judge during the disputed period. Therefore, in my opinion, a declaration will have to be made as to the authenticity regarding seniority list of Subordinate Judges for promotion to the post of District Judge. For this relief, the Respondent No. 6 had his objections which I have already disposed of against him.

46. The appointments made under the notification dated 8th April, 1969, although ad hoc yet could not deprive benefits of service to a person who is ultimately held to be entitled to such benefits from the date the ad hoc appointments were made. By its very nature, ad hoc appointments arc meant for a short period and if sufficiently long period is made to elapse for no fault of the Petitioner and he is considered eligible for that appointment, he cannot be deprived of the service benefits from the deeming date. The provisional seniority list which came in July, 1969, was subsequently confirmed by the Central Government. The ad hoc appointment was required to be made regular in accordance with this seniority list. The Full Court accordingly decided about the seniority of the Respondent No. 6 on 21-11-1969 and made him senior to the Petitioner and Respondents 7 and 8. Once that decision is set aside, the claim of promotion in favour of the Petitioner necessarily arises with reference to 8th April, 1969. Therefore, the Petitioner is to be given the relief of consideration of his case on merit with reference to that date so that he gets all the service benefits.

47. The appointment of the Petitioner in April or June, 1969 was a regular appointment because the High Court recommended him for appointment both on the grounds of seniority and eligibility and the State Government accepted the appointment. This is so because the appointment was not made conditional subject to determination of seniority of others, as was done in the notification of 8th April, 1969. Therefore, it may not be correct to say that the said appointment of the Petitioner was also ad hoc and so did not confer upon him any right to promotion.

48. Right from the beginning, the length of service as well as the date of confirmation of each officer was known to the High Court. Ordinarily, therefore, even the ad hoc appointment should have been made keeping regard to these factors. In fact, the appointments of Respondents 7 and 8 were made keeping regard to their length of service and date of confirmation. The Petitioner's appointment in April or June, 1969, was similarly made keeping regard to those factors. The provisional seniority list came into operation in July, 1969. The representations were asked by the High Court and on 21-11-1969 in its Full Court meeting the High Court made a final decision regarding the seniority of Subordinate Judges. The Respondent No. 6 was made senior-most Subordinate Judge. The claim of the Petitioner for seniority was rejected. The Advisory Committee subsequently approved the seniority list of Subordinate Judges. The Central Government approved the decision of the Advisory Committee, and as a result to that, the Respondent No. 6 was placed at No. 9 in the seniority list and as such junior to the Petitioner. One has to consider the decision of the Full Court dated 21-11-1969, keeping regard to these facts and circumstances. I have already held above that the reversion of the Petitioner is to be quashed under Articles 14, 16 and 311(2) of the Constitution as well as under paras 16 and 17 of the Himachal Pradesh (Courts) Order, 1948.

49. It may be pointed out that whatever opinion was expressed by the Registrar of the High Court or by the officers of the State Government in their nothings or letters would be of no avail to the Petitioner or the Respondent No. 6 because the decisions of the Full Court on one side and the decision of the Governor on the other would alone be pertinent and we can refer to only such decisions.

50. With these observations as to my point of view, I am persuaded to take the following decisions. I shall not quash the notification dated 8th April, 1969 (Annexure PP) and hold it to be only ad hoc which conferred no rights upon the officers and the seniority matter was left undetermined. At the same time, I approve the seniority list of Subordinate Judges (Annexure PH) which confers seniority upon the Petitioner over Respondent No. 6. The reversion order of the Petitioner dated 26th November, 1969 (Annexure PU) is quashed. The eligibility of the Petitioner shall, of course, be decided by a competent authority on the administrative side. In case he is found eligible and his seniority is already decided, he shall be given all the benefits of service from 8th April, 1969. It was stated on behalf of the Petitioner that the relief with respect to the quashing of

the notification dated 12th October, 1966, (Annexure PC) would not be pressed by the Petitioner.

51. The petition is, therefore, allowed and the following orders are made:

(a) The notification dated 12th October, 1966, (Annexure PC) is not quashed and is sustained;

(b) the notification dated 8th April, 1969, (Annexure PP) is not quashed and is sustained because it is held that the right of the Petitioner for promotion as District Judge, in case he is found eligible on merit, with effect from 8th April, 1969, would not be defeated by the ad hoc appointment of Respondent No. 6 from that date;

(c) the seniority of the Petitioner and the Respondents 6 to 8 is to be reckoned for promotion as District Judges in consonance with the gradation made in the list of Subordinate judges (Annexure PH);

(d) the order of reversion dated 26th November, 1969, (Annexure PU) made against the Petitioner is quashed; and

(e) the case of the Petitioner for eligibility shall be decided by the competent authority on the administrative side and in case he is found eligible as on 8th April, 1969, for promotion as District Judge, the Respondents 1 to 4 shall give to him all the benefits of seniority including the benefits of pay, allowance, and selection grade with effect from that date.

52. In the special circumstances of the case, no order need be made as to costs.

Chet Ram Thakur, J.—The following questions have been referred for my opinion by the Division Bench consisting of the Hon'ble the Chief Justice and brother D.B. Lal, J.:

(1) Whether in this writ petition it is open to the High Court to issue a direction to the "competent authority" on the administrative side to consider the case of the Petitioner for eligibility for promotion as District and Sessions Judge as on April 8, 1969, and for the benefits of seniority including those of pay, allowances and selection grade with effect from that date, after giving the finding that the order appointing Shri Kedarishwar and Shri T.R. Handa by the notification dated April 8, 1968, is valid as making "ad hoc" appointment?

(2) In case the answer to question No. 1 is in the affirmative, whether the High Court should make such a direction in the proper exercise of its judicial discretion?

(3) Whether upon this writ petition any declaration is necessary, and should be made, by the High Court, that the seniority of the Petitioner and Respondents Nos. 6 to 8 should be reckoned for promotion as District and Sessions Judge in accordance with the gradation made in the list of Subordinate Judges (Annexure PH)?

(4)(a) Whether the decision of the Full Court meeting on November 21, 1969, which led to the issue of the letter dated November, 26, 1969, to the State Government, and the High Court order of the same date which led to the demotion of the Petitioner, coupled with the fact of the Petitioner taking over against a subordinate post resulting in his reversion, could be challenged on the grounds set out by the Petitioner?

