



## Central Administrative Tribunal Chandigarh Bench, Chandigarh

O.A. No.199/2019  
M.A.No.1009/2019  
M.A.No.1177/2019  
M.A.No.1211/2019  
M.A.No.1461/2019  
M.A.No.1462/2019  
M.A.No.1554/2019

With

O.A. No.211/2019  
M.A.No.1128/2019  
M.A.No.1130/2019  
M.A.No.1178/2019  
M.A.No.1460/2019  
M.A.No.1464/2019  
M.A.No.1553/2019

Order reserved on 8<sup>th</sup> January, 2020

Order pronounced on 17<sup>th</sup> January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**  
**Hon'ble Mr. Mohd. Jamshed, Member (A)**

O.A. No.199/2019

Mohd. Mustafa  
Son of Akhtar Hasan,  
Aged 58 years  
Resident of House No.25, Mansa Devi Complex  
Sector 4, Panchkula – 134 1112  
Group A

..Applicant

(Mr. D S Patwalia, Senior Advocate, and Mr. B S Patwalia & Ms. A S Chadha, Advocates with him)

Versus

1. Union of India,  
Ministry of Home Affairs, North Block  
New Delhi – 110 001, through its Secretary



2. Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi – 110 069 through its Secretary
3. State of Punjab, Department of Home Affairs  
Punjab Civil Secretariat, Chandigarh  
through its Secretary – 160 017
4. Empanelment Committee for preparation of panel  
for appointment to the post of Director General of  
Police (Head of the Police Force), Punjab  
through its President – 160 009
5. Shri Dinkar Gupta, IPS,  
Director General of Police, Punjab  
Police H.Q., Punjab,  
Chandigarh – 160 009
6. Sh. Suresh Arora (retd.)  
Director General of Police, Punjab  
Currently residing at House No.25  
Sector 7, Chandigarh – 160 009

..Respondents

(Mr. Sanjay Goyal, Sr. CGSC for respondent No.1,

Ms. Alka Chatrath, Senior Advocate and Mr. B B  
Sharma, Advocate with her, for respondent Nos. 2 & 4,

Mr. Nidesh Gupta, Senior Advocate, Ms. Anu Chatrath,  
Senior Advocate, and Mr. Rakesh Verma, Advocate with  
them, for respondent No.3,

Mr. Puneet Bali, Senior Advocate, and Mr. Satya Ahuja  
& Mr. Vaibhav Jain, Advocates with him, for respondent  
No.5,

Mr. Vikash Bahl, Senior Advocate and Ms. Harbani  
Singh, Advocate with him, for respondent No.6)

O.A. No.211/2019

Siddarth Chattopadhyaya  
Aged about 56 years  
Son of Brig. J Chattopadhyaya,  
Director of Police, Punjab Group A Service  
Presently posted as Director General of Police



Punjab State Power Corporation Limited (PSPCL),  
Patiala

..Applicant  
(Mr. Rajiv Atma Ram, Senior Advocate and Mr. Jaivir  
Singh, Advocate with him)

Versus

1. Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi – 110 069, through its Secretary
2. The State of Punjab, through the Secretary  
Department of Home Affairs,  
Punjab Civil Secretariat, Chandigarh – 110 001
3. The Union of India,  
Through the Secretary,  
Ministry of Home Affairs, North Block  
New Delhi – 110 001
4. Shri Dinkar Gupta, IPS, Group A Service  
Director General of Police, Punjab  
Police Headquarters,  
Sector 9, Chandigarh – 160 009
5. Sh. Suresh Arora  
Director General of Police, Group A Service  
Punjab (Retd.) now resident of House No.25  
Sector 7, Chandigarh – 160 009
6. Shri M K Tiwari, Director General of Police  
(Group A Service) cum Managing Director  
Punjab Police Housing Corporation  
Punjab Police Housing Corporation, Sarovar Path  
Phase 7, Sector 61, Sahibzada Ajit Singh Nagar  
Punjab 160062
7. Shri V K Bawra, Director General of Police  
Intelligence (Group A Service)  
Punjab Police Intelligence Office, Sector 77,  
Sahibzada Ajit Singh Nagar,  
Punjab 140 308
8. The Union of India through the Secretary  
Department of Personnel & Training  
Central Secretariat, North Block,  
New Delhi – 110 001



9. Shri Karan Avtar Singh, Chief Secretary  
Punjab (Group A Service) Chief Secretary Office  
6<sup>th</sup> Floor, Punjab Civil Secretariat 1,  
Sector 1, Chandigarh 160 001

..Respondents

(Ms. Alka Chatrath, Senior Advocate and Mr. B B Sharma, Advocate with her, for respondent No. 1, Mr. Nidesh Gupta, Senior Advocate, Ms. Anu Chatrath, Senior Advocate, and Mr. Rakesh Verma, Advocate with them, for respondent No.2,

Mr. Sanjay Goyal, Sr. CGSC for respondent Nos.3 & 8,

Mr. Puneet Bali, Senior Advocate, and Mr. Satya Ahuja & Mr. Vaibhav Jain, Advocates with him, for respondent No.4,

Mr. Vikash Bahl, Senior Advocate and Ms. Harbani Singh, Advocate with him, for respondent No.5,  
*Nemo* for respondent Nos.6, 7 & 9)

## O R D E R

### **Justice L. Narasimha Reddy:**

The applicants in these two O.As. are the officers of the Indian Police Service (IPS) of 1985 batch (applicant in O.A. No.199/2019) & 1986 batch (applicant in O.A. No.211/2019); of the Punjab cadre. Both of them are holding the posts of the cadre of Director General of Police (DGP). Through an order dated 07.02.2019, the Government of Punjab, the 3<sup>rd</sup> respondent, appointed Mr. Dinkar Gupta, the 5<sup>th</sup> respondent, an IPS officer of 1987 batch of Punjab cadre, who too was holding the post of cadre of DGP, as DGP, Head of Police Force (HoPF), on the basis of the recommendations made by the Empanelment Committee, the 4<sup>th</sup> respondent,



constituted by the Union Public Service Commission (UPSC), the 2<sup>nd</sup> respondent herein, on 04.02.2019. Both the O.As. are filed challenging the appointment of 5<sup>th</sup> respondent as DGP (HoPF). For the sake of convenience, the respondents are referred to as arrayed in O.A. No.199/2019.

2. The brief facts are that the post of DGP (HoPF) was to fall vacant on the retirement of Mr. Suresh Arora, the 6<sup>th</sup> respondent herein. Steps were required to be taken to select one from among all eligible officers of the cadre. There used to exist the practice for preparation of the panel by a Committee for appointment to the post of DGP, constituted by the 2<sup>nd</sup> respondent, but the selection was to take place in accordance with the procedure envisaged under the legislations of the respective States made in this behalf. In the State of Punjab also, there existed a legislation, dealing with the procedure.

3. Since the Police Establishment plays a crucial role in the Administration of the State, the officer, who heads the Establishment, is naturally, required to be the one, who is known for his integrity, ability, efficiency and independent functioning. It has been the long desire at the National level, to evolve a common policy and procedure for selection and appointment of HoPF of a



State in such a way that the role of the Government of the concerned State is minimized in the selection process and the selected officers are permitted to function without any interference. Commissions were appointed for this purpose and reports were also submitted. However, no concrete steps were taken to bring about the legislation or to frame a clear policy in this behalf.

