

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A.No. 1075
T.A.No. 1937.

DATE OF DECISION 10.6.88

Ashok Kumar

Petitioner

Sri S.C. Pandey

Advocate for the Petitioner(s)

Versus

State of M.P.
Union of India

Respondent

① Sri O.P. Misra

Advocate for the Respondent(s)

② Sri H.B. Singh

CORAM :

The Hon'ble Mr. D.S. Misra

The Hon'ble Mr. G.S. Sharma

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

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Central Administrative Tribunal, Allahabad.

Registration O.A.No.1075 of 1987

Ashok Kumar ... Applicant

Vs.

State of U.P. and another ... Respondents.

Hon.D.S.Misra,AM

Hon.G.S.Sharma, JM

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

This petition u/s.19 of the Administrative Tribunals Act XIII of 1985 has been filed for directing the respondent no.1 to grant senior time scale to the applicant in the Indian Administrative Service (for short IAS) w.e.f. July 1977 and the connected reliefs of expunging the adverse entries awarded to him for the year 1974-75 and 1975-76 and other consequential ~~benefits~~ benefits.

2. The material facts of this case, which have either been specifically admitted on behalf of the respondents or have not been disputed on their behalf, are that the applicant is a direct IAS officer of 1973 batch and during the period of his probation, he was posted as Joint Magistrate Agra on 2.4.1974 and had also worked as President of U.P. Krishi Utpadan Mandi Samiti Agra at that time. The applicant had terminated the services of 5 Clerks including one Km.Asha Mahajan of the Mandi Samiti in accordance with the directions of the Dy.Director U.P.Mandi Parishad contained in his d.o.letter dated 26.12.1975. This Km.Asha Mahajan is stated to be a lady of loose character and on account of illwill against the applicant, without reporting the

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matter to the Police or any other local authorities, she addressed complaints to the Chief Secretary and Governor, U.P. alleging that he had committed rape on her on 23.12.1975 in the Inspection House of Sikunderabad. The Secretary to the Governor sent the said complaint to the District Magistrate Agra to enquire it personally and the Chief Secretary sent a copy of the complaint received by him to the Commissioner Agra with a direction ^{to him} for enquiry ~~by~~ personally. After the necessary inquiry, the District Magistrate submitted his report to the Governor on 13.1.1976 and the Commissioner submitted his report to the Chief Secretary on 25.1.1976. After studying the contents of the said reports, the respondent no.1- U.P. State was satisfied that the allegation of committing rape on Km. Asha Mahajan was not correct but there being some other findings against the conduct of the applicant in the reports aforesaid, it decided to initiate disciplinary action against him and he was served with a charge sheet dated 5.3.1976 containing 5 articles of charges. Their relevant extracts are quoted below :-

"(1) You on January 7, 1976 surreptitiously removed the statement dated Dec. 26, 1975 of Sri Gaya Prasad Chaudhari, Naib Tahsildar, Barara Rear, district Agra and the letter dated Dec. 26, 1975 of the Deputy Director, Mandis, U.P., from the file in the custody of the District Magistrate, Agra you did not return those documents in original and later on you passed on photostat copies of the statement of Sri Gaya Prasad Chaudhari, Naib Tahsildar and letter of the Deputy Director, Mandis.

(2) That during Dec. 1975/Jan. 1976, while you were posted as Joint Magistrate, Agra and President, Mandi Samiti, Agra, it was found in connection with the enquiry made on the complaint of Km. Asha Mahajan, a Clerk in the office of the Mandi Samiti, Agra, that you gave statement to the effect that you visited village Sunari on Dec. 23, 1975 and that you toured 30 days out of which 22 were night halts in Nov. and Dec. 1975 but on verification this was found to be deliberate misstatement and fictitious.

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(3) That during the period referred to above while posted as Joint Magistrate Agra and also President, Mandi Samiti Agra, it was found in connection with the enquiry made on the complaint of Km.Asha Mahajan, a clerk in the office of the Mandi Samiti, Agra, that you abused your official position by forcing Sri Gaya Prasad Chaudhary, Naib Tahasildar, Barara Area, Agra to make in your support a false statement on Jan.7,1976 and you got it ante-dated to Dec.26,1975 and you also forced Sarvasri Amir Chand, Lekhpal Atrauni and Ram Babu, Lekhpal of Sunari to make false statement on Jan.6,1976 and got those statements ante dated to Dec.26,1975.