(b) Whether the order dated November 6, 1969, reverting the Petitioner is in valid?

(c) What consequential reliefs could be given to the Petitioner?

(5) Whether a decision taken by the Central Government u/s 82 of The Punjab Re-organisation Act, 1966, is capable of challenge on the ground that the principles of natural justice have been violated apart from the question that the right of representation u/s 82(4) of that Act has not been granted?

The necessity for referring these questions arose because of the differences having arisen between the learned Judges of the Division Bench in respect of the matters covered by these five points.

2. The facts have been given in detail in the judgments of the learned Judges of the Division Bench and it may not be necessary for me to set out the detailed narration of the facts. However, it would be necessary to give a few facts in order to give my opinion on the points of differences.

3. Shri A.N. Bhoil Petitioner and the Respondents 7 to 11 are the allocated officers from Punjab consequent to the re-organisation of the State of Punjab. They were allocated as Subordinate Judges to the Union territory of Himachal Pradesh on the appointed date, i.e. 1st November, 1966. Shri Kedarishwar, Respondent No. 6, was on that date already working as Additional District Judge, Mandi.

4. On the extension of jurisdiction of the Delhi High Court to the Union territory of Himachal Pradesh with effect from 1st May, 1967, the Court of the Judicial Commissioner, which was the High Court for the Union territory of Himachal Pradesh, was abolished. The Judicial Commissioner, Shri Pt. Om Parkash was appointed as the Judge of the Delhi High Court whereas the Additional Judicial Commissioner, that is myself was reverted to the post of District and Sessions Judge and posted at Dharamsala. Consequent to my reversion, Shri Kedarishwar, Respondent No. 6, who was the junior-most officiating District and Sessions Judge, was reverted and posted as Deputy Registrar in the Delhi High Court Himachal Bench at Simla.

5. In the meanwhile, the proceedings for the integration of the services of the officers of the Union territory of Himachal Pradesh as also of allocated officers from the State of Punjab were being taken in accordance with the provisions of Section 82(4) of the Punjab Re-organisation Act. In the meantime the Delhi High Court recommended the name of Shri Kedarishwar for appointment as Additional

District Judge, Kangra at Dharamsala, against a newly created temporary post for a period of six months in the first instance. Before the notification appointing Shri Kedarishwar as Additional District Judge could be issued, Sarvshri Ram Pal Singh, T.R. Handa and S.S. Mittal Respondents, who claimed seniority over Shri Kedarishwar represented against the proposal of his appointment. It appears that because of the representations the appointment of Shri Kedarishwar could not be notified. In the meanwhile consequent to the retirement of Shri A.S. Bhatnagar with effect from 1st April, 1968, another post of Additional District Judge fell vacant and the High Court recommended the name of Shri Ram Pal Singh for appointment against that vacancy. His appointment was notified but he was not relieved by the High Court until Shri Kedarishwar was appointed. Thereafter Shri D.R. Dhamcja, District and Sessions Judge, Mahasu, retired in December, 1968. The High Court again sent its recommendation for appointment of Shri Kedarishwar as District and Sessions Judge, Mahasu, and Shri Ram Pal Singh as Additional District Judge, Mandi, and Shri T.R. Handa as Additional District Judge, Kangra. This proposal in so far as Shri Kedarishwar was concerned was not acceptable to the administration who took up the stand that Sarvshri A.N. Bhoil and S.S. Mittal were senior to Shri Kedarishwar. Subsequently, in order to resolve this tangle, a committee, presided over by Shri I.D. Dua Chief Justice and the Chief Secretary, Himachal Pradesh, Joint Secretary (Appointment), and the Registrar High Court as its members, was constituted. The committee drew up the list, placing Shri Kedarishwar at No. 1 with the remarks as "Very Good". Shri Ram Pal Singh "Very Good", the Petitioner "Very Good" and Shri T.R. Handa as "Good". It was decided in that committee that appointments against the three vacant posts, as already made, may be notified as recommended by the High Court and that the seniority of these officers was left to be determined later. It was also pointed out that the appointments to the higher judicial service will be without prejudice to the consideration of the question of seniority. Consequently, the appointments were made in the order, as already stated above vide notification, dated 8th April, 1969. It is this notification which is sought to be quashed by the Petitioner.

6. In April, 1969, I was granted ex-India leave and the Petitioner, then Subordinate Judge at Chamba, vide notification, dated 19th April, 1969, was appointed as District and Sessions Judge, Kangra and Chamba Division in my leave vacancy. This notification was subsequently superseded by a notification, dated 26th June, 1969, whereunder Shri B.D. Sharma, District and Sessions Judge, Mandi, was transferred as District and Sessions Judge, Kangra at Dharamsala; Shri Ram Pal Singh, Additional District and Sessions Judge, Mandi, was appointed as District and Sessions Judge, Mandi, and Shri A.N. Bhoil was appointed as Additional District and Sessions Judge, Mandi, vice Shri Ram Pal Singh. The earlier notification appointing the Petitioner as District and Sessions Judge, Kangra and Chamba Division, was presumably superseded on the ground that Shri T.R. Handa and others had earlier been appointed as Additional District and Sessions Judges and, therefore, he could not straightaway be posted as

District and Sessions Judge.

7. In the meanwhile a provisional joint seniority list of the District/Additional District and Sessions Judges of Himachal Pradesh and the other list showing the seniority of Subordinate Judges and the Subordinate Judges-cum-Magistrates was drawn up in accordance with the instructions contained in the Central Government letter of 14th February, 1967. Since the lists were not drawn up in accordance with the KLM formula that had been evolved by the Central Government for purposes of integration of the services, the Himachal Pradesh Administration itself drew up a list afresh and sent the same to the High Court for inviting objections. Fresh lists were prepared accordingly and the name of Shri Kedarishwar was shown in the list of District/Additional District and Sessions Judges, as also in the list of Subordinate Judges. In the first list his name was shown at No. 6, whereas in the second list his name figured at No. 9 and the names of Respondents 7 to 11 were placed higher to Shri Kedarishwar. The Petitioner as also the other Respondents filed their objections.

