

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 371 OF 2004
ALONG WITH
ORIGINAL APPLICATION NUMBER 370 OF 2004
ALONG WITH
ORIGINAL APPLICATION NUMBER 372 OF 2004
ALONG WITH
ORIGINAL APPLICATION NUMBER 440 OF 2004
ALONG WITH
ORIGINAL APPLICATION NUMBER 501 OF 2004
ALONG WITH
ORIGINAL APPLICATION NUMBER 417 OF 2004

ALLAHABAD THIS THE 5th DAY OF May 2005

HON'BLE MR. JUSTICE S.R. SINGH, VICE-CHAIRMAN
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Kripa Shankar Singh, aged about 51 years,
Son of Late Jhimal Singh,
Permanent resident of village - Tusauri,
Post Office, MAI District-Janpur (U.P.)
Present posted as Additional S.P. (Vigilance) U.P.
Power Corporation Ltd. Shakti Bhawan,
Lucknow (U.P.)

.....Applicant in O.A. No. 371/2004

(By Advocate : Shri S. Narain)

ALONG WITH O.A. NO.370 OF 2004

Ram Shankar aged about 51 years
Son of Late Ram Suresh Mishra,
Permanent resident of village and post - Taraini,
District-Basti (Previously posted as Additional S.P.
(Vigilance) Varanasi (U.P.)

.....Applicant in O.A. No.370/2004

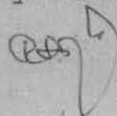
(By Advocate : Shri S. Narain)

ALONG WITH O.A. NO. 372 OF 2004

Balbir Singh aged about 49 years,
Son of late Gurcharan Singh,
Permanent resident of 253, Basoli Tola,
Khuldabad, Allahabad. Presently posted as Additional
Superintendent of Police (ASP) Crime, Kanpur Nagar.

.....Applicant in O.A. No. 372/2004

(By Advocate : Shri S. Narain)



V E R S U S

1. The Union of India through the Secretary,
Ministry of Home Affairs, Govt. of India, North
Block, New Delhi.
2. The State of U.P. through the Chief Secretary,
Govt. of U.P., Lucknow. (U.P.)
3. The Principal Secretary,
Home Department, Government of Uttar Pradesh,
Lucknow, U.P.
4. The Director General of Police,
Uttar Pradesh, Lucknow.
5. The Chairman, Union Public Service Commission,
Dholpur House, Sahjahan Road, New Delhi.
6. Shri Bhola Nath Singh,
S.P. Crime,
D.G.P. Headquarters, Lucknow U.P.
7. Sri Gyan Singh,
S.P. Inter State Border Police Force,
Jhansi, U.P.
8. Shri Vijay Shankar Singh
S.P. Vigilance, Kanpur (U.P.)
9. Sri Rajendra Prasad Singh -II
S.B. C.B. C.I.D., Lucknow (U.P.)
10. Sri Kashi Nath Singh
S.P., C.B. C.I.D.,
Lucknow (U.P.)
11. Sri Raj Bahadur Singh,
S.P. C.B. C.I.D., Lucknow (U.P.)
12. Shri Akhileshwar Ram Mishra,
S.P. Special Inquiry, Lucknow (U.P.)
13. Sri Pramod Kumar Mishra,
S.P. Enforcement, U.P. Power Corporation Limited,
Lucknow (U.P.)
14. Shri Siya Ram Saran Aditya,
S.P. Intelligence Gorakhpur, (U.P.)
15. Sri Surya Nath Singh
S.P. Vigilance, Allahabad (U.P.)
16. Sri Veer Bahadur Singh,
S.P. Baghat.
17. Shri Deepak Sharma
S.P. Ghazipur (U.P.)
18. Sri Sanjay Srivastava,

Sanjay

S.P. Security Headquarters,
Lucknow (U.P.)

19. Shri Rajesh Kumar Srivastava,
S.P. Jalaun (U.P.)
20. Shri Durga Charan Mishra
S.P. Janpur (U.P.)
21. Sri Satyendra Vir Singh
S.P. Hamirpur.
22. Shri Ram Krishna Chaturvedi, on deputation as
S.P. Indian Oil Corporation,
New Delhi.
23. Sri Rahul Asthana
S.P./Deputy Director,
Computer Centre, Jawahar Bhawan,
Lucknow (U.P.)
24. Shri Jitendra Sonkar,
S.P. Economic Offences Wing,
Meerut (U.P.)

..... Respondents in O.A.
Nos. 371/2004,
370/2004 and 372/2004

(By Advocate : Shri S. Agarwal/ Shri K.P. Singh/Shri
Tej Prakash/ Shri S. Singh/ Shri S. Chaturvedi/
Shri V. Singh)

ALONG WITH ORIGINAL APPLICATION 440 OF 2004

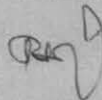
Maiya Din Karnadhar, aged about 49 years,
Son of Late Madariya, Posted as
Additional S.P. (Security) Varanasi,
C/o Senior Superintendent of Police Office,
Varanasi.

.....Applicant in O.A. No. 440/2004

(By Advocate : Shri V. Budhwar/ Shri A. Tripathi)

V E R S U S

1. The Union of India through the Secretary,
Ministry of Home Affairs, Govt. of India, North
Block, New Delhi.
2. The State of U.P. through the Chief Secretary,
Govt. of U.P., Lucknow. (U.P.)
3. The Principal Secretary,
Home Department, Government of Uttar Pradesh,
Lucknow, U.P.
4. The Director General of Police,
Uttar Pradesh, Lucknow.



5. The Chairman, Union Public Service Commission,
Dholpur House, Sahjahan Road, New Delhi.
6. Shri Bhola Nath Singh,
S.P. Crime,
D.G.P. Headquarters, Lucknow U.P.
7. Sri Gyan Singh,
S.P. Inter State Border Police Force,
Jhansi, U.P.
8. Shri Vijay Shankar Singh
S.P. Vigilance, Kanpur (U.P.)
9. Sri Kashi Nath Singh
S.P., C.B. C.I.D.,
Lucknow (U.P.)
10. Shri Akhileshwar Ram Mishra,
S.P. Special Inquiry, Lucknow (U.P.)
11. Sri Pramod Kumar Mishra,
S.P. Enforcement, U.P. Power Corporation Limited,
Lucknow (U.P.)
12. Shri Siya Ram Saran Aditya,
S.P. Intelligence Gorakhpur, (U.P.)
13. Sri Surya Nath Singh
S.P. Vigilance, Allahabad (U.P.)
14. Sri Veer Bahadur Singh,
S.P. Baghpat.
15. Shri Deepak Sharma
S.P. Ghazipur (U.P.)
16. Sri Sanjay Srivastava,
S.P. Security Headquarters,
Lucknow (U.P.)
17. Shri Rajesh Kumar Srivastava,
S.P. Jalaun (U.P.)
18. Shri Durga Charan Mishra
S.P. Janpur (U.P.)
19. Sri Satyendra Vir Singh
S.P. Hamirpur.
20. Shri Ram Krishna Chaturvedi, on deputation as
S.P. Indian Oil Corporation,
New Delhi.
21. Sri Rahul Asthana
S.P./Deputy Director,
Computer Centre, Jawahar Bhawan,
Lucknow (U.P.)



