subsisting decree would not lose its force because the decree was, later on, vacated in appeal. This case again has no parallel with the facts of the present case. It was not urged before their Lordships that the decree, which was vacated, was without jurisdiction or a nullity. As a matter of fact, has been repeatedly held by their Lordships of the Supreme Court that a decree or an order, which is a nullity, need not be vacated; and it can be ignored.

In this view of the matter, I see no ground to interfere with the order of the lower appellate Court. The appeal accordingly fails and is dismissed. The parties are directed to appear in the trial Court on the 29th of May, 1967. The costs will be costs in the cause.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

K. C. GUPTA AND OTHERS,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 2986 of 1965.

May 9, 1967

States Reorganisation Act (XXXVII of 1956)*—Ss.* 115, 116 *and* 129*—The Punjab Services Integration Rules framed by State Government—Whether* ultra vires *S.* 129*—Central Government deciding matters under Ss.* 115 *and* 116*—Whether acts judicially—Decision of Central Government—Whether can be challenged in a writ petition.*

Held, that section 129 of the States Reorganisation Act, 1956 confers exclusive powers on the Central Government to frame rules under the Act, but this does not take away from the States their normal authority to make rules regarding their services. The Punjab Services Integration Rules were made by the Punjab Government after the 1st of November, 1956, when the erstwhile Pepsu employees had already become subject to the control of the new state of Punjab. The Integration Rules were not made under the States Reorganisation Act, but under proviso to Article 309 of the Constitution. These rules were also framed in consultation with the Central Government and had the approval of that Government. They were not framed by the State Government in exercise of

any power of the Central Government which might have been delegated to the State. The State Government, therefore, had the right and authority to frame the Rules, in exercise of powers conferred on it by the proviso to Article 309 of the Constitution and to equate the two units of services from erstwhile Pepsu and the Punjab in exercise of its executive powers under Article 162 of the Constitution read with entry 41 in List II of the Seventh Schedule, subject to the control and direction of the Central Government under the relevant provisions of the Act. The Integration Rules are not *ultra vires* section 129 of the Act and are valid and legal.

Held, that the Central Government does not act judicially in the course of proceedings under sections 115 and 116 of the States Reorganisation Act, 1956. The equation and fixation of seniority of the employees is, therefore, not liable to be set aside being in violation of the principles of natural justice, even if no opportunity of being heard is afforded to them.

Held, that if several principles are laid down by the Central Government for their own guidance for determining equation of posts or cadres, it is not for the High Court to interfere in the decision of the Government in that behalf. The orders passed by the Central Government are not speaking orders, nor was it necessary to support them with reasons. As it is not possible to know what considerations weighed with the Central Government in upholding the impugned equation proposed by the State Government, the order of equation cannot be interfered with.

Held, that the Central Government after hearing the representations claiming for an *ad hoc* relief is the competent authority to deal with the matters on merits. In such a situation, it is not for the High Court to sit in appeal over the decision of the Central Government on merits and to decide whether injustice had or had not been occasioned to the services by the equation. What is fair and equitable distribution is to be decided by the Government. Even if the employees justly feel that they have not been equitably and fairly treated in the matter of equation of their services and consequent integration, they can hardly claim any relief under Article 226 of the Constitution.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the orders passed by the State Government and the Central Government and the final gradation list published in February,* 1964; *and directing respondent No.* 1 *to prepare the rules of integration afresh and perform all other functions relating to the integration of the petitions as the original authority and without being influenced by the State Government and directing respondent No.* 1 *to integrate the petitioners with Class II employees and to prepare fresh gradation list after taking into consideration their higher cadre, right, status, rank and scale of pay, etc.; and allowing costs of the petition.*

D. S. Nehra and M. R. Agnihotri, Advocates, for the Petitioners.

Anand Sarup, Advocate-General (Haryana) with J. C. Verma, H. S. Wasu, B. S. and L. S. Wasu, Advocates, for the Respondents.

ORDER

NARULA, J.—The validity and constitutionality of the Punjab Service Integration Rules, 1957, framed by the Governor of Punjab, under Article 309 of the Constitution has been impugned by K. C. Gupta and two others, the petitioners in this case.