4. One Prakash Singh, a retired Police officer, filed a Writ Petition before the Hon'ble Supreme Court, in this behalf. Notices were issued to the State and Central Governments. After elaborate consideration of the entire issue, the Hon'ble Supreme Court rendered its judgment on 22.09.2006 – **Prakash Singh & others v. Union of India & others**, (2006) 8 SCC 1. One of the directions issued was to the effect that a DGP (HoPF) shall be selected from amongst the three senior-most officers of the Department, who have been empanelled for promotion, by the 2<sup>nd</sup> respondent, UPSC. It was also mentioned that the 2<sup>nd</sup> respondent, in turn, shall take into account, length of service, very good record and range of experience for heading the police force. This procedure was directed to be in force, till the legislation by the competent legislature is made. Subsequently,



many States filed Interlocutory Applications (I.As.) seeking amendment of the directions so issued. Through an order dated 03.07.2018, the Hon'ble Supreme Court refused to modify the directions issued in its judgment dated 22.09.2006. Even while reiterating the procedure so indicated, some important observations were made, such as that "merit and seniority should be given due weightage" and any legislation/rule framed by any of the States or the Central Government, which runs contrary to the direction shall remain in abeyance.

5. The State of Punjab, the 3<sup>rd</sup> respondent filed I.A. No.144172/2018 seeking modification of the order dated 03.07.2018 and similar I.As. were filed by the States of Haryana, West Bengal, Kerala and Bihar. After a detailed discussion, the Hon'ble Supreme Court dismissed the I.As., through an order dated 16.01.2019.

6. The proposals for preparation of panel of names to be considered for appointment to the post of DGP (HoPF), were initiated by the 3<sup>rd</sup> respondent by addressing a letter dated 19.01.2019, to the 2<sup>nd</sup> respondent (UPSC). Specific reference to the orders passed by the Hon'ble Supreme Court was made and a list of 12 officers, who were working in the rank of DGP/Additional DGP and have completed 30 years of



service, was forwarded. The names of the applicants herein figured at Sl. Nos.2 and 5 respectively and that of the 5<sup>th</sup> respondent, at Sl. No.6. It was also mentioned that the 3<sup>rd</sup> respondent had a sanctioned strength of 2 cadre posts of DGP, and that the competent authority has already approved the revised cadre strength of 3 DGPs. Request was made to send a panel of 6 names.

7. The 2<sup>nd</sup> respondent constituted a Committee, i.e. the 4<sup>th</sup> respondent, and it met on 04.02.2019. After a detailed consideration, it forwarded a panel of 3 names, namely, Mr. Dinkar Gupta, the 5<sup>th</sup> respondent herein, Mr. M K Tiwari and Mr. V K Bhawra, who figured at Sl. Nos. 6, 8 & 9 respectively, in the list of 12 officers. Through an order dated 07.02.2019, the 3<sup>rd</sup> respondent appointed 5<sup>th</sup> respondent as its DGP (HoPF).

8. The applicants filed W.P. (C) Nos.202 & 218 of 2019 under Article 32 of the Constitution before the Hon'ble Supreme Court, challenging the appointment of 5<sup>th</sup> respondent and the proceedings of the 2<sup>nd</sup> respondent herein. The writ petitions were dismissed on 25.02.2019 leaving it open to the applicants to initiate the proceedings before appropriate forum. Accordingly, the present O.As. are filed thereafter.



9. The facts pleaded, and the grounds raised in both the O.As. are common and similar, except that in O.A. No.211/2019, an additional ground pertaining to the participation of the then DGP, the 6<sup>th</sup> respondent herein, in the Selection Committee, is also assailed.

10. The applicants contend that the selection and appointment of DGP (HoPF) of any State is wholly governed by the directions issued by the Hon'ble Supreme Court in **Prakash Singh's** case (supra) and in categorical terms, the Hon'ble Supreme Court held that the selections shall be made on the basis of (a) length of service, (b) very good record and (c) range of experience for heading the police force. They submit that when the Governments of various States wanted modification of this procedure or exemption from it, the request was not acceded to and on the other hand, the factors, like 'merit and seniority', were emphasized, and despite that, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have completely deviated from the said procedure. They further submit that nowhere in the Minutes of its meeting, the 4<sup>th</sup> respondent has mentioned about any negative factors against the applicants, who were senior-most officers and there was not even a remote indication as to why the 5<sup>th</sup> respondent was preferred to them.



11. It is further stated that though the Hon'ble Supreme Court rejected the request of the 3<sup>rd</sup> respondent for exemption from the procedure, they resorted to the procedure, which, in fact, they wanted to adopt. It is also stated that for reasons known to itself, the 3<sup>rd</sup> respondent has not furnished the relevant and complete information pertaining to various officers, to 2<sup>nd</sup> respondent, and had that been taken into account, the result would have been different altogether.

12. The applicants further contend that respondent Nos. 2 & 4 have adopted and applied the parameters, which were strictly prohibited by the Hon'ble Supreme Court, and the selection of the 5<sup>th</sup> respondent and his consequential appointment, are in the teeth of the specific directions issued by the Hon'ble Supreme Court, apart from being arbitrary, illegal and not transparent.

13. An additional plea, raised by the applicant in O.A. No.211/2019 is that he has been chosen by the Hon'ble Punjab & Haryana High Court in C.W.P. No.20359/2013, through order dated 15.12.2017, to act as Head of Special Investigation Team (SIT), to investigate the issue of complicity of respondent No.6 in the C.W.P., in the context of free and fair investigation in



the procurement and sale of drugs in the State of Punjab, and the nexus between the law enforcement machinery of the State and the drug mafia, and in the course of investigation, he reported the involvement of Mr. Suresh Arora, the 6<sup>th</sup> respondent and Mr. Dinkar Gupta, the 5<sup>th</sup> respondent, and in that view of the matter, the 6<sup>th</sup> respondent ought to have excused himself from being part of Selection Committee. He stated that in view of the development referred to above, he made a request to the Government of Punjab to permit him to submit the ACR directly to the Government, instead of the then DGP, the 6<sup>th</sup> respondent, and that he was permitted to do so. Another fact stated by him is that the Chief Minister of State of Punjab wanted to constitute a Committee headed by the 6<sup>th</sup> respondent, to resolve the misunderstandings between the applicant, 5<sup>th</sup> respondent and some other officers, and the 6<sup>th</sup> respondent himself has recused from being part of the Committee. It is stated that when such is the level of lack of confidence, the presence of 6<sup>th</sup> respondent in the Selection Committee, not only caused prejudice to the applicant, but had also vitiated the entire process.

On these and other supplementary grounds, the applicants pray for setting aside of the Minutes of the 4<sup>th</sup>



respondent dated 04.02.2019 and the consequential appointment of 5<sup>th</sup> respondent, through order dated 07.02.2019.

14. The respondents have filed their respective counter affidavits opposing the O.As. The 1<sup>st</sup> respondent, i.e., the Union of India, has virtually maintained neutrality in its counter affidavit and stated that the selection is by the respondent Nos. 2 & 4 and appointment is by the 3<sup>rd</sup> respondent.

15. On behalf of respondent Nos. 2 & 4, i.e., the UPSC and the Empanelment Committee / Selection Committee, a detailed counter affidavit is filed. It is stated that a proposal was received from the State Government for preparation of a panel for appointment to the post of DGP (HoPF), duly enclosing the relevant particulars. It is stated that the 4<sup>th</sup> respondent took into account, the factors, such as length of service and residual service of the eligible officers, their ACRs and experience, and prepared a panel of 3 officers. Similar procedure is said to have been followed in respect of other States also. It is further stated that though the applicants were also assessed as 'fit' on the basis of service record, and from the point of view of residual service, the Committee assessed them as 'inadequate' on



the criteria of “range of experience in core policing areas during the last 10 years”. They pleaded ignorance about the alleged indictment of 5<sup>th</sup> respondent by the SIT appointed by the Hon’ble Punjab & Haryana High Court, and stated that no penalty was noticed against any of the eligible officers. It is admitted that Mr. M K Tiwari was suspended between 26.11.2016 and 13.12.2016, but it is stated that he has been reinstated, duly treating the period of suspension as spent on duty.

