the dismissal of the suit of petitioner No. 1 should be held to disentitle the petitioner to claim the same relief on the same grounds in a petition under Article 226 of the Constitution on general principles of *res judicata*, and on the principles of Order 23 Rule 1 of the Code of Civil Procedure. I think there is great force in this objection of Mr. Sethi. Ram Kishan petitioner has, in any event, disentitled himself in the circumstances of this case to claim any relief from this Court under Articles 226 and 227 of the Constitution on the same grounds on which he instituted the suit which he voluntarily got dismissed. In the view we have taken of the solitary contention of the petitioners, on the merits of the case, it is not necessary to deal further with these objections of Mr. Sethi.

(12) For the foregoing reasons, this petition fails and is accordingly dismissed. In view, however, of the fact that the main question raised in the case was somewhat novel and is not covered by the pronouncement of any High Court or of their Lordships of the Supreme Court, we direct that the parties shall bear the costs of this case as incurred by them.

R. N. M.

LETTERS PATENT APPEAL

Before R. S. Narula and S. S. Sandhawalia, JJ

UNION OF INDIA AND OTHERS,—*Appellants*

versus

P. C. BAHL, DEPUTY SECRETARY TO GOVT. OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 427 of 1967

August 22, 1968

Indian Administrative Service (Appointment by promotion) Regulation (1955)—Regulation 5—Bringing a member of the State Civil Service on the select list of Indian Administrative Service—Process of—Whether envisages two distinct steps—Criteria for determining the seniority of such member—stated—Application of the criteria—Whether depends on the subjective satisfaction of the Statutory Committee—Committee—Whether required to record reasons for such determination—Regulation 5(3)—"Exceptitnal merits and suitability"—Meaning of.

Union of India, etc. *v.* P. C. Bahl, Deputy Secretary to Government of Punjab, etc. (Sandhawalia, J.)

Held, that the process of bringing a member of the State Civil Service on the select list of Indian Administrative Service envisages two distinct steps. First, after an officer of the State Civil Service has satisfied the test of eligibility for promotion to the select list the question for the determination by the Committee is whether a member of the State Civil Service should at all be brought on the select list. The statutory committee is enjoined to consider whether because of the merit and suitability with due regard to seniority, a certain officer is fit to be brought on the select list. The sole judge regarding merit and suitability of a particular member of the State Civil Service is the statutory committee and they have first to be satisfied regarding these two factors. Thereafter having reference to the seniority of a member they may decide to bring him on the list. This process, therefore, is distinct form determining his position in the seniority of the list prepared by the Committee. It governs only the first step whether a person should or should not be included in the list. The next step arises when the decision to bring a member of the State Civil Service on the list has been answered in the affirmative by the Committee. Then arises the question of determination of the seniority of the officer, that is the order in which his name shall appear in the list. This step is wholly governed by regulation 5(3) of Indian Administrative Service (Appointment by Promotion) Regulation, 1955. (Paras 21 & 22)

Held, that three criteria are spelled out from the language of regulation 5(3) of the Regulation, for determining the seniority of the Officer of the State Civil Service on the select list of the Indian Administrative Service. One of the criteria for such determination is the seniority of the officer in the State Civil Service. The other two are merit and suitability. It is expressly provided by the proviso to this sub-regulation that merit and suitability may override seniority. The power to determine the inter-play of these three criteria has been vested by the framers of the regulation in the statutory committee or to put it in technical language all that is required by regulation 5(3) is the subjective satisfaction of the Committee with regard to these three criteria. If they are satisfied that a junior officer (or officers) because of his exceptional merit and suitability deserves a place in the list higher than that of officers senior to him then they are perfectly entitled and indeed duty bound to do so in the terms of the proviso. It is patent that regulation 5(3) does not require any reason to be recorded for holding any person to be of exceptional merit and suitability.

(Para 23)

Held, that the phrase "Exceptional merit and suitability" in regulation 5(3) of the Regulation has not been used in an abstruse or abstract sense. "Exceptional merit and suitability" in this provision has been used in a relative sense *qua* the candidates who are eligible and whose names are being considered for the purpose of determination of their seniority. One candidate may be of exceptional merit and suitability *qua* the other rival candidate. Similarly a member of candidates may be adjudged as being of exceptional merit and suitability in comparison to another candidate.

(Para 24)

H. L. SIBAL, ADVOCATE-GENERAL (PUNJAB) WITH R. C. SATIA, ADVOCATE, for the Appellants.

BHAGIRATH DASS AND B. K JHINGON AND S. K. HIRAJEE, ADVOCATES, for respondent No. 1 only.

JUDGMENT

SANDHAWALIA, J.—These two connected appeals Nos. L.P.A. 427 of 1967 and L.P.A. 1 of 1968, on behalf of the Union of India and others and Sunder Singh and others respectively are under clause 10 of the Letters Patent and are directed against the judgment of Tek Chand, J., dated the 20th of October, 1967. By the said order the learned Single Judge had allowed the petition under Article 226 of the Constitution filed by P. C. Bahl, respondent No. 1, and granted him a writ of mandamus directing the appellants in L.P.A. No. 427 of 1967, to prepare a fresh seniority list in accordance with the judgment under appeal. As the points of facts and law arising in the two appeals are identical they will be disposed of by a single judgment.