All the three petitioners joined the service of the erstwhile Patiala and East Punjab States Union (hereinafter referred to as PEPSU) in 1956, as District Panchayat Officers. They were confirmed as such in their respective posts in October, 1956, with the concurrence of the Public Service Commission. The petitioners are all Graduates. The posts held by the petitioners in PEPSU were gazetted and were in the pay scale of Rs. 250—15—400. The District Panchayat Officers in the erstwhile State of Punjab (prior to its reorganisation in 1956) were non-gazetted and were in the time-scale of Rs. 170—350. Consequent on the merger of PEPSU with the then State of Punjab in accordance with the provisions of the States Reorganisation Act (37 of 1956) (hereinafter called the Act), the petitioners became the employees of the new State of Punjab, with effect from the 1st of November, 1956. It is not disputed that according to the provisions of the Act, the Central Government is constituted as the authority for the integration of the employees of the erstwhile State of PEPSU with the employees of the State of Punjab. The Punjab Services Integration Rules, 1957 (hereinafter referred to as the Integration Rules), framed by the Governor of Punjab, under Article 309 of the Constitution of India, were notified on July 1, 1957, and published in the official gazette of that date. Part IV of the said Rules provided machinery for the equation of services and part VI contained rules for determination of *inter se* seniority between the employees of the Punjab and PEPSU States. The gazetted posts of District Panchayat Officers of the erstwhile PEPSU were equated with the non-gazetted posts of District Panchayat Officers of the erstwhile Punjab State. By counting the length of service in the equated cadre, 21 persons were placed above the petitioners and they were placed at Nos. 22 to 24 in the provisional joint seniority list. Respondents Nos. 3 to 13 were placed above them. The remaining persons who had been placed above the petitioners have not been impleaded as they are stated to have retired or left the Department concerned before the filing of the petition. Annexure 'A-1' to the writ petition is the revised joint seniority list of the employees of the Panchayat Department (field staff). Separate representations, dated May 3, 1957, were submitted by the petitioners

(copy of the representation of Bhupinder Singh, petitioner No. 3 being Annexure 'B' to the writ petition), to the Director of Panchayats, Punjab, against the above-said equation as well as against the fixing of their seniority as assigned to them. The seniority list was finalised and is claimed by the respondents to have been circulated with a communication, dated April 19, 1958, by the Director of Panchayats, Punjab. Petitioners Nos. 1 and 2 submitted appeals against the positions assigned to them in the list. Their appeals were considered by the State Advisory Committee. Later on a joint representation by all the three petitioners and some other persons was submitted praying for their representations being considered by the Central Advisory Committee. The matter was then placed with the Government of India for the consideration of the case of the petitioners by the Central Committee. The representations were rejected and the petitioners were informed of the same by letter, dated August 26, 1959, from the Secretary to the Punjab Government in the Integration Department (copy of the communication is Annexure 'C' to the writ petition). With the said letter, a copy of the decision of the Central Government was enclosed. According to the said order, the Government of India was satisfied that the posts held by the petitioners in PEPSU had been correctly equated and that the representations of the petitioners had no force and had, therefore, been rejected. Thereafter the petitioners submitted further representations questioning the validity of the previous order and complaining against the same. By letter, dated April 14, 1961 (Annexure 'F') ,the Deputy Secretary to the Punjab Government informed the Director of Panchayats, Punjab, that the representations of the petitioners, against their equation with non-gazetted District Panchayat Officers in Punjab, had been reconsidered by the Government of India on the advice of the Central Advisory Committee for gazetted officers. A copy of the fresh decision taken by the Central Government was enclosed with the said communication. According to that decision, the Central Government. having regard to the broad similarity in the jurisdiction, functions and duties attached to the post in question approved the equation of the gazetted posts of District Panchayat Officers, PEPSU. with the non-gazetted posts of District Panchayat Officers in Punjab. It was further held in that decision that Mohinder Singh, (who has since left the Department), who had held non-gazetted post of Educational and Propaganda Officer in PEPSU could not be shown in the joint seniority list above the Officers of the same region. who held gazetted posts of District Panchayat Officers, and that, therefore, Mohinder Singh should be shown as junior to all the Panchayat Officers of PEPSU. It is not

disputed that this decision of the Central Government was somehow not communicated by the Director of Panchayats to the petitioners till they submitted another representation, in December, 1964, complaining of their case having been kept pending. The explanation given by respondent No. 2 (State of Punjab) for not having communicated the said decision to the petitioners (as contained in paragraph 14 of the written statement) is that the decision of the Government of India "could not be conveyed immediately after it was taken in 1961 as papers were mislaid somewhere." According to the return of the State, the said decision was conveyed to the petitioners only in October, 1965. In the meantime, the petitioners sent their last reminder, dated August 11, 1965 (Annexure 'D'). In reply, the Secretary to the Punjab Government sent with his letter, dated October 26, 1965, (Annexure 'E'), a copy of letter; dated April 14, 1961 (Annexur 'F'), and a copy of the Central Government's decision (Annexure 'G') to the petitioners. It was in the situation detailed above that the present writ petition was filed to quash and set aside the orders of the State Government and the Central Government in the matter of equation of the posts of the petitioners to the non-gazetted posts in the erstwhile State of Punjab and the final gradation list published in February, 1964. In the writ petition a further prayer has been made to direct the Central Government to frame appropriate integration rules and to integrate the petitioners in the new State of Punjab without being influenced by the State Government. The petitioners claim to be entitled to be integrated with Class II employees of the erstwhile State of Punjab and pray for a fresh gradation list being prepared after giving due consideration to the cadre, position, rights, status, rank and scale of pay of the petitioners.

