

(1969) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 41 of 1965

Narayan Chandra Mukherji

APPELLANT

Vs

State of Madhya Pradesh, Bhopal and Others

RESPONDENT

Date of Decision : 21-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 246, 3, 309, 311
States Reorganisation Act, 1956 — Section 115(5), 115(7), 116(2)

Citation : (1969) MPLJ 751

Hon'ble Judges : P.K. Tare, J; K.L. Pandey, J

Bench : Division Bench

Advocate : C.P. Sen, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Judgement

Pandey, J.

This is a petition under Article 226 of the Constitution to call up and quash by certiorari three orders: (i) one dated 15 May 1963 by which the State Government provisionally absorbed the petitioner as from 1 November 1956, on a post borne on the cadre of Overseers Electrical/Mechanical for purposes of the Unification of Pay Scales and Fixation of Pay on Absorption Rules, 1959; (ii) another dated 1 April, 1964 by which the petitioner was intimated that the Central Government had rejected his representation dated 29 December, 1961 against the provisional combined gradation list and (iii) the third dated 4 June, 1965 by which the gradation list was made final as published in the M. P. Rajpatra Extraordinary dated 18 June, 1965. The petitioner has further claimed a writ of mandamus or any other suitable writ or order directing that the post formerly held by him in the erstwhile State of Bhopal be equated with posts higher than those held by Overseers and his pay scale be refixed accordingly.

The facts giving rise to this petition may be shortly stated. Immediately before 1 November, 1956, when the main provisions of the States Reorganisation Act, 1956, (hereinafter called the Act) came into force, the petitioner was employed

as a confirmed Superintendent (Mechanical) in the permanent establishment of the Public Works Department of the erstwhile Part C State of Bhopal. In accordance with the provisions of Sections 115 (1) and 116 (1) of the Act, he was deemed to have been allotted to the new State of Madhya Pradesh and was also likewise deemed to have been appointed in that State to the same post which he continued to hold till June 1963.

By a notification No. 6057-4188-XIX-E, dated 30 September 1961, the State Government published the provisional combined gradation list of Class III (Executive) posts in the Buildings and Roads and Irrigation Establishment of the Public Works Department of the new State of Madhya Pradesh. In that notification, the principles formulated for equation of posts and also for determination of relative seniority for the purpose of effectuating integration of services of the various units of the new State were set out as follows:

"I. In the matter of equation of posts:

(i) where there were regularly constituted similar cadres in the different integrating units, the cadres will ordinarily be integrated on that basis; but

(ii) where, however, there were no such similar cadres, the following factors will be taken into consideration in determining the question of posts--

(a) nature and duties of a post;

(b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;

(c) the minimum qualifications, If any, prescribed for recruitment to the post; and

(d) the salary of the post.

II. In the matter of determining relative seniority:--

(a) such seniority will be determined on the basis of the length of continuous service, whether temporary or permanent, in a particular cadre (excluding periods for which an appointment is held in a purely stop-gap or fortuitous arrangement);

Provided that the inter se seniority of Government servants drawn from the same unit will not ordinarily be disturbed; and

(b) other factors being equal, seniority will be determined on the basis of age."

It was also stated in the aforesaid notification that, in accordance with those principles for equation of posts, the post of Superintendent (Mechanical) of the Bhopal unit, which was held by the petitioner, was equated with the posts of Overseer (Electrical/Mechanical), Divisional Artificer (Diploma-holder) and Mechanical Subordinate of the Mahakoshal unit and Overseer (Mechanical) of the Madhya Bharat and Vindhya Pradesh units. Further, the petitioner was assigned position No. 22 (last position) in the list of seniority of persons holding these

equated posts in Category II,

The same notification added:

"It is further notified that any Government servant feeling aggrieved by these provisional decisions is by virtue of Section 115 (5) of the States Reorganisation Act entitled to make a representation to the Central Government within one month from the date of publication of these orders in the Gazette. The representation should be addressed to the Special Secretary to Government, Madhya Pradesh, General Administration (Integration) Department, and should be sent by registered post so as to reach him within the specified period. Every such representation will be duly considered by the Advisory Committee constituted by the Central Government for the purpose u/s 115 (5) ibid and it will be forwarded for final orders to the Central Government with their recommendation.

Note 1:-- A Government servant desirous of submitting a representation may obtain any relevant information about the service details of any person or persons included in the gradation list by making an application to the Under Secretary, General Administration (Integration) Department for obtaining copies of relevant documents on payment of the requisite copying fee.

Note 2:-- The time taken in obtaining copies will be excluded in computing the period specified above for submitting representation."

This notification was sent to the petitioner by his official superior on 23 November 1961. Even before that, by an application dated 6 November 1961, the petitioner had asked for information about the service details of persons holding the equated posts. By memo No. 6808/XIX/E, dated 6 November 1961, he was intimated that information as regards duties, powers, territorial charges, appointment orders, confirmation orders, technical and other qualifications, rules for fixing seniority etc. could not be supplied. The petitioner then applied for copies of the proforma, referred to in the aforesaid memo dated 6 November 1961, relating to two government servants placed in a higher category and, after obtaining them, submitted a representation dated 29 December 1961 claiming that his post should be equated with the posts mentioned in Category I of the provisional gradation list and that his seniority should be so fixed in that category that he is assigned the third place in that list. By memo No. 2235/55/ XIX/E, dated 1 April 1964, the State Government intimated to the petitioner that his representation was rejected by the Government of India in consultation with the State Advisory Committee. Subsequently by the notified order No. 2582-3423-XIX-E-65, dated 4 June 1965, the provisional gradation list was made final and was published in the M. P. Rajpatra Extraordinary dated 18 June 1965.

Even when the aforesaid representation dated 29 December 1961 was under consideration, the State Government issued an order No. 3090/618/XIX/E, dated 15 May 1963 whereby--

(1) as from 1 November 1956, the petitioner was provisionally absorbed against a post of overseer electrical/mechanical and included in the cadre of overseers electrical/mechanical for purposes of the Unification of Pay Scales and Fixation of Pay on Absorption Rules, 1959; and

(2) it was directed that he would be deemed to be holding that post in an officiating/temporary capacity in the unified scale until further orders.

The petitioner has mainly challenged the order of the Central Government rejecting his representation against the provisional gradation list, the final gradation list dated 4 June 1965 and the order dated 15 May 1963 relating to fixation of pay inter alia on the following grounds:

(i) By Section 115 (5) of the Act, the Central Government has been constituted the sole authority (a) to make division and integration of services among the new States; (b) to ensure fair and equitable treatment to all persons affected by the provisions of the section and also (c) to ensure proper consideration of any representation made by such persons. The Central Government is not competent to delegate these statutory powers and duties to any other authority either in the Union or in the State. Even so, it delegated the work of integration of services of the new State of Madhya Pradesh to the State Government with the consequence that the combined gradation lists prepared by the latter were incompetent, Illegal and of no effect.

(ii) By refusing to supply to the petitioner information about the service details of the persons included in the provisional combined gradation list such as duties, powers, territorial charges, appointment orders, confirmation orders, technical and other qualifications etc., the State Government denied to him a fair opportunity to make representation.

(iii) The order of the Central Government on the petitioner's representation, as communicated by the State Government by memo No. 2235/55/XIX/E, dated 3 April 1964, to the effect that the representation was rejected in consultation with the State Advisory Committee is no order in the eye of law because it is not a speaking order in that it does not give any reasons therefore and it was also passed in disregard of the rules of natural justice after taking into account the recommendations of the State Advisory Committee without disclosing those recommendations to the petitioner and also without affording_ to him an opportunity of being heard against them.

(iv) By the impugned order dated 15 May 1963, which was passed ex parte without affording to the petitioner an opportunity of being heard against it and also in disregard of the protection afforded by Section 115 (7) of the Act the State Government demoted the petitioner to a lower post and placed him on a lower scale of pay with the consequence that he suffered enormous loss in emoluments as disclosed in Annexures XIV to XX.

