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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.288 of 1986.

S.P.N.Rai Sharma ... Applicant  
Vs.

Union of India and 4 others .. Respondents.

Hon.D.S.Misra, AM  
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This is a petition under Section 19 of the Administrative Tribunals Act XIII of 1985 for the recruitment of the applicant to the Indian Police Service (for short IPS) with consequential benefits.

2. The case of the applicant is that on his selection by the U.P. Public Service Commission as Deputy Superintendent of Police (for short Dy.SP) in 1957 the applicant was appointed as Dy.SP in U.P. on 12.5.1959. After completing the probation period, the applicant was confirmed on this post w.e.f. 12.5.1961. According to the provisions of Chapter XXX of U.P. Police Regulations framed under the Police Act 1961, a Dy.SP becomes eligible for promotion to the post of Superintendent of Police (for short SP) on the basis of his seniority but the applicant was not appointed as SP according to his seniority and persons junior to him were given such appointments. The applicant had passed the departmental examination prescribed under Para 428 of U.P. Police Regulations for promotion to the post of SP and was issued the requisite certificate on 6.11.1962. Under para 428 of the U.P. Police Regulations, an officer of U.P. Police has to cross the efficiency bar after completing 9 years of service for getting a superior scale. The applicant crossed his first

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efficiency bar on 12.5.1968 and the second efficiency bar w.e.f. 1.8.1972. On the basis of his seniority and crossing two efficiency bars as well as on his passing the departmental examination the applicant became due for his selection and appointment as SP but the U.P. State neither appointed him as SP nor granted the special grade in the U.P. Police Service and the applicant is stagnating on the same post since long and persons junior to him were appointed as SP. On his representation against his supersession the applicant was informed by Dy. Inspector General (Administration) vide his letter dated 22.2.1986 that whenever the promotion of Dy.SPs is to be considered in future, his case be also considered for promotion. Aggrieved by this reply, the applicant filed the present petition for quashing the order dated 22.2.1986 and for his promotion with retrospective effect from 1973 as well as for special grade pay in U.P. Police from 31.7.1974.

3. The petition has been contested on behalf of the Union Public Service Commission (for short UPSC)- respondent no.2, State of U.P.- respondent no.3 and the Director General of Police- respondent no.4. In the reply filed on behalf of the UPSC by its Under Secretary, it was stated that the case of the applicant for promotion to the Indian Police Service in U.P. Cadre has been duly considered since 1973. In 1973, the applicant was not superseded by his juniors. In the years 1974 and 1975, there were no meetings of the Selection Committee and in the year 1976, the applicant was superseded by his juniors as despite his seniority, his performance was of average category.

These recommendations of the selection committee were approved by the UPSC on 27.5.1977. In the meeting of the selection committee held on 20.12.77 the applicant was found unfit for promotion to the IPS on the basis of his overall assessment. The recommendations of the committee were approved by the UPSC on 3.7.1978. In 1977, the selection committee had not recorded the reasons for the supersession of the applicant as after the amendment in Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1955, it was not necessary to give reasons for the supersession of the officers and the recommendations were to be made by the selection committees after placing the officers under consideration for promotion into four categories, namely, outstanding, very good, good and unfit. Again there was no meeting of the selection committee in the years 1978, 1979 and 1980 and in the meetings held in the years 1981 to 1983, the applicant was superseded by the selection committee on the basis of categorisation of his service record. Again in 1984, the applicant was assessed to be unfit for promotion to the IPS. The applicant was, thus, always considered for promotion but on account of his not being found fit for promotion, he had to be superseded and there was no occasion to communicate the reasons of the supersession to him or to give an opportunity of hearing for supersession. There was no violation of Articles 14 and 16 of the Constitution in the case of the applicant and the petition of the applicant deserves to be dismissed.

