

and not that (to reproduce the words of the prescribed authority in this case) "there can be a material doubt caused with regard to the genuineness of the votes". The prescribed authority seems to me to have misconceived its own power and functions under the law and also to have failed to fully grasp the grounds on which alone an election is liable to be set aside under the law. Setting aside an election, it must always be remembered, is a serious matter, involving as it does, expense to the State and to the candidates; and where an election has not been secured by corrupt or illegal practices, an innocent non-compliance with a rule which is not basic and fundamental, not materially affecting the result of the election should not be considered sufficient for setting aside an otherwise lawful election.

For the foregoing reasons, this petition succeeds and allowing the same I quash the impugned order, with the result that the election petition must be held to be dismissed. The petitioners will have their costs of proceedings in this Court.

S. B. CAPOOR, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw, C. J., and Mehar Singh, J.

RADHAKRISHNA CHATURVEDY,—*Petitioner.*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ No. 685-D of 1962.

Constitution of India (1950)—Arts. 14 and 16—Recruitment to Indian Administrative Service in Rajasthan from existing services—Lists prepared for recruitment forthwith and in future—Officers in the Lists treated differently for determination of seniority—Whether can ask for quashing of the orders on the ground of discrimination—Indian Administrative Service (Regulation of Seniority) Rules (1954)—Rules 3(2), 4(2) and 5—Respective Scope of.

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The President India sanctioned the Indian Administrative Service (Extension to States) Scheme to be effective also in Part 'B' States, including Rajasthan, with effect from September, 1951. Pursuant thereto the Special Selection Board accepted eleven officers in List I who were to be immediately absorbed in the Indian Administrative Service and prepared a second list of nineteen officers who were to be absorbed in the Indian Administrative Service, during the next five years. Out of the officers in List II, the first sixteen were appointed to the Indian Administrative Service by a notification of April 16, 1954. While determining their seniority one formula was applied to the first ten and a different formula to the remaining six. This decision was challenged as being violative of Articles 14 and 16 of the Constitution. The decision was sought to be justified by the Government on the ground that the six officers, before appointment to the Indian Administrative Service on April 8, 1954, were substantive Sub-Divisional Officers, which are not posts in the normal cadre of the Indian Administrative Service, and they could not be allowed to supersede the first ten officers in the same list who, on the date of appointment, were holding posts in the cadre of the Indian Administrative Service, that is to say, the posts of collectors and above.

Held, that after entry into the Indian Administrative Service, the distinction of the lists was obviously lost, and all became members of the same service, so that the differentiation made on the basis of the past grouping in the Rajasthan Administrative Service in List II, though clear, cannot be described as rational. This classification has no rational relation to or connection with the object sought to be achieved by it, viz., the formation of an integrated and a satisfied Indian Administrative Service in which there is no bickering because of supervision of seniors by juniors. The entry in the Indian Administrative Service is an entry to a new service. Past service is not connected with it, except to the extent that it is a consideration for recruitment, and later, after recruitment, it plays a part in the determination of the length of service for the purposes of year of allotment, but no more. However, even in that no grouping of the type as in the Rajasthan Administrative Service ever plays any part whatsoever. The advantage obtained by the first ten officers in list II from the application of Weighted Down 'N' formula to them has been deliberately denied to the other six and the basis of the denial is neither sound nor rational, and savours of nothing but arbitrariness. The consequence is that the basis which is described as rational to achieve the object of an integrated and satisfactory Indian Administrative Service is a basis which has not prevailed either in list I or in list II, when each list is taken separately and in isolation, nor in lists I and II, when the two lists are taken together. If, as is the fact, this is the state of affairs, then an object, which has already been defeated in the very same service, the achievement of that by a basis, which has already been abandoned in the service, cannot possibly be rational, nor having a reasonable and a rational connection with the classification or differentiation made in list II. When a number of persons are

recruited to the Indian Administrative Service on one and the same day and from the same list, then it follows that normally and leaving out exceptional circumstances, none of which is made out here, same basis for the matter of year of allotment and assignment of seniority will apply to all even though it is an *ad hoc* basis. If a departure is admissible, it will be admissible for special reasons and special circumstances. Such a special case is not made out here with regard to the petitioners. When the Government has the power to proceed on *ad hoc* basis, it is even then not permitted to proceed in contravention of Articles 14 and 16 of the Constitution in regard to persons situate similarly and in the same circumstance and the same approach is to be made to the case of the petitioners. The consequence is that the denial of the benefit of Wighted Down 'N' formula to the petitioners when their companions in the same list II have the benefit of that formula and when all are similarly circumstanced having been selected on merits in list II by the Special Recruitment Board and having been recruited to the Indian Administrative Service on one and the same day, is violative of the protection under Article 14 and as such denial depresses the seniority of the petitioners, it affects their chances of promotion and is violative of Article 16(1) of the Constitution. The decision was quashed.

Held, that there is certain measure of overlapping between rule 3(2) and rule 4(2) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, on the one side and rule 5, on the other, in so far as the officers recruited to the Indian Administrative Service from list II are concerned. These rules forming part of the same set of rules have to be read together and in a harmonious manner. When read with that approach the only interpretation of these rules is that rules 3(2) and 4(2) are the only rules which apply to officers 'in service' on September 8, 1954, and that rule 5 applies to all officers recruited from list II after September 8, 1954, in whose case the Central Government has the power to fix their year of allotment as also seniority on *ad hoc* basis.

Writ petition praying that this Hon'ble Court be pleased to :—

- (a) *issue a writ, order or direction in the nature of Certiorari or otherwise quashing the order of the Respondents as contained in Notification dated 19th November, 1954 (Annexure Q) and letter dated 20th December, 1961 (Annexure V) rejecting the petitioner's representation and fixing the year of allotment of 1947½ to the petitioner as published in the Gradation list on 19th November, 1954 in which the seniority of the petitioner was fixed arbitrarily, or a Writ, order or direction in the nature of Mandamus or otherwise directing the Respondents to cancel or withdraw the said orders.*

- (b) *issue a writ, order or direction in the nature of Mandamus or otherwise directing the Respondents to fix the year of assignment of the Petitioner as 1941 calculated according to the 'N' formula, or weighted down N formula or any other principle or formula applied to other officers similarly placed as the petitioner which the Hon'ble Court may hold applicable to the petitioner's case.*
- (c) *The Respondents may be directed to grant him such rise in rank and emoluments to which he may be entitled on the application of the correct rule as decided by the Hon'ble Court, with effect from the date of his appointment to I.A.S., as if his year of allotment had been rightly decided as 1941 or any other year of allotment by the Hon'ble Court on the appropriate date.*
- (d) *Issue any other order or direction which this Court considers just and proper in the circumstances of the case; and*
- (e) *Award the costs of the petition to the petitioner.*

VEDA VYASA AND K. K. JAIN, ADVOCATES, for the Petitioner.

S. N. SHANKER, AND DALJIT SINGH, ADVOCATE, for the Respondents.

ORDER

Mehar Singh, J. MEHAR SINGH, J.—This judgment will dispose of two writ petitions under Article 226 of the Constitution, No. 685-D of 1962, by Shri Radha Krishna Chaturvedy and No. 705-D of 1962, by Shri Goverdhan Singh Chowdhary hereinafter to be referred respectively as petitioners 1 and 2. In the petition of petitioner 1 Shri Himmat Singh is an intervener. In both the petitions respondents are the Union of India, through the Secretary in the Ministry of Home Affairs, and the State of Rajasthan, through its Chief Secretary, respectively, respondents 1 and 2. In the petitions the petitioners challenge the legality and constitutional validity of the final seniority list of the Indian Administrative Service in Rajasthan in which they say that their seniority has been settled in a discriminatory manner as to be violative of Article 14, as a necessary consequence denial of protection to them under Article 16 of the Constitution.