In the return filed on 5 July 1965 on behalf of the State Government, the Central

Government and the Secretary to the State Government in the Public Works Department, it was stated that, under the provisions of the Act, the responsibility for integrating the services of the successor State was that of the successor State itself and the Central Government was authorised only to see that the allocated servants were treated fairly and their representations were properly heard. There was, in regard to this authority of the Central Government, no delegation. It was not disputed that the petitioner had applied for service details of the persons included in the combined gradation list such as duties, powers, territorial charges, appointment orders, confirmation orders, technical and other qualifications and information relating to these details were not supplied to him because they did not constitute "relevant information." However, there was, by reason of refusal to supply what was not relevant information, no denial of a fair opportunity to make representation against the provisional combined gradation list. The order passed by the Central Government on the petitioner's representation was not a judicial order and it was not, therefore, necessary to give reasons for its rejection. That being so, the order does not suffer from any of the defects attributed to it by the petitioner. Finally, in regard to provisional absorption of the allocated government servants and fixation of their pay scale, the matter was entirely within the jurisdiction of the successor State and there was no question of giving to them any opportunity of making any representation in the matter because it was open to them, at their option, to retain their old scales of pay.

When the case came up for hearing before us on 21 August 1968, the judgment of the Supreme Court in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, had been reported. In view of the law laid down in that case, the learned Government Advocate, who appeared for the respondents, found himself unable to support the position taken in the return, requested for and obtained an adjournment for taking steps to amend the return and subsequently applied for leave so to do. The amendments sought to be made disclose a complete change of front. While it was claimed in the return that the work of effectuating the integration of services in the successive State was the responsibility of that State itself and the Central Government was authorised only to see that the allocated servants were treated fairly and the representation made by them were properly considered, an endeavour has now been made by the proposed amendments to show *inter alia* that it was at the instance of the Central Government and, in accordance with the principles formulated by it, that the work of integration of services was done by the successor State and then "the equation of posts and the fixation of grades was done as indicated below and the same was approved by the Central Government".

Not unexpectedly, the petitioner opposed the application for amendment as not made in good faith and also as trying to introduce, as an afterthought, a new, totally different and altogether inconsistent case in order to bring it within the rule laid down in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, . In view of the forthright stand taken in the return filed in this case both by the

State Government and the Central Government to the effect that the work of effectuating the integration of services was the responsibility of the successor State and also in the background of the instructions issued by the Central Government from time to time in regard to the matter, we entertained some doubt about the correctness of the statement that, in this particular case, approval of the Central Government was obtained "to the equation of posts and the fixation of grades". We therefore, directed that the relevant communications by which such approval was sought and obtained be produced before us.

We have indicated that, in this matter, the Central Government had issued instructions from time to time. It will be recalled that, on 6th and 7th December 1956, there was a conference of the Chief Secretaries and other representatives of States in New Delhi. The Central Government had proposed that a committee presided over by a Joint Secretary of the Central Government would deal with the integration of the State service personnel. All the State representatives, who did not accept that proposal, prevailed upon the Central Government to leave the work of integration entirely to the State Governments and also to give them freedom to devise their own machinery for the purpose. Even so, the Central Government decided to retain with it the work of attending to representations that might be made by service personnel affected by the reorganisation of States. So, the Central Government sent to the State Governments concerned the letter No, 62/22/56-SR II, dated 3 April 1957 conveying the following decisions:

"3. After taking into consideration the views expressed by the State representatives in the matter, the Government of India have now decided that the work of integration of services should be dealt with by the State Governments themselves in the light of the general principles already devised and agreed to at the summer Conference of Chief Secretaries. They hope that in devising the appropriate machinery for handling the work of integration of service personnel the State Government will pay due regard to the need for constituting the machinery in such a manner as would inspire confidence among persons drawn from different units.

It has also been decided that Advisory Committees should be established under the provision quoted in paragraph 1 above for assisting the Central Government in dealing with all representations from service personnel affected by reorganisation as follows:--

(i) a committee at the Centre to deal with all representations from persons belonging to State Services composed of a member of the Union Public Service Commission as Chairman and a retired High Court Judge and a senior administrator serving or retired, as Members.

(ii) a Committee in respect of each of the reorganised States of Andhra Pradesh, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Punjab and Rajasthan to deal with representations from members of the Services other than State Services,

composed of a Member of the State Public Service Commission as Chairman and a Deputy Secretary of the Government of India and a nominee of the State Government as Members:

The last-mentioned Committee may co-opt as may be necessary nominees of the Administrative Secretary in the State Government and the Head of the Department concerned to assist it in the disposal of cases relating to each Department. Necessary steps are being taken to appoint Members of the above Committees accordingly.

....

The State Governments are requested to give these arrangements necessary publicity among the service personnel concerned and also take steps to forward to the Government of India all such representations along with a brief statement of each case for being considered by the Committee."

It will be readily seen that, according to the aforesaid decisions, the work of integration was left to be dealt with by the State Governments themselves in the light of certain general principles formulated and already agreed to at an earlier conference. That is how It was understood by the Mysore State Government which prepared the provisional and final gradation lists without any reference to the Central Government: *M. A. Jaleel v. State of Mysore*, AIR 1961 Mys 210. The Bombay Government too proceeded so to do and adopted a resolution dated 25 October 1957 in connection with equation of posts. The Central Government, however, directed a reconsideration of the "resolution" when a number of affected persons made representations to it : *A. J. Patel v. State of Gujarat* AIR 1965 Guj 23 (FB). Even in this State, the decision conveyed by the letter dated 3 April 1957 was understood in the same eense and the State Government prepared provisional and final gradation lists. However, since the State Government had been advised that u/s 115 (5) of the Act, the entire responsibility for the Integration of services was that of the Central Government and, therefore, that Government should publish the final gradation list, clarification was sought on the point. In the letter No. 2552/I-Integ. dated 10 July 1959, addressed to the Central Government, the State Government stated inter alia as follows:--

"The State Government are advised that since u/s 115 (5) of the States Reorganisation Act, the entire responsibility for the integration of services is that of the Central Government the final list should be published by the Central Government. Since this will involve a lot of work at the Central Government"s level, an alternative solution seems to be that these lists be published by us after duly incorporating the orders passed by the Central Government and it may be specified in the preamble that they are published under the authority of the Central Government."

In the letter No. 9/10/59-SR(S) dated 11, November 1959 sent in reply, a copy of which was forwarded to each of the concerned State Governments, the Central

Government, while refraining from saying anything about the extent of its responsibility u/s 115 (5) of the Act for the integration of services, conveyed its decision about the procedure to be followed for publishing the final common gradation lists as follows:

"I am directed to refer to State Government's letter No. 2552/I-Integration, dated the 10th July, 1959, on the above subject and to say that the Government of India have decided as follows:--

(1) As regards procedure for publishing Common Gradation lists, the Government of India agree that the State Government will publish the final common Gradation Lists in its Official Gazette, after following the procedure indicated herein:

(i) The State Government has to Satisfy Itself that the following steps have been taken before it decides to publish the Common Gradation Lists.

(a) that the Government of (Name of the State) effected the Integration of services of the (Name) Department/Establishment and prepared the provisional Common Gradation Lists in accordance with the principles laid down by the Central Government;

(b) that the Government of (Name of the State) published in the Official Gazette of the State the said provisional Gradation lists and afforded an opportunity to the service personnel affected to represent to the Government of India u/s 115 (5) of States Reorganisation Act, 1956.

(c) that the representation, if any, of officers affected had been decided in consultation with the Central Advisory Committee State Advisory Committee as envisaged u/s 115 (5) of States Reorganisation Act, 1956 and

(d) that the above-mentioned decisions have been correctly incorporated in the final Common Gradation Lists.

(ii) The State Government will prefix to the notification publishing final Common Gradation Lists a preamble (copy enclosed)."

The preamble directed to be prefixed reads:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in accordance with the decisions of the Government of India under the provisions of Section 115(5) of the States Reorganisation Act, 1956 (Central Act 37 of 1956), the Governor of (name of the State) is pleased to publish the final gradation list of the (name) establishment/department, which shall be in force retrospectively from the 1st November, 1956."

