

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. III OF 1986.

Date of decision : August 14 ,1987.

Shri Kishore Chandra Pattanayak,
son of Late Dr.Gopal Chandra Pattanayak at present
working as Special Secretary,Home Department,
Secretariat Building,Government of Orissa,
Bhubaneswar.

APPLICANT.

Versus

1. State of Orissa,represented
by the Secretary,Home Department,
Secretariat Building,Bhubaneswar.
2. Union of India,represented by the
Secretary, Ministry of Home Affairs,
North Block,New Delhi-110 001.
3. Shri Rajendra Narayan Das,
Director-cum-Director General of Police &
Inspector General of Police(Vigilance),Orissa,
Commercial Tax Building,Circuit House Premises,
Cuttack-753 001.
4. Shri Prafulla Chandra Rath,
Special Inspector General of Police,
Administration,Law & Order and Intelligence,
Police Line,Cuttack-753 001.
5. Secretary, Department of Personnel &
Administrative Reforms,Government of India,
New Delhi.
6. Shri L.I.Parija,I.A.S.,
Chief Secretary,Government of Orissa,
Secretariat Building,Bhubaneswar-751 001.
7. Shri A.K.Ray,I.A.S.,
at present working as Principal Secretary,
Government of Orissa,Secretariat Building,
Bhubaneswar-751 001.
8. Shri Bhupinder Singh,I.A.S.,
Chairman, Industrial Development Corporation
of Orissa Ltd.,Bhubaneswar.

9. Shri R.N.Das,I.A.S.,
at present working as Secretary,
Department of Finance, Government of Orissa,
Secretariat Building, Bhubaneswar-751 001.

RESPONDENTS.

For Applicant : M/s.G.A.R.Dora, Ananga Patnaik,
L.Pangari & Jagannath Patnaik,
Advocates.

For Respondent
Nos.1 and 6 to 9 : Shri Gangadhar Rath, Advocate General.
Shri Pradyumna Kumar Mohanty,
Additional Standing Counsel(State).

For Respondent
Nos. 2 & 5 : Shri A.B.Mishra, Senior Standing Counsel(Central).

For Respondent
No.3 : M/s.S.S.Basu, S.S.Rao,
G.S.Das, Pradip Mohanty,
B.P.Ray, Sisir Das, Advocates.

For Respondent
No.4 : M/s.M.R.Panda, P.K.Panda,
Dr.S.P.Pati, G.R.Nai, R.K.Pradhan,
Advocates.

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER(JUDICIAL).

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER(J) In this application under section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) Annexure-5 is sought to be quashed which has created a dispute centering around three highly placed Police Officers who are members of the Indian Police Service posted and serving under the State Government of Orissa.

• 2. The case of the applicant is that on the retirement of Shri B.K.Panigrahi, I.P.S., on 31.8.1986, the post of Director General of Police-cum-Inspector General of Police in the State of Orissa fell vacant and the Government of Orissa in Home Department vide its Notification No.50579/P/IPS-1-15/85 dated 30th August, 1986, transferred and posted Shri S.S.Padhi as Director General of Police-cum-Inspector General of Police as he was already serving as Director General of Home Guards-cum-Inspector General of Fire Brigades and ex-Officio Chairman, Police Welfare Housing Corporation, Orissa. Simultaneously, in the notification of the same day, Mr.R.N.Das, I.P.S. (Respondent No.3) was promoted to the rank of Director General of Police-cum-Inspector General of Police and on being promoted to the rank of Director General of Police, Mr.R.N.Das, I.P.S. (Respondent No.3) was posted as Director-cum-Inspector General of Police, Vigilance, Orissa (vide Annexure-5). Being aggrieved by this order, the applicant filed an application under section 19 of the Act with a prayer to strike down the recommendations of the Screening Committee empanelling Mr.R.N.Das, I.P.S. (Respondent No.3) and Mr.P.C.Rath, I.P.S. (Respondent No.4) as it is vitiated under the law because the procedure contemplated under the relevant rules or administrative instructions/guidelines laid down by the Government of India were not followed by the Screening Committee and it is furthermore prayed to quash the order of promotion of Mr.R.N.Das, I.P.S. (Respondent No.3) to the post

of Director General of Police-cum-Inspector General of Police(Vigilance)as such appointment is based on illegal grounds. Further grievance of the applicant is that he being the seniormost officer in the cadre after Shri S.S.Padhi was posted as Director General of Police-cum-Inspector General of Police, the promotion of Mr.R.N.Das(Respondent No.3) superseding the present applicant is illegal, unjust,improper and against all canons of justice, equity and fair play and hence promotion of Mr.R.N.Das(Respondent No.3) vide Annexure-5 should be quashed. The present application under section 19 of the Act was filed on 11th September,1986.

On 29th September,1986 learned Advocate General raised the preliminary question of maintainability of the application because according to him, Section 20 of the Act created a bar for admitting the case as the applicant had not exhausted other remedies available to him and therefore, it was contended by learned Advocate General that this case should not be treated as an exceptional one and the Bench should apply the word'ordinarily'to the facts of this case and should hold that the application is not maintainable. Detail discussion on this point will be taken up at the appropriate place. While arguments on this question were advanced at the Bar it was submitted before the Bench by learned Advocate General that the Screening Committee appointed by the State Government is proposing to reconsider the case of the applicant and therefore in pursuance to this submission of learned Advocate General and as agreed by the counsel appearing for both sides, we adjourned the matter for some time to enable the Screening Committee to take its further decision. The Screening Committee again met on 15.10.1986. This meeting was attended by Mr.L.I.Parija, I.A.S.,Chief Secretary to the Government of Orissa, in the chair and Dr.Bhupinder Singh,I.A.S.,Commissioner,Agriculture & Rural Development

and Mr.A.K.Ray,I.A.S.,Additional Development Commissioner and Secretary to the Government of Orissa, Planning and Coordination Department.

After considering the up-to-date confidential rolls of Shri K.C.Pattanayak(applicant), the committee was of opinion that Shri Pattanayak was not fit for empanelment. As an abundant precautionary measure the applicant sought to amend the original application by adding certain averments attacking the findings of the Screening Committee held on 15th October,1986 and after hearing counsel for both sides the application for amendment was allowed. Opportunity was given to the Respondents to file further counter, if they so desired. Some time later another application was filed on behalf of the applicant seeking to implead the members of the Screening Committee including the Chairman,Mr.L.I.Parija and in the said application it was also sought by the applicant to implead Mr.R.N.Das, I.A.S.,the [redacted] Home Secretary to the Government of Orissa, who had attended the meeting held in August,1986 as a special invitee. On 19th March,1987 this Bench allowed the application. Notices were sent to the newly added respondents(names of which have been mentioned above) to file their show cause, if any, and the newly added respondents have filed their counters separately.

3. The Central Government(Respondent No.2) has not filed any counter for the reasons best known to the concerned authorities. The State of Orissa (Respondent No.1) has filed its counter both to the main application and to the amended application.

Respondent Nos.3 & 4 namely Mr.R.N.Das & Mr.P.C.Rath have filed their counter separately and the newly added respondents namely Mr.L.I.Parija(Respondent No.6),Mr.A.K.Ray(Respondent No.7),Dr.Bhupinder Singh(Respondent No.8) and Mr.R.N.Das(Respondent No.9) have filed their

counter separately.

The State Government in its counter has maintained that no illegality has been committed by the Screening Committee in the matter of empanelment of M/s.R.N.Das and P.C.Rath because the Screening Committee after perusing the relevant records and judging the performance of each of the officers therefrom have arrived at a just conclusion which the Government accepted in usual course and equally no illegality has been committed in the matter of promotion of Mr.R.N.Das to the rank of Director General of Police. It was also maintained in the said counter that the case of the applicant,Mr.K.C.Pattanayak had not been initially rejected by the Screening Committee and it was kept open to be reconsidered after all the up-to-date confidential rolls were made available before the Screening Committee and the Screening Committee again having met on 15.10.1986 and after considering all records pertaining to the present applicant concluded that the applicant was not fit for promotion and finally closed the chapter. The law laid down regarding consideration of the cases of officers who came within the consideration zone having been strictly complied with by the Screening Committee and the Government not having found any illegality or irregularity committed by the Screening Committee it had no other option but to accept the recommendations of the Screening Committee and accordingly orders were passed by the Government which cannot amount to any illegality. This is the crux of the averments contained in the counter filed on behalf of the State Government.