8. On my return from leave the question arose as to whether Shri A.N. Bhoil should be reverted. He had filed a representation against his proposed reversion, which was considered by S.K. Kapur and Hardayal Hardy, JJ. and they expressed the view that Shri Kedarishwar and not Shri A.N. Bhoil should be reverted. In the meantime Shri B.D. Sharma proceeded on leave and the question of reversion was shelved for the time being. In the meanwhile the High Court invited objections against the seniority list prepared by the Himachal Pradesh Administration in accordance with the KLM formula and a committee of three Judges of the High Court considered the representations of all the aggrieved officers including the Petitioner. It was decided that Shri Kedarishwar was entitled to the advantage of the officiating appointment as Additional District and Sessions Judge on 1st November, 1966, and his name should be included in the list of District/Additional District and Sessions Judges, and further that Shri Kedarishwar would be entitled for appointment as officiating District/Additional District and Sessions Judge in preference to the Subordinate Judges who were not officiating as District/Additional District and Sessions Judges, on 1st November, 1966. This decision of the committee also received the stamp of approval of the Full Court. It was decided by the Full Court that Shri A.N. Bhoil who was the junior-most officiating Additional District and Sessions Judge be reverted to his substantive appointment. A notification, dated 26th November, 1969, was issued by the High Court. The High Court also requested the Himachal Pradesh Government for issuing the reversion orders of Shri A.N. Bhoil. The Himachal Pradesh Government wrote to the High Court to review its recommendation about the reversion because according to the gradation list Shri A.N. Bhoil should have precedence over Shri T.R. Handa who has been graded merely as "Good". The High Court, however, in reply invited reference to the minutes of the meeting dated 6th February, 1969, whereby three vacant posts were recommended to be filled in without determining the question of seniority of the officers and that the court had since considered that question and

according to the recommendations made by it Shri T.R. Handa ranked senior to Shri A.N. Bhoil. Shri A.N. Bhoil made a representation on 26th December, 1969, against his reversion and the Himachal Pradesh Government also pressed for re-consideration of the decision. Shri A.N. Bhoil was given a personal hearing by the committee of three Judges. The committee in fine expressed the view that no grounds had been made out for reviewing the earlier decision regarding the fixation of the seniority list and that the Government should issue the order reverting Shri A.N. Bhoil, who was the junior-most officiating Additional District and Sessions Judge, to the substantive post. The Government, however, did not pass any reversion orders. Thereafter the Petitioner filed the writ petition.

9. The joint seniority lists were also considered by the Advisory Committee from 29th June to 3rd July, 1970, and it approved the revised seniority list drawn up by the High Court. The Advisory Committee considered the individual representations made by several judicial officers. In regard to the representation of Shri A.N. Bhoil the Committee recommended the rejection of his representation against showing the name of Shri Kedarishwar in the list of District/Additional District and Sessions Judges. It further observed that Shri Kedarishwar's seniority as a Subordinate Judge had been correctly fixed by the High Court and that he was also District/Additional District and Sessions Judge since he was working as such on 1st November, 1966. The decisions of the Advisory Committee were forwarded to the High Court conveying therein that the provisional seniority list of the category concerned as approved by the Committee/Government of India after careful consideration of the representations be declared final after incorporating the decision of the Advisory Committee on each representation. The Petitioner, therefore, has prayed for quashing of the order, dated 26th November, 1969, reverting him from the post of Additional District and Sessions Judge, Mandi, to his substantive post of Subordinate Judge and prayed for a declaration that he was entitled to all the benefits of seniority, pay and allowances attached to the post of Additional District and Sessions Judge with effect from the notification, dated 8th April, 1969.

10. In respect of the inclusion of the name of Shri Kedarishwar in the seniority list finalised by the Central Government relating to the District/Additional District and Sessions Judges, the learned Chief Justice came to the following conclusion:

I am of the view that the seniority list of District/Additional District and Sessions Judges as on November 1, 1966, finalised by the Central Government cannot be questioned on the merits before us. That could have been only if it could be shown that it was prepared in contravention of the statute, for example, if the seniority list was prepared without affording to a government servant affected the right of representation recognised by Section 82(4) of the Act. It could also be questioned if it was vitiated by mala fides. In other words, it is vulnerable only so far as an administrative act is. The Petitioner, in my opinion, has failed to make out a case for interfering with the decision of the Central Government to

include the name of Shri Kedarishwar in the list of District/Additional District and Sessions Judges, and therefore that list cannot be disturbed.

In respect of the challenge to the appointments made vide notification dated 8th April, 1969, of Shri Kedarishwar and Shri T.R. Handa as District/Additional District and Sessions Judges and the order in the notification, dated 26th November, 1969, which is stated to have reverted him, the learned Chief Justice after considering the background in which the appointment of Shri Kedarishwar was made as before the appointed date as Additional District and Sessions Judge as also his inclusion in ilklst of District/Additional District and Sessions Judge, held that:

It is apparent that when the High Court proceeded on the basis that the post held by Shri Kedarishwar was not a "purely stop-gap or fortuitous arrangement" and that therefore his name should be included in that list it acted on a view which, it is clear from what has been set out above, was possible in the minds of reasonable men, and the mere circumstance that a different view was also possible would not justify interference by this Court in the exercise of its writ jurisdiction. As regards the validity of the recommendation of the High Court concerning Shri T.R. Handa, it will be noticed that the High Court took into account that the length of his service was greater than that of other Subordinate Judges. That, it cannot be disputed, is a reasonable criterion.

Another contention raised by the Petitioner is that the appointment of Shri Kedarishwar and of Shri T.R. Handa were contrary to the directions contained in the letter dated July 21/28, 1966, from the Chief Secretary (Integration Cell) to the H.P. Administration to the departments in Himachal Pradesh. In the opinion that the appointments were ad hoc appointments, I am unable to see how that can be said to contravene anything laid down in that letter, even if we were to assume that the directions contained therein applied to judicial officers. In the circumstances, Jagtar Singh and Others Vs. State of Punjab and Others, , on which the Petitioner relies, does not apply.

