

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

612

O.A. NO. 2631 OF 2000

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OA NO. 2851 OF 2003

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New Delhi, this the 10th day of September, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

M.Krishna

...Applicant

-Versus-

Union of India & Ors.

...Respondents

Present: Shri P.N. Lekhi, learned senior counsel with Sh. D.K. Darg with Shri Manzoor Ali Khan, learned counsel for applicant in both OAs.

Shri Nikhil Nayyar with Sh. R.K. Shukla, learned counsel for the respondents no. 3 and 4 in OA No. 2631/2000.

Shri M.M. Sudan, learned counsel for the respondent no. 1 in both OAs.

Shri S.K. Mishra, learned senior counsel with Shri S.K. Gupta, learned counsel for respondent no. 2 in OA No. 2631/2000

Shri S.K. Mishra, learned senior counsel with Anju Rajput, learned counsel for respondent in OA No. 2631/2000.

Shri Nikhil Nayyar with Shri R.K. Shukla, learned counsel for respondent no. 3 in OA No. 2851/2003.

1. To be referred to the Reporters or not? Yes
2. To be circulated to outlying benches or not? Yes

S. Raju
(Shanker Raju)
Member (J)

(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 2631 OF 2000

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OA NO. 2851 OF 2003

New Delhi, this the ^{10th} day of September, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

OA No. 2631/2000

M.Krishna
s/o late Munivendatappa
Secretary,
Karnataka State Backward Classes Commission,
No. 322, Dar-e-Salam Complex,
Queens Road,
Bangalore – 560 002. ...Applicant

-Versus-

1. Union of India through
Secretary,
Ministry of Personnel, Public Grievances
& Pensions,
Department of Personnel and Training,
North Block, New Delhi.
2. The Union Public Service Commission
Through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi.
3. The State of Karnataka through
Chief Secretary to the Govt. of Karnataka,
Vidhan Soudha,
Bangalore – 560 001.
4. Shri B.K. Bhattacharya, IAS
Chief Secretary to the Govt. of Karnataka
Vidhan Soudha
Bangalore – 560 002.

(J.A)

5. B.S. Palaksha, aged 49 years
s/o B.Siddappa,
Chief Executive Officer,
Zilla Paanchayat Mandya,
Karnataka.
6. M.S. Sadiq, s/o Habibulla,
Secretary,
Karanataka Slum Clearance Board Abhya Complex,
Rivuldar Street, Seshadripuram, Bangalore,
Karanataka.
7. K.R. Srinivas s/o Rangaiah,
Secretary,
Karnataka Public Service Commission,
Park House, Bangalore, Karnataka.
8. B.S. Ramprasad s/o Srinivasa Iyenagar,
Director Pre-University Board,
Maharani's College, Circle,
Bangalore 560 009 (Karnataka)
9. S.N. Jayaram s/o B.Narasimhaiah
Chief Executive Officer
Zilla Panchayat Madikeri
Kodagu District, Karnataka.
10. G.L. Chandrasekharaiah s/o Lingegowda,
Chief Executive Officer,
Zilla Panchayat Shimoga,
Karnataka. ...Respondents

OA No. 2851 of 2003

M.Krishna s/o late Munivendatappa
Secretary,
Aged about 53 years,
Presently working as Principal,
District Training Institute,
District Tumkur, Karnataka. ...Applicant

-Versus-

1. Union of India
through Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel and Training,
North Block, New Delhi.

2. The Union Public Service Commission through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi.

3. The State of Karnataka through
Chief Secretary to the Govt. of Karnataka,
Vidhan Soudha,
Bangalore - 560 001.Respondents

Present: Shri P.N. Lekhi, learned senior counsel with Sh. D.K. Darg with Shri Manzoor Ali Khan, learned counsel for applicant in both OAs.

Shri Nikhil Nayyar with Sh. R.K. Shukla, learned counsel for the respondents no. 3 and 4 in OA No. 2631/2000.

Shri M.M. Sudan, learned counsel for the respondent no. 1 in both OAs.

Shri S.K. Mishra, learned senior counsel with Shri S.K. Gupta, learned counsel for respondent no. 2 in OA No. 2631/2000

Shri S.K. Mishra, learned senior counsel with Anju Rajput, learned counsel for respondent in OA No. 2631/2000.

Shri Nikhil Nayyar with Shri R.K. Shukla, learned counsel for respondent no. 3 in OA No. 2851/2003.

ORDER

By Shri Shanker Raju, Member (J)

These two OAs pertain to selection/appointment to the Indian Administrative Service by way of promotion. Though these relate to different years, yet grounded on same set of facts and involve common question of law. Therefore, to avoid multiplicity and conflicting decisions, these OAs are being disposed of by this common order.

2. As per Rule 8(1) of the Indian Administrative Service (Recruitment Rules) 1954, the Central Government, in consultation with State Government and the Union Public Service Commission (hereinafter referred to as "Commission"), frame Regulations called Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as "Regulations"). These are meant for appointment of qualified, eligible and meritorious State Civil Services Officers to the Indian Administrative Service by way of promotion in the assigned quota. The aforesaid consideration is valid upto the age of 54 years. For the purposes of making selection as per Regulation 3 ibid, Committee consists of Chairman of the Commission and other Members. The Committee considers the suitability of officers for selection with reference to their integrity and a recorded satisfaction is to be arrived at from the confidential reports of the officers by including them in the select list stating that nothing adverse exists against their integrity. This Committee shall ordinarily meet every year and prepare a list of suitable members of State Civil Services for promotion to the Service. The number of State Civil Services Officers to be included in the list shall be determinable by the Central Government in consultation with the State Government as per Regulation 5 ibid.