Respondents 3 and 4 have practically stated the very same things in their counter and it needs no repetition.

10a The newly added respondents namely Respondents 6 to 9

have stated in their counter that no bias,prejudice or ill-feeling existed in the mind of either the Chairman or the Members of the Screening Committee including the special invitee,Mr.R.N.Das who had no part to play in the process of selection and the members of the committee including the Chairman had kept an open mind till 15th October,1986, when the committee arrived at its own conclusion after forming their just opinion based on the confidential rolls of the applicant and that he(the applicant) was not suitable for empanelment. It was furthermore averred by each of the Respondents mentioned above that there was no bias,malafide or anything of the like nature working in the minds of either the Chairman or any of the Members of the Committee against the applicant while adjudging his suitability.

On the basis of the aforesaid averments made on behalf of the either parties this Bench is now called upon to determine the legality or otherwise of the conclusions of the Screening Committee and also the action of the Government in accepting the recommendations of the Screening Committee and also the legality or otherwise relating to the promotion of Mr.R.N.Das,I.P.S.(Respondent No.3)to the post of Director General of Police (Vigilance).

4. Before dealing with the contentions of the parties before us, it would be convenient for better appreciation of the contentions, to state a few facts relating to the case which we have noticed from the record.

The applicant belongs to 1954 batch, Mr.R.N.Das,I.P.S.(Respondent No.3) belongs to 1955 batch and Mr.P.C.Rath,I.P.S.(Respondent No.4) and Shri S.N. Sinha,I.P.S.,at present Special Inspector General of Police (not a party in this application) belong to 1956 batch of I.P.S. Officers. A screening committee was formed to consider suitable officers for empanelment so as to be appointed to the post of Director General of Police. Mr.L.I.Parija,I.A.S.,

Chief Secretary to the Government of Orissa was the Chairman of the

Screening Committee and Mr.A.K.Ray,I.A.S.,Additional Development Commissioner and Dr.Bhupinder Singh,I.A.S.,Commissioner-cum-Secretary to the Government of Orissa,Agriculture and Rural Development Department were members of the said Committee. The first meeting of the Screening Committee was held on 19th August,1986. Though Dr.Bhupinder Singh could not be present in the meeting held on 19th August,1986,as he was away from headquarters, due to official and pressing engagements, the said Screening Committee with the remaining members scrutinised the available records of the three officers, namely,Mr.K.C.Pattanayak(applicant),Mr.R.N.Das(Respondent No.3) and Mr.P.C.Rath(Respondent No.4). Mr.R.N.Das,I.A.S.,Secretary to the Government of Orissa in Home Department had also attended the meeting as a special invitee. After scrutinising the records of the three officers mentioned above, it was found that the confidential rolls of the applicant,MR.K.C.Pattanayak from 20th February,1982 to 31st January,1983, not being available before the Committee it was of opinion that upon receipt of reports for the years 1983-84, 1984-85 and 1985-86, the case of the applicant would be again considered. Thereafter the Committee scrutinised and considered the available records namely the confidential rolls of Mr.R.N. Das(Respondent No.3)till 1984-85 and that of Mr.P.C.Rath(Respondent No.4) till 1983-84 and found them comparatively better than that of the applicant, Mr.K.C.Pattanayak.The committee after the above examination and presumably after some deliberations came to the conclusion that M/s.R.N.Das and P.C. Rath are fit to be included in the panel for promotion to the cadre of Director General of Police and this conclusion was arrived at on 19th August , 1986. Mr.R.N.Das(Respondent No.3) was promoted to the rank of Director

General of Police vide Annexure-5 dated 30th August,1986.

Before we decide the issues at hand, it is our initial duty to dispose of the preliminary objection raised by learned Advocate General appearing on behalf of the State of Orissa. Learned Advocate General contended that it was too premature on the part of the applicant to rush to the Tribunal without exhausting other remedies available to him, namely preferring an appeal or making any representation to the appropriate authority putting forth his grievance for promotion having been denied to him. This contention of learned Advocate General was based on the provisions contained under section 20 of the Act. Section 20 of the Act runs thus:

" 20. Applications not to be admitted unless other remedies exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section(1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

- (a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purpose of sub-sections(1) and(2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial. "

Learned Advocate General not only relied upon the provisions contained under section 20 of the Act but he strongly relied upon a judgment of the Calcutta Bench(unreported) in which one of the Members of this Bench(namely

Judicial Member Mr.Acharya) was a party to the said judgment passed in O.J.C.No.1818 of 1985. The case forming subject matter of O.J.C.No.1818 of 1985 arose out of an order passed by the Chief Administrator of the Dandakaranya Project refusing to grant revised pay to the petitioners in the said O.J.C. Those petitioners had made representations putting forth their grievances and the representation was pending by the time the application under Article 226 of the Constitution was filed. The case, on being transferred under section 29 of the Act came up before the Bench for admission and objection was taken therein as to the maintainability of the application because the petitioners not having exhausted the remedies available to them and especially because the representation was pending. Pendency of the representation heavily weighed with the Bench and therefore, it was held that the application was premature and barred under section 20 of the Act. Disposal of the representation was awaited and hence direction was given by the Bench to the Chief Administrator,Dandakaranya Project to dispose of the representation within a stipulated period. There was no dispute before us that every case has to be governed by its own facts and circumstances. The Calcutta Bench in the aforesaid case had interpreted the word 'ordinarily' basing on the observations of Their Lordships of the Hon'ble Supreme Court in a case reported in AIR 1961 SC 1346(Kailash Chandra v.Union of India).At paragraph 8 of the judgment Their Lordships have been pleased to observe-'ordinarily' means in the larger majority of cases but not 'invariably'. This eventually means that the Court or the Tribunal may make a departure from the general rule in appropriate cases. Legislature has also vested discretion with the Tribunal while using the word 'ordinarily' in section 20 of the Act. The Legislature has intended

J.M

that as a general rule every case cannot be thrown out merely on the ground that other remedies have not been exhausted. There might be cases where emergent situation may need immediate interference and therefore the Parliament in its wisdom has intentionally used the word 'ordinarily' having in its mind that there may be cases in which an aggrieved person should not wait to exhaust other remedies but should immediately seek for the interference and protection of a Court. Therefore each case has to be decided according to its own facts and circumstances.

The next question arises for consideration as to what would be an emergent situation ? In answer to this question we have no hesitation in our mind to say that if immediate relief is not given to the person aggrieved, if he is entitled under the law to so receive, then either substantial loss or irreparable injury would be caused to him. Applying this test to the facts of the present case one has to look into the emergent situation existing in the present case. The applicant is admittedly the seniormost officer whose case was being considered along with others. He has been denied promotion to the rank of Director General of Police, which is one of the covetable posts under the State Government. The apprehension of the applicant is that the appellate authority may take good bit of time to dispose of the representation. Till the disposal of the appeal the applicant would be deprived of the financial emoluments and the high official status and position if he has any merit in his case. Therefore, we feel that this case having been involved with certain emergent situations we would use the word 'ordinarily' in favour of the applicant and we would hold that section 20 of the Act does not create a bar for entertaining the application of the applicant, in the peculiar facts and circumstances of the case.