Quite apart from the consideration that the decision was, unlike those conveyed by the letter dated 3 April 1957, not given any publicity and is, therefore, not generally known to the service personnel, it is obvious that, in regard to the undertaking of responsibility for the Integration of services, this procedure does

not show any advance on the position disclosed in the earlier letter dated 3 April 1957, for the Central Government Indicated that it would only decide the representation of persons aggrieved by the provisional combined gradation list and required that those decisions should be correctly incorporated in the final list. As to the rest, the final gradation list was directed to be published by the State Government under its rule making power exercisable under the proviso to Article 309 of the Constitution. It may be noted here that the State Government's proposal that the final gradation list be published under the authority of the Central Government was not accepted. Subsequently, explaining this, the Central Government stated in its letter No. 9/10/59-SR(S) dated 12 March 1960, which reads as follows:

"I am directed to refer to the State Government's letter No. 123-3163/I-Integ., dated 9th January, 1960, on the above subject and to say that subject to the specific obligations cast on the Central Government under Sub-sections (2) to (5) and the proviso to Sub-section (7) of Section 115 of the States Reorganisation Act, persons in the State Services continue to belong to the State services and the directions, if any, given u/s 117 of that Act have to be complied with only by the State Government. In confirming the gradation list, as modified, if necessary, with reference to the decisions of the Central Government on representations made by any of the affected persons, the State Government may be said to regulate the conditions of service of their servants. Consequently, there seems to be no objection to invoking the proviso to Article 309 in the preamble, indicating at the same time that the final list is in accordance with the decisions of the Government of India u/s 115 (5) of the States Reorganisation Act, although no rule as such is framed for the purpose."

In order to complete the picture, it is necessary to refer to two other letters which disclose the thinking of the Central Government in a somewhat contrary direction. In the letter No. 9/10/59-SR(S) dated 25th July 1960, the Central Government stated:

"I am to state further that the States Reorganisation Act casts the responsibility for integration of services on the Central Government and that the presumption made by the State Government that, in the case of the departments where no representations have been received against the equation of posts or the provisional combined gradation list, no question of any direction from the Central Government arises, and that, the gradation list may therefore be finalised without any reference to the Central Government is not wholly correct even though for practical purposes the approval of the Government of India to the equation of posts and combined gradation list may be presumed in such cases. But in cases where the State Government desire to have the specific approval of the Government of India for any particular equation of posts or for finalisation of the provisional gradation list, it is requested that the relevant Information may be furnished to the Government of India."

Again, after the judgment of the Mysore High Court in AIR 1961 Mys. 210

(supra) was delivered on 13th March 1961, the Central Government sent to each of the State Governments concerned a letter dated 11th October 1961 as under:

"A question has been raised whether in respect of any provisional common gradation lists where no appeals were preferred by any of the employees against the said common gradation lists, the approval of the Central Government can be presumed and the final gradation lists published by the State Government with the preamble suggested by the Government of India in their letter No. 9/10/59-SR(S) dated the 11th November 1959, addressed to the Government of Madhya Pradesh and copies endorsed to the State Governments or whether the lists should be formally sent to the Government of India for approval before publication. The matter has been considered and it has been decided as Section 115(5) of the States Reorganisation Act, 1956, confer powers in regard to integration of services exclusively on the Central Government, it will be necessary for the State Government to obtain the specific approval of the Central Government even in respect of provisional gradation lists in regard to which no representations have been received, before publishing them as final gradation lists. I am directed to request that action may kindly be taken accordingly."

This vacillating attitude of the Central Government in regard to the extent of its responsibility u/s 115(5) of the Act for the integration of services was reflected in some cases in which that Government was required to appear. So, in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, , the Solicitor General submitted that the power of effectuating the integration of services was not exclusively conferred on the Central Government u/s 115(5) of the Act and that the power of the State Government in the matter remained unaffected except to the extent that it was obliged to carry out the direction given in the matter by the Central Government. However, in AIR 1965 Guj 23 (FB) (supra), the Attorney General had argued that the power of integration vested solely and exclusively on the Central Government u/s 115(5) of the Act.

In Union of India v. G. M. Shankaralah", Civil Appeals Nos. 1439 and 1416 of 1967, D/- 16-10-1968 (SC), the Mysore State, in which (as indicated by the Supreme Court) the Central Government had delegated its powers u/s 115 of the Act, prepared a provisional common gradation list. Certain objections raised in, regard to the list were decided by the Central Government on the recommendations of the Advisory Committee constituted by it u/s 115(5) of the Act. These were challenged in several writ petitions heard by the Mysore High. Court. The Central Government took the stand that the function entrusted to it under the Act was purely administrative, that it was not justiciable, that no question of violation of the principles of natural justice could arise and the impugned decisions were final. However the High Court allowed the Central Government to take "a somersault on what the case of the Government till then was" and to contend successfully that the decisions, though they purported to be final, were only provisional, that the affected persons had a right to make representations against it, that those representations would be considered by the

Central Government with the assistance of the Advisory Committee and, therefore, the Central Government would arrive at a final decision.

In the appeal filed by the Central Government against the decision of the Mysore High Court, an unsuccessful endeavour was made in the Supreme Court to withdraw the admission that the earlier decisions on the objections raised in regard to the list were provisional and not final on the ground that it was an erroneous concession made on a question of law. The Supreme Court pointed out that it was not, in fact, an admission of that nature. It is remarkable that, in all this, the Central Government displayed a deplorable lack of consistency. It is all the more so when regard is had to the consideration that it appertains to a matter of vital importance to thousands of members of the public service in several States who are affected by the reorganisation brought about by the provisions of the Act.

We have already indicated that the Central Government had belatedly accepted the position that the provisions of the Act cast upon it the exclusive responsibility for effectuating the integration of services in the affected States. In this connection, we may refer to the Central Government's letters dated 25th July 1960 and 11th October 1961, which we have already noticed. The Instructions in the earlier letter are, however, ambiguous because it was stated that "in cases where the State Government desire to have the specific approval of the Government of India for any particular equation of posts or for finalisation of the provisional gradation list, it is requested that the relevant information may be furnished to the Government of India". These instructions appear to give the State Government liberty to obtain or not to obtain such specific approval. But the letter dated 11th October 1961 is unequivocal. It reads:

"The matter has been considered and it has been decided, as Section 115(5) of the States Reorganisation Act, 1956, confer powers in regard to integration of services exclusively on the Central Government, it will be necessary for the State Government to obtain the specific approval of the Central Government even in respect of provisional gradation lists in regard to which no representations have been received, before publishing them as final gradation lists. I am directed to request that action may kindly be taken accordingly."

It is implicit in this letter that such specific approval is essential in regard to other provisional gradation lists also. Indeed the letter may well be regarded as containing directions u/s 117 of the Act which, by their own force and independently of Section 115 (5) thereof, obliged the State Government to act in conformity therewith. That being so, the State Government could not disregard those directions without rendering invalid any action so taken by it.

In the instant case, when we directed that the relevant communications, whereby approval of the Central Government was obtained to "the equation of posts and the fixation of grades", be produced before us, all that could be shown to us was a letter No. 8/3(19)/63-SR(S) dated 23rd December 1963 from the

Central Government approving the recommendations of the State Advisory Committee on certain representations made against the provisional gradation list. Thus, unlike the gradation list in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, which the Government of India had "approved subject to certain modifications in the equation and changes proposed in accordance with the decision on the Individual representations (paragraph 9)", the gradation list in this case was not approved by the Central Government, which dealt only with the representations against the provisional gradation list, leaving the work of integration to be dealt with by the State Government Itself, as envisaged by its earlier decisions communicated by the letter No. 66/22/56-SR.II dated 3rd April 1957.

It will be recalled that, when it was argued in Union of India (UOI) and Another Vs. P.K. Roy and Others, that, by this letter the Central Government really abdicated its functions and left the work of integration to the State Government, the Supreme Court pointed out that it related only to the preliminary work of preparation of gradation lists (paragraph 10). But in this case nothing more was done for, as shown, the consideration of the representations was in accordance with the decisions of 1957, which had left the work of integration of services to be dealt with by the State Government themselves, in the circumstances, we decline to grant leave to introduce in the return the proposed amendments which have no basis in facts.

