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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 947/87 198
T.A. No.

DATE OF DECISION 30-11-87

Shri R.C. Kohli Petitioner

Shri M.A. Krishnamurthy Advocate for the Petitioner(s)

Versus

Union of India & another Respondent

Shri P.P. Khurana Advocate for the Respondent(s)
Shri M.A. Krishnamurthy

CORAM:

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yr.*
2. To be referred to the Reporter or not? *yr.*
3. Whether their Lordships wish to see the fair copy of the Judgement?

30/11/87
(Birbal Nath)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Regn.No. OA 947/87

Date of Decision 30-11-87

Shri R.C. Kohli

...Petitioner

Versus

Union of India and others

....Respondents

For Petitioner: Mr. M.A. Krishnamurthy, Advocate

For Respondents: Mr. P.P. Khurana, Advocate

CORAM: HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

JUDGMENT:

(Judgment of the Bench delivered by
Mr. Justice J.D. Jain, V.C.)

By this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"), the applicant who is a member of the Indian Police Service, U.T. Cadre seeks to challenge his supersession/non-promotion to the post of D.I.G. Level II (i.e., Super-time scale of the IPS) and a direction to the respondents that he be promoted to the said post with effect from the date on which his junior was promoted thereto. He has also prayed for a direction to the respondents to give him all the consequential benefits including the payment of arrears of salary etc. from the date of his promotion.

2. The undisputed facts of this case are that the petitioner joined the Indian Police Service in 1966. He was allocated to the Union Territories Cadre. He was appointed to the Selection Grade of the IPS w.e.f. 26.6.1979 vide notification dated 4.12.80 issued by

the Ministry of Home Affairs, Government of India (copy Annexure-A). There-after, he was posted as Director (Vig.), Director General Supplies and Disposal w.e.f. 19.07.80. Certain adverse remarks were recorded in his Annual Confidential Report 1980-81 which were as follows:-

"The output of work and disposal of cases has been less than the previous year, although it is conceded that support was inadequate as one of the Deputy Director (Vig.) was often on leave; work has suffered during his tenure."

The petitioner represented against the said remarks and the same were expunged vide letter dated 26.7.84 of the Ministry of Home Affairs, Government of India (Copy Annexure-B)

2. In 1982, the applicant was posted in Mizoram which is considered to be a hard area, being both disturbed and difficult, as head of the Anti Corruption Branch. The Chief Secretary, Mizoram, who was the Reporting Officer in respect of the applicant recorded certain unfavourable remarks in his ACRs for the year 1983-84. The remarks as appearing in the A.C.R. were as under:-

"Powerfully built and quick of mind. Can be quite charming and polite at times. Professional knowledge is sound. Industry and conscientiousness is fair. Is very intelligent but tends to lack sense of responsibility expected of his age and service. Could also be more tactful. Is not known to show favouritism or bias. Relations with colleagues and subordinates could be better. Is fit for promotion to the higher grade in his turn. He is fit for any type of police work."

The said remarks were communicated to the petitioner vide office memorandum dated 28.7.84 (copy Annexure-C). Thereupon the applicant made a representation to the Secretary, Home Affairs, Government of India against

aforesaid adverse remarks, Annexure-D being copy of his representation dated 12.9.84. In the said representation, he inter alia pointed out how being the head of the Anti Corruption Branch, he had to function against heavy odds because there were several scandals pertaining to government funds. The prime beneficiaries thereof were said to be politicians at the highest level as well as the then Chief Secretary, who was his reporting authority. According to him, there were instances of government funds sanctioned for various government purposes being ^{regularly} passed into the hands of insurgents etc. There was large scale misappropriation of government funds sanctioned for the purchase of galvanised steel sheets etc. So, he came directly in conflict with the authorities at the helm of affairs and he had written to the Lt. Governor as early as 28.5.1983 bringing out clearly as to how his work was being hampered by Chief Secretary. His representation remained pending for a long time and it was only vide office memorandum dated 20.9.85, i.e., after the lapse of about a year (Copy Annexure-G) that the adverse remarks were expunged. Of course, in the meanwhile, he issued a couple of reminders for expeditious disposal of his representation. In the meantime, a meeting of the Departmental Promotion Committee headed by the Secretary Ministry of Home Affairs took place on 21.11.84 to consider the cases of IPS Officers including the petitioner for promotion to Super-time scale, i.e., D.I.G. Level-II. However, the consideration of the applicant's case was deferred pending decision of his representation against adverse remarks in his A.C.Rs. for the year 1983-84. Of course, one ^{officer} junior

to the petitioner, namely, Mr. Y.R. Dhuriya, who belonged to the same batch of 1966 was promoted to the Super-time scale.