The conclusions of the Screening Committee empanelling
 Mr.R.N.Das(Respondent No.3) and Mr.P.C.Rath(Respondent No.4) for promo-
ken

tion to the post of Director General of Police and the order of promotion passed by the State Government appointing Mr.R.N.Das (Respondent No.3) in the rank of Director General of Police is sought to be assailed mainly on the following grounds :

- (i) The guidelines in the form of administrative instructions not having been followed by the screening committee the entire proceeding is vitiated and consequently the promotional order contained in Annexure-5 is also illegal, and is liable to be quashed.
- (ii) Deferring consideration of the case of the applicant, Mr.K.C.Pattanayak to a later date by the screening committee and before finalising the case of Mr.K.C. Pattanayak adjudging his suitability or otherwise, empanelment of Respondents Nos.3 and 4 and promotion of Respondent No.3 vide Annexure-5 is itself indicative of the fact that consideration of the case of the applicant,Mr.K.C.Pattanayak on a later date is merely an eye wash - somehow to comply with the principles of natural justice that the case of all the officers coming within the consideration zone was considered though in fact consideration of the the case of the applicant,Mr.K.C.Pattanayak on a later date is no consideration at all in the eyes of law and therefore, the entire proceeding is vitiated, suffering from arbitrariness and violation of principles of natural justice.
- (iii) From the action of the Screening Committee and the action of the Government promoting Mr.R.N.Das, Respondent No.3 it would be clearly indicative that bias and prejudice was existing in the minds of the officers who had participated in the process of selection and therefore, the conclusions arrived at by the Screening Committee is unjust,improper and should be quashed. The recommendation of the Screening Committee being the result of bias and prejudice existing in the minds of the members of the Committee,action of the Government in promoting Mr.R.N.Das(Respondent No.3) is illegal, unjust and improper.

5. Before we deal with the merits of the case it would be appropriate and convenient to dispose of certain questions of law mooted at the Bar. Learned Advocate General contended that while considering the merits of the case and the extent to which the Tribunal could give relief

to a person aggrieved, it should be kept in view that Hon'ble Supreme Court in the case of Sampat Kumar versus Union of India reported in AIR 1987 SC 386(at paragraph 15) laid down that the Tribunal has been contemplated as a substitute and not supplemental to the High Court in the scheme of administration of justice. Basing on this observation of the Hon'ble Supreme Court it was contended by learned Advocate General that in regard to service matters the powers of the Tribunal are co-extensive with that of the High Court while exercising its powers under Articles 226 and 227 of the Constitution of India. It was further contended by learned Advocate General that in a series of decisions including the judgment of the Hon'ble Supreme Court published in AIR 1979SC 1596(D.D.Suri versus Union of India) it has been laid down that the High Court acting under Article 226 of the Constitution or the Hon'ble Supreme Court under Article 32 of the Constitution do not act as a Court of Appeal over the assessment,orders or decision of administrative authorities including the quasi-judicial authorities exercising powers under the Constitution. According to learned Advocate General the Courts can interfere with an order,if it is without jurisdiction or in disregard of law or the established prescribed procedure or if the order is grossly arbitrary or capricious. Learned Advocate General also relied upon the cases decided by Hon'ble Supreme Court in Parry & Co. versus Judge,2nd I.T. reported in AIR 1970 SC 1334, Hari Vishnu v.Ahmad Ishaque reported in AIR 1955 SC 233, Parry & Co. v. Commercial Employees' Association, Madras reported in AIR 1952 SC 179, Veerappa Pillai v. Raman and Raman Ltd. reported in AIR 1952 SC 192 to substantiate his contention that a writ of Certiorari could be issued for correcting errors of jurisdiction and only when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction and furthermore the Court while issuing a writ of Certiorari acts in exercise of a supervisory power and not with appellate jurisdiction. Basing

on the observations of the Hon'ble Supreme Court in the aforesaid cases it was also contended by learned Advocate General that the Court cannot review the findings of fact reached by the inferior court or Tribunal even if they be erroneous and it cannot sit in appeal over the findings of fact recorded by a competent Tribunal. Learned Advocate General also relied upon the judgment of the Hon'ble Supreme Court reported in AIR 1975 SC 2151 (State of Andhra Pradesh versus Chitra Venkata Rao), wherein Their Lordships were pleased to hold that the High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant and he further contended that an error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact, however wrong it may appear to be. To put the contentions of learned Advocate General in a nutshell is that the Administrative Tribunal exercising supervisory jurisdiction on the recommendations of the Screening Committee and the decisions and orders of the State Government, cannot act as an appellate forum and the questions raised by the applicant to impugn the recommendations of the Screening Committee or the order of appointment has to be determined in the light of the principles laid down by the Hon'ble Supreme Court. We have no dispute relating to the proposition of law enunciated by learned Advocate General as mentioned above in regard to the scope and ambit of the powers of the High Court in issuing a writ of Certiorari while exercising its jurisdiction under Articles 226 and 227 of the Constitution and the Tribunal has co-extensive powers. But in our view, keeping in mind the provisions contained under section 14 of the Act, the ambit and amplitude of the powers of the Tribunal are wider and larger than the powers of the High Court under Article 226 of the Constitution. For better appreciation it is necessary to quote section 14 of the Act, which runs thus :

" 14. Jurisdiction,powers and authority of the Central Administrative Tribunal-(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts(except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning -

xx xx xx xx ."

The important and significant words appearing in section 14 of the Act are that from the appointed day the Central Administrative Tribunal can exercise jurisdiction and powers and authority exercisable by all courts excepting the Supreme Court. It cannot be disputed that by all courts it is meant 'the High Court', and ' any civil court'. It cannot also be disputed that a civil court under the Code of Civil Procedure is a court of fact and can investigate into questions of fact and would come to its just conclusions. In this connection section 22(3) of the Act should also be referred to in order to find out as to whether the Tribunal can only confine itself to exercise the same powers as contemplated under Article 226 of the Constitution or it could investigate into questions of fact like that of a civil court.

Section 22(3) of the Act runs thus :

" (3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure,1908(5 of 1908), while trying a suit,in respect of the following matters,namely,-

(a) summoning and enforcing the attendance of any person and examining him on oath;

xx xx xx ."

ben

Once the Tribunal has been vested with the powers of summoning and enforcing the attendance of any person and examining him on oath it necessarily means that the Tribunal has powers to go into questions of fact. Therefore, in view of the above quoted provisions it cannot but be said that the Tribunal, under the Statute, can not only confine itself as a co-extensive forum to exercise powers exercised by the High Court under Article 226 of the Constitution but it has derived wider and larger powers under the Statute, to the extent of going into questions of fact. Conceding for the sake of argument that the Tribunal has to confine itself as a supervisory authority as is being done by the High Court in exercise of its powers under Article 226 of the Constitution there is no dispute presented by learned Advocate General that this Tribunal can correct an error of law apparent on the face of the record and can lay its hands for interference when the impugned order appears to be in excess of jurisdiction or in disregard of law or the established prescribed procedure being violated or if the order is arbitrary and capricious. Keeping in view the aforesaid principles we would now proceed to consider the arguments advanced by both sides relating to the merits of the case as to whether there has been an error of law committed by the Screening Committee amounting to arbitrariness or has failed to follow the established prescribed procedure. At the risk of repetition, for the purpose of refreshing oneself it may be stated that the main contention of learned counsel for the applicant is that the guidelines laid down by the Government of India in the Ministry of Home Affairs not having been followed by the Screening Committee, the recommendation of the Screening Committee and the empanelment of Respondents 3 and 4 namely, Mr.R.N.Das and Mr.P.C.Rath is illegal, inoperative and ought to be struck down. The next contention of learned counsel for the applicant is that

non-consideration of the case of the applicant by the Screening Committee in its first meeting held on 19th August,1986 and deferring the case of the applicant to be considered on a later date and consideration of the case of the applicant on 15th October,1986 after promoting Mr.R.N.Das(Respondent No.3)as Director General of Police,Vigilance is against all cannons of justice, equity and fair play and such later consideration is no consideration in the eyes of law. According to the applicant this amounts to non-consideration of the case of the applicant for the selection post and therefore, not only the recommendation of the Screening Committee is vitiated under the law, but promotion of Mr.R.N.Das(Respondent No.3) is illegal.