16. Respondent Nos. 2 & 4 further stated that 5 core policing areas, namely, (i) Intelligence, (ii) Law & Order, (iii) Administration, (iv) Investigation; and (v) Security, were taken into account, and that they are in conformity with the draft guidelines issued by the UPSC in the year 2009. It is further stated that the 4<sup>th</sup> respondent can adopt its own criteria for objective assessment of suitability of officers in the zone of consideration, as provided for under the draft guidelines. The relevant paragraph reads:

“6.1.2 It is humbly submitted that it may be seen from the above that the Empanelment Committee that met on 04.02.2019 considered all the relevant factors including the inter se seniority, merit and experience of the eligible Officers and accordingly prepared the panel on 04.02.2019. The applicant, though, senior in comparison to other selected officers, was not included in the panel, because the Empanelment Committee



assessed the range of experience in heading the police force, as “Inadequate” on the basis of his experience in the last 10 years. The Committee considered the following core policing areas while assessing the suitability of eligible officers for inclusion in the panel for appointment to the post of DGP (HoPF), Punjab:

- (i) Intelligence
- (ii) Law and Order
- (iii) Administration
- (iv) Investigation
- (v) Security.”

They contend that the Tribunal or a Court cannot sit as an appellate authority over the selection made by an expert agency and reference is made to various judgments rendered by the Hon’ble Supreme Court.

17. The 3<sup>rd</sup> respondent, i.e., State of Punjab, filed a detailed counter affidavit, opposing the O.As. It is stated that the selection and appointment of the 5<sup>th</sup> respondent is done strictly in accordance with the norms laid down by the Hon’ble Supreme Court and the draft guidelines framed by the UPSC. The allegations made by the applicants about the indictment of 5<sup>th</sup> respondent by the SIT, and the facts pleaded about the other two candidates, included in the list, are flatly denied. By placing reliance upon certain precedents, it is submitted that even if the charge memo is issued to an officer, it cannot be a factor to exclude him from consideration for promotion.



18. Extensive reference is made to the allegations made against 5<sup>th</sup> respondent vis-à-vis FIR No.1 dated 12.06.2017. The manner in which the Report was dealt with by the Hon'ble Punjab & Haryana High Court was also mentioned. Various proceedings, that have taken place in the High Court, in the context of appointment of applicant in O.A. No.211/2019 as Head of SIT, are discussed in detail. Effort is made to convince the Tribunal that the 5<sup>th</sup> respondent has outstanding merit and accordingly, was selected, and that no illegality has taken place in his selection and appointment.

19. The respondent No.5 filed his counter affidavit. He denied the various allegations made by the applicants and stated that he has a meritorious record, particularly in the field of intelligence. It is stated that the selection would depend upon the satisfaction of the Selection Committee and once a candidate is selected, the unsuccessful candidate cannot challenge the same, simply because he happened to be a senior. The tenor of his counter affidavit is almost on par with that of the stands taken by respondent Nos. 2, 3 & 4.

20. In his counter affidavit, the 6<sup>th</sup> respondent stated that he has absolutely no prejudice or ill will against the applicant in O.A. No.211/2019. He stated that the very



fact that he recommended the name of the applicant for awarding medals on more than one occasion would disclose not only his neutrality but also his liking for him. It is also stated that the applicant was very much aware about the selection process, and had any objection been raised at the relevant point of time, he would have simply excused himself. It is further stated that it is not fair on the part of the applicant to take exception to his participation after the conclusion of the selection process.

21. The applicants filed rejoinders to the counter affidavits. They stated, *inter alia*, that the choosing of only 5 core policing activities out of 20 is highly arbitrary apart from being in violation of the judgment in **Prakash Singh's** case. It is also stated that even in those 5 parameters, their performance is far superior than that of the 5<sup>th</sup> respondent.

22. The content of the pleadings in O.As. is too elaborate and we have taken note of the gist thereof.

23. The arguments on behalf of the applicant in O.A. No.199/2019 are advanced by Mr. D S Patwalia, Senior Advocate with Mr. B S Patwalia, learned counsel, and on behalf of applicant in O.A. No.211/2019 by Mr. Rajiv



Atma Ram, Senior Advocate with Mr. Jaivir Singh, learned counsel. Arguments on behalf of respondents in O.A. No.199/2019 are advanced by Mr. Sanjay Goyal, Senior Central Government Standing Counsel for respondent No.1, Ms. Alka Chatrath, Senior Advocate with Mr. B B Sharma, learned counsel for respondent Nos. 2 & 4, Mr. Nidesh Gupta, Senior Advocate and Ms. Anu Chatrath, Senior Advocate with Mr. Rakesh Verma, learned counsel for respondent No.3, Mr. Puneet Bali, Senior Advocate with Mr. Satya Ahuja & Mr. Vaibhav Jain, learned counsel for respondent No.5, and Mr. Vikash Bahl, Senior Advocate with Ms. Harbani Singh, learned counsel for respondent No.6, whereas arguments on behalf of respondents in O.A. No.211/2019 are advanced by Ms. Alka Chatrath, Senior Advocate with Mr. B B Sharma, learned counsel for respondent No. 1, Mr. Nidesh Gupta, Senior Advocate and Ms. Anu Chatrath, Senior Advocate with Mr. Rakesh Verma, learned counsel for respondent No.2, Mr. Sanjay Goyal, Senior Central Government Standing Counsel for respondent Nos.3 & 8, Mr. Puneet Bali, Senior Advocate with Mr. Satya Ahuja & Mr. Vaibhav Jain, learned counsel for respondent No.4, and Mr. Vikash Bahl, Senior Advocate with Ms. Harbani Singh, learned counsel for respondent No.5. There is no appearance on



behalf of respondent Nos.6, 7 & 9. We have perused the record in detail.

24. Sri D S Patwalia, learned senior counsel for applicant in O.A. No. 199/2019 submits that the method of selection of the DGP (HoPF) is prescribed by the Hon'ble Supreme Court in **Prakash Singh's** case (supra) and that the parameters stipulated therefor are very clear and succinct. He contends that though the selection was required to be based upon the factors, such as, length of service, very good record and range of experience for heading the police force, respondent Nos. 2, 3 & 4 have completely deviated from that. It is stated that right from the stage of sending the names of eligible officers till the stage of consideration of appointment, the respondents have committed several illegalities. It is stated that the complete information pertaining to officers included in the list was not sent at all.

25. Learned counsel submits that in the Minutes of 4<sup>th</sup> respondent recorded on 04.02.2019, there was absolutely no mention about the so-called core policing areas and to cover up the deviation from the procedure prescribed by the Hon'ble Supreme Court, they came forward with such a plea for the first time, in the counter affidavit. He contends that even if it is to be presumed



that the performance of the officers in the core policing activities is relevant, there was no basis for choosing only 5, out of 20, and that too, by according primacy to that of intelligence.

26. He further submits that assignment of any duty or activity to an officer is not in his hands and hardly there exists any parameters for measuring the performance in such areas, except the ACRs. He submits that the posting of an officer in a particular activity and the length thereof, is purely a matter of coincidence. It is pleaded that 5 areas were chosen only to push up the 5<sup>th</sup> respondent, who was otherwise far below, and even if one takes into account the overall performance in all the 5 activities, the 5<sup>th</sup> respondent would lag behind, compared to the applicants.