(2) The facts giving rise to the filing of the writ petition by P. C. Bahl, respondent No. 1, in both the petitions may now be surveyed. Respondent No. 1 is a member of the Punjab State Civil Service and he was confirmed therein on the 1st of June, 1948. From the said date he has been working in different capacities in several departments of the State of Punjab and at the time of filing of the writ petition he held the status of a Deputy Secretary. On the 1st of November, 1956, which was the appointed date under the Reorganization Act, 1956, a joint seniority list was prepared giving the relative place of seniority of each one of the members of the Punjab Civil Service. In the said list which was annexed as annexure 'A' to the petition, respondent No. 1 was shown at serial No. 59. It is pleaded that this list forms the basis of seniority for all future promotions, appointments and confirmations for the purposes of selection or promotion to higher posts.

(3) The contention of respondent No. 1 was that on having completed 8 years of service in the State Civil Service he was eligible for and was considered by the Committee for inclusion in the list prepared under Regulation 5 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, for the first time in the year, 1958. However, it had been averred on behalf of the Union of India that respondent No. 1, P. C. Bahal's name was placed before

the Committee for the first time in March, 1956, but he was not considered fit for inclusion in the select list. His name was also considered in subsequent meetings held in July, 1957, February, 1958, September, 1958, and December, 1959, but he was not considered fit for inclusion in the Select List by these Committees and was superseded in the Select List prepared in September, 1958, and December, 1959. His name was included in the Select List by the Committee which met on the 21st of January, 1961, and the same was continued in the Select List prepared on the 27th of January, 1962, 23rd of November, 1962, and the 30th of September, 1963. Respondent No. 1 had pleaded that though his name had figured in the list but it did not appear in the order of seniority in which his name had stood in the State Civil Service List mentioned above. His name had been placed below the officers who had been selected in 1958 and 1959 although he pleaded that their names in the said Seniority List were much below the seniority of respondent No. 1. Subsequently till the year, 1965, more names were added to the List but the seniority in the List was arranged in accordance with the order in which a particular officer was selected and according to respondent No. 1 it was in violation of Regulation 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

(4) This list which had been arranged by the Committee in accordance with the year of selection which was at variance with the original seniority as appearing in the State Seniority List was submitted for approval to the Union Public Service Commission and approval was given without effecting any changes. This List thus became the Select List from which the appointments to the Indian Administrative Service Cadre were to be made in accordance with the order in which a name appeared in the Select List. On the 8th of November, 1965, respondent No. 1 made a representation to the State of Punjab that his name should be placed in accordance with the Regulation 5(3) so that the seniority which was reflected in the State Seniority List be given effect to while arranging the names in the Select List; and that when the occasion for appointment to the Indian Administrative Service arose he might avail of his proper place of seniority. This representation was annexed as annexure 'C' to the original writ petition. A reply thereto was received from the Chief Secretary to the Government of Punjab dated the 27th of April, 1966, which informed respondent No. 1 that the Indian Administrative Service Selection Committee which had met on the 21st

of January, 1961, had quite justifiably placed him below the Select List already in force when his name was first included in the List. A reference was made in this communication to the instructions contained in the Government of India, Ministry of Home Affairs, letter No. 7/6/55-AIS(1), dated the 5th October, 1955. Not satisfied with the reply of the State Government, respondent No. 1, then moved the High Court by way of petition under Atricle 226 of the Constitution of India which has been allowed by the judgment under appeal.

(5) A brief reference to the relevant statute and the rules and Regulations which fall for determination may now be made. As these have come up for detailed consideration during the course of arguments it is desirable to set them down *in extenso*. Under section 3 of the All-India Services Act, 1951 (Act 61 of 1951), the Central Government made after consultation with the Government of the States concerned rules for the regulation of recruitment, and the conditions of services of persons appointed, to an all India Service. It was also provided that all rules made under this section shall be laid for not less than fourteen days before Parliament as soon as possible after they are made, and shall be subject to such modifications whether by way of repeal or amendment, as Parliament may make on a motion made during the session in which they are so laid. Pursuant to these provisions of the Act, the Central Government made the Indian Administrative Service Recruitment Rules, 1954, and the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. Rule 4 provides for the methods of recruitment to the Indian Administrative Service as follows:—

(a) by a competitive examination;

(b) by promotion of substantive members of a State Civil Service;

(c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.

(6) As is patent from the facts above-mentioned we are concerned with clause (b) which relates to the method of recruitment by way of promotion from the members of a State Civil Service.

(7) The main points of controversy in these appeals revolve around Regulations Nos. 5, 6 and 7 of the Indian Administrative

Service (Appointment by promotion) Regulations, 1955. They are as follows:—

"5(1). The committee shall prepare a list of such members of the State Civil Service as satisfy the condition specified in regulation 4 and as are held by the committee to be suitable for promotion to the service. The number of the members of the State Civil Service included in the list not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules or 10 per cent of the senior duty posts borne on the cadre of the State or group of States whichever is greater:

Provided that in any particular year, the maximum limit imposed by this sub-regulation, may be exceeded to such extent as may be determined by the Central Government in consultation with the State Government concerned.

(2) The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(3) The names of the officers included in the list shall be arranged in order of seniority in the State Civil Service:

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession.

(6) The list prepared in accordance with regualtion 5 shall then be forwarded to the Commission by the State Government along with—

(i) the records of all members of the State Civil Service included in the list;

(ii) the records of all members of the State Civil Service who are proposed to be superseded by the recommendations made in the list;

(iii) the reasons as recorded by the Committee for the proposed supersession of any member of the State Civil Service; and

(iv) the observations of the State Government on the recommendations of the Committee.

(7) (1) The Commission shall consider the list prepared by the Committee along with the other documents received from the State Government and, unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government, may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

(4) The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of regulation 5, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2):

Provided that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the Select List."

