

A THE SCHEDULE CASTES AND SCHEDULED TRIBES
OFFICERS' WELFARE COUNCIL

v.

STATE OF UTTAR PRADESH AND ANR.

B SEPTEMBER 19, 1996

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

Service Law :

C *U.P. Regulation of Ad hoc Appointment (On Posts Within The Purview
Of The Public Service Commission) Rules 1979 :*

D *Provincial Medical Health services—Reservation in promotion—Promotion to posts of Deputy Chief Medical Officer, Chief Medical
Officer Additional Director, Director—Fixing minimum length of ser-
vice—Memorandum dated July 28, 1986 increasing the minimum length of
service—In view of the new criteria three officers belonging to SC/ST were
denied their entitlement to promotion as Chief Medical Officers and Joint
Directors—Reservation Policy should be strictly adhered to and not left to the
whims of officers to introduce their own criteria contrary to the general
policy—Department not preparing separate list of general candidates,
Schedule Castes and Scheduled Tribes in integrating them as per the roster
prepared by the Government—Obviously it is an illegal procedure followed to
deprive the officers belonging to SC, ST and Backward Classes in integrating
their seniority according to roster—Hence the Memo dated July 28, 1986 and
all other incidental instructions issued in furtherance thereof are
quashed—Government to consider the cases of the three officers and all other
eligible officers according to rules in vogue from 1973 till the date of intro-
ducing the offending rules—If necessary to create supernumerary posts in the
respective vacancies to which the three officers are eligible to be considered
and promoted in accordance with the rules with all consequential
benefits—Directions issued.*

Constitution of India—Article 16—Reservation in Promotion.

H *Consumer Education & Research Centre & Ors. v. Union of India &
Ors., [1995] 3 SCC 432; Dalmia Cement (Bharat) Ltd. & Anr. v. Union of
India & Ors. Etc., JT (1996) 4 SC 555; Murlidhar Dayandeo Kesekar v.*

Vishwanath Pandu Barde & Anr., [1995] Supp. 2 SCC 549; *Bihar State Electricity Board & Ors. v. Parmeshwar Kumar Agarwala Etc. Etc.*, JT (1996) 5 SC 555; *State of U.P. v. Dr. R.K. Tandon*, [1995] 3 SCC 616 and *State of U.P. & Ors. v. Dr. R.K. Tandon & Ors.*, JT (1996) 7 SC 174, relied on.

Indra Sawhney v. Union of India, [1992] Supp. 3 SCC 217, referred to.

"*Constitutional Law of India*" edited by M. Hidayatullah, former Chief Justice (Vol. II) at pages 294; Swami Vivekanand : Lecture entitled "The Before Us" (1897) published in "The Complete Works of Swami Vivekanand" (Vol. 3, p. 269 (1979 edn.) Swami Ranganathananda : "Enlightened Speeches" (First Edition), 1985; "Law, Justice and the Philosophy of Man", by Swami Ranganathananda; Swami Ranganathananda "Social Responsibilities of Public Administration" an article in "The Responsible Society—The Ethos of which India Lacks Today" a commemorative volume to Justice V.S. Deshpande, former Chief Justice of Delhi High Court; "Eternal Values for a Changing Society" by Swami Ranganathananda (1971—3rd Edn.) page 693, S.A. de Smith "The abuse of statutory powers; "Ultra vires breach of statutory duty" by Peter Cane, Fellow of Corpus Christi College, Oxford, published in Public Law Series, 1981 p. 11; "Public Administration" by Pfiffner-presthus (4th Edn.) p. 550; "Responsibility in Government : Theory and Practice" by Herbert J. Spiro; "British Government and the Constitution—Test, Cases and Materials" by Colin Turpin (Third Edition-1995) p. 315 & "The Nature and Destiny and Man" Vol. II (New York : Charles Scribner's Sons, 1948) pp. 266 561, referred to.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 621 of 1987.

(Under Article 32 of the Constitution of India.)

D.N. Goburdan, Ms. Pinky Anand and Ms. Geeta Luthra for the the Petitioner.

R.C. Verma for Ashok K. Srivastava, A.K. Goel, Mrs. M. Qamaruddin and M. Qamaruddin for the Respondents.

The following Order of the Court was delivered :

This writ petition under Article 32 was referred to a Bench of three

- A Judges to decide an important question of constitutional dimension raised in this case.

B Admittedly, in the Health Department of Government of U.P. called Provincial Medical Health Services (for short, the 'Services') recruitment to the post of Doctors and promotion up to the post of Director were regulated by executive instructions of the Government and from the year 1973 Government had appointed the doctors to the service. Until the U.P. Regulation of *Ad hoc* Appointment (On Posts Within The Purview Of The Public Service Commission) Rules, 1979 were made by the Governor, in exercise of power under proviso to Article 309 of the Constitution, all the C appointments and also promotions came to be made on *ad hoc* basis. The petitioner-Association is seeking for a writ to quash the memo dated July 28, 1986 and for declaration that promotions made within the cadre shall be on the basis of seniority subject to rejection on ground of unfitness and to regularise the services of all the officers in the cadre as per instructions D as were in vogue prior to the date of that memo and other reliefs.