(4) That on Feb.3,1976 orders were issued by Govt. by Radiogram No.912/II-(2) /1976 transferring you from agra to Unnao as Joint Magistrate and the District Magistrate Agra was directed to relieve you within three days and direct you to take over charge at Unnao and orders of your transfer to Unnao along with charge certificate of handing over charge and with some other papers were sent to youat your residence in two envelps, several times and ultimately on Feb.5,1976 the said papers were received by you, but you refused to sign in token of their receipt and got your Peon, Sri Bengali Mal to sign for you, but you did not return the charge certificate of handing over duly signed and you have not yet taken over as Joint Magistrate at Unnao as directed by Government and thus you are guilty of disobeying the orders of Govt. and also of the Collector;

(5)That in connection with the enquiry made against you on the complaint of Km.Asha Mahajan, a Clerk in the office of the Mandi Samiti,Agra, while you were posted as Joint Magistrate Agra and President Mandi Samiti,Commissioner Agra Division recorded your statement on Jan.17,1976 in your immediate presence but you refused to sign the said statement and took away a copy ~~of~~xx to your house and later brought another statement which differed from your earlier statement in vital respects. "

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3. In the disciplinary inquiry conducted against the applicant, the charge nos. 2,3 and 5 were not found established and he was found guilty of charge nos. 1 and 4 only and after consulting the Union Public Service Commission and the Govt. of India- respondent no.2, he was awarded the punishment of withholding ~~of~~ his increments for two years without cumulative effect

4. For ~~the~~ period of about four months from 2.4.1974 to 31.7.1974 of the year 1974-75, the following adverse entry was awarded to the applicant by the reviewing authority on 31.8.1977, which was communicated to the applicant in Jan. 1978 vide annexure 1 :-

"He is clever. In an enquiry conducted by me I found that he had done lot of Farzi work and had been consorting with female subordinates. These are not healthy symptoms."

Fitness for promotion to
higher grade(s) in his turn. "unfit"

"His work needs to be specially watched."

On the representation dated 15.3.1978 of the applicant, the respondent no.1 expunged only a part of it containing the words " had done lot of Farzi works and". On the memorial submitted by the applicant under rule 25 of the All India Service (Discipline and Appeal)Rules,1969 to the President, the words "In an enquiry conducted by me I found that he had been consorting with female subordinate. These are not healthy symptoms" were further ordered to be expunged from the adverse remarks as informed to the applicant vide letter dated 11.3.1984 by the Special Secretary,Appointment Department.

5. For the year 1975-76, the applicant was awarded the following adverse entry on 25.7.1977 by the reporting officer :-

"An irresponsible type of officer who does not take interest in his work. Is inclined to bogus touring. In the course of an enquiry against him, I found him making false statements about partal and other activities in a village which he had not actually visited."

"Needs strict supervision and close watch."

"Has yet to understand the fundamental requirements of executive responsibility."

The applicant had represented against the said adverse entry to the Appointment Secretary on 23.7.1977 but the same was rejected. The applicant further represented to the Chief Secretary against the adverse remarks on 14.6.1978. This was treated as a memorial to the President and was forwarded to the respondent no.2-Union of India whereupon the portion of the remarks "is inclined to bogus touring. In the course of an enquiry against him, I found him making false statements about partal and other activities in a village which he had not actually visited" was ordered to be expunged as informed to the applicant on 15.10.1985.

6. The applicant was awarded adverse entry even in the year 1982-83 and he was not awarded the selection grade of the IAS w.e.f. the due date 1.1.1986. He had accordingly filed a petition u/s.19 of the A.T. Act before this Bench of the Tribunal which was registered as Registration O.A.No. 186 of 1986-Ashok Kumar Vs. State of U.P. (1987 A.T.C.-581) for granting the selection grade and expunging the annual confidential remarks for the year 1982-83 as well as for quashing the punishment dated 31.3.1985 awarded to him in the disciplinary proceedings as stated above. This Bench had quashed ^{ vide order dated 12.11.86 }