One of the main questions for consideration in this case is whether, u/s 115 of the Act, the Central Government alone has exclusive power to effectuate the integration of services in the various States affected by the provisions of the Act. This question was raised before the Supreme Court in two cases. In Union of India (UOI) and Another Vs. P.K. Roy and Others, , their Lordships, without deciding the question, assumed for the purpose of that case that Sub-sections (3), (4) and (5) of Section 115 of the Act read together, conferred on the Central Government exclusive power in regard to the integration of the services. In Civil Appeals Nos. 1439 and 1416 of 1967, D/- 16-10-1968 (SC) (supra), the question was again left open. In these circumstances, it is argued that, under Articles 162 and 246(3) read with Entry 41 of List II of the Constitution, the State Government alone has exclusive power to effectuate the integration of its public services. In our opinion, this is not entirely correct.

It is true that, speaking generally, the executive power of a State extends to all matters enumerated in the State List, including "State public services" over which the State Legislature has power to make laws and the expression "State public services" in Entry 41 is wide enough to include the integration of these services. But there are three provisions in the Constitution which make the exercise of this power subject to other provisions of the Constitution.

It is expressly enacted in the main clause of Article 162 that the exercise by the State Government of its executive power is "subject to the provisions of this Constitution". Again, the language of the proviso to that Article, applying as it

apparently does to matters enumerated in the Concurrent List, is wide enough to include within its ambit any other matter with respect to which the Legislature of a State and the Parliament have concurrent power to make laws. That being so, any "supplemental, incidental and consequential provisions" relating to public services of newly formed States in any law made by Parliament relating to reorganisation of States under Articles 3 and 4 of the Constitution will have an overriding effect and the "executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof". Finally, the proviso to Article 73(1) of the Constitution which lays down that the executive power of the Union shall not extend to "matters with respect to which the Legislature of a State has also power to make laws" lifts this inhibition in regard to any matter expressly so provided (i) in the Constitution or (ii) in any law made by Parliament.

The States Reorganisation Act, 1956, was enacted by Parliament which derived its power so to do under Articles 3 and 4 of the Constitution. Therefore the executive power of the Central Government in regard to matters covered by that Act, including the State public services, will have a subordinating and impairing effect on the executive power exercisable by the State in regard to those matters. In view of these provisions, we are unable to accept the contention that the government of a reorganised State alone has exclusive power to effectuate the integration of its services. Indeed, this extreme position was not taken even in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others, and all that was contended there by the Solicitor General was that, u/s 115(5) of the Act, the power of integration was not exclusively conferred on the Central Government, but the power of the State Government in the matter, which remained unaffected, had to be exercised subject to the directions of the Central Government. If, as contended, the State Government had exclusive power in the matter, there could be no question of taking, and acting in accordance with, the directions of the Central Government. To explain this, it is argued that the Central Government derived, under the relevant provisions of the Act, no more than a power to give such directions leaving the State Government's power to integrate its services otherwise unaffected. The contention is grounded on the opinion expressed by the Gujarat High Court in AIR 1965 Guj 23 (FB) (supra) which dissented from a contrary conclusion reached by the Mysore High Court in AIR 1961 Mys 210 (supra). To ascertain which of the two views is acceptable to us, it is necessary to consider the scope and effect of the relevant provisions, namely, Sections 114 to 118 of the Act.

Section 114 of the Act deals with All India services and is not relevant for this case. So is Section 118 which relates to the State Public Service Commission. Sections 115, 116 and 117, which are material, are reproduced below:

"115(1). Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the

Lieutenant-Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vin-dhya Pradesh or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.

(2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State, unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.

(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of Sub-section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement, as may be determined by the Central Government.

(5) 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 new States and the States of Andhra Pradesh and Madras and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(6) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of Section 114 apply.

(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution to 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.

(1) 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 Union or of an existing State in any area which on that day falls within another existing State or a new State or a Union territory shall, except, where by virtue or in consequence of the provisions of this Act such post or office ceases to exist on that day, continue to hold the same post or office in the other existing State or new State or Union territory in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the Government of, or other appropriate authority in, such State, or by the Central Government or other appropriate authority in such Union territory, as the case may be.

(2) Nothing in this section shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office,

The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."

Sub-section (1) of Section 115 provides for statutory allotment of certain persons serving in some States to the successor States. Sub-section (2) of that section enacts that certain other civil servants shall be deemed to be allotted to the principal successor State and to provisionally continue to serve in that State. Sub-section (3) empowers the Central Government to determine the successor State to which the civil servants referred to in Sub-section (2) shall be finally allotted and Sub-section (4) provides for giving effect to such orders of the Central Government. It is not difficult to see that these elaborate provisions had to be made in regard to allotment of civil servants because, in the first instance, it was in part final and in part provisional. The important point is that, for the final allotment of persons serving provisionally in the successor State, as provided in Sub-section (2) *ibid*, exclusive power had to be given to an impartial outside authority like the Central Government for the obvious reason that it could not be done either by any existing State, which was disestablished or dismembered by the provisions of the Act or even by any successor State.

It is, however, argued that the exclusive power to effectuate the integration of services in the newly formed States is not given to the Central Government, either directly or in words sufficiently wide in amplitude to express such an intentment That the power has not been given directly is undoubtedly true, but we do not agree that such power cannot be inferred as flowing by necessary implication. We have, therefore, to ascertain from the language of Section 115(5) and other relevant provisions of the Act whether the power is impliedly conferred. From a plain reading of Sub-section (5) *ibid*, it is obvious that the Central Government is empowered to establish one or more advisory committees for the purpose of assisting it "in regard to"---

- (i) the division of services among the affected States;
- (ii) the integration of services in all those States;
- (iii) the ensuring of fair and equitable treatment to all persons affected by the provisions of Section 115; and
- (iv) the proper consideration of any representations made by such persons.

Now, it is not possible to conceive of any authority being empowered by an enactment to obtain assistance in regard to an act which it is not authorised to do. It follows by necessary implication that the Central Government is authorised to do all those acts in regard to which it is enabled to seek assistance from advisory committees. The reason of the rule is that whenever anything is authorised to be done by law, there is necessarily included in that authority every power the denial of which would render the grant of the authority ineffective. And what is necessarily implied from the language of a statute is as much a part of it as if it were especially and expressly written in it.

The further submission is that this authority could at the most be implied "in regard to" the integration of services in the new States and the States of Andhra Pradesh and Madras and the intendment arising from this language does not extend to constituting the Central Government the sole authority for effectuating the integration of services in those States. The precise contention is that the power given to the Central Government "in regard to" integration is not, and should not be construed to be, the same as, or as wide as, the one given "for the purpose of integration". We are unable to accept this contention for several reasons. In the first place, it appears to us that perhaps the draftsman did not make in Sub-section (5) repetitive use of the expression "for the purpose of" in close proximity with a view to avoiding inelegant drafting. Secondly, the true meaning of the expression "in regard to" has to be gathered from the collocation and context in which it has been used and it bears in Sub-section (5) the same meaning as the expression "for the purpose of". Thirdly, even if the expression "in regard to" merely refers to the subject-matter in connection with which provision has been made for obtaining assistance from advisory committees, the content of the subject-matter has to be ascertained and it is not enough to vaguely say, as was done in the majority opinion delivered in AIR 1965 Guj 23 (FB) (*supra*), that the Central Government has "certain functions" to perform in connection with the integration of services.