27. Learned counsel further submits that the entire exercise smacks of arbitrariness and is in complete deviation from the law laid down by the Hon'ble Supreme Court in **Prakash Singh's** case (supra). He contends that since the Hon'ble Supreme Court emphasized the merit and seniority also, respondent Nos. 2 & 4 were under obligation to indicate the reasons at least in a very brief and succinct manner as to how the



seniority was overlooked, once the applicants were found fit.

28. Sri Rajiv Atma Ram, learned senior counsel for applicant in O.A. No.211/2019 has argued on the same lines. In addition, he elaborated on the plea as to participation of 6<sup>th</sup> respondent in the selection process. He contends that the 6<sup>th</sup> respondent ought not to have taken part in the Committee having regard to the fact that he was named by the applicant in a report submitted to the Hon'ble Punjab & Haryana High Court. He further submits that the factors, such as permission being accorded to the applicant to submit his ACR to the Government bypassing the DGP, and the latter recusing himself from being part of a Committee to resolve the differences among various officers, would only strengthen the plea of the applicant.

27. Sri Sanjay Goyal, learned senior CGSC advanced arguments on behalf of 1<sup>st</sup> respondent. It is stated that the prescribed procedure was followed and that no illegality has taken place.

28. Ms. Alka Chatrath, learned senior counsel advanced arguments on behalf of respondent Nos. 2 & 4. The gist of her argument is that once the proposal was



received from 3<sup>rd</sup> respondent for preparation of a panel for appointment to the post of DGP (HoPF), a Committee, i.e., 4<sup>th</sup> respondent, was constituted in accordance with the existing practice. It is stated that the 4<sup>th</sup> respondent has meticulously taken into account, the procedure prescribed by the Hon'ble Supreme Court in this behalf and even extracted the relevant orders, *verbatim*, in its Minutes. She contends that though the applicants were also found fit and there did not exist anything adverse against them, the Committee has chosen 3 officers on the basis of relative merit. According to the learned senior counsel, it is competent for the Committee to frame its own procedure in arriving at just and proper conclusion, even while complying with the other requirements, and that the same accords with the draft guidelines issued by the UPSC. It is stated that the draft guidelines were placed before the Hon'ble Supreme Court at some stage and that no exception was taken to them.

29. Learned counsel strongly urged that it is always the prerogative of the Selection Committee to choose the candidates whom they find fit, and that law does not place it under obligation, to record reasons as to why a particular candidate was selected and why the others



were not selected. Reliance is placed upon catena of judgments in this behalf.

30. Sri Nidhesh Gupta, learned senior counsel advanced arguments on behalf of the 3<sup>rd</sup> respondent, State of Punjab. He submits that the State has forwarded the proposals with complete information and that the 4<sup>th</sup> respondent has prepared panel, strictly in accordance with law. He contends that the 5 core policing areas, taken into account by the 4<sup>th</sup> respondent are very much relevant. Learned senior counsel strongly objected to the plea raised about the participation of the 6<sup>th</sup> respondent, in the Committee.

31. Sri Puneet Bali, learned senior counsel for the 5<sup>th</sup> respondent submits that the selection has taken place strictly in accordance with the prescribed procedure and that the O.As. are liable to be rejected. He contends that the various allegations made against the 5<sup>th</sup> respondent are not borne out by record. He contends that the 5<sup>th</sup> respondent excelled in the field of intelligence and other related fields and that it weighed with the 4<sup>th</sup> respondent.

32. Sri Vikash Bahl, learned senior counsel for the 6<sup>th</sup> respondent submits that the objection raised against the



6<sup>th</sup> respondent is without any basis and is an afterthought.

33. The principal contest to the O.As. was on behalf of respondent Nos. 2 (UPSC), respondent No.3 (State of Punjab), respondent No.4 (Empanelment Committee) and respondent No.5 (Dinkar Gupta), the selected candidate. Learned senior counsel advanced arguments in their behalf.

34. It hardly needs any mention that the Police Establishment plays a pivotal role in the Administration of a State. Normally, it is the prerogative of the Government of the State, to choose the Heads of various Departments and Establishments. The activities of the Police Administration would have their impact on the public at large, both positive and negative. Realizing the importance of bringing in place, a neutral and independent Police Establishment, the Government of India appointed “National Police Commission (NPC)” way-back in the year 1977, to examine the role and performance of the Police, not only as a law enforcement agency, but also as an institution, to protect the rights of the citizens, as enshrined under the Constitution. It is not necessary to mention the other points of reference. The Committee submitted as many as 5 reports between



1979 and 1981. However, hardly any steps were taken for implementation thereof.

35. Sri Prakash Singh, who served as DGP of Assam and Uttar Pradesh and head of Border Security Force, was also awarded the “Padma Shri” in 1991. He and some prominent persons approached the Hon’ble Supreme Court feeling aggrieved by the failure of the administration to take steps for implementation of the report of NPC. Notices were issued to the Central and State Governments. After extensive discussion with reference to various reports and measures, the Hon’ble Supreme Court issued the following directions, as regards the selection and appointment of the DGP (HoPF):

“(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.”



36. From a perusal of this, the following aspects become clear:

- a) The selection of the officers shall be from amongst the 3 senior-most officers of the Department,
- b) The empanelment on promotion by the UPSC was required to be on the basis of
  - (i) the length of service,
  - (ii) very good record; and
  - (iii) the range of experience for heading the police force

It was also directed that once appointed, the officer shall remain in the post of DGP (HoPF) for a period of 2 years, irrespective of his left over service till the date of superannuation. For all practical purposes, the procedure *in vogue*, in any different form, was substituted with one, referred to above. Many States wanted modification of the procedure so prescribed and in some cases, complete exemption. A bunch of I.As. was filed between 2013 and 2018. They were heard and disposed of on 03.07.2018. Apart from reiterating the procedure directed in the judgment, their Lordships emphasized the merit and seniority, and have neutralized any other procedure, which does not accord

with the one stipulated in the judgment. In the order dated 03.07.2018, the following directions were issued:



“Having heard learned counsel for the parties, we pass the following directions:

- (a) All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police;
- (b) The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh’s case(supra) and intimate to the States;
- (c) The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;
- (d) None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh’s case(supra);
- (e) An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation. Such a practice will not be in conformity with the spirit of the direction.



(f) Our direction No.(c) should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage.

(g) Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.

The present directions shall be followed scrupulously by the Union of India and all the States/Union Territories. If any State Government/Union Territory has a grievance with regard to these directions, liberty is granted to them to approach this Court for modification of the instant order.”

Special note of paragraphs (f) & (g) above need to be taken.

37. The 3<sup>rd</sup> respondent, State of Punjab, filed I.A. No.144172/2018 before the Hon'ble Supreme Court, with the following prayer:

“I.A. No.144172/2018 (State of Punjab)

(i) Exempt the Applicant State and its legislation The Punjab Police (Second Amendment) Act, 2018, duly assented to by the Governor of Punjab from the ambit and operation of Order dated 03.07.2018.

(ii) Permit the Applicant State of Punjab to implement the Punjab Police Act, 2007, as amended;

(iii) Permit the applicant to appoint it.”



This and other similar I.As. were heard in detail, on 16.01.2019. The I.As. were dismissed with the following observations:

“On an in-depth consideration, we are left with no doubt that the said directions, keeping in mind the spirit in which the Court has proceeded to issue the same, as set out in paragraph 12 of the judgment in Prakash Singh (supra) (already extracted), are wholesome and if the same are implemented, it will sub-serve public interest until such time that the matter is heard finally. In this regard, we had taken note of the submissions made by Mr. Rakesh Kumar Gupta, Secretary, Union Public Service Commission (U.P.S.C.), who has appeared personally on the request of the Court made yesterday (15.1.2019). Mr. Gupta has stated before the Court that after the judgment was rendered in Prakash Singh (supra), a panel of eligible officers in the rank of D.G.P. or the Additional D.G.P. had been drawn up by a committee of the U.P.S.C., in as many as 12 States and further that the said committee consisted of representatives of the U.P.S.C., the Central Government and the State Governments concerned. Mr. Gupta further submitted that subsequent to the directions of this Court, dated 3.07.2018, similar panels have been drawn up for two States and at present, proposals have been received from two more States for the purpose of drawing up such panels.