the order of punishment as well as the adverse entries awarded to the applicant and had directed the respondents to refer the matter of promotion of the applicant to the selection grade to the competent authority for consideration under the changed facts and circumstances. The respondent no.1 granted the selection grade to the applicant from due date after the said order. The applicant was confirmed in IAS w.e.f.7.7.1975 but on account of the disciplinary proceedings, aforesaid, and presumably even on account of the adverse remarks for 1974-75 and 1975-76, he was not granted the senior scale in the IAS from July 1977, the due date, and it was granted only from a subsequent date 8.10.1979. The applicant made a representation to the respondent no.1 on 15.3.1986 for granting the senior time scale to him from the due date and had again applied to the respondent no.1 for expunging the adverse remarks awarded to him for the years 1974-75 and 1975-76 by making representation on 15.5.1987 but the respondent no.1 vide its order dated 4.9.1987 refused his request. Aggrieved by the same, the present petition has been filed challenging the validity of this order on various grounds and the applicant has alleged that the adverse entries awarded to him for the years 1974-75 and 1975-76 were based on the preliminary reports of the District Magistrate and Commissioner Agra who had given these entries in their capacity as reporting authority and reviewing authority respectively. They were prejudiced against applicant and the entries which are self-contradictory, false and unfounded were awarded after a long time illegally and with malafide intention. The performance

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of the applicant was very good during these years and after the exoneration of the applicant in the disciplinary enquiry, he was entitled to get his senior time scale from the due date and in view of the decision of the Hon. Supreme Court in Amar Kant Vs. State of Bihar (A.I.R. 1984 S.C-537), the authorities were bound under the law to reconsider the eligibility of the applicant for the senior time scale from due date on his exoneration in the disciplinary case against him.

7. The petition has been contested on behalf of the respondents. In the reply filed on behalf of the respondent no.1 by the Joint Secretary, Appointment Department, U.P. Lucknow, it has been stated that the applicant was due for confirmation w.e.f. 7.7.1975 but on account of the disciplinary proceedings initiated against him his period of probation was extended upto 30.4.1979. On the conclusion of the disciplinary proceedings on the recommendation of the Union Public Service Commission, the applicant was confirmed w.e.f. the due date 7.7.1975 by the respondent no.1 as the penalty imposed upon him related to the period subsequent to the period of his probation of two years. The adverse remarks for the year 1974-75 were awarded to the applicant by the reviewing authority on 31.8.1977 on his overall assessment of conduct and performance and they are wholly legal. The adverse entry awarded to the applicant for the year 1975-76 is based on the facts and impressions gained by the reporting officer and the allegation of prejudice against both the authorities made by the applicant is incorrect. The representations made by the applicant against the adverse remarks were duly considered and the parts of the remarks, which were

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not found in order, were expunged. In view of the adverse entries for the period 1974-1977 and the evaluation of the performance of the applicant, he was not found fit for his promotion from the due date and as such his representations were rejected. His claim is not within time and the petition filed by the applicant is devoid of merit and deserves to be dismissed.

8. In the reply filed on behalf of the respondent no.2 by the Director in the Department of Personnel and Training, it was stated that the allegations made in the petition which do not relate to Union of India require no comments on its behalf. The portions of the adverse remarks awarded to the applicant in the confidential reports for the years 1974-75 and 1975-76 were ordered to be expunged on receiving the memorial from the applicant. The confidential reports of the applicant cannot be treated to be invalid remarks on account of delay in writing the same. The respondent no.2 is not required to pass a speaking order in disposing of the memorials against the adverse remarks under the rules and the allegation of the applicant to the contrary is not correct and there was no justification to expunge the remaining adverse remarks of the applicant.

9. In his rejoinder filed by the applicant, it was stated by him that though the period specified in rule 6 of the All India Service (Confidential Rolls) Rules 1970 (hereinafter referred to as the CR Rules) for writing the confidential reports is directory, it is settled law that the directory provision is also required to be observed in substance. It is noteworthy

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that the adverse remarks for the year 1974-75 were awarded by the reviewing authority more than 3 years after the prescribed period and that of 1975-76 after 13 months and on this ground alone, the report for that period is liable to be ignored. The remarks of the reviewing authority for 1974-75 are not only self-contradictory but they are also liable to be quashed on the ground that the said authority had taken into consideration the subsequent events in making its remarks. The remarks for the year 1975-76 of the reporting authority were based on his preliminary report on which the disciplinary action was initiated against the applicant and the same are also liable to be quashed in toto as the applicant was not found guilty of any charges framed against him on the basis of the preliminary reports of the District Magistrate and the Commissioner Agra. The senior time scale of the applicant can be deferred only till the date of his confirmation and after awarding the selection grade to the applicant, the respondents were bound to consider the case of the applicant to allow him the senior time scale from the due date. His petition is in order and he is entitled to the reliefs claimed.

