RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1089 of 1986.

R.A. Pandey & others .... Plaintiff-Applicants.

Versus

Union of India & others .... Defendant-Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this suit, received on transfer from the court of Munsif City, Kanpur under Section 29 of the Administrative Tribunals Act XIII, 1985, there are 4 plaintiffs, who have sought individual reliefs in respect of each of them. Plaintiff no.1 has sought the following reliefs :

> That the denial of due promotion from the post of Supervisor 'B' to the post of Supervisor 'A' through the Departmental Promotion Committee (DPC) on alleged ground of pendency of disciplinary proceedings against him in pursuance of the charge-sheet issued in November, 1979, May,1980 and June, 1980 and the alleged adverse entries made in his confidential reports and the omission to decide the representations and appeal preferred by the plaintiff against the same resulting in his supersession by his juniors are all illegal, mala fide and wrongful and consequently he is entitled to be promoted as Supervisor 'A' with retrospective effect with all benefits.

2. The plaintiff no.2 has also prayed that the denial of his promotion from the post of Supervisor 'B' to the post of Supervisor 'A' through DPC on the grounds of pendency of disciplinary proceedings persuant to a charge-sheet issued to him in June,1980

and the decisions of the defendants on the representations and appeal preferred by him against the same and the consequent ~~suspension~~ supersession by his juniors are illegal, mala fide and untenable and, therefore, he is entitled to be promoted with retrospective effect from such date as may be deemed proper.

3. In regard to plaintiff no.4, he has prayed that the denial of promotion from the post of Mill Wright-C to the post of Mill Wright-B on his own turn according to his placement in the list of successful candidates of the trade test against vacancies published in September,1980 and the decision of the defendants on his representations are illegal, mala fide and untenable and that he is entitled to be promoted as Mill Wright-B with retrospective effect.

4. In regard to plaintiff no.3, he has prayed that he is entitled to be granted his due promotion as and when such promotion will become due as per his seniority from the post of Auto Fitter-B to the post of Auto Fitter-A without considerations of the pendency of the disciplinary proceedings initiated against him in June,1980.

5. It has further been prayed that the disciplinary proceedings initiated against plaintiff no.1 in November,1979 and May,1980 and against all the plaintiffs in June,1980 on irregular material denying the proper opportunity of defence should be deemed to be not pending and should be deemed to have closed and the adverse remarks made in the Confidential Reports of plaintiff no.1 for the periods from October,1979 to August,1980 be expunged.

6. Briefly the facts are that plaintiffs no. 1, 2 and 4 were appointed as Trade Apprentice in the Ordnance Factory (OF), first in July,1964, second is also in the year 1964 and the third in the year 1974 and after completion of their training they were posted to the various factories and were subsequently transferred to the Field Gun Factory (FGF), Kanpur and OF at Kanpur. Plaintiff no.3 was appointed as a Fitter in FGF, Kanpur in 1976. He was promoted as a Auto Fitter-B in June,1979. Plaintiff no.1 was an active Trade

Union worker and was also an office bearer and held the office at various levels including the Working Committee of the All India Defence Employees Federation. He was an active office bearer and used to espouse the cause of the members of the Union and other employees which evidently annoyed the defendants. He was issued a memorandum in December,1977 under Rule 11 of the C.C.S. (C.C.&A.) Rules for making certain allegations in a meeting held in the residential quarter occupied by him. He was only given a warning in this case which advised him to refrain from such behaviour and practice. He was also given adverse entries in the Annual Confidential Reports (ACR) for the year,1976-77 and was advised to show improvement in his performence and duties. His representations to the Director General, OF, against the adverse entries were not replied and he was never communicated anything on his representations. He was given another adverse entries during the period March,1978 to September,1978 for his Union activities. These remarks were communicated to him after about five months and he made representations against the same but his representation was rejected. According to him after three years of service as Supervisor-B he should have been promoted but on account of the prejudice of the officials his case was not considered for promotion for which he was due in September,1977. There after the promotions became due only on completion of five years of service as Supervisor B and he again became entitled for promotion in September,1979 but he was not promoted. DPC also did not meet at all but his promotion was ignored. His representations were replied by saying that promotion was not a right and the promotions were made on the basis of certain rules. Being aggrieved by this reply from the General Manager he made representations to the Director General but his appeal was not attended to. In the result a number of his juniors superseded him. On his representations made in July,1980 he was advised that DPC did not consider him suitable. According to him no details were communicated as to why he was not suitable.