The above practice which has been followed further fortifies our view that, for the present, the directions in Prakash Singh (supra) read with the order of this Court, dated 3.7.2018, would not require any correction or modification.”

Thus, it is evident that the effort of 3<sup>rd</sup> respondent to follow a procedure, different from the one stipulated by the Hon’ble Supreme Court, did not fructify. Three days after the I.A. was rejected, the 3<sup>rd</sup> respondent forwarded



the proposals to the 2<sup>nd</sup> respondent in the context of preparation of panel. A list of 12 eligible officers was enclosed. The relevant paragraph reads:

“5. Punjab Government has at present, sanctioned strength of 2 cadre posts of DGPs. The competent authority in Government of Punjab has already approved the revised cadre strength of 3 DGPs and sent to MHA vide No.1/18/2014-3H1/679 dated 09.03.2018. It is, therefore, requested that a panel of 6 would be required to be sent by UPSC to the State Government for the post of DGP as per the guidelines of UPSC.

6. The Government of Punjab would request for the early formulation of such panel of 6 officers keeping in view the fact that the person incumbent Shri Suresh Arora has requested the Government of Punjab to relieve him of the responsibilities of the post of DGP, Punjab as soon as the process of the appointment of new DGP is completed.”

38. It is evident that the list of 12 officers was felt necessary on the assumption that a panel of 6 would be prepared by the 2<sup>nd</sup> respondent. On its part, the 2<sup>nd</sup> respondent does not appear to have addressed the issue as to whether the panel should comprise of 3, as directed by the Hon'ble Supreme Court or 6, as desired by the 3<sup>rd</sup> respondent. If the proposed panel was to comprise 3 names, the list of 12 officers was required to be reduced in size, in such a way that it is adequate for preparation of the panel of 3 names. This becomes important from the point of view of the fact that officers at Sl. Nos. 6, 8 & 9 were empanelled.



39. The 2<sup>nd</sup> respondent constituted a Committee, the 4<sup>th</sup> respondent, comprising of 5 Members, namely, one from UPSC, one from Ministry of Home Affairs, Chief Secretary of Government of Punjab, DGP, Punjab and an outsider, who happened to be a Director General, Seema Suraksha Bal (SSB). The 4<sup>th</sup> respondent examined the cases of all 12 officers included in the list and prepared detailed Minutes, running into 9 pages. The directions of the Hon'ble Supreme Court in its judgment dated 22.09.2006 as well as directions contained in orders dated 03.07.2018 and 16.01.2019, which were extracted in the preceding paragraphs, were reproduced in the Minutes of the Committee. Thereafter, the 4<sup>th</sup> respondent proceeded to observe as under:-

“3.1 In view of the above circumstances and the Orders dated 03.07.2018 and 16.01.2019 of the Hon'ble Supreme Court, the Government of Punjab, vide letter dated 19.01.2019 submitted a proposal requesting the Commission to prepare a panel for appointment to the post of DGP, Punjab. Consequently, the Government of Punjab vide letter dated 21.01.2019, submitted various information/documents to complete the proposal for preparation of panel for selection for appointment to the post of DGP (HoPF) of Punjab.

3.2 The Committee were further informed that the term of the incumbent DGP (HoPF), Shri Suresh Arora expired on 31.12.2018. In view of the interim Order of the Hon'ble Supreme Court dated 12.12.2018 in WP (C) No.310/1996, the term of the incumbent DGP was extended and continues till 31.10.2019. In view of the above, the Committee



were informed that, the date of reckoning of vacancy is 01.02.2019.

3.3 Accordingly, in pursuance of the above, the Empanelment Committee met today to prepare a panel for appointment to the post of DGP (HoPF) of Punjab.

4.1 The Committee were informed that the State Government forwarded the names of the following officers for consideration for empanelment:

S. No.	Name (S/Shri)	Date of Birth	Batch
1.	Samant Kumar Goel	13.05.1960	RR:1984
2.	Mohd. Mustafa	15.02.1961	RR:1985
3.	Hardeep Singh Dhillon	30.03.1959	RR:1985
4.	Jasminder Singh	28.08.1959	RR:1986
5.	Siddharth Chattopadhyaya	08.03.1962	RR:1986
6.	Dinkar Gupta	22.03.1964	RR:1987
7.	C. S.R. Reddy	01.01.1961	RR:1987
8.	M.K. Tiwary	11.02.1962	RR:1987
9.	V.K. Bhawra	03.05.1964	RR:1987
10.	Prabodh Kumar	10.01.1965	RR:1988
11.	Rohit Choudhary	18.03.1962	RR:1988
12.	Iqbal Preet Singh Sahota	12.08.1962	RR:1988

4.2 As intimated by the Government of Punjab, it was brought to the notice of the Committee that:

- (i) No disciplinary/criminal proceedings are pending against any of the eligible officers;
- (ii) No penalties have been imposed on any of the eligible officers; and
- (iii) The State Government have certified integrity in respect of all eligible officers.
- (iv) No adverse remarks are noticed in the ACRs/APARs of any of the eligible officers;

5.1 The Committee decided to adopt the criteria for selection, as indicated by the Hon'ble Supreme Court and quoted at para 2.1 and 2.2 above, which are the length of service, very good record, the



range of experience for heading the Police force and residual service in respect of each of the eligible officers.

5.2 The Committee took into consideration the ACRs/APARs of the eligible officers for the last 10 years, upto the year 2017-18 while assessing the suitability of the officers on the parameter of assessment of service records. The Committee went through the records of the eligible officers and made their assessment after deliberating on the grading of the officer as indicated in the various columns recorded by the Reporting Officer/ Reviewing Officer/ Accepting Authority in the ACRs/APARs for different years and then finally arrived at the grading to be assigned in respect of those years. The Committee also took note of Orders regarding appreciation for the meritorious work done by the concerned officers. Only those officers who were assessed by the Committee as at least "Very Good" for each of the preceding 10 years were considered for inclusion in the panel.

5.3 The Committee further decided that as the overall assessment of an Officer cannot be withheld because of non-availability of ACRs, the Committee have to make a categorization on the basis of available ACRs. Thus, where one or more ACRs of an Officer were not available during the relevant period, the Committee considered in lieu thereof the available ACR(s) of the year(s) immediately preceding the period of last 10 years so that the requirement of consideration of ACRs of at least 10 years is met.

6. On the basis of the above assessment, i.e., assessment of the service record, residual service and the range of experience for heading the police force in respect of each of the eligible officers, the Committee recommended a panel consisting of the names of the following officers as suitable for appointment to the post of Director General of Police (Head of Police Force), Punjab.



S. No.	Name(S/Shri)	Date of Birth
1.	Dinkar Gupta	22.03.1964
2.	M.K. Tiwari	11.02.1962
3.	V.K. Bhawra	03.05.1964

40. It is important to note that the 4<sup>th</sup> respondent has categorically mentioned that it has decided to adopt the criteria for selection, as indicated by the Hon'ble Supreme Court in the orders referred to above. This is also evident from paragraph 5.1 of the counter affidavit filed by respondent Nos. 2 & 4. In fact, they have no option, except to do that. Out of 3 factors, 'length of service' is a matter of record and hardly any assessment was needed in that behalf. The aspect of 'very good record' was taken note of in paragraphs 5.2 & 5.3. No discussion was made about the third aspect, namely, 'range of experience' or the manner in which it was assessed. Simply a mention thereof was made in paragraph 6.1.1, along with other two factors and the panel was prepared.