The admitted position from the record, is that the Personnel Department of the Government has issued model rules to all the departments to exercise the power under the proviso to Article 309 of the Constitution and to frame the statutory rules for appointment made in accordance with the E rules. Pending making of the Rules, *ad hoc* appointments could be made but it would be for one year and as soon as regular appointments were made, the *ad hoc* appointments were to be regularised in accordance with the rules. In this case, admittedly, no statutory rules were made nor the procedure even as per instructions in force, was followed. Adhocism was F the rule at the whim of the Department of Medical Health. In the Services, as per instructions in vogue, appointment to the post of Doctor could be made from amongst qualified doctors and diploma-holders. For promotion from the post of Medical Officer to the post of Deputy Medical Officers etc., qualifications and experience have been prescribed. Prior to July 28, 1986, for promotion to the post to Deputy Chief Medical Officer G experience of eight years of service was prescribed and for promotion to the post of Chief Medical Officer, two years' experience as Deputy Chief Medical Officer was prescribed. Similarly, for promotion to the post of Joint Director, two years' experience as Chief Medical Officer was prescribed; for promotion to the post of Additional Director, two years' H experience as Joint Director was prescribed; and for promotion to the post

of Director, one years experience as Additional Director but on the basis of merit and ability, was prescribed. For all other posts, seniority, subject to rejection on the ground of unfitness, was the rule. No minimum length of service was prescribed. A

In the offending Memo dated July 28, 1986, they have increased the minimum length of service from 8 years to 12 years for promotion from the post of Medical Officer to the post of Deputy Chief Medical Officer and to 15 years for promotion from Deputy Chief Medical Officer to the post of Chief Medical Officer with a minimum experience of two years and selection would be subject to merit and ability. Similarly, for promotion from the post of Chief Medical Officer to the post of Joint Director, total service of 15 years and minimum experience of one year was prescribed. Merit and ability was prescribed for promotion from the post of Joint Director to the post of Additional Director; total length of service prescribed was 25 years with a minimum of four years' service as Joint Director subject to merit and ability. For promotion from the post of Additional Director to the post of Director, total service of 28 years with minimum qualifying service of one year subject to merit and ability, was the criteria. In normal circumstances, such prescription laying down minimum service as qualification would be unexceptionable to augment the efficiency in the Services and would evoke no ire. But whether it was laid only as pretext and subterfuge to deny the constitutional right and to frustrate the constitutional objective is the question. In the first instance, we reacted against the contentions of Sri Goburdhan, learned counsel for the petitioner. But when he ripped apart the veil and succeeded in connecting the links as camouflage, the game plan became transparently visible and naked to indicate that colourable exercise of power was used and abused to denude the legitimate rights of the officers belonging to reserved categories and to deny them of their rights. Sri Verma, very fairly, was unable to support the actions of the Department. B
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Sri Goburdhan contend that this procedure was devised only to avoid promotion to three eligible officers belonging to the Scheduled Castes and Scheduled Tribes as Joint Directors etc. and this was demonstrated with reference to the instructions issued by the Personnel Department and the successive orders issued by the respondents. It is not in dispute that the Personnel Department had issued instructions on December 27, 1956 that the principle of seniority-cum-rejection on the ground of being unfit for G
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A selection as eligibility criteria should strictly be observed. Where eligible and able persons are available in Government service, opportunity should be given to all. If no suitable and experienced officer is available, there is a possibility of worsening in future of the persons facing the seniority criteria. The Government, therefore, directed that seniority-cum-rejection on the ground of being unfit be followed in promotion. The eligible persons should be offered opportunity. This principle ever since is being followed uniformly in all the Departments. In Memo No. E-210/80-SR-25-77 Personnel 1 dated April 9, 1980, the Government had issued instruction to frame the statutory rules and the manner and procedure to select the personnel was indicated and deviation as laid in para 5, which is relevant, reads as under:

D "5. This has also been decided by the State Government that if in adopting the provision as laid down in the enclosed model draft there comes any difficulty then instead thereof, as an exception and in special circumstances, if there is necessary to make any other arrangement in public interest then it may be done only after the consultation with the Karmik (personnel) and Judicial department with the higher orders (Council of Ministers of equivalent) or it can be continued."

E The Personnel Department further issued directions on December 31, 1973 that there was a provision for reservation as per the orders of the Government dated March 8, 1973 for the Scheduled Caste and Scheduled Tribe persons in promotions. It read as under :

F "The Government has taken decision that the SC/ST will avail the benefits of reservation in service and posts on which the promotion is made on seniority basis and the promotions is done in the prescribed manner."

G The Government have, therefore, reiterated the decision that SC/STs officers will avail of the benefit of reservation in services and posts and also in promotion. The principle of promotion is made on seniority basis subject to rejection on the ground of unfitness and the promotion is done in the prescribed manner.

H But, in this case, instead of implementing the Government directions in promoting those three officers as per rules, the offending criteria was

introduced. It is not in dispute that the Government have issued that in case any special circumstances are made out in derogation to the general principles, the approval of the Personnel Department, Law Department and the Cabinet Sub-Committee was required to be obtained before issuing the special rules governing the Services. But, in this case, admittedly, the Medical Health Department in deviation of the general principle of seniority, subject to rejection on the ground of unfitness, introduced merit and ability to fill up that post of Chief Medical Officer and upwards, without obtaining prior approval of those three functionaries. The counsel for the petitioner contends members of the petitioner association also do not feel shy to compete on merit and ability provided their cases were considered honestly, sincerely and objectively without pre-disposed prejudice.