A number of Rajput States, including Bikaner and Jodhpur, integrated to form State of Rajasthan. This was on April 7, 1949. Petitioner 1 was in the service of former Bikaner State before that and petitioner 2 in the service of former Jodhpur State. They give details of their service histories in those States but those are not really material for the purposes of this decision. All that may be stated at this stage is that on that date petitioner 1's substantive pay was Rs. 600 in a time-scale going up to Rs. 900 and petitioner 2 was in a time-scale of Rs. 400 to Rs. 600, with an annual increment of Rs. 20. Petitioner 1 alleges that on that date the post that he was occupying in the former Bikaner State as Inspector-General of Customs and Excise and Director of Civil Supplies were comparable to the post of what is generally understood as a District Collector, but petitioner 2 says that immediately following that date in the State of Rajasthan he was posted as a Sub-Divisional Officer. As in the case of other Unions of Indian States, in the State of Rajasthan there arose that difficult question of integration of the service personnel from the various integrating States. The Rajasthan Government created a Rajasthan Administrative Service. After finalisation of the list of officers taken in that service a seniority list was prepared, which was published in the Rajasthan Gazette of January 23, 1951 annexure 'F', in which petitioner 1 was shown at No. 71, the intervener at No. 76, and petitioner 2 at No. 147. Not only the petitioners but a number of others in the service were dissatisfied with the seniority list, which is understandable though it has never been possible so far to produce an integrated service with a seniority list which would be accepted as satisfactory by anybody and everybody in the list. The petitioners made representations against their seniority. Later, in Rajasthan Gazette of April 9, 1951, the Government of Rajasthan proceeded to categorise various sections with its incumbents in the Rajasthan Administrative Service. The categories were Groups A to H. In Group A were two members of the Board of Revenue, in Group B five Commissioners of Divisions, in Group C one Director of Land Records, in Group D one Registrar of Co-operative Societies and Village Panchayats Department, in Group E one Commissioner, Customs and Excise Department in Group F one Commissioner, Civil Supplies Department in group G sixty-three officers of the status of Collectors and District Magistrates, though under this group some fourteen other offices are listed as of the status of Collectors and

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District Magistrates, and in Group H 345 remaining officers who were other Assistant Collectors, Sub-Divisional Officers and Magistrates or officers holding other offices of equal status in rank. A copy of the Government Gazette is annexure 'C'. Petitioner 1, the intervener, and petitioner 2 are shown under Group H respectively, at Nos. 24, 28 and 94. Apparently, there were a number of representations against this categorisation of the service into groups. Upon that, the Government of Rajasthan, decided on March 25, 1952, annexure 'H'; to revise and redetermine the seniority of officers in the Rajasthan Administrative service. To achieve a just and a satisfactory solution of a none-to-easy problem a committee was constituted presided over by Ranawat J. The committee published a provisional list with a notice of June, 18, 1952, annexure 'I', inviting objections to the seniority shown in the provisional list. Petitioner 1 was at No. 16, the intervener at No. 42, and petitioner 2 at 228.

In the meantime, before the committee presided over by Ranawat, J., could finalise the revised seniority of officers in the Rajasthan Administrative Service, the President sanctioned the Indian Administrative Service (Extension to States) Scheme to be effective also in Part 'B' States, including Rajasthan, with effect from September 1, 1951. In pursuance of a direction in the scheme to State Governments, Rajasthan Government appointed a Selection Board to make a preliminary selection from amongst its officers considered suitable for inclusion in one of the three lists that were ultimately to be prepared by the Special Selection Board. Between August 17 and September 6, 1951, the Special Selection Board interviewed the officers of Rajasthan State. It accepted eleven officers in list 1 who according to the scheme were to be immediately absorbed in the Indian Administrative Service. Among those eleven officers two were from Group B, six from Group G, and three from Group H of the Rajasthan Administrative Service. The second list it prepared was of nineteen officers among whom one was from Group B, nine from Group G, and eight from Group H of the Rajasthan Administrative Service, while the nineteenth was from the Secretariat Service. In this list II, the intervener was at No. 6, petitioner 1 at No. 9 and petitioner 2 at No. 12. Officers selected for list II were not considered up to the required standard immediately but showing sufficient promise to render it likely that they would attain such

standard, with further experience, during a period not exceeding five years. There was then list III in which eleven officers were selected, two from Group A, one from Group B, one from Group C, one from Group E and six from Group G of the Rajasthan Administrative Service. Considering the three lists together the largest number of officers selected were from Groups G and H of the Rajasthan Administrative Service. The reason for this is obvious in that those groups had the largest number of officers in that service as appears from the detailed notification in this behalf of April 9, 1951, annexure 'G'. It is further apparent that the selection for the lists had no basis in the seniority in the Rajasthan Administrative Service and the Special Recruitment Board proceeded to selection on merits. As much is admitted by Shri O. S. Marwah, Under Secretary in the Ministry of Home Affairs, in his affidavit of January 29, 1965, filed in the writ petition No. 685-D of 1962 of petitioner 1. Officers selected in list 1 were appointed immediately to the Indian Administrative Service from September 1, 1951. Out of the officers in list II, the first sixteen were appointed to the Indian Administrative Service by a notification of April 16, 1954, annexure 'K', and obviously among them were the two petitioners and the intervener. The remaining officers in this list were appointed much later and their cases do not come in for consideration in these petitions.

The All-India Services Act, 1951 (Act 61 of 1951), came into force on October 29, 1951, and section 3, in sub-section (1), of it, gives power to the Central Government to make rules for the regulation of recruitment and the conditions of service of persons appointed, to an All-India Service. In exercise of that power the Central Government on September 8, 1954, made the Indian Administrative Service (Recruitment) Rules, 1954, and the Indian Administrative Service (Regulation of Seniority) Rules, 1954, Rule 3(1) (d) of 1954 Recruitment Rules refers to 'persons recruited to the Service before the commencement of these rules' as among the persons who constitute the service. Sub-rule (2) of rule 3 of 1954 Regulation of Seniority Rules says—

“The year of allotment of an officer in service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance

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with the orders and instructions in force immediately before the commencement of these rules :.....”

There is a proviso to this sub-rule which is not material. Sub-rule (2) of rule 4 of these rules—

“The seniority of officers in service at the commencement of these rules shall be as has been determined or may be determined by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules:.....”.

Here again, there is a proviso to this sub-rule but it is not material for the present purpose. When sub-rule (2) of rule 3 and sub-rule (2) of rule 4 of 1954, Regulation of Seniority Rules are read together, it is clear that the matter of seniority of an officer in service on September 8, 1954, or before that is to be settled and decided, upon in accordance with the orders and instructions in force in that behalf before September 8, 1954. This applies to every officer in the Indian Administrative Service ‘in service’ on September 8, 1954, whether on that date he is ‘in service’ having come from list I or list II or list III. No possible distinction with reference to the list from which the officer entered the service is indicated or in any way continued to have effect upon his conditions of service after entry into service. There is only one other rule of the Regulation of Seniority Rules, 1954, that may be noted here and that is rule 5 which is in these words—

“The year of allotment and the position to be assigned in the gradation list to an officer who was placed in list II or list III by the Special Recruitment Board in accordance with the Indian Administrative Service (Extension to States) Scheme shall be determined *ad hoc* by the Central Government in consultation with the State Government concerned.”

It is accepted on both sides that in list I in all the States, including of course Rajasthan State, seniority among the Indian Administrative Service Officers has been settled and

assigned according to what has been described as 'N', formula. This formula has been stated in this manner in letter No. 27/3/52-AIS(II), dated October 10, 1953, from Ministry of Home Affairs, Government of India, to the Chief Secretary to the Government of Rajasthan—

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“Year of allotment 1951 ($N1=N2/2$).

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Where N .. Number of completed years of service after attaining the age of 24, and up to 1st September, 1951—the date of the constitution of the Cadre during which the officer was in some sort of employment.

N1 .. Number of completed years of service on a pay of Rs. 600 and above before 1st September, 1951.

N2 .. N-N1.

On the basis of the year of allotment arrived at in accordance with the above formula pay has been calculated in the senior time-scale of the Indian Administrative Service for officers who were holding senior posts on or before 1st September, 1951, and in the junior time-scale for others subject to the condition that the initial pay of any officer so fixed does not exceed the pay drawn by him immediately before his appointment to Indian Administrative Service by more than Rs. 300. Where the initial pay so fixed does not correspond to a stage in the Indian Administrative Service time-scale, an officer shall be given a basic pay equal to the pay of the stage immediately below the initial pay and the balance shall be given as personal pay to be absorbed in future increments”.

The matter of note at this stage is that in list I from Rajasthan State the seniority allotted to the officers under the rules just referred to was exactly in the order in which their names were stated by the Special Recruitment Board in that list. In list I the Special Recruitment Board showed Shri Z. S. Jhala at No. 8 from Group H in the Rajasthan Administrative Service and Shri Gokal Lal Mehta, at No. 9 in Group G of the Rajasthan Administrative Service. This means that for the matter of recruitment to the Indian Administrative Service from the Rajasthan Administrative Service in so far as those selected in list I were concerned,

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no consideration was paid to *inter se* seniority in the Rajasthan Administrative Service and same has been the case in so far as the assignment of seniority to those officers is concerned under the rules. *Inter se* seniority has not interfered with the assignment of seniority among them. That is the reason why an officer from Group H has become senior to an officer from Group G among those recruited from list I. Their seniority has been settled in accordance with the 'N' formula.

