

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

NEW DELHI

O.A. NO. 808 1987
D.O.T. NO.

DATE OF DECISION

Smti M. P. Jain & Others

PETITIONER

B. S. Mainee

Advocate for the
Petitioner(s)

VERSUS

Union of India & others

RESPONDENT

P. H. Ramchandani

Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, V.C.

The Hon'ble ~~Mr.~~ Miss Usha Sevra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ? Yes

Danesh

Sh. G.

16-11-89

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C E N T R A L A D M I N I S T R A T I V E T R I B U N A L

PRINCIPAL BENCH, NEW DELHI

Registration O.A. No.808 of 1987.

Shri M.P. Jain & Others Applicants

Versus

Union of India & Others Respondents.

Hon. Mr. Justice Kamleshwar Nath, V.C.

Hon. Usha Savara, Member (A)

(By Hon. Justice Kamleshwar Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 seeks to quash the select list dated 3.4.1987, Annexure-I, issued by the Railway Board for promotion to Grade I (Under Secretary/ Deputy Director) of the Railway Board Secretariat Service, with a further direction to the respondents 1 to 3, viz / Secretary, Ministry of Railways, Railway Board, Chairman, Railway Board, and Secretary, Union Public Service Commission to frame another panel of officers for promotion according to service record.

2. Certain facts are admitted. The promotion to Grade I of the service was to be made by the process of selection under Railway Board Secretariat Service Rules, 1969 (for short, 'The Rules') by a Selection Committee in accordance with Railway Board Secretariat Service (Promotion to Grade I) Regulations, 1973 (for short, The Regulations). Section Officers of 8 years approved service and Stenographers Grade 'A' of 8 years service plus 1 year service as Section Officer were eligible for

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promotion. Those Stenographers of Grade 'A' with 8 years service were also eligible who could not work as Section Officers for one year if the Central Govt., for reasons to be recorded in writing, were satisfied that they could not be appointed as Section Officers owing to exigencies of service. The field of selection, or 'zone of consideration', extended to 3 times the number of vacancies, and if suitable Scheduled Caste or Scheduled Tribe candidates are not available it could be 5 times, but among those beyond 3 times only the Scheduled Caste and Scheduled Tribe candidates could be considered. In this particular selection, there were 10 vacancies as on 1.7.86, and having regard to the need for Scheduled Caste/Scheduled Tribe, the zone of consideration consisted of 31 officers.

3. A Selection Committee (for short, S.C.) presided over by Sri Q.M. Ahmad, Member of the U.P.S.C., with Sri S.M. Vaish, Secretary Railway Board, Sri D.P.S. Ahuja, Executive Director (Management Service), and P.N. Jatav, Executive Director (Reservation) Railway Board (under the orders of the Railway Board) was constituted. The Committee met on 18.3.87 and 1.4.87, and on a consideration of the Annual Confidential Reports of the officers in the Zone of Consideration made its own categorisation of the officers into "Outstanding", "Very Good" and "Good", and framed the impugned Panel on the basis of merit. Respondents 4 to 13 were placed on the Panel in order of merit. The dispute does not

concern the last two of them, viz M.S. Mehra Scheduled Caste and B.B. Lakra Scheduled Tribe officers; it concerns the remaining 8 officers. The applicants, who are 12 in number, did not find place in the Panel. One of the points raised by the applicants is that although they are senior and possess excellent service record, persons junior to them have been wrongfully placed on the Panel. The position of the selected officers in the select list qua the position of the applicants in the Zone of Consideration senioritywise will appear from the following chart :

Selected Officers	Merit No.in select list	Seniority No.in the zone of consideration.	Applicants
M.C.Misra	1	14	
T.N.Ananthanarayanan	2	18	
J.C.Ahuja	3	19	
Lekh Raj Wahi	4	29	
D.K.Tandon	5	30	
N.S.Sohi	6	2	
R.K.Malhotra	7	4	
M.L.Wattal	8	5	
		9	M.P. Jain
		10	R.Aravamudhan
		17	K.Rajagopalan
		7	Y.P.Nanda
		11	H.C.Kulshreshtha
		12	G.L.Punni
		13	P.K.Nandi
		15	H.N.Mehrotra
		16	D.D.Rai
		20	H.C.Gupta
		21	K.K.Sharma
		23	Kailash Chander

4. The first point raised by the applicants is

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that respondent Lekh Raj Wahi, Private Secretary to the Chairman Railway Board, and respondent D.K. Tandon, Private Secretary to Member (Engineering) Railway Board were not eligible for consideration because they had worked only as Stenographers Grade 'A' and had not worked as Section Officers for one year. The Counter Affidavit of respondents 1 to 3 is that the Central Govt. (in the Ministry of Railways) was satisfied that Lekh Raj Wahi could not be posted as Section Officer owing to the exigencies of service, hence eligible under the Proviso to Rule 8 (3) of the Rules while D.K. Tandon had actually rendered one year's service as Section Officer. The applicants' rejoinder is that the certificate of exigency in favour of Lekh Raj Wahi was issued by the Govt. only at the time of forwarding the names to the U.P.S.C. There is no denial of the assertion that D.K. Tandon had actually put in one year's service as Section Officer.

