

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**O.A.124/91**

Date of decision : 8/3/2000

Mr. K.Aravindakshan : Petitioner [s]

Mr.P.H.Pathak : Advocate for the petitioner [s]

Versus

Union of India and Ors : Respondent [s]

Mr.B.N.Doctor Advocate for the Respondent [s]

**CORAM**

**THE HON'BLE MR. V.RAMAKRISHNAN**

**VICE CHAIRMAN**

**THE HON'BLE MR. A.S.SANGHAVI**

**MEMBER [J]**

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the judgment ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*



K.Aravindakshan,  
C-1/05, DOS Housing Colony,  
Vastrapur,  
Ahmedabad.

Applicant

By Advocate      Mr.P.H.Pathak

Versus

1. Union of India, Through :  
Secretary, Department of  
Space. Govt. of India,  
Antariksh Bhavan,  
New BEL Road,  
Bangalore.
2. Director,  
Space Applications Centre, [ISRO],  
SAC PO Jodhpur Tekra,  
Ahmedabad.
3. T R Ramchandran,  
PA "C" SCA,  
Space Applications Centre,  
Ahmedabad.
4. K.M.Sasidharan,  
C/o, ISRO Office,  
Antariksh Bhavan,  
Plot No.406, CTS ,  
15<sup>th</sup> Road, Khr,  
Bombay.
5. Mrs. I K Gujaral,  
PA "C" DECU,  
S A C, Jodhpur Tekra,  
Ahmedabad.

6. P.Gopalkarishnan Achari,  
PA to Director,  
SAC, Jodhpur Tekra,  
Ahmedabad.
7. M Gopinathan.  
PA "A" RSA  
SAC, Jodhpur Tekra,  
Ahmedabad.
8. S.Sukumaran,  
PA "A"  
SAC, Jodhpur Tekra,  
Ahmedabad.
9. N.K. Nithianandan,  
PA "A" EMD,  
SAC, Jodhpur Tekra,  
Ahmedabad.
10. A.K.George,  
PA "A" RSA  
SAC, Jodhpur Tekra,  
Ahmedabad.
11. K B Nair,  
PA "A" CED  
SAC, Jodhpur Tekra,  
Ahmedabad.

Respondents

By Advocate Mr.B.N.Doctor

**J U D G M E N T**  
**IN**  
**O.A.NO.124/91**

Dt. 8/3/2000

**Per Hon'ble Mr.A.S.Sanghavi Member [J]**

The applicant who is working as P. A. "B" in the scale of Rs.1600-2900 with the respondent no.2. has moved this O.A. challenging the action of the respondents in not promoting him to P.A. "C". The applicant had joined the services in SAC as Stenographer in the grade of 425-700 from 5.5.73. He was thereafter promoted as P A in the year 1978 in the grade of Rs.475-750 and further promoted to the P A "A" in the year 1982 in the grade of Rs. 550-750. In the year 1983, he was promoted to P A "B" on the basis of his seniority in the grade of Rs.550-900. The promotion to the post of P A "C" is made by promotion from the cadre of P A "B". Selection to the post of P A "C" is made on the basis of the interview and ACR as per the O.M. dated 30.7.87. The interview carries the weightage of 70 marks while the ACR carries the weightage of 30 marks and to qualify for promotion, candidate had to secure at least 60 % marks in the aggregate with a minimum of 50% marks in each of the two elements evaluation. The applicant had appeared in the interview for the post of P A "C" in the year 1987 but he was not promoted to the said post. Thereafter again in the year 1991 when certain posts of P A "C" had fallen vacant, the applicant had appeared in the selection but he was not selected. According to the applicant, he was



not selected by the DPC with mala-fide intention as he had made some allegations against three members of the DPC. An inquiry was started against him in the year 1987 for wrongfully obtaining the house building advance and subsequently, he was exonerated in that inquiry on dated 8.3.91. When the DPC met, he was not yet exonerated and this factum of pending inquiry had influenced the DPC members not to select him. He has also alleged that the person who has written his ACR was also involved in the case of house building advance and he had made allegations against him also. The applicant has also challenged the norms for selection contending that the weightage of 70% marks for interview and 30 % marks for ACR fixed was arbitrary and illegal. He has further alleged that he was deliberately asked irrelevant questions in the interview and the members of the DPC were prejudiced against him as he had made allegations against them in connection with house building advance. He was therefore, deliberately not selected in 1987 as well as in 1991. He has alleged that the assessment made of the candidates by the DPC members is clearly capricious, arbitrary and violating the article 14 and 16 of the constitution and therefore, the entire procedure for selection is required to be quashed. He has prayed for quashing of the selection of respondents no. 6 to 11

for the post of P A "C" in the year 1991 and also for a direction to the respondents SAC to issue fresh memorandum giving weightage taking into consideration the judgements of the high courts and the Supreme Court and reconstitute the DPC for considering the case of the applicant a fresh.

2. The respondents have resisted this O.A. by contending inter alia in their reply that the said O.A. is not maintainable in view of the fact that the applicant has challenged the selection process only after appearing in the same twice and failing to get <sup>through</sup> it. The respondents have submitted that the post of Stenographer grade "B" has been up graded to P A "C" [ 2000-3200] vide the ISRO, H.Q. O.M. dated 30.7.87 and all those who were holding the post of P A "B" [ 1600-2900] were to hold the post and scale as personal to them till they were promoted to P A "C" or not vacated the post for any reasons. The procedure laid down by the O.M. dated 30.7.87 envisaged assessment by the DPC of all the employees of P A "B" grade and the element of assessment was 70 % marks for personal interview and 30 % marks for ACR and to qualify for promotion, candidate <sup>was</sup> ~~is~~ required to secure at least 60% marks in the aggregate with a minimum of 50% marks in each of the two elements

for evaluation. The D.P.C. of 1987 comprised of 5 members including one Mr.C R Shah but Mr.C R Shah was absent when the applicant was interviewed on dated 28.9.87. Out of the three eligible candidates only one was recommended i.e. the respondent no.3-Mr. T R Ramchandran, for promotion to the post of P A "C" in the grade<sup>of</sup> 2000-3200. The respondents have denied that the applicant though entitled for promotion was not selected due to the members of the DPC being prejudiced against him. According to the respondents, the applicant was charge sheeted on dated 16.9.87 but on the date on which his interview was taken, no inquiry was pending and the question of members of the DPC being prejudiced on this account, did not arise. According to the respondents the applicant was considered for promotion in 1987 but since he was not found fit, he was not recommended and there was no question of any mala fide or prejudiced involved therein. It is further contended by the respondents that since on dated 19.2.91 when the applicant was further interviewed for promotion, the disciplinary proceedings were pending against him, the recommendations of the DPC were kept in sealed cover as per the procedure on this subject. The applicant was thereafter exonerated of all the charges vide the order dated 8.3.91 and the sealed cover was opened thereafter. The applicant was



communicated with the result vide the letter dated 15.3.91. The respondents have denied the allegations that members of the DPC were highly prejudiced against him as he had made some allegations of wrongfully obtaining the house building advance against them. The respondents have further denied that the procedure adopted for selection was arbitrary and discriminatory. They have also denied that the applicant was deliberately asked irrelevant questions in the interview and that he was deliberately not selected by the DPC members. They have contended that the members of the DPC for 1987 and the 1991 were quite distinct <sup>and</sup> ~~the~~ there was no question of any body being influenced or prejudiced against the applicant. They have also denied that the irrelevant questions were asked to the applicant and an impression was given that he would not to be selected. According to them, there was no consideration other than the performance of the applicant as assessed by the DPC in the personal interview and the assessment of the evaluation of the ACRs related for the period under review in the DPC proceedings. According to them, the allegations made by the applicant against the members of the DPC are false and baseless. They have prayed that the application be dismissed with costs.

3. The applicant has filed rejoinder affidavit and the respondents have filed sur rejoinder also. The learned advocates of both the parties have filed written arguments and have also made oral submissions.

4. The applicant has not only challenged the selection of 1991 but also the selection of 1987. There is no dispute that both the selection processes proceeded on the strength of O.M. dated 30.7.87 and that the selection procedure consisted of only oral interview along with consideration of ACR of the candidate. The O.M. dated 30.7.87 is in regard to the norms for Stenographic staff and the procedure for promotion to the newly created posts of Personal Assistant in the grade of 2000-3200. The O.M. inter alia provides that 15 posts of P A "B" [existing scale 1640-2900]- had been up graded to the scale of 2000-3200 in DOS/ISRO /Centers /Units. However, 5 posts in the same grade <sup>were</sup> ~~are~~ also newly created during this year vide the O.M dated 23.7.87 It also acknowledges that this being newly created higher grade for stenographic staff in group B category, norms did not exist and therefore, the procedure for promotion for filling up of these newly created posts in the grade of Rs. 2000-3200 was laid down until further orders in



this O.M. The O.M. further provides that <sup>~ "all"</sup> ~~by~~ the existing P A "B" in the scale of 1640-2900 grade shall be assessed by the DPC for promotion to the post of P A "C" in the grade of 2000-3200 and the elements for assessment will be as under:-

[a]	interview	:	70 marks
[b]	ACR	:	30 marks
	Total	:	100 marks

"However, to qualify for promotion, candidates should secure at least 60% marks in the aggregate with a minimum of 50% marks in each of the two elements of evaluation. The review will be as on the rationalisation date of 1.9.87.

The DPC will assess the eligible candidates and draw up panels which will be valid for a period of 18 months from the date of its approval by the competent authority. Promotions will be effected, based on the panel position, availability of vacancies in the respective center/unit and subject to the rules regarding reservation for SC/ST etc."

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Para 4 of the O.M. makes it clear that the procedure laid down in the preceding paragraphs for

promotion to the post of P A "C" will apply only during the initial phase of filling up of the posts newly created during this year and to be created during 1988-89 in respect of posts already approved for creation.

5. The contention of the applicant that the selection was to be merely on the seniority basis or seniority cum merit stands defeated by the bare reading of this O.M. It is quite obvious from the O.M. that the selection was to be merely on merit and not on seniority or on seniority cum merit. There is no dispute that 1987 selection was held for the purpose of newly created posts of P.A."C" and according to the respondents, three candidates being eligible, were called for interview before the DPC. The applicant was one of them. Mr. Doctor has submitted from the files that in 1987 only one candidate was selected, while other two could not find place in the panel. The applicant was one of the candidates not selected in 1987 selection. Undisputedly he had not challenged that selection of 1987, immediately thereafter and had even appeared in the 1991 selection. It is therefore quite obvious that so far as the challenge to the selection of 1987 is concerned, the same is barred by limitation as well as acquiescence on the part of the applicant. The applicant is estopped from challenging

the 1987 selection having participated in the 1991 selection. The question of 1987 DPC having been prejudiced against him and having not selected him because he made some allegations against the DPC members does not arise for consideration in view of the conduct of the applicant in not challenging the same and also having waived by appearing in 1991 selection. The applicant has attributed malice on the part of the members of the 1987 DPC in not selecting him and has even gone to the extent of re-producing the questions asked to him by different members of that DPC by maintaining that he had noted down these questions with answers while they were being asked to him. As observed above, so far as the question of 1987 selection is concerned, the same is not open for consideration as the applicant had failed to challenge that selection within time and having elected to appear in 1991 selection had even waived the right of challenge by acquiescence. Furthermore, it is not possible to believe that while interviewing he would have been in a position to note down the questions and answers given by him. It is also not possible to believe that for all these years he would not have taken any steps, if he was really aggrieved and was certain that on account of malice towards him the members of the then DPC of 1987 had not selected him. We, therefore, do not find any substance in these allegations.



6. On our asking, Mr. Doctor, learned advocate appearing for the respondents had brought the file of the 1991 selection of P A "C" of the ISRO and perusing that file, we find that 1991 DPC comprised of 7 members whose names are as under:-

[1]	Dr. George Joseph	Chairman
[2]	Shri OPN Calla	Member
[3]	Smt. S S Joshi	Member
[4]	Shri K.S. Karnik	Member
[5]	Smt. D. Rustogi	Member
[6]	Shri M.M. Shah	Member
[7]	Shri BGV Subrahmanyam	Member

Out of these seven members, admittedly Shri OPN Calla and Dr. George Joseph were members of the 1987 DPC also. The minutes of the promotion Committee showed that Shri OPN Calla was not present when the DPC was convened for applicant's interview. Now according to the applicant, he had made allegations of involvement of Mr. Calla, Mr. M.M. Shah, and B.M. Joshi in HBA case in his preliminary inquiry, and therefore, these three members were prejudiced against him. Mr. Doctor, learned advocate for the respondents has pointed out that out of these three persons against whom allegations were made by the

applicant, only Mr. Calla was the member of the 1987 DPC, while Mr. M. M. Shah and Mr. Joshi were the members of the 1991 DPC. Mr. Doctor has further pointed out that Mr. M. M. Shah was the inquiry officer in the inquiry against the applicant in which the applicant has been exonerated in the year 1991. He has also further pointed out that Mr. M. M. Shah was not a member of 1987 DPC wherein the applicant was not found fit for promotion and was not promoted and hence the allegation that the DPC members were prejudiced against <sup>him</sup> stands nullified. According to Mr. Doctor this fact shows that the allegations of the applicant that the members of the DPC were prejudiced against him as he had made some allegations against them is baseless and false. He has also pointed out that the O.M. requires that the candidates should obtain minimum 60 % marks in the aggregate with a minimum 50% in each of the two elements for evaluation <sup>and as applicant</sup> had not been able to obtain minimum 50 % marks in ACR as well as interview, he was not selected for 1987 and 1991 DPC.

7. Now inquiry against the applicant was started by giving him a charge sheet on dated 16.9.87 on the ground of his availing HBA by deceitful means. According to the applicant, prior to start of this inquiry

against him, in his explanation he had stated that other officers had also obtained HBA on false grounds and had even given names of three persons who constituted the DPC of 1991. Now when the DPC of 1987 met on dated 8.4.87 no charge sheet was given to the applicant and no inquiry had started against him. There was therefore, no question of any member of the DPC of 1987 being deliberately prejudiced against him. Furthermore, so far as the 1991 DPC is concerned, except the bare averment that he had made some allegations against the three members of the DPC and thereby they were prejudiced against him, there is nothing to show that any of the member of the DPC was in fact prejudiced against him and bore some grudge against him. It transpires from the record that the result of the applicant was kept in<sup>a</sup>/sealed cover as the inquiry proceedings against him were not over at that time. In his O.A. the applicant has concealed this fact of his result having been kept in sealed cover and ultimately the sealed cover having been opened, after he was exonerated of the charges in the inquiry. As observed above, he had made allegations against Mr.M.M.Shah one of the members of the panel and the same member Mr.Shah had exonerated him of the charges levelled against him and had passed a

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reasoned order in favour of the applicant. It is therefore, not believable that he would have been prejudiced against the applicant and had grudge against the applicant. Furthermore., the DPC of 1991 comprised of 7 members. Even if one of the members of that committee was prejudiced against the applicant, it cannot be said that others would also be similarly prejudiced against him and would not select the applicant. When the allegations of mala fides are made the applicant is required to adduce sufficient material on record to show that the members of the selection committee were really prejudiced against him and on account of this prejudice, he was not selected. Merely saying that because he had made some allegations against the members of the selection committee and therefore, he was not selected is not sufficient to prove mala fides ~~intention~~ on the part of the promotion committee members. In the case of **M.S. Bindra Bs. Union of India & ors. reported in 1999 [2] SLJ 96,** the supreme court has observed that merely having a particular version cannot be a proof of mala fide. Sufficient material is required to be brought on record. In the instant case neither the DPC members of 1987 or 1991 are made parties in this O.A nor any cogent evidence regarding allegations made against them and

the members acting prejudicially against him is adduced by the applicant and therefore, the question of mala fides of the member of the DPC of 1991 does not arise. We find no merit in this allegation and reject this contention of the applicant .

8. The applicant has then challenged the O.M. dated 30.7.87 prescribing the procedure for the selection to the post of P A "C". According to Mr.Pathak, learned advocate appearing for the applicant, the selection was based only on the consideration of two elements-interview of 70 % marks and ACR of 30 % marks and out of total 100 marks, the candidate was required to secure at least 60% marks in the aggregate with a minimum of 50% in each of the two elements. According to Mr.Pathak, there is no justification to give weightage of 70 % marks for interview and that provision for minimum 50 % marks as qualifying marks and to obtain aggregate 60 % marks to be successful is also bad in law. Mr.Pathak has further submitted that the supreme court has laid down that prescribing more than 25 % marks for oral interview is illegal and since in the instant case 70 % marks are prescribed for oral interview, the whole procedure is vitiated and it requires to be set aside. He has further submitted that no guide lines are provided



in the O.M. as to how the marks are divided and no norms are prescribed for awarding marks. In the absence of such guide lines, the elements of arbitrariness, creep in and it cannot be denied that the members were assessing the candidates in their absolute discretion and in the use of their arbitrary exercise of power. In support of his submission, he has relied upon the following decisions.

- [1] **A.K.Simpy Vs. State of Gujarat, 1983 GLH 36**
- [2] **Ajay Hasya reported in AIR 1981 SC-722**
- [3] **Peeriakar Uppani- reported in AIR 1981 SC 2303**
- [4] **Mehu - reported in AIR 1980 SCC 1975**
- [5] **R.P.Sapru Vs. State of J & K reported in AIR 1981 SCC 1001**

9. Mr.Doctor learned advocate appearing for the respondents on the other hand has submitted that the impugned O.M. lays down the norms and mode of selection and there is nothing wrong in prescribing 70 % marks for oral interview and 30 % marks for ACR. According to him the selection was to be made purely on merit and since no written examination was prescribed, there was no reason not to prescribe 70 %

marks for oral interview and 30 % marks for ACR. He has further pointed out that this is not a case of direct recruitment to a posts but it is a case of promotion from the lower category posts to the up graded posts. The candidate was required to be selected for promotion only on the basis of his performance and on the basis of his past record. Hence there was absolutely nothing wrong in prescribing 70 % marks for interview as well as 30 % marks for ACRs. Referring to the decisions cited by Mr.Pathak, he has submitted that none of these decisions apply to the instant case as this is not a case for direct recruitment to a post where the candidates selected are not known person to the department and they are to be selected only on the basis of the merit. Mr.Doctor has placed reliance on the following cases.

- [1] Anzar Ahmad Vs. State of Bihar, reported in AIR 1994 SC 141**
- [2] A.P.State Financial Corporation Vs. Ashok Raju and others, reported in AIR 1995 SC 39**

He has also submitted that case of A.K.Simpy Vs. State of Gujarat lays down favourable ratio for the respondents rather than the applicant.

10. We have carefully gone through the decisions cited by both the learned advocate at the Bar. It is no doubt true that in the case of A.S.Yadav Vs. State of Haryana, and Ajay Hasya etc. the supreme court has laid down that the allocation of 20 % marks against interview was arbitrary and against law. However, distinguishing those cases, the supreme court has later on in the case of A.P. State Financial Corporation Vs. Ashok Raju reported in AIR 1995 SC 39, has held that the ratio in Ashok Kumar Yadav's case and other cases in line, is only applicable to those selections where written examination in addition to viva voce test is prescribed. In the selections/promotions where only viva voce test is provided, no limit can be imposed in prescribing the marks for the interview. Referring to the case of Anzar Ahmed Vs. State of Bihar reported in AIR 1994 SC 141, the supreme court has held that the High Court was not justified in allocation of 25 % for the viva voce test in Anzar Ahmed case[ supra ]. Referring to the earlier decision wherein allocation of 50% marks for interview was held to be high, apex court has laid down that the said decision appears to have been given in the particular facts of that case and it cannot be said to have laid down a law different from that laid down



in the early decisions of this court. It further says "We are unable to construe the said decision to mean that principles which govern the allocation of marks for interview in a selection based on written and viva voce test would also apply to a selection where no written test is held and the selection is based on interview only."

11. Both these decisions of the supreme court therefore make it amply clear that where no written test is prescribed, no limit can be imposed on ~~the~~ prescribing the marks for the interview. Under the circumstances, so far as the instant case is concerned, it cannot be held that prescribing 70 % marks for viva voce is illegal or arbitrary.

12. Same principle has been laid down by P D Desai [J] as he was then, in the case of A.K.Simpay vs State of Gujarat, reported in 1983 GLH 36. He has observed as under:-

" In the case of services to which recruitment has necessarily to be made from persons of mature personality , interview test may be the most suitable way, subject to the basic and essential academic and professional requirements being satisfied. In the case of some other services, where sound

selection must combine academic ability with personality promise, some weight may have to be given, though not great weight, to the interview test. Besides, there cannot be any rule of thumb regarding the precise weight to be given to the different tests. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. Furthermore, when the rules do not provide for the allocation of marks under different heads prescribed for a single test, it would be for the interviewing body to take a general decision whether to allocate marks under the different heads or to award marks in a single lot.

13. This decision also answers the submission of Mr. Pathak regarding non prescribing of the norms for the consideration by the DPC members. It was clearly open to the DPC members to lay down their own norms while assessing the merit of each candidate. Furthermore, it is laid down by the supreme court in the case of **Durga Devi Vs. State of H.P.** reported in **AIR 1997 SC 2618**, that it is the function of duly constituted committee to judge comparative merits of the candidates and fitness for the post and the administrative tribunal cannot sit as appellate court and quash the selection by itself scrutinizing the



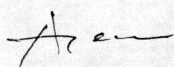
comparative merits of the candidates. Referring to the case of **Dalpat Abasaheb Solunke's** reported in **AIR 1990 SC 434-** the supreme court has observed as under:-


" It is needless to emphasis that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved mala fides affecting the selection etc."

These decisions apply with full force to the facts of the instant case. So far as the question of mala fide is concerned, we find that the applicant has not adduced sufficient material on record to show that any of the members of the selection committee was prejudiced against him and had acted in mala fide in not selecting him. So far as the quashing of the O.M. is concerned, the same falls to the ground in view of the

decision of the supreme court in the case of A.P.Financial Corporation Vs. Ashok Raju [ supra ]. It cannot be held that merely because no norms are prescribed in the O.M. for holding the viva voce test, the O.M. becomes illegal or gives arbitrary powers to the selection committee members.

15. In view of the aforesaid discussion, we are of the opinion that the grounds on which the selection is challenged by the applicant have absolutely no substance. The O.A. is therefore devoid of any merit and deserves to be rejected. In the conclusion, the O.A. is rejected with no order as to costs.

  
[ **A.S.Sanghavi** ]  
Member [J]

  
[ **V.Ramakrishnan** ]  
Vice Chairman

**S.Solanki \*\***

Sr.No. 42/99

Dated: 20/12/99

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 29/11/99 in CA/  
Spl.C.A. No. 7484 of 99 passed by the  
Supreme Court/ High Court against the Judgment/ Oral Order  
passed by this Tribunal in OA/ 124/91 is placed for perused  
please.

20/12/99  
S.O. (J) 12/12/99  
67.1-2000  
D.R. (J) 20/12/99

Hon'ble Vice Chairman

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

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Hon'ble Vice Chairman

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)



CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

No. CAT/A'bad/Judl./Vacation/94/  
Opp. Sardar Patel Stadium,  
Navrangpura,  
Ahmedabad-380 009.  
Dt. 12.12.1994.

N O T I F I C A T I O N

It is notified for general information that the  
Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad  
will remain closed from Monday 26.12.94 to 30.12.94 on  
account of Winter Vacation.

During the vacation period, a Bench consisting  
of Hon'ble Shri K. Ramamoorthy, Member (A), Central  
Administrative Tribunal, will hold sitting on 27.12.94  
to 29.12.94 hrs. onward, to transact emergent business  
only.

The filing counter of the Registry of the Tribunal  
will remain open from 1030 Hours to 1300 Hours during  
the vacation period and will receive only urgent  
application. However, the office of the Tribunal shall  
continue to remain open from 0945 Hours to 1815 Hours  
on working days.

order

(K.J. SHETH)  
JUDICIAL REGISTRAR (J)

Copy to :

1. P.S. to Hon'ble Chairman, Principal Bench, Central  
Administrative Tribunal, Rajkot House, New Delhi.
2. P.S. to Hon'ble Vice Chairman, C.A.T. Ahmedabad.
3. P.S. to Hon'ble Administrative Members, CAT, Ahmedabad.
4. P.S. to Hon'ble Judicial Member, CAT, Ahmedabad.
5. The Dy. Registrar, Principal Bench, C.A.T. New Delhi.
6. The Registrar, C.A.T. Ahmedabad.
7. The Dy. Registrar, (Judl. & Admin) CAT, Ahmedabad.
8. The Registrar, Gujarat High Court, Ahmedabad.
9. Secretary, Bar Association, Gujarat High  
Court, Ahmedabad.
10. Secretary, Ahmedabad Practitioner's  
Association, Ahmedabad.
11. The Editor, The Time of India, Indian Express  
Gujarat Samachar, Sandesh, Janta, A'bad.  
It is requested to publish this notification as  
an item of news in their esteemed daily.
12. Section Officer, C.A.T., Ahmedabad.
13. Accounts Section, C.A.T., Ahmedabad.
14. Court Officer, C.A.T., Ahmedabad.
15. Copy to Notice  
Board, I & II, C.A.T. Ahmedabad.
16. Guard File.
17. Registrar/Dy. Registrar of all other Benches of C.A.T..

URGENT

Decree Despatch No. 38502  
Date 28-11-99

1691

17/12/99

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
Special Civil Application No 7484 of 1999

1. K ARVINDAKSHAN

Vs

1. UNION OF INDIA & ORS.

Petitioner

Respondents

To

1. UNION OF INDIA

SECRETARY, DEPTT OF SPACE  
GOVT OF INDIA, ANTARIKSH  
BHAVAN, NEW BEL ROAD,  
BANGLORE-560054

2. DIRECTOR, SPACE APPLICATION  
CENTRE (ISRO)  
SAC PO,  
JODHPUR TEKRA  
AHMEDABAD-380 015

3. THE CENTRAL ADMINISTRATIVE  
TRIBUNAL, SARDAR PATEL STADIUM  
NAVRANGPURA, AHMEDABAD

✓ Ref - M.A. 328/98 in O.A. 124/91,

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 27/09/1999 praying to grant the prayers and etc....

And Whereas Upon hearing  
MR PH PATHAK for the Petitioner no. 1  
Court passed the following order :-

CORAM : J.N.BHATT & H.K.RATHOD, J.  
DATE : 26.10.1999

The challenge in this petition is in very narrow...  
.....shall stand disposed of as withdrawn.

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

17/12/99

Witness CHUNILAL KARSANDAS THAKKAR, Esquire Acting Chief Justice at Ahmedaba  
aforesaid this 26th day of Oct, 1999.

(48)

By the Court

*29 XI-99*

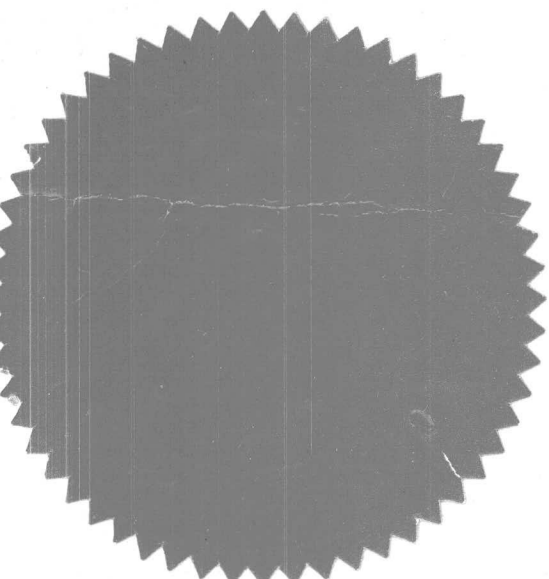
For Deputy Registrar

This day of Nov 1999

*2*

Note : This writ should be returned  
duly certified within 2 weeks.  
( 659)

241119



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7484 of 1999

K ARVINDAKSHAN  
Versus  
UNION OF INDIA

Appearance:  
MR PH PATHAK for Petitioner

CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE H.K.RATHOD  
Date of Order: 26/10/1999

ORAL ORDER

The challenge in this petition is in very narrow compass. The Central Administrative Tribunal, in Miscellaneous Application No. 328 of 1998 in Original Application No. 124 of 1991 refused to allow the amendment and impleadement of the parties who were the members of the Departmental Promotion Committees on the ground of bar of limitation.

In so far as the impleadement of the parties is concerned, in the present case, proposed parties excepting the parties at serial no. 13, 14 and 15 and 18 were not the members of the Departmental Promotion Committee of the year 1991 and, therefore, the Tribunal took the view that they are not necessary parties. Both these grounds assailed before us. We do not find it necessary in this petition to divulge on merits. However, the apprehension that the plea of mala fide in absence of the impleadement of the parties who happened to be the members of the Departmental Promotion Committee who are no more in the committee should not come in the

way of raising of the plea of mala fides. It is a case of legal mala fides and not the case of mala fides personal to the parties. Hence the same should not come in the way of the petitioner while raising plea of mala fide.

In view of the aforesaid observations, Mr. Pathak, the learned advocate appearing for the petitioner seeks leave to withdraw this petition with a liberty to raise such plea before the Tribunal. Leave is granted. The petition shall stand disposed of as withdrawn.

26.10.1999.

*sell* *sell*  
(J.N.Bhatt,J.) (H.K.Rathod,J.)

Vyas

TRUE COPY  
*20X1-SP*  
ASSISTANT REGISTRAR  
THIS DAY OF



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH

OA/TA/RA/CP/MA/PT 124 of 199 1Mr. K. Binodkumar

APPLICANT (s)

VERSUS

M.O.I. & O.S.