22. Shri Jitendra Sonkar,
S.P. Economic Offences Wing, Meerut (U.P.)

..... Respondents in O.A. No.440/2004

(By Advocate : Shri S. Agarwal/ Shri K.P. Singh/Shri
Tej Prakash/ Shri S. Singh/ Shri S. Chaturvedi/
Shri V. Singh)

ALONG WITH ORIGINAL APPLICATION NO. 501 OF 2004

Om Prakash Sagar, aged about 48 years,
Son of late I.P. Sagar,
Posted as Additional S.P. (Intelligence)
Moradabad, resident of 14 officers Colony, P.T.C.-II
Chakar Ka Milak,
Moradabad.

..... Applicant in O.A. No. 501/2004

(By Advocate : Shri V. Budhwar/ Shri A. Tripathi)

V E R S U S

1. The Union of India through the Secretary,
Ministry of Home Affairs, Govt. of India, North
Block, New Delhi.
2. The State of U.P. through the Chief Secretary,
Govt. of U.P., Lucknow. (U.P.)
3. The Principal Secretary,
Home Department, Government of Uttar Pradesh,
Lucknow, U.P.
4. The Director General of Police,
Uttar Pradesh, Lucknow.
5. The Chairman, Union Public Service Commission,
Dholpur House, Sahjahan Road, New Delhi.
6. Shri Bhola Nath Singh,
S.P. Crime,
D.G.P. Headquarters, Lucknow U.P.
7. Sri Gyan Singh,
S.P. Inter State Border Police Force,
Jhansi, U.P.
8. Shri Vijay Shankar Singh
S.P. Vigilance, Kanpur (U.P.)
9. Sri Rajendra Prasad Singh -II
S.P. C.B. C.I.D., Lucknow (U.P.)
10. Sri Kashi Nath Singh
S.P., C.B. C.I.D.,
Lucknow (U.P.)
11. Sri Raj Bahadur Singh,
S.P. C.B. C.I.D., Lucknow (U.P.)

12. Shri Akhileshwar Ram Mishra,
S.P. Special Inquiry, Lucknow (U.P.)
13. Sri Pramod Kumar Mishra,
S.P. Enforcement, U.P. Power Corporation Limited,
Lucknow (U.P.)
14. Shri Siya Ram Saran Aditya,
S.P. Intelligence Gorakhpur, (U.P.)
15. Sri Surya Nath Singh
S.P. Vigilance, Allahabad (U.P.)
16. Sri Veer Bahadur Singh,
S.P. Baghpat.
17. Shri Deepak Sharma
S.P. Ghazipur (U.P.)
18. Sri Sanjay Srivastava,
S.P. Security Headquarters,
Lucknow (U.P.)
19. Shri Rajesh Kumar Srivastava,
S.P. Jalaun (U.P.)
20. Shri Durga Charan Mishra
S.P. Janpur (U.P.)
21. Sri Satyendra Vir Singh
S.P. Hamirpur.
22. Shri Ram Krishna Chaturvedi, on deputation as
S.P. Indian Oil Corporation,
New Delhi.
23. Sri Rahul Asthana
S.P./Deputy Director,
Computer Centre, Jawahar Bhawan,
Lucknow (U.P.)
24. Shri Jitendra Sonkar,
S.P. Dy, Commissioner (S.I.B.)
Trade Tax, Kanpur(U.P.)

..... Respondents in O.A. No.501/2004

(By Advocate: Shri S. Agarwal/ Shri K.P. Singh/Shri
Tej Prakash/ Shri S. Singh/ Shri S. Chaturvedi/
Shri V. Singh)

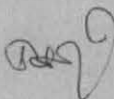
ALONG WITH ORIGINAL APPLICATION NO.417 OF 2004
Prakash Tripathi, aged about 50 years,
Son of Late Shri Prayag Narain Tripathy,
Resident of 75/93, Darbhanga Colony,
Allahabad presently posted as Additional S.P.Etah.

..... Applicant in O.A. No.417/2004

(By Advocate : Shri U. N. Sharma/Suneet Kumar)

V E R S U S

1. The Union of India through the Secretary,
Ministry (Home), New Delhi.
2. The Chairman, Union Public Service Commission,
New Delhi.
3. State of U.P. through the Chief Secretary,
Govt. of U.P. Lucknow.
4. State of U.P. through the Principal Secretary
(Home), Govt. of U.P., Lucknow.
5. Director General of Police U.P.
Lucknow.
6. Bhol Nath Singh,
S.P., Anti Dacoity Operation,
D.G.P. Headquarters, Lucknow U.P.
7. Gyan Singh,
S.P. U.P.P. I.S.B.F.,
Jhansi.
8. Vijay Shankar Singh
S.P. Vigilance, Establishment
Lucknow.
9. Rajendra Prasad Singh
S.P. C.B. C.I.D., Headquarters
Lucknow.
10. Kashi Nath Singh
S.P., C.B. C.I.D., Headquarters
Lucknow (U.P.)
11. Raj Bahadur Singh,
S.P. Special Investigation Bureau Coop.
Lucknow.
12. Akhileshwar Ram Mishra,
S.P. Special Inquiries
Lucknow
13. Pramod Kumar Mishra,
S.P. Power Corporation
Shakti Bhawan
Lucknow
14. Sia Ram Saran Aditya,
S.P. (Regional) Intelligence
Gorakhpur
15. Surya Nath Singh
S.P. Vigilance, Establishment
Lucknow



16. Veer Bahadur Singh,
S.P. Baghat.
17. Deepak Sharma
S.P. Ghazipur
18. Sanjay Srivastava,
S.P. Intelligence Headquarters,
Lucknow.
19. Rajesh Kumar Srivastava,
S.P. Jalaun
20. Durga Charan Mishra
S.P. Janpur
21. Satyendra Vir Singh
S.P. Hamirpur.
22. Ram Krishna Chaturvedi,
Indian Oil Corporation,
New Delhi.
23. Rahul Asthana
Asstt. Director/S.P. Computer Technical services
Lucknow (U.P.)
24. Jitendra Sonkar,
S.P. S.P. Economic Offence Wing
Meerut.