3. The Screening Committee held a meeting soon after the expunction of the adverse remarks from the A.C.R. of the petitioner for the year 1983-84. It was on 27-9-85. However, the petitioner was passed over and some officers junior to him were promoted. On coming to know of it, the petitioner made a representation dated 18.10.85 (copy Annexure-H) to the Secretary, Ministry of Home Affairs, against his non-promotion to D.I.G. Level-II post. He averred in the said representation that he had been placed in the selection grade in his normal turn in the year 1979 and this fact was indicative that in the first 15 years of service he ^{had} acquitted himself creditably. He further asserted that except on two occasions, i.e., A.C.Rs. for the year 1980-81 and 1983-84, he had never been given any adverse remark and even the adverse remarks recorded in the aforesaid C.Rs. were expunged by the Government after due consideration of his representation. Thus, the C.Rs. for both the said years as stood after expunction were highly commendatory in nature and he was described as being "very intelligent" and also a person "not known to show favouritism or bias." These qualities, according to him, entitled him to promotion to the higher job. He also pointed out that he had done a spell of good performance in a hard and disturbed area ^{under} and ² orders contained in the Ministry of Home Affairs dated 2.4.84 addressed to Administrator/Chief Secretaries of all Union Territories, special weightage was required

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to be given in the case of eligible officers who had successfully completed their tenure in hard territories like Mizoram in North-Eastern region for the purpose of promotion. He further pointed out that he had been deputed for various training courses as detailed therein and he had acquitted himself ~~to the~~ creditably in the courses conducted for Senior Officers by the Indian Institute of Public Administration. However, all these factors were not taken into consideration by the Screening Committee on 27.9.85 while superseding him. He asserted that none of the officers junior to the petitioner who had been promoted had done all the training courses which he had successfully completed and majority of them had not even been posted in any hard area. However, his representation was rejected vide reply dated 17.12.85 with the cryptic reply "duly considered". His further representation to the Secretary, Ministry of Home Affairs too met with no success. On the other hand, DPC again met on 1.8.86 and more officers junior to him were promoted over him. He has claimed that he had acquitted himself creditably in 1983, 1984, 1985 and 1986. Presumably he had earned good annual confidential reports for the said years but even then he has been arbitrarily ignored for promotion. The petitioner has in this application adverted, inter alia, to a letter dated 21st July, 1976 (copy Annexure-K) vide which the Government of India had conveyed its decision that no IPS officer having a seniority of 1966 (year of allotment) and onwards will be promoted to the rank of D.I.G. Super-time scale unless he had attended the Senior Officers Course. His case precisely is that while he had successfully attended the said course at National Police Academy in 1976 besides undergoing various other courses

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as detailed by him, many of his juniors who had been actually empanelled and promoted over his head had not attended the said mandatory course to be eligible for promotion to the super-time scale of pay. His contention therefore is that no weightage whatsoever seems to have been given to the courses attended by him and his non-selection to the post of D.I.G. Level-II was violative of mandate of equality ^{amongst equals} enshrined in Articles 14 and 16 of the Constitution of India, being wholly arbitrary and unfair.

4. The respondent, Secretary, Ministry of Home Affairs, Government of India, has vehemently contested this application. In the counter filed by him, it is urged that the applicant was duly considered for promotion in his turn, but he was not found fit and suitable for promotion. His case was first taken up by the Screening Committee on 21.11.84, but the Committee noticed that his representation against adverse remarks in his A.C.R. for the year 1983-84 was ^{still} under consideration. So, the Committee decided to defer consideration of his case for promotion to D.I.G. Grade till a final decision was taken on his representation. After the adverse remarks were expunged by the Government in toto from the A.C.R. of the petitioner on 17.9.85, the case of the petitioner ^{was} immediately placed before the Screening Committee on 27.9.85. The Committee assessed the suitability of the applicant for appointment to D.I.G. Level-II by evaluating his character roll as a whole for period ending March, 1984 and general assessment of his work. However, the Committee was of the view that the performance of the petitioner was not upto the mark and the Committee did not recommend him for empanelment

for promotion to D.I.G. Level-II. The Committee also decided to review his case on receipt of A.C.Rs. for the years 1984-85 and 1985-86. So on receipt of the aforesaid reports of the petitioner, his case was again placed before the Committee in its meeting held on 1.8.86, but again the Committee did not find him fit for promotion. They deny that his performance was graded as "outstanding" in the A.C.Rs. for the year 1984-85 and characterised his assertion as misconceived. The stand of the respondent precisely is that the inclusion of an officer in Selection Grade does not give him a right for future promotion to higher grades, as the selection grade is not a step in the hierarchy in the Indian Police Service and no post had been identified as Selection Grade Post. An officer can be given a selection grade while working in any post of Indian Police Service. Grant of selection grade does not involve assumption of higher duties and responsibilities. Thus, according to the respondent, the suitability of an IPS Officer for promotion to D.I.G. Level-II post is required to be assessed by evaluation of his character rolls as a whole and on general assessment of his work. They have refuted the assertion of the petitioner that the guidelines for consideration of cases of IPS Officers for promotion within the Cadre ~~do not~~ prescribe attendance in Senior Officers' Course as a condition for promotion to D.I.G. Grade in the Cadre. Thus, according to them, the officers mentioned by the petitioner as ~~not~~ having attended the said course were not debarred ^{from} promotion to D.I.G. Level-II in the cadre for the reason of their not having attended the Senior Officers' Course. The respondent asserts that the certificates of attendance of different courses undergone by the applicant were available in his A.C.R. dossiers except a few of them as mentioned by them when the Screening Committee considered his