3. The State Government forward a copy of the list, referred to in Regulation 6, to the Central Government, which further send it for observation on the recommendations of Committee to the Commission. The Commission considers the said list

prepared by the Committee along with the documents and observations of the Central Government as per Regulation 7 ibid. The list finally approved by the Commission shall form the select list of the Members of the State Civil Services and shall remain in force till 31st day of December of that year. As per Regulation 8, appointments of Members of State Civil Services from the select list to the posts borne on the State cadre shall be made. As per Regulation 9, appointment of Members of State Civil Services, who express their willingness to be appointed to the Service, shall be made by the Central Government as per the order in which the name of the concerned member appears in State Service.

4. The above Regulations with elaborate deliberations have been held valid by the Apex Court in **Sayed Khalid Rizvi versus Union of India**, 1994 SC (L&S) 84.

5. In O.A. No. 2631/2000 applicant, who is a Member of Karnataka State Civil Service and is working as State Secretary, Karnataka State Backward Classes Commission, assails denial of his appointment by promotion to the I.A.S. and has sought cancellation of the selection made by Commission in its meeting held on 5.12.2000.

6. In O.A. No. 2851/2003, applicant has assailed selection of Shri C. Somashekhar and V.G.B. Patil and their appointment by promotion in IAS in the meeting of Commission held on 14.11.2003 with a further prayer of quashing the said selection.

7. A brief factual matrix is relevant to be highlighted.
Applicant was selected in Karnataka Administrative Service

Grade-I in the year 1978 and was further promoted to Senior Grade and Selection Grade in the year 1987 and 1992 respectively. Applicant was also selected into IAS in the year 1996 but was not appointed for want of vacancy. In the Selection Committee Meeting held by the Commission on 4.12.2000, 11 State Officers had been selected whereas the applicant was not appointed by way of promotion.

8. Karnataka State Civil Services (Confidential Reports) Rules, 1985 notified on 9.8.1985 provides for writing ACRs. It is reviewed on communication by the accepting authority. These Rules were amended by a notification issued on 8.2.1999, which were prospective in nature. In so far as validity of reports under Rule 5 is concerned, it is provided that the reports written by the reporting authority prior to the amendment shall be deemed to be valid and complete for the purposes of the Rules.

9. Applicant, being aggrieved with the non-issuance of the integrity certificate to be considered by the Commission in its meeting for selection of officers from Karnataka State Administrative Service to the IAS pertaining to the vacancies of the year 1998, 1999 and 2000, filed application No. 941/2000 before the Karnataka Administrative Tribunal at Bangalore. Multifold challenges were to the report of the year 1997-98, which was allegedly not forwarded; non-issuance of integrity certificate on the ground that in pursuance of a complaint to the Lok Ayukat for possession of disproportionate assets & liabilities and investigation has been carried out in a case



registered under FIR LAC21/95 under the Prevention of Corruption Act. After meticulously dealing with the contentions, as the report of 1997-98 was forwarded to the Selection Committee, directions have been issued by an order dated 4.12.2000 to the respondents to issue a certificate regarding integrity of the applicant to the Selection Committee.

10. Applicant has also filed Application No. 538/2001 before the Karnataka Administrative Tribunal where he had challenged downgrading of his ACRs.

11. While filing O.A. 2631/2000 alleging bias against the then Chief Secretary Shri B.K. Bhattacharya and challenging the selection made by Commission in its meeting dated 5.12.2000, the Tribunal, by an order dated 21.3.2002 on the preliminary objection that OA is premature as the same issue has been dealt with in OA 538/2001 before the Karnataka Administrative Tribunal, dismissed the O.A. The aforesaid led to filing of CWP No. 4594/2002 before the High Court of Delhi wherein by an order dated 6.8.2002 on an undertaking given by the counsel that Application No. 538/2001 shall be withdrawn from Karnataka Administrative Tribunal, directions had been issued to the Tribunal by remanding back the case to dispose of it on its merits.

12. Basically, the thrust of the arguments in OA No. 2631/2000 advanced by the learned senior counsel Shri P.N. Lekhi on the bias against Shri Bhattacharya, the then Chief Secretary to the Govt. of Karnataka and his wife Mrs. T. Bhattacharya, the then Additional Chief Secretary, who was



Member of the Selection Committee of the State, is that for selection into IAS against vacancies for the year 1998, 1999 and 2000, 11 ACRs for the years 1983 till 2000 were considered but respondent no. 4 Shri Bhattacharya invalidated the 'outstanding' ACRs of the applicant for the year 1993-94 and also downgraded his ACRs for the year 1997-98. The accepting authority also intentionally in the year 2000 downgraded the ACRs as 'average', which ACRs were being evaluated for declaring fit or unfit for the selection held by the Commission.

13. The grounds of bias as reflected are that the respondent no. 4 and his wife also made other participating Members of the Selection Committee not to select the applicant into IAS. This was against the performance shown in the ACRs.