..... Respondents in O.A. No. ⁴¹⁷440/2004

(By Advocate : Shri S. Agarwal/ Shri K.P. Singh/Shri
Kamal Singh/ Shri S. Singh/ Shri S. Chaturvedi/
Shri V. Singh/D. Tiwari)

O R D E R

By Hon'ble Mr. Justice S. R. Singh, V.C.

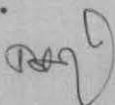
As the facts and reliefs sought by the applicants are similar, therefore, we are deciding these cases by a common order. The O.A. No. 371 of 2004 is a leading case.

Through these O.As. the applicants who are officers of Uttar Pradesh Police Service have impugned notification dated 11.02.2004 of Govt. of India Ministry of Home Affairs appointing private respondents to the Indian Police Service. They have also prayed before the Tribunal to issue suitable

direction for holding a fresh DPC in terms of the revised guidelines and procedure prescribed vide office memorandum dated 08.02.2002 of Department of Personnel and Training, Govt. of India besides quashing the DPC proceedings dated 11.12.2003 which form the basis of appointment of the private respondents vide notification dated 11.02.2004.

2. Essentially, the present applications have been filed challenging the legality and validity of the notification dated 11.02.2004 supra containing 3 separate select lists for the years 2001, 2002 and 2003. Accordingly, 19 officers of Uttar Pradesh Police Service have been promoted and appointed to UP Cadre of the Indian Police Service.

3. Briefly the applicants, six in number, belonged to 1997 to 1980 batches of U.P. Police Service initially recruited through U.P. Public Service Commission. They joined as Deputy Superintendent of Police on various dates between 1980 to 1983. Further they have been promoted as Additional Superintendent of Police during 1994 to 2001. They have pleaded that their track record in the U.P. Police has been totally unblemished and of a high order. They have further submitted that they have never been communicated anything adverse and further earned their promotion in the State Police Service in time. Nor have they been ever subjected to any disciplinary proceedings during their service.



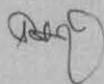
4. According to the applicants, promotions of the officers of State Police Service to Indian Police Service are governed by INDIAN POLICE SERVICE (APPOINTMENT BY PROMOTION) REGULATIONS 1955. These regulations were framed by the Central Government in consultation with State Governments and Union Public Service Commission pursuant to sub rule (i) of Rule 9 of Indian Police Service (Recruitment) Rules 1954. According to the regulation 3, there is a provision for constitution of a selection committee presided over by the Chairman/Member of UPSC. The other members of the selection committee will be Chief Secretary, Home Secretary and Director General and Inspector General of Police. To prepare a list of suitable officers each selection committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them suitable for promotions to the Indian Police Service. Further, the selection committee shall consider the cases of the members of the State Police Service in order of seniority in that service of a number which is equal to three times substantive vacancies on the first day of January of the year. Further, as per para -5(4) of the Regulations the selection committee is required to classify the eligible officer as 'outstanding' 'very good' 'good' or 'unfit' on overall relative assessment of their service records.

5. According to Regulation 5(5) of the Regulations the select list is to be prepared first from among the officers finally classified as 'outstanding', then

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from among those similarly classified as 'very good' and thereafter from amongst those similarly classified as 'good' and the order of names interse within each category shall be in the order of their seniority in the State Police Service.

6. The applicants have invited attention to a radical change brought about by the Government of India in the procedure to be observed by the Departmental Promotion Committee (DPCs) in regard to the 'selection', mode of promotion (selection cum seniority and selection by merit). The basic thrust of the revised guidelines issued by Department of Personal and Training Govt. of India vide office memorandum dated 08.02.2003 (Annexure A-3) was to the effect that there would be no super-session in 'selection' promotion. According to the revised guidelines, the Govt. of India after comprehensive examination decided that there should be no super-session in matter of 'selection' (merit) promotion at any level. The Govt. of India, according to the applicants, further decided that the element of selectivity (higher or lower) shall be determined with reference to the Bench Mark very good or good prescribed for the promotion. It was further provided vide O.M. dated 08.02.2002 (supra) that the DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench mark and accordingly grade the officer as fit or unfit only. Only those who are graded fit i.e. (who meet the prescribed bench mark) by the DPC shall be included



and arranged in the select panel in order of their interse seniority in the feeder grade. In other words, among those who meet the prescribed bench mark, interse seniority of the feeder grade shall remain intact.

7. As regards the bench mark for promotion to the revised pay scale of Rs.12000-16500/- it was specified that the bench mark for promotion, as before, would continue to be 'very good' to ensure element of higher selectivity in comparison to selection / promotions to the grades lower than the aforesaid level where the bench mark was to remain as good only.

8. It has been further stated by the applicants that the instructions contained in the O.M. dated 08.02.2002 will come into force from the date of its issue.

9. According to the applicants a DPC was held at New Delhi on 11.12.2003 for making recommendation for promotion of UP Police Service Officers to the Indian Police Service for 3 selection years namely 2001, 2002, and 2003. The number of vacancies relating to each of the above mentioned selection years were as follows:

2001	:	9 vacancies
2002	:	4 vacancies
2003	:	8 vacancies

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10. It has been pleaded by the applicants that as per latest (provisional) gradation list of officers of provincial police service U.P. (Annexure A-4) their names figure at Serial No.9, 20, 23, 25, 29 and 31. It would be appear to the applicants that the DPC held on 11.12.2003 for making recommendation for promotion against vacancies for the selection years 2001, 2002 and 2003 had adopted a formula of 'No. of vacancies in the year X-3'. Thus, it can safely be presumed that with the applicant's position at serial No.25 in the latest gradation list issued in June 2003 their names fell within the zone of consideration. However, in the impugned notification dated 11.02.2004 containing 3 separate select lists for the years 2001, 2002 and 2003, the names of the applicants did not figure and they have been superseded by their juniors due to some peculiar and arbitrary methodology adopted by the DPC despite their having a meritorious track record in service.

