

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

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O.A. No. 639/87
T.A. No.

199

DATE OF DECISION 6.8.1991

<u>Shri Om Prakash</u>	Petitioner
<u>Shri J.S. Bali. Senior</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>Shri P.P. Khurana,</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*


 (AMITAV BANERJI)
 CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 639/87

DATE OF DECISION: 6.8.1991

SHRI OM PRAKASH

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SH.J.S.BALI, SR.COUNSEL

& SH.S.S.TIWARI, COUNSEL

FOR THE RESPONDENTS

SH.P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

Shri Om Prakash, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the following orders:

(a) F.No.13012/6/86-IES dated 2nd December, 1986 under which the seniority list of Grade-III Officers of the Indian Economic Service (for short IES) as on 1.10.1986 was circulated and objections, if any, were invited against the seniority so assigned by 20.12.1986; and

(b) F.No.13015/2/87-IES dated 9th March, 1987 which notifies the appointment of GradeIII IES Officers on promotion to Grade-II of the IES in the scale of Rs. 1500-1800 w.e.f. 9.3.1987.

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The grievance of the applicant is that while he has not been included in the list of promotees from grade-III to Grade-II, some of his juniors have been promoted to Grade-II vide the impugned notification dated 9.3.1987.

The applicant joined the I.E.S. as an Inspecting Officer on 25.12.1975. He was later promoted as Assistant Economic and Statistical Adviser on 2nd April, 1980 (Grade-III of the Indian Economic Service) in the Directorate of Economics and Statistics, Department of Agriculture and Cooperation, Ministry of Agriculture. The applicant belongs to Scheduled Caste community.

Initially the Department of Personnel and Administrative Reforms, Ministry of Home Affairs was the controlling authority of the IES in accordance with Rule 6 of Indian Economic Service Rules, 1961 (hereinafter referred to as the rules). Some time in 1980, the Department of Economic Affairs, Ministry of Finance was designated as the controlling authority of the service. The said Department was to act as per the advice rendered by the Indian Economic Service Board. The applicant contends that although the Ministry of Finance circulated the impugned seniority list vide memorandum dated 2.12.1986 (Annexure A-1), no representations could be filed against the said seniority list as the same was incomplete in many respects. As an illustration of the incompleteness of the seniority list the applicant states that the posts held by the incumbents are not

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clearly stated in the said seniority list. He further submits that a seniority list cannot be deemed as seniority list unless it contains (a) date of birth; (b) date of joining the service; (c) date of promotion/absorption/ joining relevant grade. He, therefore contends that since the seniority list did not give these details the same is void and cannot be relied upon.

The name of the applicant in the said seniority list however appears at S.No.179. Against his name, his date of birth is shown as 4.7.1940 and his placement is shown in the Department of Agriculture. The applicant further avers that he has been working on a regular basis in Grade-III of the IES since 2nd April, 1980 and in accordance with rule 8(1)(c) of the rules, he was eligible for promotion to the grade-II of the service after having completed more than 5 years service on regular basis in gradeIII. The said rule 8(1)(c) further provides that:

".....promotions will be made on the basis of merit with due regard to seniority by the controlling authority on the advice of the Board, provided that if any junior officer in Grade-III is eligible and is considered for promotion, all officers senior to him in that grade shall also be considered for promotion notwithstanding that they may not have completed 5 years of service on a regular basis in that grade."

The applicant submits that his performance has always been outstanding and that no adverse remark in the Confidential Report has ever been communicated to him. He further submits that the impugned promotion order includes the names of persons junior to him and therefore notification of 9.3.1987 is bad, arbitrary, illegal and violative of the fundamental

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rights of the applicant. As an illustration he refers to the name of Shri B.N. Kacker who appears at S.No. 198 of the seniority list issued on 20.12.1986 while the applicant is at S.No. 179, yet Shri Kacker finds a place in the impugned notification dated 9.3.1987. Another cause of grievance is that the applicant allegedly has not been allowed the concession available to scheduled caste/scheduled tribe candidates, according to which if a scheduled caste/scheduled tribe candidate is senior enough to be in the zone of consideration and is within the number of vacancies for which select list is to be prepared and has not been considered unfit for promotion, his name is to be included in the select list. The applicant, therefore, avers that this concession clearly signifies that no person junior to SC/ST can be promoted to selection posts within Class-I. A junior can, however, be promoted only if the SC/ST officer is considered unfit. The next point agitated by the petitioner is that the DPC which considered the candidates for promotion from Grade-III to Grade-II of IES was not properly constituted. According to para 17.4 of Brochure on Reservation of Scheduled Caste/Scheduled Tribes in services that wherever DPC has to make bulk selection for filling up 30 or more vacancies at a time, all possible endeavours have to be made to include a scheduled caste or scheduled tribe officer as a member of the DPC. If a scheduled caste/ scheduled tribe officer is not available for inclusion as member of the DPC, either from outside or within the organisation, an endorsement to this effect is required to be obtained, before holding the meeting of the DPC, from the Liaison Officer of the Ministry/Department to the effect that despite all efforts it has not been found possible to find a scheduled caste officer for including in the DPC. The applicant affirms that the DPC did not have a member belonging to scheduled caste/scheduled tribe nor was any endorsement obtained as required in terms of provisions made in para