14. It is further contended that discrimination and bias of respondent no. 4 are evident that deliberately the integrity certificate was not issued to enable the Selection Committee to process the matter. As a result of which, it was postponed. The facts shown as foundation of bias were that while the applicant was working in the year 1999 as Chief Executive Officer of Devika Rani Estate, respondent no. 4 wanted his own man to replace the applicant. Accordingly, the applicant was transferred but the Member Secretary had not relieved the applicant and refused to give effect to the said transfer order. Subsequently, respondent no. 4 also issued a Memorandum to the applicant to threaten him to get him involved in a disciplinary action.



15. The catena of cases has been relied upon to buttress the plea of bias. The following decisions have been relied upon:

- i) **Union of India & Ors. Vs. B.N. Jha**, 2003 (4)SCC 531.
- ii) **State of Punjab vs. V.K. Khanna**, AIR 2001 SCC 343
- iii) **Common Cause, a Registered Society vs. Union of India**, AIR 1999 SC 2979.

For integrity, the following cases have been relied upon:

- i) **Amar Kant Choudhary vs. State of Bihar & Ors.**, (1984)1 SCC 694.
- ii) **Badrinath vs. Govt. of Tamil Nadu & Ors.**, (2000) 8 SCC 395
- iii) **G.N. Nayak vs. Goa University & Ors.**, (2002) 2 SCC 712.
- iv) **Gurdial Singh Fiji vs. State of Punjab & Ors.**, (1979) 2 SCC 368.

16. Learned senior counsel contends that whereas the ACRs of the applicant pertaining to the period 1993-1994 have been certified as 'no report' but in view of Rule 5 of the amendment in Karnataka State (Confidential Reports) Rules it has been reported by the reporting officer as valid for the purposes of the Rules. As regards ACRs for the period 1997-98, it is stated that the same has been made 'adverse' by the accepting authority with a bias. Regarding ACR for the year 1998-99, it is contended that though the reporting officer commented the same upon as 'outstanding', reviewing authority changed the grading to 'good' without giving an opportunity. In so far as ACRs for the years 1999-2000 and 2000-2001 are concerned, the same stated to be 'outstanding' but commented upon as



'average' to the prejudice of the applicant. It is further stated that it is mandatory upon the authorities not to have written the report after six months and unless the report is adverse the same is not to be communicated and as such there is no right of representation against downgrading. Learned counsel resorts to doctrine of legitimate expectations and stated that such a procedure is an anti-thesis to Article 14 of the Constitution of India.

17. Learned counsel further alleges discrimination on the ground that Shri C. Shomashekhar, against whom also an FIR was lodged, his integrity being a tainted person, was sent to the Commission and resultantly he was selected. It is further contended that meting out differential treatment to the applicant is violative of Articles 14 & 16 of the Constitution of India. As regards cases under Prevention of Corruption Act, it is contended that no charge sheet has been filed and as such integrity cannot be withheld till a person is convicted. As no adverse remarks have been communicated to the applicant, he cannot be adjudged unfit.

18. In OA 2851/2003 though the persons, who are selected are not impleaded as necessary parties as the quashing of selection would likely to affect them adversely, the contention put forth by the applicant's counsel is that to malign the reputation of applicant, a false FIR was lodged against him. He states that others, who had been selected in pursuance of meeting held by the Commission on 14.11.2003, are juniors than the applicant, having adverse remarks. On the other hand,



Shri Nikhil Nayyar representing Govt. of India vehemently opposed the contentions. He also represents Shri B. K. Bhattacharya-respondent no. 4, against whom malafide has been alleged. According to him, there is no prayer in the OA that OA 2851/2003 is liable to be dismissed on the ground that though selection has been assailed but the persons, who are put in the selection list, are not impleaded as necessary party and as the ultimate result of the OA is likely to affect their rights adversely, the OA is bad for non-joinder of necessary parties.

19. Learned counsel further states that the scope of OA does not allow raising of downgrading and 'no report ACRs' as nothing has been pleaded therein.

20. As regards bias, it is stated that although bias is also levelled against wife of respondent no. 4 but she has not been impleaded as a party. Regarding bias, it is further stated that no particular incidences and materials have been alleged as a foundation to substantiate the bias. Mere averments and acquisition would not take place of proof.

21. As regards integrity, it is stated that it was issued on 6.9.1990 and on 8.9.2000. The only requirement as directed by the Karnataka Administrative Tribunal whether it was to be cleared depended upon the ACRs of the applicant and also the investigation carried out against the applicant?

22. The Commission's senior counsel Shri Mishra vehemently opposed the contentions of the applicant. According to him, being a constitutional body under Article 320 of the



Constitution of India, the Commission discharges its function in view of provisions made in All India Services Act, 1951. The Commission, while discharging functions for selection, is free to devolve its own method and evaluate the record received from the State Government under Regulation 6 of the Promotion Regulations and accord approval to the recommendations of the Selection Committee. According to the learned counsel, as per para 5.4 of the Regulations, the Selection Committee classifies the eligible State Civil Services officers into various zones i.e. 'outstanding', 'very good' or 'unfit' on the basis of over all relative assessment of their service records. A list is prepared which consists of the names placed in the year of their writing their ACRs as 'outstanding' thereafter 'very good' and followed by those who are classified as 'good' within each category as per respective inter-se seniority of State Civil Services Officers. A person, who has been selected, is to be treated as provisional, if the integrity certificate is withheld.