RESPONDENT (s)

I N D E X      S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
1.	<u>OA</u>	1 to 39
2.	<u>Written Reply R-2</u>	40 to 85
3.	<u>Reply in Rejoinder</u>	82 to 99
4.	<u>Reply to Rejoinder</u>	100 to 110
5.	<u>Reply in Sx-Rejoinder</u>	111 to 128
6.	<u>MT 328/98</u>	129 to 134
7.	<u>Written Reply to MT</u>	135 to 144
8.	<u>Parts of Arguments</u>	145 to 153
9.	<u>Written Arguments of Rep</u>	144 to 152
10.	<u>Indy. Ord. 08-03-2000</u>	154 to 168
11.	<u>SCA 744/99</u>	153 to 167
		1 to 24.
		1 to 4
	<u>'C' part</u>	1 to 30

one set of OA extra.

Certified that the file is complete in all respects.

Signature of S.O.(J)

Signature of Deal. Hand.

OAI 144 191.

Shri. K. Aravindalakshani

v/s.

U.O.L. & Co.

Applicant

Respondents

Filed by - P. M. Rawal.

May fix 16 date of  
admission or 16 earliest of  
urgent work filed by 16 applicant  
and copy send to other side.

my  
4/4/91

so 4/4/91

17/3 17/3  
08/4/91

(51)

ANNEXURE - I.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT (S) Shri. K. Arvindakshou

RESPONDENT(S) V.O.L. & Or.

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO  
RESULT OF EXAMINATION.

1. Is the application competent ?
2. (A) Is the application in the prescribed form ?  
(B) Is the application in paper book form ?  
(C) Have prescribed number complete sets of the application been filed ?
3. Is the application in time ?  
If not, by how many days is it beyond time ?  
Has sufficient cause for not making the application in time stated ?
4. Has the document of authorisation/ Vakalat Nama been filed ?
5. Is the application accompanied by D.D./I.P.O. for Rs.50/- . ? Number ~~for~~ of D.D./I.P.O. to be recorded.
6. Has the copy/copies of the order(s) against which the application is made, been filed.?
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed. ?  
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ?  
(c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents has been filed and has the paging been done properly ?

DR 415001

YS (Annex 3 P 36)



PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT  
OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application.?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?
11. Are the application/duplicate copy/spare copies signed.?
12. Are extra copies of the application with annexures filed.?  
 (a) Identical with the Original.  
 (b) Defective.  
 (c) Wanting in Annexures  
 No. \_\_\_\_\_ Page Nos. \_\_\_\_\_ ?  
 (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the respondents been filed ?
14. Are the given addressed, the registered addressed ?
15. Do the names of the parties stated in the copies, tally with Name(s) ~~not~~ those indicated in the application ?
16. Are the transactions certified to be true or supported by an affidavit affirming that they are true ?
17. Are the facts for the cases mentioned under item No.6 of the application ?  
 (a) Concise ?  
 (b) Under Distinct heads ☒  
 (c) Numbered consecutively ?  
 (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons.?

checked  
 MK  
 4/10/2018

53

Obt 172/91  
3/4/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
ADDITIONAL BENCH AT AHMEDABAD.

O. A. No. 124 of 1991.

Between :

K Aravindakshan ... Applicant

And

Union of India and others. ... Respondents.

I N D E X

<u>Annex.</u>	<u>Particulars</u>	<u>Page Nos.</u>
-	Memo of Application	1 to 27
'A(1)	A copy of the Office Memorandum dated 30.7.87.	28 to 30
A(2)	A copy of order dated 8.3.91.	31 to 35
A(3)	A copy of intimation letter dated 15.3.91.	36
A(4)	A copy of letter dated 15.3.91 written by the applicant.	37 to 39

Copy sent to Advocate P M Raveel  
8/4/91  
3-4-91  
Link to Advoca  
Crisis Mtl

DI deposit  
process of 31/-

6 415001

(54)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
ADDITIONAL BENCH AT AHMEDABAD.

O. A. No. 124 of 1991.

Between :

K Aravindakshan

... Applicant

And :

Union of India and others.

... Respondents.

Details of Application :

1. Particulars of  
the applicant.

K Aravindakshan,  
C-1/05, DOS Housing Colony,  
Vastrapur,  
Ahmedabad-380 015.

2. Particulars of  
the respondents.

- 1) Union of India,  
(Notice through the  
Secretary, Department  
of Space, Govt. of  
India, Antariksh Bhavan,  
New BEL Road,  
Bangalore-560 054.
- 2) Director,  
Space Applications  
Centre, (ISRO),  
SAC P.O. Jodhpur Tekra,  
Ahmedabad-380 015.
- 3) T R Ramachandran,  
P.A. 'C', SCA  
Space Applications  
Centre, Ahmedabad-15.



(5) 2  
- 2 -

- 4) K M Sasidharan,  
C/o. ISRO Office,  
Antariksh Bhavan,  
Plot No. 406, CTS,  
15th Road, Khar (West),  
Bombay-400 052.
- 5) Mrs. I K Gujaral,  
PA 'C', DECU  
Space Applications  
Centre, Jodhpur Tekra,  
Ahmedabad-380 015.
- 6) P. Gopalakrishnan Achari,  
PA to Director,  
Space Applications  
Centre, Jodhpur Tekra,  
Ahmedabad-380 015.
- 7) M Gopinathan,  
PA 'A', RSA  
Space Applications  
Centre, Jodhpur Tekra,  
Ahmedabad-380 015.
- 8) S Sukumaran,  
PA 'A', SCA  
Space Applications  
Centre, Jodhpur Tekra,  
Ahmedabad-380 015.

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9) N K Nithianandan,  
PA 'A', EMD  
Space Applications Centre,  
Jodhpur Tekra,  
Ahmedabad-380 015.

10) A K George,  
PA 'A', RSA  
Space Applications Centre,  
Jodhpur Tekra,  
Ahmedabad-380 015.

11) K B Nair,  
PA 'A', CED  
Space Applications Centre,  
Jodhpur Tekra,  
Ahmedabad-380 015.

3. The application is against the action of the respondents in not promoting the applicant and also against the action of the respondents in promoting others who are juniors and less meritorious vide order No. SAC REV:58:91 dated 15.3.91 issued by the respondent No.2 office.

4. The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

5. The applicant further declares that the application is within the limitation prescribed in Sec.21 of the Administrative Tribunals Act, 1985.

6. The facts of the case are given below.

6.1 The applicant states that he joined the respondent SAC as Stenographer in the grade of Rs. 425-700 on and from 5.5.73. He was promoted thereafter as P.A. with effect from 21.11.78 in the grade of Rs. 470-750. He was further promoted to the post of PA 'A' from 13.1.82 in the grade of Rs. 550-750 after written test and interview. Thereafter he was promoted to PA 'B' from 17.2.83 on the basis of seniority in the grade of Rs. 550-900.

After the 4th Pay Commission, the applicant has been placed in the scale of Rs. 1640-2900 as PA 'B'. The applicant's present basic pay is Rs.2600/- as on 1.2.91.

6.2 The applicant states that from the post of PA 'B', there is a further promotion to the post of PA 'C' and posts of PA 'C' are being filled in from amongst the candidates working as PA 'B'. The promotions are being issued on the basis of interview and Annual Confidential Reports (ACRs). Office Memorandum dated 30.7.87 has also been issued laying down norms for the stenographic staff. A copy of the said Office Memorandum dtd. 30.7.87 is annexed hereto and marked as Annex.A(1). Annex.A(1)



- 5 -

Clause 2.5 of the said Memorandum points out that so far as the interview is concerned, there would be weightage of 70 marks, whereas ACRs are concerned there would be weightage of 30 marks and to Qualify for promotion, candidates should secure atleast 60% marks in the aggregate with a minimum of 50% marks in each of the two elements of evaluation.

6.3 The applicant further states that on the basis of the above referred Circular, the applicant was eligible and entitled for promotion to the post of PA 'C' in the year 1987, but he was not promoted to the said post. He was given an impression that he was not promoted because some actions were contemplated against him.

6.4 The applicant further states that in fact really there was nothing against him. What had happened was that he applied for House Building Advance (HBA) loan for a bigger house and in that connection, the details submitted by him were being enquired. Somebody had pointed out to the office that he was occupying one house in his own name and, therefore, he was not eligible for loan. He was occupying one house earlier, but that was a small one and he wanted to have a big house and, therefore, he submitted an application for loan to the office. He also pointed out that he was occupying the house on instalment basis. Thereafter the permission was granted and the loan was sanctioned. He pointed out all these

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- 6 -

facts and recently by an order dated 8.3.91, he has been exonerated and he has also been informed about the same. A copy of the said order dated 8.3.91 is annexed hereto and marked as Annex.A(2). In the said order exonerating him, it has been clearly pointed out that " -

Annex.A(2)

"..... the issue is whether he had wilfully suppressed material information of his owning and possessing a flat at N/3, Parasmani Flats, Ranna Park, Ahmedabad-61 for deriving pecuniary advantage from the Government in the form of HBA. It is evident from the Memorandum dated January 7, 1977 issued by the then controller, SAC that Shri Aravindakshan had declared possession of this flat and he had obtained permission to become a member of Kendriya Kamachari Nagar Co-Operative Housing Society Limited for a tenement type house. The then controller, who was a witness in this case, had also confirmed that this Memorandum dated 7.1.1977 was issued by him. It is quite possible that due to changes in divisions, shifting of offices to various buildings in SAC Campus etc. some papers might have been misplaced and one of them could be the office copy of this Memorandum dated 7.1.1977. The non availability of this document in the official records do not, therefore, make this document invalid.

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The Inquiry Officer has also totally agreed in this regard in his report.

In the circumstances, I find there is an element of doubt in conclusively proving that he was an owner of the flat at Parasmani at that relevant time.

In view of the forgoing, and considering all aspects and the plea of Shri Aravindakshan in this case, I have decided to give the benefit of doubt to Shri K. Aravindakshan, Personal Assistant "B", SAC, Ahmedabad be exonerated with immediate effect from the charges framed against him vide Memorandum No. SAC:EST:ILS:1987 dated September 16, 1987."

6.5 The applicant states that he was wrongly not promoted in the year 1987. Even taking into account the action and/or enquiry, the Department ought to have considered him and promoted later on.

6.6 The applicant further states that in the month of February, 1991 also, the respondents decided to fill in certain posts of PA 'C' by way of promotion and at that time also he was eligible and entitled for the said post, but taking into consideration the same facts, i.e., actions against him and/or enquiry against him, he was not promoted. A copy of the intimation dated 15.3.91 informing the applicant that having been



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(6)  
- 6 -  
considered by the DPC on 19.2.91 for promotion to the post of PA 'C', he has not been recommended for promotion is annexed hereto and marked as Annex.A(3). Annex.A(3)

6.7 The applicant states that he is eligible and entitled for promotion. Even then he has not been promoted and the decision not to promote him is really based on 3 aspects - (i) the fact that the enquiry was going on and at the time when DPC met i.e., on 19.2.91 he was not exonerated. Therefore, that was taken into account adversely affecting him; (ii) The elements of promotion as laid down in the Memorandum laying down norms dated 30.7.87 speak about weightage of 70 marks for interview and 30 marks for ACRs, and as such the respondents have acted upon absolutely wrong basis. There cannot be weightage of 70 marks to interview and 30 marks to ACRs. (iii) The members of the DPC in the year 1987 as well as in the year 1991 were and are influenced by extraneous considerations, firstly they are also involved in HBA cases like the applicant and when they were enquiring from the applicant about his case, the applicant pointed out that they have also taken HBA on the same footing. On the contrary, he also pointed out that he had no ill-intention, whereas their cases were more serious because they were owning houses, even then they had taken HBA. Moreover, they had not informed the office about their owning houses and disposal too.

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When the applicant pointed out these facts, the respondents did not like this and from the expression, the applicant felt that he would not be selected. Moreover, the person who is writing his ACRs is also involved in the case of HBA. Same is the case with the counter-signing authority. Secondly, the members also wanted to help some persons for extraneous reasons.

For all these reasons, the applicant has not been promoted.

6.8 The applicant further states that even during the personal interview, though the weightage for the interview is 70 marks, no relevant Questions were asked, all irrelevant Questions were asked and were such that they cannot be said to have nexus with the post or the subject matter and the interview was also a show and/or a sham or a pretence. It lasted only for a couple of minutes and ended with few flimsy Questions. Some of the Questions which were asked to the applicant are narrated hereinbelow :

(I) 1987 DPC - for about 5 to 7 minutes.  
Review on 24.8.87.

The committee members asked following Questions :

Mr. O P N Calla :

<u>Question</u>	<u>Answer</u>
What is the full form of INSAT	Indian National Satellite.



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What is the full form of SBRTN?

Satellite Based Rural telegraph Network.

What is Pramod Kumar in SBRTN?

He is Project Director in SBRTN

Mr. Sampat.

How long you are working with Pramod Kumar?

I am working with him as P.A. since 7 years.

Mr. A.W.P.David.

What is Mr. Pramod Kumar?

He is a Group Director in CTG (Communication ~~Technique~~ Techniques Group) and Project Director in SBRTN.

What are your duties?

As a P.A., I have to look after the office correspondence, attend phones of my boss and record keeping of all correspondence of Pramod Kumar concerning his group work etc., making tour programmes and making all arrangements for getting air-tickets, transport, stay etc., preparation of TA bill claims after tour and get the same settled, distribution of ACRs to CTG staff, collection of ACRs back in time and forward the same to Administration in time every year.

Dr. George Joseph :

No Questions were asked by him.

(II) 1991 DPC - 7 to 10 minutes.

The Committee members were :

Dr. George Joseph	Chairman
Mr. O P N Calla	Member
Mrs. S S Joshi	"
Mr. M M Shah	"
Mr. B G V Subrahmanyam	"
Mr. K S Karnik	"
<del>MxxxKxs</del> Dr. (Mrs) D. Rastogi	"



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The committee members asked following Questions.

Dr. George Joseph :

Since how long you are ~~with~~ working with Mr. Pramod Kumar?

I am working with him since 11 years.

What are your duties as P.A.?

As P.A., I have to take care of his day to day appointments of meetings etc. and to remind him in time of the same, looking after his office correspondence, attending phone calls, record keeping of all correspondence of Mr. Pramod Kumar concerning his group work etc., making tour programmes and making all arrangements for getting his air tickets, transport, stay etc., preparation of TA Bill claims after tour and get the same settled; distribution of ACRs to CTG staff, collection of ACRs back in time and forward the same to Admn. in time every year.

Mr. O P N Calla was not present during the interview, whereas other members asked Questions, such as - What is your name? Since how long you have been working? Your address? The post on which you are working? Who is your boss? etc.

6.9 The applicant further states that at the time when the interview was going on, he was keeping note of these Questions and, therefore, he is in a position to give details of exact Questions which were asked. In fact, he wanted to keep note of these Questions, so that after the interview he can ascertain whether answers

(65)

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given by him were correct or not and he can improve in future in case of necessity, but really speaking the Questions put to him were such that there cannot be two answers.

6.10 The applicant states that he answered all the Questions put by Members and if he was required to be judged from the answers which he gave, his performance was excellent and the Questions were such which cannot go unanswered even and were also such that the answers to those Questions cannot be wrong. In fact, his interview was a show and by this show of interview, he has been discarded and he has not been promoted to the post of PA 'C'.

6.11 The applicant states that really speaking the Members of the committee were prejudiced because the applicant had pointed out that irregularities were committed by them in connection with HBA. He pointed out these facts in connection with three members, viz., Shri O P N Calla, Shri M M Shah and Mrs. S S Joshi. All the members are close to each other and these 3 members also influenced other members. The applicant further states that he also brought to the notice of the Director by writing one letter on 15.3.91, a copy of which is annexed hereto and marked as Annex.A(4). There Annex.A(4) is no response to this also.



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6.12 The applicant further states that he is eligible and entitled for promotion to the post of PA 'C'. He has a very good service record. He has put in more than 18 years' service. Even then he has not been promoted. The interview by the Committee was merely a farce for 5 to 7 or 7 to 10 minutes, irrelevant Questions were asked, even the weightage given to the oral interview is much more than what is required to be given, the Committee members were influenced by extraneous considerations and circumstances and they dropped the applicant and they have decided to promote other persons. The persons who are selected are all juniors. Names of the persons promoted out of 1987 DPC are given hereinbelow.

- 1) T R Ramachandran,
- 2) K M Sasidharan, &
- 3) Mrs. I K Gujaral.

Mrs. I K Gujaral was also selected by 1987 DPC but she was promoted in the year 1988.

The applicant further states that in the year 1991 also, a panel has been prepared and persons selected by DPC have been empanelled :

- 1) P Gopalakrishnan Achari,
- 2) M Gopinathan,
- 3) S Sukumaran,
- 4) N K Nithianandan,
- 5) A K George, and
- 6) K B Nair.



Out of the above 6 candidates, order of promotion in favour of P Gopalakrishnan has been issued on 26.3.91.

The applicant further states that all such promotions for others are also likely to be issued within a short time.

6.13 The applicant further states that the officers against whom the applicant made complaints are also promoted even after the complaint by the applicant. No actions are initiated against them. As against this, the applicant has been dropped on the ground that the enquiry was pending against him. The applicant further states that even when the DPC met, the fact that he was exonerated was not brought to the notice by the management. Even the ACRs which were placed before the DPC contained the note that the departmental proceedings are pending against him. No note was placed with respect to the Inquiry Officer's report, his findings and the decision to exonerate the applicant.

6.14 Being aggrieved by the action of the respondents, the applicant challenges the same on the following amongst other grounds.

6.15 The applicant submits that he has been working with the respondent SAC since last 18 years. His service records are clean, neat and blotless.

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His performance is also very good. Under the circumstances, the action of the respondents in not promoting the applicant to the post of PA 'C' is arbitrary, capricious and violative of Art.14 of the Constitution of India and illegal, null and void.

6.16 The applicant further submits that so far as the promotion to the post of PA 'C' is concerned, two elements are taken into consideration - (i) interview; and (ii) ACRs. The marks fixed for the interview are 70. The applicant submits that there is no basis with the respondent SAC for fixing 70 marks for interview. The applicant, therefore, submits that the action of the respondent SAC in fixing 70 marks out of 100 for the oral interview is arbitrary, capricious and violative of Art.14 of the Constitution of India.

6.17 The applicant further submits that along with fixation of marks, minimum Qualifying marks have also been fixed and that is 60% marks in the aggregate with a minimum of 50% marks in each of the 2 elements of evaluation viz., interview and ACRs. The fixation of such minimum marks has no nexus with the object and as such the action of the respondent SAC in fixing such marks is arbitrary and violative of Art.14 of the Constitution of India.



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6.18 The applicant further submits that the action of the respondent SAC in prescribing all 100 marks for viva voce test viz., 70 marks for interview and 30 marks for ACRs confers upon them unfettered and absolute discretion for giving marks to the candidates, inasmuch as neither there are any rules nor are there any guidelines and the action and/or rule is, therefore, ultra vires the Constitution of India.

6.19 The applicant further submits that out of 100 marks, 70 marks are allotted to oral interview, whereas 30 marks to ACRs. There are no guidelines to guide the Members of the Selection Committee for giving marks and, therefore, the Members are free to assess the candidates in an arbitrary manner. There is also no rationale behind keeping these many marks for oral test. The only reason for keeping so many marks apart from the oral test is to see that unfavoured ones can be eliminated. Therefore, only rationale in keeping these marks is to eliminate unwanted and nothing else.

The members are free to assess the candidates the way they like. The Members are free to ask any Questions they like. The Members are free to give marks at their sweet-will. It is here at this stage that element of favouritism and arbitrariness comes in. Except the Members of the Committee and candidate who is being examined, there is no other person to watch what happens in the oral test. No heed is paid to the complaints of candidates with respect to oral interview because



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persons sitting the committee are the high ranking officers and it is also believed that what they say is the gospel truth and, therefore, in absence of any other agency in the hall where the oral test is being conducted, the say of the Members is always taken to be true. This has become the general phenomenon and any complaint made by the candidate is just brushed aside on the ground that the members of the committee are highly placed and they would not tell lie and their assessment is always taken to be right. If, therefore, less marks are allotted to oral test, the evil can be avoided. The applicant has also become the victim of allocation of high marks to the oral test. Even the candidates are not informed about their evaluation, viz., how many marks the candidates have secured at the oral interview and as such there is no check on the Members. The applicant, therefore, submits that the action of the respondent SAC is arbitrary, high-handed, violative of Art.14 of the Constitution of India, illegal and null and void.

6.20 The applicant further submits that the whole purpose of the oral test is to see the personality and suitability of the candidate alongwith his knowledge of the subject. There is no proper Quantification of the marks. In fact, there are number of heads on which personality, suitable and knowledge of a candidate can



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be assessed or ascertained and assessment has to be made for each different sub-head. Each and every member must give their own marks for each and every head and sub-head. If that is done and if marks are allotted to different subjects, there is less possibility of caprice and whims of members. No such Quantification of marks is made in the present case. There are no such rules for doing so, so far as the respondents are concerned and it is very clear that there was no separate rating by individual member. In absence of proper Quantification, the whole interview becomes bad. The applicant, therefore, submits that the action of the respondents in conducting interview in such a fashion and deciding to promote or selecting candidates for promotion is arbitrary, high-handed and violative of Art.14 of the Constitution of India.

6.21 The applicant further submits that in the case of A K Simpi V/s. State of Gujarat, it has been held that in absence of proper Quantification, the whole interview is vitiated.

In the case of Ajay Hansia reported in AIR 1981, SCC 722, the Supreme Court has held that the allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. It is also observed in the said judgment that now there can be no doubt that having regard



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to the draw-back and deficiency in oral interview test and the conditions prevailing in the country, particularly there is deterioration in the moral values and corruption, and nepotism are very much increased, the allocation of high percentage of marks for the oral interview cannot be accepted by the Court as free from the vice of arbitrariness.

In Peeriakar Uppan's case reported in AIR 1971, S.C.2303 also where 75 marks out of total 275 marks for oral test, the Supreme Court observed that marks allocated for interview were on the high side.

In Miss Nishi Mehu's case reported in AIR 1980 S.C.1975, the Supreme Court observed that 50% marks for interview out of total 150 does seem excessive.

In the case of R P Sapru V/s. State of J & K reported in AIR 1981, S.C.1009, the Supreme Court observed that allocation of 30 marks for viva voce is excessive.

The applicant submits that in view of the judgments and the ratio of the judgments of the Supreme Court as mentioned above, the allocation of more than 15% marks to the oral interview especially in the background that the applicant has performed well and answered all the questions satisfactorily which were put to him in the short span of 5, to 7 or 7 to 10 minutes clearly shows that the entire procedure of selection is arbitrary and unconstitutional. It is further



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submitted that it is crystal clear that some external element has crept into the oral test which has - affected the assessment of the applicant and the external element is caprice and whims of the members who were not guided properly and who had no proper Quantification of marks for different sub-heads before ~~xx~~ them and in absence of this, the committee assessed the applicant in a totally arbitrary manner.

The applicant, therefore, submits that the assessment in such a manner is arbitrary, capricious, discriminatory and violative of Articles 14 and 16 of the Constitution of India and the entire procedure of selection is arbitrary, unconstitutional, invalid and violative of Art.14 of the Constitution of India.

6.22 The applicant further submits that so far as the oral test is concerned, there are no norms, principles or guidelines. Irrelevant Questions were asked by the Members of the Committee to the candidates. If Questions are looked at minutely, they had not at all any connection with either personality test or general knowledge or the knowledge of the subject or the branch. The applicant submits that this is because there is absence of norms or guidelines. The applicant further submits that if the records of the respondent SAC are called for, many irregularities would come to light. The applicant submits that in absence of any norms or guidelines and the manner in which the oral test is conducted, it is submitted that the whole process of interview

is vitiated. In one case, the Division Bench of the Gujarat High Court consisting of the Chief Justice, P S Pota and Justice R C Mankad considered the Question of allocation of marks to the different sub-heads in the oral test and the fact of the assessment of performance of the candidates on the basis of consensus between the Chairman and the Members in consultation with one another. The Division Bench observed that it is difficult to hold that Commission had adopted a fair and reasonable standard for making objective assessment for the Qualities required of a candidate for being selected for the post in Question. Fixing of Qualifying marks has no nexus with the examination as such. The action of the Commission in fixing the Qualifying marks for viva voce test was held arbitrary, unreasonable and unjustified and directed the Commission to consider the Question of inclusion of names of the petitioners in the merit list ignoring the concept of minimum Qualifying marks for viva voce test.

Another judgment of the Gujarat High Court reported in 1984 GLH 217 has also taken the view that process of assessment must be so meticulously worked out as to make the determination of the result quite objective.

The applicant submits that in the present case the selections are made or the applicant is ignored only on the basis of marks in the oral test and, therefore, the oral test is required to be quashed.



(2)

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6.23 The applicant further submits that he has been wrongly dropped on the ground that the enquiry is pending against him. The real facts were not placed before the DPC. The fact that the report of the Inquiry Officer is in favour of the applicant and the applicant was going to be exonerated was also not brought to the notice of the DPC and, therefore, the DPC acted on the basis of the wrong material. Even the ACRs contained note as to pending enquiry separately, whereas no such note with respect to development in enquiry was placed. The applicant, therefore, submits that the action of the respondent SAC is based on wrong material and is, therefore, illegal, null and void.

6.24 The applicant further submits that the members of the DPC were prejudiced against the applicant, inasmuch as he had made complaints against them with respect to their irregularities in connection with HBA. He made complaints against 3 members of the DPC out of 5 and all members of the DPC were and are closely connected with each other and those 3 members influenced other members also and as a result, the decision to drop the applicant was for extraneous reasons and/or considerations and is, therefore, illegal, null and void.

6.25 The applicant further submits that the ACRs of the applicant are written by Shri Pramod Kumar and are counter-signed by Shri O P N Calla.



- 23 -

Both the officers had in past committed irregularities in connection with HBA and the applicant made complaints against their irregularities and, therefore, they were also biased and prejudiced against him and their role in the decision has also vitiated the entire process of promotion. It is also pertinent to note at this stage that Shri O P N Calla is the counter-signing authority. Even then he was a member of the DPC also. The applicant, therefore, submits that the action of the respondent SAC in dropping the applicant and selecting other candidates whom they wanted to favour is absolutely arbitrary, capricious, mala-fide and by way of an abuse of process.

7. In view of the facts, mentioned in para 6 above, the applicant prays for the following reliefs -

- (A) declaring the action of the respondent SAC in not selecting, recommending and promoting the applicant from the post of PA 'B' to PA 'C' as arbitrary, illegal, null and void;
- (B) Quashing and setting aside the decision of the respondent SAC in not promoting the applicant from the post of PA 'B' to PA 'C';

- (C) declaring the action of the respondent SAC in promoting respondent Nos. 3, 4 and 5 to the post of PA 'C' in the year 1987-88 as arbitrary, illegal, null and void and Quashing the same;
- (D) declaring the action of the respondent SAC in selecting the respondent Nos. <sup>6 to 11</sup> ~~3, 4 and 5~~ for the post of PA 'C' in 1991 DPC as arbitrary, illegal, null and void and Quashing and setting aside the same;
- (E) declaring the action of the respondent SAC in promoting the respondent No. 6 as arbitrary, illegal, null and void and Quashing and setting aside the same;
- (F) declaring the Memorandum of the respondent SAC of July, 1987 as arbitrary, irrational and ultra vires the Constitution in so far as it gives weightage to the element of interview in excess of 15% and Quashing and setting aside the same;
- (G) declaring the entire process of promotion of 1987 as well as 1991 based on Office Memorandum dated 30.7.87 giving weightage to two elements of interview and ACRs and laying down minimum Qualifying marks as arbitrary, illegal, null and void and Quashing and setting aside the same.



- (H) directing the respondent SAC to issue a fresh Memorandum giving weightage taking into consideration various judgments of High Courts and the Supreme Court;
- (I) directing the respondent SAC to reconstitute DPC and to consider the case of the applicant afresh;
- (J) directing the respondent SAC to promote the applicant from the post of PA 'B' to PA 'C' with effect from 31.8.87; and
- (K) granting any other appropriate relief.

8.1 The applicant further states that he has a very good prima facie case, the balance of convenience is in his favour, that in the year 1987 though he was eligible and entitled for promotion, he was dropped. Even in the year 1991 he has been dropped for extraneous reasons and considerations. He is the victim of arbitrary acts of the respondent SAC and now if he is not promoted immediately and the respondent SAC is not restrained from acting upon the list which is prepared by a biased DPC and on the basis of irrelevant consideration, the applicant would suffer an irreparable loss, whereas no such loss would be caused to the respondents if interim relief is granted.

8.2 Pending final decision on the application, the applicant prays for the following reliefs :



26 (7)

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- (i) restraining the respondent SAC from implementing and acting upon the select list prepared out of 1991 DPC and further restraining the respondent SAC from issuing any fresh order of promotion from that list;
- (ii) directing the respondent SAC to consider and promote the ~~xx~~ applicant forthwith on adhoc basis; and
- (iii) granting any other appropriate relief.

9. The applicant states that he pointed out the grievances and brought to the notice of the office in the year 1987, but no actions have been taken so far. Thereafter after 1991 DPC also he brought to the notice of the office by meeting personally as well as by his representation, but no actions have been taken. Even the respondent SAC has not taken care to reply. As such, there is no remedy available to him except approaching the Hon'ble Tribunal.

10. The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of Postal Order in respect of the Application fee are as under :

- (1) Number of IPO(s) DD 415001  
8
- (2) Name of the issuing G-4j High Court Ahmedabad Post Office.
- (3) Date of issue of IPO(s) 2-4-91
- (4) Post Office at which G-4j High Court Ahmedabad payable.

12. An index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures : As mentioned in para 12.

Verification

I, K Aravindakshan, son of Shri K. P. N. Menon, resident of Ahmedabad do hereby verify that the contents of paras 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Ahmedabad,

3 /4/91.

Aravindakshan

Girish Patel

( Girish Patel )  
Advocate for the Applicant.