In my opinion, the Petitioner has failed to establish that the appointment of Shri Kedarishwar and of Shri T.R. Handa by the notification of April 8, 1969, are invalid.

11. With regard to the reversion of Shri A.N. Bhoil, the learned Chief Justice held:

The High Court exceeded its powers when it posted the Petitioner as Senior Subordinate Judge. In my opinion, the High Court could not do so unless the Petitioner had been reverted by the Himachal Pradesh Government. The High Court order of November 26, 1969, was essentially a "transfers and postings" order. Transfers and postings of judicial officers, it cannot be disputed, lie within the powers of the High Court. Whether it should or should not have made the transfers and postings mentioned in the order of November 26, 1969, was a matter lying within the administrative discretion of the High Court. What it could not do after requiring the Petitioner to hand over charge as Additional District

and Sessions Judge, Mandi was to post him as Senior Subordinate Judge. The order of reversion could be passed by the Himachal Pradesh Government only, and so long as that order was not passed the Petitioner was entitled to continue in his status in the higher judicial cadre. The order of reversion had not yet been passed by the Himachal Pradesh Government, and consequently the High Court order posting the Petitioner as Senior Subordinate Judge was in excess of its powers and, therefore, invalid.

In these circumstances the learned Chief Justice further held that the Petitioner had failed to establish that the appointment of Shri Kedarishwar and Shri T.R. Handa, vide notification dated 8th April, 1969, is invalid, and relief in that regard must be refused. In so far as the relief with regard to the reversion was concerned the same was refused because there was no order reverting the Petitioner from his post. However, the order posting him by the High Court as a Subordinate Judge was invalid and that the Petitioner was held entitled to relief against the order of the High Court posting him as Senior Sub-Judge, Sirmur at Nahan. On the Petitioner's prayer for declaration that he was entitled to all the benefits of seniority, pay and allowances, etc. it was held that he was not entitled to any relief as the appointments of Sarvshri Kedarishwar and T.R. Handa made vide notification, dated 8th April, 1969, were not invalid.

12. Brother D.B. Lal after discussing the facts and the developments right from 1st November, 1966, till Shri A.N. Bhoil was posted as Senior Subordinate Judge under the orders of the High Court in November, 1969, made the following observations:

I shall not quash the notification dated 8th April, 1969 (Annexure PP) and hold it to be only ad hoc which conferred no rights upon the officers and the seniority matter was left undetermined. At the same time, I approve the seniority list of Subordinate Judges (Annexure PH) which confers seniority upon the Petitioner over Respondent No. 6. The reversion order of the Petitioner dated 26th November, 1969 (Annexure PU) is quashed. The eligibility of the Petitioner shall, of course, be decided by a competent authority on the administrative side. In case he is found eligible and his seniority is already decided, he shall be given all the benefits of service from 8th April, 1969.

The ultimate order that was passed by Hon''ble D.B. Lal, J. is as under:

(a) The notification dated 12th October, 1966 (Annexure PC) is not quashed and is sustained;

(b) the notification dated 8th April, 1969 (Annexure PP) is not quashed and is sustained because it is held that the right of the Petitioner for promotion as District Judge, in case he is found eligible on merit, with effect from 8th April, 1969, would not be defeated by the ad hoc appointment of Respondent No. 6 from that date;

(c) the seniority of the Petitioner and the Respondents 6 to 8 is to be reckoned

for promotion as District Judges in consonance with the gradation made in the list of Subordinate Judges (Annexure PH);

(d) the order of reversion dated 26th November, 1969 (Annexure PU) made against the Petitioner is quashed; and

(e) the case of the Petitioner for eligibility shall be decided by the competent authority on the administrative side and in case he is found eligible as on 8th April, 1969, for promotion as District Judge, the Respondents 1 to 4 shall give to him all the benefits of seniority including the benefits of pay, allowances and selection grade; with effect from that date.

13. I have heard the learned Counsel for the parties on the points of differences which have been referred to my opinion. Since the counsel for the parties have argued point No. 5 in the first instance, therefore, I will also take up the points in the same order.

Point No. 5:

14. The learned Chief Justice has held that the decision taken by the Central Government u/s 82 of the Act is an administrative decision and not a quasi-judicial decision and, therefore, it is not open to scrutiny by the courts unless it is against the statute or is mala fide. Brother D.B. Lal has held that the equation of the posts was an administrative matter decided by the Advisory Committee set up u/s 82(4) of the Act and could not be made a subject-matter of the judicial decision. However, towards the close of his judgment he has while expressing his regrets for entertaining his misgivings against the judgment delivered by the learned Chief Justice observed as under:

I have my own doubts if it could be held that any decision of whatever nature arrived at u/s 82 of the Punjab Re-organisation Act, 1966, would be an administrative decision and not a quasi-judicial decision open for interference by Court.

It is, I believe, in these circumstances that this point has been formulated for opinion. Mr. Chhabil Dass contends that the functions performed by the Central Government are of a quasi-judicial nature because under the provisions of Section 82(4) of the Act a duty has been cast on the Central Government to effect the division and integration of services and to ensure a fair and equitable treatment to all persons affected by the provisions of this Act and the proper consideration of any representations made by such persons. In elaborating the point as to what is the distinction between a quasi-judicial decision and a purely administrative act he has referred me to a number of cases. One of them is *Kumari Manju v. State of Himachal Pradesh* (supra). This was a case of a student seeking admission to the Medical College and in that it was not the scope of Section 82 which fell for consideration. However, the Court in that case laid down the tests and pointed out as to what is the distinction between the quasi-judicial decision and administrative acts and held that whereas administrative and

executive action may spring from consideration of policy, which are not justifiable ordinarily, a quasi-judicial proceeding becomes imperative when a matter can only be decided with reference to legally defined rights, after an objective and impartial ascertainment of facts. A judicial decision postulates that the empowering and the procedural provisions of regular courts or tribunals are there to warrant it. It had further been held that the decisions on objection as to eligibility of a candidate for admission have to be taken quasi-judicially. Therefore, this case has got different facts. He further contends that in order to achieve the object of the provisions of Section 82(4), it is manifest that the Act has provided a body, i.e., it has clothed the Central Government as the legal authority and secondly this authority is under a duty to act judicially or quasi-judicially and thirdly the Central Government is the legal authority to determine the question affecting the rights, and if it acts in excess of its legal authority the court has got the power to review that decision. The learned Counsel further contends that the functions of the Central Government under the Act are final even if it gives the directions, and, therefore, he says that it is not an administrative action but a quasi-judicial function. In such cases while integrating the services, the Central Government has to bear in mind the principles that it has laid down to ensure a fair and equitable treatment to the services of the two States and the employees have also been given a right of representation and these are matters in which an objective assessment has got to be made by the Central Government and as such, according to him, this function is of a quasi-judicial nature to be performed by the Central Government, and, therefore, the decision of the Central Government is definitely one which can be reviewed by the Courts.