(8) Regulation 8 provides for the appointment to Cadre Posts from the Select List made under the above regulation whilst regulation 9 relates to the appointments to the Indian Administrative

Service from the Select List prepared pursuant to the earleir regulations.

(9) The learned Single Judge in a judgment resplendent with erudition has dealt meticulously with the contentions raised before him. In fact he has sometimes dwelled exhaustively on the meaning to be attributed to each word in the above-said regulations, the construction of which calls for determination. However, for the purposes of these appeals, the matter is now in a narrower compass. The substance of the learned Judge's findings is six-fold and these may be enumerated as follows:—

(1) That the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, are statutory and are not merely in the nature of an executive instruction;

(2) That the infringement of the statutory regulation contained in the above-said 1955 Regulations is a matter which is justiciable by this Court;

(3) That the instructions contained in the Government of India, Ministry of Home Affairs letter No. 7/6/65-AIS (I), dated the 5th October, 1955, cannot override the provisions of Regulations above-mentioned;

(4) That respondent No. 1, P. C. Bahl, is not guilty of any laches;

(5) That on the facts of this case, regulation 5(5) governed regulation 5(3) and as such the Committee had to record its reasons for the supersession of respondent No. 1. The Committee having failed to record any express reasons the decision regarding the fixation of the respondent's seniority by the Committee is vitiated;

(6) The Committee has in fact given no reasons but has merely stated its conclusions. That the giving of the reasons is distinct from the statement of a mere conclusion.

(10) Mr. H. L. Sibal, the learned counsel for the appellant, in this appeal has not assailed the first three findings arrived at by the learned Single Judge. In fact it has been fairly conceded before us that undoubtedly the Indian Administrative Service (Appointment

by Promotion) Regulations, 1955 (hereinafter called the 1955 Regulations) is a statutory provision having been framed under the All-India Services Act. Further it is conceded that it is by now settled law that the violation of a statutory provision would be justiciable by this Court. It is also conceded that if an executive instruction purports to override or runs contrary to any statutory provision it would be of no validity to that extent. However, it has been strenuously contended in this regard that the Government of India's instructions dated the 5th October, 1955, are not violative of the statutory Regulations in any way whatsoever and are in fact wholly in conformity therewith. It is submitted that all the actions taken by the appellants are, according to them, entirely in consonance with and pursuant to the 1955 Regulations and not in derogation thereof.

(11) The controversy, therefore, now centres round the last three findings of the learned Single Judge and out of these three the last two in fact are crucial for the determination of this case

(12) To narrow down the area of the controversy it may be noticed at the outset that Mr. Bhagirath Das, the learned counsel for respondent No. 1 P. C. Bahl, has lucidly formulated the case of his client primarily on the contravention of the 1955 Regulations. He rightly makes this contravention, the corner stone of his client's case. He has explicitly stated that his client makes no grievance whatsoever of the facts prior to his selection to the list. He, therefore, rightly concedes that any action taken prior to that date has not been made the subject of attack in the petition before the learned Single Judge and he, therefore, does not rely on any facts previous to this crucial date. He has also contended that his case is not that there has been any infringement of Article 311 of the Constitution of India at all and further that as regards the decisions by the Committee and the Union Public Service Commission, no absence of *bona fides* whatsoever is suggested. In substance he contends that the 1955 Regulations being statutory there has been a clear violation of the same; this is patently justiciable; and hence the respondent is entitled to the relief he has claimed in the petition before the learned Single Judge which according to his has been rightly granted. The hard core of the point at issue is, therefore, reduced to this—

> "Has there been a patent contravention of Regulation 5 of the 1955 Regulations."

(13) The gravamen of Mr. Sibbal's argument, therefore, in this appeal is that Regulation 5(5) relates to supersession at the time of the selection, review or revision of the list. He contends that it is only when a supersession takes place and the said supersession is in the process of selection, review or revision of the select list that the recording of the reasons is necessary under the provisions of the Regulations and in this context the contention is that in the present case there has in fact been no supersession and as such the provisions of Regulation 5(5) are not at all attracted. His second contention is that for the purpose of determination of the order of seniority on the list the only Regulation which can possibly apply is regulation 5(3). This, he contends, does not require recording of any reasons whatsoever. It gives complete discretion to the Committee and if they are subjectively satisfied that a certain officer, because of his exceptional merit and suitability, in their opinion, can be assigned or placed higher in the list than the officers senior to him, then nothing more is required by the Regulation. The argument, therefore, is that on the present facts of the case of respondent No. 1, Regulation 5(5) has no application to regulation 5(3). In elaboration of this main contention, Mr. Sibbal has drawn our attention to regulation 5(2). He emphasises that in the said regulation three criteria are laid out in a specific order, namely, (1) Merit; (2) Suitability and (3) seniority. He contends that from the language of regulation 5(2) and in the manner in which these three criteria have been laid the emphasis primarily is on merit and suitability while seniority is placed as the last criterion. For this contention Mr. Sibhal has relied on the observations of the Supreme Court in *Sant Ram Sharma* v.*State of Rajasthan and another* (1), where at page 917 of the report, the learned Judges of the Supreme Court have approved of the view of Leonard D. White in the following terms:—

> "The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to more

(1) 1967 S.L.R 907.

as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment."

(14) Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the premotion. Within liimts, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true."

(15) (Introduction to the Study of Public Administration, 4th Edn., pp. 380, 383). As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit, and seniority has been taken into consideration only when merit of the candidates is otherwise equal and we are unable to accept the argument of Mr. N. C. Chatterjee that this procedure violates in any way, the guarantee under Article 14 and 16 of the Constitution."