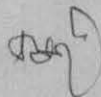
11. Thus, according to the applicants, large scale super-cessions have taken place in gross violation of revised guidelines providing that there shall be no super-cession in selection/promotions. For example, Shri Bhola Nath Singh (1979 batch) whose seniority position in the gradation list of 2003 was 21, was placed right at the top of the selection list for the year 2001, above Shri Gyan Singh (1977 batch, seniority position 4), Sri Vijay Shankar Singh, (1977 batch, seniority position 06), Shri Kashi Nath



Singh (1977 batch, seniority position 11), Sri Raj Bahadur Singh (1977 batch seniority position 12) and Shri Akhileshwar Ram Misra (1977 batch seniority position 14)

12. In the select list for the year 2002 Shri Pramod Kumar Mishra (1980 Batch, seniority position 24) was placed at the top of the list having been graded as outstanding while other selectees namely Shri Siya Ram Saran Aditya (1976 Batch seniority position 3), Shri Surya Nath Singh (1977 Batch seniority position 5) and Shri Veer Bahadur Singh (1977 Batch , seniority position 7) though selected stood superseded by Shri Pramod Kumar Mishra as they were accorded grading of very good.

13. As regard the select list for the year 2003 Shri Deepak Sharma (1979 batch seniority position 22), Shri Sanjay Srivastav (1980 Batch seniority position 28), Shri Rajesh Kumar Srivastava (1980 Batch seniority position 33) Shri Durga Charan Mishra (1980 batch seniority position 34) Shri Satyandra Veer Singh (1980 Batch Seniority position 37) and Shri Ram Krishna Chaturvedi (1980 batch seniority position 38) were all reportedly graded as outstanding and therefore placed above Sri Rahul Asthana (1975 Batch seniority position 1) and Shri Jitendra Sonkar (1977 batch seniority position 8) both of whom were supposedly graded only as very good and hence superseded.



14. It has been contended by the applicants that the DPC could not have kept two bench marks 'outstanding' and 'very good' for classifying eligible officers. The only bench mark which the DPC ought to have adopted was 'very good' and thereafter the eligible officers should have been specified as fit or unfit. The procedure adopted by the DPC was in gross violation of guidelines contained in office memorandum dated 08.02.2002. As a result, officers figuring at serial No. ⁸²32, 33, 34, 37 and 38 in the ^{Select} ~~graduation~~ list of 2003 were all junior to the present applicants whose seniority position was 25. But they have all been selected for promotion to the IPS by being accorded the grading of outstanding by the DPC, even as the applicants names stood dropped and superceded.

15. According to the applicants it transpired that even though his ACR gradings were outstanding or very good there are instances where the gradings of outstanding or very good given to the applicant by the reporting officer have been down-graded by the reviewing or accepting authorities without assigning any reason and without any communication to the applicant. Further, it has been learned by the applicant that due to the above mentioned instances of down grading the DPC has not recommended the applicants name for promotion and instead superceded them by promoting junior officers. Thus uncommunicated down-grading of ACR entries of the applicants is wholly arbitrary and illegal, which is also in gross violation of a catena of decisions by the courts

including the Apex Court. It is settled law according to the applicants that any ACR grading which though not per se adverse is of such a nature as to fall below the bench marks prescribed for promotion to the higher grades must be communicated to the officer concerned. Uncommunicated remarks below the bench mark amounting to down gradation are liable to be ignored by the DPC while considering the officers concerned for promotion.

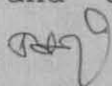
16. The applicant was accorded special grade of UP Police Service based upon his ACRs on 28.06.2001 in the pay scale of Rs.14,300 to Rs.18,300/-. Since nothing was communicated to him thereafter, it implied that that ~~their~~^{his} ACRs gradings were in conformity with the Bench Mark for promotion to the IPS, there is no valid or justifiable reason for not recommending him for promotion to the IPS. If the DPC, according to the applicants, have relied upon uncommunicated down grading of the applicants ACRs it has committed grave error in law and the same is liable to be interfered with by the Central Administrative Tribunal. Further the DPC has not recorded any detailed reasons for the super-session of the applicants by junior officers. Again it has been learned by the applicant that the DPC has proceeded to recommend officers' promotion to IPS by selectively looking at the ACR of only a few years whereas it is the totality of the service records which should have been considered for the purposes of promotion. Some of the instances of

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adverse elements present in the ACRs of the promoted officers are mentioned below:

Sl. No.	Name	Remarks
1.	Sri Rahul Asthana	Adverse remarks in the year 1985, 1986, 1988, 1989 and 1994
2.	Sri Siya Ram Saran Aditya	Adverse remarks in 1985 and 1986, one censure entry in 1997 and one censure proceedings pending
3.	Sri Gyan Singh	Adverse remark in 1999-2000.
4.	Sri Surya Nath Singh	Adverse remarks in 1995, 1986 and 2001, censured on 24.09.2003.
5.	Shri Vijay Shankar Singh	Adverse remarks in 1983, 1984 Censure entries in 1985, 1991, also, there is an enquiry pending in an anti corruption case.
6.	Sri Vir Bahadur Singh	Censured on 08.12.2003.
7.	Sri Jitendra Sonkar	Censured in 1998.
8.	Sri R.P. Singh	Subject of inquiry regarding an incident relating to advocates and district judge, in Agra, Malviya Commission is inquiring into his role.
9.	Shri R. B. Singh	Warning in 1998
10.	Shri Sugreev Giri	Censured in 1991 and currently disciplinary proceedings are pending against him.
11.	Sri Akhileshwar Ram Mishra	Censured in 1998 and generally his records are full of adverse remarks.
12.	Sri Deepak Sharma	Warnings in 1998 and 2003
13.	Shri R.K. Srivastava	Had been on medical leave for one year in 2001-2002.
14.	Sri R.K. Chaturvedi.	Became Addl. S.P. only in 1998. Does not even have 5 years ACR as ASP, still has been promoted.

17. It has further been contended by the applicants that the DPC has formulated its own gradings based upon un-communicated remarks or uncommunicated down graded ratings present in the applicants ACRs. This is wholly impermissible and contrary to law. Further



S/Shri Rahul Asthana Shri Siya Ram Saran Aditya, Shri Gyan Singh, Shri Kashi Nath Singh and Shri Akhileshwar Ram Mishra who have now been promoted to the IPS vide impugned notification dated 11.02.2004 have not been found fit even for promotion to Additional SP Special Grade 14,300/- to 18,300/- in June 2001 on the basis of their service records up to the year 2000, although the applicant was awarded the aforesaid special grade in June 2001 on the basis of his service records. Obviously the DPC has acted arbitrarily and assigned its own grading to the officers arbitrarily without any reference to the totality of the service records.