41. It is important to note that in its judgment dated 22.09.2006, the Hon'ble Supreme Court emphasized the factor of merit and seniority when it observed that the selection shall be from 'amongst 3 senior-most officers of the Department, who have been empanelled'. In the subsequent order dated 03.07.2018, the Hon'ble



Supreme Court observed that “merit and seniority should be given due weightage”. Not a word was said about those aspects.

42. We are conscious of the fact that the Court and Tribunal cannot function as the appellate authorities whenever the selections are put in challenge before them. The small area of scrutiny would be as to whether broad parameters of selection have been followed and whether any serious infraction of law has taken place. The Committee is conferred with power to make selection and as long as its decision is not tainted with any factor, like *mala fide*, no interference is permissible. Reference in this context is made to the following judgments of Hon’ble Supreme Court:

- (i) **Union Public Service Commission v. Hiranyalal Dev & others**, (1988) 2 SCC 242,
- (ii) **Dalpat Abasaheb Solunke & others v. Dr. B.S. Mahajan & others**, (1990) 1 SCC 305,
- (iii) **M.V. Thimmaiah & others v. Union Public Service Commission & others**, (2008) 2 SCC 119,



- (iv) **Uttar Pradesh Public Service Commission, through its Chairman & another v. Rahul Singh & another**, (2018) 7 SCC 254,
- (v) **Union Public Service Commission v. M. Sathiya Priya & others**, (2018) 15 SCC 796,
- (vi) **R.S. Dass v. Union of India & others**, 1986 (Supp) SCC 617,
- (vii) **Major General I.P.S. Dewan v. Union of India & others**, (1995) 3 SCC 383,
- (viii) **Union of India & another v. Samar Singh & others**, (1996) 10 SCC 555; and
- (ix) **Chairman, All India Railway Recruitment Board & another v. K. Shyam Kumar & others**, (2010) 6 SCC 614.

43. Suffice it to refer to the following paragraphs in **Union Public Service Commission v. M. Sathiya Priya** (supra):-

“18. We are conscious of the fact that the expert body’s opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body’s opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/Board of Appointment



cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Action “Power tends to corrupt, and absolute power corrupts absolutely”. The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinised the experience, Annual Confidential Reports and other relevant factors which were required to be considered before selecting the eligible candidates for IPS. The Selection Committee had in fact scrutinised the merits and demerits of each candidate taking into consideration the various factors as required, and its recommendations were sent to UPSC. It is the settled legal position that the courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee’s decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints – self-imposed, undoubtedly – of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.”

44. The selection and appointment challenged in these O.As. are substantially different from those, which take place under the relevant Service Rules. A typical procedure, as well as parameters were stipulated by the Hon’ble Supreme Court, having regard to the primacy accorded to the post of DGP (HoPF). Had it been a case where the 4<sup>th</sup> respondent has conducted its activity strictly within the parameters prescribed by the Hon’ble



Supreme Court, there would not have been any necessity to make any further scrutiny. However, even from their own admission, the 2<sup>nd</sup> and 4<sup>th</sup> respondents have deviated from the prescribed procedure.

45. Here itself, we state, even at the cost of repetition, that the Hon'ble Supreme Court was so categorical, that it has neutralized, if not frozen, any other procedure, apart from the one indicated by it. The relevant paragraph in the order dated 03.07.2018 has already been extracted.

46. No mention is made in the Minutes of the 4<sup>th</sup> respondent that any other procedure was followed. However, in their counter affidavit, 2<sup>nd</sup> and 4<sup>th</sup> respondent stated as under:-

“5.1 It is respectfully submitted that the Empanelment Committee Meeting to prepare the panel of eligible officers for appointment to the post of DGP (HoPF), Punjab was held on 04.02.2019. The Committee considered the names of the applicant (Shri Mohd. Mustafa), Shri Dinkar Gupta and Shri M.K. Tiwari at Serial numbers 02, 06 and 08 respectively in the eligibility list alongwith other eligible officers. On the basis of the assessment of service records, residual service, length of service and the range of experience for heading the police force, the Committee included the names of Shri Dinkar Gupta and Shri M.K. Tiwari in the panel at Sl.No.1 and 2 respectively for appointment to DGP (HoPF), Punjab. The applicant was also assessed as 'FIT' on the basis of service records. He was also having adequate length of service and residual service. However,



the Committee assessed the applicant as “Inadequate” on the criteria of range of experience in core policing areas during the last 10 years. On the basis of the above assessment, the name of the applicant was not included by the Committee in the panel for appointment to DGP (HoPF), Punjab.”

47. The further reasoning is furnished in paragraphs 6.1.2 and 6.1.3 as under:-

“6.1.2 It is humbly submitted that it may be seen from the above that the Empanelment Committee that met on 04.02.2019 considered all the relevant factors including the inter se seniority, merit and experience of the eligible Officers and accordingly prepared the panel on 04.02.2019. The applicant, though, senior in comparison to other selected officers, was not included in the panel, because the Empanelment Committee assessed the range of experience in heading the police force, as “Inadequate” on the basis of his experience in the last 10 years. The Committee considered the following core policing areas while assessing the suitability of eligible officers for inclusion in the panel for appointment to the post of DGP (HoPF), Punjab:

- (i) Intelligence
- (ii) Law and Order
- (iii) Administration
- (iv) Investigation
- (v) Security.”

6.1.3 It is humbly further submitted that the aforesaid Draft Guidelines, which were issued in 2009 and also submitted before the Hon’ble Supreme Court for perusal in the case of Shri Prakash Singh (supra), clearly articulate that the Empanelment Committee can adopt its own criteria for objective assessment of suitability of the officers in the zone of consideration deemed necessary to head the Police force in the circumstances peculiar to that State. The procedure outlined in the draft guidelines are reproduced as under:-



“Each Committee shall adopt its own method and procedure for objective assessment of the suitability of officers in the zone of consideration. The Committee shall make assessment of the ACRs of officer with reference to the last 10 years preceding the date of meeting of the Committee. Only those officers assessed by the Committee as at least “Very Good” for each of the preceding 10 years shall be considered for inclusion in the Panel. The Committee shall also take into account the range of experience relevant for heading the police force as reflected in the bio-data of the officers for determining their suitability for inclusion in the Panel.”

48. In this behalf, it needs to be observed that the so-called draft guidelines do not have any authenticity or legality whatever. It may be true that in the other selections, the Selection Committee constituted by the UPSC is conferred with the power to adopt its own method and procedure. Even in such cases, the discretion is pressed into service to choose the best, when many are found on the same plane. For example, if the selection is to a post for which the prescribed qualification is post graduation, the Selection Committee can take into account the Ph. D degree if the number of qualified candidates is more. However, in the name of adopting its own method and procedure, the Selection Committee cannot bring in an element, which is alien to the selection in question.



49. Whatever is the permissibility of the adoption of its own method for a Selection Committee, such a facility is totally blocked in the context of selection to the post of DGP (HoPF),. Firstly, in its judgment, the Hon'ble Supreme Court specified the three factors, even while emphasizing the importance of seniority and did not permit any other factors. Secondly, the doubt, if any, in this behalf was removed by the Hon'ble Supreme Court, through order dated 03.07.2018. Even while reiterating its earlier directions, the Hon'ble Supreme Court directed as under:-

“Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.”