Before we discuss this aspect it would be profitable to decide whether there has been an error or law committed by the Screening Committee or it has failed to follow the established procedure. In our opinion, an error of law means when there is violation of a statutory provision or any provision having statutory force has been disregarded. Admittedly, there is no statutory provision to regulate promotions to selection posts of the present nature but certain administrative instructions have been issued by the Government of India for guidance of the State Governments in matters of promotions to selection posts. Does it have the force of law? The answer to this question would be found in a judgment of the Hon'ble Supreme Court reported in AIR 1967 SC 1910(Sant Ram Sharma versus State of Rajasthan and others). In this case the petitioner was superseded by an order of the State Government of Rajasthan while promoting Shri Hanuman Sharma to the post of the Inspector General of Police, Rajasthan. The petitioner before Their Lordships prayed for issuance of a writ in the nature of Mandamus to consider the petitioner's claim as seniormost officer in Rajasthan to be promoted to the post of Inspector General of Police. Their Lordships in the said judgment were pleased to hold that a post of Inspector

17

General of Police was a selection post and seniority was not the only criteria to be taken into consideration. Merit has to be first considered. In the said case Their Lordships were also considering different administrative instructions issued by the Government of India in regard to promotions to the selection posts. Their Lordships considered the administrative instructions dated July 31, and August 3, 1954 and also the communication dated June 1, 1955 and the letter of Government of India dated October 5, 1956. At paragraph 7 of the judgment Their Lordships were pleased to observe as follows :

" We proceed to consider the next contention of Mr.N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. "

In the case of Dr.Amarjit Singh Ahluwalia versus State of Punjab and others reported in 1975(1)SLR 171 Their Lordships of the Supreme Court at paragraph 8 of the judgment were pleased to observe as follows :

" Now, it is true that Clause(2)(ii)of the memorandum dated 25th October,1965 was not astatutory provision having the force of law and was merely an administrative instruction issued by the State Government in exercise of its executive power. But that does not present any difficulty, for it is now well settled by several decisions of this Court that where no statutory rules are made regulating recruitment or conditions of service, the State Government always can in exercise of its executive power issue administrative instructions providing for recruitment and laying down conditions of service.

It was, therefore, competent to the State Government to issue clause(2)(ii) of the memorandum dated 25th October, 1965 in exercise of its executive power laying down the principle to be followed in adjusting inter se seniority of the officers in the integrated service."

Admittedly, in the present case there is no statutory provision regulating promotions to selection posts like that of Director General of Police-cum-Inspector General of Police of a State. But Government of India in Ministry of Home Affairs has issued administrative instructions in the form of guidelines keeping in view the provisions contained in Rule 3(2)(a) of the IPS Pay Rules, 1954 and the intention of the Government in issuing such guidelines is to maintain uniformity of procedure to be adopted in matters of appointment to various grades in the IPS and in all the IPS cadres in the country. This letter dated 1.1.1986 has been issued by the Ministry of Home Affairs addressed to all Chief Secretaries of all States and this forms subject matter of Annexure-3. The administrative instructions noticed in the case of Santa Ram Sharma versus State of Rajasthan (Supra) were also issued keeping in mind Rule 3(2)(a) of the IPS Pay Rules, 1954. In the absence of any statutory provisions, as observed by Their Lordships in the above mentioned judgments, these guidelines or administrative instructions have to be strictly followed by the State Governments and could be considered by the courts to find out as to whether there has been any infringement. The guidelines could be acted upon so long as it does not run counter to the statutory provisions. In the present case there are no rules prescribed in regard to promotions to the post of the present nature and therefore in our opinion according to the dictum laid down by Their Lordships in the aforesaid judgments, the guidelines/administrative instructions are to be followed. The main attack put forward on behalf of the applicant is that Respondents 3 and 4 not having completed 4 years of service in the rank of Inspector General of Police, they did not come within the zone of consideration and

the applicant having completed 4 years of service in the rank of Inspector General of Police, his case alone should have been considered by the Screening Committee and in case, the Screening Committee wanted to make a departure from the guidelines/administrative instructions issued by the Government of India while considering the cases of Respondents 3 and 4, it could be so done with the prior approval of the Ministry of Home Affairs. Without prior approval, the entire proceeding stands vitiated. On the other hand, it was contended by learned Advocate General that prior approval was not at all necessary because the subject relating to the "zone of consideration" laid down in the said guidelines is an inbuilt provision and therefore no prior approval is necessary. Before giving our finding on the respective contention, it would be profitable to quote the relevant provisions. In paragraph 4 of the forwarding letter issued by the Ministry of Home Affairs to the Chief Secretaries of all the States(Annexure-3) it has been stated as follows:

" If any deviation from these guidelines is required to be made, this may please be done only with the prior approval of this Ministry, so that the chances of service officers going to Court on the ground of deviation from or non-compliance of the guidelines are minimised."

In item (iii)(B) of the annexure to the above mentioned letter of the Ministry, which is said to be the guidelines, 'Zone of consideration' has been dealt with and it runs thus :

" The zone of consideration of officers for promotion to various ranks should be as follows, subject to availability of officers of the requisite seniority:-

- 1. xx xx
- 2. xx xx
- 3. xx xx

4. For promotion to the grade of DG and IGP:

Inspectors General of Police who have put in at least 4 years of service in the rank, and have completed 30 years of service."

leny

The important question that needs to be considered is as to whether there has been a deviation made by the Screening Committee from the administrative instructions issued by the Government of India in regard to the case of officers who were considered for empanelment for promotion to the post of Director General of Police. Admittedly, ~~all~~ the two officers namely the applicant,i.e. Mr.K.C.Pattanayak, and Mr.R.N.Das(Respondent No.3) have completed 30 years of service. Admittedly, Mr.P.C.Rath(Respondent No.4) has not completed 30 years of service and has not put in four years of service in the rank of Inspector General of Police. The disputed question is in regard to the applicant,Mr.K.C.Pattanayak and Respondent No.3,Mr.R.N.Das. It was contended on behalf of the applicant,Mr.K.C.Pattanayak that if his services as Joint Director,Cabinet Secretariat with effect from 21.11.1981 is taken into account then he has completed four years of service in the rank of Inspector General of Police because the pay scale is same as that of an Inspector General of Police under the State Government. Furthermore it was contended that the applicant having completed four years of service in the rank of an Inspector General of Police and Mr.R.N.Das(Respondent No.3) and Mr.P.C.Rath(Respondent No.4) not having completed four years of service in the rank of an Inspector General of Police, the applicant alone was eligible and/or qualified to be considered for the post in question and Respondent Nos.3 and 4 did not at all come within the consideration zone. Pay scale may be the same but an Inspector General of Police performs his duty and enjoys certain powers under the Police Act and therefore ~~the~~ equivalence in the pay scale is not the sole determining factor to arrive at a conclusion that the post of Joint Director in the Cabinet Secretariat is equivalent to the rank of an Inspector General of Police and hence it was contended by learned Advocate General that none of the officers who were considered by the Screening Committee had completed four years of service in the rank of the Inspector General of Police.No documentary evidence

nce was placed before us on behalf of the applicant to indicate that the post of a Joint Director in the Cabinet Secretariat was equivalent to the rank of an Inspector General of Police of State except that in Annexure-2 it is to be found that the pay scale of an Inspector General of Police in the State of Orissa is Rs.2,500-125/2-2,750/- and the pay scale for Joint Directors in Intelligence Bureau is Rs.2,500-125/2-2,750/-. In this connection it may be stated that the Central Government has not filed any counter. It has also not filed any papers to show that the post of Joint Director is equivalent to the rank of an Inspector General of Police. In the absence of any other positive and conclusive evidence indicating that the post of a Joint Director is equivalent in rank to that of an Inspector General of Police in the State of Orissa, we would find that there is substantial force in the contention of learned Advocate General that pay scale cannot solely become the determining factor to conclude that the post of Joint Director, Central Secretariat is equivalent to the rank of Inspector General of Police in the State of Orissa and hence we hold that the applicant has not completed four years of service in the rank of an Inspector General of Police.