In the counter-affidavit, it has not been stated that the Department had obtained approval of the three authorities. Therefore, the offending resolution was obviously contrary to the general principles laid down by Government. It is also brought out from the orders passed by the Department itself the from 1973 till January 12, 1986 the rule of seniority-cum-rejection on the ground of unfitness was in vogue and they did not insist upon a minimum qualifying service in each of the promotional post except the minimum experience in the particular post which was prescribed for promotion. It is also to be noted that the Department had relaxed the above prescribed qualifying and minimum length of service immediately after six months when claim of general candidates had come up for consideration and after the promotion was given to the general candidates the rule was restored. The petitioner have specifically pleaded that the rule of minimum qualifying service was prescribed only to deny the promotion to three eligible officers belonging to SCs/STs because they did not have, while the general candidats had the prescribed total length of service. In paragraphs 9 and 10 of the writ petition, they have specifically averred and in para 25 of additional affidavit it is reiterated giving insistence in that behalf. In paragraph 25 of the counter-affidavit filed by the respondents, they vaguely denied that relaxation to general candidates in the interest of administration was given. When the petitioners pointed out that other Departments were not insisting upon the administrative experience, merit and ability upon the minimum qualifying service, it has been stated in the counter-affidavit that since the promotee officers up to the level of Chief Medical Officer, Joint Director, Additional Director are required to have

- A administrative experience, minimum qualifying service etc. were insisted upon. But when it was pointed out that in other Departments administrative officers were not required to put up minimum qualifying service, they have stated in the counter- affidavit that in other Department, it was not insisted upon since the posts are administrative posts. The stand taken in the counter-affidavit is mutually inconsistent and blows hot and cold at the same time. It is a volte face justification given by the Department only to justify their arbitrary and *mala fide* action. As soon as the Scheduled Caste and the Scheduled Tribe officers were eliminated from consideration and general candidates were promoted, they looked around and found it safe to retrace their steps and to fall in general line by restoring the rule of minimum length of service, merit and ability and qualifying service. This gets demonstrated by the above undisputed facts.

- D It is also seen that when the post of Additional Director became vacant for general candidates only and when they were not available for promotion since they did not have required length of minimum qualifying service, the Department relaxed the requirement of minimum qualifying service on the specious plea that services of the officers were required. They have stated that they were the only special circumstances for the officers concerned. Again, after the officers from general category were promoted, the general prescription of qualifying service was insisted upon.
- E These circumstances clearly would indicate that the persons manning the Department are using a policy of pick and choose to suit their convenience in abuse of colourable exercise of power creating disharmony in policy and resorting to victimisation of the eligible officers since they belong to reserved category. There circumstances would clearly and in unmistakable terms demonstrate that the aforesaid instructions came to be issued by *mala fide* exercise of the power by the concerned officers with a view to deprive the eligible SC/ST officers for promotion to the posts to which they are entitled as Chief Medical Officers and Joint Directors.

- G Under the scheme of the Constitution the political executive headed by the Governor of the State is assisted by the Chief Minister appointed by the Governor and the Council of Ministers appointed on the advice of the Chief Minister who would be collectively responsible for the administration of the State. The administration is carried on by and in the name of the Governor but the Chief Minister, Council of Minister and the individual Ministers in charge of the assigned subjects individually and

collectively are responsible for the functioning of the concerned Ministry. The Constitution further envisages permanent bureaucracy with all India services and State services envisaged in Part XIV; their recruitment and conditions of service are regulated by provisions contained in Chapter XIV or any Acts of Legislature or the rules made under proviso to Article 309 of the Constitution or even executive instructions co-extensive with the legislative power of the State Legislature. The political executive lays broadly the policies and programmes consistent with their political manifesto but should be in conformity with the Directive Principles of the State Policy which binds the Government in power and also the Fundamental Rights. The bureaucracy works out the details of the policy and applies the law to the given circumstances in assisting the political executive. The preamble, the fundamental rights and the directive principles envisage establishment of an egalitarian social order to accord socio-economic justice, liberty, equality or status and of opportunity, dignity of person and fraternity in an integrated Bharat. The Indian social order is based on hierarchical social structure. Since the Scheduled Tribes habitate in reserved forests and forest areas, the founding fathers of the Constitution recognised and protected their special interests in Schedules V and VI to the Constitution so as to integrate them in the mainstream of the national life. Equally, the Schedule Castes who were denied social integration and kept away from the mainstream of the national life due to practice of untouchability abolished by Article 17 are protected from discrimination. In Part III of the Constitution, in particular Articles 17 and 15(2) enable them to have access to public places and denial of equality due to untouchability was declared to be constitutional offence punishable under Civil Rights Protection Act; Articles 14, 16 and 15 grant equality. Article 46 protects them from exploitation and directs the State to accord socio-economic justice, facilities and opportunities to have opportunities for appointment to an office/service/post so as to accord soio-economic justice for their integration in the mainstream of national life. The social imbalances should be removed only through rule of law. Law is a social engineer. The social justice was held to be a fundamental right by a Bench of three Judges in *Consumer Education & Research Centre & Ors. v. Union of India & Ors.*, 1995] 3 SCC 432 and *Dalmia Cement (Bharat) Ltd. & Anr. v. Union of India & Ors. Etc.*, JT (1996) 4 SC 555. Economic empowerment was also held by a Bench of three Judges in *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.*, {1995] Supp. 2 SCC 549 and *Bihar State Electricity Board & Ors. v. Parmeshwar Kumar Agarwala Etc. Etc.*, JT (1996) 5 SC 555 to be fundamental right available to them. By opération of Article