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17.4 of the Brochure. He accordingly contends that the recommendations of the DPC which was not properly constituted are null and void and illegal. By way of relief the applicant prays that the impugned notification dated 9.3.1987 promoting Grade-III Officers of the IES to Grade-II should be declared null and void. In the alternative the applicant should be declared as promoted to Grade-II w.e.f. 9.3.1987, the date on which his juniors were promoted. No relief has been claimed against the seniority list circulated on 2.12.1986 although the same is impugned.

2. The respondents in their written statement have stated that the applicant was inducted in the grade IV of the IES on 25.12.1975 and Grade-III of the IES on 2.4.1980. They contest the claim of the applicant that his performance has always been outstanding and submit that there is no basis for the assertion regarding the quality of performance of the applicant. The respondents also contest the statement that the applicant could not file a representation against the seniority list dated 20.12.1986 as it did not contain certain details as referred to in the application. They urge that the applicant cannot challenge the seniority list at this stage, against which he had not raised any objection at the relevant time. While on the one hand the applicant is claiming that the seniority list assigning him seniority w.e.f. 2.4.1980 should be declared as void, on the other hand he is praying for promotion to Grade-II on the basis of the same seniority list which he has challenged. The respondents submit that the promotion from Grade-III to Grade-II is on the basis of selection where merit with due regard to seniority is the only criterion. The seniority has no overriding priority. Shri Kacker who is admittedly junior to the applicant has been promoted on the basis of selection. Regarding the provision made in 17.4 of the Brochure, the respondents dispute the interpretation of the said rule by the

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applicant. They urge that the concessions as provided in para 17.4 ibid relate to consideration of inclusion of SC/ST officers in the select list to the extent of their being within the number of vacancies subject to their not being found unfit. Thus as against the general category candidates, who would be selected purely on merit, the SC/ST officers, within the number of vacancies are required to be included in the select list, not on the basis of their merit but on the basis of their fitness. Further the provisions relating to "within the number of vacancies" is significant and is not applicable to such SC/ST officers as do not fall within the number of vacancies. The respondents further aver that the selection was held for 80 vacancies of 1987. The petitioner, however figured at S.No. 87 of the list of eligible candidates. He was thus clearly not within the number of vacancies for which the select list was prepared. They, however affirm that all SC/ST officers, who were within the number of vacancies, were included in the select list as no one had been rejected as being unfit. The non-inclusion of the applicant in the select list is not tantamount to his being declared unfit. Regarding the constitution of the DPC, the respondents dispute the contention of the applicant that the provisions of para 17.4 of the Brochure are mandatory.

3. Shri J.S. Bali, the learned counsel for the applicant relying on the provisions of the Brochure on Reservation for Scheduled Castes and Scheduled Tribes questioned the constitution of the DPC as it did not include a member of the scheduled caste/scheduled tribe. He further submitted that no endorsement to the effect that all endeavours made to obtain the services of a Scheduled Caste/Scheduled Tribe Officer for inclusion in the DPC had failed before the DPC was held, was obtained from the Liaison officer of the Ministry. The learned counsel submitted that non-conformity with these provisions had vitiated