50. If this is the extent to which the legislation and statutory rules are rendered irrelevant for the purpose of selection of DGP (HoPF), the so-called draft guidelines, which are not contained in any official document, referable to any statute, cannot be permitted to defeat the directions issued by the Hon'ble Supreme Court. Therefore, the procedure mentioned in paragraphs 5.1, 6.1.2 and 6.1.3 of the counter affidavit filed by respondent Nos. 2 & 4 is not only contrary to the law laid down by the Hon'ble Supreme Court, but also is a



one, which does not find place in the Minutes of the meeting dated 04.02.2019 at all.

51. Assuming that the core policing areas are relevant in the selection process, it is a matter of record that there existed 20 such areas, which are mentioned in the performance evaluation. The respondents did not indicate any other source from which the said areas were selected. It is not even mentioned as to on what basis the 5 areas were selected and why intelligence, which occurs at Sl. No.14 in the list of 20, was accorded primacy.

52. At one stage of hearing of the O.As., i.e., on 25.09.2019, the Tribunal wanted to know the basis for choosing such areas for the purpose of preparing the panel. It was also desired that an affidavit is filed by respondent Nos.2 & 4 in this behalf. Accordingly, M.A. No.1834/2019 was filed on 18.11.2019 seeking permission to file an affidavit. The Application reads:-

“1. That the above mentioned Original Application is pending in this Hon’ble Tribunal and is next fixed for hearing on 21.11.2019.

2. That this Hon’ble Tribunal during the course of hearing on 25.09.2019 sought clarification on following points:-

i. What is the basis/criteria for recommending 3 (three) candidates; whether it depends upon the sanctioned strength of cadre posts of DGP.



ii. If there are 2 (two) sanctioned cadre posts of DGP, then what will be the effect and if there are 3 (three) cadre posts of DGP, then what will be the effect.

iii. Whether the criteria for selection on the basis of length of service, very good record and range of experience for heading the police force has been followed for preparing the panel for the post of DGP for other States.

iv. Why the range of experience in the intelligence service has been given much weightage out of the 16 core policing areas?

3. That it would be just, fair, in the interest of justice to permit the Respondent No.2 & 4 to place on record additional information by way of affidavit and letter dated 08.03.2018 as Annexure R-2/1.

It is, therefore, prayed that the Respondent No.2 & 4 may be permitted to place on record additional information by way of an affidavit and letter dated 08.03.2018 as Annexure R-2/1 in the interest of justice.”

53. In the accompanying affidavit, even while stating that the selection was made in accordance with the judgments rendered by the Hon'ble Supreme Court and the orders passed thereafter, the respondents stated in the affidavit as under:-

“(VII) That, the Draft Guidelines clearly articulate that each Committee shall adopt its own method and procedure for objective assessment of the suitability of officers in the zone of consideration. The Committee shall also take into account the range of experience relevant for heading the police force as reflected in the bio-data of the officers for determining their suitability for



inclusion in the panel. In other words, the Empanelment Committee can adopt its own criteria for assessment of suitability of officers in the zone of consideration as deemed necessary to head the police force. Accordingly, the Empanelment Committee that prepared the panel of officers on 04.02.2019 for the position of DGP (HoPF), for the State of Punjab assessed the eligible officers with reference to their range of experience in core policing areas in the last ten years. The core policing areas considered in this case were as under:-

- (i) Intelligence
- (ii) Law and Order
- (iii) Administration
- (iv) Investigation
- (v) Security”

54. It is just un-understandable as to how the 4<sup>th</sup> respondent felt free to adopt its own criteria, when the entire exercise was circumscribed by the judgment and subsequent orders passed by the Hon’ble Supreme Court. During the course of arguments also, we asked as to the basis for this and whether the same is being followed in respect of other States. The answer was that the set of core policing areas chosen in this behalf was specific to State of Punjab. Another surprise is that according to the respondent Nos. 2 & 4, the list can change at subsequent stages even for State of Punjab.

55. It is clear that the selection process, which was galvanized, has been virtually ignored and defeated with impunity. A device procedure was evolved to choose the



selection criteria in such a way that the desired candidates are selected. This exactly was the malady, which the Hon'ble Supreme Court wanted to eradicate.

56. The plea of the applicants that even in the 5 areas chosen by the respondent No.4, they excel the performance compared to the 5<sup>th</sup> respondent, is sought to be overcome, by stating that the 5<sup>th</sup> respondent served in the field of intelligence for more than a decade.

57. We do not enter into the field of selection or the relative assessment made by the 4<sup>th</sup> respondent. The concern is that the very choosing of the criteria was in contravention of the judgment of Hon'ble Supreme Court. The mere posting of an officer continuously in a particular activity cannot, by itself, be a factor to make him stand above others, if not supercede his seniors. Whether or not a particular officer is posted in specific activity or area, is not in his hands and it is always in the discretion of the Administration. The performance of an officer, in whatever capacity he is posted, is assessed in the contemporary ACRs. Barring that, there is no other yardstick. The length of service in a particular activity hardly counts. Sometimes it would be a factor to doubt the ability of the officer to handle other activities. It may



also give an indication about his proximity to the Government of the day.

58. The issue can be examined from another angle. The easiest way for a State Government to ensure that an officer of its choice and who is pliable as DGP, would be to continuously post him in any specific activity, howsoever inconsequential it may be, and then to make an effort to accord primacy to such activity in the process of selection. There cannot be a better instance of arbitrariness and favoritism, than this. The selection process would stand reduced to a mockery. Any aspiring officer would make endeavor in ensuring that he remains in the good books of administration and he is posted continuously in a particular activity.

59. The handling of the same activity for a fairly long period can certainly be a factor if the selection is to the post of that very specialization. When the selection is to head of the Police Administration, the assessment must be of overall performance, and not of a particular facet.

60. It is fairly well known that whenever the appointment is through a process of selection, there is every likelihood of seniority being ignored or bypassed. A senior can be bypassed under two circumstances,



namely, (a) when he is found to be suffering from any negative factor or (b) when his junior is found to be possessing additional and meritorious characteristics. If both the officers are found to be satisfying the norms required for selection, a senior cannot be bypassed. This would be in conformity with the general perception of service also. An officer, who has put in 2 or 3 decades of service, would certainly aspire to reach the highest position, if his seniority permits of that. If he is ignored without any valid reason, he would feel both frustration and humiliation. In case the officer so ignored is known for his efficiency and integrity, the element of frustration will percolate down to the lower levels. The enthusiasm to work honestly and efficiently would get watered-down, and inadvertently or subconsciously, a perception would step in to the effect that it is not honesty and efficiency, but something else, which counts for promotion of an officer. Such a tendency would certainly be harmful to the State at large.

61. In **Dr. Sudha Suri v. Union of India**, 2002 (2) SCT 63, the Hon'ble Punjab & Haryana High Court discussed the relevance of seniority even where the appointment is through selection. Hon'ble Justice Swatanter Kumar, as his Lordship then was, discussed



the issue at length and referred to the judgments rendered by the Hon'ble Supreme Court on this aspect. The following observations of the Hon'ble Supreme Court in **Chabungbambohal Singh v. Union of India & others**, 1995 (Suppl.) 2 SCC 83, were taken note of. In the case before Hon'ble High Court, the selection was to the post of Dean. The petitioner therein, who was senior, was overlooked. After taking into account the entire facts on record, the Governing Body dealt with the selection/appointment of the candidate through the following resolution:

**“Appointment of Dean at POIMER, Chandigarh**

The panel of names and the recommendation of the Director, PGIMER, Chandigarh was placed before the Governing Body. After considering the bio-data of the candidates in detail, the Members of the Governing Body approved the name of Prof. O.N. Nagi, for appointment as Dean, PGIMER, Chandigarh.”