18. The applicants have also cited the instances^{of} of Smt. Poornima Singh with reference to her promotion from PPS to IPS vide notification dated 08.06.2000. As many as 13 officers have been promoted but there was not a single case of super-cession amongst the officers found fit for promotion. Even though Smt. Poornima Singh had^{been} been given outstanding in all the 5 ACRS preceding her promotion to the IPS but still she was placed in the select list of promoted officers only in accordance with her seniority in the gradation list of U.P. Police Service.

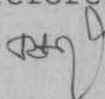
19. It has been pleaded by the applicants that a perusal of the select list would throw up a host of irreconcilable contradictions. For example Shri Pramod Kumar Mishra graded as outstanding at the top of the select list for the year 2002 was not considered even very good in the select list of 2001. Further Shri

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Siya Ram Aditya (1976 batch seniority position 3) was not considered fit for selection in the year 2001 but surprisingly he was included for selection on the strength of grading of very good in the selection list of 2002.

20. Finally the applicants have contended that DPC has failed to follow the procedure as prescribed vide office memorandum dated 08.02.2002; that the DPC has adopted two Bench Marks namely outstanding and very good instead of single admissible bench mark very good which was impermissible in law; that the DPC has formed its grading by relying on un-communicated down graded ACRS at the hands of reviewing / accepting authorities; that no detailed reasons have been recorded by the DPC in respect of super-cession; that the DPC has failed to base its recommendation on the totality of service records of the eligible officers; that one of applicants was promoted to additional SP special grade in June 2001 on the basis of his ACRs up to 2000 but the impugned DPC has promoted even those officers who were superseded for promotion to Additional SP Special Grade in June 2001 etc.

21. Thus on account of several irreconcilable, inconsistencies and contradictions inherent in the select lists for the year 2001, 2002 and 2003, the impugned order dated 11.02.2004 suffers from inherent illegalities and therefore, is liable to be quashed.



22. The official respondents including Union Public Service Commission have contended that O.M. dated 08.02.2002 of Department of Personnel and Training Govt. of India relating to revised procedure to be observed by departmental promotional committees highlighted by the applicant in support of his prayer applies to Central Services whereas the appointment from State Police Service to the Indian Police Service is solely governed by and made under the Indian Police Service (Appointment by promotion) Regulations 1955 as amended from time to time. They have further stated that the IPS promotion regulations have been framed pursuant to rule 9 (1) of the Indian Police Service (Recruitment) Rules 1954 framed in exercise of the power vested with the Central Govt. under section 3 (1) of the All India Services Act 1951 ^{enacted} ~~framed~~ pursuant to Article 312 of the Constitution of India. As such the very foundation upon which the present original application rests is wrong and therefore, it deserves to be dismissed on this ground alone.

23. According to the respondents Indian Police Service (Appointment by Promotion) Regulations supra envisage distinct roles on the part of the State Govt. Union Public Service Commission and the Central Government. Whereas the State Govt. has the exclusive role in regard to drawing of the consideration zone of the eligible State Police Officers to be placed before the Selection Committee in terms of seniority of these officers in the State Police Service, the UPSC is entirely concerned with reference to the select list

prepared and approved under Regulation 7 (3) on the basis of grading made by the selection committee and with the aid of observations of the State Govt. and Central Govt. The Central Govt. is wholly concerned as the authority in making appointments from the select list in the order in which the names of the members of the State Police Service appear in the select list for the time being in force during the period when the select list remains in force.

24. It has been further clarified by the official respondents that the State Govt. being the sole custodian of the Service Record of the State Police Officers is required to submit a proposal for convening the meeting of the selection committee, along with a list of eligible state Police Service officers and their service records, integrity certificates etc. direct to the Union Public Service Commission for consideration of the eligible State Police Service for their inclusion in the select list^{and} for their subsequent appointment to the Indian Police Service. The UPSC after scrutinizing the proposal / records fixes the meeting of the selection committee^{and} consisting of representative of State Govt., Central Govt. and UPSC. The selection committee assesses the eligible SPS officers on the basis of their service records and assigns appropriate grading to them while adopting the principle of merit cum seniority. On the basis of grading assigned to the officers viz-a-viz the number of vacancies the selection committee finalizes a list of officers to be recommended for

inclusion in the select list and appointed by promotion to IPS there-from. The State Govt. and the Central Govt. subsequently furnish their individual observations on the recommendations of the selection committee to the Commission. The commission, after taking into consideration the respective observations of the State Govt. and the Central Govt., decides upon approval of the select list. The list as approved by the Commission forms the select list. Finally and specifically in terms of Regulation 9 (1) of IPS Promotions Regulations Supra appointment to the IPS of such members of the State Police service who are included unconditionally in the select list approved by the UPSC is made by the Central Govt. in the order in which their names appeared in the select list. According to the respondent No.1 the main part played by the Union of India in the entire process of recruitment is limited to only effecting appointment to IPS of eligible SPS Offices including the select list duly approved by UPSC.

25. The respondents have also cited following provisions of Indian Police Service (Appointment by Promotion) Regulations 1955 for proper appreciation of the factual position of the present case:

Regulation 5. Preparation of a list of Suitable Officers:-

5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as are held by them to be suitable for promotion to the service. The number

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of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State government concerned and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the committee to make the selection shall be determined by the Commission.

5(2) The commission shall consider for inclusion to the said list, the cases of members of the State Police Service in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the select list and in such a case the committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Police

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Service unless, on the first day of January of the year (for which the select list is prepared) he is substantive in the State Police Service and has completed not less than eight years of continuous service (Whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

Provided also that in respect of any released Emergency Commissioned Officers or Short Service Commissioned Officers appointed to the State Police Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year (for which the select list is prepared) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

Explanation:- the powers of the State Government under the third proviso of this sub-regulation shall be exercised in relation to the members of the State Police Service of a constituent State by the Government of that State.

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5(3) The committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year (for which the select list prepared):

Provided that a member of the State Police Service whose name appears in the select list in force immediately before the date of the meeting of the committee and who has not been appointed to the Service only because he was included provisionally in the select list shall be considered for inclusion in the fresh list to be prepared by the committee, even if he has in the meanwhile attained the age of 54 years;

Provided further that a member of the State Police Service who has attained the age of fifty four years on the first day of January of the year (for which the select list is prepared) shall be considered by the committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the committee was held during such preceding year of years (under item (B) of the proviso to sub-regulation (2))

5(3)A The Committee shall not be consider the case of such member of the State Police Service who had been included in an earlier select list and -

(a) had expressed his unwillingness for appointment to the service under regulation 9:

Provided that he shall be considered for inclusion in the select list, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered of appointment to the service;

(b) was not appointed to the service by the Central Government under regulation 9(a)

5(4) The selection committee shall classify the eligible officers as 'outstanding', 'very good', 'Good' or 'unfit', as the case may be, on an overall relative assessment of their service records.