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4. On behalf of the State of U.P.- respondent no.3, the reply was filed by an Upper Division Assistant in the Department of Home, U.P. Secretariat, Lucknow. It was stated that this Tribunal had no jurisdiction to hear this case and the applicant was not selected to the IPS on account of several adverse remarks awarded to him in his Character Roll (for short CR). It was also stated that despite the seniority of the applicant, his overall performance has been of average category and he was not found fit for promotion to the IPS by the successive selection committees in their meetings and there has, thus, been no discrimination against the applicant and he was not entitled to any relief. In the reply filed on behalf of the respondent no.4 by the Dy.SP (P.R.O) of his office, it was stated that by mistake the annual remarks of 1975-76 could not be communicated to the applicant and they were communicated only on 31.10.1986 but he was not superseded on account of the said remarks alone. The applicant has no right of selection or recruitment to IPS. He has simply a right of consideration and he was always considered in its meetings by the selection committees. There has been no injustice to the applicant in the matter of his promotion in any manner.

5. In his rejoinder, it was stated by the applicant that he was superseded in 1976 on the basis of uncommunicated adverse remarks and the remarks of 1976 were communicated to the applicant only after the filing of the present petition. The adverse entries of 1976 and some other adverse entries have been quashed by the State of U.P. and there has been a discrimination against him in the matter of his selection to IPS and the applicant is entitled to the reliefs claimed.

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6. This petition was earlier heard and disposed of by this Tribunal vide order dated 23.4.1987 in which it was held that the claim of the applicant, so far as it related to the recruitment to the IPS is concerned is within the jurisdiction of the Tribunal and the Tribunal had no jurisdiction in the matter of grant of special grade in the U.P. Police Service. It was further held that the applicant could move the respondents for the review of the proceedings of the selection committee of the relevant years on the ground that his adverse report for 1975-76 was wrongly considered by the selection committee as the said remarks were not communicated to him. The applicant thereafter filed a review petition and we reopened the case to the limited extent whether instead of directing the applicant to move the respondents for proper relief, we could do anything in the matter of his non-promotion. In this way, this case has come before us again and the only question to be considered in this case is whether the applicant is entitled to promotion in the IPS cadre.

7. It is not in dispute that the applicant is the senior most Dy.SP in this State at present. Under Regulation 3 of Indian Police Service (Appointment by Promotion) Regulations, 1955, a committee is to be constituted to make selection of State cadre officers for preparing a list of such officers for promotion to the Indian Police Service. Such list is to be forwarded to the UPSC under Regulation 6 and on the approval of the list by the UPSC it becomes Select List. The promotion of the officers of the State Police Service to the IPS is thereafter made by the Union of India

from the Select List. Under Regulation 8, the State Government is competent to promote a State Police Service Officer to IPS cadre for a short period of not more than 3 months on adhoc basis under intimation to the Govt. of India and for a longer period with its prior concurrence. For such promotions, it is not necessary that the name of the officer should be included in the Select List. Such appointments are made for short periods if the exigencies require such promotion and no cadre officer is available for filling the vacancy. The U.P. State did not give an opportunity to the applicant by promoting him as SP under Regulation 8. It is also not in dispute that the name of the applicant has not come in the Select List so far.

8. We had held earlier that after the amendment in Regulation 5(7) of the IPS Promotion Regulations, the respondents were not required to communicate any reasons of his supersession to the applicant and the position remains unchanged, so far as this question is concerned, even after review.

9. The only glaring mistake committed by the Selection Committee in the case of the applicant is that the adverse remarks of 1975-76 recorded in the CR of the applicant were always considered in its meetings though such remarks were not communicated to the applicant before 1986. The stand taken by the respondents regarding these remarks is that supersession of the applicant was not based only on annual confidential report of 1975-76. It clearly suggests that the adverse report against the applicant for the year 1975-76 was always considered by the selection committees in their meetings. This was against the settled law that no adverse remarks given to an officer can be considered against him in the matter of promotion or

selection till it is communicated. In his rejoinder the applicant has stated that the adverse entries awarded to him for 1975-76 have been expunged by the U.P. State on 29.10.1987 vide copy of order annexure 12. The adverse remarks recorded in the CR of the applicant for the year 1975-76 has, thus, to be ignored altogether for the consideration of the candidature of the applicant by the selection committee.