5. It is not shown that the certificate of exigency of service preventing a Stenographer Grade 'A' from working as Section Officer has to be recorded by the Govt. at any particular time. Nothing wrong can then be found with the issue of the certificate at the time of forwarding the name to the U.P.S.C. we hold, therefore that Lekh Raj Wahi and D.K.Tandon were within the field of eligibility.

6. The second point raised is that senior officers among the applicants with excellent records have been

ignored against junior officers who happened to work with high officers and those having influence over the S.C. This general allegation was made more specific in the applicants additional affidavit filed on 22.9.87 by stating that respondents J.C.Ahuja and T.Ananthanarayanan were "closely connected with powerful officers who wielded considerable influence on S.M.Vaish, Secretary Railway Board, and D.P.S.Ahuja, Executive Director (Management Services) of the Railway Board who were members of the S.C." It was added that S.M.Vaish was the most powerful member of the S.C., being the Secretary of the Railway Board and that he and D.P.S.Ahuja had picked up the juniormost persons who were working with the Chairman, and Member (Engineering), of the Railway Board by "naked favouritism and mala fide intention".

7. That was a plea of mala fides raised by the applicants. We find that the plea does not satisfy the elements of law requisite for a case of mala fides. The plea has to be specific, not vague; the particular avert acts of mala fides must be set out. These are lacking. The applicants simply said that respondents J.C.Ahuja and T.Ananthanarayanan "were closely connected with powerful officers who wielded considerable influence on S.M.Vaish and D.P.S.Ahuja." The respondents have correctly emphasised in their additional counter that identity or particulars of the supposed "powerful officers" who wielded influence on S.M.Vaish and D.P.S.Ahuja have not been indicated, and therefore the respondents have nothing specific to answer. Nor the applicants have cited any illustration of exercise of influence on S.M.Vaish and D.P.S.Ahuja. The respondents have filed affidavits dated 9.12.87 of

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S.M. Vaish and D.P.S. Ahuja denying any mala fide action or favouritism on their part. The applicants' rejoinder dated 18.1.88 simply is that the denial by these two officers is incorrect, and that in the normal course of human conduct they would not admit that they had acted mala fide and indulged in favouritism. This rejoinder only begs the question. It is the duty of the applicants to make specific allegations and set out positive acts of malafides and favouritism by the Members of the S.C. before the latter can be expected to give a cogent reply. The respondents' additional was counter mentions that S.M. Vaish ~~was~~ just one of the members of the S.C. and was by no means "the most powerful Member". Indeed the main counter of the respondents specifically points out that H.K. Wathoo who stood at No.6 in order of seniority in Zone of consideration and was thus senior to all the applicants and most of the respondents were not selected although working under the Secretary Railway Board, S.M. Vaish. Reliance upon this circumstance as indicative of S.M. Vaish's independence is not misplaced. The applicants' plea of mala fide and favouritism in fact, thus, fails.

8. The third and the most important point raised by the applicants is that seniors among the applicants with outstanding and superior record than their selected juniors have been superseded and ignored without any reason and arbitrarily constituting malice in law. Emphasis is laid upon the cases of applicant No.2 R.Aravamudhan, No.3 K.Rajagopalan, No.5 R.C. Kulshrestha and No.8 R.N. Mehrotra. The respondents have made several contentions in this regard.

9. It is contended firstly that the case does not involve "supersession". In the Supreme Court decision in the case of U.P.S.C. Versus Hiranya Lal Dey and Others (1988) 7 ATC 72; relied upon by the learned counsel for the respondents, it has been held that in making selection there is no supersession in selecting juniors and that the concept of supersession is relevant in the context of promotion (on seniority subject to rejection of unfit), not selection. This answers the applicants' complaint that they have been superseded; the proper concept is of their having been passed over on merits.