23. Giving factual account of controversy, it is contended that for the year 1996-97 Selection Committee had met on 26.3.1996 and the applicant was in the eligibility list at serial No. 3 out of 9 officers. After having graded as 'very good' the State Government had withheld his integrity due to departmental proceedings and inclusion of his name was made provisional, as there was only one vacancy. Those who were included in the select list at no. 1 & 2 were at serial No. 6 and 7 in the eligibility list and were assessed 'outstanding' and 'very

good' respectively. A chart has been given to summarize what has been elaborated till 2003 selection has been held:

Sl. No	Year	Date of SCM	Size of select list	No. of Officers in the zone of consideration	Status of consideration			Eligibility position of officers included in select list and grading
					Very Good	Good	Unfit	
1.	1995-96	26.3.96	3	9	3	Very Good	IC withheld	6,1,3 (Officers graded as Outstanding, very good and Very Good resp.)
2.	1996-97	3.2.97 and reviewed by RSCM on 4.11.99	4	12	3	Good	IC withheld	1, 6, 7, 8 (Each had a Very Good grading)
3.	1998	04-05.12.2000	3	9	2	Unfit	Adverse remarks IC withheld	1, 5, 6 (Each had Very Good grading)
4.	1999	04-05.12.2000	5	15	1	Unfit	Adverse remarks IC withheld	2, 4, 5 (Each had Very Good grading)
5.	2000	04-05.12.2000	3	9	1	Unfit	Adverse remarks IC withheld	3, 4, 5 (Each had Very Good grading)
6.	2001	25.5.2001	2	6	1	Good	IC withheld	3, 4 (Each had Very Good grading)
7.	2002	25.6.2002	2	6	1	Good	IC withheld	3, 4 (Each had Very Good grading)
8.	2003	14.11.2003	2	6	1	Good	D.E. pending; IC withheld	2, 3 (Each had Very Good grading)

24. The elaborate procedure is that the recommendations of the Selection Committee, on being examined by the State Government, are forwarded to the Commission. The Commission considers it and the Central Government approve the same. As regards discrimination pertaining to integrity clearance of Sh. C. Shomashekhar, it is stated that in the select list of 2000, against two available vacancies, the applicant could not be recommended due to statutory limit on the size of select

list. Though the cases of disproportionate assets were pending against both these officers but a charge sheet had not been filed but as another case of enquiry was pending against the applicant, his integrity has been withheld.

25. The process of departmental enquiry only affects the unconditional inclusion of the officers in the select list and has no bearing on the assessment by the Selection Committee. In nutshell what has been contended is that proper procedure has been followed at every stage and due to the record of the applicant, he could not be appointed on promotion. It is, however, stated that selection is yet to matured into the appointment and the case of the applicant is pre-mature as the selection process is yet to be completed. As the applicant has not been included in the list of suitable officers prepared by the Selection Committee, the question of his appointment to IAS does not arise.

26. Learned senior counsel further states that the applicant has no indefeasible right even figuring in the select list to be appointed. He places reliance on a decision of the Apex court in **Jaswant Singh Narwal vs. Union of India**, 1991 (Supp.) I SCC 313.

27. It is further stated in the rejoinder that as the Central Administrative Tribunal has no jurisdiction qua Union Public Service Commission, accordingly, the proceedings were not stayed. It is contended that ACRs are integral part of selection and as the applicant is crossing the age of 54 years, he would

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not have right of consideration for appointment by promotion to IAS.

28. We have carefully considered the rival contentions of the parties and perused the material on record.

29. It is trite law that when a High Level committee like the Commission considers the respective merit of the candidates assessing the grading for promotion, the Court is precluded to sit over as an appellate authority over the assessment made by the DPC. This has been held in **Nutan Arvind vs. Union of India**, 1996(2) SCC 488. Apex Court in **UPSC vs. H.L. Dev**, AIR 1998 SC 1069 also held that the jurisdiction to make selection is vested in Selection Committee.,

30. Apex Court in **State of M.P. vs. S. Chapekar**, JT 1992 (5) SC 633 observed that only when the Court comes to the conclusion that consideration of a person for promotion was illegal, the only right is to reconsideration.

31. What is discernible from the above prepositions is that Court cannot assume the role of an expert body to independently assess the comparative merits of the candidates for the purpose of promotion. The DPC, which is vested with all devised methods and expertise, is itself competent to act. However, an exception to this is in the light of the established law that one has a fundamental right to be considered for promotion and if the consideration is fallible on account of procedural infirmities and actuated with bias or malafide in a judicial review, nothing precludes the Courts or the Tribunals to lift the veil and to examine such an illegality. However, the only



direction, which is possible on established illegality of procedure, is to send back the case for re-consideration.

32. As a cardinal principle of law and an essence of principles of natural justice any person, who is associated with a selection, should disassociate if he has any interest involved. One cannot be a judge of its on cause. In common parlance, ill motive or malice is two-fold. Malice in fact requires laying down of foundation by facts and details to establish its incidence whereas a legal malice is to be reflected and established on apparent violation of the procedural rules, which are necessarily to be followed while acting as an Administrative or Quasi Judicial Authority.