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- A 38 and 46, in particular, facilities and opportunities are required to be provided to them to improve their excellence in all spheres of life. The State, therefore, has evolved, as held by this Court in *Indra Sawhney v. Union of India*, [1992] Supp. 3 SCC 217 appointment or employment to an office particularly in the service under the State as means to provide facilities and opportunities for employment. The opportunity for education
- B given under Article 15(4) and employment accord to them right to equality of opportunity and of status and the dignity of person, economic empowerment and opportunity to improve excellence. The Constitution (77th Amendment) Act, 1995 introducing clause (4A) of Article 16 made provision for reservation in matters of promotion of any class or classes of
- C posts in service under the State in favour of Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State. Article 335 of the Constitution enjoins upon the State to take into consideration the claims of the Scheduled Castes and the Scheduled Tribes in making appointments to services and posts in connection with the affairs of the Union or of a State,
- D consistently with the maintenance of efficiency of administration. It is settled law that conditions of services include everything from cradle to grave, viz., recruitment to service or posts under the State, promotion, salary, pension etc. The conditions of services are regulated either by statutory rules or in their absence executive instructions. There is no need for pre-existing statutory rules to regulate the conditions of services.
- E Proviso to Article 309 of the Constitution gives power to the President or the Governor, as the case may be, subject to law made by the Parliament/the State Legislature to constitute services and to regulate the service conditions by making statutory rules governing the conditions of service. Under Article 162, the executive has the power to issue executive instructions
- F consistent with the fundamental rights in Chapter III, to regulate conditions of service but they are subject to the law made by the State Legislature or the Rules made by the Governor under proviso to Article 309 of the Constitution. Executive instructions can also be made to supplement the law to fill in the yawning gaps. The permanent bureaucracy, therefore, in evolving the principles or giving shape to the policy of the
- G political executive on in applying the law, rules or instructions, is guided by constitutional philosophy and public policy envisaged thereunder. Article 261 of the Constitution, therefore, accords full faith and credit to the executive acts and records of the Union and the States, the law made by the Parliament or the Legislature or such of the rules or regulations etc.
- H made in furtherance thereof as well as judicial proceedings of the Union

and of every State.

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In the "Constitutional Law of India" edited by M. Hidaytullah, former Chief Justice (Vol. II) at pages 294, on the doctrine of "full faith and credit" it is stated that relationship between the Union and the States leaves Article 261 to play greater role than its counter-part does in the U.S. Constitution. Our experience since the formation of the Constitution fully supports this conclusion. The public acts, records and judicial proceedings, in recognition of law, accorded by Article 261 are in accord with Entry 12 of the Concurrent List subject to the law made by the Parliament in clause (2) of Article 261". The founding fathers of the Constitution posed full faith and credit under Article 261 to all the enumerated acts, proceedings etc. with absolute faith that they are done to further the goals set down in the Preamble, the basic structure of the Constitution. But the crux of the matter is not the grammer of the language but the spirit behind the doctrine of full faith and credit. The reason is that the political executive assisted by the permanent bureaucracy faithfully implements the constitutional philosophy and applies the law to further the goals set down in the Constitution to establish the egalitarian social order under the rule of law and applies the law objectively, dispassionately and truthfully to elongate the constitutional perspectives and the objectives of the law made there-under. Therefore, full faith and credit is accorded to the public acts and records. That apart, the same may be relied on by other States.

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Swami Vivekanand in his lecture entitled "The Work Before Us" (1897) published in "The Complete Works of Swami Vivekananda" (vol. 3, p. 269 (1979 adn.) has stated the scope of enlightened citizenship thus :

"The problem of life is becoming deeper and broader every day as the world moves on. The watchword and the essence have been preached in the days of yore when the Vedantic truth was first discovered, the solidarity of all life. One atom in the universe cannot move without dragging the whole world along with it. There cannot be any progress with the whole world following in the wake, and it is becoming every day clearer that the solution of any problem can never be attained on racial, or national, or narrow grounds. Every idea has to become broad till it covers the whole of this world, every aspiration must go on increasing till it has engulfed the whole of humanity, nay the whole of life, within its scope. This will explain why our country for the last two centuries

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A has not been what she was in the past. We find that one of the causes which led to this degeneration was the narrowing of our view, narrowing the scope of our actions".

B Swami Ranganathananda in his Inaugural Address at Swami Vivekananda Auditorium, speaking on the concept of enlightened citizenship as envisaged in Gita and its relevance in a democracy has stated in "Enlightened Speeches" (First Edition, 1985) a publication of Ramakrishna Mission, New Delhi, thus :

C "That is the primary status of man in India since 1950 - sovereign and free citizens in a sovering democratic republic. Since then, we have been re-living in India the ancient and modern Western political experience, in a big way, and learning our lessens in this new experience of, and adpating it into, a nation-wide political democracy, in the context of immense human diversities and complex social structures, of a continental size and millennia-old cultural traditions, which would have staggered the leaders of the simple Greek city states. The several national and state elections since independence have given a democratic political education to our people, which we never had in our millennia-old history. The Constitution treats the entire people of India as sovereign and free; none is treated as slaves or as outside that citizenship all the people of India are transformed into citizens of a free democratic state. What a beautiful concept and experience.