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the proceedings of the D.P.C. He further stated that in the case of Scheduled Caste/Scheduled Tribe candidates, the DPC is required to upgrade them one grade higher than the assessment made by the DPC for the selection posts. For instance if a Scheduled Caste/Scheduled Tribe candidate is graded 'very good', he will be upgraded to 'outstanding'. Had this been done the applicant would have been placed on the select list. The next point raised by the learned counsel was about the zone of consideration. He submitted that there were 80 vacancies and the zone of consideration should have been extended to three times the number. Thus 240 eligible candidates would come in the zone of consideration. The applicant was at S.No. 87 of the seniority list and was therefore well within the zone of consideration. He also alleged that the DPC deliberately depressed the grading of the applicant as it was biased against the applicant. It was further submitted that if a Scheduled Caste/Scheduled Tribe candidate is superseded, when the posts are filled by promotion the matter is to be reported to the Minister/Minister of State/Deputy Minister, as the case may be, in terms of DP&AR OM No.36012/3/75-Estt-(SCT) dated 6.10.1976 and OM No. 36013/6/80-Estt(SCT) dated 28.1.1982. Finally the learned counsel urged that the Tribunal may examine the record of the DPC as the proceedings in the DPC are vitiated due to non-conformity with the statutory instructions.

4. The learned counsel for the applicant cited the following cases to garner support for his case.

(1) **1990(3) SLJ CAT 216 - Sh. K.P. Dohare V. U.O.I. & Anr.**

In this case the Tribunal observed:

"In our opinion, the procedure followed by the respondents is not legally sustainable. They

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ought to have convened a Review DPC after 7.12.1988 when the final order of punishment was imposed on him. The 1987 DPC had recommended his promotion but kept the same in a sealed cover which was opened on 10.12.1988. Though he had been graded only as "Good", being a Scheduled Caste candidate, he was entitled to the safeguard against supersession in promotion in view of the Department of Personnel & A.R. OM No.36012/31.75-Estt(SCT) dated 6.10.1976. That is why the 1987 DPC included his name in the select list."

This case is not on all fours with the matter before us as the petitioner herein was superseded although he was senior enough in the zone of consideration to be within the number of vacancies.

II)

(1986) 2 Supreme Court Cases 373 - State of Gujarat V. S. Tripathi.

In this case an IAS Officer was not granted selection grade and super time scale as the confidential reports on him, year after year, had included the remarks 'not yet fit for promotion' and 'needs to be watched'. These remarks were given by the then Chief Secretary of the State. The Gujarat High Court held that there were no justifiable grounds nor were any **materials** produced to warrant overlooking of the petitioner for promotion to the Selection Grade and super-time scale. The Hon'ble Supreme Court, agreeing with the findings of the High Court, declared that the petitioner should have been given selection grade with effect from March 1981, the date from which the

High Court had observed that he ought to have been given such promotion and super-time Scale w.e.f. November 1, 1983. The Hon'ble Supreme Court also observed that there was no reason to doubt the bona fides of the then Chief Secretary, who had made the remarks in the confidential report on the petitioner.

The judgement therefore does not declare any law that can be applied in the case before us.

III) **E.P. Royappa Vs. State of Tamil Nadu & Anr. - 2 S.C.R. 1974 - 348**

The facts of this case are distinguishable as the matter relates to the determination of equivalence before an officer of the IAS holding a cadre post can be transferred to a non-cadre post, keeping in view the nature and responsibilities of the functions and duties attached to the non-cadre post. The Hon'ble Court further observed that extraneous or irrelevant factors should not be allowed to form an input in the determination of equivalence between the cadre and non-cadre posts.

IV) **(1974) 1 S.C.R 797 - Mohan Lal Capoor & Others.**

This matter relates to promotion of Deputy Collector/Deputy Superintendent of Police by the Selection Committee in accordance with Regulation 4(1) of the Indian Administrative Service/ Indian Police Service (Appointment by Promotion) Regulations, 1955. Regulation 5(2) of the said rules enjoins that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority." Regulation 5(5) of the said rules says that "if in the process of selection, review or revision it is proposed to supersede any member of the state Civil/Police Service the Committee shall record its reasons

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for the proposed supersession." In view of the above facts of the case the Hon'ble Supreme Court observed that "it was incumbent on the Selection committee to have stated reasons in a manner which would disclose how the record of each officer superseded 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 selections."

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"We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with."

These observations of the Hon'ble Supreme Court are essentially intertwined with the mandatory provisions of the Indian Administrtive Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 and therefore is of no consequence in the present case.

v) **1978 (3) SCR 652 - Union of India V. Chothia (H.P.) and Ors. etc. etc.**

For the reasons adduced in the preceding case, the decision of the Hon'ble Supreme Court herein is not applicable to the present case before us.

vi) **AIR 1985 SC 983 - Bihar State Harijan Kalyan Parishad V. Union of India.**

In this case the Hon'ble Supreme Court has interpreted the rule of reservation for inclusion of Scheduled Caste/Scheduled Tribe

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candidates who are senior enough to be within the zone of consideration, applicable to promotion by selection to posts which carry an ultimate salary of Rs. 2250 per month or less (presently Rs. 5700 or less). The Hon'ble Supreme Court held that:

"In other words, their inclusion in the Select List would not give them seniority, merely by virtue of their belonging to the Scheduled Castes and Scheduled Tribes over other officers placed above them in the Select List by the Departmental Promotion Committee. This appears to us to be the only possible interpretation of paragraph 9 of the Directive."