10. It is secondly contended by the learned counsel for the respondents that no reasons are required to be recorded by the S.C. in passing over the seniors while selecting the juniors. The learned counsel for the applicants had relied upon the decisions in the case of R.C. Kohli Versus Union of India (1988) 6 ATC 228, V. Karuppan Versus Union of India (1988) 8 ATC 287, both decided by the Principal Bench of this Tribunal and K.D. Sharma Versus Union of India (1988) 7 ATC 180 decided by Jabalpur Bench of this Tribunal. The case of R.C. Kohli Versus Union of India (supra) dealt with promotion of an IPS officer to the post of D.I.G. Police. Placing reliance upon para 3 (iv) of the Govt. of India letter dated 26.8.76, it was held that the failure of the S.C. to record reasons of senior officers' unsuitability vitiated the recommendations of the S.C. It was mentioned that the said letter of the Govt. of India was

analogous to Regulation 5(5) of the Indian Administrative Services / I.P.S. Promotion (Appointment by Promotion) Regulations, 1955 which required reasons to be recorded. In the case of V.Karuppan Versus Union of India (supra) failure to record reasons for passing over a State Civil Service senior officer for promotion to the I.A.S. was held to be wrong in view of Regulation 5(7) of the I.A.S. (Appointment by Promotion) Regulations, 1955. The case of K.D. Sharma Versus Union of India (supra) concerned promotion of an IPS Officer who was DIG to the post of Additional I.G. Police and relying upon the Ministry of Home Affairs letter dated 26.8.76 (referred to in R.C. Kohli's case (supra)) it was held that the Screening Committee was bound to record reasons for passing over the senior officer.

11. The learned counsel for the respondents has urged that these decisions are not material because the Regulations under which reasons were required to be recorded had been deleted by amendment which did not figure before the Tribunal. Reference was made to the Supreme Court decision in the case of R.S. Das Versus Union of India 1986 Supp. SCC 617 inwhich the amendment by Govt. of India, Department of Personnel and Administrative Reforms' notification No.11039/6/76-AIS (I)-A dated 3.6.77 was noticed whereby Regulation 5(7) of the IAS (Appointment by Promotion) Regulations, 1955 had been deleted. The same view was expressed in the

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later decision of the Supreme Court in the case of U.P.S.C. Versus Hiranyalal Dev and others (supra) . It follows therefore that in so far as the three decisions relied upon by the learned counsel for the applicants rested upon Regulations requiring the reasons to be recorded, they are of no help to the applicants; nevertheless, the decisions are material to show that where, apart from the Regulations, instructions & decisions of the Administrative Departments of the Govt. of India, like those in Ministry of Home Affairs letter dated 26.8.76 mentioned above, requiring reasons to be recorded, they have to be recorded. It is well settled that departmental instructions duly issued to fill in gaps in the Rules are binding. It is in this sense that Departmental ^{instructions} ~~l.c.~~, if any, requiring reasons to be recorded for passing over seniors while selecting juniors must be complied with. However in the present case, the learned counsel for the applicants has not been able to produce any such decision or departmental instructions which may require reasons to be recorded for passing over senior officers in the Railway Administration while selecting the junior ones. There is substance therefore in the contention of the learned counsel for the respondents that the Selection Committee was not required to record reasons for passing over the applicants while selecting their seniors.

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12. The learned counsel for the respondents contended thirdly that the Selection Committee which is constituted under the Regulations is competent to make its own categorisation irrespective of the ratings which figure in the Annual Confidential remarks. It has to be seen whether this contention is borne out by the Regulation and has the support of law.

13. Annexures-R1 are the Regulations. The relevant portion of Regulation 5 are as follows :-

" 5 - Preparation of Select List.

(1) For the purpose of preparing the select list the Central Govt. in the Ministry of Railways shall prepare a list of the names of eligible officers of Section Officers' grade of the service and Officers of the Selection Grade of the Railway Board Secretariat Stenographer's service.

(2)

(3)

(4) The Selection Committee shall classify such of the officers included in the field of selection as are considered fit for appointment of Grade I as "Outstanding", "Very Good" and, "Good" on the basis of merit.

(5) The recommendations of the Selection Committee with upto date confidential records of the concerned officers and such other information as may be relevant, shall be forwarded to the Commission for their advice.

(6) Subject to the orders of the Govt., the recommendations of the Commission as regards suitability and classification of concerned officers shall be accepted.

(7) The Select List shall be prepared by including the required number of names first from amongst officers classified as "Outstanding", then from amongst those classified as "Very Good" and thereafter from amongst those classified as "Good". The order of names inter se within each category shall be the order in which the names are arranged in the single list prepared under sub Regulation(2).

14. It will be seen that the above Regulations do not lay down the procedure which is to be adopted by the Selection Committee for making the categorisation. It is the admitted case of both the parties that the procedure for the purpose is set out in the Office Memorandum No.22011/6/75-Estt(D) dated 30.12.76 of the Govt. of India in the Department of Personnel and Administrative Reforms, Annexure-RV. The relevant portion of paragraph (vi) of this Office Memorandum runs as follows :-

"(vi) Procedure to be observed by D.P.C. (which is the same thing as Selection Committee)

(1) Each Departmental Promotion Committee should decide its own method and procedure for objective assessment of the suitability of the candidates.

Ordinarily personal interview should not be regarded as necessary and the panel for promotion/confirmation may be drawn up on the basis of assessment of record of work and conduct of the officers concerned.