The rule of 5 years was subsequently changed again to 3 years, but according to the plaintiff he had already suffered and he continued to suffer. The plaintiff was also suspended in November,1979 for some Union activities which he alleges was ordered by incompetent authority. This suspension was, however, subsequently revoked, but an enquiry under Rule 14 was held on imputation ~~that cooperation~~ of alleged misconduct and misbehaviour and in this enquiry he was not allowed reasonable facilities in the shape of defence counsel, etc. and though there were various lacuna in the enquiry the plaintiff cooperated with the management and participated in the enquiry but the results of the enquiry proceedings were not communicated to him for over 1 1/2 years and he was imposed a punishment of stoppage of increments for a period of one year by an order dated May,1980. The plaintiff's case was that the disciplinary proceedings in question were not conducted properly and reasonable opportunity of defence was not given to him and the punishment order was passed after a long lapse of time. The plaintiff had appealed against this punishment order to the Director General but his appeal was also dismissed in August,1984.

7. In regard to plaintiff no.2 he was promoted as Supervisor B in the month of September,1977. He became entitled to become Supervisor-A in November,1981 on completion of 5 years of service. This period was again reduced to three years but in the meantime he had completed more than 3 years. DPC which was to recommend the promotions was set up in April,1980 but he was denied promotion He made representations and he was informed in August,1980 that he was not considered suitable by DPC. When he again represented he was informed in February,1981 that he could not be promoted in view of the disciplinary proceedings pending against him. He alleges that he should not have been denied promotion for mere pendency of the disciplinary proceedings. He was also an active worker of the employees Union and according to him this is what

had prejudiced the defendants. When he represented against the decision of the local administration to the Director General his case was not properly considered. He was also not heard on his representation but he was informed that his appeal has not been allowed and that the earlier decision not to consider him for promotion on ground of pendency of disciplinary proceedings was upheld. He has also been superseeded by a number of juniors. According to him he was due promotion in April,1980 and he is suffering on account of his non-promotion.

8. In regard to plaintiff no.4, he became Mill Wright-C in due course. He became entitled for further promotion in September, 1980. He appeared in the trade test and was declared successful but he was not promoted and his juniors were allowed to supersede him. He alleges that this was also done because of his trade union activities. He represented against the injustice and he was informed that he could not be considered for promotion due to administrative reasons. He also alleges that the only reason could be the disciplinary proceedings against him and the annoyance of the administration on account of his trade union activities.

9. In regard to plaintiff no.3, his case is that he is also entitled to further promotion as and when the vacancy arise, but due to his active participation in union activities and being an office bearer / the defendants are not well disposed of towards him and he is, therefore, apprehensive thathe would be illegally not promoted and would be made to suffer.

10. In reply to the plaint the defendants have said that the plaintiffs were validly charge-sheeted as they were indulging in activities which was not conducive to good discipline. They held meetings without prior permission of the management. In regard to the adverse entries, according to them, they were communicated to the plaintiffs without delay after completion of the report. He had been verbally warned several times before these entries were

made. The adverse remarks do not indicate that the adverse entries were made because of his trade union activities. They have denied that the authorities bore malice or ill-will towards the plaintiff for participating in Trade Union activities. According to them short coming of the employees cannot be ignored for reasons that they are office bearers of the Unions. Such employees are also supposed to perform the duties properly. They were considered for promotion by DPC and were not recommended for promotion due to adverse confidential reports. The adverse remarks made have also not been expunged. The defendants have said that the General Manager is empowered to initiate disciplinary action against the employees working in the grade to which the plaintiff belonged and the charge-sheet were issued on the prescribed proforma. Their replies were considered in accordance with the procedure and the plaintiffs have not been victimised for their Trade Union activities. As per existing instructions in case an individual is involved in a disciplinary case the promotion cannot be effected. Since all the plaintiffs were involved in disciplinary action their promotions could not be made.

11. We have heard the learned counsel for the plaintiffs as well as the learned counsel for the defendants. The main submission made by the learned counsel for the plaintiffs was that the punishments were without jurisdiction and the confidential reports where the remarks had not been communicated were taken into consideration and the promotions were withheld by DPC on the basis of such confidential reports. Nothing else was pressed before us.