There is no dispute about the seniority and therefore the above citation is of little help to the applicant.

VII) **ATR 1987(1) CAT 274 - Radha Ballabh Tiwari V. Union of India & Ors.**

This case deals with issues relating to faulty over-all assessment made by the DPC. The Tribunal considered that the applicant should have been graded 'Very Good' for the year 1980-81 instead of 'Good' by the DPC and directed the respondents to consider the applicant as 'Very Good' for that year.

The case is not germane to the matter agitated before us.

The learned counsel for the applicant also filed the judgement in OA No. 395/87 in Kumari N. Ajwani V. UOI decided by the Principal Bench on 29.1.1988. The case dealt with herein is distinguishable as the proceedings of the DPC were set aside in view of the fact that adverse Confidential Reports have been taken into consideration without the same being communicated to the applicant.

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5. Shri P.P. Khurana, learned counsel for the respondents submitted that the zone of consideration can be extended to 5 times the number of vacancies if adequate number of Scheduled Caste/Scheduled Tribe candidates were not available within the prescribed zone of consideration. The only constraint, however, is that the candidates should have completed 5 years service in the regular grade in the feeder post. The learned counsel submitted that admittedly there were 80 vacancies. However, only 103 candidates were eligible and all of them were considered by the D.P.C. The applicant was at S.No.87 and he was also considered by the DPC. The respondents admitted that there was no member of the Scheduled Caste/Scheduled Tribe in the DPC. However, it was not a mandatory provision. The requirement of the relevant instructions is that all endeavours should be made to the maximum extent possible to nominate a Schedule Caste/Scheduled Tribe / where a DPC has to make bulk selection for a large number of vacancies, say for 30 or more at a time. It is nowhere laid down that the DPC should not be held unless and until a member belonging to Scheduled Caste/Scheduled Tribe is nominated in the DPC. The applicant was not senior enough in the zone of consideration to be within the number of vacancies as he was at S.No.87 in the list of 103 candidates who were considered by the DPC. Out of the five Annual Confidential Reports considered, the applicant had 4 'Very Good' and 1 'Outstanding' report and he scored total 19 marks. The same number of marks were scored by a Scheduled Caste candidate, who was at S.No.86 in the list and was placed at 80th position in the select list by the DPC. The applicant, who was at S.No.87 could not find a place in the select list as he was not senior enough to be within the number of vacancies nor sufficiently meritorious to supersede his colleague who was senior to him.

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6. We have also perused the records of the DPC proceedings submitted by the learned counsel for the respondents in accordance with our directions. The note for the members of the Departmental Promotion Committee scheduled to be held on 26.2.1987 at 3 p.m. submitted by Department of Economic Affairs brings out the position as under:

"As per the circular of the Ministry of Personnel and Training all those scheduled caste officers who happen to be in the zone of consideration within the number of vacancies which are to be filled up have to be included in the panel unless they are found unfit. This point will have to be kept in view while drawing up the panel.

6. For preparation of the 1987 panel, we have to consider 240 officers at the ratio of 1:3. But we have only 103 officers who meet the eligibility criteria i.e. 5 years of regular service in Gr.III. Accordingly, it is suggested that all these 103 officers be considered for empanelment to fill up 54 vacancies for 1987."

The applicant is at S.No.87 of the 103 candidates considered by the DPC. The DPC comprised of Shri K.P. Geethakrishnan, Additional Secretary, Department of Economic Affairs, Chairman; Shri M.M.S. Srivastava, Adviser, Planning Commission; Shri S. Raghunathan, Joint Secretary, Department of Personnel & Trg.; Dr. Shankar N. Acharya, Economic Adviser, Department of Economic Affairs; Shri D. Chatterjee, Joint Secretary, Department of Economic Affairs; Members. For the year 1987, the DPC placed 80 names on the select list. The last two candidates on the select list belong to Scheduled Caste and they are Shri Brij Bhushan,

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S.No.83 and Shri M.R. Dohare, S.No.86 in the list of 103 candidates considered.