As regards Mr.R.N.Das, Respondent No.3 it was submitted on his behalf by Mr.S.S.Basu that from Annexure-B which is a letter addressed to the Accountant General, Orissa, Bhubaneswar by the Joint Secretary to the Government of Orissa, Political & Services Department conveying sanction of the Government to the creation of the post of Additional Inspector General of Police(Vigilance), Orissa, it would be found that the post in question is equivalent in status and responsibility to the post of Inspector General of Police, Orissa and therefore it was contended that Mr.R.N.Das, having been appointed as Additional Inspector General of Police(Vigilance) by

notification dated 24th September,1979 should be deemed to have been holding a post equivalent to the post of an Inspector General of Police and as such completed four years of service in the rank of an Inspector General of Police. This contention advanced by Mr.Basu deserves no merit because status and responsibility does not make a particular post equivalent to the post of an Inspector General of Police. Admittedly, Mr.Das had been appointed to the post of an Additional Inspector General of Police vice Shri G.C. Senapati the then Additional Inspector General of Police,(Vigilance)being appointed to the post of Inspector General of Police(Vigilance). There cannot be any dispute that there is difference between an Inspector General of Police and an Additional Inspector General of Police. That apart the post of Additional Inspector General of Police carries a pay scale of Rs.2,250/- if it is held by a member of I.P.S.; Rs.2,500-125/2-3,000/-if it is held by a member of Indian Police as mentioned in Annexure-2 whereas the post of Inspector General of Police in the State of Orissa carries the pay scale of Rs.2,500-125/2-2,750/. Admittedly, Mr.R.N.Das is a member of Indian Police Service. Therefore, on no account it can be held that Mr.R.N.Das, Respondent No.3 had held a post since 24th September,1979 which is equivalent to the rank of Inspector General of Police. As said earlier,Mr.P.C.Rath (Respondent No.4) has admittedly neither completed 30 years of service nor four years of service in the rank of Inspector General of Police.

In view of the discussions made above we find neither the applicant nor Respondents 3 and 4 namely Mr.R.N.Das and Mr.P.C.Rath had completed four years of service in the rank of Inspector General of Police, though the present applicant and Mr.R.N.Das(Respondent No.3)had completed thirty years of service, by 19th August,1986- the date on which the Screening Committee first met to consider the cases of the applicant and Respondent Nos.3 and 4.

6. The applicant and Respondent Nos.3 and 4 not having acquired the requisite eligibility for consideration as laid down in the guidelines/administrative instructions, could it be said that at least the established procedure appears to have been violated if not the law(has been violated) for which a valuable right has accrued to the applicant to claim that the recommendations of the Screening Committee and promotion of Respondent No.3 should be struck down. Learned Advocate General contended that the guidelines laid down against item iii(B)(zone of consideration) is an inbuilt provision and therefore prior approval of the Ministry of Home Affairs was not necessary and it was further contended by learned Advocate General that the guidelines are not mandatory and are only applicable subject to the availability of officers of the requisite seniority. The argument of learned Advocate General that the provisions contained in Annexure-3 (administrative instructions/guidelines)are not mandatory carries no weight with us because it is clearly mentioned, in the forwarding letter that deviation may be made by the State Government only(emphasis is ours) with prior approval of the Ministry of Home Affairs. Not only the word'only' is significant and important but such a stipulation is indicative of the fact that the Government of India does not want that there should be any deviation from the guidelines because specifically it has been stated in paragraph 4 of the forwarding letter that prior approval is necessary for any deviation because uniformity of procedure shall be maintained in the whole country amongst the members of the Indian Police Service, so that the chances of service officers going to Court on the ground of deviation or non-compliance of the guidelines are minimised. This evidently means that the Government of India intends to have supervisory control over the action of the State Government in regard to promotions and appointment of the officers who have been appointed initially / by the Central Government to selection posts where merit is the prime most criteria to be taken into consideration and in order

to exercise its control, the Ministry of Home Affairs has specifically stated that deviation could be possible only with the prior approval of the Ministry. The argument of learned Advocate General is that where suitable officers are not available it lies within the discretion of the State Government to make a departure from the guidelines. We may agree with the learned Advocate General to the limited extent that where officers fulfilling the requirements are not available the State Government can make a departure from the procedure laid down in the guidelines but subject to prior approval of the Central Government, in order to avoid future controversy, and minimise the discontentment amongst the members of the Indian Police Service which is an All India Service. If these provisions in the guidelines are inbuilt, then there was no necessity on the part of the Central Government to prescribe that prior approval of the Ministry should be taken. The Central Government did not make any exception to any of the provisions contained in the instructions giving a discretion to the State Government. Learned Senior Standing Counsel for the Central Government contended that before deviating from the instructions/guidelines issued by the Central Government, it is incumbent on the part of the State Government to obtain prior approval of the Central Government because according to learned Senior Standing Counsel for the Central Government these guidelines/administrative instructions are not pious wishes of the Central Government. They have been issued by the Central Government to be followed by the State Governments. This submission of the learned Senior Standing Counsel(Central) has been recorded by us in the ordersheet dated 21st April,1987. Such being the stand of the Central Government, we cannot but say that the Central Government wants these guidelines to be followed and any deviation requires prior approval. Hence we are unable to subscribe to the view propounded by

learned Advocate General and we find no merit in the aforesaid contention put forward by him. We further find that any deviation from the guidelines is subject to prior approval being taken from the Ministry of Home Affairs.

7. Another striking feature which appears in this case is that in the guidelines/administrative instructions at para (D)" period of validity of the panel"it has been mentioned that empanelment of officers shall be considered batchwise which eventually means that after the cases of particular officers of a particular batch is considered and if rejected, then only the consideration has to pass on to the next batch of officers pertaining to the succeeding years. We have already indicated that the applicant belongs to 1954 batch whereas Mr.R.N.Das(Respondent No.3) belongs to 1955 batch and Mr.P.C.Rath(Respondent No.4) belongs to 1956 batch. At the risk of repetition we may say that without finalising the case of the applicant, adjudging his suitability or otherwise in the meeting held on 19th August,1986, the Screening Committee took upon itself the responsibility of considering the cases of Mr.R.N.Das and Mr.P.C.Rath and after finding them suitable for empanelment kept the case of the applicant open to be considered in a subsequent meeting. In our opinion, it is not in accordance with the guidelines/administrative instructions laid down by the Government of India. We think there is substantial force in the contention of Mr.Ananga Patnaik, learned counsel appearing for the applicant that on account of this fact serious prejudice has been caused to the applicant.

8. It was next contended on behalf of the applicant that deferring consideration of the case of the applicant to a later date by the Screening Committee and before finalising the case of the applicant,adjudging his suitability or otherwise empanelment of Respondents Nos.3 and 4 and promotion of Respondent No.3 (vide Annexure-5) is merely an eye wash.