F It is a big change from subjection to freedom, from being praja or subject to citizenship. But it is unfortunate that we did not understand its implications or appreciate its significance; and we failed to take sustained energetic steps to assimilate the beauty and strength of this citizenship concept and value. After experiencing the ectasy of it during the first flag hoisting ceremony on the 26th January 1950, we day by day forgot all about it. We did not give serious thought to the question, what does it mean to be citizens of a free democracy? What changes should this statuts produce in myself, in my attitude and in my behaviour, to be able to deserve this status and to strengthen my new democratic state? After a little effervescence of a day or two, that ectasy of freedom slowly evaported away. The consciousness of being a free citizen, and what it involved during the modern period of our history, had

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dawned only in few people of our country. That has been our nation's misfortune. If during these thirty years, our intelligentsia, constituted of our school-and-college-educated section, had realized and assimilated the meaning of citizenship, what political and economic strength, what human energy resources, what shall-round national progress we would have achieved by now. In our Indian context at least, therefore, we have to introduce this new term, namely enlightened citizenship, making a distinction between mere political adult citizenship and enlightened citizenship. It is like the milk in our Indian market where we have to ask for pure milk, unlike in the West where our people, when they go there find an adjective sounds puzzling and absurd to the people there, since all milk there is pure".

At page 259, under the heading "Citizenship on the Focus of Human Equality", he has stated elaborately that we are primarily citizens of India and secondarily only these and other similar functionaries. All these are only the functions that we severally perform as citizens of the country. He emphasised the unity of awareness of citizenship to elongate wider spectrum of functional affinity by getting rid of all forms of mental aberrations from the humble to the high and the mighty and to widen broad mental horizens. He quoted from Bhartrhari in his Niti-sataka (verse 64) the four qualities of man thus :

"There is one type of people called the sat-purusas, good people, who sacrifice their own self-interest and work for the welfare of other people; the next group consists of the samanyas, the generality, or the majority, who also work for the welfare of other people, but without sacrificing their own self-interest; there are other the third group are the manava-raksasas, demons among men, who destroy other people's welfare in order to gain their own selfish interests; but they the fourth group on the contrary - alas, I do not know what to call them - destroy other people's welfare, even without gaining anything for themselves."

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"The second group will constitute the majority of the population in every society. And enlightened citizenship belongs to that category. The Philosophy by which they live can also be described, in the language of the nineteenth-century British political

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philosophy, as enlightened self-interest. They are frankly not ascetics; they have their own personal and family interests to achieve; but they include these in a wider concern for society as a whole; and that constitutes the vital element of enlightenment attached to their self-interest. But there is need for this group to be alert; otherwise, there is every chance of this enlightenment getting eroded and self-interest ruling supreme. And once this erosion takes place, they slide slowly down and join the third group, among whom are found all those who indulge in all sorts of social malpractices, like bribery, corruption, tax-evasion, smuggling, food and drug adulteration. Out of these, some fall further down into the fourth category and become sheer vandals. The only remedy against the second type sliding into the third and fourth categories is alertness, and constant looking up to the people of the first category - the sat-purusas and drawing inspiration from that small minority of men and women who are, in the language of Jesus in New Testament, the 'salt of the earth'."

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"Human equality at the spiritual level has been preached and practised in our country since ages. This is the meaning of, and is derived from, the Vedantic teaching of the same divine Atman in all beings - integral, inalienable, and full, and the samatvam and the sama-darsitvam, 'equality and sameness of vision', flowing from it. A few saints and devotees had realized this truth and lived by it. Bhakter jat nai, 'There is no caste and class distinction among devotees of God (as he dwells in all)', is a famous saying of Sri Ramakrishna. This great truth had never been translated into the wide social and economic fields, or transformed into a social fact of human awareness affecting millions. But that opportunity has come to us in the modern age, through the massage of modern democracy - political, economic, and social. That sama-darsityam at the spiritual level becomes, today, buttressed and strengthened by a sama-darsitvam at the political and social level, by the modern concept and practice of citizenship of a democratic state. Democratic citizenship is a focus of not only human freedom and dignity but also of human equality. Swami Vivekananda considered the significance of the emerging modern period of our history to consist essentially in this practical implementation of the Vedantic

vision of human freedom, dignity and equality. In our new India, therefore, political efforts and spiritual efforts coalesce and reinforce each other, in the struggle to evolve an egalitarian society; the spiritual effort stresses human unity in the one Atman in all, and political effort stresses human unity in the unity of citizenship in our democracy." A

On "Law, Justice and the Philosophy of Man", Swami Ranganathananda has stated thus : B

"Our country is now discussing, and tardily going about affording, legal aid to the poor; it is good that we are slowly realizing that administering and dispensing law may not always be the same as dispensing justice, and that our democracy cannot be well established without bringing law closest to justice. Theoretically, our law is equal to all, and all are equal before our law. But in actual operation, it benefits the rich and the strong, not the poor and the weak. The Sanskrit word dharma stands for the integrating principle in human society and can be translated roughly as justice or righteousness or ethical sense. Next to the truth of the Atman, it is the most significant and pervasive truth and value in Indian culture. Dharma is that very truth of the Atman reflected in the social context of human interactions. The Brhadarnyaka Upanishad gives the following exposition of dharma as righteousness, as the soul of justice : C D E