In a letter of July 13, 1953, annexure 'L', the Joint Secretary in the Ministry of Home Affairs informed the Chief Secretary of Rajasthan that on appointment to the Indian Administrative Service, list II officers will be recommended against the direct recruitment and not against the promotion vacancies. On August 11, 1953, the Chief Secretary of Rajasthan wrote to the Joint Secretary in the Ministry of Home Affairs asking for information on the subject of calculation of the years of allotment of list II officers. Although a copy of it is not produced but in paragraph 42 of petitioner 1's petition there is reference to this statement from letter No. 13/20/51-AIS (A), dated August 24, 1953, from the Joint Secretary in the Ministry of Home Affairs to the Chief Secretary of Rajasthan—"List II officers when appointed to the Indian Administrative Service should not get a higher position in seniority or a higher pay than they would have got if they had been appointed to that service when the list I officers were so appointed. This means that a ceiling had been fixed both for seniority and for pay at the level of what such officers would have got if they had been placed in list I." According to paragraph 43 of the same petition the Chief Secretary of Rajasthan addressed letter No. DS/1082/PA, dated October 1, 1953, to the Ministry of Home Affairs, suggesting that assignment of seniority to Rajasthan officers in list II regard be had to their seniority in the Rajasthan Administrative Service groupwise as it was. The Ministry replied by its letter No. 13/20/51-AIS (I) of October 10/12, 1953, of which copy has not been filed, but this part of it is reproduced in paragraph 44 of the petition of petitioner 1—"Even those who were originally rejected by the Board, were, on subsequent appointed to the Indian Administrative Service allowed to count their continuous officiating service on Indian Administrative Service posts towards their seniority in that service." This remark was made with regard to those from part 'A' states and in regard to those from part 'B' States

the letter went on to say—"As regards part 'B' States, the position is that as far as Mysore and Hyderabad are, at any rate, concerned, there is no doubt that in the circumstances existing in those States, we shall have to treat list II officers in the same manner as list I officers for purposes of their seniority.... If the actual practice in the majority of States is to count for seniority, the entire period of officiating service in Cadre posts irrespective of whether such service is rendered by persons who were considered suitable for the service or even for the posts it might cause embarrassment to you if the list II officers of your State are treated differently." Then in paragraph 45 of petitioner 1's petition from letter No. DS/1216/PA of November 4, 1953, is reproduced this formula suggested by the Chief Secretary of Rajasthan for assignment of seniority among the sixteen officers appointed to the Indian Administrative Service from list II—

"Year of allotment—1951—(N1 plus N2) plus completed years between the date of appointment and 1951".

To this the reply given by the Joint Secretary in the Ministry of Home Affairs of December 3, 1953, is in extenso reproduced in paragraph 46 of the same petition—

"As I told you in one of my earlier letters, Government of Mysore and Hyderabad have decided to treat list II officers on the same basis as officers of list I for the purpose of seniority. We, however, provisionally agree with your suggestion that in Rajasthan the seniority of the list II officers should be weighed down by reducing the deemed length of service which they would have got if the list I formula had been applied to them by half the number of years which lapse between the year of the initial constitution of the Indian Administrative Service Cadre in Rajasthan and the year in which they are actually appointed to the Indian Administrative Service. In other words, if the year of allotment of a list II officer, calculated on the basis of the formula applicable to the list I officer is 1946, and he is actually appointed to the Indian Administrative Service in 1955, i.e., four years after the

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initial constitution of the cadre in Rajasthan, his year of allotment will be regarded as 1946 plus 2, i.e., 1948.

* * * * *

To Give them credit only for the period since the constitution of the cadre would, therefore, in itself, amount to not recognising their earlier service in such posts. On the whole we are provisionally of the view that they may for the present be given credit for the entire service in senior Indian Administrative Service posts since the date of the constitution of the cadre.

* * * * *

You will appreciate that the Government of India attach considerable importance to the uniformity in the conditions of service of the All-India Service officers. If, therefore, as a result of the consultations with the part 'B' States it is found necessary to make some slight modifications in the formula now proposed, I hope your Government will have no objection in accepting them....".

It appears that the Ministry of Home Affairs in the Government of India was opposed to differential treatment in assignment of seniority in regard to those recruited to the Indian Administrative Service from list II. It, however, appears to have accepted the suggestion made by the Rajasthan Government for assignment of seniority to the sixteen officers recruited from list II in the Indian Administrative Service from Rajasthan that 'N' formula be applied to them as has been explained, but it was pointed out that modification of that was possible so as to have uniformity in the conditions of service of the All-Indian Service officers. Now, if 'N' formula was applied to the two petitioners and the intervener, the year of allotment of the intervener worked to 1940, that of petitioner 1 to 1941, and that of petitioner 2 to 1945. This is in the list with annexure 'M' which is a letter of August 11, 1953, by the Chief Secretary of Rajasthan to the Ministry of Home Affairs. The Chief Secretary of Rajasthan then with his letter No. DS/160/PA of January 25, 1954, a copy of which is not produced, sent the list of the sixteen officers from

list II showing the assignment of seniority, to them according to the Weighted Down 'N' formula, but the list accompanying the letter is produced as annexure 'N'. According to this the year allotment of the intervener is 1941, that of petitioner 1, 1942, and that of petitioner 2 1946. To this the reply of the Joint Secretary in the Ministry of Home Affairs was by his letter, annexure 'O', of April 1/4, 1954, in which he said—"We have since considered the point whether the formulae originally agreed to by us for the fixation of seniority of lists II and III officers should also be suggested to the Government of Madhya Bharat and Patiala and East Punjab States Union. In the other Part 'B' States and also in the Vindhya State, seniority of list II and III officers have been fixed on the basis of the same formula as that applied to their list I officers. It is unlikely that Madhya Bharat and Pepsu would be willing to accept the formula suggested for Rajasthan. In the circumstances I feel I should point out to you that if this formula which is disadvantageous to the list II and list III officers is adopted only in Rajasthan, they may have a grievance on this account. I shall be grateful if this is considered by the State Government and their final views communicated to us.' Here again, the Ministry of Home Affairs has indicated its endeavour to resist the Weighted Down 'N' formula for list II officers as suggested by the Rajasthan Government. There is reference in paragraph 51 of petitioner 1's petition to letter No. DS/262/PA, dated May 14, 1954, a copy of which is again not produced but a part of it is reproduced in paragraph 55 of petitioner 1's petition, which part reads—"Some of the substantive Sub-Divisional Officers in list II were senior in age but it would not be quite reasonable to give them a seniority in the Indian Administrative Service which will make them senior to some Collectors or even Commissioners." And that followed this suggestion—"The fact that substantive appointments were made to what are now cadre posts, prior to coming into force of the Indian Administrative Service Scheme, may, therefore, be made the basis of examining seniority as follows:—

- | | |
|-------------------------------|---------------------------|
| (a) List II officers who sub- | <i>Year of allotment.</i> |
| stantively held Indian | 1951—(N1 plus N2) plus |
| Administrative Service | date of appointment. |
| posts on the basis of | 2 |
| their appointments in | |

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the Rajasthan Administrative Service made prior to introduction of Indian Administrative Service Scheme.

- (b) List II officers who sub-stantively held posts of Sub-Divisional Officers or equivalent rank in the Rajasthan Administrative Service. Article 3(3) (b) of the Draft Indian Administrative Service (Appointment by Promotion) Regulations may apply.