Filed by Mr. Girish Patel ...  
Learned Advocate for Petitioners  
with second set of 9 spares  
copies copy set 9 served to  
other side

Dt. 3/4/91 Dy. Registrar C.A.I (J)  
Ahmad Bench

Annexure.A(1)

Government of India  
Department of Space  
Indian Space Research Organisation  
(HEADQUARTERS)

P Block, Cauvery Bhavan  
KG Road, Bangalore-560009

No. HQ: ADMN: 4.20 (2)

July 30, 1987

OFFICE MEMORANDUM

Sub: Norms for Stenographic Staff - Procedure  
for promotion to the newly created post  
of personal Assistant in the grade of  
Rs. 2000-3200.

-----

Vide DOS OM No.2/1(3)/83-I (i) dated July 23, 1987, 15 posts of PA 'B' (existing scale Rs.1640-2900) have been upgraded to the scale of pay of Rs.2000-3200 in DOS/ISRO Centres/Units. Further, 5 posts in the same grade (Rs.2000-3200) have been newly created during this year, vide OM No.2/1 (3)/83-I (iv) of July 23, 1987. This being a newly created higher grade for Stenographic staff in Group 'B' category, norms do not exist at present for promotion to this grade. The matter has been examined and it has been decided that the following shall be the procedure for promotion to and filling up of these newly created posts in the grade of Rs. 2000-3200, untill further orders.

- 2.1 The newly created stenographic post in ISRO/ DOS/Centres/Units in the grade of Rs.2000-3200 shall be designated as Personal Assistant 'C'.
- 2.2 All those who are currently holding the existing posts of Personal Assistant 'B' in the grade of Rs.1640-2900 shall, with immediate



effect, hold the posts and scale as personal to them, as long as they are not reviewed and promoted as PA 'C' or not vacated the post for any reason. The posts of PA 'B' shall stand abolished as and when the incumbents vacate the post on promotion to the newly upgraded/created post of PA 'C' or cease to hold the post for any reason.

2.3 Promotion to the post of PA 'C' in the scale of pay of Rs.2000-3200 will be within the respective ISRO Centre/Unit only. In this context, the Bangalore based Units (BBC) is treated as one Unit.

2.4 For promotion to the post of PA 'C', the concerned Centre/Unit shall constitute appropriate DPC.

2.5 All existing PAs 'B' in the scale of pay of Rs.1640-2900 grade, shall be assessed by the DPC for promotion to the post of PA 'C' in the grade of Rs.2000-3200 and the following shall be the elements for assessment :

- (a) Interview : 70 Marks
- (b) ACR : 30 Marks

Total : 100 Marks

To Qualify for promotion, candidates should secure at least 60% marks in the aggregate with a minimum of 50% marks in each of the two elements of evaluation. The review will be as on the rationalised

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- 3 -

date of 1st September, 1987.

2.6 The DPC will assess the eligible candidates and draw-up panels which will be valid for a period of 18 (Eighteen) months from the date of its approval by the competent authority. Promotions will be effected based on the panel position, availability of vacancies in the respective Centre/Unit and subject to the rules regarding reservation for SC/ST, etc.

3.1 If the posts of PA 'C' cannot be filled up by promotion of the existing PAS 'B' in the scale of Rs.1640-2900 from the panel proposed as per para 2.6 above, such of those PAs 'B' (in the scale of pay of Rs.1640-2900)/PAs 'A' who have put in a combined service of 3 years in the pre-revised scales of Rs.550-900 and Rs.550-750 will be eligible for consideration for promotion to the post of PA 'C' in the grade of Rs. 2000-3200, following the same procedure outlined in para 2.5 above.

4. The procedure laid down in the preceding paragraphs for promotion to the post of PA 'C' will apply only during the initial phase of filling up of the posts newly created during this year and to be created during 1988-89 in respect of posts already approved for creation. Separate orders will be issued in due course of time prescribing the norms and procedures for promotion to the posts of PA 'C' to be filled up in future.

5. Hindi Version of this OM will follow.

(S S VISWANATHAN)  
Director, PP & PM, ISRO

To  
All concerned.

Turn copy  
CP/ishd/ahol  
3-4-91



21(84)

Annex.A(2)

Government of India  
Department of Space  
Space Applications Centre  
Ahmedabad.

No. SAC EST: DLS: 1987

March 8, 1991.

O R D E R

Shri K.Aravindakshan, Personal Assistant "B", SAC was informed vide Memorandum No. SAC : EST: DLS: 1987 dtd. September 16, 1987 that it was proposed to hold an inquiry against him under Rule 11 of the Department of Space Employees' (Classification, Control and Appeal) Rules, 1976. A statement containing the articles of charge framed against him and a statement of imputations of mis-conduct or mis-behaviour in support of the articles of charge were also sent to him alongwith above Memorandum. The article of charge against him read as under :-

"That the said Shri K.Aravindakshan, while functioning as Personal Assistant "B" in SAC, has committed grave misconduct in as much as he has drawn House Building Advance of Rs.35,940/- for constructing a house at 201, K.K. Nagar, Ghatlodia, Ahmedabad-61, from the office by concealing material information of his owning and possessing another flat at N/3, Parasmani Flats, Ranna Park, Ahmedabad-61 and thereby deriving pecuniary advantage from the Government. He has, thus, failed to maintain absolute integrity and rendered



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- 2 -

himself liable for disciplinary action".

2. Shri Aravindakshan was asked to submit his written statement of defence and also to state whether he desired to be heard in person. Shri Aravindakshan denied the charges framed against him. An inquiry was, therefore, ordered against him. Shri K.S.Krishnan, the then Administrative Officer II (Estt), SAC was appointed as the Inquiring Authority and Shri T. Bhaskara Rao, Assistant Administrative Officer, CED, SAC was appointed as the Presenting Officer vide Memoranda Nos. SAC EST: DLS: 1988 dated June 16, 1988 and SAC EST: DLS: 1988 dated June 16, 1988. After completing the inquiry, the Inquiring Authority submitted his report in which he has arrived at the conclusion that the charge framed against Shri K. Aravindaksha, as mentioned in para 1 above has been substantially proved.

3. The undersigned, as the Disciplinary Authority in the case of Shri K. Aravindaksha, Personal Assistant "B", SAC, has carefully considered the entire record of inquiry in great detail. The charge in brief against Shri Aravindakshan is that he has concealed material information of his owning and possessing another flat at N/3, Parasmani Flats, Ranna Park, Ahmedabad-61 while drawing House Building Advance of Rs.35,940/- for constructing a house at 201, K.K.Nagar, Ghatlodia, Ahmedabad-61. From the records of inquiry, I find that Shri Aravindakshan had not been co-operating fully with the office

in this matter. He has been making contradictory statements without proper explanations. At one place he has claimed that he was ignorant of HBA Rules and Regulations and that as he was under tension due to family problems, he could not submit proper paper/seek prior permissions. However, at another place he shows/quotes rules and regulations under which he had obtained House Building Advance. He had also asked for a permission to dispose of the flat at Parasmani in which he had declared it as purchased before joining SAC. The Office Memorandum No. SAC: EST: ADV: 2.19/76 dated January 7, 1977 issued by the then Controller, SAC also stated that Shri Aravindakshan was in possession of owner-ship flat No.3 at Parasmani Flats, Ahmedabad. It is reported that at no time Shri K.Aravindakshan has disclosed this information (ownership of flat at Parasmani) nor any papers are available in the records - including the copy of the said Memorandum (no copy is in the records). It seems during the inquiry proceedings he realised that he has made a mistake and started stating that it is purchased under installement scheme No. evidence has been produced to that effect by him. On the one hand, he has stated that it was purchased before joining SAC, whereas in the Property Return filed in 1979, he has declared "NIL". He has not been able to explain this contradiction.

4. In spite of above contradictions in his stand, the issue is whether he had wilfully suppressed material information of his owning and



possessing a flat at N/3, Parasmani Flats, Ranna Park, Ahmedabad-61 for deriving pecuniary advantage from the Government in the form of HBA. It is evident from the Memorandum dated January 7, 1977 issued by the then Controller, SAC that Shri Aravindakshan had declared possession of this flat and he had obtained permission to become a member of Kendriya Karmachari Nagar Co-Operative Housing Society Limited for a tenement type house. The then Controller, who was a witness in this case, had also confirmed that this Memorandum dated 7.1.1977 was issued by him. It is quite possible that due to changes in divisions, shifting of offices to various buildings in SAC Campus etc some papers might have been misplaced and one of them could be the office copy of this Memorandum dated 7.1.1977. The non availability of this document in the official records do not, therefore, make this document invalid. The Inquiry Officer has also totally agreed in this regard in his report.

5. In the circumstances, I find there is an element of doubt in conclusively proving that he was an owner of the flat at Parasmani at that relevant time.

6. In view of the forgoing, and considering all aspects and the plea of Shri Aravindakshan in this case, I have decided to give the benefit of doubt to Shri Aravindakshan, taking a lenient view in the matter. I accordingly order that Shri K. Aravindakshan, Personal



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- 5 -

Assistant "B", SAC, Ahmedabad be exonerated with immediate effect from the charges framed against him vide Memorandum No. SAC EST: DLS: 1987 dated September 16, 1987.

7. A copy of Inquiry Officer's report is enclosed.

8. The receipt of this order should be acknowledged.

(M.M.Shah)  
Controller

Shri K.Aravindakshan,  
Personal Assistant "B",  
CTG/SCA,  
SAC.

Treasurer Copy  
Spid Bhutel  
3-4-91

36 (89)

Annex.A(3)

Government of India  
Department of Space  
Space Applications Centre  
Ahmedabad.

SAC REV:58:91

March 15, 1991.

Shri K. Aravindakshan, Personal Assistant 'B' having been considered by the Departmental Promotion Committee on 19.2.1991 for promotion to Personal Assistant 'C', has not been recommended for promotion.

Sd/-  
( R R Nair )  
Asstt. Admn. Officer (Rev.)

To

Shri K. Aravindakshan  
Personal Assistant 'B'  
CTG-SCA.

True copy  
for file  
3-4-91

37 (96)  
Annexure.A(4)

March 15, 1991

From : K.Aravindakshan  
P.A 'B'  
CTG/SCA

Confidential

To : Director  
SAC

The following Committee constituted by you has interviewed me on February 19, 1991 at 3.30 P.M. for the post of P.A. 'C'.

Dr. George Joseph	Chairman
Shri O.P.N. Calla	Member
Shri B.G.V.Subramanyam	"
Shri M.M.Shah	"
Dr.(Mrs.) D. Rustogi	"
Mrs. S.S.Joshi	"
Shri K.S.Karnik	"

During the year 1986 a departmental enquiry had initiated against me regarding HBA Advance taken by me. In the year 1987 the DPC constituted by you had met for interviewing me for the post of P.A. 'C'. I understand that I was not given my promotion to P.A. 'C' post in July 1987 due to the prejudices of the DPC members and the officers, who wrote my ACRs. Since my HBA Advance problem was going on at that time, I think that the committee had not considered my case for promotion to P.A. 'C'. I may further add that I have been working as P.A. for the last 15 years in SAC and have discharged my duties very efficiently and to the entire satisfaction of my superiors. So far I have never got any kind of adverse remarks from my superiors. Therefore, the decision of the Committee for not selecting me to the post of P.A. 'C' is erroneous, arbitrary and thus illegal.

On March 8, 1991 the Controller, SAC vide order No. SAC EST: DLS:1987 dated March 8, 1991 has exonerated me with immediate effect from the



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charges framed against me vide Memorandum No. SAC: EST: DLS: 1987 dated September 16, 1987 regarding the HBA Advance taken by me. I do not know that this Committee is aware of this before arriving at a decision that I am not fit for the promotion to P.A. 'C' or not.

Since I had written to you earlier that Shri M.M.Shah, Shri C. Lal, Dr.B.C.Agarwal, Shri S.R.Joshi etc. have also taken HBA Advance by giving the same declarations even though they all got houses in their names, for taking necessary action. In addition to this, Shri O.P.N. Calla, Shri Pramod Kumar, Shri R.C. Garg and Mrs. S.S.Joshi have also involved in HBA cases, the details of which are as follows. Since some of the above members also involved in the DPC, which met on February 19, 1991 for interviewing me for the post of P.A. 'C', I think that they have not considered me for the promotion because they are aware of my complaint against them.

1. Shri O.P.N. Calla twice has taken HBA Advances and he has refunded the amount to office.
2. Shri Pramod Kumar and Shri R.C.Garg have applied for HBA Advance and have taken back the HBA forms submitted by them because of my complaint of HBA. Due to this, Shri Pramod Kumar, who has not written my ACRs correctly even though I am working with him properly.
3. Mrs. S.S.Joshi has also taken HBA by

- 3 -

giving the same declaratio which I have given, even though she owns another house in her name.

In view of this I would be very much grateful if you could kindly cancel the recommendation of the above DPC considering the above points and arrange to constitute another DPC with impartial members for considering my promotion to the post of P.A. 'C' with effect from July 1987 since I have been exonerated from the HBA problem by the Disciplinary Authority, at the earliest.

In the year 1988 I had brought to your notice that the above employees of SAC have taken HBA by giving false declaration even though they own houses in their names. But so far you have not taken any action against them. I once again request you to kindly take necessary action against the concerned persons regarding the HBA taken by them as early as possible. A copy of this letter is marked to Chief Vigilance Officer, ISRO, Bangalore for taking necessary action at the earliest. A copy of this letter marked for Chairman, ISRO is also enclosed. I request you to kindly forward these letters to them for necessary action. Advance copies of this letter are being sent to Chairman, ISRO and The Chief Vigilance Officer, ISRO.

An early action in this matter is highly appreciated.

With kind regards,

(K.Aravindakshan)

True Copy  
Ambyale  
3-4-91



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(93)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT AHMEDABAD

ORIGINAL APPLICATION NO. 124 OF 1991

Shri K. Aravindakshan .... APPLICANT

V E R S U S

1. Union of India  
and Others ..... OPPONENTS

Recd  
Bkhatt  
clerk to Advn  
Gisish Patel  
9-7-91

WRITTEN REPLY ON BEHALF OF  
THE RESPONDENT NO. 2

P. M. Rao.  
Govt. Pleader

I, J. H. Bhabhalkhatt working  
as Administrative Officer-II in the office  
of the Respondent No. 2 herein, do hereby verify  
and state as under :

1. I state that I have read a copy  
of the Original Application No. 124 of 1991  
filed by the present applicant and have also  
perused the official record pertaining to this  
case and as such I am conversant with the facts

...



and circumstances of the present case and in reply thereto, I state as follows.

2. I state that I am filing this Written reply for the purpose of opposing admission of the application and/or grant of relief as prayed for by him in the application and I reserve my right of filing further and detailed reply/(ies) if and when need so arises.

3. I state the application of the present applicant is thoroughly misconceived in law as well as in facts and is not maintainable and deserves to be dismissed.

4. At the outset, I ~~submit~~/that deny all the allegations, contentions and submissions raised by the applicant in the application, individually and collectively, save and except those specifically admitted by me hereinafter and those averments which are not replied to in detail by me hereinafter, may not be termed as to have been admitted by me.

5. In Para Nos. 1 and 2 of the application, the applicant has merely stated certain particulars, which do not call for any comment.

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6. With reference to Para No. 3 of the application, I deny that persons junior/less meritorious have been promoted vide order No.SAC/REV/58/91 dt. 15-3-1991 issued by the respondent No. 2 office. I submit that these persons were promoted after only considering different aspects in their cases.

7. Withreference to Para Nos. 4 and 5 of the application, I am not aware of the averments made in these paras by the applicant. I submit that the Counsel appearing on behalf of the respondents will deal with the same at the time of hearing of this application.

8.1 With reference to Para No. 6.1 of the application, I submit that the applicant was recruited as Stenographer in the grade of Rs. 425-700 (Pre-revised) w.e.f. 5-5-1973 after conducting written test, skill test and personal interview by the appropriate Departmental Selection Committee (i.e. D.S.C.) of the Department and was appointed to the said post. As a matter of career progression (under review procedure/process), the applicant was reviewed by the appropriate Departmental Promotion Committee (D.P.C.) and was promoted to the post of P.A. w.e.f. 21-11-1973 in the grade of Rs. 470-750 (pre-revised). The applicant was not promoted to the post of PA 'A' w.e.f. 13-1-1982



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(96)

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but since the designation and grade of PA i.e. Rs. 450-750 was abolished, revised and upgraded to Rs. 570-750, the applicant was automatically placed in the revised grade of Rs 550-750 with a designation of Personal Assistant 'A' w.e.f. 13-1-1982. Therefore, I deny that the applicant was promoted to the grade of PA 'A' in the grade of Rs. 550-750 after undergoing written test and interview w.e.f. 13-1-1982. It is further submitted that the applicant was promoted to the post of PA 'B' w.e.f. 17-2-1983 in the grade of Rs. 550-900 (pre-revised) revised grade Rs. 1640-2900, after selection by the appropriate DPC after passing prescribed qualifying test.

8.2 With reference to Para No. 6.2 of the application, I submit that the newly created higher grade for stenographic staff in group B (gazetted) category has been designated as PA 'C' (2000-3200 grade). As per ISRO HQ O.M. dated 30th July 1987, all those who are currently holding the post of PA 'B' (1640-2900) shall hold the post and scale as personal to them, so long as they are not reviewed and promoted as PA 'C' or not vacated the post for any reason. The post of PA 'B' shall stand abolished as and when the incumbent vacates the post on promotion to the newly created posts of PA 'C' or cease to hold the post for

...



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any reason. As per procedure laid down in the said memorandum dated 30-7-1987 all existing PA 'B' in the scale of Rs. 1640-2900 shall be assessed by the DPC for promotion to the post of PA 'C' in the pay scale of Rs. 2030-3200 and the following shall be the element for assessment :-

a) Interview	70 marks
b) ACR	<u>30 marks</u>
	100 marks

To qualify for promotion, candidates should secure at least 60% marks in the aggregate with a minimum of 50% in each of the two elements (i.e. interview and ACR) for evaluation. I crave leave to refer to and rely upon the said Office Memorandum dated 30-7-1987 at the time of hearing of this application, if this Hon'ble Tribunal so desires.

8.3 With reference to Para No. 6.3 of the application, I submit that the applicant was eligible for consideration to the post of Personal Assistant 'C' as per the ISRO Headquarters' Memorandum No. HQ/ADMN/4.20(2) dated 30th July 1987 and accordingly, he was reviewed by the DPC on 24-8-1987. The DPC was constituted

...

of following members :-

- |    |                     |          |
|----|---------------------|----------|
| 1. | Shri AWP David, IAS | Chairman |
| 2. | " DPN Calla         | Member   |
| 3. | " George Joseph     | "        |
| 4. | " N. Sampath        | "        |
| 5. | " C R Shah          | "        |

A copy of the office order No.SAC / GA / 95/37 dated 3rd August 1987 constituting the above committee is attached as Annex-(I) to this application. Shri C.R. Shah, Member was absent when the applicant was interviewed on 24-8-1987. The applicant was interviewed as per the procedure laid down in O. M. dated 30-7-1987. Out of three eligible candidates, only one was recommended (viz. Shri T. R. Ramchandran, Respondent No. 3 herein) for promotion to the post of PA 'C' in the grade of Rs. 2000-3200 and the other two candidates including the applicant was not selected. It is denied that the applicant was entitled for promotion. The applicant was only eligible for consideration for promotion as PA 'C' and accordingly the applicant was considered by the duly constituted DPC. The applicant was not recommended for promotion as PA 'C' after the review. I deny that the applicant was given any impressions that he was not promoted because some actions were contemplated against him.

Annex-I

....

3.4 With reference to the averments made in Para No. 6.4 of the application, I submit that the applicant was charge-sheeted on 16-3-1987 for the alleged suppression of material information by the benefit of which the applicant availed House Building Advance. It is, therefore, submitted that the applicant was reviewed for the post of PA 'C' by the duly constituted DPC on 24-3-1987 i.e. one month before the issue of the chargesheet. There is no material evidence to show that the DPC was prejudiced against the applicant. In fact, as per the records available, the committee was informed that there is no vigilance case/departmental disciplinary proceedings either pending or contemplated against the applicant.

In conclusion of the enquiry conducted against the applicant, in House Building Advance case for concealing material information, the applicant was exonerated vide order No.SAC/EST/DLS/1987 dated 8-3-1991. I crave leave to refer to and rely upon a copy of this order at the time of hearing of this application, if this Hon'ble Tribunal so desires.

3.5 With reference to the averments



6.5  
made in Para No. 6.5 of the application, I deny that the applicant was wrongly not promoted in the year 1987. I submit that the applicant was considered for promotion as PA 'C' by the duly constituted DPC on 24-8-1987. The DPC did not recommend the applicant for promotion based on the performance in the interview and based on evaluation of the A.C.Rs.

8.6 With reference to the averments made in Para No. 6.6 of the application, I submit that the applicant was further reviewed for promotion to the post of PA 'C' on 19-2-1991 by the duly constituted DPC. Since the departmental disciplinary proceedings were pending as on 19-2-1991, the recommendations of the DPC were kept under sealed cover as per the procedure on the subject. The applicant was exonerated of the charges vide order dated 8th March 1991. Consequently the recommendations of the DPC held on 19-2-1991 which were kept under sealed cover were opened. It was found that the applicant was not recommended for promotion by the DPC which was held on 19-2-1991 and accordingly the same was communicated to the applicant vide letter No. SAC/REV/58/91 dated 15th March 1991.

8.7 With reference to the averments made in Para No. 6.7 of the application, I

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deny that the applicant was entitled for promotion as on 24-8-1987 and as on 19-2-1991. The applicant was only eligible for consideration for promotion to the post of PA 'C' as on the above mentioned dates. In the review held on 24-8-1987, the applicant was not recommended for the promotion by the duly constituted DPC and there were no disciplinary proceedings pending as on that date against the applicant. In the subsequent review held on 19-2-1991 also, the applicant was not recommended for the promotion by the duly constituted DPC as was explained in Para No. 8.6 hereinabove by me. It is further submitted that disciplinary proceedings relating to suppression of material information in the House Building Advance case were initiated on 16-9-1987 and the same were continued on 19-2-1991. In terms of the existing procedure, the recommendations of the DPC held on 19-2-1991 were kept under sealed cover. On conclusion of the disciplinary proceedings, the applicant was exonerated vide order dated 3th March 1991 and consequently the recommendations of the DPC held on 19-2-1991 were opened and the same were communicated to the applicant vide letter dated 15th March 1991 referred to by me hereinabove in Para No. 8.6 above.

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249 (12)

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The applicant was not recommended by the DPC held on 19-2-1991 for promotion to the post of PA 'C' as communicated to the applicant vide above referred letter.

It is denied that the applicant was not promoted because the inquiry was going on at the time when the DPC met i.e. on 19-2-1991 and was exonerated of the charges.

The DPC which met on 19-2-1991 reviewed the performance of the applicant alongwith others in the personal interview and made proper assessment of A.C.Rs for the period under review. It is further submitted that under merit and vacancy oriented scheme of promotion followed in ISRO for promotion of its group B and A Administrative personnel, each individual is considered for promotion on his own merit after completion of the prescribed numbers of years in each grade subject to availability of posts. The promotions are based on the recommendations of the duly constituted DPC which evaluates the merit of each candidate. The disciplinary proceedings, if any, pending against the person interviewed would not be looked into by the DPC for assessing the merit and worth of individual concerned for promotion. It is therefore, reiterated that the disciplinary proceedings pending against the applicant had nothing to do with the assessment of the performance and merit

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of the applicant for promotion by the DPC.

The element of assessment for selection was done as per the O.M. of the ISRO Headquarters dated 30th July 1987 according to which 70 marks are allotted for the interview and 30 marks are allotted for the Annual Confidential Report (ACR) ~~xxx~~. It is stated that ISRO/DOS i.e. Indian Space Research Organization/ Department Of Space is empowered to <sup>formulate</sup> formulate norms/procedures for its employees which are different from other Central Government Departments. Allocating marks in the ratio of 70 : 30 for interview and ACR respectively have been done within the powers/policy of the INDIAN SPACE RESEARCH ORGANIZATION (ISRO)/ DEPARTMENT OF SPACE (DOS). In the existing merit and vacancy oriented scheme of promotions for group B and A administrative personnel in ISRO, it has been stipulated that element for assessment for suitability for promotion is 70 marks for interview and 30 marks for ACR, wherever no written test is prescribed and reviews are to be made on the basis of ACR and interview. To qualify for promotion, the candidate should secure at least 60% marks in

aggregate with a minimum of 50% in each of two element of evaluation. This is to be followed very scrupulously by all DPC in all case of promotions for group B and A administrative personnel wherever no written test has been prescribed. The post of PA 'C' is a group B gazetted post. The element of written test has not been prescribed by ISRO/DOS for promotion to this post. Since the PA 'C' is a responsible post and of gazetted rank, ISRO is right in laying down the norms by which 70 marks are prescribed for interview and 30 marks prescribed for ACR to assess the competence and the eligibility of the candidate to hold the post. It is, therefore, denied that the respondent have acted upon absolutely on wrong base. It is further submitted that the members of the DPC which met on 24-8-1987 were as mentioned at Para No. 8.2 hereinabove. The members of the DPC which met on 19-2-1991 were as under :-

- |                          |          |
|--------------------------|----------|
| 1. Dr. George Joseph     | Chairman |
| 2. Shri OPN Calla        | Member   |
| 3. Smt. S. S. Joshi      | "        |
| 4. Shri K S Karnik       | "        |
| 5. Dr.(Mrs.)D. Rustogi   | "        |
| 6. Shri M M Shah         | "        |
| 7. Shri BGV Subrahmanyam | "        |

I deny that the members of DPC were influenced by extraneous considerations. I submit that none of the committee members were prejudiced towards the applicant as alleged by the applicant. The allegations are, therefore, concocted by the applicant with malafide intentions and were baseless and incorrect.

3.3 With reference to the averments made in Para No. 6.3 of the application, I submit that the DPC was constituted by the competent authority (i.e. Director Space Application Centre, Ahmedabad). The DPC did not find the applicant fit for promotion as PA 'C' based on the procedure followed, each member of the DPC gives marks to the candidate in the personal interview and thereafter the marks awarded by all members are consolidated and average thereof worked <sup>out</sup> and percentage of marks secured by the candidate thus, arrived at. The percentage of marks secured in the personal interview are then added to the percentage of marks secured in the evaluation of ACRs. In case the aggregate percentage of marks is 60% or more, the candidate gets placement in the select panel in order of merit. The applicant was not recommended

L performance in the interview and evaluation of ACRs. As per



by the DPC in the review conducted on 24-8-1987 and also on 19-2-1991 based on his performance in the interview and evaluation of ACRs.

I deny that the DPC had asked him irrelevant questions. The questions and the answers mentioned in the application are concocted by the applicant and are incorrect. I pray that this Hon'ble Tribunal may not accept the same. It is not practically possible for any candidate to note down <sup>asked</sup> questions and reply given to each and every committee members. The applicant cannot question the fair judgement of the duly constituted DPC and question their recommendations which were duly approved by the competent authority.

8.9 With regard to the averments made in Para No. 6.9 of the application, I submit that the details of questions referred to by the applicant which were reported to have been asked in the personal interview were concocted by the applicant and were figments of imagination. The questions which were not asked ~~xxx~~ to the applicant could also be fabricated for the sake of argument and the same could never be taken into account. There are ~~xxx~~ no concrete proof to establish that such

and such questions were asked. The argument of the applicant are, therefore, frivolous and beyond reason and denied by me.

8.10 With regard to the averments made in Para No. 6.10 of the application, I deny that the interview of the applicant was a show and he was discarded promotion. I submit that the applicant did not qualify for promotion as PA 'C' in two reviews held one in 1987 and other one in 1991 based on his performance in the personal interview and the evaluation of ACRs. In the merit and vacancy oriented scheme of promotions followed by ISRO, the performance of the candidate is assessed by a committee consisting of well qualified and experienced members drawn from higher level. The assessment is always done impartially by the DPC members in respect of all the candidates and their recommendation are submitted to the competent authority for approval.

8.11 With reference to the averments made in Para No. 6.11 of the application, I deny that the committee members including three members named by the



applicant were prejudiced towards the applicant.

I also deny that these committee members committed irregularities in connection with House building advance. I submit that some of these officers were sanctioned House building advance after following due procedure, rules and regulations as prescribed by the ISRO/DOS/Government and there were no irregularities in their cases. I further deny that all the DPC members are close to each other and the three members named by the applicant also influenced other committee members. The DPC which met on 19-2-1991 to review the applicant for promotion to the post of PA 'C' did not recommend for promotion based on performance and the evaluation of ACRs. Subsequent to this review and with malafide intentions, the applicant made frivolous and unscrupulous allegations against the committee members through application dated 15-3-1991 which were baseless and devoid of truth. The applicant was served with a Memorandum No. SAC/EST/DLS/1991 dated 1-5-1991 calling for explanation for making false and baseless allegations and casting aspersions on senior officers of the organization and the applicant was simultaneously warned severely for misconduct and for forwarding advance copies of his

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letter dated 15-3-1991 to the Chairman, ISRO and the Chief Vigilance Officer, DOS for information and necessary action without exhausting all the means of securing attention or redress and without prior permission of this Centre authorities as per rules and procedure of ISRO/ DOS and Government of India. I also deny that the committee members were prejudiced against the applicant.