10. Reliance has been placed on behalf of the applicant on Hari Singh Varma Vs. Union of India (1986(2) SLR-784) in which it was held that promotion cannot be denied on the basis of adverse remarks which were not communicated and directing <sup>that</sup> the petitioner <sup>be given</sup> to <sup>get</sup> all consequential benefits from the date on which his junior was promoted, and it was contended that likewise the applicant should be ordered to be promoted as SP from the date persons junior to him were promoted. Reliance was further placed on Brij Mohan Singh Chopra Vs. State of Punjab (1987 (2) SCC-188) in which it was held that stale adverse entries should not be taken into consideration and the entries for a period of more than 10 years ~~old~~ should not be taken into consideration as that would be an act of digging out past to get some material to make an order against the employee. The applicant has also placed reliance on State of Guj. Vs. S.Tripathi (1986(2) SCC-373) in which it was held that the petitioner was wrongly passed over on the basis of some remarks in his CR. It was a case of an officer of Gujarat State in which the petitioner had resigned from service <sup>by the time</sup> <sup>when</sup> his case was considered by the Hon. Supreme Court and he was given only some monetary benefits. In the case of Hari Singh Varma Vs. Union of India (Supra), the

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petitioner belonged to a clerical cadre and the Bombay High Court had not considered the provisions of All India Service Regulations in the matter of promotion of the officers of State cadre and as such, none of them are applicable to the case of the applicant. The observations made by the Hon. Supreme Court in the case of Brij Mohan Singh Chopra (Supra) were in connection with the pre-mature retirement of a State level officer and the provisions <sup>governing</sup> ~~of~~ <sup>of</sup> the promotion of a State Officer to the cadre of All India Service did not arise for consideration. We are of the view that the settled law is that an officer is entitled only to consideration for promotion and none has an absolute right of promotion and if there is any discrimination against an officer, the Court/Tribunal can only direct the employer to consider him for promotion under the relevant rules. The request made on behalf of the applicant for issuing a direction by this Tribunal to the respondents for promoting the applicant as SP in the IPS cadre is not reasonable and cannot be accepted. We can simply direct the respondents to consider the case of the applicant afresh after ignoring the adverse remarks for the year 1975-76 and no other relief can be granted to him by this Tribunal.

11. We find support in coming to this conclusion from a recent pronouncement of the Hon. Supreme Court in State Bank of India Vs. Mynuddin (1987 SCC (L&S)-464). A few observations of the Hon. Court are extracted below :-

"Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which

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his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the court can issue a direction to the management to consider case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion."

There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds-scientific, technical, financial, industrial, commercial, administrative, educational, etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become nowadays very much refined and sophisticated and such evaluation should therefore, in the public interest ordinarily be left to be done by the individual or committee consisting of persons who have the knowledge of the requirements of a given post, to be nominated by the employer. Ofcourse, the process of selection adopted by them should always be honest and fair.

\*\*\*\*\*when the process is vitiated  
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."

12. The petition is accordingly allowed in part and we direct the respondents to constitute a review selection committee within 3 months in case no regular selection committee as provided by Regulation 3 of IPS (Appointment by Promotion ) Regulations 1955 is going to be constituted during this period to consider the case of the applicant afresh after

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excluding the adverse remarks awarded to him for the year 1975-76 for the inclusion of his name in the lists prepared for the years 1976 and onwards. We further direct the State of U.P. to consider the applicant for his appointment as Superintendent of Police on adhoc and purely temporary basis as provided by Regulation 8, whenever such appointments are deemed necessary in future. The parties are directed to bear their own costs.

Bhima  
11/5/88

MEMBER (A)

Dated: May 11 1988  
kkb

S. Sharad

MEMBER (J)