10. Before we consider the merits of the case of the applicant regarding the adverse remarks, it may be convenient to consider the relevant provisions of CR Rules. According to sub-rule (1) of rule 5 of these rules, a confidential report assessing the performance, character, conduct and qualities of every officer of the service ~~shall~~ be written for each financial year or calender year, as may be specified by the Government ordinarily within 2 months of the close of the said year. Sub-rule (1) of rule 6 of CR Rules requires that the confidential report shall be reviewed by the review-

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ing authority ordinarily within 1 month of its being written. The proviso to this sub-rule provides that this requirement may be dispensed with in such cases as may be specified by the Government by general or special order. Thus, the normal rule is that the reporting authority shall write its report within 2 months of the close of the year in question and the reviewing authority has to review the confidential report within one month of its being written. The proviso to rule 6(1) makes it clear that it is not always necessary to review the confidential report and this requirement may be dispensed with by the Govt. by general or special order. It, therefore, reasonably follows that when the reviewing authority, for any reason, is not able to review the confidential report within 1 month or thereafter within a reasonable time, the requirement of reviewing the report may be dispensed with in proper cases.

11. Sub-rule (3) of rule 5 of CR Rules provides that where more than one confidential reports are written on a member of the service during the course of a financial year or a calender year, as the case may be, each such report shall indicate the period to which it pertains. Though it is clear from sub-rule (1) of rule 5 itself that the confidential report is to be written for each financial or calender year, the sub-rule (3) further makes it clear that when necessary there may be more than one confidential reports for smaller periods of a year and in no case, a confidential report has to cover the period of more than 1 year. In other words, the performance or the events following the year under assessment cannot be imported or used by the reporting or reviewing authorities for the purpose of writing or reviewing the report. The principle seems to be very

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logical and equitable. An officer has to be awarded or condemned for his performance or conduct during the year under comment and not for the conduct and performance of any subsequent period as the same will not go unwatched and it will be given due consideration when the confidential report for that year is written or reviewed subsequently.

12. One other salient feature relating to the confidential reports is contained in rule 8 of the CR Rules, which provides that where a confidential report of a member of service contains an adverse remark or a critical remark, it shall be communicated to him in writing together with a substance of the entire confidential report (emphasis supplied) within 3 months of the receipt of the confidential report. This rule further provides that in the event of any difference in opinion between the Central Government and the Govt. of a State as to whether a particular remark is to be deemed as an adverse remark or critical remark or not, the opinion of the Central Govt. shall prevail. The idea behind this rule is that as soon as the confidential report of a member of the IAS is received by the Govt. or any authority specified by it and it contains an adverse or critical remark, the same should be communicated to the officer concerned expeditiously so that he may know the shortcomings at the earliest and be cautious for future and may take suitable steps for improvement. In case the confidential reports are recorded or reviewed after a lapse of several years, the very purpose of writing them is likely to be frustrated atleast in part and the officer to whom such report relates may get prejudiced in his service career.

13. Keeping these broad principles in view, we will now first examine the adverse remarks awarded to the applicant for the year 1974-75 (2.4.1974 to 31.7.1974) by the reviewing authority on 31.8.1977. The entire adverse remark communicated to the applicant in January 1978 is contained in annexure 1 to the petition and has been reproduced in verbatim in the earlier part of this judgment. The remark itself makes it clear that it is based on the inquiry conducted by the reviewing authority (Commissioner Agra) on his preliminary report made in January 1976 in connection with the complaint of Km.Asha Mahajan. The period under review related to financial year 1974-75 i.e. from 1.4.1974 to 31.3.1975 and the actual period under review was only from 2.4.1974 to 31.7.1974. The reviewing authority was, therefore, not authorised under the law to take into consideration the events taking place in Jan.1976 for reviewing the report.

14. We are further of the view that regarding ~~was~~ doing a lot of Farzi work, a specific charge no.2 was framed against the applicant as quoted above in the disciplinary proceedings against him on the basis of the preliminary report of the District Magistrate and Commissioner Agra in 1976. This charge was not found established against the applicant and being conscious of it a part of the adverse remark "had done lot of Farzi work and" was expunged by the respondent no.1. One other portion "In an inquiry conducted by me I found that he had been consorting with female subordinates. These are not healthy symptoms." was expunged by the respondent no.2 on submitting a memorial to the President and there remained only following adverse remarks for 1974-75 with which the

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applicant is concerned now :-

"He is clever."