8.12 With reference to the Para No. 6.12 of the application, I submit that the selection to the post of Personal Assistant 'C' is based on merit (i.e. personal interview and evaluation of ACRs) and not on the basis of seniority as claimed by the applicant. The allegations made by the applicant that interview by the committee was merely farce for 5 to 7 minutes and irrelevant questions were asked etc. etc. are false and baseless. I deny that the committee members were influenced by the extraneous considerations and circumstances and dropped the applicant and they have decided to promote other persons. I submit that the progress in career of respondents Nos. 3 to 11 or any one else in ISRO is totally unrelated to the progress in career of the applicant, as the promotions

57 (110)

in ISRO for group B and A administrative personnel are not based on comparative merits or seniority. The applicant cannot draw a parallel of himself with respondents Nos. 3 to 11 whose merits were considered by the DPC independently and whose fitness for promotions were independent of comparative merits. The promotion of respondent No. 3 (Shri T.R. Ramchandran), 4 (Shri K.M. Shashidharan) 5 (Mrs. A.K. Gujaral), and 6 (Shri M. Gopalkrishnan Achari) mentioned by the applicant have no relevance what-so-ever with the promotion of the applicant and the applicant is trying to make all irrelevant statements striking no cord of reason. In the existing promotion system, each individual is considered for promotion on his own merit and after completion of prescribed nos. of years in the respective grade. In this system no individual is compared to another individual in assessing his competence for promotion. In the case of review for the post of Personal Assistant 'C' there is no consideration for seniority or juniority. It is reiterated that the promotions of respondents Nos. 3 to 6 have nothing to do with the promotion of the applicant as each individual is considered for promotion on his own merit in the order of merit in the panel with reference to vacancy. It is further submitted that the applicant was considered for promotion as per rules at every point of time and the

and the applicant was promoted to higher grade namely Personal Assistant on 21-11-1978 and as Personal Assistant 'B' on 17-2-1983 as recommended by the duly constituted Departmental promotion committees. The Departmental Promotion committee only considers the performance of the employee in the personal interview and the evaluation of ACRs for the period under review and makes a total assessment of the worth of the employee for promotion to the higher grade. In the merit and vacancy oriented scheme of promotion followed in ISRO for the administrative staff, promotions are not automatic but are subject to availability of vacancy apart from merit. The persons placed on the select panel by the DPC would be promoted only when vacancy arises during the currency of the select panel i.e. 18 months.

3.13 With reference to the averments made in Para No. 5.13 of the application, I submit that some of the officers against whom the applicant made irresponsible and irrelevant allegations were promoted as per procedures followed in ISRO for promotion of the scientific and technical staff. There were no departmental disciplinary proceedings either initiated or contemplated against the officers referred



I submit that the worth of the applicant for promotion to the post of PA 'C' was assessed by the duly constituted DPC in 1987 and in 1991 and after assessing his performance in the personal interview and evaluation of the ACRs, the applicant was not found suitable by the DPC for promotion. I deny that the action of the respondents in not promoting the applicant is arbitrary, capricious and violative of Article 14 of the Constitution of India and illegal and null and void.

3.16 With reference to the averments made in Para No. 6.16 of the application, I submit that as per ISRO headquarters O.M. dated 30th July 1997, DCS/ISRO has prescribed the following elements for assessment for promotion the post of PA 'C' :-

1. Interview	70 marks
2. ACR	30 marks.
	-----
TOTAL	100 marks

To qualify for promotion, the candidates should secure at least 60% marks in aggregate with a minimum of 30% marks in each of the two elements of the evaluation. The post of PA 'C' is a responsible and of gazetted rank and, therefore, ISRO is

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the personal interview and ACR is a general ethics found else where in the other Government Departments too. ISRO has not deviated from the general principles of fixing a minimum standard for the assessment of its employees for promotion to higher grades. The applicant was recruited and appointed in ISRO and given two further promotions duly observing the stipulated norms specifying the basic requirements, of minimum ~~percentage~~ of marks in the elements of evaluation. Therefore, the applicant has no grievance to make against these specifications. The object of fixing such minimum marks is to find out right people to discharge the functions expected of them while holding the responsible post. The post of PA 'C' in ISRO is a group B and gazetted post having its own importance in the organizational set-up. The intention behind fixing such minimum marks in the elements of evaluation for promotion to the post of PA 'C' or any other post in ISRO is only to ensure that the only deserving and capable candidates are selected for the post. It is therefore, denied that fixation of such minimum marks has no nexus with the object.

3.13

With reference to the averments

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63 (116)

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made in Para No. 6.18 of the application, I submit that ISRO has fixed the over all marks of evaluation at 100 and fixed 70 marks for interview and 30 marks for ACRs for review of its employees for promotion to PA 'C' in accordance with the general principles of Government policy existing else where in the other Government departments and UPSC. In the DPC process, marks are awarded by the members of the DPC purely based on the performance of the candidate. Each committee member has the wisdom and conscience to assess the performance of each candidate and committee member accordingly awards marks to the best of his judgement. Therefore, no unfettered or absolute discretion rests with the committee members, in this regard. The performance of the candidates are not assessed by a single member in the committee. There are more than 5 to 6 members in all the DPCs. The assessment of one member may vary from that of the other members. As such there is no question of irrationale evaluation of the competence of a candidate for promotion. The functioning of DPCs appointed by the competent authority as per guide lines / orders of the Government of India is not ultra vires the Constitution of India.

3.19

With reference to the averments

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made in Para No. 6.19 of the application, I deny that the members of the DPC are free to assess the candidate in an arbitrary manner. In general, the DPCs are comprised of high ranking and well experienced officers of the organization. The element of evaluation in the DPC process are meticulously followed impartially by each member of the committee. The capability and worth of the candidate for promotion to a higher post could be assessed only by fixing some minimum marks in personal interview and that is the yardstick followed by ISRO for promotion to the post of PA 'C' also. I deny that there is no rationale behind keeping these many marks for oral test. The reviews for promotion are not based entirely on the performance of the candidate in the personal interview but also depend on the assessment of the ACR reports which speak profoundly of the worth of the candidate for holding the higher post. There is, therefore, nothing wrong in fixing a certain amount of marks i.e. 30 marks for ACR by ISRO in DPC proceedings for promotion to the post of PA 'C'. It is, therefore, denied that the rationale behind keeping this marks is to eliminate

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unwanted. The DPC is consisting of high ranking officers drawn from various higher levels as is the case with other Central Government Departments/UPSC. The candidates are assessed and their competence tested by raising questions by each committee member and those who are found fit are selected in the order of merit. In the personal interview, each member of the DPC gives marks to the candidate and thereafter marks awarded by all members are consolidated and average thereof worked out and the percentage of marks secured by each candidate is thus, arrived at. There is no room for malpractice or discrimination in this process. Full justice is meted out to the deserving candidates. The applicant was not found suitable by the DPC for promotion based on performance in the personal interview and evaluation of ACRs. There arises no grievance for the applicant in this regard as the applicant failed to secure minimum required standard of marks in the elements of evaluation prescribed by ISRO for promotion. The fact that the applicant has not been recommended for the promotion in the review held on 19-2-1991 has been duly communicated to the applicant vide letter dated 15-3-1991. It is, therefore, denied that the action of



of the respondent SAC is arbitrary, high handed, violative of Article 14 of the Constitution of India, illegal and null and void.

8.20 With reference to the averments made in Para No. 6.20 of the application, I submit that the applicant is making allegations about the DPC proceedings without any basis or rational and are merely figments of imaginations. The applicants' views and misgivings about the DPC proceedings and the competence of the DPC members are brain child of the ignorance, ill feeling towards the committee members and are capricious. The applicant is merely projecting his ignorance and his anguish in his arguments which are devoid of truth and rational. It is reiterated that worth of the candidate for promotion is assessed by the DPC with reference to performance in the personal interview and the evaluation of ACR reports. There are no other considerations in the DPC proceedings for making such evaluation for promotion. It is, therefore, denied that the action of the respondent SAC in conducting interview and giving promotions is arbitrary, high handed and

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67 (120)

violative of Article 14 of the Constitution of India.

6.21 I am not aware of the averments made in Para Nos. Sub-para 1 to 5 of Para 6.21 of the application and hence I do not deal with these paras. I submit that the Counsel appearing on behalf of the respondents will elaborately deal with these averments at the time of hearing of this application.

A With reference to the averments made in Sub-para 6 of the Para No. 6.21 of the application, I deny that the entire procedure of selection is arbitrary and unconstitutional. The candidate was not recommended for promotion by the duly constituted DPC after assessing his eligibility and suitability in the personal interview as well as the evaluation of ACRs. I deny that some external elements has crept into the oral test which has affected the assessment of the applicant. I also deny that the committee acted in total arbitrary manner. The DPC was only duly constituted by the competent authority in the organization and consisted of well experienced and high ranking officers various levels and their wisdom, com and way of judgement are indisputable the review held in 1987 and in 19

applicant was <sup>not</sup> found suitable <sup>for</sup> promotion as PA 'C' by a well constituted committee and the recommendation of such committee is devoid of any irregularities. In the DPC review held in 1987, respondents Nos. 3 to 5 were selected for promotion after following the similar procedures of assessment by the duly constituted DPC so also in the review held in 1991 respondent Nos. 6 to No. 11 were selected for promotion and were placed on select panel duly following the similar review procedure of assessment by a duly constituted committee. The applicant was not selected as per the assessment of the DPC with reference to the performance of the applicant in personal interview and the evaluation of ACR reports. It is, therefore, denied that the entire procedure of selection is arbitrary, unconstitutional, invalid and violative of Article 14 of the Constitution of India.

8.22 In context to the averments made in Para No. 6.22 of the application, I submit that no specific norms as regards nature of questions, the time duration, number of questions etc. can be laid down for personal interview. In the review for promotion the candidates are assessed

69 (122)

by a duly constituted DPC consisting of higher rank officers drawn from various higher levels. The members are prone to ask naturally only the relevant questions pertaining to the field of work, knowledge of office procedures/Rules and regulations, the essential qualities required for holding the relevant post, etc. to assess whether the candidate possesses sound knowledge about the work of field and whether familiar with the office procedures, Rules and Regulations and whether the candidate has the potentiality to shoulder higher responsibilities. I further state that in the DPC proceedings, each and every committee member awards marks separately for each candidate; marks thus awarded by all the committee members are totalled and aggregate percentage thereof after computing the average marks is worked-out. The question of mutual consultations among the committee members for awarding marks to the candidates does not find place in the DPC proceedings. Each committee member is independent in his opinion/assessment and he does this meticulously with reference to the performance of the candidate in the personal interview. I state that the questions quoted by the applicant in the application are mere figments of imagination and are concocted

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with malafide intentions. There is no base in the argument that the irrelevant questions were asked by the members of the committee to the applicant. I further submit that there were no irregularities in the DPC proceedings conducted in 1987 and in 1991 for promotion to the post of PA 'C'.

In context to the averments made about the Division bench decision of the Gujarat High Court referred to by the applicant, I am not aware of these averments made by the applicant. I submit that the Counsel appearing on behalf of the respondents will elaborately deal with these averments at the time of hearing of this application.

I deny the contention of the applicant that the applicant has been ignored on the basis of the marks in the oral test, since it is not correct and baseless. The elements of evaluation prescribed by ISRO consists of personal interview and assessment of evaluation of ACRs. The marks awarded by the DPC looking into ACR reports under the period of review are also taken into account to determine whether the applicant was qualified for

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71 (124)

promotion to the post of PA 'C'. In the case of the applicant, the duly constituted DPC did not recommend for promotion based on the performance of the applicant in the personal interview as well as the assessment made by the Committee on the evaluation of ACRs. I, therefore, deny that the applicant is ignored only on the basis of marks in the oral test.

8.23 With reference to the averments made in Para No. 6.23 of the application, I submit that when the DPC met on 19-2-1991, the disciplinary proceedings for suppression of the material information relating to HBA case were pending against the applicant. I further state that the applicant was not exonerated of the charges at the time the DPC met on 19-2-1991. The committee was duly appraised as per the procedure that there are Departmental disciplinary proceedings pending against the applicant. ....

Since the disciplinary proceedings were pending against the applicant, as per the ISRO / DOS / Government of India orders, the recommendations of the committee were kept under a sealed cover. As on the date of review i.e. on 19-2-1991, no decision was taken by the Disciplinary authority in the pending disciplinary case. The final decision on conclusion of the disciplinary proceedings was taken by the Disciplinary Authority

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subsequent to the review of the applicant conducted on 19-2-1991. As per the decision taken by the Disciplinary Authority, the applicant was exonerated vide order dated 8-3-1991; it is therefore denied that the DPC acted on the basis of wrong material. The recommendations of the DPC were entirely based on the performance of the applicant in the personal interview and assessment made by the Departmental Promotion Committee on the evaluation of ACR reports under the ~~promotion/committee~~ period of review. I further deny that the action of the respondent SAC is based on wrong material and is illegal and null and void.

8.24 With reference to the averments made in Para No. 6.24 of the application, I submit that the applicant is repeating the same allegations made in the earlier paras. I deny that the DPC members including the 3 members named by the applicant were prejudiced towards the applicant in as much as the applicant had made Complaint against them with respect to their irregularities in connection with HBA. I submit that some of these officers were sanctioned HBA after following due procedures/rules and regula-

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2 of the charges and the same was communicated.



tions as prescribed by ISRO/DOS/the Government of India and there were no irregularities in their cases. It is further submitted that the applicant had made frivolous allegations against these officers in his application dated 15-3-1991. The allegations of irregularities against these officers were raised by the applicant subsequent to the review held on 19-2-1991 through his letter dated 15-3-1991 referred to above. Therefore, the questions of prejudice by the above 3 officers against the applicant do not arise. These allegations were made with a view to avenge the unfortunate situation the applicant had for having failed to qualify for promotion as PA 'C' in the review held on 19-2-1991. The allegations are baseless and are devoid of truth. In fact, the applicant was served with a Memorandum No.SAC/EST/DLS/1991 dated 1-5-1991 calling for explanation for making false and baseless allegations against the senior officers of the Organization and for forwarding advance copies of his letter dated 15-3-1991 to the Chairman, ISRO and the Chief Vigilance Officer, DOS for information and necessary action without exhausting all the means of securing attention or redress and without prior permission of this Centre authorities as per rules and regulations and procedure of ISRO/DOS & Government of

(127)

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India. I submit that the DPC proceedings were not influenced by any other considerations. The officers against whom the allegations are made are senior officers holding senior positions in the organization with higher responsibilities and some of them are also members of the other DPCs. I reiterate that there were no considerations other than the performance of the applicant as assessed by the DPC in the personal interview and the assessment on the evaluation of ACR reports for the period under review in the DPC proceedings held on 19-2-1991. I therefore, deny that the decision to drop the applicant was for extraneous reasons and/or considerations and is illegal, null and void.

8.25 With reference to the averments made in Para No. 6.25 of the application, I submit that the applicant was working under Shri Pramod Kumar former Group Director, DTG and the ACRs of the applicant were written reviewed/countersigned as per the procedures. I deny that both the officers in the past committed irregularities in connection with HBA. I submit that the applicant made allegations against these officers through his letter dated 15-3-1991

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75 (28)

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subsequent to the review held on 19-2-1991 whereas the ACRs of the applicant for the period under review were written/reviewed/counter-signed as per the procedure in the preceding years. I, therefore, deny that they were biased and prejudiced against the applicant. I further state that the role whatsoever of these officers in the decision had not vitiated the entire process of promotion as alleged by the applicant. I state that the DPC constituted by Director SAC for the post of PA 'C' is a senior level committee considering the fact that the post of PA 'C' (revised grade Rs. 2000-3200) is a Group B, gazetted administrative post. Shri OPN Calla being a senior officer in the organization had been nominated as the member of the DPC in consideration of his vast experience, knowledge and higher positions held by him in the organization. It is the prerogative of the competent authority to nominate appropriate members in the DPC. There is, therefore, nothing wrong in nominating Shri OPN Calla as the member in the DPC which reviewed the applicant along with others for promotion as PA 'C'. This committee recommended for promotion in respect of Respondents Nos. 6 to 11 based on their performance in the personal interview and evaluation of ACR reports whereas

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the applicant was not recommended for promotion only on the consideration that as per the assessment of the DPC the applicant did not qualify for promotion with reference to the performance in the personal interview and evaluation of ACR reports. I, therefore, deny that the action of the respondent SAC in dropping the applicant and selecting the other candidates is arbitrary, capricious, malafide and by way of abuse of process.

9. With reference to the averments made in Para No. 7, I submit that the applicant has no grievances to make and the averments made by the applicant are false and incorrect. In consideration of the averments made in Para Nos. 8.1 to 8.25 hereinabove, it is prayed that Hon'ble Tribunal may not award any of the reliefs as prayed for by the applicant under Para Nos. 7 (A) to 7 (K) of the application.

10.1 With reference to the averments made in Para No. 8.1 of the application, I submit that there is no prima-facie case of grievance for the applicant in as much as the fact that the applicant was considered for promotion to the post of PA 'C' in the year 1987 and so also in

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77 (130)

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1991 by the duly constituted committee consisting of senior/high ranking officers of the organization and that the applicant was not recommended for promotion on these two occasions mainly on the ground that as per the assessment of the DPC the applicant did not qualify for promotion in the personal interview combined with assessment of DPC on the evaluation of ACR reports for the applicant for the period under review. I deny that the applicant was dropped for extraneous reasons and considerations. The questions narrated in the petition by the applicant and the allegations made by the applicant against the senior officials who are also members of the DPC were nothing but fictitious and not worth enough for consideration by this Hon'ble Tribunal. I deny that the applicant is a victim of arbitrary acts of the respondent SAC. I submit that the select panel was prepared by the duly constituted DPC which met on 19-2-1991 and approved by the competent authority in the organization. I also submit that there were no irregularities in the DPC proceedings. As per the existing orders, the select panel is valid for a period of 18 months from the date of approval. As and when vacancies of PA'C' are created/resulted, persons on select panel would be given promotions in

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the orders of merit. As per the existing orders followed, validity of existing select panel for promotion of to the post of PA 'C' would expire on completion of 18 months from the date of approval. I submit that the applicant was not selected for promotion as PA 'C' in the DPC review held on 19-2-1991 and as such the applicant has no grievances to make against his non-selection and so also selection/recommendation in respect of respondents No. 6 to 11. I, therefore, pray that this Hon'ble Tribunal may not award any reliefs to the applicant, as prayed for by him in the application.

10.2 With reference to the averments made in Para No. 8.2 of the application, I submit that the reliefs as sought for by the applicant may not be granted by this Hon'ble Tribunal.

11. With reference to the Para No. 9 of the application, I submit that the applicant did not point out any grievance to the notice of the office in the year 1987. I further submit that the applicant did not represent any grievance after the DPC review held on 19-2-1991, instead vide letter dated 15-3-1991, the applicant



79 (132)

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raised irresponsible and frivolous allegations against senior officer of the organization without reasons and justifications. The applicant was served with a Memorandum No SAC/EST/DLS/1991 dated 1-5-1991 against *making* false and baseless allegations and the applicant was simultaneously warned for misconduct and for forwarding advance copies of his letter dated 15-3-1991 to the Chriamn, ISRO and the Chief Vigilance Officer, DOS for information and necessary action without exhausting all the means of securing attention or redress and without prior permission of this Centre authorities as per rules and regulations and procedures of ISRO/DOS & Government of India. I further submit that the applicant did not represent for any remedy from the office as claimed by him.

12. I am not aware of the averments made in Para No. 10 of the application, that the matter of regarding which this application has been made is not pending before any of the Court of Law or any other authority or any other Bench of the Tribunal. I hereby call upon the applicant to strict proof of the averments made in this para.

13. The Para Nos. 11, 12 and 13 of the application by the applicant merely

...

contain certain particulars and hence these paras do not call for any comment.

In view of the facts and circumstances narrated by me hereinbefore in the foregoing paras and in view of the fact that the applicant has no prima-facie case or ground for preferring this application before this Hon'ble Tribunal and in view of the settled provisions of law, it is crystal clear that the applicant has no cause for grievances in the application and hence I pray that this Hon'ble Tribunal, would refuse to award any of the reliefs/interim-reliefs as prayed for by the applicant in this application and would be further pleased to reject this application by the applicant in limine with costs.

Ahup  
9-7-91

J. H. Brahmhatt

VERFICATION

I, J. H. BRAHMBHATT working  
as Administrative Officer - II in  
the office of Respondent No. 9 herein, do

....

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(134)

hereby verify and state that what has been  
stated hereinabove by me is true to my  
knowledge, information and belief and I  
believe the same to be true and that I  
have not concealed any material information.

Verified at Ahmed on this  
9th day of July 1991.

Heal C. Gatt

✓ Reply/Response/written submissions  
filed by Mr. P. M. Rana  
learned advocate for petitioner /  
Respondent with regard to  
Copy served/not served to other side.

Di. 9/17/91 Dy. Registrar C.A.T. (I)  
A'bad Bench

Saw



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(135) 32

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
ADDITIONAL BENCH AT AHMEDABAD.

O.A. No. 124/91.

K. Arvindakshan ... Applicant.

V/s.

Union of India and others. ... Respondents.

AFFIDAVIT-IN-REJOINDER.

I, K. Arvindakshan, the applicant herein  
do hereby solemnly affirm and state as under.

1. I have read the written reply and/or  
affidavit-in-reply filed by Shri I H Brahmhatt,  
working as Administrative Officer (II) in the  
office of the respondent No.2 and I say that the  
contents thereof are not true and are, therefore,  
denied. None of the contents, submissions or  
avermments made in the written reply should be  
taken to have been admitted by me unless which  
has been specifically admitted hereinbelow. I  
reiterate and adhere to whatever I have stated  
in the Memo of O.A.

to P M Ravi  
CSAC  
13/8/91

2. With reference to para 3, I say that the  
contents thereof are not true and I specifically  
deny the same. It is not true that the applica-  
tion is thoroughly misconceived in law as well as  
in facts and is not maintainable. I say that the  
application is directed against the arbitrary  
actions of the respondents and is genuine and  
bonafide and is maintainable and deserves to be  
allowed.

3. With reference to para 6, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 3 of the O.A. It is not true that persons junior to the applicant and/or less meritorious have not been promoted. I reiterate that junior and less meritorious persons have been appointed vide order dated 15.3.91 and other orders.

4. With reference to para 8.1 and 8.2, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.1 and 6.2 of Memo of O.A.

~~5. With reference to para 8.3, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 8.3 of the Memo of O.A.~~ I further say that Annex.I is not given with the reply. I reserve my right to comment upon the same as and when the said Annex. is supplied to me.

5. With reference to para 8.3, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 8.3 of the Memo of O.A. I submit that I was wrongly denied my promotion to the post of P.A. 'C' by the DPC on 24.8.1987 by issuing the arbitrary and illegal Memorandum dtd. 30.7.1987.

(137) 84

- 3 -

Therefore, I submit that I was completely eligible for my promotion to P.A. 'C' post in 1987. Looking at my seniority, experience and capability, I also submit that I was denied my promotion due to the prejudice and mala fide intention because of my HBA problem which in fact started in early 1987 and the same was relied upon by DPCs and this was the main reason in denying my promotion to the post of P.A. 'C' in 1987 and 1991. I have come to know from reliable sources that in other Centres of ISRO (Bangalore, Sriharikota and Trivandrum), the promotions to the post of P.A. 'C' were done strictly based upon seniority in 1987. The Office Memorandum No. SAC EST: H S: 1987 dated 16.2.1987 proves that the enquiry started before 1987 DPC, a copy of which is annexed as Annex.X(1). The last line of para No.4 of Office Memorandum No. HQ: ADMN: 4.20(2) dated 30.7.1987 proves that the proceedings of the 1991 DPC were based on the Office Memorandum No. HQ: ADMN: 4.20(2) dated 30.7.1987 which is illegal. A copy of this Memorandum is annexed ~~hereto~~ as Annex.A(1) to the O.A. I rely upon what is stated in para 6.3 of my O.A.

6. With reference to para 8.4 and 8.5, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in paras 6.4 and 6.5 of my O.A. ~~The submission~~ I again reiterate that I have not suppressed any material



information regarding my HBA application. I followed all the necessary procedure which were required to be followed for getting HBA. I took permission from the competent authority in this regard, but the respondents had lost the relevant documents from my HBA file which was proved during the course of the enquiry.

7. With reference to para 8.6, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.6 of my O.A. I reiterate that I was denied my promotion to the post of P.A. 'C' by the DPC held on 19.2.1991 because some members of the DPC were fully prejudiced against me because I pointed out the serious irregularities done by them in regard to their HBA.

8. With reference to para 8.7, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.7 of my O.A. I say that I was fully eligible and entitled for my promotion to the post of P.A. 'C' as on 24.3.1987 and onwards. I was denied my promotion only because of the prejudices and mala-fide intentions of the respondent authorities. I submit that throughout my career in PSRO, I have done my job excellently and to the utmost satisfaction of my superiors.

I reiterate that the allotment of marks to oral test as well as ACRs in the Office Memorandum

- 5 -

dated 30.7.1987 are contrary to the law laid down by the Hon'ble High Courts and the Supreme Court of India in such matters and thus the Memorandum dated 30.7.1987 becomes completely vague, arbitrary and illegal in the eyes of law and deserves to be Quashed and set aside by the Hon'ble Tribunal.

I submit that the rules and regulations framed by all the Govt. Departments including ISRO (which is fully Central Govt. Organisation) have to comply with the rules laid down by the High Courts and Supreme Court of India. Nobody or no organisation is above the law of the land.

With respect to contents in connection with Office Memorandum dated 30.7.87 and element of assessment, I say that the contents thereof are not true and are, therefore, denied. I reiterate and adhere to whatever I have stated in O.A.

The O.M. says that Rs. 1640-2900 is upgraded. This means those who are in the Grade of 1640-2900 should be automatically put in the grade of Rs. 2000-3200 without any interview. Otherwise the O.M. should not say that this grade is upgraded because the statement becomes ambiguous and self contradictory.

In so far as combined service is concerned, I say that the respondent Nos. 4, 5 and 6 do not have combined service of 3 years in both the grades i.e. Rs. 550-750 and Rs. 550-900 as per para No. 3.1 O.M. dtd. 30.7.1987 because they worked only



in Rs. 550-750 grade. Hence they are not eligible to appear for DPC in 1987 and 1991 and, therefore, their selection by the DPC may be quashed and set aside.

The marks fixed for ACR and interview are not correct as per para 2.5 of O.M.

As per para 4 of the O.M. dated 30.7.87, this O.M. is not valid for 1991 DPC and it is valid only for DPC of 1987 as has been stated in the last para 4 of O.M. "The procedure laid down in the preceding paragraphs for promotion to the post of PA 'C' will apply only during the initial phase of filling up of the posts newly created during this year and to be created during 1988-89 in respect of posts already approved for creation. Separate orders will be issued in due course of time prescribing the norms and procedures for promotion to the posts of PA 'C' to be filled up in future".

9. With reference to para 8.8, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.8 of my O.A.

10. With reference to para 8.9 and 8.10, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.9 and 6.10 of my O.A. I reiterate that I had fully remembered and noted down the Questions asked by the DPC members



and as has been submitted in my O.A. Majority of the Questions asked by the members were irrelevant.

11. With reference to para 8.11, I say that the contents thereof are not true and I deny the same. I reiterate and adhere to whatever I have stated in para 6.11 of my O.A. I say that what is stated by me in my letter dated 15.3.1991 are correct to the best of my knowledge and these facts can be proved by calling HBA records, complete personal files and all other related papers of HBA sanction of these high ranking officers viz., Shri M M Shah, Dr. B C Agarwal, Shri S R Joshi, Shri C Lal, Shri O P N Calla, Mrs. S S Joshi etc. in the Hon'ble Tribunal. I further submit that I was served with the Memorandum No. SAC/EST/ILS/1991 dated 1.5.1991 just to harass and victimise me. A copy of this Memorandum Annex.X(2) is annexed hereto as Annex.X(2). I have asked for relevant documents in this regard vide my letter dated 10.5.1991, but the respondents have not provided the same yet. A copy of the said Annex.X(3) letter is annexed hereto as Annex.X(3).

12. With reference to para 8.12, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.12 of my O.A.

I submit that I possess all the merits and competence required for promotion to the post of PA 'C' and I allege that I was denied my

promotion based upon the mala fide intentions of the DPC members.

I further submit that I was the senior-most PA 'B' amongst all the candidates who were selected or whose names were listed in the panel of selected candidates. I submit that I was fully competent, deserving and experienced based upon high Quality work, but I was denied my well deserved promotion to the post of PA 'C' mainly due to the prejudices and mala fide intentions of the DPC members.

13. With reference to para 8.13 and 8.15, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in paras 6.13 and 6.15 of my O.A.

14. With reference to para 8.16, 8.17 and 8.18, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in paras 6.16, 6.17 and 6.18 of my O.A. I again reiterate that the Office Memorandum dated 30.7.1987 framed by the respondent authority is completely vague, arbitrary and illegal in the eyes of law and cannot be used for making promotion to the post of PA 'C'. All rules and regulations framed by any Government department in regard to such promotions have to comply with the decisions given by the Hon'ble High Courts and the Supreme Court of India in such matters.

15. With reference to para 8.19 and 8.20, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in paras 6.19 and 6.20 of my O.A. I submit that the members of the DPC denied my promotion based upon the extraneous considerations. Otherwise there was no reason to deny the promotion to the applicant. Some members of the DPC were fully prejudiced and biased against me because I pointed out the serious irregularities done by them in regard to their HBA matters to the Chairman, ISRO and Chief Vigilance Officer, DOS/ISRO. I, therefore, ~~submit that what is~~ pray that this Hon'ble Tribunal be pleased to direct the respondent authority to produce all the HBA records of these high ranking officers before this Hon'ble Tribunal for inspection in order to find the correct facts.

16. With reference to para 8.21, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.21 of my O.A.

17. With reference to para 8.22 and 8.23, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.22 and 6.23 of my O.A. I reiterate that I was fully entitled and competent to get my promotion to the post of PA 'C' in each and every aspect,



but I was denied my promotion mainly based upon the prejudices of the DPC members, both in 1987 and 1991.

18. With reference to para 8.24, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.24 of my O.A. I submit that as per the procedure laid down by the Govt. of India in regard to HBA is that a person applying for HBA has to declare that he has got no house on his name or on the name of his wife or in the name of his minor children. I submit that the concerned high ranking officers named by me in my original application (some of them were DPC members also) had suppressed these facts while applying for HBA. But these high ranking officers were given preferential treatment by the authorities by not taking any actions against them for their serious irregularities, on the other hand the authorities promoted these high ranking officers while I was denied my promotion and was charge sheeted also without any reason.

