Union Of India & Anr vs P.K. Roy & Ors on 9 November, 1967

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Bench: V. Ramaswami, K.N. Wanchoo, R.S. Bachawat, G.K. Mitter, K.S. Hegde

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
P.K. ROY & ORS.

DATE OF JUDGMENT:
09/11/1967

BENCH:
RAMASWAMI, V.
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RAMASWAMI, V.
WANCHOO, K.N. (CJ)
BACHAWAT, R.S.
MITTER, G.K.
HEGDE, K.S.

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RF 1972 SC 586 (7)
R 1973 SC 69 (37)
RF 1973 SC1260 (7)
R 1973 SC2102 (17)
F 1974 SC1502 (8)
R 1975 SC 929 (12)
RF 1976 SC 214 (9)
RF 1977 SC 161 (7,8)
R 1981 SC1990 (11)
R 1984 SC 273 (41)

ACT:

States Reorganisation Act (37 of 1956), s. 115(5)-Power of Central Government to fix seniority of officers in re-organised States Preliminary work done by State Governments--If improper delegation.

Natural Justice-Application of rules--Depends on facts of each case

HEADNOTE:

Respondents 1 to 13 were Assistant Engineers in the State of Madhya Pradesh before it was reorganised under the States Reorganisation Act. 1956. After the formation of the new State of Madhya Pradesh, they continued to serve in the new State along with officers taken over from the absorbed States and regions, and, it became necessary to integrate the service and to fix the inter se seniority of the officers of the: integrated service. The Chief Secretaries of the various States that were to be affected by the reorganisation had evolved certain general principles that should be observed with regard to. the integration work and the Government of India informed the State Governments that the work of integration of services should be dealt with by the State Governments in the light of those principles. Thereafter, the State Government published a provisional gradation list of the department to which the respondents belonged and notified, that any government servant feeling aggrieved was entitled to send his representation to the Central Government. Representations were received from respondents 1 to 4, 6 and 7 and some other officers. and those representations were sent by the State Government to the Central Government for being dealt with in consultation with the Advisory Committee it had constituted for dealing with the representations from officers affected by the reorganisation. Since the State Government had prepared the list on a basis different from that suggested by the Central Government the latter directed that a revised list should be prepared on the basis of the formula laid down by the Central Government. Accordingly, the State Government sent a second list prepared on the basis of that formula, and the Central Government, in consultation with the Advisory Committee, examined both the lists and the representations of officers already received and decided that the second gradation list should be approved subject to certain modifications, and certain directions in the ease of officers from the Mahakoshal region. It was further directed that as the rearrangement as per modifications suggested was likely to affect the ranks of officers of other regions. the entire list should be reviewed in the light of directions given by the Central Government. On this direction, the State Government refixed the inter se seniority of officers from the Mahakoshal region, and thereafter, prepared the final gradation list and published

it.

The respondents thereupon filed a writ petition in the High Court challenging the validity of the final gradation list on two grounds: (1) the work of integration was exclusively entrusted to the Central Government by s. 115(5) of the States Reorganisation Act and that the gradation list as published was illegal and ultra virex because, there improper delegation of its powers and duties by the Central Govern-

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ment to the State Government, and; (2) in the circumstances of the present case the respondents should have been given another opportunity of making a representation before drawing up the final gradation list. The High Court allowed the petition.

In appeal to this Court.

Held: (1) Even on the assumption that the task of integration was exclusively entrusted to the Central Government, the High Court was in error in holding that there was improper delegation of its statutory power by the Central Government. [200G]

In the present case the steps taken by the Central Government in the matter of integration did not amount to any delegation of its essential statutory functions, because it was the Central Government which laid down the principles for integration. it was the Central Government which considered the representations and passed final orders, and both the preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government. When the Central Government intimated that the work of integration should be left to the State Government what was meant was that only the preliminary work of preparation of the gradation' list on the principles decided upon by the Central Government should be left to the State Government concerned. Such work cannot be done by the Central Government itself as the necessary information regarding the officers can be obtained and tabulated only by the States concerned, and there is nothing in ss. 115 or 117 of the Act prohibiting the Central Government in any way, from taking the, aid and assistance of the State Government in the matter of effecting the integration of the services. The principle delegates non protest delegate, cannot be held' to have been violated. if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after has been taken. In such a case the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. [198E-H; [99D-G]