In this way the Rajasthan Government through its Chief Secretary again changed its mind and then suggested that the Weighted Down 'N' formula be applied only to first ten officers in list II, who have come from Groups A to G of the Rajasthan Administrative Service, but with regard to the remaining six officers, the first three of whom are the two petitioners and the intervener and who came from Group H of the Rajasthan Administrative Service, seniority be assigned following the analogy of draft rule 3(3) (b) of the Draft Seniority Rules. That draft rule reads in this manner.—'Where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former', shall be his year of allotment for purposes of seniority. It has already been pointed out that much earlier in letter annexure 'L' of July 13, 1953, the Joint Secretary in the Ministry of Home Affairs had pointed out to the Chief Secretary of Rajasthan that 'on appointment to the Indian Administrative Service, list II officers will be recommended against the direct recruitment and not against the promotion vacancies.' The suggestion of the Rajasthan Government then meant that while Weighted Down 'N' formula was to be applied to the first ten officers in list II, the draft rule 3(3) (b), concerning matters of seniority as regards promoted officers, was to be applied to the remaining six officers in that list including the two petitioners and the intervener. There is annexure 'P', which bears no date, and it gives the decision of the Ministry of Home Affairs on this aspect of the matter in this way—"The Chief Secretary was of the opinion that

the *inter se* seniority of the officers who were formerly members of the Rajasthan Administrative Service, should be related to the Groups in which they were placed in that service. After some discussion, it was agreed that the formula which the Rajasthan Government had recommended for application to list II officers, namely, the list I formula, weighed down by $\frac{1}{2}$ the difference between the date of initial constitution of the Indian Administrative Service Cadre in Rajasthan and the date of their actual appointment to that service, should be applied to all officers of list II, who were formerly in Groups A to G of the Rajasthan Administrative Service. The officers of list II who have been appointed to Indian Administrative Service and who were formerly in Group H of the Rajasthan Administrative Service should be placed below the last Indian Administrative Service officers who have been confirmed as Collector in that service.' In paragraph 53 of petitioner 1's petition it is stated that the reason given for this discrimination was that the uniform application of Weighted Down 'N' formula to all officers of list II will place at least three of them (obviously referring to the two petitioners and the intervener) above several Rajasthan Administrative Service officers working as Collectors and Commissioners in order of seniority. Unfortunately to this no clear reply is given in the return in the shape of affidavit of Shri O. S. Marwah, made on November 11, 1964, in which all that is stated is that 'a suggestion had been made by the State Government in view of the selection that had already been made to the Rajasthan Administrative Service and in view of the fact that the officers had already been placed in different groups of the service. There followed then the Rajasthan Government notification, annexure 'Q', of November 19, 1954, in which the first ten officers in list II were assigned seniority according to the Weighted Down 'N' formula and the next following six including the two petitioners and the intervener, were assigned seniority according to draft rule 3(3)(b). In that gradation list the year of allotment of the intervener is shown as 1947 and each of the two petitioners as 1947 $\frac{1}{2}$.

It has been stated by the petitioners in the petitions that neither the Weighted Down 'N' formula nor the draft rule 3(3)(b) had the approval either of the Rajasthan Government or of the Central Government, and hence that formula and the draft rule really did not exist so as to be applicable to the list II officers recruited on April 8, 1954. The

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petitioners further aver that they came to know of their years of allotment on the publication of the notification, annexure 'Q', on November 19, 1954. They made representations against their seniority and so also did a number of other officers affected by the assignment of seniority shown in that list. For a long time there was no response to the representations and reminders. Petitioner 1 says in paragraph 57 of his petition that even the then Chief Secretary of Rajasthan later appreciated the wrong done to him and recorded a note on the file to the effect that his case be forwarded for consideration to the Government of India. In the affidavit of Shri O. S. Marwah in reply to this paragraph this allegation is entirely ignored. It is not denied that the then Chief Secretary made such a note on the file in favour of petitioner 1. Soon after the then Chief Secretary having relinquishd his charge another gentleman took over as such. He made enquiries from various States on this question and an extract from the replies is annexuer 'R'. It shows that in Pepsu, Saurashtra, Mysore and Uttar Pradesh the manner of assignment of seniority adopted for list I was also adopted for list II. In the case of Mysore, however, as there was no question of integration, *inter se* seniority already existing was reflected in the recruitment to the Indian Administrative Service. So the instance of that State is not helpful, but in the other States same formula was reported to have been applied in regard to assignment of seniority for both the lists I and II. It is stated that a departmental committee was appointed to go into the matter and it then reported that great injustice had been done to the three officers from list II after the seniority had been settled of the first ten officers in that list. In the meantime the permanent incumbent took over as Chief Secretary. He considered the representations, all the facts and the material collected by the time he joined and recorded a note on the whole aspect of the matter. A copy of that note is with annexure 'S', which is a letter of December 9, 1957, by Special Secretary to Rajasthan Government to the Secretary in the Ministry of Home Affairs on the subject of assignment of seniority to officers of Rajasthan cadre of the Indian Administrative Service. The Chief Secretary considered in detail all the relevant facts and aspects of the whole case and his note is rather instructive. After discussing the various aspects of the question of assignment of seniority he proceeds to say—"Even the formula applied to List I officers, which gave full weightage to all

services rendered on a pay of Rs. 600 and above and half weightage to service on a pay of less than Rs. 600 irrespective of whether the latter service was gazetted or non-gazetted, administrative or clerical, appears to have upset *inter se* seniority in the same unit and placed erst-while juniors over the heads of seniors merely by the sheer length of service in subordinate ranks. At least as between officers included in the same list, that is as among officers considered equally eligible for promotion, *inter se* seniority of officers coming from the same unit should not have been upset. Such upsetting has a thoroughly demoralising effect

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The problem of seniority as between officers included in the various lists, emergency recruits, promoted officers and officers transferred from other States, does not exist in part 'A' States; it is a peculiarity of Part 'B' States. In Mysore where there was no question of the rival claims of the officers of various merged units, the year of allotment of list II officers was fixed on the same basis as that applicable to list I officers but on the distinct understanding that the *inter se* seniority of officers in the Mysore Civil List would not be disturbed..... In Pepsu list II officers were treated in the same way as list I officers but, perhaps, the number of officers involved was small unlike in Rajasthan where the number of officers in list II was about double the number in list I. In Pepsu there was no list III at all. Saurashtra seems to have accepted the list I formula for their list II officers and List II formula for their list III officers. There is no detailed information as to how the problem was solved in Madhya Bharat..... The Indian Administrative Service (Regulation of Seniority) Rules were promulgated on 8th September, 1954. Under rule 3(2) of these rules the year of allotment of an officer in service at the commencement of those rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the orders and instructions in force immediately before the commencement of those rules. In other words, the seniority rules do not apply to persons already in service on the 8th of September, 1954, except as indicated in the proviso to that sub-rule. Another rule which is immediately relevant to our purpose is rule 5 which says that the year

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of allotment and the position to be assigned in the graduation list to an officer who was placed in list II or list III by the Special Recruitment Board in accordance with the Indian Administrative Service (Extension to States) Scheme shall be determined *ad hoc* by the Central Government in consultation with the State Government concerned. In other words, the rules do not apply to officers placed in those two lists and afford no guidance for the determination of their seniority.....For determining the seniority of these officers (list II officers) no one formula was adopted." Then he goes on to refer to Weighted Down 'N' formula and the draft rule 3(3) (b) and proceeds—"In other words, they (the six officers in list II after the first ten in the list) were treated on a par with officers promoted from the State Civil Service. It may be noted that this rule did not apply to persons already in service before the coming into force of the rules, i.e., 8th September, 1954. The reason why this particular rule was chosen to be applied to the six officers is not clear. Apparently it was considered that the formula applied to the ten officers of list II would have resulted in boosting up the seniority of the six officers from Group H who had been only substantive Sub-Divisional Officers and that some other formula had to be found to depress their seniority. This decision, I feel, was a departure from the formula originally suggested and approved and was based on the results of the original formula rather than on its merits." Having so dealt with the general aspect of the matter, he considers the representations of the two petitioners and intervener and goes on to say—"They have claimed that since they were included in list II, they should be allotted seniority according to the Weighted Down 'N' formula as applied to the ten officers irrespective of whether they were from G Group or H Group. Originally it appears that this contention was accepted and that recommendations were made to the Government of India in D.O. letter No. DS/1601/PA, dated the 25th January, 1954, suggesting the following years of allotment—Shri Himmat Singh (intervener)—1941, Shri R. K. Chaturvedy (petitioner 1)—1942, and Shri G. S. Chowdhary (petitioner 2)—1946....., Soon, thereafter it was thought that the recommendations made would have led to some substantive Sub-Divisional Officers included in list II assuming too high a seniority because of their age and experience. Thereupon the Chief Secretary in his letter

dated the 14th May, 1954, to the Home Ministry reported that 'it would be quiet unreasonable to give a seniority in the Indian Administrative Service which will make them as senior as some senior Collectors or even a Commissioner. He, therefore, separated the cases of the officers who had substantively held prior to the introduction of the Indian Administrative Service Scheme posts which were included in the Indian Administrative Service Cadre and of those who had substantively held posts of Sub-Divisional Officers or equivalent rank. While the Weighted Down 'N' formula was applied to the former, only rule 3(3) (b) of the seniority rules was applied in the cases of the latter In other words, other Part 'B' States were objecting even to the weightage suggested by the Rajasthan Government. They were in favour of applying the same formula as had been approved for list I officers. The Government of India too were in favour of giving list II and III officers the same seniority as list I officers. Far from liberalising the seniority rules in favour of list II officers on the lines adopted in other Part 'B' States, we adopted an entirely different and far less liberal formula for the three officers in question. Even what was mentioned in the notes was not implemented in the correspondence. Thus while the ten officers who were allowed the Weighted Down 'N' formula were themselves at a disadvantage as compared to their compeers in other part 'B' States, the three officers in question suffered from an extra disadvantage in being subjected to the provisions of rule 3(3) (b) of the Seniority Rules. The reason why the three officers were not allowed the benefit of the Weighted Down 'N' formula was that Shri Himmat Singh (intervener) would have gone above Shri K. P. U. Menon, Shri Chaturvedy (petitioner 1) above Shri Ram Niwas Hawa and Shri Chowdhary (petitioner 2) above Shri Raj Kumar and that this was considered undesirable inasmuch as they were said to be only substantive Sub-Divisional Officers and not Collectors as they had been kept in Group H. If the intention was to prevent substantive Sub-Divisional Officers from going above substantive Collectors, this has certainly not been achieved in the rest of the list. It is not as if a person belonging to Group H of Rajasthan Administrative Service has not gone above a person belonging to Group G, i.e., a substantive Sub-Divisional Officer above a substantive Collector. For instance, Shri Z. S. Jhala who was substantive a Sub-Divisional Officer in the H Group, has gone above Shri Gokal