Yet He (the Cosmic Person) did not flourish (even after projecting all power into the universe - intellectual, politico-military, commercial and labour). He specially projected that excellent form, dharma, or righteousness. This dharma is the controller of the Ksatriya (the holder of power and authority). Therefore there is nothing higher than that, even a weak man hopes (to defeat) a stronger man through dharma, as (one contending) with the king. That dharma is verily truth. F

Until law becomes not only in formulation but also in operation, law has no meaning." G

In "The Responsible Society - The Ethos of which India lacks Today", a commemorative volume to Justice V.S. Deshpande, former Chief Justice of Delhi High Court, in his article "Social Responsibilities of Public Ad- H

A administrators" Swami Ranganathananda has stated at page 1 thus :

B "I consider the administrator primarily as a citizen of India and
I want him to always remember this truth. It will do him good to
know what that means. Nobody is born an administrator, and
nobody is always an administrator. We are all born citizens of a
free India, and acquire the status of full citizenship at the age of
maturity as laid down under the Constitution. Some of those
mature citizens choose to be, and are called upon to become, our
administrators for some years of their life. This means that their
primary individuality is not as administrators, but as citizens. We
C are all essentially citizens of free India called upon to perform
particular functions in the service of our nation, so that citizenship
constitutes our primary being, and what we do as administrators,
or as members of some other profession becomes merely the
function we discharge deriving inspiration from that being."

D On "The Problem of Motivation", he has stated that bureaucracy is
necessary for every State which is part of the whole process of Government.
But a functionary need not be a bureaucrat, static and wooden, though
functioning as a bureaucrat. On "Bureaucracy : Static versus Dynamic" at
page 4, he has stated thus :

E "A static bureaucracy and a dynamic bureaucracy are both
bureaucracies; the difference lies only in attitudes; the first repre-
sents a low notion of man as a mere functionary, man as a mere
bureaucrat. That is a very poor state of man, in which he or she
draws from his or her function to enrich his or her inner being
F which is otherwise empty; and this is the state of mind that is prone
to, and often succumbs to, corruption. The second represents man
as inwardly rich in his being, in the strength of citizenship aware-
ness and patriotic impulse, and pouring out the richness into his
or her function. And this attitude fosters a spirit of service and
contains much innate strength to resist and overcome corrupting
G influences. In these context, attitude plays a great part. A change
of attitude can produce tremendous results. And attitude is some-
thing that one can control, that one can manipulate, that one can
make to grow. This attitude control is an integral part of a
philosophy of man, which can enrich one's being as well as func-
H tion."

In his article "Role of the People and Institutions in a Responsible Society", published in "The Responsible Society" (ibid), Justice H.R. Khanna, former Judge of this Court has expressed his views at page 55 about the role of the civil servants and has stated that "Apart from ensuring that there is no trespass by one wing of the State upon the domain of the other wings, we have also to ensure that within each wing proper norms which have been evolved for the healthy functioning of democracy are adhered to and complied with. It is in this context that one may first turn to the executive. This is the strongest wing of the State and consists of two parts - the ministers and the civil servants. So far as the ministers are concerned it is they who normally take the policy decisions and lay down the general pattern of administration. The execution of those decisions and the application of policy matters to individual cases is, however, to be left to the civil servants. The civil servants, therefore, of necessity, have to act in fulfilment of the promises in the policy and the Constitution. It is the duty of the civil servants to carry out the policies to fulfil the constitutional objectives and the responsibility of the government".

In "Eternal Values for a Changing Society" by Swami Ranganathananda (1971 - 3rd Edn.) at page 693, the pragmatic philosopher had in his speech advised the young Indian Administrative Officers, stating under the heading "The Administrator in a Welfare State" that the State in a democratic society derives its strength from the co-ordinated wills of all its free and equal citizens. In the absence of this strength, the State becomes an imposition on the people. States have always been looked upon as irksome burdens by the people at large in our country, who have tolerated their existence for the little benefits of order and security derived from them. Quoting Bertrand Russell in his "Impact of Science on Society", Swami Ranganathananda has stated "Unless men increase in wisdom as much as in knowledge, increase of knowledge will be increase of sorrow". Buddhi connotes this ripening of knowledge into wisdom. Intelligence at the buddhi level creates a pattern of what Sorokin calls altruism in human character. It cannot function except in a creative and constructive way. Detachment and stability, resourcefulness and sympathy, are the hallmarks of such a character, at once efficient and human. He has stated that the Indian Administrative Service Training School has kept this two-fold efficiency as its objective, and has adopted for its motto the pregnant message of Sri Krishna in the second chapter of the Gita, verse 50; *Yogah karmasu kausalam - Yogi is efficiency for action*. A world of ethical and spiritual thought has been compressed in that brief message. Therefore, he

- A has exhorted the IAS Officers thus : "Our politics and administration will have to breathe the spirit of this yoga if we are to realize the objectives of a welfare State, if we are to establish a polity based on social justice and social peace, a polity free from all forms of exploitation, not merely economic, but also political and mental. This yoga however, is not a teaching to compose the distractions of a mere nation and people, but is universal in its scope".