I reiterate that I was denied my deserving promotion based upon the extraneous considerations and based upon the mala fide intentions of the DPC members. I further submit that the allegations made against the high ranking officers in regard to their HBA are fully correct and the same can be verified by calling their HBA records in this Hon'ble Tribunal. I submit that I have not done any wrong act while sending advance copies of my letter dtd. 15.3.1991 to the Chairman, ISRO as well as to the

chief vigilance Officer, DOS/ISRO. I further submit that it is the duty of every honest Govt. servant to send any information of public interest to the higher authorities through proper channel and advance copy of the same can be sent directly.

19. With reference to para 8.25, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6.25 of my O.A. I submit that the actions of DPCs in 1987 and 1991 in denying promotion to me are completely arbitrary, mala fide and violative of Art.14 of the Constitution of India.

20. With reference to para 9, I say that the contents thereof are not true and I specifically deny the same. I deserve the reliefs prayed for by me in para 7(A) to 7(K) in my O.A.

21. With reference to para 10, I say that the contents thereof are not true and I specifically deny the same. I reiterate that I have a prima-facie case that I fully deserve my promotion to the post of PA 'C' from 1987 onwards. I reiterate and adhere to whatever I have stated in para 8.1 and 8.2 of my O.A.

22. With reference to para 11 and 12, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 9 and 10 of my O.A.

23. I further say that so far as the contents in the O.A. in connection with the selection process, Qualifying marks, weightage and the process which is being adopted by the respondent authorities and various judgments of the High Courts as well as the Supreme Court of India and the violation of these judgments which are pointed out in the Memo of my O.A., I reiterate and adhere to the same and I further say that my counsel would explain, interpret and argue all those aspects at the time of hearing and I do not explain and interpret them again here and I further say that in case of necessity, I reserve my right to explain these aspects and other aspects on law as well as on facts in writing by filing further affidavit.

24. In view of the facts and circumstances pointed out hereinabove, I say that my application is required to be allowed and prayers made in para 7 and 8 of the application are required to be granted and I am also required to be granted promotion retrospectively.

Ahmedabad,  
13/8/91.

Aman dahl

Reply/Response to the application  
filed by Mr. Arvind Patel.  
Issued by the Respondent with record.  
Copy served/forwarded to other side.

Saw  
13/8/91  
13-8-91

DI 13/8/91  
13/8/91

Arvind Patel  
(J)  
Bench



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Space Applications Centre  
Ahmedabad

No. SAC:EST:DL: 1987


February 16, 1987

MEMORANDUM

It has been reported that Shri K. Aravindakshan, Per. Asstt. B, SAC, has a flat in his own name at N/3, Parasmani Flats, Ruana Park, Ahmedabad-61. Shri Aravindakshan has not disclosed this information either at the time of applying for HBA or at any other time. Had this information been furnished to the office, he would not have got the HBA of Rs. 35,940/- sanctioned to him in March 1985 for constructing a house at K.K. Nagar. On the contrary, he has given a written declaration on 12.3.85 stating that he or any of his family members does not own a house in Ahmedabad. Shri Aravindakshan's action of wilfully concealing material information and thereby gain advantage amounts to misconduct in terms of CCS (Conduct) Rules, 1964.

As per Rule 18(2) of CCS (Conduct) Rules, a Govt. servant cannot purchase a flat without previous knowledge/ approval of the competent authority. As stated above, Shri Aravindakshan has not informed the competent authority either before or after purchase of the said flat at N/3, Parasmani Flats. Shri Aravindakshan has therefore violated Rule 18(2) of CCS (Conduct) Rules, 1964 and rendered himself liable for disciplinary action.

Shri Aravindakshan is hereby directed to submit his explanation for the aforesaid misconduct and also to show cause as why disciplinary action as per rules should not be taken against him. His reply should reach the undersigned within ten days from the date of receipt of this Memorandum.

  
(C.F. Shah)  
Head, PAGA

Shri K. Aravindakshan  
Per. Asstt. B  
CTC/SCA

NO.SAC:EST:DLS:1991

May 1, 1991.

MEMORANDUM

With reference to his letter dated March 15, 1991 addressed to Director, SAC, Shri K. Aravindakshan, Personal Assistant "B", CTG, SCA, SAC is hereby informed as follows:-

- (A) The prejudices he has alleged against DPC members who considered him for his eligibility for promotion to the post of Personal Assistant "C" or those who wrote his ACRs are baseless and purely imaginary.
- (B) There are well drawn-out procedures for considering the case of an employee for promotion when departmental disciplinary proceedings are pending against him. The case of Shri K. Aravindakshan for promotion to the post of Personal Assistant "C" had been considered in 1987 and in 1991 according to these procedures. For the purpose of their assessemnt on the suitability of any official for promotion, the DPCs will not take into consideration the fact of the pending cases against the official. This has been so in the case of Shri Aravindakshan also and his apprehensions to the contrary in this regard are misplaced and baseless.
- (C) Since Shri Aravindakshan himself has been exonerated of the charges against him, there is no point in his raising the same type of allegation against others. He is strongly advised in this regard to refrain himself from making unverified, unsubstantiated and baseless allegations against his colleagues and other responsible officers in the Centre.

2. It is observed from the last paragraph of his letter dated March 15, 1991 that Shri Aravindakshan has sent advance copies of the letter to the Chairman, ISRO and the Chief Vigilance Officer, DOS for information and necessary action. This action on the part of Shri Aravindakshan of sending advance copies of letter not through proper channel and before exhausting all means of securing attention or redress from the Centre Authorities is in clear violation of the Government of India orders and instructions in this regard and thus, constitutes a grave mis-conduct. Shri Aravindakshan is, therefore, hereby directed to explain



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within 10 days of the receipt of this Memorandum why disciplinary action should be initiated against him for this mis-conduct.

S. S. Joshi  
(Mrs. S.S. Joshi)  
Head, P & GA

To  
Shri K. Aravindakshan  
P.O. "B", CTG, SCA, SAC,  
AHMEDABAD.



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Annex: x: (3)  
May 10, 1991

From : K. Aravindakshan  
P.A 'B'  
CTG/SCA

To : Mrs. S.S. Joshi  
Head, P&GA  
SAC

With reference to the Memorandum dated May 1, 1991 vide reference No.SAC:EST:DLS:1991, following things may be considered:

1. By the above Memorandum it is alleged against me that the action on my part of sending advance copies of letter dated 15.3.1991 addressed to Director, SAC directly and not through proper channel and before exhausting all means of securing attention or redress from the Centre Authorities is in clear violation of the Govt. of India orders and instructions in this regard, and thus constitutes a grave misconduct and therefore I am directed to explain within 10 days of the receipt of this Memorandum why disciplinary action should not be initiated against me for this misconduct.
2. So far as the allegations levelled against me are concerned, they are all false and fabricated and I want to explain each and everything in detail. I have received the above referred memorandum on May 3, 1991. According to the directive of the Memorandum, I am required to explain before May 12, 1991, but it is practically impossible for me to explain the allegations levelled against me in such a short time and therefore I want atleast a month's time to meet with the allegations levelled against me after getting the following informations from you.

Moreover I also want some information for explaining the allegations against me and without that information, it is really practically impossible for me to meet with the allegations in the real sense. I am giving the details about the information which I am in need are herein below:

1. The Memorandum refers to the violation of the Govt. of India orders and instruction as to approaching through proper channel, but neither the details of the orders and instructions nor the references are made. No copy has been supplied and therefore it is practically impossible for me to know which instructions and orders are breached off and are violated.

I, therefore, request you to supply me a copy of the orders and instructions in this regard.

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2. So far as the circulars, orders and instructions are concerned, please let me know when were these supplied to me earlier, when these were made known to me earlier or when were these circulated to me or my department.

I request you to supply me the above said information in this regard.

3. I had approached you as well as other authorities personally many times in this regard. Moreover I have also written letters to you and other authorities many times. Details of our personal meetings and the decisions taken thereof as well as the decisions taken on my letters and representations are not known to me and I am not aware of the results of those letters and representations and personal meetings and I, therefore, request you to inform me and give details as to the meetings and decisions in this regard.
4. It has been mentioned in paragraph (E) of the said memorandum that my promotion was considered for Personal Assistant 'C' in the year 1987 and 1991 according to the procedure. I request you to kindly supply me the copy of the procedure for considering the promotion and the facts as to consideration of my case in the year 1987 and in the year 1991 in detail along with the reasons for not finding me fit for the promotion and the method of evaluation and the results of the evaluation and the marks given by all concerned in item wise in my case and the cases of others.
5. Whether while considering my case for promotion by the DPC in 1987 and 1991 the facts regarding the pending enquiry was considered or not?
6. Whether the fact that I am exonerated was informed to the DPC in 1991 or not?
3. The above information is very much material for my replying and meeting with the allegations levelled against me. So far as the circulars, orders and instructions which are breached off are important that without which I can not reply at all. I, therefore, request you to supply the above referred informations mentioned in paragraph 2 above to me as early as possible so that I can reply the allegations levelled against me.

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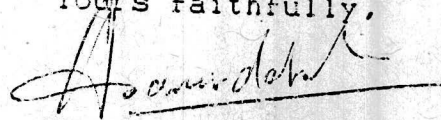
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Madam, after receipt of the reply, I will try to reply as early as possible taking into consideration the allegations levelled against me and the gravity, I submit that the allegations are required to be met with properly and therefore after you supply the above referred information, I would need a month's time for my reply. May I, therefore, request you to grant the time as referred above and as prayed for.

Thanking you,

Yours faithfully,

  
(K. Aravindakshan)



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT  
AHMEDABAD

OA NO. 124 OF 1991

Shri K. Arvindakshan

.....Applicant

Versus

Union of India & Others

.....Respondents

REPLY TO REJOINDER ON BEHALF OF RESPONDENTS

I, I. H. Bhambhatt, working as a Admin Officer - II  
for the office of Respondent No. 2 do state as under :

I have read the copy of rejoinder and I am authorised to file reply on behalf of respondents. I say that on behalf of opponents early reply has been filed. I reiterate what has been stated in the said reply. I say that I am filing this further reply to the rejoinder filed by the applicant. I deny all the contentions and averments made in the rejoinder, save and except that which are specifically admitted by me hereinafter. I reserve my right to file detailed reply, if and when necessary.

1) At the outset it is submitted that the applicant has not brought out any new facts in his rejoinder. The applicant is repeating his earlier views and opinions which are in many instances contradictory to the actual facts as well as rules, regulations and procedure governing his promotion.

2) With reference to Para 2 to 4, it is submitted that what has been stated in Para 3 to 8.2 of the reply filed on behalf of the respondents are true and the only facts. It is reiterated that those who were recommended for promotion in the DPC Review conducted in 1991 were so promoted purely based on the laid down procedure i.e. their performance in the personal interview and based on the evaluation of their ACRs. They were found fit for promotion whereas, the applicant was not found fit considering

.....2/-

his performance in the interview and assessment of ACRs. The question of junior or senior, does not arise in the review for promotion for the post of PA 'C', as claimed by the applicant. The promotions are effected purely based on merit as assessed by the DPC. There is no element of written test for promotion to the post of PA 'C'. It is submitted that copy of the Annexure I which is filed alongwith the reply was served on the applicant while giving the copy of the reply of the respondents to the applicant.

3. With reference to Para 5, I deny the contention thereof. The factual position has been explained in Para 8.3 of the reply filed by respondents earlier. It is denied that the applicant was wrongly denied the promotion to the post of PA 'C' on 24.08.87. It is also denied that Memorandum No.HQ/ADMN/4.20(2) Dtd. 30.07.87 is arbitrary and illegal. In the review conducted on 24.08.87 in terms of the Memorandum Dtd. 30.07.87 referred above, the applicant was found not fit for promotion by duly constituted DPC. It is submitted that the applicant was only eligible for consideration to the promotion as PA 'C' and accordingly he was considered by the duly constituted DPC. It is denied that the applicant was denied promotion due to prejudice and malafide intention. It is also denied that his HBA problems, whatsoever, were relied upon by the DPC. There is no nexus between his contentions and the actual facts available before the duly constituted Departmental Promotion Committee in 1987 and 1991. It is denied that the Departmental inquiry started before 1987 DPC. In fact, the applicant was charge-sheeted only on 16.09.87 relating to his HBA whereas, the DPC had already met for his promotion on 24.08.87 (ie. 1 month before the issue of the

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charge-sheet)). The said committee which met on 28.08.87 was informed in writing that there is no vigilance/Departmental disciplinary proceedings against the applicant. The Office Memorandum dtd. 16.02.87 referred by the applicant was not a charge-sheet, but only a show cause notice calling for explanation from him relating to his HBA. The disciplinary authority did not make up his mind to initiate disciplinary proceedings while issuing the said Memorandum dtd. 16.02.87. It is further submitted that the OM dtd. 30.07.87 issued by the ISRO Headquarters is applicable uniformly to all ISRO Centres located at Bangalore, Sriharikota, Trivandrum and elsewhere. In no such Centres, the promotion to the post of PA 'C' was effected purely based on seniority in 1987. The elements for assessment for suitability for promotion as PA 'C' are interview and evaluation of ACR as laid down in the OM dtd. 30.07.87, and no ISRO Centres have bypassed these norms while considering the candidates for promotion as PA 'C'. It is, therefore, evident that seniority is not the criteria at all for promotion as PA 'C'. The contentions of the applicant to the contrary are misconceived and are not maintainable. It is further stated that the proceedings of the DPC held in 1991 were also based on the said OM No.HQ/ADMN/4.20(2) dtd. 30/7/87. It is stated that no fresh orders relating to review for promotion to the post of PA 'C' have been issued. It is also stated that the existing orders (ie. the OM dt.30.07.87) are to be followed for review for promotion to the post of PA 'C'. It is, therefore, stated that the DPC proceedings conducted on 19.2.91 are perfectly in order and not illegal as alleged by the applicant. The averments made



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in Para 8.3 of the reply to Para 6.3 of the O.A are only the actual position and are still relied upon by the respondents.

4. With reference to Para 6, I deny the contents thereof. I say that the factual position has been explained in Para 8.4 and 8.5 in the reply filed by respondents. It is stated that the applicant was charge-sheeted on 16.09.87 for the alleged suppression of material information relating to HBA availed. On completion of the proceedings, the applicant was exonerated of the charges vide order No.SAC/EST/DLS/1987 dtd. 08.03.91. It is reiterated that there is no nexus between the disciplinary proceedings conducted and the proceedings of the DPC which considered the applicant for promotion as PA 'C'. Both the proceedings were independent of each other and the DPCs were never influenced by the former under any circumstances while assessing the fitness for promotion of the applicant. DPC never looks at or takes cognizance of the disciplinary cases of the applicants while assessing their suitability for promotion. The method of assessment is confined to the overall performance in the personal interview and evaluation of ACR reports. It is reiterated that DPC did not recommend the applicant for promotion based on the performance in the interview and evaluation of the ACRs. This decision of the DPC which met on 24.08.87 has had no bearing on or in no way connected with the charges framed against him under DOS Employees' Rules 1976 subsequently on 16.09.87.

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5. With reference to Para 7, I deny the contentions thereof. I reiterate and adhere to whatever I have stated in Para 8.6 of the reply of the respondents. There were no reasons for the members of the DPC held on 19.02.91 to remain prejudiced against the applicant on any grounds under any circumstances. The presumption of the applicant on the contrary co-relating the same to the allegations of serious irregularities against a few DPC members regarding their HBA raised with caprice and malafide intentions are baseless, unfounded and misconceived. It is stated that there were no irregularities at all in the HBA sanctioned to some of the DPC Members as alleged by the applicant. It is stated that the applicant could not point out any irregularities as there were none in the other cases of HBA sanctioned. The applicant, in fact, raised serious allegations relating to the HBA granted to these officers only in his letter dtd. 15.03.91 (ie. after the DPC met on 19.02.91). The DPC Members were, therefore, not even aware of the allegations of irregularities raised by the applicant in connection with HBA sanctioned to a few of them. It is reiterated that there is no basis to the allegations that the DPC was prejudiced or biased against the applicant on any grounds or under any circumstances and the apprehensions of the applicant are totally imaginary. It is submitted that the applicant is trying to distort the facts of his having failed to qualify for promotion in the DPC review held in 1987 & 1991, to his advantage by raising allegations of prejudice against DPC without any iota of truth therein.

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6. With reference to para 8, I deny the contentions thereof. The factual position has been explained in para 8.7 of the reply filed by the Respondents earlier. It is submitted that the applicant was only eligible for consideration for promotion to the post of P.A.C for the review held in 1987 and 1991. Accordingly, he was considered for promotion and not recommended for promotion by the duly constituted DPC based on his performance in the personnel interview and based on the evaluation of ACRs. It is denied that he was denied promotion because of the prejudices and malafide intentions of the Respondent authorities. It is submitted that in the absence of written tests or skill test in stenography for the post of P.A.C (the senior most grade of the category of stenographic staff in ISRO), the only way left to the DPC to assess suitability of the candidate for the post is to subject him to thorough scrutiny and personal interview. For these reasons the allocation of 70% marks for interview for the post of P.A.C. in ISRO is justified. The remaining 30% has been allotted for the ACRs. It is reiterated that ISRO/DOS is empowered to formulate policy norms/procedures for its employees which are different from other Central Government organisations. Allocating marks in the ratio of 70:30 in the interview and ACR has been done within the powers and policy of ISRO/DOS. The procedure is existing for a long time and has been applied to all Uniformly. Since the PA"C" is a more responsible post in Gazetted rank, ISRO is right in laying down the norms by which 70% marks are prescribed for interview and 30% marks prescribed for ACR to assess the

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competence and eligibility of the candidates to hold the said post. It is denied that the OM dated 30.7.87 is vague, arbitrary and illegal as alleged by the applicant. ISRO has not deviated from the general principles of fixing the minimum standard for the assessment of its employees for promotion to higher grades. I submit that fixing a criteria for selection is based mainly on the functional requirement of the post in the line of P A namely, PA"C". The norms prescribed for review for promotion as P.A.C. is therefore sustainable in law. It is further stated that the elements of evaluation specified in this Memorandum dated 30.7.87 are reasonable and are not excessive or violative of the judicial pronouncements of various Courts/Tribunals. It is reiterated that the said norms have been found to be suitable in the DPC process to evaluate the worth of the right persons to hold and discharge the functions of the post. It is stated that these norms are laid down with the object of achieving efficiency in administration. The said norms are applicable alike in all the Centers/Units of DOS all over the country.

It is submitted that certain posts of PA "B" (in the scale of pay.1640-2900) were upgraded to the scale of pay of Rs.2000-3400 and are designated as PA"C". It is stated that only the posts have been upgraded and the incumbents of the said posts have no claim for automatic placement in the upgraded posts of PA"C". A few have been upgraded and a few other newly created

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with designation as PA"C" with a view to create more avenues of promotion for the stenographic staff. Upgradation does not mean and intend automatic promotion. Since there were no norms for filling up the newly designated posts of PA"C", the circumstances warranted framing up of new norms. Accordingly exercising its powers, Department of Space/ISRO Headquarters formulated new norms vide OM dated 30/7/87 for PA"C" suiting to the standard and efficiency and fitness to discharge the functions of PA attached to senior Officers in ISRO. As per the said OM dated 30.7.87, all those who are currently holding the post of PA"B" shall hold the post of PA"B" as personal to them as long as they are not reviewed and promoted as PA"C" or not vacated the post for any other reason. The post of PA"B" shall stand abolished as and when the incumbents vacate the post on promotion to the newly created post of PA"C" or ceased to hold the post for any reason. In view of the foregoing the applicant is not entitled for any automatic placement/promotion in the higher grade without undergoing the set procedures for assessment by DPC. It is further stated that vide another OM dated 23/7/87 the pay scale of PA"A" has been revised from Rs.550-750 (Pre-revised) to Rs.550-900 (Pre-revised). The present PA"A"s are therefore holding the scale of Rs.550-900/- (Rs.1640-2900/- Revised). As per para 3.1 of the OM dated 30.7.87, the existing PAs"B" are to be considered first for review. In case the post of PA"C" cannot be effected by the existing PAs B" then such of those PAs"B"(in the scale of pay of Rs.1640-2900/-)/PAs"A" who have put in a combined service of 3 years in the pre-revised scale of

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Rs.550-750 and 550-900 will be eligible for consideration for promotion to the post of PA'C'. Therefore PAs'A' having combined service of 3 years in the pre-revised scales of Rs.550-700/- and Rs.550-900 are eligible for consideration for promotion to the post of PA'C'. Thus as per the instructions, in the review held on 24/8/87, the then existing PAs'B' including the applicant were considered and reviewed. The applicant was not recommended for promotion as assessed by the DPC. In the said review the Respondent No. 3 (Shri T R Ramachandran) was recommended for promotion as assessed by DPC. Thereafter the respondents 4 & 5 (Shri K.M.Sasidharan and Mrs.S.K.Gujral) who were having the combined service of 3 years as PA'A' in the grade of Rs.550-750/- and Rs.550-900/- were considered for promotion in the DPC review held on 31/8/87 and were recommended for promotion. They were accordingly placed in the panel and were promoted against the vacancies created later on. In the review held on 19/2/91 again the applicant was considered for review along other PA'B' in compliance with the orders that the existing PAs 'B' are to be considered first for the review. In the said review the applicant was not recommended for promotion based on his performance in the personal interview and evaluation of ACR. Thereafter the existing PAs'A' having combined 3 years service in the pre-revised scale of pay of Rs.550-750 and Rs.550-900/- were considered for promotion as PA'C' in the review held on 13/3/91. In the said review, the respondent No.6 (Shri M.G.K. Achary) who fulfilled the norms for the review as he was having 3 years combined service in the pre-revised scale of Rs.550-750 and 550-

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900, was also recommended for promotion and got empanelled as the first candidate in the panel as per merit. The allegations of the applicant that the Respondents 4,5 & 6 do not have combined service of 3 years both in the grade of Rs.550-750 and Rs.550-900 and hence are not eligible for DPC as on 1987 and 1991 are, therefore, unfounded and baseless, but are contradictory to the facts.

It is further stated that to qualify for promotion as per OM dated 30.7.87, the candidates have to secure 60% marks in the aggregate with minimum of 50% marks in each of the 2 elements of evaluation (i.e. interview for which 70 marks have been allotted and ACR for which 30 marks have been allotted). It is denied that the marks fixed for interview are not correct. It is stated that the DPC conducted in the year 1991 was in terms of the OM dated 30.7.87. It is denied that the OM dated 30.7.87 is not valid for 1991 DPC. It is submitted that before conducting the said review it has been ascertained that existing orders i.e. OM dated 30.7.87 are to be followed for review for promotion to the post of P.A.C as no fresh orders relating to the review for promotion to the post of P.A.C. have been issued. As has been stated earlier, DOS/ISRO is fully empowered to prescribe norms and procedures for promotion of its staff. The norms and procedures accordingly prescribed vide OM dated 30.7.87 are still in existence and are adhered to for all reviews in future for the said post of PA "C". It is therefore stated that the DPC held in 19/2/91 as per the norms laid down in the OM dated 30/7/87 is legitimate and legal.

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7. With reference to para 9, I reiterate and adhere to whatever I have stated in para 8.8 of the reply filed by the respondents earlier. I deny that the contents thereof are not true.

8. With reference to para 10, I deny the contents thereof. It is submitted that whatever has been stated in para 8.9 and 8.10 of the reply filed on behalf of the respondents are true and are the only facts. I reiterate and still adhere to whatever has been stated in para 8.9 and 8.10. It is submitted that in the interview, the performance of the applicant was not satisfactory.

9. With reference to para 11 I deny the contents thereof. The factual position has been explained in para 8.11 of the reply filed by the respondents earlier. I say that the applicant made allegations against some of the DPC members in his letter dated 15.3.91, that too after the DPC met on 19.2.91 to review the applicant for promotion to the post of PA'C'. I further state that the allegations raised in the letter dated 15.3.91 have no bearing on the results of the DPC proceedings. The DPC was conducted impartially and without any prejudice. I further state that the allegations made by the applicant are totally false and baseless and therefore, the applicant was served with a memorandum No.SAC/EST/DLS/91 dated 1.5.91 calling for explanations for his act of forwarding advance copies of the said letter dated 15.3.91 to Chairman, ISRO and Chief Vigilance Officer, DOS without exhausting all the means of securing attention or redress and without routing the same through proper channel as per the rules and procedures of ISRO/DOS/Government

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of India. The applicant has finally submitted his explanations vide letter 13/10/1991 and the same is under process. Since the applicant failed to follow Govt. procedures/instructions in forwarding representations to higher authorities, he has himself rendered liable for disciplinary action under the relevant service rules. As a matter of fact, there is no nexus between the allegations raised by the applicant in his letter dated 15.3.91 and the DPC proceedings conducted in 1987 and 1991. The applicant is trying to distort the facts and having failed to qualify for promotion due to poor performance in the personal interview, he is casting aspersions on the DPC members.

10. With reference to para 12 it is denied that the applicant was denied promotion due to the malafide intentions of the DPC members. The DPC only considers the performance of the candidates in the personal interview and evaluate the ACRs for the period under review and makes a total assessment on the worth of the candidates for promotion to the higher grade. For promotion to the post of PA'C' merit as assessed by DPC alone is the criteria. The applicant was not recommended for promotion by DPC because he was not found eligible for promotion after assessing his performance in interview and evaluation of ACRs. Therefore, there is no truth in his contentions that he was denied promotion due to the prejudice and malafide intentions of the members.

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11. With reference to para 13 I reiterate and adhere to whatever has been stated in para 8.13 and para 8.15.

12. With reference to para 14 I deny the contents therein. I say that the factual position has been explained in para 8.16, 8.17 and 8.18 in the reply filed by the respondents. I reiterate and adhere to whatever has been stated in these paras. I deny that the OM dated 30.7.87 is vague, arbitrary or illegal in the eyes of law and cannot be used for making promotion to the post of PA'C'. I reiterate that the OM dated 30.7.87 stipulates norms and procedures for conducting review for promotion to the post of PA'C'. By specifying these norms in OM dated 30.7.87 care has been taken to ensure that only the right persons are selected for the post of PA'C' which is a Group 'B' gazetted post in ISRO. The elements of evaluation for promotion as PA'C' are prescribed having regard to the functional requirements, capability and efficiency to discharge the duties of the post. It is further stated that ISRO/DOS is competent to lay down its own promotion policies for its employees. The OM dated 30.7.87 is therefore not in contravention of any of the rules/regulations framed by Government or the decisions given by Hon'ble High courts or Supreme Court of India in such matters.

13. With reference to para 15 I say that the factual position has been explained in para 8.19 and 8.20 in the reply filed by the respondents and I reiterate and adhere to whatever has been

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stated in these paras. I reiterate that there is a definite procedure and system including quantification adopted by the interview committee in evaluating and assessing the suitability of candidates in interview. These are done with utmost care by the committee which consists of senior and very competent officers experienced in assessing the candidates. I deny that the members of the DPC did not recommend the promotion of the applicant based upon extraneous considerations. It is reiterated that the applicant was not recommended for promotion only based on his performance in interview and evaluation of his ACRs. It is further submitted that the allegations regarding irregularities in the HBA sanctioned to any members of DPC were found to be baseless and had no bearing on the selection. It may be noted that the applicant raised allegations of irregularities in the HBA cases of others only in his letter dated 15.3.91 ie, after the DPC met on 19.2.91. It is a fact that the DPC members were not even aware that the applicant has raised allegations of irregularities regarding HBA sanctioned to any of them. It is, therefore, stated that the allegations of prejudice and bias raised against the DPC members have no merits at all and are in fact misconceived and contradictory to facts. As already stated, there were no irregularities in the HBA sanctioned to any members of the DPC and the documents thereto were properly put to scrutiny/auditing by the Auditors of Government. The Government is fully equipped with all machinery to detect irregularities in the service matters of other Government servants. It has no relation to the applicant. The issues pertaining to HBA and rules

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governing the same are entirely different and have no relevance, what-so-ever, with the DPC proceedings conducted for promotion of the applicant for PA'C'. Therefore no interference at the hands of the Hon'ble Tribunal is warranted by way of direction to produce any records/documents of HBA sanctioned to any DPC members which have no relevance to the DPC recommendations in the case of the applicant. It is, therefore, prayed that Hon'ble Tribunal may not accede to the request of the applicant in this regard.

14. With reference to para 16 I say that the factual position has been explained in Para 8.21 of the reply filed by the respondent earlier. It is submitted that the post of PA C is a Gazetted Group B post. Promotion to the said post is mainly based on merit. Considering the professional standard of efficiency PAs are required to possess, the elements of evaluation such as personal interview and the assessment of ACR have been prescribed for promotion to the post of PA'C'. The element of written test has not been prescribed in this scheme of promotion for PA'C' post. The existing procedure as already explained earlier, is selection based on the assessment of the DPC for promotion to the post. For these reasons, it is reiterated that in the absence of written test the allocation of 70% marks for interview is justified. This policy having nexus with the object of achieving administrative efficiency is not unreasonable. It is again submitted that the promotion scheme adopted for PA'C' is purely merit-oriented and the candidates qualifying for review are therefore put to strict scrutiny before the DPC.

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In M/s. Datta Vs. Union of India 1974 SLUR 263(Delhi) it has been held that in the case of selection on merit, the Court cannot sit in judgement over the assessment of DPC.

Again in State of Rajasthan Vs Guman Singh AIR 1971 Rajasthan (191)/1970 WNL 17(18)(D.B), it has been held that where merit is made sole basis for promotion, Rules are not ultra virus of Article 14 of Constitution of India.