The writ petition has been contested by the respondents. The Central Government has filed its brief written statement, wherein it is averred that the principles which were to govern the integration of services affected by the reorganisation of the States were agreed at the Conference of Chief Secretaries held in 1956, according to which principles the equation of posts was to be determined with due regard to the following factors:—

(i) The nature and duties of a post;

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

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

(iv) The salary of the post.

It has been added in the return of the Central Government that the Punjab Government made merely provisional equations and drew up provisional combined gradation lists of Officers of the Panchayat Department, and invited the Officers concerned to submit representations, which when received were forwarded by the State Government along with its comments to the State Advisory Committee. Thereafter, on the request of some of the Officers of the Panchayat Department, the State Government referred the representations to the Government of India for being placed before the Central Advisory Committee. The last mentioned Committee consisted of the Chairman of the Union Public Service Commission, Shri P. N. Sapru, Member of the Rajya Sabha, who is a retired Judge of the Allahabad High Court and Shri K. Y. Bhandarkar, retired Secretary of the Central Government in the Ministry of Law. The said Central Advisory Committee claims to have considered the representations of the petitioners and the recommendations of the State Government and to have made its recommendations to the Central Government, who considered them and passed final orders to which reference has already been made. It is stated in the return that no personal hearing was given to the petitioners by the Central Advisory Committee or by the Central Government as it was not necessary to adopt such a course. According to the Central Government, all that the State Government did was to take preliminary action which was necessary before the Government of India could pass final orders, and that the representations of the petitioners were duly considered and rejected by the Government of India itself in consultation with the Central Advisory Committee. It has been denied that the Government of India delegated any of its functions under the Act to the State Government.

The State of Punjab, respondent No. 2, has filed a detailed written statement, according to which the Integration Rules were made in accordance with the advice of the Central Government and were subject to the directions which the Government of India might issue under section 115(5) and section 117 of the Act. Respondents Nos. 3 and 5 to 7 have filed a joint return, dated May 21, 1967, in the form of an affidavit of Hari Krishan, respondent No. 5. Various additional defences have been raised in their return.

Narinder Sarup, petitioner No. 2, has filed a joint replication on behalf of all the petitioners with the leave of the Court obtained on October 24, 1966, in C.M. 3921 of 1966. In the replication the petitioners have set out points of dissimilarity between the positions held by them in the erstwhile State of PEPSU on the one hand and between the posts held by their counterparts in Punjab with whom they have been equated on the other hand. The only other significant thing brought out in the replication is a list of the grounds on which it is claimed that the equation statement prepared by respondents Nos. 1 and 2 is arbitrary and against the Integration Rules, themselves.

At the hearing of the writ petition Mr. Anand Swarup, the learned Advocate-General for the State of Haryana, who is appearing in this case on behalf of respondents Nos. 1 and 2, took up a preliminary objection to the effect that this petition should be dismissed as it has been filed after undue delay. Inasmuch as the *vires* and validity of the Integration Rules which were framed in 1957, and the orders of the Central Government which were passed in 1961, are being questioned by the petitioners, it is claimed that the petition should be dismissed wihout going into merits, as it was filed after about eight years of the framing of the Rules and after the expiry of about four years from the date of the final orders of the Central Government. The petitioners could have no cause of action if their representations had been accepted or if they were otherwise satisfied with the process of integration in so far as it concerned them. Any writ petition filed by them for declaring the Integration Rules to be invalid, though they were not effected by them, would have been dismissed *in limine.* The first time when they could justly come to this Court under Article 226 of the Constitution was when the final order of he Central Government against the representations of the petitioners was communicated to them. This did not admittedly take place before October, 1965. The writ petition has been filed soon thereafter. In these circumstances I do not find any merit in the preliminary objection raised on behalf of the respondents and I have no hesitation in rejecting the same.

On behalf of the petitioners, the following five points have been raised by their learned counsel Mr. D. S. Nehra:—

(1) The State Government had no right to frame the Integration Rules and either to frame a formula for equation of posts or for grouping them. The Central Government which was the sole and exclusive statutory authority under

the Act, had no jurisdiction to abdicate its functions in favour of the State Government;

(2) The impugned orders of the Central Government are liable to be set aside as they were passed in quasi-judicial proceedings without affording the petitioners any opportunity of being heard in support of their representations. The impugned equation and fixation of seniority of the petitioners is, therefore, liable to be set aside, as the same was decided upon in violation of the principles of natural justice;

(3) The impugned equation is arbitrary and contrary to the principles settled by the Central Government as brought out in its return;

(4) The equation and the fixation of seniority of the petitioners has also been ordered in violation of rule 16 of the Integration Rules, and is in contravention of even the decision of the Central Government itself in the matter of placing of Mohinder Singh in the joint seniority list; and

(5) In any case the petitioners were entitled to *ad hoc* relief to alleviate the hardship which has been caused to them by impugned orders.