case on 27.9.85. Further according to them, the remaining certificates were placed in his A.C.Rs. dossiers before submission of his case on 1.8.86 excepting two certificates, namely, (a) Advance Course on Research Methodology at Institute of Criminology and Forensic Sciences, New Delhi and (b) V.I.P. Security Training Course in May, 1982, because he had not submitted the copies of the said certificates. Further, according to the respondents, the fact that the petitioner had served in Mzoram was known to the Screening Committee. Hence, the assertion of the respondents is that the petitioner was duly considered, but he was not found fit and suitable for promotion and the question of any arbitrariness on their part does not arise.

5. It is ~~the~~ common ground between the parties that the name of the petitioner was put up before the Screening Committee which met on 21st November, 1984 to consider the promotion of I.P.S. Officers of the U.T. Cadres to D.I.G. Level-II (i.e., Supertime scale). However, on being informed that the representation of the petitioner against adverse remarks in his C.R. for the period 1983-84 ^{still} was under consideration, the Committee deferred the case of the petitioner till a final decision on his representation was taken in the Ministry. This was obviously in conformity with the relevant instructions issued by the Government of India in this respect. As stated in Appendix 29 appearing at page 451 of Chaudhary's Compilation of the Civil Service Regulations, Volume III (Appendices), procedure for making promotion and functioning of the Departmental Promotion Committee was laid down by the Government of India, Cabinet Secretariat, Department of Personnel & Administrative Reforms ^{office} vide mems dated 30th November, 1976 and 11th January, 1977. According

to the said procedure, in cases where a decision on the representation of the officers against adverse remarks has not been taken or the time allowed for submission of representation is not over, the Departmental Promotion Committee may in their discretion defer the case for consideration pending decision on the representation. So there ^{can be} / no doubt that the procedure adopted by the Departmental Promotion Committee on 21st November, 1984 was in perfect accord with the aforesaid instructions. The grievance of the petitioner however is that he was gravely prejudiced on account of inordinate delay in consideration of his application dated 12.9.84 inasmuch as almost a year was taken by the Government in expunging the adverse remarks appearing in his A.C.R. for the year 1983-84 vide Annexure-G dated 20.9.85. His contention is that according to para 9.4 of O.M. dated 20th May, 1972 issued by the Government of India, his representation ought to have been decided in any case not later than six weeks from the date of the submission of his representation. If that had been done, surely, the Screening Committee would have considered his case also along with ^{his} / other colleagues. Thus, the delay in expunction of adverse remarks in his C.R. had the effect of not only depriving him of a comparative assessment of his work vis-a-vis his other colleagues who were then considered, but it also ^{resulted in} / miscarriage of justice, in that, it postponed his reconsideration by about a year. We do find force in his submission that the Government should have devised effective means to mitigate the hardship caused to ~~the~~ officers who are subjected to such treatment by ensuring that their representations against adverse remarks are disposed of as expeditiously as possible so that their cases for promotion are laid before the ensuing Screening

of course,
Committee well in time except, / for unavoidable reasons.

6. Undoubtedly, the Government has the power to expunge the adverse remarks appearing in the A.C.R. of an officer which may be found to stem from competence wrong appraisal of his ~~status~~ and calibre as an officer and there is a clear purpose behind the exercise of such power, i.e., to ensure justice and fairplay to the concerned officer in the matter of his future advancement in life. As observed by the Supreme Court in Mañsa Ram Vs. S.P. Pathak & others: 1984(1) S.C.C. 125 (although in a different context) "when the power is conferred to effectuate performance it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time even when no limitation is prescribed in this behalf."

7. As stated above, the next meeting of the Screening Committee took place on 27.9.85 by which date the adverse remarks appearing against the A.C.R. for the year 1983-84 had been expunged. So, the minutes of the Screening Committee which met on the said date are most crucial for a proper determination as to whether the petitioner has been meted out justice and fairplay by a proper and rational appraisal of his merit in relation to others who had been earlier considered and approved for promotion in D.P.C. meeting held on 21st November, 1984. The following ^p excerpts from the minutes of the meeting are very pertinent to note:-

" The Committee were informed that upon consideration of the representation of Shri R.C. Kohli, the adverse remarks in his A.C.R. were expunged. The Committee were also informed that no vigilance case/departmental proceeding is either pending or contemplated against Shri R.C. Kohli.