Finally, we do not find anything in the provisions of Sections 115 and 117 of the Act to lend support to the argument that the exercise of the powers u/s 115(5) in regard to integration is limited to giving directions in connection therewith u/s 117. It is true that Section 117 generally empowers the Central Government to give such directions to any State Government as may appear to it to be necessary for giving effect to the provisions of part X, including Section 115(5), but that is an additional power conferred for the purpose of effectuating the exercise of the power given to the Central Government *inter alia* in regard to the

integration of services under the aforesaid Section 115(5) and throws no light on the content of the power under the last-mentioned provision. So, in AIR 1965 Guj 23 (FB) (supra), Desai C. J., who delivered the majority opinion, observed;

"A reliance was placed upon the provisions contained in Section 117 which empowers the Central Government to give directions to any State Government for the purpose of giving effect to the provisions contained in Part X, i.e., Section 114 to Section 118 of the Act. A provision relating to the giving of directions cannot strictly speaking be invoked for the purpose of considering the authority in which the power of integration vests. The directions have to be given for the purpose of giving effect to the provisions inter alia of Section 115. Section 117 cannot render much assistance for the purpose of considering whether the Central Government is constituted the sole and exclusive authority for the purpose of the integration of the services. We must look elsewhere for the purpose of finding the power of the Central Government to exclusively function in connection with such integration." (Paragraph 21).

We indicated earlier that Section 115(5) of the Act empowered the Central Government to establish one or more advisory committees to assist it in regard to four matters, namely, (i) the division of services among the affected States, (ii) the integration of services in these States, (iii) the ensuring of fair and equitable treatment to all persons affected by the provisions of Section 115 and (iv) the proper consideration of any representations made by such persons. It is obvious and is not also disputed, that Section 115(5) gives to the Central Government exclusive power in regard to three matters, namely, (i), (iii) and (iv). If so, it is difficult to accept that that is also not so in regard to "integration" occurring in the expression "division and integration of the services" in clause (a) of Sub-section (5). It is well settled that where there is a doubt about the meaning of the words of a statute, it is found not so much in a strictly grammatical or etymological propriety of language, nor even in its proper use as in the subject or in the occasion on which they are used and the object to be attained: *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, . And the meaning of a doubtful word is known by the company it keeps and is ascertainable by reference to the words which are associated with it: *Noscitur a sociis*. It is a well established rule that associated words are understood in a cognate sense, taking, as it were, their colour from each other. So Crawford observes:

"In order to ascertain the meaning of any word or phrase that is ambiguous or susceptible to more than one meaning, the Court may properly resort to the other words with which the ambiguous word is associated in the statute. Accordingly, if several words are connected by a copulative conjunction, a presumption arises that they are of the same class, unless, of course, a contrary intention is indicated."

(The Construction of Statutes, pages 325-26.)

J. G. Sutherland also states:

"In case the legislative intent is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases."

(Statutes and Statutory Constructions, Third Edition, Vol. 2, page 393.)

It will be readily seen that this is only an application of the general principle that the sense and meaning of a statute can be gathered only by comparing one part with another and by viewing all parts together as one whole and not one part only in isolation. So, in dealing with the same question, Somnath Iyer J., who spoke for a Division Bench of the Mysore High Court, observed in AIR 1961 Mys. 210 (*supra*) as follows:

"Sub-section (5) deals with four matters. It provides in the first instance for the division of the services; secondly, for their integration; thirdly, for fair and equitable treatment to the civil servants; and, fourthly, for the proper consideration of their representations.

It is for obtaining assistance in regard to these four matters that Section 115(5) authorises the Constitution of advisory committees by the Central Government. The duty to divide the services, save in cases provided for by Sub-section (1) of Section 115, which makes statutory allotments of certain classes of civil servants, is, as Sub-sections (2) and (3) indicate, exclusively that of the Central Government. Sub-section (5) next ensures fair and equitable treatment to the civil servants affected by the provisions of Section 115 and it is clear from this Sub-section that the responsibility of according that fair and equitable treatment is again that of the Central Government. The proper consideration of representations made by the civil servants, either in the matter of the division of services or their integration is similarly made part of the statutory duty imposed upon the Central Government.

It is tints incontrovertible that three of the functions to be performed under Sub-section (5), namely, the division of the services, the according of fair and equitable treatment to the civil servants, and the proper consideration of their representations, are exclusively assigned by Section 115(ii) to the Central Government. The argument that the remaining fourth function was not assigned to the Control Government would involve the consideration of Sub-section (5) in so far as it refers to the integration of the services, in a manner different from that in which it has to be understood with reference to the three other matters dealt with by it and should, therefore, be rejected.

The legislative intent deducible from the subject-matter and purpose of Section 115(5) does not appear to us to be different.

The scheme of Section 115 is to create and evolve a homogeneous civil service for each of the States formed by Part II of the States Reorganisation Act. It first creates the personnel of that service, by the machinery provided by Sub-sections

(1), (2) and (3). Its next objective is the blending and amalgamation of the services to which such personnel belonged before the formation of States, and, for that purpose, it authorises the establishment of advisory committees both for the division of services and for their fusion.

The fair and equitable treatment required by Section 115(5) and the representations, a proper consideration of which is directed, are clearly relatable not only to the division of the services, but also to their integration. So, the purpose of the establishment of the committees is to aid the division and integration. The subject-matter of Section 115 is the division and integration of the services and the purpose of Sub-section (5) of that section is to create the machinery for its execution. That Sub-section, which is a complete and exhaustive code on the subject-matter of such integration, plainly bestows ultimate power to make the integration only on the Central Government."

(Page 216)

With respect, we agree with these observations.

There are, in our opinion, other reasons also which indicate that Parliament entrusted the work of integration to the Central Government alone. One of them is the consideration that, if it were desired to leave the authority of the State Government in the matter unaffected or to limit it to taking certain binding decisions, a suitable provision to that effect could be easily made in the Act, giving to the aggrieved person inter alia a right of appeal or revision against such decision exercisable within a limited time. The absence of such provisions from the Act contra-indicates that, as contended, the Central Government was given only a supervisory jurisdiction in the matter of integration.

It will be readily seen that several States suffered from the unsettling effects of reorganisation of States and in all those States the work of integration of services had to be done. That work is a complex process involving numerous steps. As pointed out by the Supreme Court in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, the first two of these steps are the formulation of principles on which the work of integration has to be carried out and the actual preparation of preliminary or provisional gradation lists. Formulation of principles is no doubt important, but the more important part of the work is the preparation of gradation list, involving, as it does, two steps, namely, the equation of posts and the determination of relative seniority in the combined gradation list. This is also the most difficult part of the work when regard is had to the consideration that several regions have been brought together to form a new State. Each of these regions has its own civil servants for every department of administration, having different qualifications and conditions of service and holding posts of diverse denominations with varying duties, responsibilities and jurisdiction.

The nature of the difficulties will be obvious when it is realised that the preparation of a combined gradation list involves the bringing together in one category of all civil servants of different regions working on similar posts who in

other respects are, on the whole or as far as may be, equal or very nearly so. In this situation, there is hardly any scope for mechanical application of the formulated principles. On the other hand, differences, which are numerous, can easily be put forward or exaggerated to justify refusal to integrate a class of civil servants from any region with the rest of the class on equal terms or at all. To give an example, the reorganised Bombay State, while applying the principles formulated by the Central Government, equated the posts of certain civil servants from the former Saurashtra State by cutting down their services by five years. On representations made, the Central Government intervened and remitted the matter for reconsideration, observing:

"The Government of India are not able to approve of the basis of equation adopted by the Government of Bombay stipulating a qualifying service of 5 years to entitle a person to be equated with the corresponding post in Bombay and in cases where 5 years is not available, equating such a post with a lower post. The principle adopted by the Government of Bombay is discriminatory and results in unfair treatment to categories of Government servants even to the extent of making them lose periods of approved service for purposes of seniority".

(AIR 1965 Guj 23 (supra) paragraph 12.)

Another example of such deviation may be given from this State. Although the principle recognised for determining inter se seniority is the length of continuous service, whether temporary or permanent, in the equated posts of the various integrating units, services of certain civil servants rendered by them in posts held by them long ago in some princely States, which had not been equated, were taken into account. The problem of integration was faced by several States and it was right and proper that the principles formulated for the work of integration should be applied impartially and fairly and worked out in the same way in all those States by an authority inspiring confidence. So, in the Report of the States Reorganisation Commission, it was stated:

"The integration of services which will follow the determination of cadres and the allotment of personnel should be based on definite principles which should, as far as possible, be of uniform application throughout India It is also of the greatest importance that the body constituted to integrate the service personnel of the different States should be such as to inspire confidence.....".