Pradyat Kumar Bose v. The Hon'ble The Chief Justice of the

Calcutta High Court, [1955] 2 S.C.R. 1331. followed.
Board of Education v. Rice, [1911] A.C. 179, Local Government Board v. Arlidge [1915] A.C. 120 and Fowler (John) & Co. (Leeds) v. Duncan [1941] Ch. 450. referred to.

(2) The doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in a particular case. In view of the special circumstances of the present case the respondents were entitled to a second opportunity to make a representation with regard to (a) the inter se seniority list of the assistant engineers of the Mahakoshal region prepared as per the directions of the Central Government, and (b) the combined final gradation list. As no such opportunity was furnished, the final list, so far as the category affected by the directions given by the Central Government was ultra vires and illegal and that part of the notification must be quashed. [202D-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 618 of 1966.

Appeal by special leave from the judgment and order dated April 29, 1964- of the Madhya Pradesh High Court in Misc. Petition No. 371 of 2962.

Niren De, Solicitor-General, V.A. Seyid Muhamad, R.N. Sachthey, for R.H. Dhebar, for the appellants. A. K. Sen, Rameshwar Nath and Mahinder Narain, for respondents Nos. 1, 3, 6, 10, 12 and 13.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Madhya Pradesh High Court dated April 29, 1964 in Miscellaneous Petition No. 371 of 1962. By its judgment the High Court held that the preparation of provisional gradation lists by the State of Madhya Pradesh under the relevant provisions of the States Reorganisation Act, 1956 (Act 37 of 1956), hereinafter referred to as the "said Act", was unwarranted in law and the final list published on April 6, 1962 prepared by the State Government under instructions from the Central Government with regard to the integration of officers of the Engineering Department was illegal and ultra vires and must be quashed by the grant of a writ.

The said Act was enacted to provide for the reorganisation of the States of India and for matters connected therewith and came into force with effect from November 1, 1956. By s. 9 (1) of the said Act there was formed a "new State" to be known as the State of Madhya Pradesh comprising the following territories:

"(a) the territories of the existing State of Madhya Pradesh, except the districts mentioned in clause (e) of sub-section (1) of section 8;

(b) the territories of the existing State of Madhya Bharat, except Sunel tappa of Bhanpura tahsil of Mandsaur district;

(c) Sironj sub-division of Kotah district in the existing State of Rajasthan;

(d) the territories of the existing State of Bhopal, and

(e) the territories of the existing State of Vindhya Pradesh;".

Respondents 1 to 13 were Assistant Engineers in the erstwhile State of Madhya Pradesh. The first four of them were, appointed as such on probation from October 27, 1956 and the others had been appointed as temporary Engineers. The respondents continued to serve in the new State and a new "Buildings, Roads and Irrigation Branch of the Public Works Department" was constituted with the officers taken over from the absorbed States and regions. The integration of the services became therefore necessary and a principle had to be evolved for integration of the services and fixing inter se seniority as several officers had been taken over into the reconstituted branch. Section 115 of the said Act provided as follows:

"115. Provisions relating to other services:

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

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

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

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

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

(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to--

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

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

Section 116 provided for the continuance of officers in the posts they previously held and s. 117 empowered the Central Government to give directions to the State Government in respect of their integration.