33. The malice in fact cannot be established merely on ipsi dixi. Mere averments, acquisition and unfounded recitations would not be compliance. What is required is credible, justifiable and strong material conclusively pointing out towards bias of a person and a foundation to that effect has to be led. Bias is an enemy of fairness. It is an anti thesis to the doctrine of fairness in administrative as well as in quasi-judicial actions. Bias should not be artificial but it should be real. One should appreciate real bias in order to get an action vitiated.

34. Though catena of decision are in existence which lay the concept of bias, the Apex court in **V.K. Khanna's case** (supra) in extenso dealt with the concept of bias and malice and laid



down codified principles. The following observations have been made:

“8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.

35. In **B.N. Jha's case**, the Apex court made the following observations:

“29. Law in this regard has expanded to a great extent. In J.F. Garner's Administrative Law, it is stated:

“The natural justice 'bias' rule looks to external appearances rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decision-maker then that decision can be challenged. It is a matter of the courts ensuring that 'justice is seen to be done'. Since successful challenge is based on appearances, it is natural that the types of matter to which rule applies is somewhat confined. As we shall see it clearly applies to judicial and disciplinary functions but not generally more widely to administrative decision-making and actions”.

30. In Metropolitan Properties Co. (FGC) Ltd. vs. Lannon Lord Denning, M.R. observed: (All ER p. 310 A-D):

“[I]n considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or

whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand: see R.V. Huggins; Sunderland Justices, per Vaughan Williams, L.J. Nevertheless, there must appear to be a real likelihood of bias. Surmise of conjecture is not enough: see R.V. Camborne Justices, ex p Pearce; R.V. Nailsworth Licensing Justices, ex p Bird. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or Chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: "The Judge was biased".

33. In *Manak Lal v. Dr. Prem Chand Singhvi* this Court observed: (AIR p. 429, para 4)

"But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. 'The principle', says Halsbury, 'nemo debet esse judex in causa propria sua precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein' (Halsbury's Laws of England, Vol. 21, p. 535, para 952). In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

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36. In **Common Cause's case**, the following observations have been made by the Apex Court:

"86. In *Administrative Law* by Sir William Wade, 7th Edn., "misfeasance in public office" has been defined as malicious abuse of power, deliberate mal-administration and unlawful acts causing injury. It is further provided in the same book that "misfeasance in public office" is the name now given to the tort of deliberate abuse of power. After considering various decided cases, Prof. Wade proceeds to say:

"This and other authorities, including the last mentioned decision of the House of Lords, were held to establish that the tort of misfeasance in public office goes at least to the length of imposing liability on a public officer who does an act which to his knowledge amounts to an abuse of his office and which causes damage"

(Emphasis supplied)"

37. If one has regard to the above, what is discernible as a ratio and a binding precedent, is that the principles of natural justice are inexplicable. It depends upon facts and circumstances of each case to find appropriate application of the principle. When fairness is synonymous with reasonableness while alleging bias, general statements are not indicative of ill will. Cogent evidence available on record should be produced and established to prove bias. Malice act has an attribute ~~of~~ intention of a damaging act by the concerned authority. Real likelihood of bias is to be inferred by adopting the test of common reasonable prudent man. If the bent of mind and the concept of reasonable man affirms the bias that is to be taken as it is. A real danger should exist on behest of the person against whom bias is alleged in an administrative action.



38. Having regard to the concept of bias and real likelihood, we have perused both the OAs and found that the applicant on factual matrix has alleged that he was given a particular post but the respondent no. 4 wanted that post to be offered to one of his own men which was processed through competent authority and as the Secretary had refused to relieve the applicant, a threat of disciplinary proceeding is a conclusive evidence of bias against the applicant. Further as the then Chief Secretary and his wife were the Members of the Selection Committee, a real danger likelihood of bias existed which has been confirmed, as the applicant had not been placed in the select list. In support thereof, two representations are also on record to show that before the Selection Committee the applicant had written to the DOP&T regarding dis-association of Shri B.K. Bhattacharya from participating in the selection proceedings. We do not find even a whisper of allegation through incidents, particularly the factual account leading to the bias. In such an event the aforesaid request is lacking in material particulars and from the reading of these two representations and applying a test of the common man, there is no material whatsoever on record to infer such a bias. Now in the OA, bias has been alleged giving details and facts, which are not sufficient and conclusive.

39. In OA 2631/2000, respondent no. 4 Shri Bhattacharya has categorically denied the allegations of bias. As per the reply, transfer of the applicant in the year 1999 was an incident of service on administrative reasons. The applicant, who was

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working as Chief Executive Officer of Devika Rani Estate, was transferred as Secretary, Karnataka State Minority Commission against an existing vacancy. Shri K.L. Negi Revenue Secretary had never refused to relieve the applicant but had sought clarification in the light of Election Commission's guidelines enforced at that time which was clarified and the applicant was relieved.

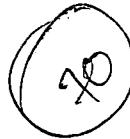
40. Another aspect, which belies the allegation of bias, is the administrative exigency. As per the Regulations, the constitution of Selection Committee by the State is necessarily to be headed by the Chief Secretary. It is the accepting authority and additional Secretary. They are the relevant members of the Selection Committee. As wife of respondent no. 4 has not been impleaded as a respondent, the allegations of bias against her are to be rejected at the threshold. If a State Officer, whose overall service record is to be considered, is allowed to take the plea of bias against the members of the Selection Committee as a mantra, it would be very difficult and a chaotic situation would arise when holding of Selection Committee meeting would be impossible. It is in the administrative exigency and discharge of administrative functions as envisaged under the Rules, Shri Bhattacharya was necessarily to be associated with the selection. For want of a strong foundation mere allegations, which remain unsubstantiated, would not be sufficient to infer real likelihood of bias.