(16) Relying on the above and applying the ratio thereof to the present case the contention of Mr. Sibbal is that it is only when merit and suitability of candidates are otherwise equal, that the consideration of seniority would be called in. Relying next on the proviso to regulation 5(3) Mr. Sibbal contends that in the terms of that proviso the power to arrange the order of seniority on the list has been expressly vested in the Committee. If they are of the opinion that a junior officer, because of exceptional merit and suitability, may be assigned a place in the list higher than that of officers senior to him then they are prefectly at liberty to vary the order of seniority in the State Civil Service. The core of the contention is that the framers of the Regulations have vested a discretion in the statuory body, namely, the Committee. All that this proviso requires, therefore, is the subjective satisfaction of the said

Committee. Once the Committee is so satisfied and opines accordingly in th terms of regulation 5(3) then according to him it is acting in conformity with the spirit and the letter of the said regulation. He submits that it has been expressly averred on behalf of the Committee that in the present case they were in fact of the opinion that officers placed higher in the list than the respondent were of exceptional merit and suitability *qua* him. In face of this averment and the unanimous opinion of the Committee to that effect it is not the practice of this Court to go behind the discretion vested in a statutory body by the law. Mr. Sibal contends that the subjective satisfaction of the Committee is thus to be respected and not to be lightly overridden. He contends further that regulaiton 5(3) nowhere requires the recording of any reasons and as the *bona fides* of the Committee's action have not been challenged, the fixation of the order of seniority by them is hence unassailable. Mr. Sibal then relied on regulation 6(ii) which lays down that the records of all the members of the State Civil Service who are proposed to be superseded by the recommendations made in the list are to be forwarded to the Union Public Service Commission by the State Government along with the select list. He, therefore, wishes us to infer from that that regulation 6(ii) is related to regulation 5(5) and that the meaning to be attributed to the word 'supersession' becomes clear in his context and it is only in such a case that the records of such an officer are to be sent to the Union Public Service Commission. Then distinguishing the case of *Shambhu Dayal Gupta v. Union of India* (2), he placed reliance on the following observations in the said judgment at page 494—

> "Sub-regulation (5) of regulation 5 applies only when it is proposed to supersede any member of the State Civil Service which is not the case here."

An alternative contention has also been raised. This is that even if it were to be held that the Committee should record reasons for its action under regulations 5(2) and (3), then this also has been complied with.

(17) In reply thereto Mr. Bhagirath Das, the learned counsel for respondent No. 1 has firstly relied on regulation 5(3) and has argued

(.2) I.L.R. (1967) 1 Punj. 490.

that the proviso thereto is only in the nature of exception. He contends that the criterion of fixing the order of seniority laid down in regulation 5(3) is primarily the order of seniority in the State Civil Service. He interprets this to mean that this order is the normal one and it is to be disturbed only in very exceptional circumstances. If this order of seniority, according to him, is to be disturbed it must be for specific and explicit reasons and also a specific finding *qua* each officers that he is of exceptional merit and suitability and, therefore, deserves to be assigned a place in the list higher than that of officers senior to him. The recording of these reasons, according to Mr. Bhagirath Das, is the condition precedent to any such action by the Committee. In this case particularly he submits that regulation 5(5) would apply and govern regulation 5(3) and as such the recording of reasons is the *sine qua non* for the action of the statutory committee in altering the order of seniority. He submits that the committee has not recorded its reasons. It has hence not complied with the provisions of regulation 5(5). This is in flagrant violation of the said regulation and as such the action of the statutory committee cannot be substained.

(18) In elaboration of this contention, he relies on regulations 6(iii) and (iv). The submission* is that regulation 6(ii) expressly requires that the reasons, as recorded by the Committee, for the proposed supersession of any member of the State Civil Service are to be forwarded to the Union Public Service Commission and further not merely the reasons of the committee but also the observations of the State Government on the recommendation of the Committee are necessary to be submitted to the Union Public Service Commission. He argues that regulations 6(iii) and (iv) are mandatory and are clearly related to regulation 5(5). Having contented that in this case there has been a clear supersession of respondent No. 1, he submits that firstly the recording of the reasons was necessary under regulation 5(5) and further those reasons as recorded along with the observations of the State Government have to be submitted to the Union Public Service Commission and then and then alone a compliance with the regulation could possibly be said to have been executed. Failure to comply with these provisions which, according to him, are mandatory is fatal to the action of the Committee. He argues that compliance with the above provision is a condition precedent for the Commission when it acts in the finalisation of the list and converts it into the select list. In the absence of this condition precedent, according to him, any action of the Union Public Service Commission

in framing the select list would be without the necessary foundation required for the said purpose by the regulation.

(19) Reliance was placed on the observation of the Supreme Court in *Associated Electrical Industries (India) Private Ltd. v. Its workmen*, (3). That was a case under the Industrial Disputes Act. Under the said provision a power is given to the appropriate Government to transfer proceeding pending before one Tribunal to another Tribunal and one of the requirements of section 33B of the Industrial Disputes Act is that before making such an order reasons for the same must be recorded. Interpreting the same, the observations of the learned Judges are as follows :—

> "When we turn to the orders by which the reference was withdrawn from the industrial tribunal and transferred to another, we find that there is no reason mentioned in any of them. All that the orders purport to say is that it is expedient to withdraw the reference from one tribunal and transfer it to another. In our opinion, the said bare statement made in the orders by which the proceedings are withdrawn from one Tribunal and transferred to another does not amount to a statement of reasons as required by section 33B(1). It is quite clear that the requirement about the statement of the resason must be complied with both in substance and in letter. To say that it is expedient to withdraw a case from one tribunal and transfer it to another repeatedly on three occassions in respect of the same proceedings is not to give any reason as required by the section."