(Paragraph 810)

By virtue of its standing and detachment, the Central Government was eminently fitted for the work of uniformly and even-handedly applying the principles of integration of services in all the affected States and was, therefore, selected by Parliament to be the repository of the authority required for the purpose.

Under the provisions of the Act, new States were formed mainly on the basis of language with the consequence that regions, which formerly were either independent units of administration or were part of other States, were brought

together under one administration, leaving one or the other region in a dominant position in the now State. Unfortunately, our country continues to be plagued with regional and parochial feelings which often find expression in emotional unrest. In those circumstances the civil servants of smaller units were exposed to unfair treatment by the dominating unit. So, the States Reorganisation Commission stated in its report:

"An eminent publicman pointedly drew our attention to the fact that the existing smaller units, which may be integrated with the larger States, should not be treated as annexed territories, and that government servants belonging to these smaller units should be treated fairly and even generously. We realise the importance of this question and hope that the reorganisation of the administrative machinery in the States will be effected in such a manner that no section or group may be left with a sense of grievance."

(Paragraph 812)

It will be seen that an impartial outside authority like the Central Government was required to secure to such civil servants fair treatment in this sense.

Yet another reason is that Part B and Part C States, which had undertaken the work of integration of their services, found the task more difficult than was at first anticipated and had not completed the work even in 6 or 7 years partly because the Government of those States did not accord to the work the necessary priority.

For all these reasons, we are, with all due respect, unable to share the majority opinion in AIR 1965 Guj 23 (supra) and we agree with the conclusion reached in AIR 1961 Mys. 210 (supra) to the effect that, u/s 115(5) of the Act, the Central Government is the sole repository of the power to effectuate the integration of services in the new States and the States of Andhra Pradesh and Madras. This was also the view taken by another Division Bench of this Court in P.K. Roy, Asst. Engineer, Govt. of M.P., P.W.D. and Others Vs. State of Madhya Pradesh and Others, . In deciding the appeal against that decision, the Supreme Court, as already indicated, assumed that Section 115(5) conferred exclusive power: on the Central Government in regard to the integration of services: Union of India (UOI) and Another Vs. P.K. Roy and Others, . The same view was assumed, adopted or expressed in several other cases. The only other case taking a contrary view is K. C. Gupta v. Union of India AIR 1969 mah 34. The learned Single Judge, who decided that case in 1967 before the Supreme Court's judgment in P. K. Roy's case, Union of India (UOI) and Another Vs. P.K. Roy and Others, , merely followed the "middle course" adopted by the majority opinion in A. J. Patel's case, AIR 1965 Guj 23.

Before we take up the next question, we may shortly consider the implications of the statutory provision whereby the powers in regard to the integration of services are vested exclusively in the Central Government. There was, at one time, some controversy in regard to it and it was held that the Central

Government could not take for the work of integration of services any assistance from other authorities, including the State Government, except in relation to preparatory work of a purely ministerial character and that, therefore, the work of preparation of a provisional gradation list could not be delegated to the State Government. The controversy has now been set at rest by the decision of the Supreme Court in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, . Relying upon *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, their Lordships have authoritatively laid down that, in this matter, the Central Government could take all manner of assistance from the State Government, including the preparation of provisional gradation lists and there would be no unauthorised delegation of statutory power so long as--

(i) the Central Government exercises general control over the activities of the State Government in regard to the integration of services;

and

(ii) the ultimate integration is done with the sanction and approval of the Central Government.

The provisional gradation list prepared in this case is not, therefore, open to challenge on the ground that that work could not be entrusted to the State Government. As a matter of fact, it has not also been so challenged before us. However, the position in regard to the final gradation list is different. As shown, it was not prepared with the sanction and approval of the Central Government. Indeed, in the return filed in this case, the Central Government disclaimed all responsibility for the integration of services u/s 115 (5) of the Act and stated that its authority extended only to ensuring that the allocated servants were treated fairly and their representations were properly heard (Para. 1 (e) of the return). Fully in keeping with this, the Central Government instructed the State Government to publish the final gradation list as its own--as rules made by it under the proviso to Article 309 of the Constitution. This is what the Central Government stated in its letter dated 12 March 1960:

"In confirming the gradation list, as modified, if necessary, with reference to the decisions of the Central Government on representations made by any of the affected persons, the State Government may be said to regulate the conditions of service of their servants. Consequently, there seems to be no objection to invoking the proviso to Article 309 in the preamble, indicating at the same time that the final list is in accordance with the decisions of the Government of India u/s 115 (5) of the States Reorganisation Act, although no rule as such is framed for the purpose."

It follows that, in this case, the State Government made the provisional gradation list. The State Government itself confirmed that list and published it as rules made by it under the proviso to Article 309 of the Constitution. Therefore, its character as a gradation list made by the State Govt. is not altered by the consideration that it incorporates also the decisions of the Central Government

under Clause (b) of Section 115 (5) of the Act on representations made to it by the affected persons. In the circumstances, we are clearly of opinion that, in this case, the final gradation list cannot be regarded as one made by the authority named for the purpose in Section 115 (5) of the Act.

It is questionable whether the Integration of services, which includes equation of posts and determination of relative seniority, can be regarded as amounting to making rules relating to conditions of service within the meaning of Article 309 of the Constitution. This was doubted in *Naganoor v. Union of India* AIR 1966 Mys 95 and *Shaligram Anantram Chaturvedi Vs. Union of India (UOI)*, . In the case of AIR 1965 ahm 23 (Supra), the Full Bench was of the opinion that these acts did not form part of determination of conditions of service within the meaning of Section 115 (7) of the Act. We do not, however, express any opinion on this question because it was not argued before us,

The next point which we have to consider relates to the representation made by the petitioner. In view of Clause (b) of Section 115 (5) of the Act, there can be no doubt, and it is not disputed before us either, that any person like the petitioner, who is affected by the provisions of Section 115, has a statutory right of representation to the Central Government. As we have already indicated, the authority named in Section 115 for effectuating the division and integration of services is the Central Government. The State Government is not named in that section and no one can be legally affected by anything done by it even though that act may be by way of aid and assistance to the Central Government in the performance of its statutory duties under the section. Therefore, strictly speaking, it is only the ultimate act done with the approval of the Central Government which can be the foundation of a right of representation under Clause (b) of Section 115 (5) of the Act. We are further of opinion that, in so far as that clause requires the Central Government to ensure fair and equitable treatment to all persons affected by the provisions of the section, the right of representation is not exhausted by making only one representation.

As we have indicated earlier, the work of integration is a complex process and its effectuation involves several stages. The statutory right of fair and equitable treatment implies that an aggrieved civil servant should be able to make representations from time to time. To illustrate this, an example may be devised. Under the provisions of the Act, several independent units of administration were brought together to form a new State. In anticipation of the coming into force of the Act, some of these units hurriedly and prematurely confirmed their civil servants and even went to the length of confirming some of them from the date of appointment, while others did not do so. After the formation of the new State, the work of integration was initiated and, in due course, final gradation lists were approved by the Central Government, determining, according to the accepted principle, inter se seniority on the basis of the total length of service on the equated posts irrespective of whether it was temporary or permanent. But in disregard of these final gradation lists, the new State gave promotions only to

junior civil servants merely on the ground that they had been confirmed. In the circumstances, the senior civil servants, who had not been confirmed earlier for no fault attributable to them, are entitled to represent against this unfair treatment and invoke the intervention of the Central Government u/s 115 (5) of the Act.

In *N. Desai v. Govt. of Andh. Pra.*, AIR 1968 Andh Pra 5 a Division Bench of the Andhra Pradesh High Court stated:

"Thus integration involves matters of detail as well. Unless such matters as have bearing on fusion are completely determined, integration cannot be complete. The duty of the Central Government is not over with merely laying down some criteria. Nor does its statutory power get exhausted with it. It has to see that the integration is effected properly in the manner contemplated by it and that its directions in this behalf are rightly followed and are not misunderstood or misconstrued. The statute itself lays down that it has to properly consider from time to time the representations made by persons affected in the process of division and integration. The problems arising may be diversified and may not be fully comprehended unless certain aspects are brought to light by the persons affected. Having regard to the fact that occasion for representation arises when adverse effect is foreseen or realised, not all representations can come at one time".