(6)

41. Accordingly, we hold that the applicant has miserably failed to establish bias against respondent no. 4 and on that count selection proceedings could not be vitiated.

42. As regards certification of integrity, the same was issued by the respondents on 6.9.1990. The only reason not to certify the integrity of the applicant was that a criminal case was registered against the applicant under the Prevention of Corruption Act. On this ground, we find that in case of C. Shomashekhar despite the investigation was carried out against him under the Prevention of Corruption Act, his integrity was certified. Equality in law and equal treatment to the like person is expected, as invidious hostile discrimination which does not pass the twin test of intelligible differentia and any reasonable nexus with the object sought to be achieved has to fail. Fairness in action is a sine qua non for an administrative authority. In our considered view, in the matter of integrity certificate applicant could have been treated differently. From the perusal of the record, we find that integrity of the applicant was not certified in his ACRs for the period 1997-98 on the ground of an investigation being under progress. For the year 1999-2000 the integrity was not certified on the same count. The Apex Court as regards integrity certificate in **Amar Kant Choudhary's** case observed as under:-

“5. The true legal position governing such cases is laid down by this Court in *Gurdial Singh Fiji v. State of Punjab* which was a case arising under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which more or less correspond to the Regulations applicable to the Indian Police Service. In the above case



Chandrachud, C.J. has observed thus: (SCC p.376, para 17)

The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, no arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.

6. It is not disputed that the classification of officers whose cases are taken up for consideration into 'outstanding', 'very good', 'good' or 'bad' etc. for purposes of promotion to the Indian Police Service Cadre is mainly based upon the remarks in the confidential rolls. On December 22, 1976, when the Selection Committee met, the adverse remarks in the confidential roll for 1973-74 had not been communicated and the appellant's representation regarding adverse remarks in the confidential roll for the year 1974-75 and censure against him had not been disposed of although it is alleged that one Shri



Yamuna Ram against whom also adverse remarks had been made was included provisionally in the select list. When the Selection Committee met on March 11 and 12, 1981 despite State government's suo motu decision not to retrain adverse remarks for the year 1976-77 on records, the same had not been removed from the confidential roll. This must have influenced the decision of the Selection Committee. It is also seen that the confidential rolls of the appellant for the year 1979-80 and 1980-81 which contained entries favourable to the appellant were not placed before the Selection Committee. On October 14, 1981 when the Selection Committee met, it does not appear to have considered the representation made by the appellant against his non-selection. In addition to all these, the State Government has expunged the adverse remarks by its orders made from time to time. These facts are not controverted by the respondents."

43. In **Gurdial Singh Fiji's case** (Supra) the Apex Court as regards integrity certification has reiterated the above view.

44. If one has regard to the above, we are of the considered view, which is fortified by the decision of the apex Court in **Union of India vs. K.V. Janakiraman** that till a charge sheet is issued, one has right to be considered and the result to be kept in a sealed over. In the matter of integrity, if one is not convicted mere allegations in the form of FIR are not sufficient to be acted upon. Moreover, what we find that there are mere allegations that Shri Somashekhar's integrity was certified which cannot be countenanced. However, we find from the reply of the Commission that not only the investigation of the criminal case but pending disciplinary proceeding is also the basis of withholding of integrity certificate. The said fact is not confirmed or reflected by any of the documents produced on record.

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45. In the above view of the matter withholding of integrity certificate of the applicant is not justifiable. We are also conscious of the view that tainted person against whom adverse material is existing his integrity cannot be cleared but while applying uniform criteria, an identical action is expected from the Government to uphold the principle of equality. The Apex court in **Mohinder Singh Gill & Anr. vs. Chief Election Commissioner**, 1978(1)SCC 405 has clearly ruled that if administrative authorities proceed to defend their action, what has been recorded after due deliberations cannot be supplemented by any other reasons. In the present case, from the perusal of the record, the integrity has not been cleared because of an investigation and there is no reference to any pending disciplinary proceedings.

46. As regards the grievance of the applicant regarding 'no report certificate' issued pertaining to the ACRs of the period 1993-1994 which was part of the record scrutinized of the other officers we find that the report pertaining to the period 1993-94 self assessment has been recorded on 27.9.1999 and the reporting officer has reported and graded the applicant as 'outstanding' on 27.9.1999 itself.

47. Writing of confidential reports is regulated under the Karnataka Civil Services (Confidential Reports) Rules, 1985. As per rule 3, the ACRs are to be reported by the reporting officer within one month from the close of the year then it is to be reviewed within one month thereafter by the reviewing officer. Under Rule 4 and is to be accepted with such modification by



the accepting authority within one month thereafter. The communication of remarks under Rule 9 are to be conveyed within eight months within the close of the year with an opportunity to the concerned employee to represent.