(20) To examine these rival contentions the scheme of the Indian Administrative Service (Appointment by Promotion), regulations 1955 may first be examined, Regulation 2 pertains to the definitions whilst regulation 3 provides for the constitution of the Committee which is to make the selection. Regulation 4 provides the conditions of eligibility for promotion from the State Civil Service to the select list and thereafter to the Indian Administrative Service. Regulation 5 which is crucial and which calls for interpretation then provides for the "preparation of a list of suitable officers" as are held by the Committee to be suitable for promotion to the Indian Administrative

(3) A.I.R. 1967 S.C. 284.

Service. Regulation 6 deals with the consultations with the Commission in the finalisation of the list prepared by the Committee and regulation 7 provides for the finalisation of the list prepared by the Committee which is then termed as the select list. The rest of the provisions of the Regulations are not very relevant.

(21) The process, therefore, of determining the seniority on the list prepared by the statutory committee is two-fold. First after an officer of the State Civil Service has satisfied the test of eligibility for promotion to the select list the question for the determination by the Committee is whether a member of the State Civil Service should at all be brought on the select list. The test for including the member of the State Civil Service in the list is entirely a subjective test by the statutory Committee. Regulation 5(1) begins as follows :—

> "The Committee shall prepare a list of such members of the State Civil Service as satisfy the condition *specified in regulation 4 and as are held by the committee to be suitable for promotion to the Service."

(22) The crucial words, therefore, are "as are held by the Committee to be suitable for promotion." An indication in the nature of guide-lines is laid out in regulation 5(2). The statutory committee is enjoined to consider whether because of the merit and suitability with due regard to seniority, a certain officer is fit to be brought on the select list. The sole judge regarding merit and suitability of a particular member of the State Civil Service is the statutory committee and they have first to be satisfied regarding these two factors. Thereafter having reference to the seniority of a member they may decide to bring him on the list. This process, therefore, is distinct from determining his position in the seniority of the list prepared by the Committee. It governs only the first step whether a person should not be included in the list.

(23) The next step arises when the decision to bring a member of the State Civil Service on the list has been answered in the affirmative by the Committee. Then arises the question of determination of the seniority of an officer or, to put it in another way, the order in which his name shall appear in the list. This step in our view is governed wholly by regulation 5(3). As is patent from the language and the position thereof the purpose of regulation 5(3) including the proviso is clear. Three criteria are spelled out therefrom. One of

the criteria for such determination is the seniority of the officer in the State Civil Service. The other two are merit and suitability. It is expressly provided by the proviso to this sub-regulation that merit and suitability may override seniority. The power to determine the inter-play of these three criteria has been vested by the framers of the regulation in the statutory committee or to put it in technical language all that is required by regulation 5(3) is the subjective satisfaction of the Committee with regard to these three criteria. If they are satisfied that a junior officer (or officers) because of his exceptional merit and suitability deserves a place in the list higher than that of officers senior to him then they are perfectly entitled and indeed duty bound to do so in the terms of the proviso. It is patent that regulation 5(3) does not require any reason to be recorded for holding any person to be of exceptional merit and suitability. Sub-regulations (1), (2), (3) and (4) of regulation 5, as is clear from the language thereof make no mention whatsoever of any recording of reasons. At this stage as yet regulation 5(5) has no application whatsoever and it is only when that provision comes into play that the recording of reasons is envisaged.

(24) The phrase "Exceptional merit and Suitability" in regulation 5(3) in our view has not been used in an abstruse or abstract sense. "Exceptional merit and Suitability" in this provision has been used in a relative sense *qua* the candidates who are eligible and whose names are being considered for the purpose of determination of their seniority. One candidate may be of excptional merit and suitability *qua* the other rival candidate. Similarly a number of candidates may be adjudged as being of exceptional merit and suitability in comparison to another candidate. In any case when once the Committee has arrived at an opinion to the said effect regarding a candidate's exceptional merit and suitability the statute in its wisdom has thought it expedient to respect that opinion. It is noticeable that it has not been required that the Committee should explain the basis of their opinion by expressly recording their reasons therefor. That requirement is only as regards regulation 5(5). It would, therefore, be treading a dangerous ground to go behind the clear expression of subjective satisfaction and the expression of opinion following thereto which had been expressly averred to in the written statement on behalf of the Committee. As already noticed there is no suggestion of *mala fides* on the part of the Committee. If acting *bona fide* and clearly alive to and in conformity

with the provisions of regulation 5(3), they have arrived at a certain opinion *qua* a certain officer or a set of officers their action is, to our minds, unassailable, We are, therefore, of the opinion that the order of the seniority of respondent No. 1 was fixed in conformity with and after complying with the provisions of regulation 5(3) and there were no infringements thereof.

(25) It, therefore, remains to determine whether the provisions of regulation 5(5) are attracted to the facts of the case of respondent No. 1. Thus it is the construction to be placed on regulation 5(5) which will ultimately tilt the balance between the two rival contentions raised on behalf of the appellants and the respondent. The crucial questions which arise herein may be formulated as follows:—

(1) Has there been a supersession of respondent No. 1 as is envisaged in regulation 5, sub-clause (5)?

(2) Has this supersession been in the process of selection, review or revision?