3. The Committee assessed the suitability of Shri R.C. Kohli for appointment to D.I.G. Level-II posts (Rs.2000-125/2-2250) in Union Territories by evaluating his character roll as a whole and on a general assessment of his work as reflected in his A.C.R. dossier for the period ending 3.3.1984. The Committee was of the view that the performance of Shri Kohli was not upto the mark and accordingly the Committee did not recommend him for empanelment for promotion to D.I.G. Level-II. The Committee decided that his case will be reviewed on receipt of A.C.Rs for the years 1984-85 and 1985-86".

On a bare perusal of the minutes, it is abundantly clear that only the A.C.R. dossiers of the petitioner for the period ending 31.3.84 were considered and on evaluating his character roll as a whole and on a general assessment of his work, the Committee was of the view that the performance of the petitioner was not upto the mark and therefore, the Committee did not recommend him for empanelment for promotion to D.I.G. Level-II. In other words, his relative merit vis-a-vis other colleagues who had been considered earlier on 21.11.84 was not at all considered by the Screening Committee. Such a course, in our view, defeats the very purpose of Review D.P.C. inasmuch as a Review D.P.C. is contemplated to ensure that the concerned officer is put in the same position in which he would have been, but for adverse remarks, which were eventually expunged, on the date when he was first considered along with his other colleagues, but his case was deferred on account of his representation against adverse remarks still pending decision. In other words, the petitioner ought to have been restored to the same position in which he would have been but for adverse reporting on 21.11.84 when the Screening Committee first met.

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The Review DPC must ensure a complete restitution and it was not justified in considering the case of the petitioner alone in isolation. Surely, adoption of such a method has resulted in grave prejudice to him inasmuch as his comparative merit was not assessed by the Screening Committee and he was considered to be unfit for promotion on the basis of his own C.Rs. This conclusion is fortified by the following guidelines appearing para XV(6) of Appendix 29 adverted to above. The relevant portion is extracted below:-

"Whenever such review DPC meets, it should consider only those persons who were eligible as on the date of meeting of original DPC. That is, persons who became eligible as on a subsequent date should not be considered by that review DPC. Such cases will, of course, come up for consideration by the regular DPC. Further the review DPC should restrict its scrutiny to the CRs for the period relevant to the first DPC. The CRs written for subsequent periods should not be considered. However, if any adverse remarks relating to the relevant period, were toned down or expunged, the modified CRs should be considered as if the original adverse remarks did not exist at all."

The learned counsel for the respondents has, however, urged that there was no requirement of comparative assessment of the petitioner vis-a-vis those who had been earlier considered and approved by the Screening Committee on 21.11.84, fitness and suitability for promotion was to be considered by evaluating his character roll as a whole and on a general assessment of his work as reflected in his A.C.Rs. dossiers, the A.C.Rs. dossiers of all others having been already considered on 21.11.84. This approach to our mind wholly militates against the very concept of selection on "merit" with due regard to seniority as embodied in sub-rule(2A) of

Rule 3 of the Indian Police Service (Pay) Rules 1954 and reiterated in the instructions issued by the Ministry of Home Affairs, Government of India, in their office letter dated 26.8.76 on the subject of promotion to the Senior Scale and super-time scale of the officers of Indian Police Service. Of course, it is stated in para III(3)(ii) of the said letter that -

"Suitability of officers to hold supertime scale posts may be judged by evaluating their character roll record as a whole, and general assessment of their work."

Surely, this guideline does not in any manner conflict with the concept of selection on merit with due regard to seniority and both these considerations can go well together, for, sub-para 2 simply lays down the mechanic and methodology to be adopted for adjudging the merit of various candidates who are in the zone of consideration. In this context, we may advert, with advantage, to Parvez Qadir Vs. Union of India, AIR 1975 S.C. 446, wherein the Supreme Court had an occasion to consider the validity of Regulation 5 of Indian Forest Service (Initial Recruitment) Regulations 1966.

Observed the Supreme Court -

". It is the duty of the Special Selection Board to prepare a list from amongst the State Forest Officers and such a list can only be prepared in order of seniority if the respective records of each of such officers is considered and the comparative merit assessed. The past performance of an officer being one of the criteria forming selection, the only way to adjudge their suitability is by perusal of confidential records. It is true that confidential records do not sometimes give a true picture due to the vagaries of the recording officer. The human fallibility and want of objectivity in the superior officer are factors which cannot be eliminated altogether. For that matter one can ask what method is perfect? For this reason, certain safeguards have been provided in order

to make them as objective as possible. If there is an adverse entry against any officer that officer is given an opportunity to explain. After the explanation is given, the superior officer as well as the Government ultimately decided whether that remark by the recording officer was justified or not, and if it is not justified the Government can always order its deletion. Sometimes vagary may enter into the service confidentials, and it cannot be postulated that all superior officers who have been empowered to finalise such entries will suffer from any of those traits because the actions of the officer concerned may not have any immediate impact upon him and consequently his sense of objectivity will not be dimmed or strained."