In Shri Karam Singh Grewal Vs State of Punjab & Others 1975 (2) SLR 189 (Punjab & Haryana), it has been held that Government servant has no right to be promoted, but has the right to be considered for promotion.

In VMK Menon Vs. Scientific Advisor 1985(2) SLR 810(Karnataka), it has been held that the employee has only right to be considered for promotion; he has no legal right to claim promotion. Where employees not found suitable for recommendation to be promoted as per the opinion framed by DPC, the Court cannot substitute its opinion for DPC.

It is reiterated that ISRO/DOS is empowered to frame Rules, policy, norms, procedure etc. for promotion of its employees to higher grades/posts having regard to the object of achieving

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administrative efficiency. While framing such policies/norms, ISRO has not deviated from the general principles of fixing the minimum standards for the assessment of its employees for promotion to higher grades by the duly constituted DPCs. It is reiterated that in the DPC so conducted the applicant was not found suitable for promotion as assessed by DPC with reference to his performance in personal interview and evaluation of his ACR reports.

15. With reference to para 17, I deny the contents thereof. I reiterate and adhere to what has been stated in para 8.22 & 8.23 of the reply of the respondents. It is stated that the applicant was only eligible for consideration for promotion for the post of PA'C' and accordingly the applicant was considered by the duly constituted DPC for promotion in 1987 and 1991, but was not recommended for promotion after assessing the performance of the applicant in the personal interview and the evaluation of ACR. It is reiterated that the DPC was never prejudiced nor biased towards the applicant under any circumstances on any grounds and the contentions of the applicant to the contrary are contradictory to the facts.

16. With reference to para 18, I deny the contents thereof. I say that the factual position has been explained in Para 8.24 in the reply filed by the Respondents. It is stated that there is no iota of truth in the contentions of the applicant regarding declarations submitted by the officers referred by him for the purpose of HBA. He makes wild and baseless allegations.

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It is reiterated that the applicant is trying to cover up his unsatisfactory performance in the personal interview with other irrelevant factors which are in no way connected with his competence and suitability for promotion. These allegations have, however, been examined by the Office and are found to be baseless and misconceived and the applicant has been informed of the same. The applicant was simultaneously warned against making unfounded and baseless allegations against superior officers of the organisation. The records of HBA sanctioned have been put to scrutiny and verification of the Auditors of the Government and the same are dealt with as per the rules and instructions of Department/Govt. of India. It is, therefore, prayed that Hon'ble Tribunal may not be carried away by these allegations. It is further stated that the applicant has violated the instructions of the Government relating to forwarding of representations to higher authorities while forwarding his letter dated 15.3.91 directly to Chairman ISRO and Chief Vigilance Officer, DOS, without routing the same through proper channel and without exhausting all the means of securing attention or redress as contained in the Govt. of India, Ministry of Home Affairs OM No. 118/52-Estd dtd 30/4/52 governing the same. Therefore, the applicant was issued a show-cause notice vide Memorandum dated 1.5.91.

17. With reference to para 19, it is submitted that what has been stated in Para 8.25 of the reply filed on behalf of the respondents are true and the only facts. I reiterate and adhere to whatever has been stated therein. I submit that the applicant

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was not recommended for promotion in 1987 & 1991 and the DPC proceedings were not influenced by any other considerations than the suitability.

18. With reference to para 20, I say and repeat that the applicant has no grievance and the averments made by the applicant are false and contra to facts. The allegations of prejudice and bias are his afterthoughts, as he could not qualify for promotion mainly due to the poor performance in the interview in 1987 & 1991. There may not be legal remedy to satisfy such frustration. It is, therefore, submitted that the original application and his present rejoinder are misconceived and untenable and deserve to be dismissed. It is further submitted that no legal right of the applicant is violated. It is, therefore, prayed that Hon'ble Tribunal may not award any of the reliefs prayed for by the applicant under para No.7(A) to 7(K) of the original application.

19. With reference to para 21, I say that the factual position has been explained in para 10 of the reply filed by the respondents. I reiterate and adhere to whatever has been stated in this para. Any relief, if granted, would have serious repercussions on several promotions so far effected based on the recommendations of various DPCs and will unnecessarily and unjustifiably cause asperations on the working of DPCs for

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various grades in DPC. I, therefore, pray that this Hon'ble Tribunal may not award any relief to the applicant in full appreciations of the factual position as explained by the Respondents in the earlier reply as well as in this reply to rejoinder.

20. With reference to para 22, I reiterate and adhere to whatever has been stated in para 11 of the reply already filed on behalf of the respondents.

21. With regard to para 23, it is submitted that the contentions and averments of the applicant in the DA regarding the selection process, qualifying marks, weightage and DPC process are in contra to facts and not maintainable in law. It is further stated that ISRO/DOS has neither violated any rule or procedure nor acted in violation of any judgements of Hon'ble High Courts and Supreme Court of India, in prescribing certain norms for assessing the worth its employees for qualifying for promotion through duly constituted DPCs consisting of Senior Officers majority of whom having extensive experience in being members of various DPCs just as the DPC which assessed the applicant for promotion.

22. In view of the foregoing facts and circumstance, there is no merit in application and the same deserves dismissal; and this Hon'ble Tribunal may be pleased to dismiss the same as such.

Date :

Place : Ahmedabad

J. Brahmachari

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VERIFICATION

I, J. H. Brahmshelt, working as  
Admin. Officers - II in the Office of Respondent  
No. 2 herein, do hereby verify and state that what has been  
stated hereinabove by me is true to my knowledge, information  
and belief and I believe the same to be true and that I have not  
concealed any material information.

Verified at \_\_\_\_\_ on this  
\_\_\_\_\_ day of \_\_\_\_\_ 1992.

J. H. Brahmshelt



(174) H

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH AT AHMEDABAD

O.A. NO.124/91

K. Aravindakshan

- Applicant

V/s

Union of India and Others

- Respondents

AFFIDAVIT - IN SURSUR-REJOINDER

I, K. Aravindakshan, the applicant herein do hereby solemnly affirm and state as under:

1. I have read the SUR-rejoinder filed by Shri I.H. Brahmbhatt, Administrative Officer-II on behalf of Respondent No.2, Director and I say that the contents thereof are not true and are therefore denied. None of the contents, submission and averments made in the said SUR-rejoinder should be taken to have been admitted by me unless which has been specifically admitted herein below. I reiterate and adhere to whatever I have stated in the Memo of O.A. as well as the affidavit in rejoinder.

2. With reference to Para 1, I say that the contents thereof are not true and I specifically deny the same. It is not true that I have repeated the views and opinions in the affidavit in rejoinder which are in many instances contradictory to the actual facts as well as rules, regulations and procedures governing my promotion. I say that while challenging the arbitrary actions I had pointed out the real facts of my case as well as law on the point. Reply was filed by the Respondents which did not put forward any correct defense at all, but made certain incorrect and inaccurate statements which were required to be replied. I, therefore, submitted my affidavit in-rejoinder reiterating

the facts pointed out in my O.A and I also pointed out as to how the defense of the Respondents was wrong in law as well as on facts. There are no contradictory statements made by me either in the O.A or in the affidavit in rejoinder.

3. With reference to Para 2 the contents thereof are not true and are therefore denied. I reiterate and adhere to whatever I have stated in para 2 to 4 in my affidavit and in rejoinder. It is denied that the contents of para 3 to 8.2 of the reply filed on behalf of the Respondents are true. I say that I have already dealt with them in my affidavit and in rejoinder filed earlier and I do not repeat the same. It is denied that those who were recommended for promotion in the DPC review conducted in 1991 were so promoted purely based on the laid down procedure that is to say their performance in the personal interview and based on the evaluation of their ACRs. It is also denied that they were found fit for promotion whereas I was not found fit considering my performance in the interview and assessment of ACRs. It is also denied that the question of junior or senior does not arise in the review for promotion for the post of P.A. 'C' as claimed by me. It is further denied that promotions are effected purely based on merits as assessed by the DPC. It is also denied that the copy of Annexure-I filed along with the reply was served on me while giving the copy of the reply of the Respondents to me. I am served with the copy of the reply, but along with the reply there is no annexure annexed with it. I, therefore, request you to supply a copy of the same forthwith so that I can deal with it. I will deal with the same as and when I receive the copy of the Annexure-I referred in para 2 of your reply. I further say that ISRO is purely a central

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government organization which follows of central government rules and regulations strictly for administrative cadres, but while doing so, ISRO being an organ of government can not act in an arbitrary manner. The DPC which met in 1991 was completely biased against me because of the fact that I have brought to the notice of the higher authorities certain irregularities committed by some of the members in connection with the HBA advance. They were negatively influenced because of my complaints against them and as a result they considered my juniors for the post of P.A. 'C' whereas I was not considered as a candidate for promotion. I say that the action of not recommending me for promotion to P.A 'C' was a deliberate action. So far as the process of consideration is concerned I have already stated in O.A as well as in rejoinder that the weightage given to the oral interview is excessive and is against the norms laid down by courts in various judgements and it can not be said that the action is just or proper. It is further submitted that so far as my performance at the time of interview was concerned it was excellent. I had replied all questions put to me. I had prepared notes of all the questions put to me. I have reproduced those questions and answers in the memo of O.A. In fact the questions were all formal and I had replied all of them correctly and therefore there was no question of assessing my performance negatively based on these questions. But as stated earlier the committee was biased and was pre-determined to judge my performance negatively with a view to seeing that I have not promoted.

4. With reference to para 3, I say that the contents thereof are not true and I specifically deny the same. I



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reiterate and adhere to whatever I have stated in para 5 of my affidavit in rejoinder. I say that I was wrongly denied promotion to the post of P.A 'C' on 24.8.1987 and the Memo dated 30.7.1987 is also arbitrary. It is denied that I was not found fit for promotion by the duly constituted DPC. Denial by the Respondent that I was denied promotion due to prejudice and malafide intention is incorrect and is denied. In fact I was denied promotion due to prejudice and malafide intention of the Committee consisting of members, Mr. O.P.N. Calla, Mr. A.W.P. David, Mr. N. Sampath, and Dr. George Joseph in 1987 and members, Dr. George Joseph, Mr. O.P.N. Calla, Mrs. S.S. Joshi, Mr. M.M. Shah, Mr. B.G.V. Subrahmanyam, Mr. K.S. Karnik and Dr. (Mrs.) D. Rustogi in 1991. I had written about irregularities of 3 members. All these three members were holding highly influential position. My action of complaining against them was not liked by them. These three members were directly connected with the issue and were directly prejudiced against me whereas other members were influenced by these three members and therefore the remaining members were also indirectly biased against me or prejudiced against me and therefore my right for being considered for the post of P.A 'C' was meaningless. In fact when there were complaints against those officers, they ought not to have participated at all and they should have remained away from the DPC. But they did not do so. They remained present and they also influenced other members too. It is not true that HBA problems were not relied upon by the DPC. It is not true that there is no nexus between my contentions and the actual available before the duly constituted Departmental Promotion Committee in 1987 as well as in 1991. It is also not true that the departmental enquiry had not started in 1987. The

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serving of the charge sheet itself means the initiation of the departmental proceedings. The serving of the charge sheet on 16.9.1987 relating to HBA is admitted by the Respondents whereas the departmental enquiry is denied. This is really absolutely contradictory stand of the Respondents. The charge sheet was connected with HBA. Many other officers were connected with the HBA. Even before serving of charge sheet I was called by the Respondents and personal discussions in that connection had taken place. I was orally asked as to whether it was admitted by me that I had obtained HBA wrongly. to which I had categorically said no and at that time I had also discussed about the question of HBA of other officers and I had given the names of those officers also and therefore this was a very little then the knowledge of the authorities I had made complaints about the irregularities of officers more particularly the three officers. I therefore say that they were aware about my complaints about them that 1987 DPC they were in oral form. I further say that I was also asked orally and personally not to give the names of those officers in writing. As stated earlier I was also told personally to admit the guilt even prior to issuance of charge sheet. When I refused to do so on the ground that I had not acted illegally and I have not committed any illegality or irregularity. At that stage I was also told that I will have to face the enquiry. I, therefore, say that it is absolutely incorrect to say that the Disciplinary Authority did not make up its mind to initiate disciplinary proceedings while issuing the Memorandum dated 16.2.1987. In fact it was in their mind. Even the members were aware about this and therefore the committee was completely biased. I am not aware about the

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note in writing that there was no vigilance of the departmental disciplinary proceedings against me was before the committee. One can say because the enquiry in its real form had actually not commenced, but in reality the enquiry was initiated. Members were also aware about this and therefore the written note as stated above was meaningless as against a personal knowledge.

I further say that so far as the Memorandum dated 30.7.1987 is concerned the contents in that connection made on behalf of the Respondents are not correct and are therefore denied. I have already explained the position in affidavit in para 5 of rejoinder and I therefore do not repeat the same. I reiterate and adhere to whatever I have stated. In view of this I say that even the norms laid down by the Circular are completely violated.

5. With reference to para 4 I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 6 of the affidavit in rejoinder. It is denied that the contents of para 6 of affidavit in rejoinder are incorrect. It is true that I was charge sheeted on 16.9.1987. It is also true that on completion of the proceedings I was exonerated of the charges vide order dated 8.3.1991. I say that the charges leveled against me were all false and fabricated and the department could not prove those charges. What was proved was contrary to the charges and as a result I was exonerated. It is not true that there is no nexus between the disciplinary proceedings conducted and the proceedings of the DPC which consider my case for promotion as P.A. 'C'. It is also not true that both the proceedings were



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independent of each other and DPC members were never influenced by the former under any circumstances while assessing the fitness of my promotion. It is also denied that DPC never looks at or takes cognizance of the disciplinary cases while assessing the suitability for promotion. It is also denied that the method of assessment is confined to the overall performance in the personal interview and evaluation of ACR reports. It is also denied that the DPC did not recommend my name for promotion on the basis of the performance in the interview and evaluation of the ACRs. It is denied that the decision of the DPC which met on 24.8.1987 had no bearing on or in no way connected with the charges framed against me under DOS Rules 1976. I say that so far as the charges are concerned I have already explained earlier as to what happened in reality and how and what manner the proceedings were initiated. Though the charge sheet was served upon me on 16.8.1987 in reality these allegations and charges were communicated even prior to the service of the charge sheet. I had made it clear before the authorities that I was in no way guilty for any of the charges levelled against me and I was totally innocent. I had also made it clear that many highly placed officers had suppressed the material information from the department deliberately. I had given their names also. Out of these names given by me three were the members of the DPC which met to review the cases for promotion including the case of mine. They were aware about this and therefore it is futile exercise on the part of the respondents to say that the DPC was not at all influenced. It is, therefore, submitted that the present case which becomes immaterial as to whether the DPC takes cognizance of the case for the

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matter of assessment as confined to the overall performance in the personal interview. In the light of the special facts of this case which can be easily understood that how and why the DPC did not recommend my name for promotion.

6. With reference to para 5, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 7 of my affidavit in rejoinder. It is denied that there were no reasons for the members of the DPC held on 19.2.1991 to remain prejudiced against me on no grounds under any circumstances. It is not true that my presumptions correlating the same to the allegations of irregularities against a few DPC members regarding their HBA with caprice and malafide intentions and are baseless, unfounded and misconceived. It is not true that there were no irregularities at all in the HBA sanctioned to some of the DPC members as alleged by me. It is also not true that I could not point out any irregularities as there were none. It is also not true that I raised these allegations only in my letter dated 15.3.1991 after the DPC met on 19.3.1991 and the DPC members were not aware of these allegations. It is also not true that there is no basis to the allegations with the DPC was prejudiced or not against me on any ground and my apprehensions are totally imaginary. It is not true that I am trying to distort the facts of my having failed to qualify for promotion in the DPC review held in 1987 and in 1991 to my advantage by reason and allegations of prejudice against DPC without any iota of it therein. I say that so far as the allegations are concerned I have already

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explained the development in the earlier paragraph and I therefore do not repeat the same. I reiterate and adhere to the same and I pray that it can also be treated as a part of this paragraph and may be read accordingly. I further say that so far as the allegations the substances in the allegations is concerned they are based on irregularities in connection with the HBA. I have categorically stated in my letter written to the government that how and in what manner the irregularities were committed and therefore it is absolutely incorrect to say that there was no basis for the allegations levelled by me. It is also worthy of mention at this stage that there is a policy and there are circulars of the government in relation to submission of returns relating to immovable property and there are forms which are required to be filled in by officers. Some highly placed officers, 1) Shri M.M. Shah, 2) Dr. B.C. Agarwal 3) Shri C. Lal 4) Shri S.R. Joshi 5) Mrs. S.S. Joshi 6) Shri R.C. Garg 7) Shri S.R. Naik were possessing houses while claiming HBAs. According to my information they had not declared those houses under rules which really amounted to misconduct. The correctness about my say that they did not declare the information about the possession of the houses at the time of claiming HBA can be ascertained from the declarations and the forms which are in the custody of the Respondents. The Respondents may be directed to produce all these documents before the Honourable Tribunal with a copy to me.

I further say that Shri O.P.N. Calla who was a member of the DPC also did not give such declaration. Moreover he had taken two HBAs, one on 30.9.1987 and two on 30.3.1989. Under the rules it was not permissible. But the fact remain



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that he was granted two HBAs. Under what circumstances it still remains amnesty. Same is the case with other members also. In their cases also irregularities were noticed. These facts were within the knowledge of the Respondents. I also brought to their notice during early discussions as stated earlier. Then they did not take any action against them. I had to write to the government which was not liked by the officers and as a result even for sending such information to the government, I was served with a Memorandum. I say that the complaints or allegations made by me were based on some material. They are not imaginary as alleged by the Respondent. Out of the names given by me some of them were members of the DPC. They also knew it and therefore they were influenced by the said fact and as a result my name was not recommended for promotion to the post of P.A. 'C'. I further say that to ensure the facts and for ascertaining the reality production of HBA files, Property Acquisition/Disposal Forms, Property Return Forms of every year since the date of their joining and declaration forms should be ordered. From all these it will be evident that they had houses while taking HBA. Taking of HBA is possible only they had not declared their property in their forms. I therefore say that the complaint and or allegations regarding irregularities committed by highly placed officers is not mere imagination, but it is a fact based on material which can be easily proved. The complaints were not made after I was not selected or recommended for promotion.

7. With reference to para 6, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 8 of my affidavit in rejoinder.

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The denial that I was denied promotion because of the prejudices and malafide intentions of the Respondent authorities is absolutely incorrect. It is denied that the only way left to the DPC to assess the suitability of the candidate for the post is to subject him to a thorough scrutiny and personal interview. It is also denied that the allocation of 70% marks for interview and 30% marks for ACRs is justified. It is denied that the allocations of marks in the ratio of 70% and 30% has been done within the powers and policy of ISRO. It is also denied that since the post of P.A 'C' is more responsible post in gazetted rank, ISRO has right in laying down the norms. It is not true that the O.M dated 30.7.1987 is not vague, arbitrary and illegal. I say that ISRO is empowered to formulate just, proper and legal formula for the assessment of the candidates. Powers vested in the authority have to be exercised fairly. They have no right to act in an arbitrary manner. By fixing a formula in the ratio of 70% and 30% is alleged, unjust and illegal. It is absolutely vague. I reiterate and adhere to the contents in this connection made in the Memo of O.A as well as in the affidavit in rejoinder and I say that the norms prescribed for review for promotion as P.A 'C' are not sustainable in law and the element of evaluation specified in the Memo dated 28.7.1987 is unreasonable and is excessive and is also violative of the judicial pronouncement. It is denied that the norms are laid down with the object of achieving efficiency in the administration and are applicable all over the country. I say that it does not achieve any object at all and much less in the efficiency in administration. On the contrary such norms adversely affect the efficiency of the employees. It is denied that only the posts have been

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upgraded and the incumbent of the said post have no claim for automatic placement in the upgraded post of P.A 'C'. It is also denied that upgradation does not remain an intend for automatic promotion. It is also denied that I am not entitled for any automatic placement or promotion in the higher grade without undergoing the said procedure for assessment by the DPC. I say that the O.M. says that 1640-2900/- grade is upgraded. This means that those who are in the grade of 1640-2900/- should be automatically put in the Grade 2000-3200/- without any further process or interview etc. In as much as this is a clear and simple meaning of this O.M. Otherwise the O.M. would not have said that this grade is upgraded.

It is denied that on the basis of the performance I was not recommended in 1987 and in 1991. It is denied on the basis of the performance of Respondent No.3, Mr.T.R. Ramachandran was recommended and thereafter the Respondent No.4 and 5, Mr. K.M. Sasidharan and Mrs. S.K. Gujaral were recommended for promotion on 31.8.1987. Similarly in 1991 the Respondent No.6, Mr. M. Gopalakrishnan Achary was recommended. It is also denied that the allegations made by me that Respondent No. 4, 5 and 6 do not have combined service of three years both in the Grade of 550-750 and 550-900/- were not eligible are unfounded and baseless. I say that the submissions made in that connection in the original application as well as in affidavit and in rejoinder. and I reiterate and adhere to the same. I further say that the explanations of the Respondents in this connection in para 6, 7 to 10 are all incorrect.



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8. With reference to para 7, the contents thereof are not true and are therefore denied. I reiterate and adhere to the contents of para 9 of the affidavit and in rejoinder.

9. With reference to para 8, the contents thereof are not true. I reiterate and adhere to whatever I have stated in para 10 of the affidavit and in rejoinder. It is not true that in the interview my performance was not satisfactory.

10. With reference to para 9, 8 to 13, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 11 to 15 of my affidavit and in rejoinder. It is not true that I made the allegations on some of the DPC members after DPC on 19.3.1991. It is true that I made the allegations in the letter dated 15.3.1991. I say that for the first time I made allegations about the irregularities in the year 1987. It is denied that the points raised in the letter dated 15.3.1991 have no bearing on the result of the DPC proceedings. It is also denied that the DPC was conducted impartially and without any prejudice. It is further denied that the allegations made by me are totally false and baseless. In fact the points raised by me in connection with the irregularities committed by some of the officers were all correct. I had also brought it to the notice of the Respondents earlier. I have also forwarded an advance copy of the letter dated 15.3.1991 to Chairman, ISRO and Chief Vigilance Officer, ISRO, which was not liked by the officers at all. They were going to be taken to task by the higher authorities and as a result I was served with a Memo

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dated 1.5.1991 calling for explanation for my act of forwarding advance copies of the letter dated 15.3.1991 to Chairman, ISRO and Chief Vigilance Officer, ISRO. It is denied that I had forwarded the advance copies without exhausting all means of securing attention or redress and without routing the same through proper channel as per the rules and procedures of the Govt. of India. I submitted my explanation dated 18.10.91 has been accepted and the chapter is over. I have also complained to the authorities in connection with the arbitrary actions taken against me. It is denied that as a matter of fact there is no nexus between the allegations raised by me in the letter dated 15.3.1991 and the DPC proceedings conducted in 1987 and 1991. It is denied that I am trying to distort the facts and I have failed to qualify for promotion due to poor performance in the personal interview, I am casting aspersions on the DPC members. I say that the allegations in connection with irregularities by higher officers including some DPC members were not made for the first time in the letter dated 15.3.1991. For the first time I have brought to the notice of the authorities in the year 1987 during oral discussions much prior to the date of DPC in 1987. I have already explained this earlier and therefore I do not repeat the same.

So far as the performance during the interview is concerned my performance was excellent and therefore it is absolutely untrue on the part of the Respondents to say that my performance was poor and therefore I was not recommended for promotion. I reiterate and adhere to whatever I have stated

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in the Memo of O.A. as well as in the affidavit and in rejoinder. I will also deal with it at a proper stage later part of this reply by dealing the denial of promotion on the ground of malafide and extraneous reasons and the aspect in connection with the performance.

It is also not true that I was not denied promotion due to the malafide intentions of the DPC members. It is not true that the DPC members only considered the performance of the candidates in the personal interview and evaluated the ACR for the period under review and made total assessment on the worthy of the candidate for promotion to higher grade. It is also not true that for the promotion to the post of P.A. 'C' merit is assessed by DPC alone is the criteria. It is also not true that I was not recommended for promotion by DPC because I was not found eligible for promotion after assessing my performance in the interview and evaluation of ACRs. I was denied promotion due to the prejudice and malafide intentions of the members of the DPC. Any denial in this connection is untrue and is denied. It is not true that the DPC members were not aware that I had raised the allegations of irregularities regarding HBA sanctioned to any of them when the DPC met on 19.2.1991 and therefore the allegations of prejudice and bias have no merits and are misconceived and contradictory to facts. It is denied that there were no irregularities in the HBA sanctioned. It is also denied that the documents were properly put to scrutiny and auditing by the Auditors of the Government. It is not true that the issues pertaining to HBAs and rules governing the same are entirely different and have no relevance



whatsoever with the DPC proceedings and therefore no interference at the hands of the Hon'ble Tribunal and has warranted by way of direction to produce the records, documents of HBA sanctioned to the DPC members.

It is denied that O.M. dated 30.7.1987 is not vague, arbitrary and illegal in the eyes of law. It is denied that by specifying the norms in O.M. dated 30.7.1987 care has been taken to ensure that only the right persons are selected for the post of P.A 'C', which is a Group B gazetted post. It is also denied that the elements of evaluation for promotion as P.A 'C' are prescribed as regards to the functionary requirements, capability and efficiency to discharge the duties. It is denied that the O.M. dated 30.7.1987 is not in contravention to the rules and regulations framed by the government for the decision given by the High Courts and Supreme Court.

I say that the show cause notice was issued to me in connection with my HBA on 16.9.1987 and I was exonerated vide order dated 8.3.1991. I further say that the HBA matter was discussed in detail during February, 1987 with Shri P.P. Kale, Ex-Director and Shri A.W.P. David, Ex-Controller. Since they did not take any action on the concerned officers, I was constrained to bring it to the notice of the Director, SAC by writing a letter dated 15.3.1991. First representation relating to HBA allegations against some officers related to the members alleged in the representation was audited by the Auditors of the A.G., Bombay.

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It is further submitted that HBA files related to the members mentioned below were not supplied to Auditors based on their request dated 11.9.1991, copy of which is enclosed herewith, as Annex. Some members cases were not called for audit because there is a random checking. With a view to ascertaining the truth in the allegations, the Respondents should be directed to produce the Auditors report along with original documents such as personal files containing property returns of every year since the date of their joining, property acquisition/disposal forms and HBA documents along with its declaration showing whether they are having a house in their names or in their family members in station or where they are having or possessing a house at the time of taking HBA. I say that all the officials named by me had houses in station at the time of taking HBA. The names and addresses of these officers are given herein below:

1. Shri M.M. Shah  
2, Vanshree Society  
Near Drive-in Cinema  
Thaltej Road  
Ahmedabad - 380054
2. Dr.B.C. Agarwal  
104, Jai Ambe Nagar  
Thaltej Road  
Ahmedabad - 380054
3. Shri C. Lal  
103, Jai Ambe Nagar  
Thaltej Road  
Ahmedabad - 380054
4. Shri S.R. Joshi  
H-12, Sukruti Flats  
Manek Baug  
Ahmedabad - 380015

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5. Mrs. S.S. Joshi  
Sumitriya Society  
Near Jodhpur Char Rasta  
Ahmedabad - 380015

6. Shri R.C. Garg  
95/566, Vijaynagar Flats  
Naranpura  
Ahmedabad - 380013

7. Shri S.R. Naik  
34/279, Vidyanagar Flats  
Near Azad Society  
Ahmedabad - 380015

8. Shri O.P.N. Calla

had taken 2 HBAs when there is a provision for one HBA:

1. Taken on 30.9.1987 - Rs. 50,000/-  
Refunded on 16.5.1988

2. Taken on 30.3.1989 - Rs. 50,000/-  
Refunded on 7.11.1990.

Under the provisions of HBA rules the amount of HBA granted to them was required to be recovered by the department with penal interest. But the department did not do so nor did the department take any steps in that regard. It is further submitted that as stated earlier I ventilated the grievances



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with irregularities in HBA in 1987, and thereafter in 1991. In 1991 first representation was sent through proper channel on 15.3.1991 and the second representation was sent on 3.4.1991. Inspite of all these, no actions have been taken. When the Director failed to take action on my written representation after waiting for a pretty long time of 18 days I was constrained to send the copy of letter to Chairman, ISRO and which is permitted under the existing rules of the government via. Order No.G.I.M.H. Affairs Memo No.10/1/65 Ests(B) dated 29.4.1965 Decision No.3. I further say that in fact after the service of the notice and memorandum I submitted my explanation on 18.3.91 and as stated earlier my explanation was accepted and thereafter also an appeal was submitted. Thereafter I approached the authorities and ventilated the minor grievances in connection with the decisions. The discussion also took place with Ex-Director, Shri P.P. Kale when I submitted an appeal in connection with the decision. A copy of the appeal is annexed as Annexure-II. During the discussions with Shri P.P. Kale I was told also that the chapter is completely closed and nothing remains to be done and I was told to forget about it. Thereafter it can not be said that the explanation given by me by letter dated 18.10.1991 is under consideration. Actually it is incorrect. I further say that the Memorandum dated 25.3.1992 and my representation/appeal subsequent to this memorandum also fortifies my say. I am shocked to know now at this stage that it is still under consideration. I have also decided to write to the Director in this connection with a view to clarifying the situation.

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I further say that ISRO is not empowered to formulate the DPC norms for administrative staff. It is further stated that the promotion policy of technical and administrative cadre can not be compared as it is entirely different. I further say that no DPC or interview are conducted as per the promotion policy of technical staff. The recruitment of the administrative staff and their promotions are purely based on the central government procedure only. In my case also the DPC which met was influenced by extraneous considerations and irrelevant facts as explained earlier. Some of the members were completely biased against me due to my action of pointed out the irregularities in connection with their HBA. I therefore say that because of the discussion which took place with the Ex-Director, SAC and Ex-Controller, SAC in February, 1987 and because of the disclosure of names of officials referred herein above the members of the committee were biased and as a result due to personal prejudices they did not recommend my name for the post of promotion as P.A 'C'. Moreover some of the officials were also present as DPC members in 1987 as well as in 1991. Following members were common in both the DPCs:

1. Shri O.P.N. Calla
2. Dr. George Joseph

The aforesaid discussion clearly goes to show that the action on the part of the DPC in not recommending my name was not merely arbitrary, but malafide too.