According to the submission made on behalf of the applicant it is no consideration at all in the eye of law and hence the entire proceeding is vitiated. The case of all the three officers,namely the applicant and Respondents 3 and 4 was put up before the Screening Committee in its meeting held on 19.8.1986. According to the aforesaid guidelines/administrative instructions the review committee for empanelment of an officer to the grade of Director General and Inspector General of Police of the State and any equivalent post, should consist of the Chief Secretary,two non-I.P.S.Officers in the rank of Additional Secretary to the Government of India working under the State Government and accordingly it was admitted before us that the Government of Orissa in General Administration Department vide their office memorandum dated 25th March,1986 laid down the composition of the Screening Committee for considering suitable officers for promotion to the rank of Director General and Inspector General of Police and the composition of the Screening Committee for the said purpose was the Chief Secretary, Commissioner,Agriculture and Rural Development and Additional Development Commissioner and Secretary to the Government of Orissa,Planning & Co-ordination Department. At the risk of repetition we may say that the Screening Committee met for the first time on 19th August,1986 to consider the cases of all the three officers who are parties before us and that of Shri S.N.Sinha who is not a party before us. The question of empanelment of Shri Sinha did not arise because of the reasons recorded by the Screening Committee in its minutes. In the said meeting Dr.Bhupinder Singh who was the then Commissioner of Agriculture and Rural Development did not attend as he was away from headquarters on pressing official engagement. Ofcourse, no coram is fixed for the meeting. But the fact remains that consideration of the cases of all the three officers took place in the absence of Dr.Bhupinder Singh who did not play any role in the process of selection of officers

for empanelment. But Dr.Bhupinder Singh participated in the meeting held on 15th October,1986 to consider the suitability of the applicant,Mr.K.C. Pattanayakthough by then in pursuance to the meeting held on 19th August, 1986 Respondents 3 and 4 had been empanelled and Respondent No.3 had been promoted to the rank of Director General of Police. It cannot be disputed that Dr.Bhupinder Singh had no chance at all to express his opinion in regard to the suitability of Respondents 3 and 4 and equally he had no opportunity to assess the performance of the applicant vis-a-vis the performance of Respondents 3 and 4 based on their confidential rolls. On a perusal of the minutes of the screening committee held on 15th October,1986 it would appear that it was in form of clarification if not further clarification assigning reasons as to why the committee had found Respondents 3 and 4 to be suitable for empanelment and promotion though we would repeat and say that Dr.Bhupinder Singh had no role to play in the meeting held in August,1986. Apart from this important infirmity appearing in the conduct of the Screening Committee it is also to be found that Mr.R.N.Das,I.A.S., Secretary to Government of Orissa in Home Department had attended the meeting as a special invitee. In the minutes of the Screening Committee held on 19.8.1986 it is mentioned as follows :

" A meeting of the Screening Committee to consider IPS officers for promotion to the grade of D.G. of Police was held on 19.8.86 at 10.30 AM under the Chairmanship of Chief Secretary,ADC as Member, and Home Secretary as Special Invitee,participated. Commissioner,A & R.D., who is a member of the Screening Committee,being away on training,could not attend."

From the above, it was contended on behalf of the applicant that the Screening Committee had no authority to co-opt a member in the absence of the member appointed by the Government to participate in the process of selection and therefore, the entire proceeding is vitiated. On the other

hand, it was contended by learned Advocate General that the Home Secretary was a special invitee to assist the Screening Committee. This argument of learned Advocate General though at first flush seems to be plausible and irresistible, we however think it is unsustainable on closer scrutiny. Had the Home Secretary, Mr. Das been invited to assist the Screening Committee for the limited purpose of supplying information as to the cadre position etc., it would not have been mentioned that the Home Secretary had participated as a special invitee. The word 'participation' definitely means participation in the process of selection for empanelment for which he had no authority because the Home Secretary was not appointed as a member of the Screening Committee by the Government in their Memorandum mentioned above and the Screening Committee had no authority to coopt another officer for participating in the deliberation. In case, Mr. Das, the Home Secretary was invited to assist the Screening Committee then it would not be required of the Home Secretary to sign in the minutes in token of its correctness. Had Mr. Das (Home Secretary) been invited to assist the Screening Committee then his absence from the meeting of the Screening Committee held in October, 1986 lends substantial force to the contention of learned counsel for the applicant that due to the presence of Dr. Bhupinder Singh in the meeting held in October, 1986, the services of Mr. Das (Home Secretary) was not requisitioned or in the alternative, participation of Mr. Das (Home Secretary) in the meeting held on 19.8.1986 having been already challenged in the application under section 19 of the Act filed on 11th September, 1986 and by then notice having been received in the General Administration Department accompanied by a copy of the application under section 19 of the Act filed by the applicant, presence of Mr. Das (Home Secretary) was excluded on 15.10.1986. Taking into consideration the facts and circumstances stated above, we are of opinion that the proceeding of the Screening Committee held on 19.8.1986 would become illegal due to the participation of the

Mr.

Home Secretary who was not appointed by the Government of Orissa to constitute the Screening Committee as the Screening Committee had no authority to co-opt an officer to participate in the absence of Dr.Bhupinder Singh and absence of Dr.Bhupinder Singh from the meeting of 19.8.1986 depriving him of participation in the process of selection of Mr.R.N.Das (Respondent No.3)and Mr.P.C.Rath(Respondent No.4)cuts at the root of the matter namely a fully constituted committee appointed by the Government had not considered the entire matter which was the individual responsibility of each and every member of the committee duly constituted by an order of the Government.

In this connection, a judgment of the Hon'ble High Court of Orissa pronounced in O.J.C.No.282 of 1981 disposed of on 11th November, 1986(unreported)needs to be mentioned as it has a direct bearing on the issue at hand. In the said case decided by Their Lordships of the Orissa High Court the post of legal assistant was created in the Office of the Orissa State Electricity Board and it was decided to fill up the post by way of selection from amongst Grade I and Grade II assistants,accountants and junior accountants who had served the Board for a period of 10 years. For the purpose, a recruitment committee was constituted consisting of the Secretary of the Board, Accounts Officer(Operation)and the Design Engineer. By office order dated 29.4.1975 the assistant to the Chief Engineer, Electricity was nominated as a member of the Staff Recruitment committee in place of the Design Engineer. The interview of the candidates was held on 10.6.1980 and 17.6.1980. On 10.6.1980 only two of the members participated namely the Secretary and the Accounts Officer(Budget).On 17.6.1980 the interview was conducted by the Secretary and the Executive Engineer (Planning). A contention was put forward before the Hon'ble High Court that the selection was not conducted by the constituted committee and the consideration of the cases of candidates on different dates by different

h/n

members vitiated the selection. From the facts it is found, later an office order was issued on 17.6.1980 constituting the Staff recruitment committee with the Secretary, Accounts Officer(Budget) and the Executive Engineer (Planning) as members with retrospective effect from 9.6.1980 in order to get over the difficulty. In such circumstances, the Hon'ble High Court held that the selection is unsupportable as admittedly the Executive Engineer (Planning) took part in the selection process on 17.6.1980 and instead of the Accounts Officer(Inspection) who was a member of the committee as per Annexure-2, Accounts Officer(Budget) participated on 10.6.1980 and therefore the Hon'ble High Court held that participation of both these officers was irregular and vitiated the selection and ultimately the High Court held that the selection for the post of legal assistant stood vitiated and is therefore invalid in law. The facts stated above are practically similar to the facts of this case so far as the particular issue is concerned. We would, with respect adopt the same view in coming to the conclusion that the process of selection in the present case is therefore vitiated and is thus invalid according to law.

9. Next, averting to the proceeding of the meeting of the Screening Committee held in October, 1986, we find that the committee has tried to assign reasons in retrospect as to why it had found Respondents 3 and 4 suitable for empanelment though actually no reasons have been given for supersession as required under the instructions issued by the Central Government. We shall deal with this aspect in detail, later, at the appropriate stage. This part of the labour undertaken by the Screening Committee in its minutes would not, in our opinion, cure the irregularity/illegality, if any, committed by not considering the case of the applicant at one and the same time and failing to devote their consideration batchwise as laid down by the Government of India. It is now required of this Bench to address itself as to whether on this account the principles of natural justice have been violated.