The Scheduled Caste/Scheduled Tribe candidates placed in the select list are as under:

<u>Scheduled Caste</u>	<u>Scheduled Tribe</u>
Sl. Nos.32; 33; 34; 40	Sl.Nos.9 & 42
41; 43; 55; 56; 57; 58	
69; 70; 79 & 80	

Thus in the list of 80 candidates there are 16 candidates belonging to Scheduled Caste/Scheduled Tribes.

In the office note dated 9th January, 1987, in file No.F.No.13015/1/87-IES submitted by the respondents, it has been brought out that "the Scheduled Caste/Scheduled Tribe Officers who are within the first 80 places in the proposed select list and who do not have adverse entries in their Confidential Reports will have to be promoted. Their number is 15. The number of the officers belonging to the general category, who can be included in the select list is thus only 65. This is as per the Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Services issued by Ministry of Home Affairs."

The recommendations of the DPC were approved by the Minister of State on 27.2.1987.

The following issues have been raised for adjudication in the OA:-

- i) Whether non-inclusion of a member of the Scheduled Caste/Scheduled Tribe in the DPC and the absence of an endorsement that all endeavours to the maximum extent possible were made to find an officer for nomination in the DPC would vitiate its proceedings;

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(ii) Whether the Scheduled Caste/Scheduled Tribe candidates should be given one grading higher than the graded assessed by the DPC;

(iii) Whether the matter regarding the applicant, who belonged to the Scheduled Caste and is allegedly superseded, should have been specifically brought to the notice of the Minister-in-charge.

(iv) Whether seniority list, which does not contain certain particulars like date of birth; date of joining service etc. can be held bad in law.

7. We have heard the learned counsel for both the parties, perused the records of the DPC submitted by the respondents. We have also carefully gone through the records of the case.

From the record of the DPC submitted by the respondents we find that there was no Scheduled Caste, Scheduled Tribe member nominated in the DPC nor was any endorsement brought to the notice of the DPC that all endeavours were made to the maximum extent possible to nominate a Scheduled Caste/Scheduled Tribe Officer in the DPC. The instructions relevant in this regard were issued by the Department of Personnel ^{and} Administrative

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Reforms vide OM No. 41013/16/80-Estt.(SCT) dated 10.8.1981.

Paragraph 2 of the said OM is reproduced below:

"2. This matter has been examined in all its aspects. In the Department of Personnel and A.R. Office Memorandum No.27/4(iii)/70-Estt(SCT) dated the 2nd September, 1970 and No.16/1/74-Estt(SCT) dated 23rd May, 1975 it has been suggested that Ministries/ Departments may endeavour to the maximum extent possible, to nominate a Scheduled Caste/Scheduled Tribe officer while constituting the Departmental Promotions Committee, Selection Boards etc. for recruitment/promotions to posts/services under them. Particularly where a Selection Board or a Departmental Promotion Committee has to make bulk Selections for a large number of vacancies say, for thirty or more at a time, no effort should be spared in finding a Scheduled Caste or Scheduled Tribe officer for inclusion in the Selection Board/Departmental Promotions Committee. According to the Department of Personnel & A.R. Office Memorandum No.1/9/72-Estt(D) dated the 29th January, 1973 in respect of Departmental Promotions Committee for a Group 'C' or Group 'D' post, one of the members of the Committee should be an officer from a Department not connected with the one in which promotions are considered. It has been provided in the Department of Personnel & A.R. O.M. No. 16/1/74-Estt(SCT) dated the 8th April, 1974 that in the event of a Scheduled Caste/Scheduled Tribe Officer not being available in the Ministry/Department itself for nomination in the Departmental promotion Committee, there is no objection to nominating, to the extent possible, a

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Scheduled Caste/Scheduled Tribe officer
from another Ministry/Department."

A specific reference to the instructions of the DP&AR in the above OM dated 10.8.1981 in respect of a DPC for a Group 'C' or Group 'D' post leads us to believe that these instructions appear to have been issued in the context of constitution of DPC for promotion in non-gazetted cadre and not to the Group 'A' posts.