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11. With reference to para 14, I say that the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 16 of the affidavit and in rejoinder. It is true that the post of P.A 'C' is a gazetted Group B post. It is denied that considering the professional standard of efficiency the P.A. 'C' required to possess the element of evaluation such as personal interview and the assessment of ACR have been prescribed for promotion to the post of P.A 'C' which is mainly based on merit. I say that had it been so the department would have acted in a fair manner and would not have given excessive weightage to personal interview. It is denied that in the absence of written test, the allocation of 70% marks for personal interview is justified. I say that it is totally unjustified. I further say that such an excessive weightage has really no nexus with the object ought to be achieved. I further say that the manner in which the members of the DPC interviewed the applicant, the manner in which the questions were put to me and the nature of the questions absolutely falsify the stand of the Respondents that promotion scheme adopted for P.A 'C' is purely merit oriented and the candidates qualifying for review are therefore put to strict scrutiny before the DPC.

I further say that upto 1987 the policy was that the seniority was being taken into consideration and the senior most candidates were being selected after a personal interview. Though there was personal interview it was simply a formality. Now if the stand of the Respondent that



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the selection is purely on merit is a reality; It can be seen that after 1987 they might have changed the basis, but here again one important point can not be missed and that is, if the Respondents want to base the selection on pure merit then interview should be exhaustive and must be planned in such a manner that the candidates are not put to disadvantageous and unjust situation. In my case as stated earlier, the manner in which the interview was conducted and the nature of the questions put to me do not support the stand of the Respondents that they were purely based on merit really assessed by the DPC.

I further say that the judgements relied upon by the Respondents in para 14, have no bearing whatsoever as far as my case is concerned. In my case the question is not whether there is a right to be considered for promotion nor is the question whether a court can see the judgement over the assessment of DPC. I have already raised questions in the original memo of O.A as well as in the affidavit of rejoinder and therefore I do not repeat the same. I pray that those submissions may be treated as a part of this reply also and may be read particularly. I further say that the real question herein in my case whether am I considered? Whether there was a legally constituted DPC? Did I raise finger against members of the DPC by pointing out their irregularities? If there are any allegations against members of the DPC can it be presumed or not that they were biased or prejudiced against me? Can it be presumed or not that there was presence of element of personal bias? Is it permissible in law for any person to become a judge for

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assessing the suitability of a candidate for the higher post against whom there are serious allegations more particularly for judging the suitability of a person who has made allegations against them? I say that these are the questions which are vital questions for determining a controversy centered around and I therefore say that the say of the Respondents that I was not found suitable for promotion as assessed by the DPC which was based on the personal interview and evaluation of my ACRs, is absolutely malafide.

12. With reference to para 15, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 17. It is denied that I was considered by the duly constituted DPC for promotion in 1987 and in 1991, but was not recommended for promotion after assessing my performance in the personal interview and evaluation of ACRs. It is also denied that the members of the DPC were never prejudiced nor biased towards me under no circumstances or on any ground. It is also denied that my contentions in this connection are contradictory to the facts. The element of bias and the prejudice have already explained herein earlier and I therefore do not repeat the same. I reiterate and adhere to the same.

13. With reference to para 16, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 18 of the rejoinder. It is denied that there is no iota of truth on

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my contentions regarding declarations submitted by the officers referred by me for the purpose of HBA. It is also denied that I make baseless allegations. It is also denied that I am trying to cover up my unsatisfactory performance in the personal interview with other irrelevant factors which are in no way connected with my competence and suitability for promotion. It is also denied that the allegations have been examined by the office and are found to be baseless and misconceived, and I was warned against making unfounded and baseless allegations. I say that I have given details about the irregularities during the personal discussions and thereafter in writing too. The correctness of my allegations can be really ascertained by examining the documents and files referred herein above and the Respondents may be put to the strict proof thereto and that can be done by directing the production of those documents. It is also denied that the records of HBA sanctioned have been put to scrutiny and verification of the Auditors of the Government and the same are dealt with as per the rules and instructions of the department/Govt. of India. I say that they were put only before the internal auditors having close connection with the highly placed officers connected with the irregularities. They have never been put for scrutiny for audit before the A.G., Bombay which are really the government auditors and who are known for their correctness and strictness. I say that the allegations made are not incorrect. They are correct. It is denied that I have violated the instructions of the government relating to forwarding of representations to higher authorities while forwarding my copy of letter dated



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15.3.1991 directly to Chairman, ISRO and Chief Vigilance Officer, ISRO without routing the same through proper channel and without exhausting all the means of securing attention or redress as contained in the O.M. dated 30.4.1952 governing the same and for which I was served with the Memorandum dated 1.5.1991. I have already stated earlier that I have not violated any rules. In fact I had brought it to their notice during the oral discussions and thereafter in writing also. Even before writing to Chairman, ISRO, I briefed to the Ex-Director, Shri P.P. Kale who did not do anything and as a result I was constrained to write to the Chairman, ISRO and therefore I did not violate any of the rules or regulations of the Govt. of India. It was really a mistake on the part of the Respondents or deliberate action on their part to issue a show cause notice and thereafter I submitted my explanation and the actions were dropped. Even thereafter I had met personally Shri P.P. Kale, Ex-Director and submitted a representation making grievances in connection with the decision dated 25.3.1992. I further say that the none of the HBA documents relating to members alleged in my representation were audited by the Auditors of A.G., Bombay. I further say that HBA files were demanded by the A.G. Office at Bombay. But such files related to the members mentioned in the representation or the members against whom the irregularities alleged were not supplied to Auditors. A copy of the request letter making demand of the files is Annexed herewith which falsified my say that they were not audited and I further say that they were deliberately not supplied the same. Even the production of personal files containing property returns since the date

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of their joining, HBA documents along with declarations in connection with the possession of house property either in their name or in the name of their family members would be made the position crystal clear.

14. With reference to para 17, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 17 of the affidavit and in rejoinder. It is true that I was not recommended for promotion in 1987 and in 1991, but it is not true that DPC members/proceedings were not influenced by any other considerations than the suitability. I say that they were influenced by irrelevant facts and extraneous considerations.

15. With reference to para 18, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 20 of the affidavit and in rejoinder. It is not true that I have no grievances and averments made by me are false and contrary to the facts. It is also denied that allegations of prejudice and bias are after thoughts. It is denied that the original application and the affidavit in rejoinder are misconceived and untenable and the O.A deserves to be dismissed. It is further denied that no legal right of a man is violated and therefore I am not entitled to reliefs prayed by me in para 7 (a) to 7 (k). I say that I am done injustice twice so far as the promotion is concerned, first in the year 1987 and for the second time in the year 1991. I have already mentioned earlier as to how and in what manner I was served

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with the notice and their outcome. It can be seen from the aforesaid facts and circumstances that the Respondents were really harassing me and the action of the Respondent in not recommending me for promotion to the post of P.A 'C' is also very clear and indicative of malafide. I further say that I was the only person who was found qualified first for the post of P.A 'A' and P.A 'B'. But for my complaints in connection with the irregularities of some officers, there was nothing against me and therefore there was no reason for denying me promotion for the post of P.A 'C' in the grade of 2000-3200/-. Till now I have never been communicated with any adverse remarks and therefore even with respect to my ACRs, there was no problem. But for the reasons mentioned herein above, that a predetermined mind not to select me for P.A 'C' and they conducted the interview for 5 to 10 minutes. They asked some silly questions and completed the formalities. I say that if the interview was the only test for determining merits and if the questions put to me were the only basis for determining the merit during the interview, then all the questions which were put to me were answered by me correctly. I had kept the notes of those questions along with the names of the members who raised those questions and the answers given by me. Taking this into consideration also, there was no reason for not recommending me for promotion. I say that the decision was absolutely malafide and for extraneous considerations. As I have already stated the reasons for the same earlier, I do not repeat them. I further say that during my service career of about 22 years, my service records have remained spotless and action on my part in complaining about the



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irregularities in HBA was also in the interest of the Respondents and was not with personal malice. I had given the names of all the officers who were connected and I consider it the duty of every employee to bring it to the notice of the higher authority about such an irregularity.

16. With reference to para 19, the contents thereof are not true and I reiterate and adhere to whatever I have stated in para 21 of my affidavit and in rejoinder. It is denied that any relief in the matter will have serious repercussions on several promotions so far affected based on the recommendations for DPC and will unnecessarily, unjustifiably cause aspersions on the working of the DPC. I say that the Hon'ble Tribunal can always look into the facts with a view to ascertaining the truth, whether the action is justified or not or whether the action is legal or not and if the Hon'ble Tribunal comes to the conclusion that there is substance in my say and the DPC abused the power vested in it, then in that case, the Honourable Tribunal can grant relief which may have even farreaching consequences. I say that that is the real function and the duty of the court and there is nothing unusual such directions are required to be given for doing justice. I further say that those who are going to be affected are also parties before the Honourable Tribunal in these proceedings and therefore there is no substance in the contention of the Respondents that it will have serious repercussions. The duty is to cast upon the DPC to act fairly. In a case like this it was the duty of the members not to be a part of the DPC at a relevant time atleast while judging my suitability particularly when they

(200) f25

knew that I had made allegations against them, and I therefore say within the powers of the DPC they have not acted fairly and have abused the powers vested in them.

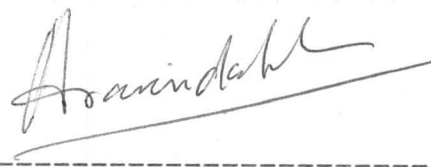
17. With reference to para 21, the contents thereof are not true and I specifically deny the same. I reiterate and adhere to whatever I have stated in para 23 of the affidavit and in rejoinder. It is denied that the contentions and averments in the O.A regarding the selection process, qualifying marks, weightage and DPC process are contrary to facts and are not maintainable in law. It is also denied that ISRO has neither violated any rule or procedure nor has acted in violation of any judgements of the Honourable High Courts or Supreme Court of India in prescribing certain norms for assessing the work of its employees for qualifying for promotion duly constituted DPC consisting of senior officers majority of whom having extensive experiences in being the members of various DPCs just as a DPC which assessed me for promotion. I say that I am not having any objection against their inclusions in DPC based on the experiences of any qualified person. Whether the DPC members were qualified or were experienced or not is not a question. The real question is whether they were biased? and if the answer is yes, the next question would be can they remain as members of DPC for judging my suitability? I therefore say that having regard to the facts mentioned herein above read with facts and submissions made in the O.A well as in affidavit in rejoinder, the undoubted position is that the members of the DPC were completely biased, they have abused the powers vested in them, they acted not merely

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arbitrarily, but malafide too and therefore the decision of the DPC not to recommend my case is absolutely high handed, arbitrary, capricious, malafide and illegal, null and void. I further say that ISRO/DOS is not empowered to formulate the DPC norms for administrative staff. The promotion policy of technical and administrative cadre can not be compared because they are different. The administrative staff recruitment and promotions are purely based on central government procedure as they are gazetted posts. The Respondents have not acted in accordance with the law. Even from the point of view of norms, they have considered they are not just proper and legal in as much as excessive weightage has been given to the personal interview, which really remains as drama in the present case. Courts have time and again warned against such norms and procedures and many times quashed the proceedings and promotions, courts have also declared such rules ultra vires too. I say that the present case also false on the same line.

18. With reference to para 22, I say that the contents thereof are not true and therefore deny the same. It is denied that there is no merit in O.A and the same deserves dismissal. I say that the submission made are full of merits and in view of the aforesaid facts and circumstances the decision of the Respondents is not at all justified and the original application is required to be allowed with costs and reliefs prayed for are also required to be granted.

Date : 6-3-1996  
Place : Ahmedabad.

  
-----



No. Audit/212/60/1989-90 740-91/Appendix 13. dt 11.9.91.

Have Building of Adm. Bldg. of the following employees, who are to be paid immediately to Audit.

Sl. No.		Name of Employee		Amount	
1)	5514	R-GAZ	Dr. B. B. Patil	7-8-84	Rs 1,00,000/-
2)	5542	"	Dr. B. B. Patil	12-9-84	Rs 1,00,000/-
3)	6103	R/GAZ	Dr. B. B. Patil	"	Rs 1,00,000/-
4)	6600	R-GAZ	Dr. B. B. Patil	22-1-90	Rs 1,50,000/-
5)	5558	R-GAZ	Dr. B. B. Patil	22-2-82	Rs 1,50,000/-
6)	516	R-GAZ	Dr. B. B. Patil	26-2-70	Rs 1,00,000/-
7)	6291	R/GAZ	Dr. B. B. Patil	21-3-80	Rs 1,50,000/-
8)	2549	"	Dr. B. B. Patil	22-3-80	Rs 1,50,000/-
9)	5444	"	Dr. B. B. Patil	27-3-80	Rs 1,50,000/-
10)	5320	"	Dr. B. B. Patil	28-3-80	Rs 1,50,000/-
11)	3051	"	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
12)	6614	R-GAZ	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
13)	5497	R-GAZ	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
14)	6567	"	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
15)	352	"	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
16)	405	"	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
17)	5712	"	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
18)	6557	"	Dr. B. B. Patil	30-3-80	Rs 1,00,000/-
19)	5361	"	Dr. B. B. Patil	14-5-90	Rs 1,10,000/-
20)	5393	"	Dr. B. B. Patil	15-6-90	Rs 2,00,000/-
21)	5486	R-GAZ	Dr. B. B. Patil	27-7-90	Rs 1,45,000/-
22)	363	R-GAZ	Dr. B. B. Patil	31-8-90	Rs 30,000/-
23)	367	"	Dr. B. B. Patil	28-9-90	Rs 2,00,000/-
24)	203	"	Dr. B. B. Patil	22-11-90	Rs 2,25,000/-

15/1/ADU/2.2(61) 50,000/-  
01.29.39.89

Glenn's Accounts Officer  
SAC, Ahmedabad

Glenn's Accounts Officer  
SAC, Ahmedabad

(203) 127

COPY OF ANNEX-I

URGENT

GOVT. AUDIT PARTY - CAMP SAC,  
AHMEDABAD

No.Audit/SAC/DOS/1989-90 & 90-91/Reqs.No.13 Dt. 11-9-91

House Building Advance files of the following employees maintained by Admn. Section may please be made available to Audit immediately:

<u>S.No.</u>	<u>PR No.</u>	<u>Unit</u>	<u>Name of the Employee</u>	<u>Order No &amp; Date</u>	<u>Amount Sanctioned</u>
1.	5514	R-GAZ	Dr. M.B. Potdar	16.11.89	Rs.1,00,000/-
2.	5642	"	Shri Baby Simon	"	" 1,00,000/-
3.	6103	R/GAZ	" S.V. Nair	22.1.90	" 1,15,000/-
4.	6600	GGAZ	" S.T. Bhatia	22.2.90	" 1,50,000/-
5.	5058	RGAZ	" R.K. Thagi	26.2.90	" 1,00,000/-
6.	516	RNG	" D.R. Pandya	21.3.90	" 1,00,000/-
7.	6291	R/GAZ	" S. Kundu	23.3.90	" 1,00,000/-
8.	3047	"	" M.N. Satyaprakash	27.3.90	" 1,30,000/-
9.	5404	"	" Ramuduu Myla	28.3.90	" 1,21,250/-
10.	5320	"	" D. Subramanyam	28.3.90	" 1,00,000/-
11.	3051	"	" K. Swarnakumar	30.3.90	" 1,00,000/-
12.	6614	AMG	" P.K. Sanghvi	30.3.90	" 1,00,000/-
13.	5497	R.GAZ	" S.R. Mehta	30.3.90	" 1,00,000/-
15.	6597	"	" J.B. Modh	30.3.90	" 1,60,000/-
16.	352	"	" D. Sivaramakrishna	30.3.90	" 1,00,000/-
17.	305	"	Dr. K.N. Shankara	30.3.90	" 1,00,000/-
18.	5712	"	P. Dhar	20.4.90	" 1,00,000/-
19.	6557	"	A.K. Sisodia	14.5.90	" 1,10,000/-
21.	5361	"	M.S. Arora	14.6.90	" 1,10,000/-
22.	5393	"	K.D. Acharya	27.7.90	" 1,45,000/-
23.	5486	A-GAZ	Smt. S.S. Joshi	31.8.90	" 30,000/-
24.	363	R-GAZ	Shri G. Raju	26.9.90	" 2,00,000/-
25.	367	"	Shri P.M.C. Lal	22.11.90	" 2,25,000/-
26.	302	"	Shri O.P.N. Calla	EST/ADV/2.2(010) 89 dt.29/3/89..	" 50,000/-

Sd/-  
(Section Officer)  
11.9.91

The Accounts Officer  
SAC, Ahmedabad.

204  
128  
May 14, 1992

From : K. Aravindakshan  
P.A 'B'  
CTG/SCA/SAC

To : Director  
SAC

Sir,

Sub : Appeal against Memorandum No.SAC/EST/DLS/1991 dated  
March 25, 1992 by Mrs. S.S. Joshi, Head, P&GA.

---

I was directed to explain vide Memorandum No.SAC/EST/DLS/1991 dated 1.5.1991 as to why disciplinary action should not be initiated against me for my act of sending advance copies of my letter dated 15.3.91 to Chairman, ISRO and the Chief Vigilance Officer, DOS without routing through proper channel and before exhausting all means of securing attention or redress from the Centre authorities. I had explained and submitted my representation dated 18.10.1991 and therein I have also demanded certain documents, letters, circulars etc. etc. I was not supplied with all the circulars, documents, letters and informations required by me and as a result I have explained everything under protest. Vide Order dated 25.3.1992, Mrs. S.S. Joshi, Head, P&GA has passed an order and come to the conclusion that there is no element of doubt that I have not exhausted all means of securing attention or redress from the Centre authorities by sending advance copies and I committed a misconduct. But taking into the fact that the said act was committed for the first time the disciplinary action has been dropped. However I am warned against repetition of this misconduct in future and advised to restrict myself from making wild and baseless allegations against superiors of the Centre.

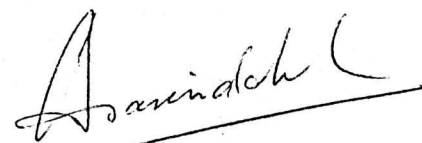
Sir, I have pointed out at this stage that I have not made any baseless allegations against my superiors and I had also no intention to do so. I merely pointed out the facts which were relevant and that too while explaining my case and these facts were also pointed out in connection with my claim for equal treatment. I had also explained that I did not make any complaint directly in fact all the remedies were exhausted and I had explained everything in all my replies including the last reply dated 18.10.1991. I had reiterated and adhered to whatever I had stated in my replies dated 10.5.91, 3.10.91 and 18.10.91 and I request to treat them as a part of of this appeal as if they were reproduced here.



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Sir, I may state that careful consideration of these facts together with all my replies would bring here only one fact that there was no misconduct on my part or there is no negligence, carelessness and lack of thoroughness etc. on my part. Under the circumstances I request your honour to quash the findings of holding my act as misconduct and also to quash the penalty of warning.

With kind regards,



(K. Aravindakshan)

(206) 129

MAST/319/98  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD.

O.A./T.A./C.A./R.A./M.A. No. MA/328/98 in DA/124/91

K. Arvindachan Mr. P.H. Rahab  
APPLICANT (S) COUNSEL

VERSUS

UD 12005  
RESPONDENT (S) CO UNSEL

DATE : OFFICE ORDER : ORDER

16.4.98 : 1. Amenclement  
: 2. Copy not found. Two  
: Copies in A extra & ad.  
: Submits the  
: On scrutiny, MA is  
: found in order and of approval  
: the same in 11th Sep's letter.  
: Remains at 80 m 2000 m  
: in 2000 m

16/4/98 MA/328/98 S.O.(J)  
17/4/98 DR(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

M.A.No. of 328 1998

In O.A. No. 124/91

Between

K.Arvindaksham

.....

Applicant

Vs

Union of India and Others

Respondents

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SR.	ANNX	PARTICULAR	PAGE
NO.			

1.		Memo of the application	1 to 4
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Date 13/4/98

Ahmedabad

P. H. Pathak

Advocate for the applicant

By Mr. P. H. Pathak  
learned Advocate for Respondent  
with counsel set & T.O. ...  
copies copy served/not served in  
other case

12/5/98, Dy. Registrar C.A.T. &  
Ahmedabad



(208) / 134

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

M.A.No. of 328 1998

In O.A. No. 124/91

Between

K.Arvindaksham

.....

Applicant

Vs

Union of India and Others

Respondents

Application for amendments

May it please the Hon.ble Tribunal

That after respondent no. 11, the following respondents may be allowed to be amended as they are committee members who have acted predudicely to the applicant because the applicant has given their names in his pending inquiry. That the applicant has in inquiry proceedings, subsequently said that similar to the applicant, the other employees who are in possession of residential accommodation with either from Gujarat Housing Board or private society were also granted the House Building Advance for purpose of the House. That in those proceedings, the applicant has given the names of the respondents who are to be added as party respondents. As per the complaints of the applicant, respondents no. 12 onwards were called and asked for explanations. Therefore, they were prejudiced the applicant and as they were in the member in the DPC, the applicant was not considered fit. Therefore, they were the necessary parties.

12. M.M. Shah  
2, Vanashree Society, Nr. Drivein Cinema  
Thaltej Road, Ahmedabad.

13. Mr. B.C. Agrawal  
104, Jayambe Nagar, Thaltej Road,  
Ahmedabad.

- 14 Mr. S.R. Naik  
E-2, DOS Housing Colony
- 15 DOS Housing Colony  
Vastrapur, Ahmedabad. 15
- 16 Mr. OFN Calla  
Paramdham Society, Bopal  
Ahmedabad.
- 17 Mr. S.S. Joshi  
Sumitriya Society,  
Nr. Jodhpur Char Rasta  
Ahmedabad. 53
- 18 Mr. S.R. Joshi  
Plot No.7, D.1, ISRO Complex  
Sterling City, Bopal  
Ahmedabad.

That after 6.25, the following paragraphs may allowed to be amended.

6.26 It is submitted that the respondent administratio has enquired about the H.B.A. of applicant in the year 1987, before conducting DPC for further pramotion of ap- plicant. That the applicant was c6alled personally and asked explanation by the management. That in explanation, at that time, the applicant has stated the names of various persons who were similarly situated to the applicant and obtained house loan advance in which the applicant has clearly stated the names of the newly added respondents. That the administration has started investigation and also interrogated the respondent No.12 on ward. therefore, the respondent No.12 onward who were the member in the selec- tion committee of the applicant were prejudice against the applicant and therefore without any justification and



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reason, the applicant was not declared successful in selection. It is important to note that the promotional post was a seniority cum fitness post. therefore, the selection committee has to found applicant positively unfit . In the present case, there was nothing against the applicant or any adverse in the service record of the applicant , that the applicant can be declared failed in the selection. Therefore the decision of the selection committee not to found applicant fit for further pramotion is perverse, baseless and required to be set aside.

From the above circumstances of the case, and all the contentions raised in the earlier paragraph, This is a clear case of malafied exercises of powers to victimise the applicant and therefore the same is violative of Article 14 & 16 of the Constitution of India and hence the decision of the respondents not to consider the applicant for the promotion is also required to be set aside and the respondents are required to be directed to grant all consequential benefits of the promotion etc. to the applicant. In view of the services recorded of the applicant, there is nothing against the applicant to deny benefits of the promotion. Therefore, the claim of the applicant is just reasonable and required to be accepted.

Date 13/7/98  
Ahmedabad



P.H. Pathak

Advocate for the applicant



4

(211) 184

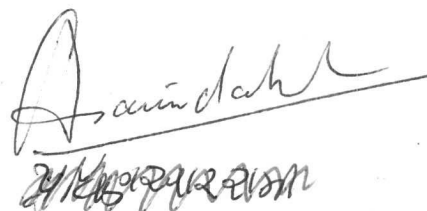
Verification  
AFFIDAVIT

Shri K. Arindaran, the applicant, adult,  
residence of Alber do hereby solemnly affirm that what  
is stated above is true to the best of our knowledge and  
belief and we believe the same to be true.  
We have not suppressed any material facts from this Hon'ble  
Tribunal.

Solemnly affirmed at Ahmedabad on  
this 13 day of December, 1997

Date :- 13/12/98.  
Ahmedabad.



  
K. Arindaran

E. 212  
135

BEFORE THE HON'BLE CENTRAL ADMINISTRATION TRIBUNAL,  
AHMEDABAD BENCH AT AHMEDABAD

MISC. APPLICATION NO. 328 OF 1998

IN

ORIGINAL APPLICATION NO. 124 OF 1991

Shri K. Arvindakshan .....Applicant  
V/s.  
Union of India and Others .....Respondents

Written Reply to the Misc.Application  
on behalf of the respondents  
-----

I, K.M. Joy, Head, Personnel & Gen.  
Administration of the SPACE APPLICATIONS CENTRE,  
Ahmedabad do hereby file this written reply on behalf  
of the Respondents to this Misc. Application No. of  
1998 filed by the Applicant.

2. At the outset I say and submit that the Misc.  
Application is misconceived, untenable and is required  
to be rejected in limini. I say that the Applicant has  
no legal right to claim the reliefs claimed for in the  
Application and that the same is required to be  
rejected.

3. I further say and submit that no part of the  
Misc. Application shall be deemed to have been admitted  
by the Respondents unless specifically stated

(213)  
126

hereinafter. All the statements, averments and allegations contained in the Misc. Application shall be deemed to have been denied unless specifically admitted hereinafter.

4. I further say and submit that the Original Application No. 124/91 is itself baseless, misconceived and untenable and require to be rejected. The Misc. Application filed by the Applicant is also misconceived.

5. I say and submit that the applicant has filed the Original Application for the promotion from Personal Asstt. 'B' to PA 'C' and there is no connection with the issue of House Building Advance. It is further stated that the applicant was charge-sheeted on 16/9/87 for the alleged suppression of material information relating to HBA availed by him and the Departmental Promotion Committee was held to consider his promotion from PA 'B' to PA 'C' on 24/8/87 (i.e. 22 days before the issue of the charge-sheet). The said committee which met on 24/8/87 was informed in writing that there is no vigilance/ Departmental disciplinary proceedings against the applicant. Departmental Promotion Committee (DPC) never looks at or takes cognizance of the disciplinary cases of the applicants while assessing their suitability for promotion. The method



(2147) 137

of assessment is confined to the overall performance in the personal interview and evaluation of ACRs. It is reiterated that DPC did not recommend the applicant for promotion based on the performance in the interview and evaluation of the ACRs. It is denied that the applicant was not promoted due to prejudice and malafide intention.

6. As regards to para 4 of the MA, the applicant submitted that similar to the applicant, the other employees who are in possession of residential accommodation were also granted the House Building Advance is a baseless allegations. This allegation has, however, been examined and found to be baseless and misconceived and the same has been informed to the applicant. The applicant was simultaneously warned against making false and baseless allegations against superior officers of the organisation. The records of the HBA sanctioned have been put to scrutiny and verification of the Auditors of the Government and the same are dealt with as per the rules and instructions of Department/Govt. of India. It is, therefore, prayed that Hon'ble Tribunal may not be carried away by these allegations. I say and submit that in the Misc. Application, the applicant requested to the Hon'ble Tribunal to allow some of the Officials of the Space Applications Centre as Respondents, which is baseless and it will not serve any useful purpose. It is further

(215) 138

submitted for the perusal of the Hon'ble CAT that the DPC was consisting of 5 members including Chairman, who have interviewed the applicant in 1987, much before the issue of charge-sheet to the applicant and only one of the members, viz., Shri OPN Calla was in the Committee from the proposed Respondent (No. 16) who is retired on superannuation in the year of 1995. Therefore, there is no question of any prejudice to the applicant as the other 4 members were in the DPC. The 2nd DPC which was held on 19/2/1991, out of 7 members, one of the members, Shri OPN Calla did not attend the meeting and only two other members were in the DPC from the proposed Respondents and other 4 members were in the DPC, therefore in this case also no question of any prejudice arises. It is reiterated that DPC did not recommend the applicant for promotion based on the performance in the interview and evaluation of the ACRs.

8. The applicant stated that the selection committee of the applicant were prejudice against him and therefore he was not declared successful in selection. It is also worth mentioning here that the applicant has given names of the 6 officials as proposed Respondents, and out of six, two members were in the DPC, though one member could not attend, which was held on 15/4/96 and the Committee recommended his case for

(216) 139

promotion to the post of Personal Assistant 'C'. The first person in the Select panel was promoted as there was only one vacancy arose during the validity of the panel. A copy of the minutes held in this regard on 15/4/96 is annexed at Annexure R-1. Therefore, the contention of the applicant is totally incorrect that the selection committee of the applicant was prejudiced against him and the applicant was not considered for promotion.

9. As regards to para 6.26 of the MA, I say and submit that the applicant has not produced any proof or records that the other employees as stated by the applicant are in possession of residential accommodation with either from Gujarat Housing Board or Private Society and were granted the HBA for the purpose of the House. The contention of the applicant is baseless and misconceived.

10. I further say and submit that before conducting the DPC in the year 1987, the Disciplinary Authority did not make up his mind to initiate disciplinary proceedings and in the DPC, the Competent Authority has informed in writing to the Committee that there is no vigilance/ Departmental disciplinary proceedings against the applicant. Only because of his poor performance in the DPC, the Committee did not consider his case for promotion.