Fitness for promotion to
higher grade(s) in his
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"Unfit"

" His work needs to be specially watched."

15. There has been much controversy on the interpretation of the word 'clever' used in the remarks. The contention of the applicant is that according to the dictionary meaning, the word clever is not used in bad sense and it cannot be a disqualification to be clever. On the other hand, the learned counsel for the respondent no.1 contended before us that the word clever has been used to convey the sense of 'Kaiyan' in these remarks. Without entering into this controversy, we are of the view that when both the State Government and Central Government have used the word clever to convey an adverse ^{remark} entry to the applicant and there is no dispute between them about the interpretation of this remark, and, even in a case of dispute, the opinion of the Central Government about a particular remark has to prevail, we feel inclined to interpret the word clever as an adverse or critical remark. It has now to be seen whether the remaining adverse remarks, as stated above, awarded by the reviewing authority were justified under the facts and circumstances of this case. Annexure 1 states that the reporting authority had found the work of the applicant satisfactory and his control over the subordinates effective and he was reported to be an officer possessing impressive personality. After excluding the ~~xxxxxx~~ opinion of the reporting authority, it has to be seen ~~here~~ as to whether there was any material before the reviewing authority to make such adverse remarks? According to the Head 2 of Part III of the Form of Confidential

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Reports, as prescribed under the CR Rules, the reviewing authority has to write whether he agrees or disagrees with the assessment of the reporting officer and if there is anything to modify or add. In the extract of the confidential report communicated to the applicant vide annexure 1, there is no mention that the reporting authority had disagreed with the assessment of the reporting authority about the applicant. In the absence of the fact that the remark made under Head 2 was not conveyed to the applicant, it may be safely presumed that the reviewing authority did not disagree with the assessment of the ~~application by the~~
^{about the applicant} reporting authority and did not wish to make any addition or modification in that respect and the adverse remark communicated to the applicant seems to have been noted by the reporting authority under Head 3 pertaining to general remarks of the Form. ~~In easier~~ It being so, the reviewing authority had no justification to term the applicant as clever and assess him unfit for promotion and also could not recommend for being specially watched. In Krishna Lal Sharma Vs. Union of India(1987)4 Adminstrative Tribunal Cases-709), an employee of the Union of India was awarded the adverse remarks "highly indisciplined", "doubtful in honesty", "irregular, careless and casual" and "unfit". The Principal Bench of the Tribunal quashed the said adverse remarks with the following observations:-

"...It is not clear as to how he was indisciplined as no particular incident is mentioned or communicated to the petitioner. It is also stated that he is irregular, careless and casual but no particulars, whatsoever, are given. In the absence of these particulars and specially in the background of the facts of this case, these adverse remarks cannot be sustained and are accordingly quashed."

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16. Despite the repeated representations of the applicant to different authorities, he was never communicated the reasons on which the remaining adverse remarks for 1974-75 are based. It is not clear as to how the applicant whose work was found to be satisfactory and the control over the subordinates effective, was found to be unfit for promotion and it is also not clear as to why there was need to watch his work specially. We, thus, find no justification for such remarks recorded by the reviewing authority after a lapse of over 3 years when due to such delay the requirement of reviewing the remarks for the period 2.4.74 to 31.7.1974 should have been dispensed with under the proviso of rule 6(1) of the CR Rules. It further appears that in his representations against the adverse remarks, copies whereof are on record, the applicant had given particulars about his good performance at Agra during the period under review. In such a case, irrespective of the fact whether ^{under} ~~or not~~ rules, the authorities were required to pass speaking orders on the representations against the adverse remarks, it became obligatory to make atleast some comments about the facts stated by him. It could not only meet the requirement of the principles of natural justice but ~~would~~ have also helped us to have our satisfaction whether the representations made by the applicant against the adverse remarks communicated to him were duly considered. This was, however, not done.

17. From the material on record, we find that the opinion of the reviewing authority was mainly based on its preliminary inquiry made in Jan.1976 and no fact or circumstance found against the applicant in such inquiry report was ultimately found to be true

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or established. A part of it being the subject matter of charges 2,3 and 5 was rejected by the disciplinary authority and the remaining matter concerning charges 1 and 4 was found to be unfounded by this Bench in the earlier case ~~against~~ [&] the applicant. The reporting authority having made a good report on the applicant, the reviewing authority had, therefore, no material to make any adverse comment about his work and conduct and to hold him unfit for promotion. We are, therefore, unable to agree with the contention of the respondents and have come to the conclusion that the adverse remarks in question were not made by the reviewing authority with open mind and there being no material to support them, they are liable to be quashed. We will like to add that the possibility cannot be ruled out that the reviewing authority had partly based its opinion about the applicant on the subsequent report of the reporting officer for year 1975-76 as by that time the report of the subsequent year was already recorded. Even that was not permissible to the reviewing authority under the law.