The argument on the first point proceeds like this. The State Government has executive power under Article 162 of the Constitution read with entry 41 in List II of the Seventh Schedule to make integration of its services. The State has also power under Article 246 of the Constitution to make laws with respect to its public services and matters incidental thereto. In the absence of anything else, the State could make laws and rules for integration of its services and take all other necessary steps for that purpose. Sub-section (5) of section 115 of the Act has, by operation of Article 4 of the Consitution, transmitted the said power of integration of the State services exclusively to the Central Government, thus leaving no such power with the State Government. Reliance is placed for this argument on a Division Bench judgment of the Mysore High Court in *M.A. Jaleel, son of M.A. Rawoof and others* v. *The State of Mysore by Chief Secretary to the Government of Mysore, Bangalore and others,* (1). In that case it was held that the source of the power to enact

(1) A.I.R. 1961 Mysore 210.

section 115(5) of the States Reorganisation Act consists of Articles 3 and 4 of the Constitution and the inevitable consequence of the enactment of that sub-section is that the relevant States have been deprived of their power to make integration in the broad field of its executive authority. The learned Judges held that by virtue of Article 4(2) of the Constitution, the validity of the provision of sub-section (5) of section 115 of the Act is not open to attack as offending against the general executive power of the State conferred on it by the Constitution. It was further held that it is not permissible for the Central Government which is a delegate of the Parliament to assign to the Government of any State its entire responsibility to make integration enjoined on it by the Act. At this stage it would be appropriate to set out the provisions of Articles 2, 3, 4 and 162 of the Constitution, and sections 115(1), (2), (3) and (5), and 117 of the Act:—

Articles.—"2. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

3. Parliament may by law:—

(a) form a new State by separation 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;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless where the proposal contained in the Bill affects the area, boundaries or name of any of the States***, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I.—In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.

Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union Territory by uniting a part of any State or Union territory to any other State or Union territory."

"4(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.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

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 shall 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."

Sections.—"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 II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.

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

(4) * * * * *.

(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.

117. *Power of Central Government to give directions.*—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."

Mr. D. S. Nehra, the learned counsel for the petitioners, submitted that the object of the Parliament in enacting the above-mentioned provisions of the Act was to avoid interested elements in the States not doing proper justice on account of possible prejudice for or against different units of the integrated States in the matter of integration. Mr. Nehra, submitted that the State Government could no

doubt make laws and rules for its services after the integration, but its power to do so in relation to the process of integration, which according to legal fiction took place on the midnight between 31st of October and 1st November, 1956, had been taken away by the Act. The provisions of the Act conferring the relevant power on the Central Government are deemed to have taken away the normal authority of the State under Article 309 of the Constitution to make rules for its services relating to integration. Mr. Nehra is no doubt substantially supported by the dictum of Mysore High Court in *M. A. Jaleel's case* (supra).

Counsel has then referred to a later judgment of another Division Bench of the same Court (K. S. Hegde and M. Santosh, JJ.), in *Shankarayya (G.M.) and others* v. *Union of India and others* (2), wherein it was held that the Central Government was charged with the duty of integrating the services in the new States to ensure fair and equitable treatment to all persons affected by the provisions of section 115 of the Act and that sub-sections (2) and (3) of section 115 specifically confer the power on the Central Government to divide the services of existing States and allot some of its Officers to one or other of the successor States. In the case of PEPSU and Punjab, however, there was no difficulty of allocation of services of one State to the other as there was no dispute about all the PEPSU employees having been integrated with their counterparts in the State of Punjab. which was the successor State *qua* PEPSU.

The next case to which reference has been made by Mr. Nehra is of *P. K. Roy, Assistant Engineer, Government of M. P., P.W.D. and others* v. *State of Madhya Pradesh and others* (3). A division Bench of the Madhya Pradesh High Court held in that case that the State Government had no power to do the work of integration as a delegate of the Central Government and that section 117 of the Act could not be construed to authorise delegation of powers by the Central Government to the State Government. On that basis it was held that the power of formulating the principles for integration could not be delegated to the State Government. At the same time, the learned Judges of the Madhya Pradesh High Court made it clear that the gathering of material and the doing of all incidental and subsidiary acts as would assist the Central Government in its task of integration could be delegated to the States.

(2) 1967 L.L.J. 15.
(3) A.I.R. 1964 M.P. 307.

Mr. Nehra has also referred to section 129 of the Act which confers exclusive power on the Central Government to make rules to give effect to the provisions of the Act. No power is conferred by any provision of the Act on the State Government to make any rules regarding integration. Express and exclusive power to make rules regarding integration conferred on the Central Government is claimed by Mr. Nehra to exclude by implication and by operation of Article 4 of the Constitution the normal authority of the State Government to make rules on that subject.