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

Regulation 9. Appointment to the Service from the select list:-

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9(1) Appointment of a member of the State Police Service, who has expressed his willingness to be appointed to the service, shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the select list for the time being in force during the period when the select list remains in force.

26. According to respondent No.1 UPSC convened a meeting of the selection committee on 11.12.2003 to prepare a year wise select list of 2001, 2002, 2003 of SPS Offices of Uttar Pradesh for their appointment by promotion to the IPS Uttar Pradesh Cadre. The select lists were prepared against 9 (2001), 4 (2002) and 8(2003) vacancies existing in the promotion quota of IPS Uttar Pradesh Cadre as on 01.1.2001, 01.01.2002 and 01.01.2003. For 9 vacancies of 2001 the zone of consideration was 27; for 4 vacancies of 2002 the zone of consideration was 13; and for 8 vacancies of 2003, the zone of consideration was 25 in terms of regulation 5(2) of the IPS Promotions Regulations. It has further been clarified by the respondent No.1 that for vacancies relating to 2002 and 2003 the zone of consideration included one officer from the previous select list in addition to the normal zone of consideration in accordance with second proviso to regulation 5(5) of IPS Appointment by Promotions Regulations. The applicants could not be included in the select list due to lower grading assigned to ~~him~~ ^{them} and statutory limit of the size of the select list for the year 2001. For the year 2002 the applicants' name

did not figure in the zone of consideration. As such he could not be appointed in IPS there from. For the year 2003 the applicant was duly considered by the Selection Committee and his name figured at serial No.10 in the zone of consideration but due to lower grading assigned to him and the statutory limit on the size of the select list he could not be included in the select list. Subsequently in exercise of powers conferred by Rule-9 of IPS Recruitment Rules 1954 read with regulation 9 of the IPS Appointment by Promotion Regulations 1955, those officers whose names were unconditionally included in the year wise select list of 2001, 2002 and 2003 were appointed to the IPS by Govt. of India vide ministry of Home Affairs notification No.I.14011/23/2003-IPS.I dated 11.02.2004.

27. Respondent No.2 and 3 have contended that O.M. dated 08.02.2002 of the Department of Personnel and Training; Govt. of India highlighted by the applicants in support of their prayer is not applicable to appointment from State Police Service to the Indian Police Service which is regulated by Indian Police Service (Appointment by Promotion) Rules 1955. Further the State Govt. in the process of selection /appointment of State Police Officer to IPS has the exclusive role in regard to drawing of the consideration zone of the eligible State Police Service Officers to be placed before the selection committee; that the State Government being the sole custodian of the service record of the State Police Officers is required to furnish a proposal for

convening the meeting of the selection committee along with a list of eligible State Police Service Officers and their service records to the Union Public Service Commission; that the UPSC after scrutiny of the proposal and relevant records fixes meeting of the selection committee which also consists of representatives of the State Govt. and Central Govt., and UPSC; that the selection committee assesses the eligibility as well as suitability of State Police Officers on the principle of merit cum seniority and further assigns appropriate grading to them. Thus the main part played by the State Govt. in the entire process of appointment by promotion to IPS is limited to only determination of vacancies with the approval of Govt. of India, preparation of eligibility list. of State Police Service Officer in their original seniority besides furnishing the character rolls and other service records to the UPSC.

28. As regards the facts of the present case respondents No.2 and 3 have endorsed the contentions of respondents No.1 and 5, so far as the reasons for non-inclusion of the names of the applicants in the select list for the years 2001, 2002 and 2003 are concerned.

29. On the other hand the private respondents No.13, 17, 19, 20 and 22 have by and large reiterated the contention of the official respondents. In particular they have maintained that office memorandum dated 08.02.2002 of Department of Personnel and Training

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Govt. of India is not applicable to the case of promotion of SPS to IPS; that as per decision of Hon'ble Court the Courts and the Tribunals cannot sit over the assessment made by a high level selection committee and substitute their own judgment on the judgment of the selection committee; that the selection committee has not been challenged by the applicant on the ground of malafide or arbitrariness; that as per decision of Hon'ble Apex Court in RS Das Vs. U.O.I. & Ors. AIR 1975 SC 593 the selection committee is no longer required to record reasons for super-cession; that the original application has no force and is liable to be dismissed.

30. We have heard the counsel for the parties and perused the pleadings as well as records.

31. Learned counsel of the applicants has strongly contended that some of the respondents Nos. 6 to 22 have inferior service records in comparison to the service records of the applicants in as much as they have either been punished or there are adverse elements in the service records. So far as select list of 2001 is concerned respondent Nos. 7, 8, 9 and 10 though senior to the applicant their service record is not unblemished as would be apparent from the following chart submitted by the counsel for the applicant:

	Adverse Service Records
Shri Gyan Singh	1999-2000: Adverse entry awarded subject matter of challenge at the instance of the State Government against the order of the Public Service Tribunal.

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	Assigned special Grade on 21.08.2003 after the delay of two years and 2 months.
Shri Vijay Shanker Singh	Adverse entry awarded in the year 1983-84. Censor Entry awarded on 09.08.1991 and 31.05.1985. Enquiry pending at State Government level.
Shri Kashi Nath Singh	Adverse entry awarded in the year 1983-1984 (Final) as no representation filed. 1991-92 Adverse entry subject matter before this Hon'ble Court. Assigned special grade on 21.08.2003 after delay of 2 years and 2 months.
Sri Akhileshwar Ram Mishra	Censor Entry awarded in the year 1998, subject matter of challenge before the Court. Assigned Special Grade on 21.08.2003 after the delay of 2 years and 2 months.