(2) Selection Method: Where selections are to be made by selection method as prescribed in the Recruitment Rules, the field of choice namely the number of officers to be considered should ordinarily extend 5 to 6 times the number of vacancies expected to be filled within a year. 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 Departmental Promotion Committee after examination of their respective record of service. In other words, it is entirely left to the Departmental Promotion Committee 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 Confidential Reports. The panel should thereafter be drawn up to the extent necessary by placing the names of "Outstanding" officers first, followed by the officers categorised as "Very Good" and followed by the officers categorised as "Good". The inter se

seniority of officers belonging to ~~anyone~~ category would be the same as their seniority in the lower grade."

15. The contention of the learned counsel for the respondents is that the Selection Committee, in view of the above instructions is not bound to adopt the A.C.R. gradings of the officers for the purposes of categorising them as "Outstanding", "Very Good" or "Good". It is urged that it is sole and exclusive jurisdiction of the Selection Committee to make its own classification irrespective of the gradings shown in the Confidential Report. The learned counsel for the applicants contends that, even so, the Selection Committee cannot make categorisation in an arbitrary manner without adopting clear norms for the purpose which has not been done in the present case.

16. There is no dispute that as a canon of interpretation the scheme of the Regulations and the Instructions must be construed as a whole; it is not permissible to extract a clause here or there and jump to a conclusion. The Regulations speak only of the field of eligibility, the constitution of the Selection Committee, the preparation of a list of eligible officers by the Department, its submission to the Selection Committee/Commission and of the Selection Committee to categorise the officers appropriately into a single select list. The manner in which the Selection Committee has to do it is to be found in the Office Memorandum which requires

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the following acts to be done :-

- (i) The Selection Committee must decide its own method and procedure;
- (ii) The Selection Committee must make objective assessment of the suitability of candidates;
- (iii) The panel for promotion should be drawn up on the basis of assessment of the record of work and conduct of the officers concerned;
- (iv) The categorisation into "Outstanding", "Very good" and "Good" has to be done on the basis of the officers' merits;
- (v) The assessment has to be made by the Selection Committee after examination of the respective records of service;
- (vi) The Selection Committee has to make its own classification irrespective of the grade that may be shown in the A.C.Rs;
- (vii) The panel has then to be drawn up by placing the three categories of officers one after the other.

17. It is plain enough that for discharge of its functions the Selection Committee has to decide its own methods and procedures. There is nothing in the Counter Affidavit to indicate what method and procedure had been adopted by the Selection Committee. The learned counsel for the respondents submitted that it is not possible for him, nor even for this Tribunal to contemplate how the mind of the Selection Committee worked in appreciating the A.C.Rs of the officers. He says that in some A.C.Rs gradings at the end of the *of different years* year had not been indicated, some A.C.Rs have been

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written by the same officer on the same date. His contention is that this situation has to be left to the Selection Committee for its consideration and none of us is in a position to say anything about it. The contention can be only partially correct, namely to the extent that the details of the various entries and the gradings in the A.C.Rs have to be left exclusively to the scrutiny of the Selection Committee; the Tribunal is in no position to go into it. But the contention cannot be accepted to the extent that the Selection Committee is entitled to make an assessment of the recorded performance of the work and conduct of an officer in any manner that the Selection Committee wants. The Office Memorandum clearly requires the Committee to decide its own method and procedure. It is true that every Selection Committee is competent to have "its own" method and procedure; but a method and procedure has to be decided upon. It is also well settled that no procedure can be arbitrary and unfair; otherwise it will violate Article 14 of the Constitution of India. The Office Memorandum has taken care to State in so many words that the Committee should decide its own method and procedure "for objective assessment of the suitability of candidates". In other words, the assessment has to be objective as contradistinguished from subjective; and the procedure has to ensure a method of objective assessment. On the face of it, this cannot be left to the fancy of the Selection Committee; and if the learned counsel for the respondents

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were to think that in view of the provision in the Office Memorandum that the making of classification is left entirely to the Selection Committee irrespective of the grading that may be shown in the A.C.Rs, he should be missing the crucial provision that ^{has} nevertheless _{or} to be done in accordance with a method and procedure which ensures objective assessment. We may observe that there is no requirement to draw up the procedure in the form of a formal document; the method and procedure actually adopted may be set out in the counter affidavit to enable the Tribunal to judge whether it is fair and germane to the object sought to be achieved by the Regulations and O.M. The adoption of a fair and germane procedure may even be inferred from the record if it can be done consistently, because reliance can be placed on a presumption that the official functions have been discharged in a regular manner. But where neither the counter affidavit sets out the method and procedure actually adopted, nor the facts and circumstances indicate that fair and germane norms have been consistently applied, it would not be possible to hold that requirements of the law, the Regulation and the O.M. have been fulfilled. The facts and circumstances of this case reveal this very infirmity in the stand of the respondents. We may refer to the categorisation of the selected