The Advocate-General for the State of Haryana has, on the other hand, referred to a Full Bench judgment of the Gujarat High Court in *A. J. Patel and others* v. *The State of Gujarat and others* (4). In a very lucid and exhaustive judgment the learned Judges of the Gujarat High Court held that there are no express words in the States Reorganisation Act, expressly conferring the power of integration of the services in question "exclusively" on the Central Government. Considering the provisions of sub-sections (1), (2) and (3) of section 115 of the Act, they held that the division of services has been done partly by the Legislature and is allocated partly to the Central Government. It was held by the Full Bench of the Gujarat High Court that though Parliament has the authority to make provisions relating to the integration of services in connection with the affairs of the newly formed States, yet no provision in the Act has taken away the authority of the States to make rules for the same purpose in exercise of its ordinary authority under Articles 162 and 309 of the Constitution. The use of the expression "in regard to" in section 115(5) of the Act was held not to suggest the purposes for which assistance has to be given, but refers to the subject-matter of the connection wherewith assistance has been rendered. The dictum of the Court in this connection is available in the following passage:—

> "Having considered the provisions of section 115 as a whole and having considered the provisions in the light of the other provisions contained in the States Reorganisation Act, it appears to us that the Central Government has certain functions to perform in connection with the integration of services, but that it is not constituted the sole and exclusive authority for the purpose of the integration of services and that the power of the State Government is not wholly

(4) A.I.R. 1965 Gujarat 23.

taken away in connection therewith. The provisions of sub-section (5) of section 115 would be fully satisfied if the power of the State Government conferred under Article 162 of the Constitution is made subject to any directions which the Central Government may give to the State Government in connection with the integration of services. The Central Government has been assigned functions in connection with the ensuring of fair and equitable treatment to all persons affected by the provisions of section 115 and has been vested with the power to give directions to the State Government in connection therewith. The Central Government is assigned functions in connection with the proper consideration of any representations made by persons affected by the provisions of the said section, and has been empowered to give directions to the State Government in connection therewith. Having functions to perform in connection with all these matters and having got the power to give directions to any State Government in connection therewith, it would be proper to hold that the powers of the State Government to integrate the public services of the State conferred under the Constitution exist and survive to the extent that such have not been abrogated for the purpose of giving effect to the directions that may be issued by the Central Government to the State Government. This construction will preserve the power of the State Government to integrate its public services subject to any directions in connection therewith given by the Central Government.

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To the extent that the Central Government chooses to exercise that power, the power of the State Government would be circumscribed or limited."

The Full Bench of the Gujarat High Court held that they could not agree with the decision of the Mysore High Court to the effect that the Central Government was constituted the exclusive authority for integration.

After giving my serious consideration to the matter, and with the greatest respect to the learned Judges of the Mysore High Court,

who decided the case *M. A. Jaleel, son of M. A. Rawoof and others* v. *The State of Mysore, Bangalore, Chief Secretary to the Government of Mysore, Bangalore and others* (1), I am inclined to agree with the middle course adopted by the Gujarat High Court. Section 129 of the Act no doubt confers exclusive power on the Central Government to frame rules under the Act, but this does not, in my opinion, take away from the States their normal authority to make rules regarding their services. The Integration Rules were made after the 1st of November, 1956, when the erstwhile PEPSU employees had already become subject to the control of the new State of Punjab. The Integration Rules were not made under the States Reorganisation Act, but under proviso to Article 309 of the Constitution. Moreover, it is clear from the unequivocal averments in the written statement of the Central Government, filed in this case, that these rules were framed in consultation with the Central Government and had the approval of that Government. In fact, it is clear from the following passage in the return of the Union of India, that the entire process of integration in the new State of Punjab was carried out by the State authorities in accordance with the orders and subject to the directions of the Central Government:—

> "The Government of Punjab made provisional equations and drew up provisional combined gradation lists of officers of the Panchayat Department, and invited the Officers concerned to submit representations within the specified period. The representations made were forwarded by the State Government, along with their comments to the State Advisory Committee. Thereafter, on the request of some of the Officers of the Panchayat Department, the State Government referred the representations to the Government of India, for their being placed before the Central Advisory Committee. The Central Advisory Committee consists of the Chairman, Union Public Service Commission, as Chairman, Shri P. N. Sapru, Member, Rajya Sabha, and retired Judge of Allahabad High Court, and Shri K. Y. Bhandakar, retired Secretary, Union Law Ministry, as Members. That Committee considered the representations and sent their recommendations to the Central Government, who considered them and passed final orders on the representations, after fully considering all the points which were raised in the representations. No personal hearing was given by the Central Advisory Committee or by the Government of India, as it was not necessary that personal

> hearing be given. The Central Government's orders are binding on all concerned, including the State Government. It is, therefore, not correct to say that the work of integration has not been done by the Central Government. Although the State Government took the preliminary action, which was necessary before the Government of India passed final orders, the representation of Shri K. C. Gupta, against the provisional equation of posts was duly considered and rejected by the Government of India in consultation with the Central Advisory Committee. The powers of the Government of India were not delegated to the State Government."