- C S.A. de Smith in his article "The abuse of statutory powers" Published in Public Law Series 1956 (page 233) has stated at page 237 under the heading "Misuse of Powers in Bad Faith and in Good Faith" that a discretionary power may be exercised invalidly if its repository exercises it for an improper purpose or on the basis of irrelevant considerations or in disregard of relevant considerations or with gross unreasonableness.... The concept of bad faith eludes precise definition, but in relation to the exercise of statutory powers it may be said to comprise dishonesty and malice. A power is exercised dishonestly if its repository intends to achieve an object other than that for which he believes the power to have been conferred. His intention may be to promote another public interest or his own private interests. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.

- E On the "*Ultra vires* breach of Statutory duty" by Peter Cane, Fellow of Corpus Christi College, Oxford, published in public Law Series, 1981 at page 11, the author has stated at page 13 on the "The Content and Scope of the Duty" that duties are not always couched in terms of such crystal clarity that they are practically self-applying. One of the important differences between a duty and a power is that the holder of a power has a greater or less freedom to give concrete content to the power in particular circumstances, whereas the bearer of a duty has no control over the content of the duty. At page 19, he concludes by saying that the legal consequences of the use of the word 'duty' are varied and complex and depend to a large extent on how open-textured is the language in which the content of the duty is cast as well as on the political sensitivity of the area in which the duty operates, Secondly, by developing the notion of *ultra vires*, breach of duty, the courts have given themselves a degree of flexibility and power in the enforcement (or non enforcement) of the duties of public authorities which has hitherto existed only in relation to the control of powers and discretions.

- H In "Public Administration" by Pfiffner-Presthus (4th Edn.) at page

550 it is stated that public administration is responsible to the rule of law doctrine which proves a fairly effective standard for judging administrative decisions. Political responsibility is similarly involved with the idea of government's control by public opinion, political parties, and the community. Responsibility is also commonly used to denote the obligation of an individual to behave according to certain standards of conduct. In public administration, responsibility often has a negative connotation; we are usually satisfied if the official is kept from wrong doing. On "Responsibility and Accountability", he states that accountability refers to the formal or legal locus of responsibility. Responsibility, on the other hand, has a highly personal, moral quality and is not necessarily related to formal status or power, although it is probably true that greater power brings greater responsibility. Thus a department head is accountable for the actions of all his subordinates, although in actual fact he is not "responsible for their use of the power which he must of necessity delegate to them. Similarly, in exercising discretion the official is morally responsible for his decisions, although he is often not legally accountable. In practice, responsibility must be shared; it percolates down the stream throughout the entire administrative branch. On the other hand, accountability, which concerns the formal relationships between administration and the legislative and judicial branches, can never be shared. In general, the bureaucracy is regarded as accountable to elected representatives and to the courts who give meaning to the rule of law doctrine. Within the Executive branch, accountability is sought through a hierarchy of offices and duties and makes possible a "line of command" from top to bottom. The chiefs of the various departments must answer to the President as repository of power. Each section and division heads are legally accountable in turn to departmental heads. Upon the Executive head falls the impossible task of coordinating and directing the entire executive branch. Under the Constitutional mandate that gives the President "executive power" and directs him to ensure that "the laws are faithfully executed." The Council of Ministers is accountable for the entire administrative branch. The bureaucracy has a representative function. In the case of regulatory activity, for example, administrators give meaning to board legislative declarations of social policy by their decisions in specific cases. In advancing the social objectives of the community, they sometimes develop the rule of public interest which is applied when decisions are made. The bureaucracy shares with the legislature the task of ensuring that the community receives a reasonable amount of justice in the distribution of public resources. Moreover, by virtue of a recruitment policy that gathers individuals with socio-economic backgrounds far more

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A varied than those of elected representatives. The bureaucracy may be viewed as a truer cross-section of the nation, providing necessary supplement to the incomplete representation which the Parliament offers. Although this thesis violates traditional democratic theory, the hard facts of administrative policy determination and the official's role in compromising group demands suggest that orthodox interpretations require some modification, formulation and principles and policies; application of them requires pragmatism with broad vision to elongate the Constitution physolophy. Obviously, therefore, full faith was given to their acts and actions. In selecting among alternative policies, in extending or narrowing the efficacy of rule or policy, the official necessarily must work in a value context. Various factors impinging upon a particular decision are isolated and require assignment of relative weights nor in accordance with what the official thinks is "right" but in tune with and to effectuate mandates of the Constitution.; The "public interest" will be the ultimate element in this process. In "Responsibility in Government : Theory and Practice" by Herbert J. Spiro had stated at pages 86-87 and 95 thus :

D ".... Modern law modern bureacycracy were created to fill the same needs. On the Continent, especially, the birth and growth of each cannot be conceived of without the other. Administrative law was designed to make responsible conduct possible for the ruler's new instruments, the bureaucrats, by giving them reasonable éxpectations of the probable consequences of their acts. As it became more than just administrative law facilitated more responsible conduct for all to whom it applied. Belief in the political responsibility of individuals is, therefore, intimately linked with advocacy of the rule of law. This rule of law, together with the resources already mentioned, gives us two components of the deliberately created, explicit casual responsibility of the early bureaucrats. As the third component, they were endowed with not only the capacity, but the obligation, to make decisions. In other words, they had to exercise their discretion when they applied to specific cases the general rules and instructions laid down for them by the sovereign himself, or on his behalf. Finally, the carefully cultivated esprit de corps of the new public services and, indeed, the spirit of the whole epoch, endowed both public servants and the subjects on whom they acted with the purpose and determination needed to make the novel system work."