48. The aforesaid rule has undergone an amendment on 8.2.1999 with the prospective effect where as to the validity of the reports, following provisions under Rule 5 has been made:

“5. Validity of Reports: - Notwithstanding anything contained in the Karnataka State Civil Services (Confidential Reports) Rules, 1985 and Karnataka State Civil Services (Performance Report) Rules, 1994 (hereinafter referred to as the said rules):

- a) reports written, reviewed and accepted for any year by the Reporting Authority, the Reviewing Authority and Accepting Authority or written and reviewed by the Reporting and Reviewing Authority or written by the Reporting Authority only shall be deemed to be valid and complete reports; and
- b) the reports written or reviewed or accepted in accordance with the said rules as amended by these rules shall be deemed to be valid for the purpose of said rules.

49. If one has regard to the above, a deemed valid and complete report would be the report which had been written prior to the amendment i.e. 8.2.1999. In the present case, ACRs for the period 1993-94 was to be written on self-appraisal by the reporting officer within one month. The self-appraisal has been written only on 27.9.1999 and on the same day, the reporting officer has recorded his remarks. Accordingly, this ACR cannot be a deemed valid and complete report and rightly the same has been considered by the authorities as 'no report'



by issuance of a certificate. The contentions raised by the applicant's counsel cannot be countenanced.

50. As regards ACR pertaining to the period 1996-97, we find that whereas the reporting officer had graded the applicant 'outstanding', the reviewing authority had disagreed and treated the said remarks as 'adverse' and the same had been communicated to the applicant. This is in valid compliance of the decision of the Apex Court in **U.P. Jal Nigam & Ors. Vs. Prabhat Chandra Jain & Ors.**, (1996) 2 SCC 363.

51. As regards down grading of the ACR for the period 1997-98, we find that the applicant had been graded 'outstanding' by the reporting officer and as there was no reviewing authority, the accepting authority has downgraded the said ACR to 'good'. In this regard, we find that Rule 5 of the Rules pertaining to Confidential Reports ibid provides for acceptance of confidential reports with the following provisions:-

"5. ACCEPTANCE OF CONFIDENTIAL REPORTS.-(1) The Confidential Report, after review, shall be accepted with such modifications as may be considered necessary by the accepting authority ordinarily within one month of its receipt.

(2) Notwithstanding anything contained in rule 3 or rule 4, where the accepting authority writes or reviews the Confidential Report of any Government servant, it shall not be necessary further to review or accept any such report."

52. If one has regard to the above, nothing precludes the accepting authority to accept the remarks given by the reporting and reviewing authorities with modifications, which may be



considered necessary but the modification should not be in a manner to convert the remarks of 'outstanding' to 'good' which would amount to steep fall in the performance of the applicant.

53. It is also pertinent to note, in the peculiar facts, that once the reviewing authority is bypassed for want of its non-availability, the accepting authority has taken over the dual role of the reviewing authority as well as accepting authority whereas the applicant who had been graded as 'outstanding' without any reasons on record the same has been converted into the grading of 'good'.

54. The concept of downgrading has been well explained by the Apex Court in the case of **U.P.Jal Nigam (supra)**, which reads as under"

"2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an 'outstanding' report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of 'satisfactory' without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

(26)

3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of aduerseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasized that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

55. Principles of natural justice are inbuilt and are to be deemed in a provision even if explicitly excluded. This is a sine



qua non for fairness in procedure. As an entry of 'outstanding' to 'good' though may not be an adverse but it is a steep fall in the performance of an employee, which could be preceded by recording of reasons and giving an opportunity to the concerned employee to represent. This entry keeping in view the selection to the IAS and having regard to Regulation 5 where persons are to be empanelled in order of their grading of 'outstanding', 'very good' in further order of seniority of outstanding report if converted into 'good' would have an adverse impact on evaluation of an officer and its performance by the Commission as well as Selection Committee and without affording an opportunity the grading which had been downgraded to 'good' would have serious impact in consideration of the applicant. We are also of the view that though the DPC is not bound by the grading, yet grading does play a vital role in evaluating the person on comparative merit with others. There is no indication that the aforesaid remarks had been supported by any reason or communicated to the applicant. In our considered view non-communication of these remarks has prejudiced the applicant in fair consideration and being adverse remarks it was incumbent upon the respondents to have communicated the same.

56. As regards ACR for the period 1998-99, we have perused the record and found that the reporting officer has graded the applicant as 'very good' whereas the reviewing authority downgraded him as 'good'. The aforesaid downgrading by the



reviewing authority has not been communicated, as an adverse remarks, to the applicant.

57. Rule 9 of the Confidential Rules, which pertains to communication of remarks, provides as under:-

"9. COMMUNICATION OF REMAKRS- (1) All adverse remarks in the Confidential Report shall be communicated in writing by the accepting authority or any other authority empowered by Government in this behalf to the government servant concerned, ordinarily within eight months of the close of the year. While communicating an adverse remark, a short summary of the good points shall also be communicated but the name of the officer recording the remarks shall not be communicated to the Government servant reported upon. Where a report shows that a Government servant has made successful efforts to remedy defects to which his attention has been drawn previously, it shall be communicated to him.

(2) When an officer has done outstanding work in the course of a year and earned appreciation, it shall be communicated to him by the accepting authority.

(3) The fact of communication of remarks under sub-rule (1) or (2) shall be recorded in the report."

58. If one has regard to the above, all remarks, which have an effect of adversity upon the concerned employee, the communicating authority has to mention the fact of communication of remarks in the report itself.