In the written statement of the State of Punjab, the contents of paragraph 5 are relevant in this respect and are, therefore, quoted below verbatim:—

> "The Punjab Services Integration Rules, 1957, were framed by the State Government under Article 309 of the Constitution of India in accordance with which the Governor of a State is empowered to make such rules in regard to the recruitment and conditions of service of persons appointed to Public Services and posts in connection with the affairs of that State. These rules were made in accordance with the advice of the Central Government. They are subject to the directions which the Government of India may issue under section 115(5) and 117 of the States Reorganisation Act, 1956."

The Integration Rules were not framed by the State Government in exercise of any power of the Central Government which might have been delegated to the State. In fact no delegation of any functions of the Central Government under the Act has been proved. The question of such delegation being legal or not does not, therefore, arise. Moreover, no exception has been taken even at the hearing of this case to the formula of equation by cadre to cadre adopted by the Punjab State. On the other hand, Mr. Nehra has frankly conceded that the grouping formula was not only unworkable, but would have been opposed to the principles of justice and that the only proper way of integrating the services was by suitably integrating one cadre with another. The only quarrel of the petitioners is with the particular equation made in respect of the petitioners between the District Panchayat Officers of the erstwhile PEPSU and their counterparts in the State of Punjab as

it existed prior to November 1, 1956. So far as the said equation is concerned, the matter was taken up by the petitioners themselves to the Central Government and the Central Government considered the detailed representations of the petitioners and upheld the impugned decision of equation. Whether a better or different decision could be arrived at or not, and whether the equation approved of by the Central Government was on merits proper or not, is outside the scope of the enquiry before me in this writ petition, as this Court is not expected to sit in appeal over the said decision on merits. The fact remains that the equation was under the directions of, and in any case, with the approval of the Central Government. It is, therefore, held that the State Government had the right and authority to frame the Integration Rules of 1957, in exercise of powers conferred on it by the proviso to Article 309 of the Constitution and to equate the two units of the services in question in exercise of its executive power under Article 162 of the Constitution read with entry 41 in List II of the Seventh Schedule, subject to the control and direction of the Central Government under the relevant provisions of the Act. This is what has been done in the instant case and no fault can, therefore, be found with it. The Integration Rules are not *ultra vires* Section 129 of the Act and are valid and legal.

In order to decide the second question raised by the learned counsel for the petitioners, it is first necessary to come to the conclusion whether the decision to equate particular units of services in one State with a particular corresponding unit in the other, is a quasi-judicial process or not. Mr. Nehra has relied on the observations of the Division Bench of the Mysore High Court in the case of *Shankarayya (G.M.) and others* (supra) to the effect that it is reasonable to infer that the power conferred on the Central Government under section 115(5) of the Act is a quasi-judicial power, as the procedure prescribed indicates that the power is judicial as the test of "fair and equitable treatment" envisaged by the Act is an objective test.

Reliance has also been placed by the learned counsel on the following observations in the judgment of Grover, J., in *Madan Lal* v. *The Union of India and others* (5):—

"There can be no proper consideration unless the party or the parties that are going to be affected by any decision in

(5) 1967 Curr. L.J. (Pb. and Hry.) 62.

the joint seniority in the integrated service are told what the representations of other parties who are claiming seniority are to enable a proper representation being sent by the party or the parties likely to be affected. The statute, therefore, itself contains an indication that some hearing or opportunity must be afforded to the persons likely to be affected by the decision of the Central Government in the matters by the aforesaid provision."

Mr. Harnam Singh Wasu, the learned counsel for respondents Nos. 3 and 5 to 7, has on the other hand referred to the judgment of S. K. Kapur, J. in *Shaligram Anantram Chaturvedi* v. *Union of India through the Secretary, Ministry of Home Affairs, New Delhi* (6), wherein it has been expressly held that the various sections in the Act do not give to the employees concerned a right to require the Central Government to carry out the adjustment or integration in a particular manner, and that this having been left entirely to the Central Government, neither section 115 nor section 116 of the Act leads to the conclusion that in exercising powers thereunder the Central Government is acting judicially. Mr. Wasu has also relied upon a Division Bench Judgment of the Madhya Pradesh High Court in *Vinod Kumar-Radhika Prasad* v. *State of Madhya Pradesh and others* (7).