15. Reference is also made to the Union of India and Ors. v. P.K. Rao and Ors. 1969 S.L.R. 104. In fact this authority has got no relevancy inasmuch as in that case the lists were vitiated because they were prepared by the State Government and not by the Central Government and the Supreme Court held that there had been no delegation by the Central Government of any of its essential functions to the State Government and the other question considered by the Supreme Court was whether the Respondent was entitled to a second opportunity to make a representation regarding inter se seniority list to the Central Government and it was held on the facts of the case that they were. The Supreme Court further observed that the statutory requirement providing for representations embodied a principle of natural justice but it did not hold that the decision of the Central Government could be examined on the merits by a court of law. The next authority which has been cited by the learned Counsel is the D.F.O. South Kheri and Ors. v. Ram Sanahi Singh 1970 (1) S.C.W.R. 194. In this case the Divisional Forest Officer cancelled an order of the subordinate forest authority relating to the contract without affording any opportunity of hearing to the contractor and, therefore, it was held by their Lordships of the Supreme Court that the cancellation order of the contract was in violation of the principles of natural justice because the party to whom prejudice the order was intended to be passed

was entitled to a hearing applied alike to judicial, tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. Therefore, the facts of this authority are also quite distinguishable. Further, he relied on A.K. Kraipak and Others Vs. Union of India (UOI) and Others, to show the distinction between administrative power and quasi-judicial power inasmuch as the dividing line between the two powers has been held to be very thin. In this case Mr. Kriapak was one of the members of the Selection Board to the Indian Forest Service cadre from the State of Jammu and Kashmir and he himself was one of the persons to be selected for that. The selection was governed by the All-India Services Act, 1951, and an elaborate body of rules and regulations. The selection was challenged on the grounds of bias and mala fides. But nowhere in that case the Supreme Court had observed that the courts of law can examine the impugned order on merits. The further authority is Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, In this case where an examinee was dealt with for using unfair means in examination halls, the Examination Committee of the Board did not afford any opportunity to the examinee to give an explanation and represent his case before the Committee and, therefore, it was held in these circumstances that where no opportunity whatever was given to the examinee to give an explanation the resolution of the Committee cancelling their result and debarring from appearing in the next examination was vitiated. The further authority is N. Subba Rao etc. Vs. Union of India (UOI) and Others, It was a case u/s 115 of the States Re-organisation Act, 1956, and in that case questions relating to the equation of posts and integration of services of the employees of the Andhra and Telengana regions were to be decided by the Central Government. The Central Government gave its final decision and equalised the posts of the two areas. It also laid down four principles for determining the inter se seniority of the officers. The Andhra Pradesh Government made a strong representation to the Central Government on two points--first that the retrospective regularization of the services of the employees of the Andhra region was essential and secondly that it was valid and proper to take into consideration the continuous service of the Andhra employees from a date anterior to November 1, 1966. This representation resulted in two orders from the Central Government. By the first order it refused to alter the decision taken against the regularisation of services with retrospective effect. But by the second order it held that the continuous services of some of the Andhra officers prior to November 1, 1966, should be taken into account in determining the inter se seniority of the officers. Employees of both the regions filed writ petitions before the High Court. The High Court quashed the order that the continuous service of some of the Andhra officers prior to November 1, 1966, should be taken into account in determining the inter se seniority of the officers on the ground that it suffered from the vice of denial of principles of natural justice to the Telengana officers. It held that the Central Government may adhere to its previous decision or may vary the same. But, if it wants to vary, it must give an opportunity to the services affected to make their representation. The High Court did not give any decision on merits of the question of

retrospective regularisation of services of Andhra Engineers or the equation of posts. On appeals to the Supreme Court it was held that the order of the Central Government was made without giving the Telengana area officers any opportunity of making representation against the course of action which the Central Government adopted by that decision. Further that, under the States Re-organisation Act power is conferred on the Central Government to bring about the integration of services in the State by ensuring fair and equitable treatment to all persons affected by the provisions of Section 115 of the Act. The Government of Andhra Pradesh is under a duty to bring all relevant facts to the notice of the Central Government. The Andhra State officers are to present their view point in order to ensure that the final decision of the Central Government is fair and equitable to all employees of the new State. The Telengana area officers are also entitled to make representation in order to ensure integration of the services and fair and equitable treatment to all persons affected by the provisions of the section. Therefore, in this case the action of the Central Government was open to challenge because no opportunity for representation was afforded to the Telengana area officers and the order was against the provisions of the statute which cast a duty on the Central Government to bring about the integration of services in the State by ensuring a fair and equitable treatment to all persons and the Central Government by denial of a right of representation had acted outside the scope of the statute.