32. So far as the vacancies for the year 2002 is concerned following is the position of adverse elements in the service records of respondent Nos. 11 to 14:

	Adverse Service Records
Shri Pramod Kumar Mishra	(Junior) does not possess excellent service record to the best of the knowledge of the applicant.
Shri Siya Ram Saran Aditya	1985-86 Representation rejected against adverse entry. Censor entry awarded on 17.04.1997.
Shri Surya Nath Singh	Adverse entry awarded in the year 1984-1985, 1985-86 (final) as no representation filed. 24.09.2003 Censor entry, connived with anti social elements in regard to extortion and kidnapping case in Saharanpur.
Shri Veer Bahadur Singh	8/9.12.2003 Censor Entry awarded

33. Similarly for the vacancies for the year 2003 the position of adverse elements in the service records is summarized below in respect of respondents No. 15 to 22:

Shri Deepak Sharma	Deepak Sharma Warning administered in the year 1998 and 2003. Possess inferior service record and is
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	junior to the applicant, belongs to 1979 batch, but manipulated his promotion in I.P.S. cadre on account of the fact that at the relevant point of time, he was working as Additional S.P. (Protocol) Lucknow.
Shri Sanjay Srivastava	Junior to the applicant, at serial No.28, does not possess superior records in comparison to applicant.
Shri Rajesh Kumar Srivastava	Junior pertain to 1980 batch at serial No.33, and does not possess superior records in comparison to the applicants.
Shri Durga Charan Mishra	At serial No.34 junior pertains to 1980 batch, but manipulated his promotion in I.P.S. cadre on account of the fact that at the relevant point of time, he was working as Additional S.P. Vidhan Sabha (Shuraksha) Lucknow.
Satendra Vir Singh Ram Krishna Chaturvedi	At serial No.37 and 38 (juniors) and do not possess superior records in comparison to the applicant.
Rahul Asthana	Adverse entries in the year 1985-86, 1988-89, 1993-94, administered warning vide notification dated 19.10.2002 and 27.04.12001. Not granted special grade on the post of Additional S.P. till date.
Jitendra Sonkar	At serial No. 8 Censor Entry awarded on 14.12.1998 and does not possess superior records in comparison to the applicant.

34. It has further been contended by the applicants counsel that respondent No.7 Gyan Singh, Respondent No.9 Kashi Nath Singh, Respondent No.10 Akhileshwar Ram Mishra have been granted special grade on the post of Additional superintendent of Police after a period of 2 years and 2 months onwards which implies that their service records were not unblemished and the applicants possessed superior service records in comparison to them. It is also stated that the selection committee has ignored the police medals and appreciation certificates from time to time as in the

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case of Shri M.D. Karndhar (Annexure No.4 to O.A. No.440/2004) and Shri O.P. Sagar (Annexure No.2 in O.A. No.501/2004). The applicants have also challenged the counter affidavit filed by the State Govt. as well as Union Public Service which do not furnish parawise reply to the averments and the allegations contained in the original application. They have further stated that the official respondents have down graded the entries of the applicants as the selection committee was either not given the true inputs or the selection committee has not seen the records of the applicants viz-a-viz the private respondents and has thus ignored the inferior records of the private respondents. The selection committee has thus granted premium to the private respondents over their inferior service records while giving them march over the applicants who possess superior entries.

35. Down-gradation of entries either by DPC or by State Govt. is illegal as the same has been done in violation of the principles of natural justice without giving any reason whatsoever. In support of their contention they have cited U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. 1996 (2) SCC Page 363 and State of U.P. Vs. Yamuna Shanker Mishra and Ors. reported in 1997(4)SCC Page-7. Further according to the applicants neither any notice nor any opportunity was given either by the private respondents or by DPC while down grading the entries of the applicant which goes to suggest large scale manipulation. Thus the impugned notification is liable to be set aside since

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it has caused, unlike previous years, large scale super-session.

36. With a view to adjudicating the facts and circumstances of the case as also the legal issues involved, we are of the view that following questions should be addressed for careful consideration:

- (i) Whether office memorandum No.F.No.35034/7/97-Estt.(D) dated 08.02.2002 of Govt. of India, Ministry of Personal, Public Grievances and Pensions, Department of Personnel and Training, prescribing revised guidelines on procedure to be observed by Departmental Promotion Committee is applicable to the case of State Police Service Officer being appointed to Indian Police Service by promotion.
- (ii) Whether un-communicated adverse remarks in the Annual Confidential Report's of the applicants have been taken into consideration by the selection committee formed to prepare year wise list of State Police Officers who are suitable for promotion to the Indian Police Service of U.P. Cadre for the years 2001, 2002 and 2003.
- (iii) Whether the Selection Committee is required to record reasons for supersession of the officers of the State Police Service in the matter of their appointment of the Indian Police Service by promotion.

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37. So far as the first question is concerned, it has rightly been contended by the respondents that the guidelines issued by the Department of Personnel and Training vide O.M. dated 08.02.2002 are applicable to promotion within the central government and are not applicable in the matter of promotion to Indian Police Service which is one of the All India Services formed under the provisions All India Services Act 1951. As a matter of fact separate recruitment rules have been framed for the IAS/IPS/IFS. In pursuance of these rules the IPS (Appointment by promotion) Regulations 1955 have been made. In accordance with Rule-3 of IPS (Appointment by promotion) Regulations 1955, there is a provision for constitution of a selection committee headed by either the Chairman or the Member of Union Public Service Commission. Further a perusal of Regulation-5 (4 and 5) of Promotions Regulations will make it amply clear that the selection committee shall classify eligible officers as outstanding, very good, good or unfit as the case may be on an overall relative assessment of their service records. Thereafter the list shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding' then from among those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good'. The order of names interse within each category shall be in the order of their seniority in the State Police Service.

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38. On construction of aforesaid Regulation (5) it is amply clear that it was a mandatory obligation on the selection committee to categorize officers in four categories on the basis of over all assessment of their service records. As observed by the Hon'ble Supreme Court in the case of R. S. Das Vs. U.O.I. & Ors. A.I.R. 1987 SC Pg.593 Regulation (5) of Promotions Regulations was amended by notification dated 03.01.1977. Thereafter regulations 5(4 and 5) were altered. It was accordingly provided that the selection committee should classify eligible officer as 'Outstanding', 'Very Good', 'Good' and 'Unfit'. The new amended regulation emphasizes that the merit and suitability was the governing consideration and seniority played only a subsidiary role. Further, it was only when merits were roughly equal, seniority was the relevant determinant factor. Thus the amended Regulation (5) in our view minimized the role of seniority in the process of selection and primacy was accorded to merit. Since the Indian Police Service is the premier Police Service of the country it is but natural that the selection is made on merit alone for promotion to higher service. If promotion is made on merit alone, the senior officer perse has no legal right to promotion. Similarly it cannot be said that a senior officer has been superseded by a junior officer having higher categorization awarded by the selection committee. In nut-shell no comfort can be drawn by the applicants from office memorandum dated 08.02.2002 of DOPT, Govt. of India in the matter of appointment of State Police Officers to Indian Police Service as the

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same is regulated in accordance with IPS (Appointment by Promotions) Regulations 1955.