Indeed, the selection method as contained in para VI(2) of the Appendix 29 (supra), envisages that "the officers in the field of selection, excluding those considered unfit for promotion by the Departmental Promotion Committee, should be classified by the Departmental Promotion Committee as "outstanding", "Very Good", and "Good" on the basis of their merit, as assessed by the DPC after examination of their respective records of service. In other words, it is entirely left to the DPC to make its own classification of the officers being considered by them for promotion to selection posts, irrespective of the grading that may be shown in the CRs. The panel, should, thereafter, be drawn up to the extent necessary by placing the names of the "Outstanding Officers" first, followed by the officers categorised as 'Very good' and followed by the officers belonging to any 'Very good' and followed by the officers categorised as 'good'. The inter-se-seniority of officers belonging to any one category would be the same as their seniority in the lower grade." Evidently, this procedure has

not been adopted by the Screening Committee in the instant case. The non-observance of this procedure in our view goes to the very root of the matter and vitiates the entire proceedings of the Screening Committee held on 27.9.85.

8. Another vice from which the minutes of the meeting of the Screening Committee held on 27.9.85 suffers is non-compliance with sub-para (iv) of para 3 contained in letter dated 26.8.76 of the Government of India. It enjoins that the reasons for supersession may be kept on record in the case of officers who are not included in the panel. The Screening Committee as observed earlier has simply recorded its conclusion that on evaluation of character roll of the petitioner as a whole and on a general assessment of his work as reflected in his A.C.R. for the period ending on 3rd March, 1984 was not upto the mark and accordingly, the Committee did not recommend him for empanelment for promotion to D.I.G. Level-II. It is just a reproduction of the language of sub-para (ii) of para 3 of letter dated 26.8.76. The minutes of the Committee are totally bereft of the reasons which led them to form this conclusion. In Union of India Vs. M.L. Kapoor and others, AIR 1974 SC 87 in which the Supreme Court had an occasion to consider the scope and ambit of Regulation 5(5) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 which laid down that "if in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession", it was held by the Supreme Court that "it was incumbent on the Selection Committee to have stated the reasons in a manner which would disclose

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how the record of each superseded officer stood in relation to records of others who were to be preferred, particularly, as this^{is} practically the only remaining visible safeguard against possible injustice and arbitrariness in making the selection." Observed the Supreme Court that -

"We find considerable force in the submission made on behalf of the respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. This apology for reasons to be recorded does not go beyond indicating a conclusion in each case that the record of the officer concerned is not such as to justify his appointment "at this stage in preference to those selected.. . . ."

Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

This authority was noticed subsequently by the Supreme Court in Gurdial Singh Fijii Vs. State of Punjab: AIR 1979 SC 1622. Following the aforesaid observations in M.L.Kapoor's case (supra), their Lordships elucidated the proposition further as under:-

"That an officer was 'not found suitable' is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List. In the absence of any such reason, we are unable to agree with the High Court that the Selection Committee had another 'reason' for not bringing the appellant on the Select List."

Reference in this context may also be made, with advantage, to Union of India Vs. H.P. Chothia and others: AIR 1978 SC 1214, which was a case under the Indian Forests Service (Initial Recruitment) Regulations, 1966 and Regulation 5(3) required the Selection Board to record reasons in respect of eligible officers of the ~~State~~ services who were not adjudged as suitable. The Supreme Court observed that "this provision in our opinion is in public interest and has been made with a view to avoid arbitrary or capricious exercise of discretion by the Board and also to prevent any hostile discrimination."

9. Needless to say that sub-para (4) of para 3 of the guidelines dated 26.8.1976 being analogous to Regulation 5(5) of the aforesaid Regulations, it was imperative for the Screening Committee to have recorded in a concise manner the reasons which prevailed with them for concluding that he was not fit and upto the mark to be empanelled for promotion to D.I.G. Level-II. That would have surely given some inkling^{of} how the mind of the Screening Committee was working. The requirement of recording reasons is not, therefore, an idle formality and its substantial compliance by the Screening Committee was absolutely necessary even assuming that the same cannot be termed as mandatory. The reasons would have surely shed light on whether the conclusion arrived at by the Screening Committee is fair and impartial.

10. We would not have made the above observations just as an exercise in futility, had we been impressed even in the least by the argument that the petitioner's calibre, performance, knowledge of the relevant laws and the rules and capability to deliver the goods was