If the answer to these two queries is in the affirmative, it is only then that a case for the respondent (No. 1) would be spelled out; and if the reply is in the negative, it is patent that the contentions raised on his behalf must necessarily fail. The crucial word, therefore, which falls for interpretation is the word 'supersede' used in regulation 5(5). This word is not a term of legal art and has not been defined or interpreted either in Bourvier's Law Dictionary or Wharton's Law Lexicon. In Stroud's Judicial Dictionary, this word has been interpreted in the special context of the meaning to be placed thereon in Company Law, and in cases of conflict between a general Act and a local Act. This does not in any way aid us in ascribing the correct meaning thereto in the present case. The construction to be put on this word was considered in the Amrican case of *Kemp* v. *Stanley* (4). This is a decision of the Supreme Court of Louisiana. That case arose in determining the constitutionality of a statute which authorised the Attorney-General of the State of Louisiana to supersede the district Attorney. The language of the statute was in the following words—

"Provided further that the Attorney-General shall have power to relieve, supplant and supersede the District Attorney in any criminal proceeding, when he may deem it necessary for the protection of the rights and interests of the State * * * * *."

(4) 15 Southern Reporter 2nd series 1.

(26) The learned Judges of the Supreme Court of Louisiana in that case accorded judicial approval to the meaning given to this word in the Second Edition of Webster's International Dictionary. Therein this word 'supersede' has been given the following meaning pertaining to the present context:—

> "To displace, or pass over, so as to appoint a successor or make way for another; to supplant; as, the Governor superseded Judge A with Judge B.
>
> To take the place, room, or position of; to follow in place of; to replace; as, the new bill is designed to supersede all previous bills; the new appointee supersedes a promoted (or dismissed) official."

(27) The issue, therefore, clearly is that attributing the meanings above-mentioned to this word then has there been a supersession of the respondent in those terms?

It is necessary to go back to the facts and it is noticeable that for the first time the name of respondent No. 1,—P. C. Behal was brought on the list on 21st January, 1561. In the minutes of the Committee's meeting of the even date, his name after consideration was placed at No. 28 in the select list. Thereafter the list was revised annually next year and in the meeting of the Committee held on the 27th February, 1962, his name then finds place at No. 19 of the list prepared on the said date for this year which was duly approved by the Union Public Service Commission. Thereafter on the 23rd November, 1962, in the annual revision of the list, the name of the respondent finds place at No. 18. It thus emerges that from the moment of bringing his name on the list in 1961 till the time of the filing of the petition, his position in the seniority on the select list had not been altered to his detriment. It is not the case at all that after 21st January, 1961, when his name was first brought on the list at No. 28, any person whose name appeared lower than his in the order in the list has been raised to an order higher than that of respondent No. 1. As a matter of fact as has been noticed, his name in the order of seniority has in fact been gradually upgraded to number 18 due to the appointments to the Indian Administrative Service of the persons above him, retirement, and other factors We are, therefore, clearly of the opinion that from the crucial date of the 21st January, 1961, when the name of the respondent was first

placed on the select list, onwards there has been no supplanting or replacing or passing over of respondent No. 1 which may amount to supersession within the meaning of the said word used in regulation 5(5).

(28) Assuming for the sake of the argument that there has been a supersession of respondent No. 1 (though we have expressly found otherwise), the question then arises whether this supersession arises in the process of selection, review or revision. We will consider this aspect in all its three aspects. Firstly as regards the process of selection, it is noticeable that on the averments made on behalf of the State of Punjab, the name of respondent No. 1 was considered in March, 1956; July, 1957; February, 1958; September, 1958 and December, 1959, by the statutory Committee. On all these occasions, the Committee did not consider him fit to be brought on the select list, He was in those relevant years clearly superseded in the process of selection. Officers junior to him on the State Civil Service List were brought on the select list whilst his name after due consideration was not considered to be fit to be so brought. This, to our mind, is what regulation 5(5) means when it refers to supersession in the process of selection. But the noticeable feature of this case clearly is that respondent No. 1 makes no grievance of this supersession. He did not at any stage challenge such supersession in the process of selection in the years 1956 to 1959. In this petition it is expressly his case that no grievance whatsoever is made of the period prior to the 21st January, 1961. It is otherwise also conceded that no State Civil Service Officer had any vested legal right to claim to be brought on the select list. In the words of Mr. Bhagirath Das, 'the learned counsel for respondent No .1 mere non-selection in a previous year does not give any right of action to a member of the State Civil Service and no such ground was in fact pleaded in the writ petition. The name of respondent No. 1 was brought on the list for the first time in January, 1961, and even at that stage it was provisional being subject to the result of a disciplinary case pending against him. It is thus clear that after the said date of 21st January, 1961, the case is not within the ambit of any supersession in the process of selection Supersession, if any, was prior to the said date which expressly is not before this Court for adjudication.

(29) As regards the second aspect, regulation 5(4) provides for a review and regulation 7(4) provides for a special review of the list. Admittedly in this case there has been no occasion for any

review or special review under the above said provisions. Hence patently no question of supersession in the process of revision arises at all. Regarding the third aspect, as has already been noticed, the list was revised after 1961 in the years 1962 and 1963 and the order of seniority of respondent No. 1 has not thereafter been altered to his detriment in the revisions in these two years. Obviously, therefore, no question of any supersession in the process of revision of the said list can arise.

(30) We are, therefore, clearly of the view that on the facts of the present case there is in fact no supersession of respondent No. 1 within the meaning and context of regulation 5(5) and further even if it be so held it has not been in any process of selection, review or revision. Therefore, in our view regulation 5(5) is not at all attracted on the facts of this case.