39. The contentions of the applicants that the Selection Committee which met on 11.12.2003 and prepared the lists for promotion to the IPS cadre of Uttar Pradesh during the years 2001, 2002 and 2003 was a departmental promotion committee is a misnomer. The D.P.C. as commonly understood in service matters decides promotions within the same service or cadre. In the instant case, the selection committee was not a mere departmental promotion committee deciding the question of departmental promotion within the same cadre but one of recruitment to an all India Service by promoting officers belonging to another service i.e. State Police Service. In this view of the present controversy, ~~of~~ ^{the} office memorandum dated 08.02.2002 issued by Departmental of Personnel and Training, Govt. of India would be in-applicable to the cases of applicants. Besides the I.P.S. (Appointment by Promotions) Regulations 1955 do not prescribe either directly or by implication any Bench Mark to determine suitability of a State Police Service Officer for his appointment to Indian Police Service by promotion.

40. Coming to the second question, we have perused the relevant records of the applicants and have not come across any instance of un-communicated adverse remarks which could have influenced the selection committee in the matter of over all relative assessment of their service record.

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41. The next question for our consideration is whether the selection committee while making recommendations of eligible State Police Service Officers to Indian Police Service is required to record reasons while making relative assessment of their service records.

42. In support of his contentions learned counsel for the applicant has cited the case of Uma Charan Vs. State of M.P. AIR 1981 SC Pg.1915 in which case the appellant was promoted to the Indian Police Service and was posted as Superintendent of Police. Thereafter the selection committee reviewed the select list, purporting to act in accordance with Regulations (5) of the Regulations and recommended that the appellant and 27 others be superseded. The sole ground for supersession was thus, stated by the Selection Committee as follows:

"The committee considered that, on an over all assessment, the records of the officers are not such as to justify their appointment to the Indian Police Service at this stage"

43. The Hon'ble Supreme Court held that this was merely an apology for reasons to be recorded, which 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. The Apex Court further observed that it is "incumbent to state reasons in a manner, which would disclose how the record of each officer superseded stood in relation to records of

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others, which is the only remaining visible safeguard against the possible injustice and arbitrariness".

44. We have given anxious consideration and thought to the contentions of the learned counsel of the applicant as stated above. We are however, of the considered view that the peculiar facts and circumstances of the present controversy does not relate to a review of the selection list which was the case of petitioners before Supreme Court in Uma Charan's case and who were already appointed by promotion to Indian Police Service and were functioning as Superintendents of Police. On the other hand, the present controversy relates to a selection committee constituted to consider initial appointment by promotion of State Police Officers to Indian Police Service.

45. Besides there is a lot of substance and force in the contention of the respondents by virtue of the decision of the Hon'ble Supreme Court in the case of R. S. Das and Ors. Vs. U.O.I. & Ors. AIR 1987 SC Pg.593. Accordingly, it was held that the amended Regulation (5) of IAS Appointment by (Promotion Regulations) 1955 dispenses with the necessity of recording reasons in cases of super-cession of senior members. It was further observed that the scheme contained in promotion regulations and the criteria of merit prescribed therein for preparing the select list do not leave any scope for the apprehension that when reasons for super-cession of Senior Members are not to be recorded and merit is made a sole criteria for

promotion the selection would be made in an arbitrary manner. It is notable that I.P.S. (Appointment by Promotion) Regulation 1955 are in 'pari materia' to I.A.S. (Appointment by Promotion) Regulations 1955.

46. The principal object of the promotion system as contained in the IPS (Appointment by Promotion) Regulations 1955 is to secure the best possible incumbents for promotion to the Indian Police Service which is the backbone of the Police Administration of the country. The machinery designed for preparation of the select list under IPS (Appointment by Promotion) Regulations 1955 ensures objective and impartial selection. The selection committee is constituted by the high ranking responsible officers presided over by chairman or a member of the UPSC. There is no reason therefore, to hold that they would not act in fair and impartial manner in making selections.

47. It can not also be said that the principles of natural justice required the selection committee to record reasons for the super-cession of the officers to enable them to make representation against their super-cession. If during the process of selection a Senior Officer is proposed to be superseded by virtue of not being included in the select list and if opportunity is afforded to him to make representation and only thereafter the list is finalized, the process could be cumbersome and time consuming. On the other hand it will be difficult for the committee to prepare and finalise the select list within a reasonable

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period of time and the very purpose of preparing the select list would be defeated since the Scheme of I.P.S. (Appointment by Promotion) Regulations 1955 clearly warrants the exclusion of principles of 'audi alteram partem'.

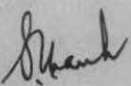
48. We are of the considered view that no vested legal right of a member of State Police Service, who after being considered is not included in the select list, is adversely affected. Non-inclusion in the select list does not take away any right of a ~~member~~^{of} of State Police ~~Officer~~^{Officer} that may have accrued to him as a Deputy Superintendent of Police. Therefore, no opportunity is necessary to be afforded to him for making representation against the proposed supersession.

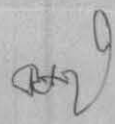
49. We are conscious of narrow scope of judicial review under the law of the land. The Hon'ble Supreme Court in a plethora of Decisions (Nutan Arvind Vs. U.O.I. & Ors., 1996 (2) SCC 488) (Durga Devi Vs. State of Himanchal Pradesh 1997(4) SCC 575) (State of M.P. Vs. Srikant Chapekar JT 1992(5) SC 633) (Dalpath Aba Saheb Solunke Vs. B.B. Mahajan AIR 1990 SC 434 and Smt. Anil Katiyar Vs. U.O.I. & Ors. 1997 (1) SLR 153) has held that the Courts and Tribunals are not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the D.P.C. and certainly cannot sit in judgment over the selection made by the DPC unless the selection is vitiated by the malafide or on the ground of

arbitrariness. Similarly the Tribunal cannot assume the power to judge the comparative merits of the candidates and consider the fitness or suitability for appointment. Nor it is the function of the courts to hear appeals over the decisions of the selection committee and to scrutinize the relative merits of the candidates.

50. It is not the case of the applicants that the decision of the selection committee is vitiated by malafide. We are therefore, of the considered view, that no case for judicial intervention into the present controversy is sustainable.

51. For aforesaid reasons and the case law cited above, the Original Applications are bereft of merit and are accordingly dismissed. No order as to costs.


Member (A)


Vice-Chairman

Shukla/-