12. In regard to the disciplinary action the General Managers of the Ordnance Factories were delegated the power of appointment for class III and class IV staff only in 1972. The Presidential order delegating to them the disciplinary authority has only been issued in 1987. In the case of Gafoor Mia v. Director, DMRL, (1988 (6) ATC 675) a Full Bench of this Tribunal had held that power

to make appointments, which have been delegated to the subordinate authorities do not extend to the imposition of penalty under the relevant D&A Rules. The power to initiate disciplinary proceedings has also been delegated in certain cases but it depends on the type of delegation as to against which offence the disciplinary proceedings can be initiated by the delegated authority. It is observed that under Section 16 of the General Clauses Act,1987 where power to appoint implies power to suspend or dismiss but such implication cannot be inferred in case of delegated power. The General Managers have not been delegated disciplinary powers by the President earlier to 1987. Also in regard to the appointing authorities in respect of a Government Servant there can be several appointing authorities but to ensure proper functioning of the Department disciplinary power has to be vested in a single authority. It is for this reason that the appointing authority has been vested in the highest of all the authorities specified in Rule 2(a) of the CCS (CC&A) Rules,1965. Thus punishment can be imposed by the highest of the officers mentioned in Rule 2(a). Under the rules an officer is competent to initiate disciplinary proceedings only if he is either the appointing authority in terms of Rule 2(a) or is the disciplinary authority in terms of Rule 12. If he is only a delegate of the appointing authority he can neither be the appointing authority nor the disciplinary authority and, therefore, he cannot exercise the power. It was further held in this case that the petitioners in that case were appointed by the Director of Research Laboratories who possessed the delegated power to make appointments but since he did not satisfy requirement of highest authority laid down in Rule 2(a) and he was also not the disciplinary authority, hence he was not competent to impose punishment on those petitioners. In para 48 and 49 of this judgment the following conclusions were arrived at :-

> "48. Our answers to the questions as reframed are as under: Under the CCS(CC&A) Rules.

(i) As an appointing authority only the highest among the appointing authorities, is competent to impose any of the penalties including the penalties specified in Article 311.

(ii) Any appointing authority, if constituted specifically as a disciplinary authority, may impose any penalty as authorised under the rules governing disciplinary proceedings, but, such disciplinary authority cannot impose penalties specified in Article 311 unless that authority is also the authority which had appointed the particular government servant or is an authority equivalent or superior in rank to such authority.

(iii) A delegate of an appointing authority, by virtue of mere delegation of the power to appoint, is not competent to initiate disciplinary proceedings or impose any penalty.

(iv) A delegate of an appointing authority can initiate disciplinary action and impose penalties against a government servant only if he is constituted as a disciplinary authority under the Rules.

(v) The President or any authority empowered by the President by a general or special order and any disciplinary authority constituted under the Rules is competent to initiate disciplinary proceedings for imposing any penalty.

(vi) Authorities competent to impose any penalty, major or minor, may initiate disciplinary proceedings for imposing major penalties as well.

49. Our answer in regard to the position under the Railway Servants (Discipline and Appeal) Rules is the same as at items (i) to (iv) above. In regard to initiation of disciplinary proceedings under the said Rules -

(i) The President or any other authority empowered by the President by a general or special order and any disciplinary authority directed under Rule 8(1)(b) of the Railway Servants (Discipline and Appeal) Rules to institute disciplinary proceedings against any railway servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 6 may initiate disciplinary proceedings for imposing any penalty.

(ii) Insofar as a non-gazetted railway servant is concerned, only an authority competent to impose a major penalty may initiate disciplinary proceedings for imposing a major penalty."

13. In the ratio of the above observations no punishment could be imposed by the General Manager. The only authority, who was competent to impose punishment at the relevant time was the Director General. Therefore, the punishments imposed on the plaintiffs which were beyond jurisdiction of the General Manager are quashed as prayed by the plaintiffs in prayer no.5 of the plaint. The defendants will be at liberty to initiate fresh proceedings, if they so desire, but according to law.

14. As far as the confidential reports are concerned the law on the subject is very clear. If the confidential report is not objective but tainted with malice the entire report has to be rejected Also if an adverse entry which has not been communicated and finalised, i.e. on which the representation has not been finally disposed i.e. on which the representation has not been finally disposed of can also not been taken into consideration by the recommending authorities to deny promotion to an individual. The confidential reports are assessment of an officer's performance and there is no doubt that it is left to the Reporting and Reviewing Officers to write them. The plaintiffs have taken shelter behind the fact that they were active Trade Union workers and, therefore, the authorities concerned, who were to write their confidential reports had got prejudiced. It is one of the hazards of being a Trade Union worker and of carrying that mantle, that a person may come into an adverse estimation of the superiors, who are the controllers

of the destiny of the concerned person but this hazard has to be well understood and taken in the right spirit by those who take up with their superiors and the administration problems on day to day functioning which at times tend to be unreasonably represented or represented in an offensive manner. A judicial review is not warranted unless the entry is unreasonable or erroneous on the face of the record or mala fide or vindictive. At the same time officers, who are privileged to watch and judge others have also to do it fairly and with reasonable care.