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so poor/below average that it did not merit comparative evaluation at all. We have already adverted to above the A.C.R. of the petitioner for the year 1983-84 as it stood before expunction of adverse remarks. Apart from anything else it certified that his conscientiousness is fair and he is not known to show favouritism or bias. In our view, the virtue of integrity transcends all other qualities especially in police service about which the common man has many a reservation and even critical comment to make. We further notice that the nature of duties which the petitioner was called upon to discharge while in Mizoram as Head of the Anti-Corruption Branch were likely to come into conflict with those at the helm of affairs against whom the allegations of large scale siphoning off of the government funds were being levelled. In the A.C.R. dossier of the petitioner for the year ending 31st March, 1983, the Chief Secretary to the Government of Mizoram who was the Reporting Authority while commending various qualities of head and heart of the petitioner concluded that "could be much more effective if he stops rubbing people the wrong way." The Reviewing Authority, viz., Chief Minister, Mizoram too recorded "he is advised to curb the tendency to rub people the wrong way." However, it appears that this part of the A.C.R. which is critical of his tendency to rub people on the wrong way was never communicated to him. Presumably, the Screening Committee must have noticed it and may be that, it left some kind of adverse impression about the tendency of the petitioner to abuse his power. It may even be that this particular adverse in nature remark although it was not communicated to the petitioner

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because the then Lt. Governor, Mizoram as ~~XX~~ Accepting Authority gave him a clean chit in the following words:-

"The officer is doing excellent job as SP Anti-corruption. In such a job people who are implicated find ways and means of destroying the image and integrity of the officer".

In the A.C.R. for the subsequent year, viz., for the period ending ~~xx~~ 31.3.84, which contained certain adverse remarks and which were eventually expunged by the Government the then Lt. Governor, Mizoram recorded the following remarks as had been left by his predecessor in regard to the work of the petitioner:-

"Such work is always unwelcome, thankless and and there is always the danger of retaliation, motivated and inspired efforts to harass such officers and even if nothing substantial is found against them to harass them by giving them sleepless nights by pin-pricks here and there. They are likely to offend those suspected of corrupt practices and if in high places, their ACRS may be spoiled. The officers doing such work are doing a duty enjoined upon them by the Administration and it would be unjust if they suffer owing to the conscientious performance of such duties."

Not only that, the then Lt. Governor endorsed the observations of his predecessor.

11. We have highlighted some of the aspects of the A.C.R. dossiers of the petitioner not with a view to evaluate his performance and commend his qualities of head and heart. Our only aim in doing so is to point out that the case of the petitioner was not so worthless/poor that it did not merit relative assessment of his calibre ^{competence} performance/integrity and other qualities vis-a-vis the other officers who had been earlier considered and approved by the Screening Committee on 21.11.84 for promotion. We also wish to emphasise in this context that more than ordinary value should be attached to the C.Rs. pertaining to the years immediately preceding such consideration. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also

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of utmost importance. Such being the position, we think that it was, but meet for the Screening Committee to record succinctly the reasons which prevailed with them for concluding that the performance of the petitioner was not upto the mark and as such he was unfit for promotion. Of course, we hasten to add that while we have all the respect for the members of the Screening Committee, who are experts in their respective fields, the task of ushering a society based on rule of law is entrusted to the court and it cannot abdicate its functions. It is trite that an administrative authority who purports to act by its regulations must be held bound by the regulations. Hence, non-recording of reasons for the supersession of the petitioner vitiates the conclusion arrived at by it.

12. The next submission made by the learned counsel for the petitioner is that the various certificates awarded to the petitioner in token of his having completed various senior level programmes were also not placed before the DPC. In this context, our attention has been invited to the definition of the expression "confidential roll" as given in the All India Services (Confidential Rolls) Rules, 1970. Rule 2 (b) thereof reads as under:-

"2(b) 'confidential roll' means the compilation of the confidential reports written on a member of the Service and includes such other documents as may be specified by the Central Government, by general or special order, in this behalf."

Pursuant to the aforesaid provision, the Central Government vide O.M. dated 22.2.74 issued by the Department of Personnel

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& Administrative Reforms specified the documents enumerated therein as documents to be included in the confidential roll of an officer. The said documents, inter alia, include "record about the approved course of study or training undertaken by the member of the Service," besides some other certificates. Our attention has been specifically invited to the fact that the DPC did not take notice of the factum of his having successfully completed the Senior Officers Course despite clear instructions issued by the Ministry of Home Affairs, Government of India in their letter dated 21st July, 1976 (copy Annexure-K) to the effect that -

"Considering the importance of the Refresher Courses, the Government of India have decided that no IPS Officer having a seniority of 1966 (year of allotment) and onwards will be promoted to the rank of DIG in any Central Police Organisation unless he has attended the Senior Officers' Course. On successful conclusion of the course, the Director, NPA, will issue a certificate in respect of each officer and a copy of this certificate will be placed on his A.C.R. folder."

Likewise, it is pointed that the Screening Committee did not accord due recognition to the fact that he had completed his tenure posting in the North-Eastern Region successfully while considering his case for promotion to DIG Level-II post. In this context, our attention has been invited to (Ministry of Finance) Government of India's letter dated 14.12.73 and Government of India, Ministry of Home Affairs' letter dated 2nd April, 1984 (Copy Annexure-I). The former letter contains a direction that satisfactory performance of duties for the prescribed tenure in the North-Eastern Region shall be given due recognition in the case of eligible officer, inter-alia, in the matter of promotion in the Cadre post.