(31) Mr. J. N. Kaushal, the learned counsel for the appellant in L.P.A. No. 1 of 1968 whilst adopting the arguments advanced by Mr. Sibal has further raised the contention that once it is held that regulation 5(8) alone is applicable, the matter is completely narrowed down. He submits that this regulation does not require any reasons to be given. Under the proviso to regulation 5(3), exceptional merit and suitability can override the criterion of seniority. In the minutes of the meeting of the Committee held on the 23rd November, 1962, it has been expressly recorded as follows:—

> "The list in paragraph 2 above does not follow the order of seniority in the State Civil Service as, in the opinion of the Committee, the exceptional merit and suitability of officers placed in the higher list than those senior to them justify their being assigned places accordingly."

Similarly in the minutes of the meeting of the 21st of January, 1961, it was recorded as follows:—

> "The above list does not follow the order of seniority in the State Civil Service, as in the opinion of the Committee the records of officers Nos. 1 to 25 justify their being assigned places in the list higher than officers senior to them."

(32) In the written statement on behalf of the appellants it was expressly averred that the Committee had found the officers who

were placed above respondent No. 1 to have exceptional merit and suitability so as to deserve a place higher than that of respondent No. 1 in the list of seniority. Mr. Kaushal further contends that the statutory committee and the Union Public Service Commission are not judicial or quasi-judicial bodies: they are administrative tribunals and it is not necessary that their actions should be speaking orders expressing in detail all the reasons which impelled them so to act. He contends that if they had complied with the requirements of regulation 5(3) and the law vests the discretion to do so in them and it is not the allegation that the said discretion has been motivated by any extraneous consideration, then the exercise of such a discretion cannot be made the subject of an attack. In any case he argued that this Court in its writ jurisdiction would be wholly reluctant to go behind the expression of an opinion which has expressly been vested in the discretion of the Committee by the regulation. He has placed reliance on *Vice-Chancellor, Utkal University and others* v. *S. K. Ghosh and others* (5), for his above contention. In that case the medical students of Utkal University of Orissa had prayed for a writ of *mandamus* under Article 226 of the Constitution of India against the Vice-Chancellor of the University and certain other persons connected with it in the High Court of Orissa. The High Court had allowed the petition and granted the writ of *mandamus*, on the findings that the syndicate acted unreasonably and without due care and that on the facts there was no justification for the syndicate to pass such a drastic resolution in the absence of proof of the quantum and amplitude of the leakage of the paper in the examination. The learned Judges of the Supreme Court whilst allowing the appeal against the judgment of the High Court of Orissa observed as follows:—

> "It may be that the matter could have been handled in some other way, as, for example, in the manner the learned Judges indicate but it is not the function of the Courts of Law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law."

(33) The ratio of this case is hence clearly applicable. Regulation 5(3) has entrusted the determination of seniority in the list to the judgment and discretion of the statutory committee. That discretion has been so exercised admittedly without any *mala fides*. We

(5) A.I.R. 1954 S.C. 217.

are, therefore, precluded from going behind the exercise of such discretion and examine the facts for ourselves and adjudicate thereon in a petition under Article 226 of the Constitution of India. That such a course would be erroneous is patent from the following observations in the case above-said:—

> "We also think the High Court was wrong on the second point. The learned Judges rightly hold that in a mandamus petition the High Court cannot constitute itself into a Court of appeal from the authority against which the appeal is sought, but having said that they went on to do just what they said they could not. The learned Judges appeared to consider that it is not enough to have facts established from which a leakage can legitimately be inferred by reasonable minds but that there must in additon be proof of its quantum and amplitude though they do not indicate what the yard-stick of measurement should be. That is a proposition to which we are not able to assent.
>
> We are not prepared to perpetrate the error into which the learned High Court Judges permitted themselves to be led and examine the facts for ourselves as a Court of appeal but in view of the strictures the High Court has made on the Vice-Chancellor and the syndicate we are compelled to observe that we do not feel they are justified."

(34) Mr. Sibal's next contention was that even if it be assumed that it was necessary that reasons for placing the names of junior officers at higher places than that of respondent No. 1 have to be given that condition in substance has been complied with. At the time of placing the name of respondent No. 1 on the list on the 21st of January, 1961, the Committee had expressly based itself on the records of officers Nos. 1 to 25 as the ground for assigning to them places higher in the list than the officers senior to them. It is further averred that this list has no finality and was revised from year to year and the relevant list which is being attacked was framed on the 23rd November, 1962. Therein also it had been expressly stated in the minutes as has already been quoted above that regarding the variation in the order of seniority in the list, the same was based on the exceptional merit and suitability of the junior officers who were being placed in a position higher than those senior to them and the records justify their being so assigned. Mr. Sibal, therefore,

contends that it is clear that the Committee was alive to the requirements of regulation 5(3) and has acted in strict compliance therewith. The submission is that reference to the record is the reason for placing the junior officers above respondent No. 1. His contention is that the conclusion is that a junior officer should be placed higher than respondent No. 1, and the reason for the same is the record of such an officer and in comparison thereto the record of respondent No. 1. He contends that both of them are clearly distinct. It is patent that the records of all these officers were before the Committee at the time of the selection. It was recorded in the minutes of the meeting of the 21st January, 1961, as follows:—

> "The Committee examined the records of all the permanent members of the State Civil Service who on the 21st January, 1961, had completed not less than eight years of continues service (whether officiating or substantive) in a post of Deputy Collector."