The Hon'ble High Court observed as under:

32. Besides above four lines, there is no record produced before the court, which could even remotely suggests as to what weighed with the recommending authority or the Governing Body for finding the other senior candidates to respondent No. 4 as unsuitable for appointment to the post of Dean. The institute in its affidavit has stated that none of them were found unsuitable for promotion. If that be so how could senior be rejected without adopting any criteria or giving any reasons whatsoever. While we mention about giving reasons, we do not even intend to remotely suggest that detailed order or noting should have been



recorded on the file or records of the institute maintained during normal course of its business. All that is expected and desirable is that a definite expression of Opinion by the concerned authority, which would clearly show the proper decision making process culminating into fair and just final decision. Not even an iota of suggestion or process of forming view by the Director or the Governing Body is available on record. In fact, it was conceded by the learned counsel appearing for the Institute that except the above resolution, there was no record of recommendation and present appointment of Dean with the Institute. It is apparent that bio-data/resume submitted by the respective Professors was circulated to the members of the governing body. The afore-stated minutes of the governing body mention "recommendation of the Director, PGIMER Chandigarh was placed before the governing body."

33. We have already noticed that an oral recommendation was made in favour of Dr. S.K. Gupta during the course of meeting of the governing body, by the Director. The expression placed on record in its common parlance would mean placing or keeping a document on record. Admittedly, there was no recommendation in writing which could be placed on record. The governing body further recorded that it approved the name of respondent No. 4 appointment as Dean. Approval is an act of approving, grant of formal -permission or sanction. It normally would refer to an existing order/fact. In the present case, the recommendation of the Director was not approved by the governing body. No reasons or opinion expressed by the recommending authority for recommending Dr. S.K. Gupta from the panel under consideration, the governing body again does not record anything much less reasons for differing with the recommendations made and for selection of respondent No. 4 was junior most Professor and Head of the Department amongst the empanelled persons. This by no stretch of imagination could be stated to be sufficient compliance to the basic rule of fair play and proper application of mind by the concerned authorities. It offends the twin test provided under the well settled canons of service jurisprudence i.e. fair play in administrative action and proper application of mind by the concerned



authorities. Such infringement would have but an inevitable result of adding colour of arbitrariness to such administrative action.”

In paragraphs 52 and 55, the Hon’ble High Court made the following observations:

“52. Recommendation upon due consideration of relevant factors, is the privilege of the recommending authority and to give the same due weightage in relation to matters of appointment, would be obligatory upon the appointing authority. Any interpretation of regulation/instructions which would render either of the authorities dysfunctional or nonfunctional in the method of appointment, would have to be discouraged. Mischief must be prevented and not introduced by procedural interpretation. The scheme of principle legislation and other ancillary legislation make it obligatory upon the concerned authority not to inter mingle the fine distinction proved in the language of the statute/rule. The clear distinction between the functions to be performed by each authority must be clearly understood with an intention to prevent the mischief or absolute arbitrariness in State action.

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55... Expert bodies or professorates are experts of their line and the Court would normally not sit in judgment over the discretion exercised by them unless it suffers from the vice of arbitrariness or is based on no reason, whatsoever. This unreasoned recommendation was rejected again for no reason, whatsoever. Respondent No. 4 had not been recommended by the Director of the Institute. Thus, his appointment offended one of the basic features prescribed under the rules. Even if it is assumed that the appointing authority could exercise such a power, then it was mandatory for it to record some kind of opinion or reason for rejecting all others and granting appointing to respondent no.4.”



The aforesaid judgment was upheld by the Hon'ble Supreme Court in S.L.P. (C) No.22135/2001 on 18.03.2002. The same situation obtains in the instant case.

62. Obviously by taking note of the indiscriminate supercession of the seniors in the context of promotion to the post of DGP (HoPF), the Hon'ble Supreme Court gave an indication about the primacy to be accorded to the senior. In the main judgment, their Lordships directed that selection shall be from amongst the three senior-most officers of the Department, who have been empanelled for promotion. In the order dated 03.07.2018, the merit and seniority was emphasized.

63. It is true that the Selection Committee is not under obligation to record any reasons in support of its conclusions. Where, however, a person, who is otherwise found to be fit, is sought to be overlooked, an indication is required to be given in a very brief or succinct manner. The Minutes of the meeting of 4<sup>th</sup> respondent do not give an indication as to what weighed with the Selection Committee (a) to operate a list of 12 officers forwarded with a request to send a list of 6 officers so operated for selecting only 3; and (b) how the candidates at Sl. Nos. 6, 8 & 9 were selected in supercession of their



seniors, who too, were found to have satisfied the criteria stipulated by the Hon'ble Supreme Court. Failure to do so, would only lead to the conclusion that there do not exist any valid reason. The one, which is sought to be mentioned in the counter affidavit, was already held to be not in accord with the judgment of Hon'ble Supreme Court. The result is that the entire selection process and consequential appointment of the 5<sup>th</sup> respondent is contrary to the judgment of Hon'ble Supreme Court in **Prakash Singh's** case (supra), and the orders passed thereafter on 03.07.2018 and 16.01.2019.

64. Though it is also pleaded that the 5<sup>th</sup> respondent was named by the SIT constituted by the Hon'ble Punjab & Haryana High Court and there are other factors against him and two other officers selected in the panel, were not forwarded, we are not impressed with that. Assuming that the 5<sup>th</sup> respondent was named in the report submitted by the applicant in O.A. No.211/2019, heading SIT constituted by the Hon'ble Punjab & Haryana High Court in the context of identifying the nexus between the senior officers of the law enforcing agency and drug mafia, the necessity would have arisen only when any specific order from the Hon'ble High



Court had emerged, wherein the 5<sup>th</sup> respondent is named or there exist any proceedings, in which 5<sup>th</sup> respondent or other selected candidates, figured as parties.

65. The additional plea raised on behalf of applicant in O.A. No.211/2019 is about participation of 6<sup>th</sup> respondent in the selection process. It may be true that the applicant mentioned the name of 6<sup>th</sup> respondent in his report, in a sealed cover, submitted to the Hon'ble High Court, he was permitted to submit his ACR bypassing the 6<sup>th</sup> respondent or that the latter has recused himself from being part of a team to bring about the reconciliation between the applicant and the other police officers. However, unless the applicant is able to demonstrate that the 6<sup>th</sup> respondent has taken any steps adverse to him, any prejudice cannot be inferred. The plea of the 6<sup>th</sup> respondent that he recommended the case of the applicant for award of medals even after registration of an FIR, would only show that he did not have any prejudice against him.

66. Further, being a senior officer in the Administration, the applicant was very much aware that the DGP of a State would be part of Selection Committee. Just as he addressed a letter to the Chief



Secretary, seeking permission to file ACR directly, he could have addressed a letter to UPSC also, stating that he would be prejudiced in case the 6<sup>th</sup> respondent is included as a member in the Selection Committee. Admittedly, he did not give any such indication. It would be unfair to attribute malice or prejudice to the 6<sup>th</sup> respondent on the conclusion of the selection process.

67. Since we are accepting the plea of bias or waiver, we do not feel it necessary to refer to the large number of precedents cited in this behalf.

68. In view of the foregoing discussion, we allow the O.As. holding that:

- (a) The procedure adopted by respondent Nos. 2 & 4 for preparation of the panel for the purpose of selection and appointment of DGP (HoPF) for the State of Punjab, culminating into the Minutes dated 04.02.2019, is patently opposed to, and is violative of the one stipulated by the Hon'ble Supreme Court in its judgment in **Prakash Singh's** case (supra), and the orders dated 03.07.2018 passed therein, apart from being otherwise illegal and arbitrary. Accordingly, the