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officers vis-a-vis their A.C.R. gradings which stand as follows :-

<u>Name of selected Officers</u>	<u>Categorisation by S.C.</u>	<u>A.C.R. Gradings</u>
M.C. Misra	Outstanding	Outstanding for 1981, 82, 83 and 1985. No entry for 1984.
T.N. Ananthanarayanan	"	Outstanding for 1981 to 1985.
J.C. Ahuja	"	Outstanding for 1981, 82, 84 and 1985; Very Good for 1983.
Lekh Raj Wahi	"	Outstanding for 1981 to 1985.
D.K. Tandon	"	Outstanding for 1984; fit for promotion out of turn for 1981 to 1983 and 1985. (hence Outstanding).
N.S. Sohi	Very Good	Outstanding for 1981 and 1984; Very Good for 1982 and 1983; Satisfactory for 1985.
R.K. Malhotra	"	Outstanding for 1981, 82, 83 and 1984; Good for 1985.
M.L. Wattal	"	Outstanding for 1981, 82, 83, 84; Very Good for 1985.

On a careful look at this material one may, at the best, draw, if at all, the following norms :

(i) Assessment in the ACRs as "fit for promotion out of turn" is treated as 'Outstanding'.

(ii) Assessment in the ACR as 'Outstanding for all the five years, or 'Outstanding' for four years and "Very Good" for one year is categorised as 'Outstanding'.

(iii) Assessment in the ACR as 'Outstanding' for any number of years less than 5, coupled with "Very Good" "Satisfactory" or "Good" is categorised as "Very Good".

18. However, it will be noticed immediately that four 'Outstanding,' and one 'Very Good' A.C.R. in the case of J.C. Ahuja is categorised as 'Outstanding', but in the case of M.L. Wattal is categorised as 'Very Good' only. The inconsistency is apparent.

19. In the case of applicants, no one is categorised as 'Outstanding'; they are categorised either as "Very Good" or "Good". One may leave out of consideration S/Shri M.P. Jain, Y.P.Nanda, G.L.Punni, P.K. Nandi, D.D. Rai, H.C.Gupta and Kailash Chander as their gradings in the A.C.R., per se, or coupled with seniority in the zone of consideration are lower than those in the select list; even K.Rajagopalan may be left out with 4 'Outstanding' and one 'Good' grading in the A.C.R. as his seniority in the zone of consideration is much lower than those of the selected persons with equal gradings. But the gradings of the remaining four persons, on whom much emphasis is laid in the application and in the applicants additional affidavit, certainly deserve a close consideration. They are as follows :-

R.Aravamudhan - 'Outstanding' in all 5 years, 1981 to 1985.

R.C.Kulshrestha - 'Outstanding' in 4 years for 1981 to 1985 and 'Very Good' in 1985.

R.N.Malhotra - 'Outstanding' in 4 years, from 1982 to 1985, and 'Very Good' in 1981.

K.K.Sharma - 'Outstanding' in 4 years of 1981, 1983 to 1985 and 'Very Good' in 1982.

20. It is patent that while T.N.Ananthanarayanan and Lekh Raj Wahi with 5 'Outstanding' A.C.Rs have been categorised as 'Outstanding', and selected, applicant R.Aravamudhan

with identical performance is not so categorised. Similarly while J.C. Ahuja with 4 'Outstanding' and one 'Very Good' A.C.R. grading was categorised as 'Outstanding' and selected, the three applicants R.C. Kulshrestha, R.N. Malhotra and K.K. Sharma with identical performance are not so categorised. We have pointed out that even in the select list itself there is an identical anomaly with the case of M.L. Wattal who has been categorised only as "Very Good"; but, of course, M.L. Wattal has made no grievance thereof and nothing more need be said. Nevertheless, one cannot fail to notice that in any view of the gradings, S/Shri R.Aravamudhan, R.C. Kulshrestha, R.N. Malhotra and K.K. Sharma had patently better gradings than the selected officers N.S. Sohi, R.K. Malhotra and M.L. Wattal even if we assume the adoption of norms, as visualised above, by the Selection Committee.