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Lal Mehta who was substantively in the G Group, (i.e., a substantive Collector). Both were included in list I, but the objection that an officer of Group H should not go above an officer of Group G was not upheld. If this could happen as among officers of list I, it is not understood why it could not be permitted to happen as among officers of list II. There are other instances of officers belonging to a lower group going above officers belonging to a higher group. In list II itself Shri M. U. Menon, Shri J. M. Kunzru and Shri Kanwar Bahadur all belonging to Group G, went above Shri B. S. Mehta (list I) and Shri Daulat Singh (list II) both offices belonging to Group B. In other words three officers of the rank of Collectors went above two officers of the rank of Commissioners. If this could happen, there was no reason why the officers who have represented could not seek a similar jump over substantive Collectors. It is clear that *inter se* seniority has nowhere been observed in the drawing up of the Indian Administrative Service seniority list. The order given in the seniority list of Rajasthan Administrative Service officers drawn up by the Ranawat Committee has not been observed.....
, In other words, the 'N' formula has completely upset *inter se* seniority, obviously because it has taken into account, for the purpose of seniority, the total length of service of the officers including service in clerical, subordinate and non-gazetted ranks—service which might not have counted at all in the fixation of unit seniority or of seniority in the Rajasthan Administrative Service. One might in the normal course have expected that officers from list I who were appointed to the Indian Administrative Service nearly three years before those of list II would rank senior to the latter. That is not the case. A number of officers included in list II have gone above those of list I. This shows that the 'N' formula and the Weighted Down 'N' formula were considered to be of far greater importance than either the *inter se* seniority of the officers or the difference between list I and list II. In fact, that difference between the 'N' formula and the Weighted Down 'N' formula is so slight that in many cases the consideration shown for the total length of service seems to have been the determining factor." He then summarises the effects of the application of 'N' formula and the Weighted Down 'N' formula and proceeds—"If all these things can happen, and have been allowed to happen, it is not understood why the same rules could not be applied to the three officers in

question even if they (holding the substantive rank of Sub-Divisional Officers) too would thereby have gone above certain officers holding the substantive rank of Collector. It is only Shri Himmat Singh (intervener) and Shri R. K. Chaturvedy (petitioner I) who stand to gain considerably by their revised 1941 and 1942 seniority. Shri Chowdhary (petitioner 2) will be securing only 1½ years' seniority. It appears that though Shri Himmat Singh (intervener) and Shri Chaturvedy (petitioner 1) were included in H Group, they were, most of the time, holding very responsible posts in no way less important than that of Collectors.....

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It appears that it is their complaint that they were wrongly placed in Group H in the process of selection by merit." He in the end recommends that the two petitioners and the intervener be assigned seniority according to the Weighted Down 'N' formula which would give the intervener allotment year of 1941, petitioner 1 the allotment year of 1942, and petitioner 2 the allotment year of 1946. This note of the Chief Secretary was forwarded to the Ministry of Home Affairs with a covering letter which is annexure 'S' of December 9, 1957. The Government of India in the Ministry of Home Affairs by its letter, annexure 'V', of December 20, 1961, while rejecting the approach of the Rajasthan Government to reconsider the seniority of the petitioners said—"The seniority of officers in list I was determined in accordance with the 'N' formula. As regards list II/III officers, no precise formula was evolved and each case was to be decided *ad hoc* by the Central Government in consultation with the State Government concerned. Thus, whatever basis was evolved for fixing the seniority of list II/III officers in a particular State it was done *ad hoc* and this principle was subsequently incorporated in rule 5 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. The Government of India agree with the Government of Rajasthan that under rule 4(2) of the rules, the seniority of these officers has to be determined according to the orders and instructions in force immediately before the rules came into force. They have not, however, been able to appreciate the argument of the State Government that the only order and instructions in force then were those relating to the 'N' and the Weighted Down 'N' formula. It may be recalled that in spite of the Government of India's views conveyed to the Government of Rajasthan in Shri Dutt's

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D.O. letter No. 12/36/53-AIS (I), dated 1st April, 1954, the modification of the Weighted Down 'N' formula was suggested by the State Government themselves in Shri B. G. Rao's D.O. letter No. DS/262/PA, dated 14th May, 1954, a copy of which is enclosed. This was the basis of discussion between the State Government and the Central Government at a meeting held on 19th June, 1954. The principle agreed to at the meeting, as recorded in a note in this Ministry (copy enclosed), were communicated to the Chief Secretary to the Government of Rajasthan in Shri Dutt's D.O. letter, dated 26th/27th July, 1954, and were accepted by them in Shri Rao's D.O. dated 30th July, 1954.....

..... It will be seen that the seniority of these officers was decided according to the agreed principles. It is regretted that the State Government's suggestion that these officers should be given the benefit of the Weighted Down 'N' formula which held the field before the rules came into force cannot, therefore, be accepted. The application of the analogy of rule 3(3) (b) *ibid* was certainly a part of the principle agreed to and as such that should govern the seniority of these officers which has, in fact, been done. On purely legal considerations, there is thus no justification to revise their seniority. The Government of India also regret they cannot accept the State Government's suggestion that rule 3(3) (b) applied to officers promoted from the State Services only and as list II officers were selected not by way of promotion but as direct recruits it was wrong to apply that principle. The State Government are aware that the seniority of State Service officers appointed to the Indian Administrative Service under the Special Recruitment Scheme, who have also been treated as direct recruits, has been decided, with the concurrence of the State Governments on the analogy of rule 3(3) (b). Therefore, there was nothing wrong in applying the same principle to list II officers. According to the instructions their seniority was to be decided *ad hoc* by the Central Government. The Central Government is free to accept in consultation with the State Governments any working rule in fixing the seniority of such officers.....

It has also been suggested in the note enclosed with your letter under reply that Group H officers have been discriminated against in not being given the benefit of the formula applied to other list II officers. The argument is misconceived. It was never stated on behalf of the Central

Government that all list II officers would be governed by a uniform formula. Appointments of list II officers were not made at the same time but were done over a period of five years and as such no uniform principle could have been evolved originally. The principle which was ultimately incorporated in rule 5 *ibid* was to decide each case *ad hoc*

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It was, however, inherent in the manner the cadres were constituted particularly in Part 'B' States that a completely satisfactory solution could not have been found. The endeavour, however, was always to find out what would be reasonable from all points of view. It would not be advisable to change at this late stage the principles of determining the seniority of any particular group." Although reference has only been made to the paragraphs of petitioner 1's petition and the annexures with the petition, but the same matters are restated in petitioner 2's petition. The Government of India in the Ministry of Home Affairs was first of the view that in the matter of assignment of seniority in the case of officers recruited from list II 'N' formula should apply. When Rajasthan Government pressed for a slight modification of that formula, it was then agreed that Weighted Down 'N' formula should apply to them. After that the Rajasthan Government apparently thought of maintenance of *inter se* seniority among officers from that list having regard to their positions as in the grouping in the Rajasthan Administrative Service. So, even though the Ministry of Home Affairs pointed out that this might result in dissatisfaction, on the insistence of Rajasthan Government, it accepted this proposal, thus confining the Weighted Down 'N' formula to first ten officers in that list and applying the basis of draft rule 3(3) (b) to the remaining six including the two petitioners and the intervener. Ultimately, when the Rajasthan Government supported the case of the petitioners for revision of their seniority urging that they should be assigned the same according to the Weighted Down 'N' formula, the Ministry of Home Affairs turned that down. It is after that that the petitioners filed these petitions challenging the constitutional validity and legality of the decision of the Government of India in the Ministry of Home Affairs in the matter of assignment of their seniority in the Indian Administrative Service. As will appear presently their main argument is based on the ground that the decision is violative of Articles 14 and 16 of the Constitution.