(35) Similarly in the meeting of the 23rd of November, 1962, the following minute was recorded:—

> "The Committee examined the records of all the permanent members of the State Civil Service, who, on the first day of January, 1962, had completed not less than eight years of continuous service (whether officiating or substantive) in a post of Deputy Collector/post declared equivalent thereto."

Mr. Sibal, therefore, submits that it was not necessary to refer individually in detail to each part of the record. The Statutory Committee had the record of each officer before it and they were examined and placing reliance on their record determined the order of seniority. He contends that there is an express reference to the records and that constitutes a valid reason duly expressed on which the conclusion of the Committee is based. The submission is that this is clearly sufficient compliance even if it was to be held that the recording of reasons is necessary. In any case it is argued that this is a substantial compliance with the spirit of the regulation.

(36) Mr. Bhagirath Das in reply to this contention has placed reliance on *Collector of Monghyr and others* v. *Keshav Prasad Goenka and others* (6), for the proposition that conclusion is distinct from

(6) A.I.R. 1962 S.C. 1694.

the reasons thereof and on *S. G. Jaisinghani* v. *Union of India and others* (7), for the broad proposition that discretion when conferred upon an executive authority must be confined within definite limits. Unquestionably there can be no two opinions regarding this enunciation of the law.

(37) In view of our decision that the recording of reasons was not necessary this contention loses its importance. Nevertheless we are inclined to agree with the contention of the counsel for the appellants. There is a clear reference to the records of the officers concerned, the factum of their inspection and then a conclusion therefrom is arrived at alongwith the other factors. In any case even if the letter of the law is technically infringed, there is substantial compliance in the terms of dictum of the Supreme Court in *S. K. Ghosh's case* which is in the following terms:—

> "The substance is more important than the form and if there is substantial compliance with the spirit and substance of the law, we are not prepared to let an unessential defect in form defeat what is otherwise a proper and valid resolution."

(38) In fairness to the counsel for the parties we may also notice a few subsidiary contentions which had been raised on either side. Mr. Sibal on behalf of the appellants had also argued that the selection by the Committee is merely recommendatory. It is merely an intermediate step that is taken for the purpose of the finalisation of the list. After the Committee has made the recommendation the records of all the members of the State Civil Service included in the list, the records of all the members who have been superseded, the reason for such supersession and the observations of the State Government are all forwarded to the Union Public Service Commission. Under regulation 7, the Commission is to consider the list prepared by the Committee along with other documents and if it considers necessary to make any changes it shall inform the State Government of the changes proposed and asked for its comments and on receipt thereof it may finally approve the list. Particular reliance was placed on the use in

(7) A.I.R. 1967 S.C. 1427.

regulation 7(2) of the words 'just and proper'. The relevant part of regulation 7(2) is as follows:—

> "7(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government, may approve the list finally with such modification, if any, as may, in its opinion, be just and proper."

Mr. Sibal, therefore, arguing on the language of this regulation submits that this completely vests the power of selection and approval in the Commission and it is ultimately the approval of the list by the Commission which gives any finality to the list. He, therefore, contends that preparation of a list of suitable candidates by the Committee is merely an intermediary step. This he contends can hardly be challenged when no attack against the final order of the Union Public Service Commission has been directed.

(39) Mr. Bhagirath Das has strenuously argued that regulation 7(1) clearly shows that the normal procedure for the Commission is to approve the list and it is only in exceptional circumstances that the Union Public Service Commission would consider a change and then follow the procedure in regulation 7(2). His argument basically was that any deviation even at an intermediary stage from the regulations would give a cause of action to his client.

(40) Mr. Sibal has also argued that there is no finality attached to the list prepared by the Committee and even so as regards the select list, The list of 1963 against which the grievance was made has been subsequently revised and as such the petition is virtually infructuous. The earlier list having lapsed and the new list having been prepared this Court will not pass an order which will be merely academic. The learned counsel for the appellants has also relied on a Division Bench authority of this Court reported as *Harpal Singh* v. *The State of Punjab and others* (8), in which also similar question was raised. We have, however, been taken through the judgment but the question which we have earlier decided in this petition regarding the necessity of giving reasons and as to what constitutes reasons has not been determined in the said case and that case is hardly of any assistance, in determining the points at issue.

(8) C.M. 2861 of 1965 decided on 14th September, 1967.

(41) We are mentioning these rival contention in fairness to the learned counsel for the parties but in view of the decision in the earlier part of the judgment it is not at all now necessary to adjudicate upon them. It may further be noticed that reliance was also placed on *Harpal Singh's case* for the submission that respondent No. 1 was guilty of laches and the appeal be allowed on that point alone. As the point arising in appeal involves the interpretation of a statutory provision and we are allowing the appeal on merits, it is not necessary to go into and adjudicate on the question of laches.

We, therefore, hold that—

(1) On the facts of this case, there has been no supersession of respondent No. 1 within the meaning and context of regulation 5(5);

(2) Regulations 5(1), (2), (3) and (4) do not contain any express or implied requirement that the Committee should record its reasons whilst acting under those provisions;

(3) That the order of seniority of respondent No. 1 has been fixed in conformity with and after compliance with the provisions of regulation 5(3) and there has been no infringement thereof;

(4) On the facts of the case the provisions of regulation 5(5) are not attracted and cannot govern the provisions of regulation 5(3); and

(5) That even if it be held that the recording of reasons was a legal requirement, there has been a substantial compliance thereof.

(42) In view of the above, we would allow these appeals and setting aside the order of the learned Single Judge dismiss the writ petition filed by respondent No. 1. In the circumstances of the case there will, however, be no order as to costs.

R. S. NARULA, J.—I entirely agree.

K. S. K.