21. But the learned counsel for the respondents would say that we are on a wild-goose chase and conjectures, that the Selection Committee did not adopt the supposed norms, and that it is not for this Tribunal to make assessments which is the exclusive function of the Selection Committee as held in the cases of U.P.S.C. Versus Hiranyalal Dev and Others (*supra*) in para (5), and State Bank of India and Others Vs. Mohd. Mynuddin 1987(4) S.L.R. 383 (Supreme Court) in para 5. True, it is not for this Tribunal to make assessment and categorisation; the function exclusively belongs to the Selection Committee. But the function is certainly not outside the

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purview of judicial review. This Tribunal is duty-bound to scrutinise whether the Selection Committee has discharged its functions within the four-corners and object of the Regulations and Departmental instructions. In Hiranyalal Dev's case (*supra*), the Supreme Court clearly said that the Selection Committee has to decide what norms to apply and is bound to apply the same yard-stick and norms as regards ratings to be given to the officers. Obviously there have to be tangible norms and their uniform application has to be shown to the Tribunal. In Mohd. Mynuddin's case (*supra*) the Supreme Court ruled in para 5 that "the process of selection adopted by them (Selection Committee) should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides, or any other similar vitiating circumstances, other considerations will arise." Obviously, it has to be shown to the Tribunal that the process of selection adopted by the Selection Committee has been honest and fair. It will not do to say that under the departmental instructions as contained in O.M. the Selection Committee is competent "to make its own classification of the officers being considered by them for promotion to selection posts irrespective of the gradings shown in the Confidential Reports." It has to be tangibly in accordance with a "method and procedure" decided upon by itself and such method and procedure must be calculated to work out an "objective assessment of the suitability of the candidates." Such method and procedure must be

honest and fair (vide Mohd. Mynuddin's case, *supra*), and the norms adopted in the method and procedure should be norms and yardstick applied to the cases of all the officers (vide Hiranyalal Dev's case, *supra*). It will not do for the respondents to plead that the Selection Committee had adopted 'some' norms and yardstick, 'some' procedure and method which they kept secret in the depths and confines of their mind, and the Tribunal must presume that they must have been fair and germane and must have been applied uniformly in face of the inconsistencies and anomalies which we have indicated above. An executive *ipse dixit* is alien to the rule of law. The Selection Committee cannot make a 'subjective assessment'; they have to make an 'objective assessment' as unmistakably required in the Instructions contained in the O.M. We find that the respondents have failed to make out that the Selection Committee adopted any "method and procedure", must less a fair one, or that they applied any such procedure uniformly and consistently. On these findings, the impugned select list Annexure-I deserves to be quashed.

22. The fourth point raised by the applicants is that while categorising the officers, the Selection Committee did not give weightage to the fact that the applicants had already been working as Deputy Directors on adhoc basis, while some of the selected respondents had worked only as Section Officers or Stenographers Grade 'A'. Reliance is placed on Railway Board's Circular Annexure-VI.

23. The respondents case in the counter is that the Railway Board circular dated 25.1.76 is not relevant because the selection for the post in question has to be done in accordance with the Rules and Regulations and because selection has to be done not on the basis of interview as contemplated in the circular but on the basis of overall performance as reflected in A.C.Rs. It is further said that some of the selected candidates namely M.C. Misra, T.N. Ananthanarayanan, N.S. Sohi, N.K. Malhotra, M.L. Wattal and M.S. Mehra were also working as Adhoc Deputy Directors prior to their consideration by the Selection Committee and therefore also the applicants cannot claim weightage on the basis of their adhoc officiating appointment in the same capacity.

24. The circular of the Railway Board in question appears to have been supplemented by another circular dated 9.8.82 and the two are set out at page 122 of the Railway Establishment Manual 1986 Edn, published by Bahri Brothers. In addition to the contents appearing in Annexure-VI of the application the publication contains the following further provision :-

" the intention of the above is only to give broad guidelines to the Selection Board and it does not confer any right on those working on adhoc basis to claim retention in higher grade or to be selected."

25. Appreciating the circular dated 25.1.76 alongwith circular dated 9.8.82, it would be clear that although

the contents thereof do provide broad guidelines to Selection Boards, they do not confer any right on the Adhoc employees to claim to be selected. The learned counsel for the applicants has referred to the case of Mohini Mohan Dutta Versus Union of India & Others ATR 1987 (2) CAT 517 where the Calcutta Bench of this Tribunal observed that in view of the directions of the Railway Board once a candidate works on adhoc basis satisfactorily no reversion shall be made ordinarily unless there are strong reasons for doing so. That was a case of the Adhoc Chief Draftsman reverted as Head Draftsman, and the Bench referred to a Railway Board's decision that if a person was officiating for more than six months satisfactorily in a adhoc capacity, the matter has to be referred to the HQrs. if a question of his reversion arises. We do not think that a situation which was considered in that decision can be fairly applied to the present case. The Regulations and the Departmental Instructions concerned in the present case are special and particular provisions which must override general provisions like those contained in the circulars in question. The contention of the learned counsel for the respondents ^{is} that the circulars concern selections on the basis of interview which is not required under the instant Rules and Regulations. It will however be appreciated that where interview is not to be held, that would signify as good a situation