Section 117 enacts:

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

Subsequent to the passing of the said Act a meeting of the Chief Secretaries of the various States that were to. be affected by the reorganisation was held at Delhi on May 18 and 19, 1956 at the invitation of the Central Government. In this meeting certain decisions were taken as to the general principles that should be observed with regard to the integration work. By their letter No. 62/22/56 SR 11 dated April 3, 1957 (Annexure R-I of the counter-affidavit) the Government of India informed the State Governments that they had decided that the work of integration of services should be dealt with by the State Governments in the light of general principles already decided in the meeting of the Chief Secretaries. The State Governments were also informed that the Central Government was constituting Advisory Committees for assisting them in dealing with the representations from the officers affected by reorganisation. With regard to the principle for determining equation of posts and relative seniority the following conclusions were reached at the conference of the Chief Secretaries:

> "It was agreed that in determining the equation of posts, the following factors should be borne in mind :
>
> (i) the nature and duties of a post;

(ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;

(iii) the minimum qualifications, if any, prescribed for recruitment to the post;

(iv) the salary of the post;

It was agreed that in determining relative seniority as between two persons holding posts declared equivalent to each other, and drawn from different States, the following points should be taken into account :--

(i) Length of continuous service, whether temporary or permanent, in a particular grade;

this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement;

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

Note: It was also agreed that as far as possible, the inter se seniority of officers drawn from the same State should not be disturbed."

By a notification dated May 20, 1958 (Annexure R-2 of the counter-affidavit) the Government of India constituted a Central Advisory Committee under s. 115(5) of the said Act for the purpose: of assisting the Central Government in dealing with the problems arising out of the allocation and integration of the services. The. functions of the Committee. were:

"(i) To advise the Central Government in regard to the division and integration of members of the gazetted cadres of the State Services among the new States and the States of Andhra Pradesh and Madras, and

(ii) To make recommendations to the Central Government with a view to ensure that fair and equitable treatment is given to the service personnel belonging to the Gazetted cadres of the State Services who are affected by the State Reorganisation and to consider representations submitted by them."

As directed by the Central Government, the State Government also appointed the necessary committees to undertake the preliminary work of integration. On September 12, 1959 a provisional gradation list of the department to which the respondents belonged was published by the State Government by notification No. 3175-Integ. dated September 12, 1959. In the preamble attached to. the provisional list the principles (which were already approved by the Central Government) on the basis of which the lists were prepared, were set out. But there was a proviso to cl. (2) of the preamble which said that "where a service or cadre consists of compartments/grades and where the normal

method of recruitment to a higher compartment/grade is by promotion from a lower compartment/grade, continuous service will ordinarily be reckoned from the date of commencement of service in the lowest compartment/grade, on a salary not below such limit as may be specified in this behalf". Representations were received from several officers including respondents 1 to 4, 6 & 7. These representations were sent by the State Government to the Central Government for being dealt with in consultation with the Advisory Committee it had constituted. Thereafter a reference was made by the State Government to the Central Government seeking its directions regarding publication of the final lists. In reply thereto the Central Government conveyed its decision by a letter dated November 11, 1959 to the following effect:

> "1. The State Government should publish the final common gradation list in its official gazette following the prescribed procedure;
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> 2. The State Government will prefix to the notification publishing a common gradation list, a preamble on the lines drafted by the Central Government;
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> 3. The State Government was to be satisfied:
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> (a) that the provisional gradation list was prepared after following the principles laid down by the Central Government;
>
> (b) that it was published in the official gazette;
>
> (c) that an opportunity was afforded to the service personnel to make representations;
>
> (d) that the representations, if any, had been decided by the Central Government in consultation with the Central Advisory Committee;
>
> (e) that the decisions of the Central Government were correctly incorporated in the final common gradation list."

In their letter dated August 29, 1960 the Central Government pointed out that the State Government had prepared the provisional gradation list not on the basis of continuous service in the equated grade but on the basis of length of total service including service in the lower grades. The State Government was therefore directed to prepare an alternative gradation list on the basis of the conventional formula of continuous service in the equated grade subject to maintenance of inter se seniority. The State Government complied with this direction. In their letter dated September 16, 1961 the Central Government said that the procedure adopted by the State Government for determining inter se seniority on the basis of length of total service in gazetted posts could not be approved. On the contrary, the decision of the Central Government was that inter se seniority should be determined on the basis of continuous length of service, whether in a temporary or permanent capacity in the equated grade, and the second list prepared by the State Government on that basis was approved subject to two modifications, (i) The ranking of the officers from Bhopal

region (Serial Nos. 60 to 70) should be rearranged as per rankings given by the Union Public Service Commission.