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The return in either petition has been made by way of an affidavit of Shri O. S. Marwah, Under Secretary in the Ministry of Home Affairs. The facts have broadly been accepted on behalf of the respondents with the correspondence detailed reference to which has already been made. It is said, that the petitioners have no right and thus no *locus standi* to question the matter of seniority which is not justiciable. It has been pointed out that in the Indian Administrative Service (Extension to States) Scheme it was specifically pointed out 'the standard obtained by the services also differ considerably in different States as also the methods of recruitment thereto,' and it is said that it is this factor which has been the basis of application of different approach to seniority in different States. So, when the Rajasthan Government prepared a provisional seniority list of officers in list II on the basis of 'N' formula, certain anomalies cropped up. It is denied that for the purposes of determining seniority for the newly constituted service in Rajasthan, there was in existence the formula known as 'N' governing the officers in list II. In reference to Government of India's letter that differential treatment to officers of list II might cause grievance among them it is stated that 'the suggestion of the Government of India to the Rajasthan Government that the application of the Weighted Down 'N' formula in Rajasthan would cause grievance to the State officers was also made at a time when the Government of India was not in the picture and was not possessed of all the relevant data in respect of the complicated structure of the Civil Service in Rajasthan. Later on, when the matter was looked into and the peculiar difficulties of the State Government were realised by the Central Government, the latter after careful consideration agreed to accept the recommendation of the Rajasthan Government The other State Governments did not accept the Weighted Down 'N' formula because the conditions of service of officers in those States were materially different from those in Rajasthan and the petitioner can have no just grievance on that account'. It is then denied that any discrimination has been made by the Rajasthan Government and it is pointed out that on a suggestion having been made by the Rajasthan Government in view of the selection that had already been made to the Rajasthan Administrative Service, the Government of India considered the suggestion and came to the conclusion that the recommendations of

the Chief Secretary were rational, reasonable and equitable keeping in view all the facts and circumstances of the case and structure of the State's Civil Service as a whole and its efficient working. The basis upon which reliance is placed in the matter of determination of seniority is that 'the object and principle to be kept in view was that persons holding the posts not encadred in the Indian Administrative Service should not by the application of any formula go above the officers holding substantive posts encadred in the Indian Administrative Service.' The further approach taken is that the seniority has been fixed in the light of the facts and circumstances of the case to obtain maximum efficiency of the services to avoid friction and material disparities in service. It is again stated that 'in regard to officers in list II, no precise formula was evolved and each case was to be decided by the Central Government *ad hoc* in consultation with the State Government concerned. Whatever basis were evolved for fixing the seniority of list II officers was done *ad hoc* on principle that was subsequently incorporated in rule 5 of the Indian Administrative Service (Regulation of Seniority) Rules'. Emphasis is laid on the peculiar problems in Rajasthan State and it is said that officers of covenanting States were selected on merits in Rajasthan Administrative Service and in the light of their respective service conditions and other relevant circumstances, they were placed in different groups. On selection of some officers from the groups of the Rajasthan Administrative Service, it was considered necessary and desirable that seniority of a person, who was not holding a post encadred in the Indian Administrative Service should not go above an officer, who was holding an Indian Administrative Service cadre post before the selection as an officer for the Indian Administrative Service. It is denied categorically that the formula agreed to for determination of the seniority of list II officers in Rajasthan did not have the approval of the Government of India or the State Government, but it is definitely stated that the decision in this respect was taken after consultation and with the approval of the Minister for the Ministry of Home Affairs. The seniority of the petitioners is said to have been determined on *ad hoc* basis, which the Government of India had the right to do as no order or instructions had been issued for the fixation of the years of allotment of officers appointed to the Indian Administrative Service from list II. Later in the affidavit it is stated that 'I admit

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that respondent 1 (Union of India) had suggested, to respondent 2 (State of Rajasthan) that the list I formula should be applied to list II officers also, but that is of no avail.' Explaining the position of the petitioners on recruitment it is said that the exact position is that list II officers, including the petitioners, were promoted to the Indian Administrative Service but they were counted against direct recruitment quota. In the subsequent affidavit by the same officer made on January 29, 1965, it is reiterated that 'it is admitted that list II officers were appointed against direct recruitment vacancies.' In this affidavit the further position taken on behalf of the respondents is that the seniority of the petitioners was settled on *ad hoc* basis under rule 5 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. They were governed for the purposes of assignment of year of allotment under the All-India Services Act and the rules and regulations made thereunder. It is not open to the petitioners to say that the grouping in the Rajasthan Administrative Service was arbitrary, as the grouping was based on the status of the posts and the officers were placed under the various groups on the basis of experience, educational qualifications, and posts held by them. It is in this affidavit that there is clear admission on the side of the respondents that the Rajasthan Administrative Service officers were not selected to the Indian Administrative Service on the basis of grouping in the Rajasthan Administrative Service, but they were selected by the Special Recruitment Board according to their performance in the interview and their suitability in the Indian Administrative Service. It is further stated that while determining the seniority of list II officers, grouping of Rajasthan Administrative Service played a limited part in so far as the officers of H. Group, that is to say officers, who substantively held posts of Sub-Divisional Officer's rank or equivalent, were not allowed to go above Officers of A to G groups, that is to say officers who substantively held posts encadred in the Indian Administrative Service. And yet in the next line it is stated that this object was not applicable in the case of list I officers as they were selected for immediate appointment to the Indian Administrative Service and their seniority was to be determined by 'N' formula, whereas list II officers were to be appointed to the Indian Administrative Service during next five years if they showed capacity. As such their seniority was to be determined, *ad hoc*. So it is denied on the side of the

respondents that there has been arbitrary discrimination against the petitioners in applying the draft rule 3(3) (b) to them and in applying Weighted Down 'N' formula to the ten list II officers above them, for this proceeded on rational basis so that the petitioners may not supersede persons who have held posts meant for the Indian Administrative Service officers.

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There has been some controversy whether it is rule 3 (2) and rule 4(2) or rule 5 of the 1954 Regulation of Seniority Rules that governs the case concerning the seniority of the petitioners. Those rules have already been reproduced. Rules 3(2) and 4(2) apply to officers 'in service' on the date 1954 Rules came into force, that is to say on September 8, 1954. The petitioners had been appointed to the Indian Administrative Service on April 8, 1954. They were thus 'in service' within the meaning and scope of rule 3(2) and rule 4(2), and it follows that apparently it is these rules that apply to them in the matter of assignment of their allotment year as also seniority. Rule 5 is widely worded applying to list II officers and saying that their seniority shall be determined *ad hoc* by the Central Government. Now, if the rule was to be read as such in isolation it would seem to tend to cover the cases of list II officers already in service on September 8, 1954. This means that there is certain measure of overlapping between rule 3(2) and rule 4(2), on the one side, and rule 5, on the other in so far as the officers recruited to the Indian Administrative Service from list II are concerned. These rules forming part of the same set of rules have to be read together and in a harmonious manner. When read with that approach the only interpretation of these rules is that rules 3(2) and 4(2) are the only rules which apply to officers 'in service' on September 8, 1954, and that rule 5 applies to all officers recruited from list II after September 8, 1954, in whose case the Central Government has the power to fix their year of allotment as also seniority on *ad hoc* basis. Rule 5 does not apply to the case of the petitioners. Under rule 5(2) and rule 4(2) the year of allotment and seniority of each petitioner are to be settled, since the same were not settled by September 8, 1954, 'in accordance with the orders and instructions in force immediately before the commencement of these rules.' It means that such orders and instructions as were in force for the purpose of the year of allotment of an officer as also for the purpose of

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assignment of his seniority on or before September 8, 1954, are the orders and instructions according to which the year of allotment and assignment of seniority must proceed in so far as each one of the two petitioners is concerned.