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as if an Adhoc employee working quite satisfactorily ^{even} may not be declared unsuitable ^{if} such a situation could be found in the course of an interview. The spirit of the policy decision in the two circulars of the Railway Board thus seems to be that among persons of equal merit those working quite satisfactorily on adhoc basis may be given some consideration to save them from harassment. This is described as a broad guidelines for the Selection Boards. At the same time, it expressly excludes any right of such employees to claim to be selected merely because they were working quite satisfactorily on adhoc basis. The guidelines and the limitation on right of the adhoc employees appear to be quite reasonable. We should hold that in the absence of any guideline in the matter of adhoc employees in the Rules, Regulations and the Departmental Instructions, the guidelines indicated by the two circulars may be fairly applied to the selection in question only to the limited extent that among officers of the same merit, the adhoc employees who have been working satisfactorily may be given some weightage by the Selection Committee. What should be that weightage has to be determined exclusively by the Selection Committee.

26. However there is another aspect of the matter. The selections were to be made for the ten vacancies which existed upto 1.7.86. The documents alongwith the zone of consideration, prepared on that basis, would have been considered by the Selection Committee

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in its meeting dated 18.3.87 and 1.4.87. The A.C.Rs upto 1985 only were being considered. It should have been proper and fair therefore to consider only those Adhoc postings which would have taken place before 1.7.86. The respondents specifically pleaded in para 6(m) of their counter that S/Shri M.C. Misra, T.N. Ananthanarayanan, N.S. Sohi, R.K. Malhotra, M.L. Wattal and M.S. Mehra were also working as Deputy Directors prior to the consideration of their names by the Selection Committee. There is no rebuttal of that statement in the rejoinder. The dates of adhoc appointments were stated before us by the learned counsel for the parties at the Bar, but we are not very sure about them; we think that they ought to have figured in the parties affidavits. We are not in a position therefore to hold affirmatively as to which of the applicants were entitled to be given weightage on the basis of their working as Deputy Directors in adhoc capacity if they had worked quite satisfactorily.

27. The fifth point raised by the learned counsel for the applicants relates personally to Shri M.C. Misra, respondent on the ground of the absence of A.C.R. entry in his case for the year 1984. It appears that during some earlier proceedings of this case it was noticed, when the A.C.Rs of the various officers may have been produced, that the entry was missing. At that time

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the applicants simply said in para 15 of their additional affidavit filed on 22.9.87 that M.C. Misra had been picked up although one of his Confidential Reports "was not available on the record" while he had been working in the office of Minister for Railways. In the additional counter, no comments had been made except that the Tribunal had seen that one year's entry was not there. However in paragraph 6(q) of their rejoinder to the main counter, the applicants came out with a version for the first time that the A.C.R. in question of M.C. Misra had been intentionally kept away from the perusal of the Hon'ble Tribunal and of the Departmental Promotion Committee on the ground that it had been misplaced although it "is available and is being deliberately concealed to justify the conclusions of the Departmental Promotion Committee as well as the respondents". We do not think that we should take notice of this allegation which is placed for the first time in the rejoinder because it is a new fact which the respondents have no opportunity to meet. A rejoinder must be confined to the facts which arise from the counter. The position which had figured before this rejoinder was simply that one year's A.C.R. of Shri M.C. Misra was wanting. A statement by the applicants that it does exist and has been clandestinely suppressed is a new allegation which should have been brought out in the form of an independent affidavit with the permission of the Tribunal so that respondents could have a fair opportunity of meeting it.

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28. However in the midst of this situation, we find Office Memorandum No.22011/6/85-Estt(D) dated 30.5.86 of the Department of Personnel & Training of the Govt. of India published at page 489 of P.Muthuswamy's "The Establishment and Administration" (1Ind Edition), directing that while forwarding proposals to the U.P.S.C., the Ministries/Departments should have the A.C.R. Folder checked up "to verify whether A.C.R. for the individual years are available." It goes on to say that "if the A.C.R. for a particular year is not available and for valid/justifiable reasons it cannot be made available a certificate should be recorded to that effect and placed in the A.C.R. Folder." When the A.C.R. Folder was placed before us it did not contain any such certificate. Perhaps we may not say anything more in this regard because the respondents might have said something about it, if they had an opportunity to do so. We should not therefore strike down the selection of Shri M.C. Misra only for that reason; but if the matter gets reopened, the respondents would be expected to satisfy the requirements of the decisions of the Government.

29. These are all the points which had been raised before us and in view of our findings, the impugned select list would deserve to be quashed with the direction to frame a fresh select list. But the

learned counsel for the respondents has pointed out that some of the officers have already retired and a good number of them have already been selected in the subsequent proceedings of the Selection Committee. It will be fair to consider the effect of this situation.