10. Law is well settled and it was rightly and fairly not disputed at the Bar that a particular officer cannot claim promotion as a matter of right to a promotional post and especially to a selection post where merit is the first criteria to be taken into consideration except that he has the right to be considered. In the present case, at the risk of repetition, we may say that the Screening Committee has failed to undertake the batchwise consideration. True, it is that in regard to 1954 batch no officer was available except the applicant. Therefore, in all fitness of things after finally concluding the suitability or otherwise of the applicant, the Screening Committee should have passed on to consider the case of Respondent No.3, who belongs to 1955 batch and then the Screening Committee could have considered the case of Respondent No.4 who belongs to 1956 batch. Apart from this infirmity, without finally adjudicating the suitability or otherwise of the applicant, the committee came to its own conclusion holding Respondent Nos. 3 and 4 to be suitable for empanelment and deferred consideration of the applicant on the ground that up-to-date confidential rolls of the applicant was not available which was awaited and it was decided to finalise the case of the applicant after receipt of his up-to-date confidential character rolls. In these circumstances, one has to put a question as to whether piece meal consideration complies with the requirements of natural justice. In view of the mandate issued by the Central Government, that there should be a batchwise consideration, it was incumbent upon the Screening Committee to defer consideration of the cases of all the Officers to a later date to be considered at one and the same time which would have been real consideration in the eyes of law. Learned Advocate General strenuously urged that there is no scope for the applicant to apprehend that the members of the screening committee had not kept an open mind till the case of the applicant was finally considered in October, 1986, even though the Screening Committee had already held Respondent Nos. 3 and 4 to be suitable. It was further

contended by learned Advocate General that apprehension on the part of the applicant is baseless and has no legs to stand on because the Government always has power to demote an officer, if his senior is found to be suitable and it has also the power of creating superannuary posts. True, it may be so but we would adopt the argument of learned Advocate General in the context of another aspect of this case, which will be later dealt- that 'JUSTICE SHALL NOT BE ONLY DONE BUT THERE MUST BE MANIFESTATION OF JUSTICE BEING DONE'.

This wholesome principle has been derived from the phrase AUDI ALTERAM PARTEM as observed by Their Lordships of the Supreme Court in a case reported in AIR 1985 SC 1416(Union of India v.Tulsiram Patel) over which strong reliance was placed by learned Advocate General while repelling the contention of learned counsel for the applicant pleading bias against the members of the Screening Committee. It was contended by learned Advocate General that on this account no prejudice can be legitimately claimed by the applicant. We agree with learned Advocate General that the Government has ample powers for creation of posts but we cannot persuade ourselves to agree with learned Advocate General that consideration of cases of different officers on different dates after finally concluding the suitability of junior officers, in a piecemeal manner complies with the principles of natural justice. The consideration regarding the suitability of different officers should be at one and the same time so that there cannot be any room or scope to say that the consideration has not been in compliance with the principle of natural justice and therefore, not according to law. In our opinion, final conclusions arrived at by the Screening Committee in regard to the suitability or otherwise of the applicant after the promotion of Respondent No.3 is no consideration according to law, especially when nothing has been mentioned in the promotional order (Annexure-5) that such promotion or appointment is purely on ad hoc basis, or

temporary basis or as a stop gap arrangement.

II. It was also contended by learned counsel for the applicant that consideration of the confidential roll of the applicant pertaining to the period from 1.4.1985 to 31.3.1986 recorded by the Home Secretary is illegal. Because, from Annexure-7 annexed to the reply given by the applicant to the counter of Respondent No.1, it is found that the confidential character of the roll of Special Secretary to the Government has to be recorded by the Chief Secretary or an Additional Chief Secretary and the counter-signing authority is the Minister and/or Deputy Minister and the accepting authority is the Chief Minister. In the present case, we find that the Home Secretary has recorded his views in the confidential rolls of the applicant pertaining to the aforesaid period when admittedly the applicant was a Special Secretary to the Government of Orissa. Therefore, it was admitted before us on behalf of the State Government that the Home Secretary had no authority to record his views in regard to the performance of the applicant who was the Special Secretary during the aforesaid period and eventually the confidential rolls pertaining to the said period should not have been taken into consideration by the Screening Committee. In view of this admitted position, it was argued by learned Advocate General that ruling out the confidential roll of the applicant for the said period from consideration, views of the other authorities recorded in the confidential reports of the applicant at different periods could be taken into consideration by the Screening Committee and the Screening Committee having taken into consideration the other confidential reports, the conclusion of the screening committee regarding the unsuitability of the applicant should be accepted. On the other hand, it was contended by learned counsel for the applicant that instead of Home Secretary recording his views (about which he was not competent to do so) had any other

competent authority like that of the Chief Secretary or the Minister recorded their views, the possibility of gaining a better report cannot be overruled and the Screening Committee could have arrived at a different conclusion. We think there is considerable force in the contention of learned counsel for the applicant.

12. Before we close the matters dealing with the minutes of the Screening Committee another important question should be noticed which was mooted at the Bar namely in regard to the performance of the applicant recorded in his confidential roll for the period from 20th November,1982 to 31st March,1983 wherein it is stated that" the applicant was 'not yet' fit for promotion". In the minutes of the Screening Committee held in October,1986it is stated that " on consideration of the annual confidential report for the year 1981-82 the applicant was not fit for promotion to higher grade". According to the applicant there is gulf of difference between 'not fit for promotion' and ' not yet fit for promotion .' 'Not yet fit for promotion' means the applicant was not fit for promotion in 1981-82 and ' not fit for promotion' means he can never be fit for promotion. This makes a good deal of difference and both carry distinct meaning and we feel that there is considerable force in the contention of learned counsel for the applicant that wrong quoting of the remarks at two different stages might have persuaded the Screening Committee to arrive at incorrect conclusions.

13. It was next contended by learned counsel for the applicant that the Screening Committee not having stated the reasons in a manner which would disclose how the record of superseded officer stood in relation to the record of others, the minutes of the Screening Committee should be held to be bad in law and hence it should be quashed. Towards the later part of paragraph 4 of the minutes of the Screening Committee held in October,1986 it is stated that the committee• considered• the confidential rolls in respect of the applicant for the year 1981-82 wherein it was observed that the applicant displayed average initiative and industry and was more

suitable for desk work and was not fit for promotion to higher grade. In the year 1982-83 the applicant was assessed to be an officer of average calibre and consciousness. In 1985-86 his performance was not above average. We have already stated that the confidential rolls pertaining to the year 1985-86 cannot be taken into consideration as the competent authority has not recorded his views. Nothing is mentioned in the minutes about the confidential rolls pertaining to 1983-84 and other years which find place in the relevant book. Therefore one would not be unjustified to presume that remarks for other years was not taken into consideration. We have already given our views in regard to 'not fit for promotion' and 'not yet fit for promotion'. They need no repetition. The cumulative effect of the aforesaid observations of the Screening Committee in its minutes indicates the conclusion of the members of the Screening Committee and those observations cannot be construed as giving reasons for supersession. In this connection, reliance was placed on a judgment of the Hon'ble Supreme Court reported in AIR 1974 SC 87 (Union of India v.M.L.Capor and others) . Their Lordships at paragraph 28 were pleased to observe as follows :

" In the context of the effect upon the rights of persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or

decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with. We think that reliance was rightly placed by respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were : Associated Electrical Industries(India)Pvt.Ltd., Calcutta v. Its Workmen, AIR 1967 SC 284 and Collector of Monghyr v. Keshav Prasad Goenka(1963)1SCR 98=(AIR 1963 SC 1694)."

The very same view was also taken by Hon'ble Supreme Court in the case of Gurdial Singh Fiji v. State of Punjab and others reported in 1979(1) Vol.20 Services Law Reporter 804. In the said case Chandrachud, C.J., speaking for the Court was pleased to observe that while superseding a particular officer reasons must be given. Relying on the above mentioned judgments of the Hon'ble Supreme Court it was contended on behalf of the applicant that while superseding the applicant no reasons have been given by the Screening Committee as to how the performances of others stood in comparison to the applicant and the reasons for which the Screening Committee came to the conclusion that the performance of the officers junior to the applicant was better than the performance of the applicant. Hence it was submitted that on this account also the conclusions of the Screening Committee should be quashed. While repelling the contention of learned counsel for the applicant, learned Advocate General relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 593(R.S.Dass v. Union of India and others). Their Lordships had considered the cases of M.L.Capor and Gurdial Singh Fiji(supra) in the case of R.S.Dass v. Union of India and held that no reasons need be given. This dictum was laid down by Their Lordships because regulation 7(3) of the IAS (Appointment by Promotion)Regulations, 1955 was deleted by the Government vide GSR 813 dated 2.6.1979 which laid

down that reasons must be given and Their Lordships further held that deletion of this provision does not affect Articles 14 and 16 of the Constitution.