On behalf of the petitioners it has been stressed that officers in list II in other States have had their years of allotment and assignment of seniority determined according to 'N' formula, but this has been denied to the petitioners, so that they have been discriminated against in this manner as compared to their compeers in the other States. It is obvious that this argument cannot stand scrutiny because in different States at the time of the enforcement of the Indian Administrative Service Recruitment Scheme the conditions of service prevailing with the officers from amongst whom selection to the Indian Administrative Service was made by the Special Recruitment Board were widely different and there was nothing comparable in the same. So that this is not helpful to the petitioners. Attack has next been directed, though in somewhat half-hearted manner, against the grouping in the Rajasthan Administrative Service as published in the Rajasthan Gazette, annexure, 'F', of April 9, 1951, but if the petitioners were dissatisfied with that, then the same should have been challenged at that time in 1951. Even in spite of the appointment of the committee presided over by Ranawat, J., this grouping could have been questioned. So in this petition the petitioners cannot challenge the grouping in the Rajasthan Administrative Service as in the notification of April 9, 1951. Another argument urged on the side of the petitioners has been that the deviation from the 'N' formula into Weighted Down 'N' formula and then the application of the Weighted Down 'N' formula only to the first ten officers in list II and the application of the draft rule 3(3) (b) to the remaining six were not decisions of the respondents. It is said that that was just the result of some kind of discussion between the Chief Secretary of Rajasthan and the Joint Secretary in the Ministry of Home Affairs. This, of course, has been categorically denied on the side of the respondents and it is stated that Weighted Down 'N' formula as also the draft rule 3(3) (b) had the approval of both the respondents for their applications to officers in list II in the manner already stated and it is further said that the Minister for Home Affairs approved of that. This is in the affidavit of the Under Secretary in the

Ministry of Home Affairs and there is just no reason why that should not be accepted. With reference to draft rule 3(3) (b) it has been said that it was a just a draft and there could be no question of the application of a draft rule to the petitioners for the matter of year of allotment, and assignment of seniority in each case. This, however, is misconceived for the simple reason that instead of the respondents reproducing the very language of draft rule 3(3) (b), use of the short descriptive number of that draft rule has been made just for the sake of convenience while taking a decision that the language of the draft rule is the basis upon which the matter of year of allotment and assignment of seniority is to proceed. So that nothing turns upon this.

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After that the argument on the side of the petitioners is brief and simple. In *General Manager, Southern Railway v. Rangachari* (1), their Lordships observed that 'Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions from part of the same constitutional code of guarantees and supplement each other.' The learned counsel for the petitioners relying upon this observation urges that, although the Special Recruitment Board admittedly made selections to the three lists for the Indian Administrative Service without regard to previous or *inter se* seniority of the officers interviewed and made selection on merits and although with regard to those selected in list I the effect of grouping in Rajasthan Administrative Service or *inter se* seniority has been completely ignored and it has also been completely ignored with regard to first ten officers in list II, to whom Weighted Down 'N' formula for the purpose of assignment of seniority is to apply, yet that is the very basis on which discrimination has been applied to the petitioners in having year of allotment and assignment of seniority in each case determined not with reference either to 'N' formula or to Weighted Down 'N' formula but by a wholly disadvantageous proposition as in draft rule 3(3), (b). The selection by the Special Recruitment Board was on merits and thus all selected in list II were placed on the same basis and in exactly the same circumstances. They were found promising for future recruitment within the next five years. Among them were officers from various groups of the Rajasthan Administrative Service and some

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members of the Higher Groups were not even selected with them in list II. So that a basis which was ignored by the Special Recruitment Board and by its selection all those in list II had been placed at par and in the same circumstances, yet by a subsequent decision of the respondents the same basis has been revived and a division has been made in the list II itself. The first ten officers have had the advantage of the Weighted Down 'N' formula for the determination of their year of allotment and seniority, whereas in the case of the remaining six a different basis, for that purpose has been applied in the shape of draft rule 3(3) (b) placing them under substantial disadvantage, inasmuch as the seniority of petitioner 1 under Weighted Down 'N' formula of year 1942, has been brought down to year 1947½ and in the case of petitioner 2 from the year 1946 to 1947½. It has been pressed that for this discrimination there is no rational basis and further this discrimination has no bearing on any object to be achieved connected with this discrimination or connected with the Indian Administrative Service. The contention on behalf of the petitioners then is that in this manner they have been discriminated against in contravention of Article 14 and the effect of the discrimination bearing upon their seniority affects their promotion and thus there is also contravention of Article 16(1). This is the principal argument on the side of the petitioners.

The reply by the learned counsel on behalf of the respondents is that, although the Special Recruitment Board made selections to the three lists on the basis of merit not taking into consideration seniority in the Rajasthan Administrative Service, whether as such or groupwise, yet in the peculiar circumstances prevailing in Rajasthan, the Rajasthan Government in the interest of harmony and efficiency in the service had to consider whether those officers in list II who had only occupied posts of Sub-Divisional Officers and not above should by reason of any proposition be promoted to rank senior to those others in the same list who were holding the post of a Collector or above, in other words a post in the normal cadre of the Indian Administrative Service? It was on this consideration that the suggestion was made to respondent 1, which was accepted. The result of the acceptance was the decision of respondent 1 in regard to the basis of seniority among officers in list 1 in regard to the basis of seniority among

officers in list II which proceeded on the consideration of previous grouping in the Rajasthan Administrative Service so as to avoid any friction in the service on account of juniors superseding seniors, and particularly juniors of a class who have never occupied a post in the cadre of the Indian Administrative Service superseding those who have held such posts. The learned counsel has said that the difference between two parts of list II or rather the classification made in that list is both clear and reasonable. The classification is first ten officers in that list who have held posts normally in the cadre of the Indian Administrative Service and the remaining officers, including the two petitioners, who have never held any such post. The learned counsel then says that the relation of this differentia taken from the Rajasthan Administrative Service is with the object of having an integrated and satisfactory Indian Administrative Service. He refers to two cases decided by their Lordships of the Supreme Court in this respect. The first case is *Kedar Nath Bajoria v. Ramjidas Bajoria* (2), in which at page 406 their Lordships observed—'It is well settled that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation. To put it simply, all that is required in class or special legislation is that the legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation to the object which the legislature seeks to attain. If the classification on which the legislation is founded fulfils this requirement, then the differentiation which the legislation makes between the class or persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation were all embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative purpose. The other case *Kangshari Halder v. The State of West Bengal* (3), in which their Lordships pointed out that the question for consideration in such cases is —('Is the classification rational and

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(2) A.I.R. 1953 S.C. 404.

(3) A.I.R. 1960 S.C. 457.

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based on intelligible differentia; and has the basis of differentiation any rational nexus with its avowed policy and object? The learned counsel for the respondents contends that this test applies in the present cases and consequently there is no occasion for the application of either Article 14 or Article 16(1) of the Constitution to the cases of the petitioners.

In regard to the claim of the petitioners in the present petitions that their seniority should have been assigned according to 'N' formula, the argument has not been pressed on their part with any seriousness. The reason is that it appears that even while making representations in regard to the assignment of their seniority, they gave up this claim and only pressed for determination of their seniority according to Weighted Down 'N' formula as applied to the first ten officers in list II above them. This is clear from paragraph 197 of the opinion given by Shri K. S. Subramanian, I.C.S., Chief Secretary to Rajasthan Government, who prepared a long note, from which extracts have been cited in detail above, supporting the claim of the petitioners, a copy of which is with annexure 'S'. So that this claim need not be considered any further. The reason why benefit of the Weighted Down 'N' formula has been denied to the petitioners is that before appointment to the Indian Administrative Service on April 8, 1954, they were substantive Sub-Divisional Officers, which are not posts in the normal cadre of the Indian Administrative Service, and they could not be allowed to supersede the first ten officers in the same list, which officers on the date of appointment were holding posts in the cadre of the Indian Administrative Service, that is to say, the posts of Collectors and above. This is the only reason upon which emphasis has been laid to support this differentiation or classification in list II, on the side of the respondents, although it has been variegatedly stated at different places in the affidavit of the Under Secretary on behalf of the respondents and in the arguments of the learned counsel. The differentiation of sixteen officers in list II between first ten of Groups A to G and the remaining six of Group H of the Rajasthan Administrative Service is a clear and intelligible differentiation. There is no manner of difficulty in appreciation of the basis of this classification. But the first question is, is it rational? When preparing list II the Special Recruitment Board entirely ignored this basis. It did not apply this basis to any of the three lists.