Mr. Nehra, learned counsel for the petitioners, has then referred to the note of a recent judgment of the Supreme Court in *State of Orissa* v. *Dr. (Miss) Binapani Dei and others* (8) and has argued that even in an administrative matter like the retirement of a Government servant on the basis of his age determined at an *ex parte* enquiry, the person affected has a right to be heard and any order passed without giving him such an opportunity is liable to be set aside. Counsel also relied upon the observations made in the judgment of the Supreme Court in that case to the effect that though the deciding authority in such a situation is not in the position of a Judge called upon to decide an action between contesting parties and though strict compliance with the form of judicial procedure may not be insisted upon, the authority concerned is nevertheless under a duty to give the person against whom an enquiry is held, an opportunity to set up his version or defence and an opportunity

(6) A.I.R. 1967 Pb. 98.
(7) A.I.R. 1966 M.P. 134.
(8) 1967 S.C.N. 76.

to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. The principles laid down in the above cases are well-known and well settled. What Mr. Nehra, however, is missing is that in the Supreme Court judgment in *State of Orissa* v. *Dr. (Miss) Binpani Dei and others* (supra), as well as in the judgment of Grover, J., in *Madan Lal* v. *The Union of India and others* (supra), the question that arose was whether a person against whom some action had to be taken was or was not entitled to know the evidence against or the material on the basis of which the action was proposed to be taken against him, and to meet the same. The answer to the above question has always been in the affirmative. No action was proposed to be taken by the Central Government against the petitioners in the instant case. No material, prejudicial to their interest, was being considered *ex parte*. What the Government was considering was the detailed written representations of the petitioners themselves. I am not aware of it having ever been laid down that in the absence of a statutory requirement to that effect any person who has made a representation, is entitled as of right to be heard orally before his representation can be disposed of. It was held in *S. Kapur Singh* v. *Union of India* (9), that an opportunity of making an oral representation is not a necessary postulate of an opportunity of showing cause for the purpose of satisfying the constitutional requirements of Article 311 of the Constitution. Moreover, I am bound by the judgment of this Court in *Shaligram Anantram Chaturvedi's* case (supra), and cannot in the face of it hold that the Central Government is expected to act judicially in the course of proceedings under sections 115 and 116 of the Act. In any case, the petitioners cannot make any just grievance in this behalf as they never asked for an oral hearing at any stage of the proceedings before the Government. No principle of natural justice has, in any case, been violated in the impugned proceedings. There is, therefore, no force even in the second contention of Mr. Nehra.

The third ground of attack pressed in the case almost travels into the merits of the controversy. The contention of Mr. Nehra is that though four criteria; viz. (i) nature of duties; (ii) responsibilities and power; etc. (iii) Minimum qualifications; and (iv) salary had been laid down by the Central Government for determining equation of posts or cadres, the Government, according

(9) A.I.R. 1960 S.C. 493.

to its own return, took into account, in the present case, only one out of them, that is the nature and duties of the posts held by the petitioners on the one hand and their counterparts in the Punjab on the other. The grievance of the petitioners is that the greater responsibilities, the higher powers exercised by the PEPSU Officers, the fact that the minimum qualification in PEPSU was being a graduate and in Punjab it was being a matriculate, and the vast difference in the salary of the two sets of posts have been completely ignored by the Central Government in rejecting the representations of the petitioners against the impugned equation. The petitioners admit that they represented on these points to the Central Government. The principles laid down by the Central Government were for their own guidance and it does not appear to me to be possible for the High Court to interfere in the decision of the Government in that behalf. The orders passed by the Central Government are not speaking orders nor was it necessary to support the orders with reasons. It is, therefore, not possible to know what considerations weighed with the Central Government in upholding the impugned equation proposed by the Punjab State. I cannot find my way to interfere with the order of equation on that ground.

The fourth argument relates to the alleged violation of rule 16 of the Integration Rules. The said rule reads as follows:—

> "*Inter se* seniority of any employee in the parent State shall not be disturbed in determining his seniority in the State of Punjab under these rules."

The complaint is that Mohinder Singh, who was junior to the petitioners, in PSPSU has been illegally placed above the petitioners in the joint seniority list prepared as a result of the integration. This grievance of the petitioners appears to be fully justified. In fact the petitioners represented against this illegality and their representation was accepted by paragraph (2) of the orders of the Central Government (Annexure 'G'), whereby it was directed that Mohinder Singh, who held the non-gazetted post of Educational and Propaganda Officer in PEPSU, could not be shown in the joint seniority list above the petitioners, who held gazetted posts of District Panchayat Officers. The Central Government clearly directed that Mohinder Singh should be shown as junior to all the Panchayat Officers of PEPSU. Though Mohinder Singh has since left the

Department, the petitioners claim to have been prejudicially affected by the initial mistake committed by the Punjab Government in showing him above the petitioners in the joint seniority list. The learned Advocate-General for the State of Haryana has conceded that it is a matter of regret that despite the above-said directions of the Central Government which are binding on the State authorities, Mohinder Singh, has in fact been shown at No. 16 in the revised joint seniority list (Annexure 'A-1'). though the petitioners are shown at Nos. 22 to 24 therein. Name of Mohinder Singh should have been taken out from No. 16 and the names of the personnel from Nos. 17 to 24 should have been lifted up by one number and Mohinder Singh should have been placed at No. 24 in the said list in compliance with the orders of the Central Government referred to above. This should now be done and the consequential effect and benefit of chain reaction of this change (in accordance with the directions of the Central Government) should be given to the petitioners.