16. The counsel for the opposite party has contended that the principles of natural justice cannot be called into aid in this case inasmuch as there is already a provision made in the statute for representation, etc. to be made by the employees. They could be invoked only in case there had been no provision made in the Act itself and attention has been invited to A.K. Kriapak and Ors. case (supra) in which it has been observed that the rules of natural justice will operate if no law is made. Further, the learned Counsel has rightly contended that u/s 82(4) of the Act a right of representation has been granted to the persons affected for a fair and equitable treatment and, therefore, the question of invoking the principles of natural justice will not arise and that what the Court has to decide is whether the authority, that is, the Central Government, has acted in the discharge of its functions in accordance with the provisions of the law and in that behalf he has already mentioned that the Petitioner had been afforded an opportunity for making a representation and he did actually make the representation. The further authority relied on is Beant Singh v. Union of India 1969 S.L.R. 304 which has also been referred to by the learned Chief Justice in his judgment. According to this judgment function of allocation of services and consideration of representations is an administrative function and not a quasi-judicial function and that no opportunity of personal hearing is necessary. Integration or allocation of services is not a normal feature of conditions of service and there is no right of employees as affected by allocation to any of the successor State and if the Central Government has arrived at a decision after consideration of the representation made by the employees under

the provisions of Section 82 the decision is not justiciable unless it is proved that it was vitiated by mala fides or colourable exercise of power. In the present case, the Central Government has fully considered the representation and the Advisory Committee had afforded an opportunity of personal hearing also and the authority, therefore, acted fully in accordance with the provisions of the statute and if the authority has acted fully within the four corners of the statute the employee has got no right to challenge this decision which is of an administrative nature as the integration or allocation of services is not a normal feature of conditions of service. It is in fact a very huge and colossal task consequent to the re-organisation of the State which is a political decision and the employees cannot question the allocations, which is purely an administrative act and the integration which is a continuing process of these allocations is an administrative function of the Central Government within the provisions of the Act, however in accordance with the provisions it has given the right of representation to the employees affected by the integration of services of both the States, i.e. the State from which the employees have been allocated and the persons of the State to which the allocations have been made. Once the employees have exercised that right of making the representations it is for the Central Government who is the final authority in the matter of integration, etc. to consider and decide the representations on the basis of the principles evolved by it for facilitating the process of integration of such services. Unless the persons feeling aggrieved can show that the authority has acted mala fide or on extraneous considerations not warranted by the statute then necessarily that act of the administrative body would be open to challenge before the court otherwise not. According to *D. Rajiah Raj and on. v. Union of India and Ors.* 1972 S.L.R. 860 (S.C.) in such a case where the question of equation of posts of Hyderabad was involved under the provisions of Section 115 of the States Re-organisation Act, 1956 the Supreme Court repelled the contention of the Class I Executive Engineers from Hyderabad that they should have been placed en bloc above Sub-Engineers, Sub-Divisional Officers of Hyderabad and Assistant Engineers of Andhra by equating the post of Sub-Engineer and Sub-Divisional Officer of Hyderabad to the post of Assistant Engineer of Andhra and held that the Court cannot go into these questions as the equation of posts is within the province of the Central Government under the States Re-organisation Act. This authority, therefore, has got full bearing on the facts of the present case. In these circumstances I am unable to hold that when the Act granted a right of representation and the Petitioner availed of that opportunity that the principles of natural justice should be imported. The Court, in my opinion, cannot question or review the decision of the Central Government if it has been arrived at by that authority after fully considering the representations, etc. in accordance with the law and the principles evolved by it. Reference may also be made to (i) *Union of India v. G.R. Prabhavalkar and on and* (ii) *W.H. Deshmukh and Ors. v. Gopal Ramchandra and Ors.* 1973 (1) S.L.R. 1007 (S.C.). In this case it had been held as under:

The Central Government u/s 115 of the Act, has to determine the principles governing equation of posts and prepare a common gradation list by integration of services. To assist it in the task of integration of services and for a proper consideration of representations, the Central Government is empowered to establish Advisory Committees. The Central Government is bound to ensure a fair and equitable treatment to officers in the matter of integration of services and preparation of gradation lists. It has also to give a full and fair opportunity to the parties affected to make their representations; and the Central Government has also to give a proper consideration to those representations. So long as the Central Government has acted properly according to the provisions of the Act, we are of the view, that a court cannot go into the merits or otherwise of equation of posts which is a matter within the province of the Central Government.

17. In view of the fact that both the learned Judges have come to a decision that the decision of the Central Government is an administrative act and, therefore, it cannot be questioned on merits. I am also of the same view that it being an administrative decision cannot be questioned in a court of law unless the same is mala fide, based on extraneous considerations and outside the scope of authority given by the statute. Therefore, the submission of the learned Counsel for the Petitioner that it is a quasi-judicial act of the Central Government and is open to review by the Court is not correct when the Petitioner has been afforded an opportunity of representation and he did actually make the representation and the same was considered by the Central Government which was the competent authority under the Act and, therefore, there was no question of invoking the aid of principles of natural justice by saying that it was a quasi-judicial function performed by the Central Government. *Union of India v. G.R. Prabhavalkar and Ors. and W.H. Deshmukh and Ors. v. Gopal Ram Chandra and ors.* (supra) is a complete answer to this question which is the latest authority of the Supreme Court on the point.

Point Mo. 1:

18. Both the learned Judges have come to the conclusion that the appointments made vide notification, dated April 8, 1969, are ad hoc appointments and are valid. This question is, therefore, not open to challenge. The question that arises for consideration is:

Whether it is open to issue a direction to the competent authority on the administrative side to consider the case of Shri A.N. Bhoil for eligibility for promotion as District and Sessions Judge with effect from 8th April, 1969, and whether he is entitled to the benefits of seniority, etc.?

19. Brother Lal has taken the view, as would be apparent from his judgment, that Shri Kedarishwar Respondent No. 6 had been promoted as District and Sessions Judge on the ground that he was senior to all the Subordinate Judges at the time when the recommendation was made by the High Court to the Government for his promotion. This promotion was made on the basis of inter se

seniority list in regard to District/Additional District and Sessions Judges, prepared by the Himachal Pradesh Government and approved by the Central Government. It has been observed that the inclusion of the name of Shri Kedarishwar in this list did not confer on him a right for being appointed as District and Sessions Judge or for being considered for such appointment and that is all the more so when he was reverted as Senior Subordinate Judge on 8th May, 1967. It has further been observed that after the reversion of Shri Kedarishwar he must take his chance for promotion after all the seniors above him including the Petitioner have been promoted as District/Additional District and Sessions Judges. Further he has held that confirmation is one of the factors to be taken into consideration while determining the seniority and on that ground he has observed that Shri A.N. Bhoil has to be considered senior for purposes of promotions as District/Additional District and Sessions Judge over Shri Onkar Nath who otherwise is shown senior to Shri A.N. Bhoil in the list of seniority approved by the Central Government under the Act. As regards Sarvshri Ram Pal Singh and T.R. Handa, it is observed that they were also promoted on the basis of their seniority in that list.