Its selection was just on merits. It has thus not only been not applied to list I, but in that list it has been ignored even in the matter of the year of allotment as also assignment of seniority. Shri Z. S. Jhala of Group H—a group of Sub-Divisional officers and of those not occupying posts encadred in the Indian Administrative Service—has superseded Shri Gokal Lal Mehta from Group G—a group of Collectors, a post encadred in the Indian Administrative Service. If this consideration has not prevailed in list I, why should it have specially been brought in for the purpose of assignment of seniority in list II? It has been said that there could be no one single proposition or formula that could be applied to list II, because officers in this list were to be recruited over a period of five years as they proved their suitability and capacity and in the nature of things as each officer came to be appointed to the Indian Administrative Service, his year of allotment and assignment of seniority had to be on *ad hoc* basis. This seems to be an abstract proposition that is urged ignoring the facts of these particular cases. In the case of list II from Rajasthan State at least sixteen officers were appointed to the Indian Administrative Service on one and the same day, that is to say on April 8, 1954. (So sixteen officers placed by the Special Recruitment Board on considerations of merit in one list, that is to say list II, and appointed to the Indian Administrative Service on one and the same day have had to face classification as stated between the first ten and the remaining six on a basis which the Special Recruitment Board entirely discarded. It is the basis, as pointed out, which has not obtained among those entering the Indian Administrative service from List I. It has been said that officers from list I should be ignored for they were so good that they were found fit for immediate absorption in the Indian Administrative Service and were so absorbed at once. While they were absorbed in a group immediately on the preparation of list I, a short time after the sixteen officers from list II were also absorbed in the same service on one and the same date. After entry into the Indian Administrative Service, the distinction of the lists is obviously lost, and all became members of the same service. So that the differentiation made on the basis of the past grouping in the Rajasthan Administrative Service in list II, though clear as stated, cannot be described as rational. The Chief Secretary to Rajasthan Government in his note rightly points

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out that this differentiation has sprung up not from the merit of the application of Weighted Down 'N' formula to list II, but from the result of that application; which it appears that the authorities did not appreciate in Rajasthan. Can such an approach be ever described as rational, and the answer has to be in the negative. There is then the connected question whether this classification has any rational relation to or connection with the object sought to be achieved by it? The learned counsel for respondents has pressed that the object that has been sought to be achieved by it is an integrated and satisfied Indian Administrative Service in which there is no bickering because supersession of seniors by juniors. The entry in the Indian Administrative Service is an entry to a new service. Past service is not connected with it, except to the extent that it is a consideration for recruitment, and later, after recruitment, it plays a part in the determination of the length of service for the purposes of year of allotment, but no more. However, even in that no grouping of the type, as in the Rajasthan Administrative Service ever plays any part whatsoever. One instance has already been given that in list I this object has been defeated in that an officer from Group H has superseded an officer from Group G of the Rajasthan Administrative Service on entry in the Indian Administrative service. The learned counsel for the respondents has persistently urged that the illustration from list I be dropped, for it has no bearing on the merits of the present argument. This is not quite correct, because officers recruited from that list go to make up membership of the Indian Administrative Service quite as much as officers recruited from list II or any otherwise. At the same time for a moment, this illustration may be dropped from consideration. Then what has happened among the first ten officers from list II after their entry in the Indian Administrative Service on April 8, 1954? In list II, Shri M. U. Menon, Shri J. N. Kunzru and Shri Kanwar Bahadur Mathur from Group G—group of Collectors—in the Rajasthan Administrative Service, after entry in the Indian Administrative Service on April 8, 1954, have superseded Shri Bhagwat Singh Mehta of list I from Group B—a group of Commissioners of Divisions—of the Rajasthan Administrative Service. In this instance those three officers from list II have superseded (i) an officer who entered the Indian Administrative Service sometime before they did, and (ii) an officer who was in a senior group, with a

much higher scale of pay, than in which those three officers were in the Rajasthan Administrative Service. This illustration does not support the theory that the respondents have been endeavouring to achieve the object of an integrated and a satisfied Indian Administrative Service in Rajasthan State. No doubt, it may be said that officers in Group B and those in Group G of the Rajasthan Administrative Service are officers who held posts encadred for the Indian Administrative Service, but, in spite of this, as between themselves supersession seems to have been permitted without a doubt by this instance. How is such supersession on any basis anywise different than a supersession that would have resulted because of the petitioners having been given benefit of Weighted Down 'N' formula though they were previously in Group H? It is not clear how such supersession has contributed towards integration and satisfactory working of the Indian Administrative Service, which would have been disturbed if similar supersession had resulted in the event of the remaining six officers having been accorded equal treatment along with first ten officers selected in their company in list II. Here again, the learned counsel for the respondents has persistently stressed that in the illustration an officer from list I has been brought in and this somehow renders the illustration inappropriate for consideration to the facts of the petitioners' cases. This seems to be somewhat of an extraordinary approach for an advantage which first ten officers in list II have distinctly obtained by the application of the Weighted Down 'N' formula to them, is an advantage which is deliberately denied to the petitioners. The basis of the denial is neither sound nor rational, and savours of nothing but arbitrariness. There is then the third illustration and this is confined entirely to list II. Shri Daulat Singh in this list was in Group B (Commissioners of Divisions) of the Rajasthan Administrative Service. Shri M. U. Menon, Shri J. N. Kunzru and Shri Kanwar Bahadur Mathur are from Group G (Collectors) of this Service. All were appointed to the Indian Administrative Service on the same date. Yet the last named three from Group G have superseded in the year of allotment and assignment of seniority Shri Daulat Singh from Group B. The only answer to this illustration is the one that has already been considered that it relates to groups of posts encadred for the Indian Administrative Service. But this consideration cannot prevail for the reason already

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explained. This has not prevailed in so far as list I is concerned which is clear from the first illustration as above. The consequence is that the basis which is described as rational to achieve the object of an integrated and satisfactory Indian Administrative Service is a basis which has not prevailed either in list I or in list II, when each list is taken separately and in isolation, nor in list I and II, when the two lists are taken together. If, as is the fact, this is the state of affairs, then an object, which has already been defeated in the very same service, the achievement of that by a basis, which has already been abandoned in the service, cannot possibly be rational, nor having a reasonable and a rational connection with the classification or differentia made in list II. It has already been said that the object has long before been abandoned on previous occasions. Thus though the classification is clear and intelligible, based on past classification, it is neither reasonable nor rational having been abandoned ever since the selections by the Special Recruitment Board. The object sought to be achieved by it has not been adhered to with regard to either list I or list II. Classification for such an object cannot be considered rational or reasonable. It cannot be considered to have any rational or reasonable connection with the achievement of an object which really does not otherwise exist but for the petitioners and those placed along with them in similar situation. The learned counsel for the respondents points out that according to rules 3(2) and 4(2) of the 1954 Regulation of Seniority Rules the petitioners being in service on the date of the enforcement of those rules, the orders and instructions in force immediately before that are to settle the year of allotment and assignment of seniority in either case. This is correct. The learned Counsel then says that the respondents had the right having regard to the peculiar circumstances of Rajasthan State to proceed to settle seniority of petitioners on *ad hoc* basis as had been decided upon by the time the petitioners came to be taken in the Indian Administrative Service. Assuming this to be correct, when a number of persons as in these cases sixteen officers from list II, are recruited to the Indian Administrative Service on one and the same day and from the same list, then it follows that normally and leaving out exceptional circumstances, none of which is made out here, same basis for the matter of year of allotment and assignment of seniority will apply to all even though it is an *ad hoc* basis.

If a departure is admissible it will be admissible for special reasons and special circumstances. Such a special case is not made out here with regard to the petitioners. When the Government has the power to proceed on *ad hoc* basis, it is even then not permitted to proceed in contravention of Articles 14 and 16 of the Constitution in regard to persons situate similarly and in the same circumstances. So that the same approach is to be made to the case of the petitioners even upon consideration of this argument of the learned counsel for the respondents. The consequence is that the denial of the benefit of Weighted Down 'N' formula to the petitioners when their companions in the same list II have the benefit of that formula and when all are similarly circumstanced having been selected on merits in list II by the Special Recruitment Board and having been recruited to the Indian Administrative Service on one and the same day, is violative of the protection under Article 14 and as such denial depresses the seniority of the petitioners, it affects their chances of promotion and hence also violative of Article 16(1) of the Constitution. The decision of the respondents to apply draft rule 3(3) (b) to the petitioners is, therefore, quashed with a direction to the respondents that in the case of the petitioners in the matters of year of allotment and assignment of seniority Weighted Down 'N' formula be applied as it has been applied to ten other officers in the same list as the petitioners. The petitioners, therefore, succeed in their petitions. The respondents will bear the costs of each petitioner in the latter's petition.

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Appellant.

versus

STATE TRANSPORT AUTHORITY, DELHI AND ANOTHER,—Respondents.

L.P.A. No. 79-D of 1961:

Motor Vehicles Act (IV of 1939)—S. 57(8)—Whether confined to conditions set out in S. 48—Delhi Motor Vehicles Rules—Rule 4.7—Application to vary the conditions of a permit—Whether must be

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March, 1st.