(ii) In the case of officers from Mahakoshal region (Serial Nos. 59 onwards) it was pointed out that the then State of Madhya Pradesh had not passed orders fixing the ranking of the said officers and hence the ranking should be done by the State Government keeping in view the normal rule of fixing ranks with reference to date of appointment on a substantive vacancy, whether on probation or as confirmed officer. It was further directed that as the rearrangement as per modifications suggested was likely to affect the ranks of officers of other regions the entire list should be reviewed in the light of directions given by the Central Government. On this direction of the Central Government, the inter se seniority of the officers of Mahakoshal region was refixed by the State Government by its 1otter No. 1086/6216/XIX/E dated February 20. 1962. In the light of this list the provisional gradation list was also revised. As already directed by the Central Government in its letter dated November 11, 1959, the State Government published the final gradation list with the preamble attached to it stating that the final list was being published by the Governor in exercise of powers conferred by the proviso to Art. 309 of the Constitution and in accordance with the decisions of the Government of India under the provisions of s. 115(5) of the said Act. The final gradation list was published by the State Government on April 6, 1962. The respondents thereafter moved the High Court of Madhya Pradesh for grant of a writ under Art. 226 of the Constitution. The validity of the final gradation list was challenged on the ground that it was not made in accordance with the provisions of s. 115 (5) of the said Act but in contravention of that provision. It was also alleged that in so far as the State Government, in drawing up the final gradation list, followed a principle different from the one followed in preparing the provisional gradation list on the: basis of which representations were invited, the State Government had in effect denied the right of representation to the persons affected thereby. The writ petition was allowed by the High Court which quashed the notification dated April 6, 1962 (Annexure 1 to the writ petition) publishing the final gradation list of the establishment of "Buildings, Roads and Irrigation" in the Public Works Department and further directed the Central Government "to complete the work of the integration of the services in the aforesaid Department in conformity with the provisions of sub-s. (5) of s. 115 of the States Reorganisation Act, 1956".

The first question to be considered in this appeal is whether the High Court was right in taking the view' that the work of integration was exclusively entrusted to the Central Government by s. 1 l 5 (5) of the said Act and that the final gradation list published on April 6, 1962 was illegal and ultra rites as the delegation of 'its powers and duties by the. Central Government to the State Government in regard to integration was not in accordance with law.

Under Art. 162 of the Constitution it is provided as follows:

> "162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to. which the Legislature of the State has power to make laws:

> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shaft be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

As regards the matters in respect of which the Legislature of a State has the power to make laws, item 42 in List II of the Seventh Schedule to the Constitution specifies "State Public Services", and under the provisions of Art. 162, the executive power of the State extends to State Public Services. This power is, however, subject to the other provisions of the Constitution. Article 309 states:

> "Subject to the provisions of this Constitution Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:
>
> Provided that it shall be competent for the. President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the. State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

Under this Article, the Governor of a State is empowered in the case of services and posts in connection with the affairs of the State, to make. rules regulating the recruitment and conditions of service of persons appointed to such services and posts until provision in that behalf is made. by or under an Act of an appropriate Legislature. Article 2 of the Constitution enacts that Parliament may by law admit into the Union or establish, new States on such terms and conditions as it thinks fit. Article 3 of the Constitution states that Parliament may by law--(a) form a new State by separation.n of territory from any State or by uniting two or more States or parts. of States or by uniting. any territory to. a part of any State; (b) increase the area of any State; (c) diminish the area of any State;

(d) alter the boundaries of any State; (e) alter the name of any State. Article 4 provides as follows:

> "(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

....." By virtue of the power under Art. 4 the said Act was. enacted. On behalf of the appellants the Solicitor-General put forward the argument that the Dower of

integration is not exclusively conferred upon the Central Government under s. 115 (5) of the said Act but the power of the State Government in the matter of integration under Art. 162 read with Entry 42, List 11 remains unaffected except to the extent that the State Government must carry out the directions of Central Government in the matter of integration. The opposite view-point was presented by Mr. Asoke Sen on behalf of the respondents. It was contended that under s. 115(5) of the said Act the Central Government was given, by necessary implication, the exclusive power to integrate and the word "allotment" in s. 115(3) & (4) carries with it the necessary power of fusion and integration. We do not propose, for the purpose of the present case, to decide which of these view- points as to the interpretation of s. 115(3), s. 115(4) and s. 115(5) of the said Act is correct. We shall assume in favour of the respondents that s. 115 (3), s. 115(4) and s..115(5) read together confer exclusive power on the Central Government in regard to integration. Even on that assumption we do not agree with the finding of the High Court that there was improper delegation of its statutory powers and duties by the Central Government, that there has been a violation of the provisions of s. 115(5) of the said Act or that the final gradation list published by the notification dated April 6, 1962 is illegal and ultra vires. Generally speaking, the work of integration requires the formulation of principles on which the work has to be carried out, the actual preparation of preliminary gradation lists in accordance with the principles so settled, the publication of the lists together with the principles upon which they have been compiled, the invitation of representations by the persons affected thereby, the consideration of representations and decisions upon those representations, and the publication of the final gradation list incorporating the decisions of the Central Government on the representations submitted. In the present case, there is no dispute that the Central Government laid down in their letter dated April 3, 1957 the principles with regard to the equation of posts and determination of relative seniority as between two persons holding posts declared equivalent to each other and drawn from different States. It also appears that the Central Government appointed two advisory committees for dealing with representations from the service personnel affected by the reorganisation. As directed by the Central Government in their letter dated April 3, 1957, the State Government also appointed two committees for the purpose connected with integration. Thereafter, the State Government prepared a provisional list fixing the inter se seniority of officers who had come into the cadre from different regions. The list was published and it was notified that any Government servant feeling aggrieved by the provisional list was entitled to send his representation to the Central Government. The principle upon which the list was prepared was published and it was notified that the principle was subject to any subsequent modification at the direction of the Central Government. Representations were thereafter received from officers including respondents 1 to 4, 6 & 7. The representations were sent to the Central Government to be dealt with in consultation with the advisory committees that were constituted. On a consideration of these representations the Central Government directed the State Gov-

ernment to forward the alternative list prepared on the basis of the conventional formula laid down by the Central Government As already observed, the State Government had proposed that seniority should be fixed on the basis of continuous service including that in the lower grade, but the Central Government had directed that continuous service in the equated grade alone should be taken into account for fixing the seniority subject only to the maintenance of inter se seniority of the officers coming from several integrating regions. The Government of India therefore directed that revised list should be prepared on the basis of this formula.Accordingly, the State Government sent a second

list prepared on the basis of the conventional formula, viz., continuous service in the equated grade subject to maintenance of inter se seniority.The Central Government thereafter in consultation with the advisory committee examined both the lists and after taking into account the representations made, conveyed to the State Government its decision by its memorandum dated September 16,1961 with regard to the preparation of the final gradation list.The decision thus communicated may be summarised as follows:(1) Inter se seniority should be determined only on the basis of continuous length of service, whether in a temporary or permanent capacity in the equated grade, (2) the second gradation list prepared according to this principle and forwarded to the Central Government was approved subject to certain modifications in the equations and the changes proposed in accordance with the decisions on the individual representations. As regards inter se seniority of the Mahakoshal officers, the Central Government stated in paras 9 & 10 of the letter:

> "9. In' respect of the Mahakoshal officers shown from serial No. 59 onwards it is seen that no formal orders were issued by the Madhya Pradesh Government prior to 31st October, 1956 fixing the rank of each officers. While approving the notification confirming an officer, it was customary in old Madhya Pradesh to issue order regarding the rank which he would obtain in the seniority list. In respect of the confirmation orders issued during October, 1956, it appears that no such orders were issued. If the present ranks in the Combined Gradation List were to be accepted, it would mean that some of the officers who were not selected by the Public Service Commission of the old Madhya Pradesh for permanent posts would be senior to those selected and placed on probation as early as 1953. The normal practice adopted in such cases would appear to be to arrange the names of the officers in the order of appointment to a substantive vacancy whether on probation or as a confirmed officer.
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> appointed to substantive vacancies with effect from the same date, the normal practice was to arrange the names on the basis of length of continuous service. Where a departure from this principle was intended, specific orders were issued or the names arranged in the desired sequence in the confirmation orders itself.
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> 10. A rearrangement of the names of the Bhopal and Mahakaushal officers in the manner indicated above is a matter concerning the respective parent State seniority lists. However, a rearrangement of the names of these officers would have repercussions on the ranks of officers from other regions. It is, therefore suggested that the entire matter may be reviewed by the State Government in the light of the position stated in the two preceding paragraphs and the necessary changes carried out in the Combined Gradation List."

In accordance with this direction the State Government prepared the inter se seniority list of Mahakoshal officers (Annexure R-14) dated February 20, 1962. On the basis of this list the final gradation list was prepared by the State Government and published on April 6, 1962. In our opinion, the procedure adopted in this case does not contravene the provisions of s. 115(5) of the said Act, because it was the Central Government which laid down the principles for integration, it was the Central Government which considered the representations and passed final orders, and both the

preliminary and final gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government. It is manifest that there has been no delegation by the Central Government of ,my of its essential functions entrusted to it under the statute. It was pointed out by Mr. Asoke Sen that in its letter dated April 3, 1957 the Central Government had intimated that the work of integration should be left to the State Government. But what was meant by that letter was that only the preliminary work of preparation of the gradation lists on the principles decided upon by the Central Government should be left to the State Governments concerned. It is clear that such work cannot be done by the Central Government itself since the necessary information regarding the officers can be obtained and tabulated only by the States concerned. It was also pointed out by Mr. Asoke Sen that the preparation of the provisional and the final gradation lists by State Government constituted a delegation by the Central Government. We do not think there is any substance in this argument. It is not disputed that the provisional and the final gradation lists were prepared by the State Government on the principles laid down by the Central Government itself subject to one change in the matter of determining seniority and the provisional gradation list was sent for approval of the Central Government together with representations made by the officers concerned for being dealt with and decided upon by the Central Government. The principle of the maxim "delegates non protest delegare"

> has therefore no application to the present case. The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is in the eye of law no "delegation" at all and the maxim "delegatus non potest delegare" does not apply [See Fowler (John) & Co. (Leeds) v. Duncan](1). In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. In the context of the facts found in the present case. we are of opinion that the High' Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final gradation list dated April 6, 1962 was therefore ultra rites and illegal. Even on the assumption that the task of integration was exclusively entrusted to the Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the' matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in ss. 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter of effecting the integration of the services. So long as the

act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter. it cannot be head that there has been any violation of the principle "delegatus non potest delegare". For instance, it was observed by this Court in Pradvat Kumar Bose v. The Hon'ble The Chief Justice of Calcutta High Court(2):

(1) [1941] Ch. 450. (2) [1955] 2 S,C.R. 1331. 1345..

"It is well-recognised that a statutory functionary exercising such a power cannot be said to have, delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so. provides-is the ultimate responsibility for the exercise of such power."

As pointed out by the House of Lords in Board of Education v. Rice(1), a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material". The same principle was reiterated by Lord Chancellor in Local Government Board v.Arlidge(2) in the following passage:

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly respOnsible to Parliament like other Ministers. He is respOnsible not only for what he him:self does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

We accordingly reject the argument of Mr. Asoke Sen on this aspect of the case and hold that the High Court was in error in holding that there was an improper delegation of its' statutory power by the Central Government under s. 115(5) of the said Act.