18. Now coming to the adverse remarks for 1975-76, it appears from ~~the~~ annexure 7 that these adverse remarks were recorded by the reporting authority itself. Whole remarks ~~have~~ been stated above and it appears therefrom that even the reporting authority had based its opinion about the work and conduct of the applicant on the inquiry made by it on the complaint of Km. Asha Mahajan, as stated above. We have already stated that both the District Magistrate and the Commissioner had submitted their reports to the higher authorities on the basis of the inquiries made by them on the complaint of Km. Asha Mahajan and the charges framed against the applicant on the said reports were not found

established and the applicant was exonerated of all the charges, as above. This being the position, the respondent no.1 took a rather rigid stand in not expunging any part of the adverse remark awarded to the applicant for 1975-76. ^{in our view,} ~~and~~ the respondent no.2 could convince itself that ^{at least} ~~only~~ a portion of the said remark was not correct and justified and expunged the same, as indicated above. Now the remaining adverse remarks for the year 1975-76 are as follows:-

" An irresponsible type of officer who does not take interest in his work. Needs strict supervision and close watch. Has yet to understand the fundamental requirements of executive responsibility."

He was further reported to be "not yet fit for promotion."

19. It has been canvassed that the applicant was reported to be irresponsible type of officer as some work done by him was found to be Farzi and his statements were found to be false and he was also interested in bogus touring. Such remarks could also be based on the fact that the applicant had allegedly removed certain statements from the custody of the District Magistrate surreptitiously. The District Magistrate could also have another fact in view that the applicant by abusing his official position had forced his some subordinates to make false statements and had ante-dated the same. The District Magistrate also could not ignore the fact that the applicant had allegedly refused to sign his statement recorded by the Commissioner during the course of preliminary inquiry and took away the same to his house and later brought another statement which differed from the earlier one. We say so on the strength of the charges 1,2,3 and 5 framed against the

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applicant as stated above which were not found established against him. It further appears from our judgment in the earlier case of the applicant that the facts found by the District Magistrate Agra in his preliminary report against the applicant were not established in the disciplinary inquiry. This being the factual position, we see no justification for maintaining the remaining adverse remarks recorded by the District Magistrate in his capacity as the reporting authority about the applicant. We will further like to say that there is nothing on the record to substantiate the adverse remarks awarded to the applicant in 1975-76. This being the state of affairs of the remarks given by the reporting authority, in our opinion, there was no material before the reviewing authority to give ^{the} remark to the effect that the applicant was not yet fit for promotion. In this way, we are unable to accept the contention of the respondents even regarding the remaining adverse remarks awarded to the applicant in the year 1975-76 and the same too deserves to be quashed.

20. Regarding the request of the applicant to grant senior time scale in the IAS from the due date, we are of the view that in view of the changed circumstances of the case of the applicant, we leave it to be reconsidered by the competent authority whether under the circumstances developed afterwards, the applicant is entitled to this relief. Even otherwise, this Tribunal has not to ~~make its own evaluation &~~ ^{make its own evaluation &} substitute its own judgment in such matters and it is always for the competent authority to judge whether an officer is entitled to promotion, selection or grade etc. The senior scale was denied to the applicant on the ground that at that time he was facing a department-

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al inquiry and thereafter the adverse entries were awarded to him for two years. ^{As &} The applicant was completely exonerated in the disciplinary proceedings and the adverse remarks awarded to him in the years 1974-75 and 1975-76 have also been found to be unjustified, his case has to be reviewed according to rules by the competent authority.

21. We accordingly quash the remaining adverse remarks awarded to the applicant for the years 1974-75 and 1975-76 and direct the respondents to examine and reconsider the case of the applicant for granting the senior time scale from due date within a period of 3 months from the receipt of the copy of this order. The petition is disposed of accordingly with the direction to the parties to bear their own costs.

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MEMBER(A)

Z. Sharmin
MEMBER(J)

Dated: 10th June 1988
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