30. The learned counsel for the parties conceded at the Bar that the Selection Committee of 1988, selected applicants M.P. Jain, K.Aravamudhan, Y.P.Nanda, R.C. Kulshrestha, K.N. Malhotra and D.D. Rai, and the Selection Committee of 1989 selected applicants Hari Chand Gupta and K.K. Sharma for the post of Deputy Director/Under Secretary. Of these, M.P. Jain has retired.

31. It was further conceded that K.Rajagopalan, G.L. Punni, P.K. Nandi, and Kailash Chander were never selected by the Selection Committee, but they have been working as adhoc Dy. Directors. Of these K.Rajagopalan has retired.

32. The contention of the learned counsel for the respondents is that in this manner all the applicants have been getting the benefit of working as Deputy Directors and for all practical purposes have not suffered any significant loss. It is urged that if the impugned selection is quashed, it will unsettle the settled situation causing avoidable hardship to the selected officers and much inconvenience to the Department and the U.P.S.C. as they will have to go over

the process for 1987, 1988 and 1989 again. The contention of the learned counsel for the applicants is that considerations of hardship and inconvenience cannot outweigh the requirements of law, fairness and justice, and the humiliation and harassment which the deserving applicants have suffered qua their juniors deserve to be remedied.

33. A similar situation came up for consideration before the Jabalpur Bench of this Tribunal in the case of K.D. Sharma Versus Union of India & Others (1988) 7 ATC 180. In that case the promotion of an IPS officer working as D.I.G. to the post of Additional I.G. Police and thereafter to the Super Time Scale post of I.G. Police was in question. A Screening Committee was required to be constituted for promotion to the post of I.G. Police. That was not done; and by the time the matter came to be decided judicially the officer had retired. The Bench held that although the selection was invalid yet since the petitioner had retired it would not be desirable to unsettled the settled things, necessary or appropriate to retrospectively order reversion of any of the officers who were promoted to the rank of I.G. Police (vide para 33). The Bench went on to say that nevertheless the officer was entitled to be considered for the post of I.G. Police in relation to the performance of other officers by a properly constituted Screening Committee (vide para 44). It was further observed that the officer having retired he could not be physically

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promoted but he could have monetary compensation by way of differential emoluments. The Bench went to observe as follows in para 45 :-

" Apart from this, the question of psychological morale, and honour of an officer is involved not only in relation to the petitioner, but other members of the police force in future."

34. Having said so, the Bench ordered the Govt. to constitute a Screening Committee to review the officers' case for "retrospective proforma promotion" with effect from the date his next junior was promoted as I.G. Police.

35. We have given our anxious thought to the situation and we do think that in view of the infirmities which we have found in the selection proceedings, justice and fairness demands that a review of the selection must be made inspite of the fact that some of the officers have retired and most of the officers have been subsequently selected. Whatever inconvenience has to be undergone for the purposes of rendering justice will not be too ~~big~~ as to dissuade this Tribunal from declaring what is right. At the same time we should say that the selection of Shri M.S. Mehra, a Scheduled Caste Officer and Shri B.B. Lakra, a Scheduled Tribe Officer must remain unaffected because of the special situation due to reservation quota. We should also like to say that while the respondents undergo the requisite exercise, it would not be necessary

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to revert any of the officers who have already been promoted in view of the impugned select list, Annexure-I. We are in no manner of doubt that it will be possible for the Govt. to make appropriate provision in that connection. Without elaborating, we may mention that the feasibility of creating supernumerary post is very well known (see page 339 of Railways Establishment Manual (supra) and the decisions of the Govt. of India in the Office Memoranda dated 15.3.61, 29.8.60, 2.8.62, 8.10.64 under Rule 11 of the Delegation of Financial Powers Rules and F.R. 15).

36. We should like to say that the learned Advocates at the Bar, Shri B.S. Mainee and P.H. Ramchandani for the applicants, the respondents have presented case before us with considerable thoroughness and lucidity which has helped us a lot to arrive at our decision on some important points involved in the case.

37. In view of our findings above, we quash the impugned select list, Annexure-I dated 3.4.1987 except in respect of respondents M.S. Mehra and B.B. Lakra. The concerned respondents shall constitute an appropriate Selection Committee which shall reconsider the applicants' case in the light of the observations made in the body of this judgement and shall prepare a fresh select list after which the appropriate authority of the Govt./ Railway Administration shall issue revised promotion orders to the post of Deputy Director/ Under Secretary

[Signature]

with retrospective regular or proforma promotion, as the case may be, in favour of the applicants who may be found entitled thereto and accord all consequential benefits to them according to law. The entire process and the issue of promotion orders shall be done within six months from the date of receipt of a copy of this order by respondent No.1. In the meantime, none of the officers who have been promoted in pursuance of the impugned select list, Annexure - I shall be reverted. Parties shall bear their cost of this petition.

L. L. L. L.
Member (A)

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Vice Chairman

Dated the 16th November, 1989.

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