15. It was put up before us that the adverse entry in the ACR of 1976-77 was conveyed in May,1978. The representation was submitted by the plaintiff in July,1978 but his promotion was denied due to this adverse ACR in October,1977. The Departmental Promotion Committee proceedings are not before us but such narration go to indicate that the principle laid down by the Hon'ble Supreme Court in the case of Gurdayal Singh Fijji v. State of Punjab, (1979 (2) S.C.C. 368) that a promotion cannot be denied on account of certain adverse entries against which a person makes representations but for one reason or the other those representations could not be disposed of. While considering the effect of non-disposal of the representations against the adverse remarks before refusing promotion the Hon'ble Supreme Court had made the following observations :-

> "The principle is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an oportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for some reason or

another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the government has not been able to consider his explanation and decide whether the report was justified.

16. The minutes pertaining to DPC held on [illegible] 1.12.78 which are placed at paper no.45-Ga of the application also do not give any reasons for not recommending for promotion those who were found unfit. The Principal Bench of this Tribunal in the case of R.C. Kohli v. Union of India and others, (1988 (6) ATC 228) had made the following observations in paras 9 & 10 of this judgment :-

> "9. Another vice from which the minutes of the meeting of the Screening Committee held on 27.9.1985 suffers is non-compliance with sub-para (iv) of para 3 contained in letter dated 26.8.1976 of the Government of India. It enjoins that the reasons for supersession may be kept on record in the case of officers who are not included in the panel. The Screening Committee as observed earlier has simply recorded its conclusion that on evaluation of character roll of the petitioner as a whole and on a general assessment of his work as reflected in his ACR for the perioe ending on 3.3.1984 was not up to the mark and accordingly, the Committee did not recommend him for empanelment for promotion to DIG Level II. It is just a reproduction of the language of sub-para (ii) of para 3 of letter dated 26.8.1976. The minutes of the Committee are totally bereft of the reasons which led them to form this conclusion. In Union of India v. M.L. Kapoor in which the Supreme Court had an occasion to consider the scope and ambit of Regulation 5(5) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 which laid down that "if in the process of selection, or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession" it was held by the Supreme Court that "it was incumbent on the Selection Committee to have stated the reasons in a manner which would disclose how the record of each superseded officer stood in relation to records of others who were to be preferred, particularly, as this is practicaly the only remaining visible safeguard

A3/12

against possible injustice and arbitrariness in making the selection". Observed the Supreme Court that :

> We find considerable force in the submission made on behalf of the respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. This apology for reasons to be recorded does not go beyond indicating a conclusion in each case that the record of the officer concerned is not such as to justify his appointment at this stage in preference to those selected.....Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

This authority was noticed subsequently by the Supreme Court in Gurdial Singh Fijji v. State of Punjab. Following the aforesaid observations in M.L.Kapoor case their Lordships elucidated the proposition further as under :

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

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

10. Needless to say that sub-para (4) of para 3 of the guide-lines dated 26.8.1976 being analogous to Regulation 5(5) of the aforesaid Regulations, it was imperative for the Screening Committee to have recorded in a concise

manner the reasons which prevailed with them for concluding that he was not fit and upto the mark to be empanelled for promotion to DIG Level II. That would have surely given some inkling of how the mind of the Screening Committee was working. The requirement of recording reasons is not, therefore, an idle formality and its substantial compliance by the Screening Committee was absolutely necessary even assuming that the same cannot be termed as mandatory. The reasons would have surely shed light on whether the conclusion arrived at by the Screening Committee is fair and impartial.

We agree with these observations. DPC has failed to give any reason as to why the plaintiffs had not been recommended for promotion. No rule has also been brought to our notice which says that it was not necessary for DPC to give such remarks. We, however, are not expressing any final opinion on this aspect but we are guided by the law laid down in the above cited case. We are sure that when the matter goes up before DPC again they will keep this in view.

17. On the above considerations we give the following directions :

(I) We direct that review DPC will be held for the periodwhen the plaintiffs became due for promotion and only such confidential reports will be put up before the review DPC as could be considered in view of the observations made by us in the paras supra, i.e. those CRs where the adverse reports had been communicated and representations finally disposed of.

(II) We further direct that these exercises regarding consideration of the plaintiffs for promotion and treating the disciplinary proceedings as non est will be completed by the authorities within three months from the date of receipt of these orders and if the plaintiff become due for promotion they will be given the promotion with all consequential benefits.

(III) Regarding punishments we have already given

3/ Orders on para 13 above.

18. The application (Suit No. 1509 of 1983) get disposed of in the above terms. Parties will bear their own costs.

MEMBER (J).

MEMBER (A).

Dated: May 31st, 1988.

PG.