This, however, should not detract us from the fact that in the select list of 80 candidates, 16 candidates belong to the Scheduled Castes/Scheduled Tribes although only 15 candidates were senior enough in the zone of consideration to come within the number of vacancies. Thus, despite the fact that no member of the DPC belonged to the Scheduled Castes/Scheduled Tribes, the interest of the Scheduled Castes/Scheduled Tribes appears to have been taken care of by the DPC in accordance with the relevant instructions. We further hold the view that the provision for nominating an officer as Member on the DPC is not mandatory. The provision is meant to safeguarding the interest of the Scheduled Castes/Scheduled Tribes. Even though no material has been placed before us indicating that endeavours were made by the respondents to find a suitable officer belonging to Scheduled Castes/Scheduled Tribes, we are of the view that non-conformity with the provision should not be allowed to cloud the facts of the case where adequate representation, in accordance with the extant instructions, was given to the Schedule Castes/Scheduled Tribes candidates. We, in the circumstances do not find any merit for judicial interference with the DPC proceedings on this account.

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We also find that there is no provision for giving one grading higher than the assessed grade by the DPC to candidates appearing for selection for Group 'A' posts as is evidence from the Ministry of Home Affairs O.M. No. 1/9/69-Est.(SCT) dated 26.3.1970 as amended by Department of Personnel and Administrative Reforms O.M. No. 1/10/74-Est.(SCT) dated 23.12.1974. The relevant extract from the said O.M. is reproduced below:-

"2. In promotions by selection to posts within Class I, which carry an ultimate salary of Rs. 5,700 per month, or less, the Scheduled Castes/Scheduled Tribes officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the Select list has to be drawn up, would be included in that list provided they are not considered unfit for promotion. Their position in the select list would, however, be the same as assigned to them by the Departmental Promotion Committee on the basis of their record of service. **They would not be given, for this purpose, one grading higher than the grading otherwise assignable to them on the basis of their record of service.** (emphasis supplied.)"

Thus the applicant has no case for being graded outstanding on the ground that he had to be given one grading higher than the assessed grade.

The next point is again answered by the facts of the case. The applicant figured at S.No. 87 in the list of 103 candidates who were considered by the DPC. He was, therefore, not senior enough in the zone of consideration to fall within the number of vacancies.

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In accordance with Dept. of Per. & A.R.

OM No.36012/3/75-Est(SCT), dated 6.10.1976 and No. 36013/6/80-Est.(SCT) dated 28.1.1982, cases of supersession to be reported to the Minister are those where a Scheduled Caste Officer, who is senior enough in the zone of consideration and falls within the number of vacancies is declared unfit and not placed in the select list. The following extract from the said makes the position clear:

"In regard to promotions by selection to posts within Group 'A', which carry an ultimate salary of Rs. 5700 p.m. or less, where there is no reservation but the Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn are to be included in that list provided they are not considered unfit for promotion. Cases where eligible Scheduled Castes/Scheduled Tribes candidates though available in the seniority list within the number of vacancies for which the select list is drawn, are not selected, should be submitted to the Minister/Minister of State/Deputy Minister, concerned as the case may be."

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In view of the above provision this argument does not sustain the case of the applicant.

Although the seniority list dated 2.12.1986 has been impugned, the applicant has not sought any specific relief against the same. In fact he is seeking promotion on the basis of the same seniority list -

!Qui approbat non reprobatur! He who approbates does not reprobate, (i.e., he cannot both accept and reject the same thing.). The principle that a party shall not at the same time affirm and disaffirm the same transaction- affirm it as far as it is for his benefit, and disaffirm it as far as it is to his prejudice - is not peculiar to English Law, but common to all law which is based on the rules of justice.

Rungamma Vs. Atchama, (1846) 4 M.I.A.1. The maxim is founded, not so much on any positive law, as on the broad and universally applicable principles of justice. (Per Lord Chelmsford) in **Shah Mukhun Lall Vs. Baboo Sree Kishen Singh**, 12 M.I.A.157. Further he also did not raise any objection at the appropriate time against the assigning of the seniority. In fact even in the OA, there is no specific grievance except making a statement that certain particulars were not given in the seniority list. We do not consider absence of these particulars as essential for the purpose of making a representation in case he was aggrieved in any manner against the seniority assigned to him.

A passing reference was made by the learned counsel for the applicant that the Chairman of the DPC was biased against the applicant. However, no specific material has been produced to substantiate such bias. As indicated in paragraph 6 above, the DPC was a high power committee, presided over by Additional Secretary, Department of Economic Affairs. In absence of any specific material, we are unable to doubt the bona fides of the DPC or its Chairman.

In the above circumstances of the case, the application is dismissed with no order as to costs.

S. Banerji
(I.K. RASGOTRA)
MEMBER(A) 6/8/1991

A. Banerji
(AMITAV BANERJI)
CHAIRMAN

SSM Pronounced by me in the open court today, the 6.8.1991

S. Banerji
(I.K. Rasgotra)
6/8/91 Member(A)