This direction was made applicable to the members of the IAS/IPS Cadres of Union Territories vide subsequent letter dated 2nd April, 1984.

13. We are constrained to remark that despite these clear instructions, there is nothing on record to suggest that the Screening Committee did take notice of these facts which were quite essential for proper appraisal/evaluation of his work for promotion to DIG Level-II. The answer of the respondents to this contention is somewhat fantastic. As regards the first, their stand is that the guidelines for consideration of cases of officers for promotion within the cadre do not prescribe attendance in a Senior Officers' Course as a condition for promotion to DIG post in the Cadre. Therefore, the officers mentioned by the petitioner as not having completed the said Course were not debarred from promotion to DIG Level II. In our considered view, this stand of the respondents is absolutely untenable in view of the clear directions of the Government of India embodied in Annexure-K. ^{arguendo} Assuming that the said instructions are not mandatory in nature, there can be no room for doubt that they are at least directory and even then, the respondents could not simply ignore the instructions on the facile plea that there were no guidelines for taking notice of successful completion of the said Course. As for completion of successful tenure posting by the petitioner in the hard and difficult area of Mizoram, the respondents have simply stated in their counter that the members of the Screening Committee were aware of this fact. To say the least, it would not imply that the Screening Committee took due recognition of the said fact while evaluating the service record of the petitioner. So the report of

the Screening Committee also suffers from the vice of non-consideration of these ^{and} other documents as required by various office memos issued by the Government of India from time to time adverted to above.

14. Lastly, the learned counsel for the petitioner has vehemently urged that the Screening Committee was not justified in taking into account the service dossiers of the petitioner prior to his promotion to the Selection Grade. Reliance in this context has been placed on various reported decisions of the Supreme Court etc., viz., the State of Punjab Vs. Dewan Chuni Lal: 1970(4) SLR 375 (SC), Brij Bihari Lal Aggarwal Vs. High Court of Madhya Pradesh: AIR 1981 SC 594 and J.D. Srivastava Vs. State of M.P. and others: 1984(2) SCC 8. However, we do not think that the ratio of any of these cases will be applicable to the facts of the instant case. In the first of these cases, the respondent, Dewan Chuni Lal, was a Sub-Inspector of Police and was called upon to answer the charge-sheet in 1949 setting forth extracts from his Confidential Character Roll showing his in-efficiency from the years 1941 to 1948. He had been allowed to cross the Efficiency Bar in the year 1944. Under these circumstances, it was held by the Supreme Court that the reports earlier to 1942 should not have been considered at all inasmuch as the respondent was allowed to cross the Efficiency Bar in that year. Obviously, this authority has no bearing on the facts of the instant case inasmuch as the guidelines contained in letter dated 26.8.76 clearly state that the suitability of officers to hold supertime scale post may be adjudged

by evaluating their character roll as a whole and general assessment of their work. So the Screening Committee was required to look into the entire service profile of the petitioner in order to have an overall picture of his performance and calibre etc. The other two authorities bear on the power of the Government to retire a government servant compulsorily in public interest in terms of service ^{rules} (F.R.56(3A)) which was held to be absolute power provided the authority concerned formed an opinion bona fide. It was, in this context, observed by the Supreme Court that the confidential reports relating to a remote period are not quite relevant for the purpose of determining whether the government servant should be compulsorily retired or not and dependence on stale entries by digging out old files to find some material to make an order of compulsory retirement against an officer would be an arbitrary action bordering on perversity, particularly when the officer has been promoted subsequent to such entries. In Brij Bihari Lal's case, the Supreme Court observed that "while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service upto the statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct

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relevance, but also of utmost importance."

15. We have already extracted these observations partially and observed that more than ordinary value should be attached to the C.Rs pertaining to the years immediately preceding the consideration of a candidate for promotion because they are not^{only} of direct relevance but also of utmost importance for the purposes of assessing his suitability for promotion. There is certainly a commendable rationale behind the requirement that the suitability of an officer to hold super-time scale post be adjudged by evaluating his character roll as a whole and general assessment of his work, having regard to the high degree of responsibility which a super-time-scale post in the IPS Cadre carries. It is aimed at ensuring greater efficiency and better functioning of the department. No doubt the object and purpose of scanning the service record of a government servant with a view to assess his overall performance and ^{competence} etc. during the course of his service career is not the same in both the situations, namely, for the purpose of compulsory retirement and for the purpose of his selection for promotion to a higher rung of the ladder inasmuch as in the former case the assessment is made with a view to weed out the inefficient hands as also officials with doubtful integrity on an overall view of his service profile whereas in the later case the Screening Committee has to determine whether the concerned officer possesses requisite merit and is suitable for promotion to a higher job. It cannot be gainsaid that an officer

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may be capable of discharging duties of the post held by him satisfactorily, but he may not be fit for the higher post. Hence, the necessity for proper evaluation and appraisal of his service record. All the same, there can be no ^{shadow} ~~of~~ of doubt that the confidential reports of the earlier years will pale into insignificance as compared to the latest confidential reports of the concerned officer inasmuch as his capability, efficiency and suitability for the higher post has to be judged primarily on the basis of his performance during 6 or 7 years immediately preceding his contemplated promotion. In other words, more weightage will have to be given to the latest confidential reports as compared to those of early period of his ^{service} career.