59. U.P.Jal Nigam's case (supra) has also been a reference to the Full Bench of this Tribunal in OA No. 555 of 2001 with other connected OAs decided on 16.4.2004, where the following observations have been made to

answer the reference:-

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"Consequently, if a person earned a Good report in his Confidential Report, it cannot be taken to be an adverse remark when there is no downgrading. Adverse remarks can indicate the defects and deficiencies in the quality of work, performance and conduct of an officer, it may not include the words in the nature of counsel or advice. The adverse remarks have to be seen at the time when they are recorded. If the reporting and reviewing officers have recorded the performance of an officer to be 'Good', necessarily his total and overall performance have to be considered later on. It cannot, therefore, be held that merely because on subsequent date, he may not meet the benchmark, the remarks would automatically turn colour and become adverse.

34. Our attention was greatly drawn towards a decision of this Tribunal in the case of Udai Krishna v. Union of India (1996) 33 ATC 802. A Division Bench of this Tribunal at Allahabad was confronted with a similar situation. Their attention was drawn towards a decision of the Patna Bench of this Tribunal carrying a benchmark in the case of B.P. Singh v. Union of India (1994) 28 ATC 601. The learned members of the Bench at Allahabad did not subscribe to the view in the case of B.P. Singh (supra) and proceeded on to hold to the contrary. This is indeed totally contrary to the judicial discipline. The decision, therefore, cannot be taken to be precedent pertaining to the nature of the arguments that were advanced before us. We, therefore, subscribe to the view taken by the Punjab and Haryana High Court in the case of M.S. Preeti (supra) and of the Delhi High Court in the case of Rajender Kumar (supra). We answer the reference as under:

If there is no downgrading of the concerned person in the Annual Confidential Report, in that event, the grading of 'Good' given to the Government



employee irrespective of the benchmark for the next promotion being 'Very Good' need not be communicated or to be treated as adverse".

60. Having regard to the above ratio laid down, we are of the considered view that as there has been a downgrading of applicant in his grading to the ACR from 'very good' to 'good' the same has to be communicated as an adverse remarks.

61. Having failed to adopt the proper procedure, these remarks could not have been taken into consideration by the Selection Committee.

62. As regard preliminary objection raised by the counsel for respondent i.e. State that examination of ACR and downgrading was not the scope of the O.A., we find that before the State Administrative Tribunal the applicant has not raised these pleas. Only integrity was the issue. Subsequently, on raising simultaneously the dispute of ACRs before the Karnataka Administrative Tribunal, Bangalore, Central Administrative Tribunal dismissed the OA No. 2631 of 2000 as premature. The High Court of Delhi, vide its order dated 6.8.2002, directed consideration of the matter on merits. We find that in OA 2631 of 2000 the applicant has raised in the pleadings vitiation of the selection on the ground of downgrading and invalidation of his ACRs and non-issuance of his integrity certificate apart from the bias. In OA 2851 of 2003 pertaining to selection of 2003 where the downgraded ACRs were considered to evaluate the service record of the applicant, specific pleadings have been taken to assail the downgradation. Accordingly, the contention



put forth that the aforesaid challenge is not the scope is overruled.

63. As regards challenge to the selection process held in 2003 for appointment to IAS by promotion, it is trite law in the light of the decision of the Apex Court in **E.M.S. Shushant vs. M. Sujhata**, 2000 (10) SCC 197 and **Rama Rao vs. All India Backward Bank Employees**, 2004 SCC (L&S) 337 that when the outcome of the proceedings adversely affect the rights of a person non-impleadment of such an officer as necessary party would be against the principles of natural justice. However, we are not setting aside any of the selections. As such we find that in OA 2851 of 2003 where the affected parties are not impleaded, no adverse order shall be passed against the persons empanelled. However, in OA No. 2631 of 2000 all the concerned affected parties are impleaded but we are not setting aside the selection.

64. In our considered view, though we are not to sit as an appellate authority over the findings arrived at by the expert Selection Committee/Commission, which is within its discretion to adopt ways and means and methodology to evaluate comparative assessment as reported by the State to consider and select persons from the State to the IAS by way of promotion yet if the process is vitiated by violation of the rules and the record is evaluated de hors the principles of natural justice, there is presumption of unfairness in the procedure. An administrative action or even during the discharge of duties, as quasi judicial authorities, principles of natural justice and



adherence to procedural rules is a sine qua non expected from the authorities.

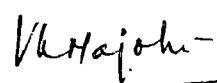
65. On count of withholding of integrity certificate being discriminatory, non communication of the adverse remarks and considering the same to declare the applicant unfit certainly prejudice the applicant and this has been done without following due process of law.

66. In the result, we partly allow the O.As and direct the respondents to either communicate the adverse remarks/downgrading to the applicant for the concerned years as discussed above to the applicant with an opportunity to represent or to ignore the same, and by way of holding a review DPC consider the case of the applicant for selection to the IAS by way of appointment on promotion and in the event he is found otherwise fit the same shall be given effect to. The applicant shall be entitled to all consequential benefits at par with his juniors. The aforesaid process shall be completed in accordance with rules, law and instructions within a period of four months from the date of receipt of a certified copy of this order.


(Shanker Raju)

Member (J)

/na/


V.K.Majotra
10.9.04
(V.K.Majotra)
Vice Chairman (A)