(217)  
H40

11. I further say and submit that the promotion post from PA 'B' to PA 'C' is a seniority- cum- fitness post is totally denied. It is totally a merit-oriented promotional post. The relevant OM No. HQ:ADMN:4.20(2) dated 30/7/87 issued by DOS/ISRO HQ., outlining the procedure to promote PA 'B' to PA 'C' is annexed at Annexure R-2. There are only two elements viz., Interview-70 marks and ACR 30 marks out of 100, are considered for promotion from PA 'B' to PA 'C'. There is no mention about seniority at all in the above referred OM. Accordingly, enough care has been taken to ensure that only the right persons are selected for the post of PA 'C' which is a Group 'B' gazetted post and it is a Senior Secreterial position attached to top Executives/Scientists.. The elements of evaluation for promotion as PA 'C' are prescribed having regard to the functional requirements, capability and efficiency to discharge the duties of the post. It is further stated that ISRO/DOS is competent to lay down its own promotion policies for its employees.

12. I further say and submit that there is no malafied intention on the part of the Selection Committee. It is denied that there is any violation of Article 14 and 16 of the Constitution of India. It is reiterated that the DPC was never prejudiced nor biased towards the

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16/

applicant under any circumstances on any grounds and the contentions of the applicant to the contrary are contradictory to the facts.

13. I say and submit that the Hon'ble Tribunal may not allow the officials as listed by the applicant as a Respondents because they were not at all concerned. The 6 officials mentioned by the applicant, out of which 3 officials have already retired from the service.

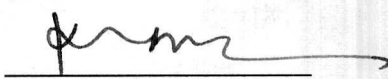
14. It is submitted that considering the facts and circumstances of the case, the Hon'ble Tribunal may be pleased to find that there is no substantial points in his applications and therefore, the OA as well as this MA may be rejected summarily.

-----  
Advocate for the Respondents

VERIFICATION

I, KM Joy, Head, Personnel & Gen. Administration, aged about 56 working in SPACE APPLICATIONS CENTRE, ISRO, Ahmedabad do hereby verify and state that what is stated in herein above is true to my knowledge, information and belief the same to be true.

Ahmedabad  
Date: 31/8/98

  
K. M. JOY  
Head P&GA  
Space Applications Centre  
Ahmedabad

(219)

Confidential

Government of India  
Department of Space  
Indian Space Research Organisation  
Space Applications Centre  
Ahmedabad

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April 15, 1996

Minutes of the Departmental Promotion Committee meeting held on  
April 15, 1996.

Review Committee:

Dr.K.N.Shankara	- Chairman
Shri AKS Gopalan	- Member
Shri B.S.Bhatia	- Member
Shri M.M.Shah	- Member
Shri S.R.Naik	- Member
Shri BGV Subrahmanyam	- Member
Shri K.M.Joy	- Member

The Committee considered the following Personal Assistants B  
for promotion to the post of Personal Assistant C.

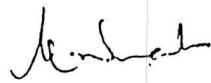
Sl No	Name	Division	Remarks
1.	Shri B.S.Joshi	RSA-IPDPG	-
2.	Shri K.Aravindakshan	SCA-CTG	-

In terms of ISRO HQs. Office Memorandum No. HQ:ADMN:4.20(2) dated  
July 30, 1987 promotions from Personal Assistant B to Personal  
Assistant C are by merit.




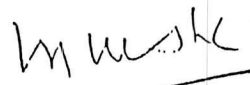
After taking into consideration all the general aspects, such as (i) punctuality in attendance, (ii) good conduct, (iii) generally good service record, (iv) vigilance clearance, (v) the performance in the personal interview and (vi) confidential reports, the Committee recommends the following employees for promotion to the post of Personal Assistant C.


Sl No	Name	Scale of pay	Remarks
1.	Sh. B. S. Joshi	2000-3200	—
2.	K. Aravindakshan	— also —	—

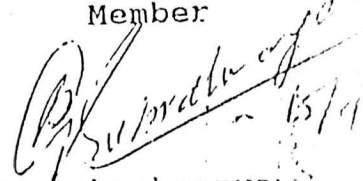
  
(K.N. Shankara)  
Chairman


  
(AKS Gopalan)  
Member

  
(B.S. Bhatia)  
Member

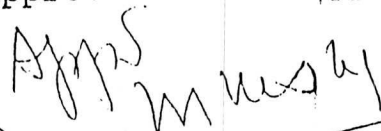
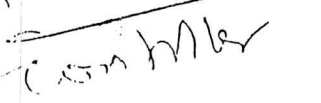
  
(M.M. Shah)  
Member

  
(S.R. Naik)  
Member

  
(BGV Subrahmanya)  
Member

  
(K.M. Joy)  
Member

Approval of the appointing authority:

  
DIRECTOR  
  
Controller

GOVERNMENT OF INDIA  
DEPARTMENT OF SPACE  
INDIAN SPACE RESEARCH ORGANISATION  
(HEADQUARTERS)  
BANGALORE

No.HQ:ADMN:4.20(2)

July 30, 1987

OFFICE MEMORANDUM

Sub: Norms for Stenographic Staff-Procedure for promotion to the newly created post of Personal Assistant in the grade of Rs.2000-3200.

Vide DOS OM No. 2/1(3)/83-I(i) dated July 23, 1987, 15 posts of PA 'B' (existing scale Rs. 1640-2900) have been upgraded to the scale of pay of Rs.2000-3200 in DOS/ISRO Centres/Units. Further 5 posts in the same grade (Rs. 2000-3200) have been newly created during this year, vide OM No. 2/1(3)/83-I (iv) of July 23, 1987. This being a newly created higher grade for, Stenographic staff in Group 'B' category, norms do not exist at present for promotion to this grade. The matter has been examined and it has been decided that the following shall be the procedure for promotion to and filling up of these newly created posts in the grade of Rs. 2000-3200, until further orders.

- 2.1 The newly created stenographic post in ISRO/DOS Centres/Units in the grade of Rs. 2000-3200 shall be designated as Personal Assistant 'C'.
- 2.2 All those who are currently holding the existing posts of Personal Assistant 'B' in the grade of Rs. 1640-2900 shall, with immediate effect, hold the posts and scale as personal to them, as long as they are not reviewed and promoted as PA 'C' or not vacated the post for any reason. The posts of PA 'B' shall stand abolished as and when the incumbents vacate the post on promotion to the newly upgraded/created post of PA 'C' or cease to hold the post for any reason.
- 2.3 Promotion to the post of PA 'C' in the scale of pay of Rs. 2000- 3200 will be within the respective ISRO Centre/Unit only. In this context, the Bangalore based Units (BBU) is treated as one unit.
- 2.4 For promotion to the post of PA 'C', the concerned Centre/Unit shall constitute appropriate DPC.
- 2.5 All existing PAs 'B' in the scale of pay of Rs. 1640-2900 grade, shall be assessed by the DPC for promotion to the post of PA 'C' in the grade of Rs. 2000-3200 and the following shall be the elements for assessment:

(a)	Interview	:	70 Marks
(b)	ACR	:	<u>30</u> Marks
	Total	:	<u>100</u> Marks

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To qualify for promotion, candidates should secure at least 60% marks in the aggregate with a minimum of 50% marks in each of the two elements of evaluation. The review will be as on the rationalised date of 1st September, 1987.

- 2.6 The DPC will assess the eligible candidates and drawup panels which will be valid for a period of 18 (Eighteen) months from the date of its approval by the competent authority. Promotions will be effected based on the panel position, availability of vacancies in the respective Centre/Unit and subject to the rules regarding reservation for SC/ST, etc.
- 3.1 If the posts of PA 'C' cannot be filled up by promotion of the existing PAs 'B' in the scale of Rs. 1640-2900 from the panel proposed as per para 2.6 above, such of those PAs 'B' (in the scale of pay of Rs. 1640-2900)/PAs 'A' who have put in a combined service of 3 years in the pre-revised scales of Rs. 550-900 and Rs. 550-750 will be eligible for consideration for promotion to the post of PA 'C' in the grade of Rs. 2000-3200, following the same procedure outlined in para 2.5 above.
4. The procedure laid down in the preceding paragraphs for promotion to the post of PA 'C' will apply only during the initial phase of filling up of the posts newly created during this year and to be created during 1988-89 in respect of posts already approved for creation. Separate orders will be issued in due course of time prescribing the norms and procedures for promotion to the posts for PA 'C' to be filled up in future.
5. Hindi version of this OM will follow.

(S.S. Viswanathan)  
Director, PP & PM, ISRO



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H/S

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD  
ORIGINAL APPLICATION NO. NO. 124/91

Between..

K. Arvindaksham

..Applicant.

Versus

Union of India & Ors.

..Respondents

POINTS OF ARGUMENTS

1. That the applicant has challenged the decision of respondent department, not selecting the applicant, and selecting the applicant & not recommending for promotion to the post of PA-Gr.C and promoting respondents no 3 to 6. That the applicant has challenged the Memorandum of the respondent department July, 1987 as ultravires to the Constitution of India whereby the weightage to the elements of interview is given 70 % and declaration of process of DPC for promotions reference to Memorandum 30,7,87 giving excess weightage to the elements of interview, as constitutional and violative of Articles q4 & 16 of the Constitution of India. and laying down the minimum qualifying marks etc.

14 & 16 of the Constitution of India.

2. The applicant has joined the service as Stenographer in scale Rs 425-700 from 5.5.73, he was promoted w.e.f. 21.10.78 in scale Rs 470-750 and further promoted as PA Grade A from 1.4.1982. Further promotion was granted to the applicant as PA Gr-B w.e.f. 17.2.1983 in scale Rs 550-

900.

3. That from the post of PA Gr-B, further promotions was as PA Gr-C. The posts were upgraded posts, as per say

Re. Arvindaksham  
B. N. Sankar  
19-1-2008

filed by  
Mr. Pathak  
in C-1  
no  
19/1/00

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of the respondent. The said promotion was on the basis of interview and annual Confidential Records, as per office memo at Annexure A/1 which provides giving weightage of 70 marks for the interview, 30 marks for ACR and to qualifying one should secure 60% in aggregate with minimum 50% on each of 2 elements of evaluation.

4. That the respondents have filed the reply to the application and from the reply, rejoinder and Affidavit to sur Rejoinder, the following facts are admitted by the department:

i) That the post in question was the upgraded post required to be filled up on the basis of seniority-cum-merit. That intention of upgrading the posts were to avoid stagnation of employees and is filed up on basis of scrutiny of service record.

That incase of promotion of seniority - fitness, seniority will prevail and employee can be denied promotion only if he is found unfit. In the present case during the services of applicant admittedly there is no adverse report, nor any thing is produced before the Tribunal to justify the decision of the department/ DPC , though called for.

Therefore the application is required to be allowed on that ground . Reliance is placed on

1. 24(1)GLR319, in case of D.B. Shah V/s State.
2. AIR 1968 SC 1113. State of Mysore VS Syed Mohmad.

ii) That As per memorandum, relied by the respondents, 70 marks allotted for interview and 30 for service

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records.

--That there is no criteria or guidelines provided in the memorandum, how to judge the candidate.

--It will apply to future vacancies.

--It is for promotion to the post of PA- C and not for upgraded posts.

iii) No norms were fixed by the selection committee for allotment of marks amongst themselves.

iv) No details submitted before the Tribunal even though asked for, about DPC proceedings of 1987 & 91. I reserve my right to give further submission if the respondents intend to produce the same now.

v) The service records of the applicant is also not produced before the Tribunal to point out that applicant's service record was such that it can be said that he is unfit for promotional post. That when the criteria is seniority-cum-merit, it is well settled principles that the seniority will prevail. That the applicant is having meritorious service records.

vi) That the post was upgraded, therefore, senior-most employee is required to be considered on basis service records.

vii That complaint of the applicant with regard to HBA was pending investigation where the applicant has given details of officers who were members of the selection committee. It was at preliminary enquiry stage, there after the Charge-sheet was issued to the



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applicant. Thus applicant has disclose the names of the officers , before DPC was constituted, i.e. preliminary investigation . The names disclosed by the applicant were the Members of DPC.

viii) The when the applicant was called before DPC, one of the member was not present, therefore it is not known how the DPC has considered the case of the applicant.

ix) The Circular of 1987 says that the procedure prescribed therein to be observed for future vacancies.

5. From the above clear position, the judgement cited by me about weightage to be given to oral interview, the decisions and procedures to be followed by the selection committee, allotment of marks in interview and to find out posting of employee on the basis or seniority and therefore, present application is required to be allowed with cost.

6. As per the criteria laid down the applicant was entitled and eligible for promotion in 1987 but he was considered unfit for promotion, on the ground that some actions were contemplated against him. That there was a case as stated in para 6.4 against of the applicant under investigation about House Building Advance granted to him. That ultimately the applicant was exonerated also, as stated in para 6.4.. Therefore, it is prima facie clear that he was deprived of promotion from 1987, illegally. That the 3 grounds stated in para 6.7 which were foundations

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against the applicant for promotion, which were illegal and unjustice.

- (i) pending proceedings against the applicant,
- (ii) not exonerated and
- (iii) giving weightage of marks in interview.

The DPC of 1987 & 1991 were influenced extraneous consideration as some of the members were also involved in HBA case due to discloser of their names by applicant in preliminary enquiry. That details of those persons were submitted by the applicant at the time of preliminary enquiry. These officers were the members of selection committee. The person who has written ACR of the applicant was also involved in HBA issue and the same was the position of countersigning authority.

7. That even in 1987 DPC where 70 marks was given weightage and in interview no relevant questions were asked to the applicant ( refer para VI.6) It is important to note that Mr. Calla was not present during interview who was one of the member of selection committee and questions asked were of no relevance. The applicant had noted the questions asked to him during the interview which are stated in para VI.8 & 6.9. The Committee should not decide the case of applicant in case of absent of any member. It is admitted that Mr. Calla was absent in 1987 DPC. Hence the proceedings were vitiated only on that ground as non application of kind of all the members of committee.

8. Prejudice of members of the interviewing committee was pointed out by the applicant vide letter at

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Annexure A/4, That 3 members i.e. Mr. Calla, MM Shah & BS Joshi were also involved in HBA case, whose names were disclosed by the applicant in his preliminary enquiry and steps were taken to record their statements, by the investigating officer.

9. That the DPC in 1991 was not pointed out that the applicant was exonerated from the charge-sheet. That the correct ACRs produced before the DPC for consideration. That the charge sheet pending was considered as adverse against the applicant. That except said charge-sheet, there is nothing adverse against the applicant. The respondents have not produced the proceedings of DPC or ACR of applicant to justify the contentions & reply. There was no foundation for DPC come to the conclusion that applicant was unfit.

10. That the memo for promotion to PA-C criteria is interview and ACR. That for interview was given weightage of 70 marks out of 100. That there is no justification to give weightage of 70% marks for interview. It is unjust, as held by the Hon. Supreme Court. It is held that more than 15% weightage for oral interview is illegal. Moreover, the said memo further provides that minimum 50% qualifying marks and aggregate 60% marks require to be obtained which is also bad in law. Giving 70% marks for interview is illegal, arbitrary. That there was no guidelines provided, how the marks are to be divided and the basis of awarding marks. In absence of the guidelines the members were free to assess the candidates as per their own sweet will. There is no independent person to watch the



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performance of the members of the committee, therefore, there was arbitrary exercise of power and absolute discretion was with the members of selection committee, hence is absolutely illegal. Kindly refer to main grounds stated in para VI.15 to 21.

11. That the legal contentions are not denied by the respondents and therefore in light of following judgments the procedure followed by DPC and the memorandum relied upon by the respondents, for selection etc are also being unconstitutional, arbitrary, require to be set aside in light of following judgments.

- i A.K. Simpi v/s State of Gujarat, 1983 GLH 36.
- ii Ajay Hasya AIR 1981 SC 722 where more than 15% marks for oral interview is declared as arbitrary.
- iii Peeriakar Uppani case AIR 81 SC 2303 where 75 marks for oral interview out of 275 is held to be arbitrary
- iv Case of Mehu reported in AIR 1980 SCC 1975 - 15% weightage given for oral interview out of total 150 marks declared as extraneous.
- v In case of R.P. Sapru v. State of J & K AIR 1981 SCC 1001 allocation of 30 marks for viva voce declared as illegal.

That the present selection is require to be set aside on the ground of time consumed by selection committee to examine candidates and the question asked by the members of selection committee. The selection committee not considering the applicant for promotion is ex facie arbitrary and the proceedings of selection was in is

violation of Articles 14 & 16 of the Constitution of India.

12. As I have stated in para 6.22 there was no criteria or guidelines before the selection committee of before 1987 DPC or 1991 DPC. Kindly refer to para 6.29 of the application. I have relied on the judgment of Gujarat High Court reported in the said para. Therefore, the selection procedures followed by the DPC is being unconstitutional require to be set aside.

13. Even before the DPC the correct records of the applicant was not produced, only on the ground that the enquiry is pending against the applicant, he was denied promotion which is exfacie illegal. That the respondents have not produced before the Tribunal the documents and the files of selections etc though have called for hence adverse inference is require to be drawn in favour of applicant against respondents. There is nothing on the record based on which the applicant was declared failed. I reserved my rights to file further arguments, in case the respondents produce, the above referred files to DPC and nothings etc. before the Hon'ble Tribunal.

14. I have pointed out prejudice of the members of DPC against me and the authority which were writing SCR of mine which I have stated in para 6.24 and 6.26 where I have pointed out the HBA pending cases and details of preliminary investigations conducted against them.

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15. I further say that the private respondents are illegally considered and promoted and therefore, promotion of those employees are required to be quashed and set aside and the applicant is required to be granted promotion on the upgraded post, on basis of his service records.

19/12/2015

D. H. P.  
CH. Alhak  
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BEFORE THE HON'BLE  
CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD

Original Application No.124 of 1991

Shri K. Aravindakshan ... Applicant

V/s.

Union of India and Anr. ... Respondents

Written arguments on behalf of the respondents

1. At the outset it is stated that the application of the applicant deserves to be dismissed on the ground that he is guilty of making false statements and false documents in order to mislead the Hon'ble Tribunal and so he does not deserve any

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relief whatsoever as claimed by him and his application deserves to be dismissed on this ground alone. The facts in brief are as follows :

1.1. The applicant was recruited as Stenographer with the respondents by following due process of selection with effect from 5.5.1973. After review by DPC he was promoted in the pre-revised grade of Rs.470-750 with effect from 21.11.1978. However, I state that the applicant was not promoted to the post of Personal Asstt - A (PA-A for short) with effect from 13.1.1982, but the designation and grade of PA in the scale of Rs.450-750 was abolished, revised and upgraded to Rs.570-750. The applicant was automatically placed in the revised grade of Rs.550-750 with the designation of PA-A with effect from 13.1.1982. What is material for the purpose of this application is that the applicant was promoted to the post of PA-B with effect from 17.2.1983 in the grade of Rs.550-900 (pre-revised) in the revised grade of Rs.1640-2900 after selection by the appropriate DPC. I further state that the stenographer staff in group-B (gazetted) category had been designated as PA-C and as per ISRO HQ O.M. dated 30.7.1987, it was decided that all those who held PA-B posts shall hold the same

with corresponding scale as personal to them so long as they are not reviewed and promoted as PA-C or did not vacate the PA-B post for any reason. The post of PA-B was to stand abolished when the incumbent holding such personal post was promoted or ceased to hold the post and effect the same for any reason. The office memo dated 30.7.1987, which is annexed to reply to O.A. as Annexure-R1 throws much light on the subject. It is not necessary to quote the whole here. It is however, noteworthy that 15 posts of PA-B have been upgraded and 5 posts have been newly created in the scale of Rs.2000-3200 and that it is being a newly created higher grade from group-B category, there was no norms existing for the same at that time. The matter of policy and procedure was then prescribed for promotion as well as for filling up the newly created post until further orders. For the purpose of promotion, a DPC was to be constituted and the elements for assessment for the purpose of selection were to be 70 marks for the interview and 30 marks for evaluation of ACR, totalling 100 marks in all. With further requirement that the candidate should obtain a minimum of 50% of marks in each of the element and should get an aggregate of minimum of 60% of marks in both. A panel was to be pre-



pared which was valid for 18 months, promotion was to be effected based on panel position and availability of vacancies. I state that considering these factors, it cannot be said that the promotion was to be effected directly on seniority-cum-merit basis. The prescribed policy is stated above. In any case the DPC which met in the year 1987 and in the year 1991 has found the applicant unfit so his seniority alone cannot make him entitled to promotion. It is submitted that the posts were to be filled in on merit-cum vacancy basis. The O.M. remained in force in the years 1987 and 1991 selections. As regards the absence of one member of the panel, I state that the O.M. does not prescribe any number and generally as per the convention in ISRO also, enough number of persons are included in selection panel to meet with such contingency and absence of one member does not affect quorum of the meeting.

1.2. The applicant has challenged the O.M. at Annexure-A1 on the ground that undue weightage of 70 marks was given for interview and only 30 marks for ACR and this is against the various Supreme Court judgements and judgements of other courts and hence the process of selection has been vitiated

and deserves to be set aside. In this regard it is stated that ISRO is perfectly entitled to frame its own rules for selection.

1.3. It is submitted that in fact the authorities cited by the applicant in support of his contention relate to the marks obtained in the written examination vis-a-vis those obtained in the interview etc. The respondents rely upon the judgements in 1994 SC 141 and 1995 SC 39 which lay down that there cannot be any limit to the percentage of marks prescribed for the interview, where the elements for assessment are viva-voce and academic performance, meaning thereby ACR in the present case. It is submitted that the contention of the applicant in this regard has no substance. As regards the alleged absence of guidelines prescribed in the memo as to how to judge the candidate, it is submitted that in a viva-voce test where questions are to be put to a candidate, there cannot be any guidelines about exact questions to be put and when highly placed officers constitute the DPC, it should be left to them what relevant questions should be put to the candidate. Detailed instructions or guidelines can never be laid down for the same. So far as the ACRs are concerned,

the grading can be given evaluating the ACRs themselves. I further state that the OM itself shows that it was made applicable to the officials/stenos who held the post at that time and it cannot be said that it applies to vacancies which were to occur in future. I also state that whether called upgradation or promotion, the avenue to PA-C was open through this O.M. only and not otherwise. As stated in the reply to the O.A., it is clear that the marks given by the members of DPC were to be considered in aggregate and then the average of the marks was to be considered to decide whether the candidate was fit or not. The respondents are not aware of any instructions given by the Hon'ble Tribunal to produce the DPC proceedings of 1991 and 1987, but they are prepared to produce the same if so directed by the Hon'ble Tribunal. Same applies to ACR of the applicant also.

1.4. The applicant has made much of the fact that when he appeared for interview in the year 1987 he had already disclosed the names of officers who had indulged in malpractices as regards the HBA and even then the DPC was constituted comprising such officials and who are naturally biased against him and so the process of selection was therefore



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vitiated. It is hereby denied that the applicant had given any such names or lodged any such information before the DPC of 1987 was constituted. The applicant has failed to produce any copy of any information so alleged to have been given as regards such officers. Here it may be noted that according to him such officers or some of them constituted the DPC for the year 1991 also where again he was not found fit and therefore prejudice was caused to him. In fact only on 5.12.1988, during the course of enquiry against him after DPC of 1987, he wrote one letter making allegations as regards misconduct in obtaining HBA against certain officers. It is noteworthy that out of members of selection panel for the years 1987 and 1991 only Shri M.M. Shah has been named in this letter. For this reason, copy of this letter is not produced by the applicant. If so directed, the same will be produced by the respondents. As such the question of any prejudice on the part of DPC panel in the year 1987 cannot arise. In this regard it would be proper to point out at this state that the applicant was interviewed by the DPC again on 19.2.1991 and the result was placed in sealed cover. When he was exonerated from the disciplinary proceedings it was found that the DPC did not find him fit. The

result was communicated to the applicant on 15.3.1991 and on this very day he has chosen for the second time to make allegations in writing against the superior officers and here for the first time he has stated that he made such allegations even before the DPC meeting in the year 1987 which is not true. He did so on 5.12.1988 only. It goes without saying that the theory that it was because his allegations were made in the year 1987 prior to DPC of 1987 and so due to prejudice of DPC members he has suffered is totally baseless and false. It is denied that any superior officer has ever indulged into any such malpractice. In fact it has been found, as stated in para. 9 of the Sur-Rejoinder, that the allegations made by the applicant by letter dated 15.3.1991 have been found to be totally baseless and in turn the applicant has been asked to show cause for not making these allegations through proper channel. In this regard I further state that the DPC met first on 24.8.1987 and the charge sheet was served upon the applicant on 16.9.1987. Show cause notice was issued to the applicant on 16.2.1987, but the DPC was not aware of the charge sheet served upon the applicant on 16.9.1987. As no vigilance case was pending against the applicant when the DPC met on

24.8.1987, the question of informing the DPC just does not arise. For the interview on 19.2.1991 as stated above, sealed cover procedure was adopted.

1.5. It is noteworthy that the applicant was exonerated by an order dated March 8, 1991 and that also by Shri M.M. Shah, Controller of the respondent, whereas the second interview was held on 19.2.1991. Therefore the question of bringing the fact of exoneration to the notice of DPC cannot arise. It is noteworthy that Shri M.M. Shah is the only member of DPC for the years 1987 and 1991 against whom the allegations were made by letter dated 5.12.1988 and Shri M.M. Shah has exonerated him which dispels the theory of prejudice.

2. I say and submit that the applicant has concocted the questions and answers for both the interviews of the years 1987 and 1991. As already stated, his case is that he was interviewed for a short time and he was asked merely formal questions and when the interview was going on he went on noting down the questions and answers both vide para. 6.9 of the Orig. Application. Apart from the fact that a person cannot remember all the questions and answers, if he were to make a note of the



same later on after the interview, it must be noted that he would not have been allowed to note down the questions and answers at the very time of interview by the interviewing panel. He would have been immediately asked what he was doing and to pay attention to the questions that were put to him and to reply properly. It is not normal for any candidate to go with a pen or pencil for the interview. I repeat that the applicant has just concocted the whole interview and there is a definite purpose behind the same. The applicant relies upon the judgement of a single judge of the Hon'ble High Court of Gujarat reported at 1983 GLH page 36 in the case of A.K. Shimpi and others V/s. State of Gujarat and Ors. The applicant has in fact tried to mould his case as per the reasoning given in this reported case. The authority cited states that in a case where the interview test is prescribed as the sole or one of the modes of selection, if the interview is shown to have lasted for a very brief period, say two or three minutes per candidate on an average, and it is shown that the questions asked were formal questions such as relating to the parentage and residence of the candidate and particularly no question is shown to have been asked which has any relevance to the

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assessment of the suitability of the candidate, the oral interview test would run the real risk of being vitiated because it would be impossible in such an interview to assess the merit of the candidate with reference to the relevant factors. In the instant case the applicant has stated that his interview lasted for 2-3 minutes. It is submitted that there was a panel of experts selected by the Chairman on both the occasions and the very concoction perpetrated by the applicant shows that he was not asked only the formal questions, but was assessed in the context of the ACRS and the answers given in the interview. In fact the very necessity felt by the applicant to concoct the questions and answers goes to show that he was properly interviewed by means of putting relevant questions to assess his merit. It is submitted that the OM laid down the norms and mode of selection before the interview was taken and they were known to the members of the selection committee. It could not have been unknown to the candidates also. The said committee had the ACRs of all the candidates before it and each member put his own marks for both and the average was taken out and selection was made. Therefore there was material before the selection panel. The case of the applicant rests upon the

fact that the committee was prejudiced because he had made allegations against its members. This is wholly untrue as explained above. The case of the applicant is that he made the allegations right from the year 1987 against the panel member in writing as per letter dated 15.3.1991. However, he has failed to produce any document of 1987 in support thereof. It is noteworthy that according to him he made allegations against Shri M.M. Shah who was a member of the panels also. However, the very same member, Shri M.M. Shah has exonerated the applicant from the charges levelled against him and has passed a very reasoned and just order in favour of the applicant. To say therefore that all members of the panel knew each other and supported each other is totally false. It is noteworthy that on 15.4.1996 panel comprises Shri M.M. Shah and Shri S.R. Naik who were members of the panel of 1991 also have selected the applicant by the same method of selection, Shri M.M. Shah being a member of the first committee also.

3. As regards the disciplinary proceedings faced by the applicant, as the applicant was not served with any charge sheet when the 1987 DPC met, the fact was not brought to the notice of the DPC and



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no prejudice was caused by the said fact.

4. So far as the selection of 1991 is concerned, sealed cover procedure was adopted and when the applicant was exonerated the sealed cover was opened and the result was communicated to the applicant on 15.3.1991 when he immediately chose to level baseless and wild allegations against the officers with a view to concoct the evidence against the officers.

5. I say and submit that the applicant is guilty of concocting the evidence and producing the same before the Hon'ble Tribunal as stated above. He has not come with clean hands. On this ground alone, his case is liable to be thrown out, apart from drawing adverse inference against him. The respondents submit that if the Hon'ble Tribunal desires, they are prepared to produce the record of selection panel's proceedings and ACR for both the years and letter dated 5.12.1988 which the applicant has failed to produce. The applicant has failed to get any order from the Hon'ble Tribunal for production of the same.

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6. It is submitted that the applicant has failed to implead the officers as respondents in his Original Application against whom he has chosen to make personal allegations on the ground that he informed about their misconduct regarding HBA to the institution and so they were personally prejudiced against him as a result of which he suffered in the selection process. All these officers were necessary parties and in their absence plea of malafides against them cannot be entertained. It is noteworthy that as such they have not been given any opportunity to meet with the allegations. The application to add them as parties has been rejected and the S.C.A. No.7484 of 1999 filed by the applicant against the said order rejecting the application in the Hon'ble High Court has been withdrawn by the applicant. So the applicant is now precluded from raising any plea of personal malafides against such officers. It is noteworthy that neither the present respondents nor the proposed one were heard by the Hon'ble High Court while passing the order permitting withdrawal of the petition.

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7. In view the above, the original application  
deserves to be dismissed.

B N Deel  
(B.N. Doctor)

Addl. Standing Counsel for the  
Central Government

Ahmedabad;

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