16. The upshot of the whole discussion is that the report of the Screening Committee dated 27th September, 1985 is vitiated by more than one flaws and infirmities of serious nature. It is well settled that the executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reasons is the essence of the guarantee epitomised in Articles 14 and 16(1) of the Constitution of India. Hence, the said report of the Screening Committee cannot be sustained and has got to be quashed in order to afford a fair opportunity ^{to the} ~~to the~~ applicant to be judged on merits afresh in the light of the observations made by us above. As for the subsequent report of the DPC we deliberately refrain from commenting upon it either way, lest anything said by us at this stage should prejudice the case of the petitioner at the time of fresh consideration by the Screening Committee.

17. That brings us to as to what relief can be granted to the petitioner in view of our findings that

Court are pertinent to note:-

"We agree with the High Court that Shri Tripathy was wrongly passed over. However, instead of directing the Government of Gujarat to consider afresh the claim of Shri Tripathy for promotion to the Selection Grade and the super time scale, we declare that the respondent should have been given Selection Grade with effect from March 6, 1981 (the date from which the High Court observed that he ought to have been given such promotion) and the super time scale with effect from November 1, 1983 and direct the Government of Gujarat to give the consequential monetary benefits."

According to the learned counsel for the petitioner,, there is no valid reason why ~~xxx~~ similar order should not be passed by the Tribunal in this case. However, on a consideration of various other authorities which bear on the subject, we do not feel persuaded to do so. In the State of Mysore and another Vs. Syed Mahmood and others: AIR 1968 SC 1113, the Mysore State Civil Services General Recruitment Rules, 1957 required promotion to higher post on seniority-cum-merit basis, i.e., seniority subject to fitness of the candidate to discharge duties of the post from amongst persons eligible for promotion. The respondents therein were passed over while making promotion to the Sr. Statistical Assistant from Junior Statistical Assistant Cadre. The respondents then filed a writ petition in the High Court. The High Court while refusing to quash the seniority list directed the appellant-State to promote the respondents as from the dates on which their juniors were promoted and treat their promotion as effective from that date. In the appeal filed against the judgment of the High Court the Supreme Court observed that -

"In the circumstances, the High Court could issue a writ to the State Government compelling

it to perform its duty and to consider whether having regard to their seniority and fitness they should have been promoted on the relevant dates when officers junior to them were promoted. Instead of issuing such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect. The High Court ought not to have issued such writs without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959."

The Supreme Court has, following the foregoing dictum, elucidated the legal proposition further only recently in State Bank of India Vs. Mohd. Mynuddin: AIR 1987 SC 1889. Observed their Lordships:-

"The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the Court should not ordinarily issue a writ to the Government or the statutory authority to promote an officer straightway. The principle enunciated in the above decision is equally applicable to the case on hand."

The Supreme Court further observed -

"There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The method of evaluation of the abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post to be nominated by the employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, malafides or any other similar vitiating circumstance other considerations will arise."

Still later adopting the same principle, the Supreme Court has set aside the direction given by the Central Administrative Tribunal to the Union of India and others to promote the first respondent in the Special Leave to Appeal filed by the Union of India and others against Ranbir Singh Yadav and others (J.T.1987(4) SC 223) and to pay the consequential benefits consequent upon his inclusion in the promotion list. Their Lordship instead directed the DPC entrusted with the duty of making selection of officers for promotion to the cadre of "F.(Executive)" to consider the case of the respondent No.1 in the light of the findings recorded by the Central Administrative Tribunal. A further direction was also made that "if the respondent is promoted, he will be entitled to all the consequential benefits."17

18. In view of these latest pronouncements of the highest court of the land, we feel that appropriate order to be passed in the instant application would be to quash the proceedings and report dated 27.9.85 of the Screening Committee to the effect that the petitioner's performance was not upto the mark and therefore, the Committee did not recommend him for empanelment for promotion to D.I.G. Level-II and direct the respondents that the case of the petitioner for promotion to the post of D.I.G. Level-II be considered afresh by a duly constituted Screening Committee in accordance with the criteria laid down in Office Memorandum dated 26.8.76(supra) and in the light of the observations made by us above. The respondents shall then take a decision to promote the petitioner or not on merits. We, therefore, allow this application and order accordingly. The respondents shall implement this order within four months from the

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date they receive a copy of this order. However,
there shall be no order as to costs.

9/30/11/87

(Birbal Nath)
Administrative Member

J. D. Jain

(J.D. Jain)
Vice-Chairman