We proceed to consider the next contention raised on behalf the respondents that in any event they should have been given (1) [1911] A.C. 179, 182. (2) [1915] A.C. 120, 133.

a second opportunity to make a representation regarding: (1) inter se seniority list of the Assistant Engineers of the former Mahakoshal region prepared on February 20, 1962, Annexure R-14, and (2) the final inter se seniority list published on April 6, 1962. With regard to the inter se seniority list it was pointed out by Mr. Asoke Sen that in paragraphs 9 and 10 of its letter dated September 16, 1961, Annexure R-7, the Central Government noticed that no formal orders were issued by the State of Madhya Pradesh prior to October 31, 1956 fixing the rank of the Mahakoshal officers from serial No. 59 onwards. It was customary in the old State of Madhya Pradesh that the Government issued orders regarding the rank of the officers while making a notification confirming the officers. It was pointed out that if the present rank in the combined gradation list was to be accepted it would mean that some of the officers who were not selected by the Public Service Commission of the old Madhya Pradesh for permanent posts would be senior to those selected and placed on probation as early as 1953. The normal practice adopted in such cases would appear to be to arrange the names of the officers in the order of appointment to substantive vacancy, whether on probation or as confirmed officer. It was suggested by the Central Government that the entire, matter should be reviewed by the State Government in the light of the procedure stated in paragraphs 9 and 10 of the letter and necessary changes should be carried out in the combined gradation list. In view of the directions contained in this letter the State Government prepared an inter se seniority list of the Assistant Engineers of the Mahakoshal region in their letter dated February 20, 1962. It is not disputed on behalf of the respondents that this order of seniority was reflected in the final gradation list published on April 6, 1962; but the contention of the respondents is that no opportunity was given to them to make a representation against the inter se seniority list dated February 20, 1962, though Mr. Asoke Sen conceded that he had no quarrel with the principles upon which the list was prepared. Learned Counsel, however, said that the principles were wrongly applied in particular cases and the respondents should have been given an opportunity of making a representation with regard to the inter se seniority list dated February 20, 1962. With regard to the final gradation list published on April 6, 1962 the contention of Mr. Asoke Sen was that the basis upon which the "assumed date" was given in column No. 6 was not set out either in that notification or in the principle specified in the preliminary gradation list. On this point the Solicitor-General said that the final gradation list was prepared and the "assumed date" in column No. 6 was inserted on the principle of "kicking down". It was also pointed out by the Solicitor-General that in the Conference of the Chief Secretaries it had been agreed that in determining inter- State seniority the principle to be taken into account was length of 10 Sup. C.I./67--14 continuous service, whether temporary or permanent in a particular grade. The argument was stressed that the principle could be ,applied only on the basis of "kicking down" and that principle was implicit in the preparation of the final gradation list. We are, however, not quite sure whether the Solicitor-General is right in his contention on this point. We think that the final gradation list could have been prepared on the basis of the principle agreed upon in the conference of the Chief Secretaries both on the method of "'kicking down" and the 'alternative method of "kicking up". It iS nowhere stated either in the preliminary gradation list or in the final gradation list that the principle of "kicking down" was adopt- in preference to the alternative principle. It was argued by Mr. Asoke Sen that in regard to both these matters the respondents have a right of representation and the final gradation list should have been published after giving them further opportunity to make a representation. Normally speaking, we should have thought that one opportunity for making a representation against the preliminary list published would have been sufficient to satisfy the requirements of law. But the

extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case (See the decision of this Court in Shri Bhagwan and Anr. v. Ram Chand and Anr.(1). In view of the special circumstances of the present case we think that the respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr. Asoke Sen before the final gradation list was published. As no. such opportunity was furnished to the respondents with regard to these two matters we hold that the combined final' gradation list dated April 6, 1962, so far as category 6 is concerned, is ultra vires and illegal and that part of the notification alone must be quashed by grant of a writ in the nature of certiorari. The rest of the notification of the State Government dated April 6, 1962 with regard to other categories will stand unaffected. So far as category No. 6 is concerned, the Central Government is directed to give an opportunity to the respondents to make a representation in regard to the two points mentioned in this paragraph and thereafter take steps to finalise and publish the list in accordance with law.

We accordingly modify the order of the High Court and allow this appeal to the extent indicated above. There will be no order with regard to costs in this Court. V.P.S. Appeal allowed in part.

(1) [1965] 3 S. C.R. 218, 222