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"It lead us also to characterise a healthy bureaucratic situation as a situation of responsibility par excellence." A

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"They consider the bureaucrat, or the citizen, responsible so long as he is honest, broadly speaking. They want to prevent, or at least to punish, dishonesty. The honesty of public servants and citizens is certainly an important matter." B

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"In terms of the constitutional, democratic postulate, each citizen delegates parts of his original, general casual responsibility to other groups and individuals - to political parties, to legislative and other representatives, to judges, and to administrators. Moreover, in the course of the constant division and sub division for labour, new special responsibilities are created". C D

In "British Government and the Constitution - Text, Cases and Materials" by Colin Turpin (Third Edition - 1995) it is stated at page 315 thus :

"Legitimacy is primarily a feature of constitutional systems. They possess this quality by virtue of a general public support for their authority, and may have it in greater or lesser degree. Successive governments, even unpopular ones, benefit from the legitimacy attaching to the constitutional order, so that their own actions are perceived as 'legitimate'. It will be evident that this is not the same thing as 'lawful' although legality is normally a condition of legitimacy, in that a government which disregards the law is seen to be acting disorderly with the constitutional system from which its legitimacy is derived". E F

Reinhold Niebuhr's has stated in "(T)he Nature and Destiny of Man" Vol. II (New York : Charles Scribner's Sons, 1948) p 266 at page 561 that bureaucracy, therefore, shares this responsibility when it talks in its forward thrust to effectuate the Constitutional philosophy and public justice. Administrative responsibility lies in giving shape and content not only to the policies laid down in the Constitution and by the executive, but also applies them to given set of facts. In this case, on the facts the executive H

A bureaucracy has forfeited the faith and credit according to them by the Constitution and betrayed public faith in honest and dispassionate decision making process and in applying the given set of standards of executive orders in giving promotions to different classes of officers in diametrically opposite way frustrating the constitutional objectives to promote socio-economic justice and equality of opportunity in promotion to the officers of the appellant-Association.

It is settled law that the Constitution having given the benefit of reservation and having adopted the policy by the Government, the policy should strictly be adhered to and it should not be made a farce and introducing at the whim of the officers, their own criteria contrary to the general policy. Therefore, it was directed by this Court in *State of U.P. v. Dr. R.K. Tandon*, [1995] 3 SCC 616 in paragraph 6 that the rule of reservation if applied and the candidates were selected, accordingly, their seniority vis-a-vis general candidates should be in accordance with the roster maintained by the State Government. The same was reiterated in *State of U.P. & Ors. v. Dr. R.K. Tandon & Ors.*, JT (1996) 7 SC 174 in paragraph 8 thus :

"Yet another problem that was brought to our notice is that while preparing their *inter se* seniority and fitment, the Government was not strictly following the rule of roster and reserved for Scheduled Caste Scheduled Tribe and Backward Class candidates and their placement on the respective vacancies earmarked for them in the roster. It would be obvious that when the Government makes appointments through administrative instructions or statutory rules, the appointment of candidates should be according to order of merit and roster. The Government should follow the rule of reservation and make appointments as per roster points. That procedure is also prescribed even in the *Ad hoc* Rules. Therefore, even appointments from the lists of 1971, 1977, 1978, 1979 and among those retired from service or had the benefit of court orders or non-selectees, the *inter se* seniority should accordingly be determined as per the rule of reservation and roster. Even among the non-selectees when they are appointed under *Ad hoc* Rules and seniority under Rule 7 thereof is determined, the same principle should be followed. There roster points should also be worked out and appointments made accordingly. There shall be direction to

follow this procedure so that there will not be any deviation from the rules of appointment, reservation so that and the order of appointment would become according to rules and remain legal." A

It is not in dispute that the department was not preparing separate list of the general candidates, Scheduled Castes and Scheduled Tribes in integrating them as per the roster prepared by the Government. It is obviously illegal procedure followed to deprive the officers belonging to Scheduled Castes, Scheduled Tribes and Backward Classes in integrating their seniority according to roster. Therefore, we have no hesitation to quash the offending memo issued by the Department of Provincial Medical Health Service, Government of U.P. dated July 28, 1986 and all other incidental instructions issued in furtherance thereof. The Government is directed to consider the cases of the three officers and all other eligible officers according to rules in vogue from 1973 till the date of introducing these offending rules. If necessary, the Government is directed to create supernumerary posts in the respective vacancies to which the three officers are eligible to be considered and promoted in accordance with the rules with all consequential benefits. B C D

The writ petition is accordingly allowed. The respondents are directed to consider the cases of the three officers and if found fit, to promote them or any of other eligible officers within a period of six months from the date of the receipt of this order with all consequential benefits in accordance with the rules. The cases of all other officers should also be considered according to rules and if found eligible, they may be promoted against respective vacancies as per roster. No costs. E

G.N.

Petition allowed.