(Page 13)

We have said earlier that a final gradation list prepared by, or with the sanction of, the Central Government is the foundation of right of representation under Clause (b) of Section 115 (5) of the Act. However, the Central Government had decided, as communicated by its letter dated 11, November 1959, that an opportunity should be afforded to the service personnel to represent against the provisional gradation list and such representations would be considered and decided by the Central Government in consultation with the Central Advisory Committee. In *Union of India (UOI) and Another Vs. P.K. Roy and Others*, the Supreme Court regarded this representation as satisfying the requirement of law in regard to the provisional gradation lists which were subsequently approved by the Central Government, but they also laid down that, in the event of any provisional gradation list being materially altered by, or at the instance of the Central Government, a second opportunity to make a representation should also be afforded. Their Lordships observed:

"Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list published would have been sufficient to satisfy the requirements of law. But the extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the right of the persons affected, the scheme and the policy of the statute and other relevant

circumstances disclosed in the particular case".

(Para 11)

We would, therefore, consider in this particular case whether the petitioner was afforded a reasonable opportunity of making a representation against the provisional gradation list.

It is clear that, in a common gradation list, civil servants of several administrative units with dissimilar designations, varying duties, functions and jurisdiction and differing conditions of service are brought together. Further, civil servants of one unit are ignorant of the service details of those of other units and it is only on the basis of these service details that an aggrieved civil servant can make an effective representation against the provisional gradation list. Indeed, this was realised at an early stage and the notification publishing the provisional gradation list expressly provided that a civil servant desirous of making a representation against the provisional gradation list could obtain any relevant information about the service details of any person included in that gradation list. Even so, when the petitioner applied for the service details, he was told that most of those details could not be supplied. This is what was communicated to him by the letter dated 16 November 1961:

"According to note I of the notification published at page 1937 of the extraordinary issue dated the 28th October 1961 of the Gazette, any relevant information about the service details (by which is meant information contained in pro forma I appended to G. A. Department memorandum No. 2732/1577/I-Integ. dated the 26th July 1958) could be supplied. Information on other points such as duties, powers, territorial charges, appointment orders, confirmation orders, technical and other qualifications, rules for fixing seniority etc. cannot be supplied."

(Annexure V)

To explain this, it is suggested in paragraph 5 of the return that the information sought by the petitioner, not being relevant, was not supplied to him. When we consider that, in making the provisional gradation list in question the State Government stated in the notification, by which it was published, that they had taken into consideration (i) the nature and duties of a post, (ii) the responsibilities and powers exercised by the officers holding a post, the extent of territorial or other charges held or responsibilities discharged, (iii) the minimum qualification, if any, prescribed for the post, and (iv) the salary of the post, it is incomprehensible how the information sought by the petitioner, so far as it related to these service details, could be regarded as irrelevant. Fairness is one of the attributes of natural justice and it implies that, where there is a right of representation in circumstances such as those present here, the material on which such representation could be made should, on demand, be made available to the aggrieved person. Indeed, even apart from this, we think that this is implicit in the statutory right itself, for it envisages a reasonable opportunity of

making representation and not merely an empty formality of showing that an opportunity was afforded. In our opinion, in refusing to give to the petitioner information on these points, the State Government denied to him a reasonable opportunity to make a representation against the provisional gradation list. This by itself, without more, vitiates the order of the Central Government rejecting his representation as also the final gradation list which was subsequently published by the State Government,

The order passed by the Central Government on the petitioner's representation is further challenged on the ground that it did not give reasons for rejecting it and there was also a denial of natural justice in that the order was based on the recommendations of the Advisory Committee without giving to the petitioner an opportunity of meeting it and satisfying the Central Government to the contrary. These contentions have been controverted in the return and it is stated that no reasons need have been given by the Central Government, which did not pass a judicial order. The question then is, whether, in dealing with the integration of the services u/s 115 (5) of the Act, the Central Government discharges quasi-judicial or administrative functions. If the functions are judicial or quasi-judicial reasons must be given for the order passed on the representation. *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunhunwala and Others*, ; *Govindrao v. State of M. P.*, AIR 1965 SC 1222 and *Bharat Raja Vs. The Union of India (UOI) and Others*, . Even if the functions be administrative, reasons must be given for the order passed if so required by the statute; *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, ; *Re Poyser and Mills Arbitration* 1963-2 All ER 612 and *Iveagh v. Minister of Housing and Local Govt.*, 1964-1 QB 395. In other cases it is not obligatory to give reasons for administrative orders.

The controversy whether a given power is administrative or quasi-judicial is an ancient one. In *The King v. Electricity Commrs.*, 1924-1 KB 171, *Atkin L. J.* laid down the test as follows:

"Where any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially. act in excess of this legal authority, they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs".

This test was adopted in numerous cases including *Rex v. Legislative Committee of the Church Assembly*, 1928 1 KB 411; *The King v. London County Council* (1931) 2 KB 215 : AIR 1943 164 (Privy Council) and *Nakkuda Ali v. Jayaratne*, 1951 AC 66 . That test was accepted by the Supreme Court also in *Province of Bombay Vs. Kusaldas S. Advani and Others*, ; *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, and *Vrajlal Manilal and Co. Vs. Union of India (UOI) and Another*, . However, recently, it was pointed out by Lord Reid in *Ridge v. Baldwin*, 1964 AC 40 that there was nothing in the speech of Lord Atkin in the *Electricity Commissioner's* case 1924-1 KB 171 (*Supra*) to suggest that the judicial element could not be inferred without the statute specifically imposing a duty to act judicially. It was

also laid down there that the duty to act judicially, envisaging observance of rules of natural justice, should be, as decided in numerous earlier cases, inferred whenever power is given to an authority or body of persons to determine questions affecting the rights of citizens. That this was so had been noticed earlier by our Supreme Court in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, speaking for the Court, Wanchoo, J. (as he then was) stated:

"Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively; (vide observations of Parker J., in R. v. Manchester Legal Aid Committee. 1952-1 QB 413.)"

(Pages 1113-4)

This view was adopted in subsequent cases; Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, ; Bhagwan v. Ram Chand. AIR 1965 SC 1967 ; State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, . In the case of Shri Bhagwan v. Ram Chand (Supra), Gajendragadkar, C. J, who spoke for the Court, stated:

"An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice exercising its jurisdiction and its powers, but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal would depend upon the nature of the power conferred on the authority or body, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body, and other relevant circumstances. This question has been considered by this Court on several occasions. In Civil Appeal No. 44 of 1964, D/- 9-12-1964 = (reported in AIR 1965 SC 1595) both aspects of this matter have been elaborately examined and it has been held adopting the view expressed by the House of Lords in 1964 AC 40 that the extent of the area where the principles of

natural justice have to be followed and judicial approach has to be adopted, must depend primarily on the nature of the jurisdiction and the power conferred on any authority or body by statutory provisions to deal with the questions affecting the rights of citizens. In other words, in that decision the Court has held that the test prescribed by Lord Reid in his judgment in the case of Ridge, 1964 AC 40 affords valuable assistance in dealing with the vexed question with which we are concerned in the present appeal."

(Page 1770)

In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Supreme Court observed:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the frame work of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a Welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

In the last-mentioned case, the following observations of Lord Parker in Regina v. Criminal Injuries Compensation Board, Ex Parte Lain, 1967-2 QB 864 were quoted with approval:

"The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time, the writ only went to an inferior Court. Later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty."