20. This proposition, in my opinion, does not appear to be tenable. When the name of Shri Kedarishwar was recommended for being promoted to the higher judicial service in February, 1969 the inter se seniority list had not yet been prepared. The learned Chief Justice has referred to the circumstances under which the recommendation in the case of Shri Kedarishwar was made. A perusal of the various notings and the letters that were exchanged between the High Court and the Himachal Pradesh Government goes to establish that since the seniority list had not been finalised and the need for filling the posts in the higher judicial service was urgent it was decided to have ad hoc appointments. I entirely agree with the observations of the learned Chief Justice that neither time nor administrative requirements can stand still and, therefore, it is imperative sometimes to make ad hoc appointments.

21. When the question of promoting one of the officers to the higher judicial service arose in February, 1969 even the final allotment of judicial officers from Punjab to Himachal Pradesh had not been made by the Central Government. It was so communicated only in October, 1969 and the task of drawing up of provisional seniority list was taken up in July, 1969 only. Hence it is amply clear from the material on the record that seniority was not the basis for the recommendation made in favour of Shri Kedarishwar. Indeed a close examination will show that the factor of seniority had no relevance if the basis was one adopted by the High Court. The factor of seniority could be taken to operate only as between the Subordinate Judges only with reference to their position in the cadre of Subordinate Judges. The circumstance that one of them had earlier served as Additional District and Sessions Judge, a post outside the cadre has no relevance when referring to the seniority of that officer in the cadre of Subordinate Judges. The significance of having served as Additional District Judge can only be that the particular officer had held a post of higher status and

had previous experience of work which the other Subordinate Judges could not claim to have. The High Court considered that as Shri Kedarishwar had served earlier as Additional District Judge he should be preferred over the other Subordinate Judges. That is exactly what the Committee of the three Judges held when they considered the representations of the various judicial officers on the perusal of the inter se seniority list prepared in October, 1969. The report of this Committee of the three Judges was considered by the Full Court meeting of November 21, 1969, and was approved.

22. The further argument that after Shri Kedarishwar had reverted the circumstance that he had held a higher post earlier could be of no avail. This argument could be accepted if that circumstance was taken as conferring a right on Shri Kedarishwar to future promotion. No right to future promotion can be inferred merely because Shri Kedarishwar had earlier worked as Additional District and Sessions Judge and his name found place even in the list of District/Additional District and Sessions Judges as on November 1, 1966. However, this circumstance could be considered as a legitimate criterion for deciding whether he should be promoted. The High Court was not bound to recommend his name for higher promotion because of that circumstance, but the High Court was also not debarred from taking into consideration the fact of his having worked in a higher post. The status of Shri Kedarishwar as Additional District Judge was recognised validly by the Central Government which was the only competent authority under the Act to do so. It may be mentioned that for the point in issue, inclusion in the list was a matter relevant to Shri Kedarishwar's status and not his seniority. The status was relevant because it was being compared with the status of other Subordinate Judges as on 1st November, 1966. The High Court was right in treating Shri Kedarishwar as holding a superior status to that of the other Subordinate Judges as on 1st November, 1966. The High Court made the list a criterion because of the unsettled state of things at that time. This list affords a very reasonable standard for determining whether the post of Additional District and Sessions Judge, Mandi held by Shri Kedarishwar had a status which could be said to be superior to that of the Subordinate Judges.

23. It is also pertinent to note that the consideration which prevailed with the High Court in regard to Shri Kedarishwar held true on the date when his name was under consideration and even though he had been reverted from the post of Additional District and Sessions Judge, Mandi in May, 1967, to his subordinate post of Subordinate Judge, it could so remain valid thereafter as a criterion for consideration. Indeed that consideration could arise only if he was Subordinate Judge on the date when he was being considered for promotion. The post of District and Sessions Judge had to be filled in on the basis of merit with due regard to seniority.

24. Regarding Shri T.R. Handa the High Court, it will be noticed, took into account his length of service which admittedly was greater than that of other Subordinate Judges. That undisputedly was a reasonable criterion.

25. In view of the fact that all the promotions were ad hoc and it was not necessary to consider all the officers who were eligible for promotion and because the High Court took the fact into consideration that Shri Kedarishwar was the Additional District and Sessions Judge on the 1st of November, 1966, (not seniority but merit) there appears to be no justification for taking the view that a direction should be issued to the competent authority on the administrative side to consider the case of the Petitioner for eligibility for promotion as District and Sessions Judge as on 8th April, 1969 and for the benefits of seniority "including those of pay, allowances and selection grade with effect from that date. It may be stated here that when Shri A.N. Bhoil was promoted no one else who was eligible for appointment to the higher judicial service was considered and if that criterion alone had to be taken into consideration, Shri A.N. Bhoil's initial appointment itself shall have to be struck down. Since both the Hon'ble Judges agree that the notification, dated April 8, 1969, is valid and has to stand, therefore there is no ground for the issuance of the direction as has been referred to in the question under reply.

Point No. 2:

26. Since my reply to the question posed is in the negative it does not require any answer. It may, however, be pointed out that it will not be proper exercise of its judicial discretion if the Court directs that the case of the Petitioner for eligibility for promotion be considered with effect from 8th April, 1969,

Point No. 3:

27. The answer to this question has also to be in the negative. On the point whether the Petitioner was entitled to be considered for appointment in the higher judicial cadre as on April 8, 1969, when Sarvshri Kedarishwar and T.R. Handa were appointed, the case of the Petitioner was that these appointments were invalid. It was never his case that if the appointments were ad hoc and, therefore, valid nevertheless he was still entitled to be considered for appointment with reference to those dates in the higher judicial cadre. This is a question which cannot arise in this writ petition because ad hoc appointments alone were permissible until the seniority list was finalised by the Central Government. In issuing any direction as is indicated in this question, the Court would be anticipating a cause of action, which has not yet arisen. Besides while promoting a person to a higher judicial service, merit is the main consideration although seniority has some relevance. Therefore, merely because the Petitioner is shown higher in the list of the Subordinate Judges is no ground to justify the grant of a consideration sought for in question No. 3. As has already been noticed the Central Government recognised the status of Shri Kedarishwar on 1st of November, 1966, as that of District/Additional District and Sessions Judge, and, therefore, that point heavily weighed in his favour while considering the question of his promotion.