The last submission advanced on behalf of the petitioners is this. It is pointed out that there were the following relevant corresponding services in the erstwhile PEPSU and Punjab:—

Pepsu	*Punjab*
1. District Panchayat Officers (graduates or double graduates) in the time-scale of Rs. 250—15—400;	District Panchayat Officers (including under-graduates) in the time-scale of Rs. 170—10—350;
2. Selection grade Panchayat Officers in the scale of Rs. 125—230;	Selection grade Panchayat Officers in the time-scale of Rs. 125—230;
3. Panchayat Officers in the time-scale of Rs. 100—160;	Panchayat Officers in the time-scale of Rs. 100—160;
4. Propaganda and Education Officers in the scale of Rs. 200—10—300.	Education Panchayat Officers in the scale of Rs. 170—10—350.

The argument is that Selection Grade Panchayat Officers having been equated separately, (with their counterparts in Punjab) from the Panchayat Officers in the two States simply because of

difference of their salary, the District Panchayat Officers of PEPSU should also have been kept in a cadre separate from their counterparts in Punjab on account of the vast difference in the scale of their pay as well as their educational qualifications and importance of duties. It is the equation of the District Panchayat Officers of the two States which is the solitary basic grievance of the petitioners. There is no dispute that if the equation is correct, the *inter se* seniority of the petitioners with the Punjab Officers has been correctly fixed except for the case of Mohinder Singh, which has already been dealt with above. It has been argued that even if the equation of the various services in the Panchayat Department of the integrated State cannot be questioned as such, the petitioners should have been granted relief, in the above circumstances, on an *ad hoc* basis, in accordance with the requirements of the proviso to rule 11(a) of Part IV of the Integration Rules. Rule 11 is in the following terms:—

> "11. (a) The pattern of services and posts obtaining in the Punjab State being taken as a norm, the PEPSU State services and posts shall, having regard to all relevant considerations, be normally equated with them in the corresponding services and posts:
>
> Provided that if any case of inequity or injustice is brought to the notice of the Integration Committee it shall be decided on an *ad hoc* basis.
>
> *Explanation*:—The equation of services and posts shall cover the period when the equated services and posts were in lower pay scales.
>
> (b) Such of the services and posts in the PEPSU State which are not equated shall be treated as unequated."

The petitioners did feel that injustice had been done to them and represented even for an *ad hoc* relief on that basis. The Central Government, which is admittedly the competent authority to deal with the matter on merits, rejected the representations of the petitioners. In such a situation, it is not for this Court to sit in appeal over the decision of the Central Government on merits and to decide whether injustice had or had not been occasioned to the petitioners by the said equation. What is fair and equitable distribution was to be decided by the Government. The petitioners have had ample opportunity of representing their case to the Union of

India. Their representations were considered with the help of the Central Advisory Committee for Gazetted Officers. Even if the petitioners justly feel that they have not been equitably and fairly treated in the matter of equation of their services and consequent integration, they can hardly claim any relief under Article 226 of the Constitution, as this Court does not sit in appeal over the decisions of the Central Government on merits under the Act.

No other point has been argued in this case by the counsel for the parties. The writ petition, therefore, succeeds only partially. Respondent No. 2 is directed to implement the decision of the Central Government contained in paragraph 2 of its order (Annexure 'G') communicated with its letter, dated April 14, 1961 (Annexure 'F'), and to work out and adjust the *inter se* seniority of the integrated cadre of the petitioners with effect from November 1, 1956, on the basis that the name of Mohinder Singh was deemed to have been placed below those of the petitioners in the joint seniority list and to give the petitioners benefits, if any, that may accrue to them in chain reaction of the requisite implementation. In all other respects the petition fails and is dismissed, but without any order as to costs.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

MAJOR MICHAL A. R. SKINNER AND OTHERS,—*Petitioners*

versus

MUNICIPAL COMMITTEE, HANSI,—*Respondent*

Civil Revision No. 240 of 1966.

May 15, 1967

Code of Civil Procedure (Act V of 1908)— S. 9—Punjab Municipal Act (III of 1911)—Ss. 3(1) (b)(ii), 69, 84 and 86—Suit for the recovery of excess amount charged as house tax on the ground that deduction under S. 3(1)(b)(ii) was not allowed—Whether maintainable in a civil court.