(Page 882)

Reverting to the question whether the powers u/s 115 (5) of the Act in regard to the integration of services are quasi-judicial or administrative, it is, obvious that the Central Government has been given legal authority to deal with the integration of services which involves determination of questions relating to equation of posts and fixation of inter se seniority in gradation lists. It is equally clear that such determination is bound to affect the rights of numerous public servants drawn from several administrative units. These public servants had vested rights in the units to which they formerly belonged. They now find themselves in a situation in which those rights are in jeopardy in the sense that the rights are being subjected to scrutiny for the purpose of equation of posts. Any erroneous decision in this respect will vitally affect numerous public servants and may even blast the future career of many of them. It will thus be readily seen that the Central Government's decisions are likely to have serious and widespread consequences, What is more, whichever way the Central Government decides a particular matter relating to the integration of services, it is bound to affect adversely one section or other of the public services. It is true that, in this case, there is no lis in the strict sense of there being two contesting parties but, in the larger sense, there would be a lis between a public servant who, as in this case, claims that his post should be equated with those of a higher grade and others who oppose it. The same thing may be said about the determination of relative seniority. In any event, it is not essential for a statutory function to be quasi-judicial that there should be a lis in the strict sense.

It is equally true that it is not expressly provided in the Act that, in this matter, the Central Government must act judicially, but there are indications in the Act which clearly point in that direction. In the first place, the Central Government has to appoint Advisory Committees to assist it in the work of integration of the services. Secondly, it is required to ensure to the civil servants fair and equitable treatment. Finally, it is obliged to properly consider representations made by them. As we indicated elsewhere in this order, the right of representation afforded to the civil servants implied that the material on which they could make an effective representation must be made available to them. Further, the Central Government is" enjoined to ensure to the civil servants fair and equitable treatment and, in our view, this by itself implies that it must act in a quasi-judicial manner, ensuring to the civil servants fairness in the proceedings and a determination of the questions involved on objective considerations. As a matter of fact, the Central Government has laid down principles for the equation of posts and determination of relative seniority, which are calculated to ensure such determination on objective tests. Having regard to the nature of powers conferred on the Central Government u/s 115 (5) of the Act relating to the integration of services, the serious consequences likely to arise from the exercise of those powers on the rights of civil servants and the requirement that, in this matter, the Central Government must ensure to them fair and equitable treatment and also properly consider any representation made by them, we are of opinion that the powers are quasi-judicial. In this view, the absence of reasons

in the impugned order, which led to the rejection of the petitioner's representation, is another vice vitiating its validity.

Even if the powers be regarded as administrative, the Central Government is obliged to deal with the matter relating to the integration of services, involving as it does serious consequences as already adumbrated, in conformity with the rules of natural justice, *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . These rules were in fact applied by the Supreme Court to a case relating to the integration of services: *Union of India (UOI) and Another Vs. P.K. Roy and Others*, . The question, however, is whether the rules of natural justice require that the recommendations of the Advisory Committee, which was consulted by the Central Government before rejecting the petitioner's representation, ought to have been made available to him and whether he should have been given an oral hearing for contradicting or correcting it. The rules of natural justice are not enacted rules. The question whether, in a given case, the requirements of natural justice have been met depends upon the facts and circumstances of the case and the procedure therein adopted in the, background of the statute and the rules framed thereunder. In *Russel v. Duke of Norfolk* 1 949-1 All ER 109, Tucker, L. J. stated at page 118:

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly I do not derive much assistance from the definitions of natural justice which have been from time to time used, but whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case".

This opportunity must provide an occasion to correct or contradict any statement relevant to the matter. So, in *Local Government Board v. Arlidge* 1915 AC 120 Viscount Haldane recalled with approval the views of Lord Loreburn and stated:

"I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice* 1911 AC 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties. In the controversy to correct or contradict any relevant statement prejudicial to their view. If the Board failed in this duty, its order might be the subject of certiorari and it must itself be the subject of mandamus."

The recommendations of the Advisory Committee are not before us and, since

the impugned order is being quashed on other grounds, we do not desire to pursue this aspect of the matter further except to say that, unless the recommendations contained any relevant statement of fact prejudicial to the petitioner which he did not already have an opportunity of contradicting, or correcting, he was disentitled to have access to those recommendations for, presenting his case. In regard to the denial of an opportunity for a personal or oral hearing, it is sufficient to say that it is not an essential postulate of natural justice, 1915 AC 120 (Supra); S. Kapur Singh Vs. Union of India (UOI), and Ramratan Balchand Vs. The State of Madhya Pradesh and Others, .

The petitioner has challenged also the State Government's order dated 15 May 1963 whereby he was provisionally absorbed as from 1 November 1956, in a post of overseer (electrical and mechanical) on the pay scale Rs. 100-250. On that basis, he was placed on the unified pay scale Rs. 120-275 and given later the revised pay scale Rs. 170-315. The pay scale on which he was employed as Superintendent (Mechanical) before the reorganisation of States was Rs. 150-250. He claimed that, in view of that higher pay scale, he was entitled to the unified pay scale Rs. 180-385 and the revised pay scale Rs. 320-426. His grievance is that, as a result of the impugned order, he was demoted to a lower post and he also suffered in emoluments as disclosed in Annexures XIV to XX. The impugned order discloses that this is only a provisional arrangement, grounded as it is on the provisional combined gradation list. So, it is stated in paragraph 6 of the return:

"As already stated, in the provisional gradation list published by the State Government, the post held by the petitioner has been equated with the post of Overseer. The absorption of the petitioner provisionally on that post does not amount to any demotion."

Under Sub-section (2) of Section 116 of the Act, the State Government is empowered to pass, in relation to any allocated servant, any order affecting his continuance in any post or office previously held by him. That, we think, is sufficient authority for the provisional arrangement made by the State Government. So, in AIR 1961 Mys 210 (Supra) the Division Bench observed:

"We think that the conferment of authority on the Central Government to make the integration did not deprive the Government of its power to consolidate its governmental operations through a transitional reorganisation of its administrative structure during the interregnum between the formation of the new State and the amalgamation of the integrant parts of its civil service by the Central Government".

(Paragraph 77)

That is not to say that the petitioner may not have been prejudiced by the provisional arrangement, but that is only a temporary disadvantage which is expected to be corrected when the final arrangement is made. So, in Shankar v. State of Mysore AIR 1962 Mys 112 the Division Bench observed:

"Any temporary disadvantage or prejudice to which a civil servant may be exposed by reason of the exercise of the power by the State Government to make interim arrangements can always be redressed by the Central Government with retrospective effect when it makes the final integration. That, in our opinion, is an excellent ground for the refusal of the request made on behalf of the petitioner that we should issue an interdict stopping all promotions in the State until the final integration is accomplished."

(Page 117)

In *G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore*, this view was approved and Wanchoo, J. (as he then was) observed:

"We are of opinion that the view taken by the Mysore High Court in the earlier writ petitions after the framing of the provisional seniority list is correct and the State Government would be entitled to act on that list subject of course to this that if the provisional list is in any way altered when the final list is prepared, the State Government would give effect to the final list."

(Page 180)

So far as the protection under Sub-section (7) of Section 115 is concerned, the petitioner cannot contend that the new pay scales were to his disadvantage because he had the option to retain his old scale of pay. For all these reasons, we must decline to interfere with the provisional order dated 15 May 1963.

The petitioner has claimed many other reliefs including a writ of mandamus directing the Central Government to equate his post in a higher grade and also to refix his pay scale accordingly. Apart from the consideration that all relevant material necessary for giving such directions is not before us, it is the Central Government which has been empowered to determine such questions and we would not be justified in assuming the powers of that Government to decide or express any opinion on these questions on merits. We consider that, in the view we have taken, all that we need do is to quash the Central Government's order rejecting the petitioner's representation and so also the final gradation list dated 4th June, 1965.

The result is that this petition succeeds to the extent hereinafter indicated. The Central Government's order rejecting the petitioner's representation as communicated to him by the State Government's memo dated 1 April 1964 and the final gradation list dated 4th June, 1965, which is published in the *M. P. Rajpatra Extraordinary* dated 18th June, 1965 are quashed. In the circumstances of the case, we direct the respondents to bear their own costs and pay those incurred by the petitioner. Hearing fee Rs. 250. The security amount deposited by the petitioner shall be refunded to him.