Point No. 4(a), (b) and (c):

28. With regard to this point Shri Chhabil Dass submits that the same does not arise and that all these three points are redundant inasmuch as both the learned Judges have come to a finding that the order of reversion is bad whereas Mr. Sushil Malhotra submits that these points do arise. Brother D.B. Lal has held that the order of reversion made by the High Court was not acceded to by the Government. In fact under paragraphs 16 and 17 of the Himachal Pradesh (Courts) Order, 1948 read with Article 233 of the Constitution it was the State Government which had to make the order of reversion, Although the effect of reversion was complete inasmuch as the Petitioner was demoted and actually took over as subordinate officer yet this formal defect remained to be fulfilled and on that ground the order of reversion was liable to be quashed also on that ground. The learned Chief Justice on the other hand has held that the High Court order of November 26, 1969, of itself reverts the Petitioner. It is a "transfers and postings" order. It assumes that the Petitioner is being reverted to his substantive post of Subordinate Judge. At the time of passing this order the High Court wrote to the Himachal Pradesh Government requesting it to issue" an order for the reversion of the Petitioner. That demonstrates that when the High Court made the order, it was aware that the order made by it was not an order of reversion and that the order of reversion had to be passed by the Himachal Pradesh Government. Nevertheless although no order of reversion was passed by the Himachal Pradesh Government the Petitioner was directed by the High Court to hand over the charge as Additional District and Sessions Judge, Mandi, and posted him as Senior Subordinate Judge, Sirmur at Nahan. The High Court exceeded its powers when it posted the Petitioner as Senior Subordinate Judge. The High Court could not do so unless the Petitioner had been reverted by the Himachal Pradesh State Government and he, therefore, held the order of the High Court posting the Petitioner as Senior Subordinate Judge, Sirmur at Nahan, invalid.

29. It cannot be disputed that under paras 16(2) and 17 of the Himachal Pradesh (Courts) Order, it was the Chief Commissioner who after consultation with the Judicial Commissioner could appoint a District Judge. In fact at that time Himachal Pradesh was a Union territory and, therefore, Article 233 of the Constitution was not applicable. The corresponding section of the Punjab Courts Order has also got the same phraseology and, therefore, the High Court was not competent to make any reversion. The reversion could only be made by the Lt.-Governor at the relevant time. Since the Lt.-Governor did not make any reversion, therefore, this order of posting to a lower rank, prima facie, appears to be invalid. However, it may be observed that the appointment of Shri A.N. Bhoil was also ad hoc and he had no vested right to the post and, therefore, his posting to a lower rank or the reversion on the orders of the High Court did not in any way contravene the provisions of Articles 14 and 16 read with Article 311 of the Constitution. Regular appointments are yet to be made as is apparent from the numerous correspondence that was exchanged between the High Court and the Government as also the notification appointing the Respondents that the

appointment was ad hoc and the learned Judges also have come to the same conclusion. Therefore, the reversion from such an ad hoc appointment which was only till the time that the final seniority list was not prepared is not invalid. Moreover, the Petitioner was appointed in a leave vacancy which was to terminate in August, 1969. Thereafter it transpires that the two Judges of the High Court recommended for the reversion of Shri Kedarishwar. But before that order could be implemented Shri B.D. Sharma proceeded on leave. Therefore, in my opinion, Shri A.N. Bhoil continued in the leave vacancy of Shri B.D. Sharma and when Shri B.D. Sharma joined Shri Kedarishwar proceeded on leave as a District and Sessions Judge and then Shri A.N. Bhoil also continued in that very chain of that leave vacancy. During the period of leave of Shri Kedarishwar the three Judges committee constituted to consider the representations with regard to the seniority, etc. of the judicial officers held that Shri Kedarishwar was senior to Shri A.N. Bhoil for the reasons as stated in the report. Subsequently that report was approved by the Full Court meeting of the High Court and later on that report was submitted to the Advisory Committee of the Central Government constituted under the provisions of Section 82 of the Act. This Committee also considered the recommendations of the High Court, and the recommendations, etc. were also before the Committee. It also accorded its approval to the recommendations of the High Court and which was approved by the Central Government which was the final authority in such matters. Therefore, at the relevant time when Shri A.N. Bhoil was reverted from the post which he was also holding like others on ad hoc basis and to which he had no right was posted by the High Court in a lower rank. In fact there was no necessity for any order from the Government for the reversion of Shri A.N. Bhoil because Shri A.N. Bhoil was holding this post purely in a leave vacancy successively of three officers and on the termination of the leave of the last officer there was an automatic reversion without any formal orders from the appointing authority and if the High Court, in my opinion, had posted him to a lower rank this order also cannot be termed as invalid. But since both the Judges have come to a unanimous finding that the order was invalid, therefore, in the absence of any reversion order from the Government the Petitioner could not be granted any relief for quashing the reversion because there was no formal order of the Government reverting him. It was only an order of posting made by the High Court which, however, has been held to be invalid. In view of this the Petitioner cannot be allowed any relief after quashing the order in the absence of any order at all made by the Government. Hence the decision of the Full Court meeting of 26th November, 1969, as also the letter, dated 26th November, 1969, to the State Government for issue of a notification reverting the Petitioner cannot be challenged on the ground set out in the petition.

30. I have already held above that the order, dated 6th November, 1969, reverting the Petitioner, in my opinion, is not invalid inasmuch as the Government never reverted him it was only the posting order made by the High Court which although invalid cannot be challenged by the Petitioner on the

grounds set out in the petition.

31. The Petitioner, in my view, is not entitled to any consequential relief except that he is entitled to his pay and allowances as an Additional District Judge for the period for which the Petitioner after his posting order by the High Court as a Senior Subordinate Judge continued to function as such till his subsequent posting as the Additional District Judge.

32. The conclusion, therefore, is that on all the points I am entirely in agreement with the findings of the Hon"ble the Chief Justice. The file may now be placed before the Division Bench for their orders.