After giving our careful consideration to the arguments advanced on behalf of both sides on this point we are of opinion that all the above mentioned cases apply to cases of officers of the State Civil Service being promoted to the cadre of Indian Administrative Service and is not applicable to cadre officers being promoted to the selection posts. Even though the Government of India had deleted this provision which was previously found in regulation 7(3) and such deletion was published in the Gazette of India dated 2.6.1979 yet in the letter issued by the Ministry of Home Affairs on 1.1.1986 (Annexure-3)(referred to above) it had been stated against para C(iv) as follows:

" Detailed reasons for supersession may be kept on record in the case of officers who are not included in the panel, or who do not figure in the panel in the order of their seniority in the IPS."

From the above we are of the view that the IAS(Appointment by Promotion) Regulations, 1955 having no application to the basis set out by the Government of India laying down the procedure to be adopted for promotion of IPS Officers to the rank of Director General of Police, the deleted provision in the said Regulations was not taken notice of by the Ministry of Home Affairs while issuing the letter stated above. Presumably this is because the Central Government wants to know whether reasons set forth by the Screening Committee in superseding senior officers is tenable, reasonable and hence acceptable and the second intention of the Central Government is not only to give an opportunity to the State Government to decide the correctness or otherwise of its decision in recommending supersession but during judicial review the judicial forum will also decide the justifiability on the part of the Screening Committee in taking its decision for supersession. Despite the view expressed by the Hon'ble Supreme Court in the case

of R.S.Dass v.Union of India and others(supra)the Ministry of Home Affairs has not taken any steps to delete this part of the instruction and had the Government of India done so, learned Advocate General would not have left any stones unturned to place it before us and therefore we feel that the judgment of the Hon'ble Supreme Court in the case of R.S.Dass v.Union of India and others has no application to the facts of the present case. Hence we are of opinion that reasons should have been recorded by the Screening Committee. Failure to do so drives us to the conclusion that there is another instance of violation of the guidelines.

14. Now, we propose to take up the most important question mooted at the Bar,namely whether bias existed in the minds of the members of the Screening Committee including the Chairman,against the applicant for which it is alleged that the members of the Committee have arrived at wrong/incorrect/illegal conclusions. Law relating to 'bias' or 'malafide' is well-settled. Before we deal with the questions of fact involved in this case so far as this aspect is concerned, it would be worthwhile to succinctly state the settled position of law on this subject. It was observed by the Hon'ble Supreme Court in the case of E.P.Royappa versus State of Tamil Nadu and another reported in AIR 1974 SC 555 that in case of malafides or bias the burden of establishing malafide is very heavy on the person who alleges the same. The allegation of malafide is very often easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility. Their Lordships of the Hon'ble Supreme Court were pleased to observe at paragraph 92 as follows :

" Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often very easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner,

who was himself once the Chief Secretary has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary for the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party particularly when the imputations are grave and they are made against the holder of an office which has high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up -these considerations are wholly irrelevant in judicial approach- but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand-point we must assess the merit of the allegations of malafides made by the petitioner against the second respondent."

From the above observations of Their Lordships it is crystal clear that once there is allegation of mala fide or bias against officers entrusted with high responsibility and official status the degree of standard of proof must be rigorous and stringent. Reliance was placed by learned Advocate General in a case reported in AIR 1985 SC 1416 (Union of India versus Tulsi Ram Patel) wherein Their Lordships have been pleased to lay down that the first rule is 'NEMO JUDEX IN CAUSA SUA' namely no man shall be the Judge in his own case and from the well established rule of law namely 'AUDI ALTERAM PARTEM' it has been laid down by Their Lordships in the very same judgment that 'Justice should not only be done but should manifestly be seen to be done'. The famous author on administrative law, Garner

len

rightly puts it observing' Any person affected by an administrative decision may insist on his case being heard by a fair Judge or one free from bias'. Keeping in view the principles laid down by Their Lordships in Royappa's case (supra)and the other observations stated above this Bench is now required to find out the allegations of bias pleaded by the applicant against the members of the Screening Committee and the Bench is required to find out whether those allegations, if any, have been proved to the hilt with utmost certainty and also to the utmost satisfaction of the Bench,if not proved beyond reasonable doubt. In this connection, at the outset it could be said that in the application under section 19 of the Act filed on 11th September,1986 not a single word was breathed alleging any mala fide or bias against any of the members of the Screening Committee including the Chairman. In the application for amendment of the original application(filed on 13th February,1987) it was stated for the first time alleging bias against the members of the Screening Committee. In the application for amendment there was also no direct allegation of bias. The case sought to be put forward by the applicant in the amended application is that due to certain irregularities/illegaliies committed by the members of the Screening Committee, namely not following the directives issued by the Government of India contained in their letter referred to above and due to misreading of the matters mentioned in the confidential rolls and due to the action of the Screening Committee in requesting the Home Secretary,Mr.R.N.Das to attend as a special invitee and due to the action of the Screening Committee in considering the confidential roll of the applicant in which the views of the Secretary to the Government of Orissa in Home Department was recorded which was admittedly without jurisdiction created a reasonable apprehension in the mind of the applicant that there was likelihood

of bias on the part of the Screening Committee against him. No doubt, the Chairman of the Screening Committee, Mr. Parija and the members of the Screening Committee namely Dr. Bhupinder Singh, Mr. A. K. Ray and so also the Home Secretary, Mr. R. N. Das have firmly denied in the counter filed by each of them, of any bias or malafide having existed in their minds. But all the same the Bench has to give a finding regarding the likelihood of bias keeping in mind the principles laid down by Their Lordships of the Hon'ble Supreme Court. It was submitted by learned counsel for the applicant that it is not required of the applicant to actually show the existence of bias in the minds of the members of the Screening Committee but it would suffice for the applicant if from the records he could satisfy the Court that from the action of the Screening Committee there is likelihood of a reasonable degree of bias or reasonable apprehension in the mind of the applicant that there is likelihood of bias existing in the mind of the members of the Screening Committee. It was further submitted that if the applicant is successful in proving this fact the recommendation of the Screening Committee is bound to be quashed. We have no dispute either with learned Advocate General or with learned counsel for the applicant on the principles enunciated by each of them on the basis of the judicial pronouncements made by the Hon'ble Supreme Court. In support of his contention stated above learned counsel for the applicant placed reliance on a judgment of the Hon'ble Supreme Court reported in AIR 1973 SC 2701 (S. Parthasarathy versus State of Andhra Pradesh). The appellant before Their Lordships was a clerk cum typist in the Public Works Department under the Andhra Pradesh Government and in due course of time he was posted as Office Superintendent in the Information and Public Relation Department and while serving as such a departmental proceeding was initiated against the appellant before Their Lordships who was ultimately retired compulsorily on the basis of the finding given in the disciplinary proceeding. The appellant before Their Lordships filed a suit to set aside the order of punishment and accord-

ingly a decree was passed in his favour by the trial court which was unsettled in appeal by the High Court of Andhra Pradesh. The appeal preferred by the Andhra Pradesh Government having been allowed by the High Court the matter was carried in appeal to the Hon'ble Supreme Court and it was found by the Hon'ble Supreme Court that from several correspondence it was patently clear that the appellant was being pursued by the Deputy Director, one Mr. Manbe so much so in order to get rid of the appellant a reference was made by Mr. Manbe to the Superintendent of the Hyderabad Hospital for mental diseases to certify that the appellant was suffering from mental disability so that it would be easier for Mr. Manbe to get rid of the appellant. Failing in his attempt to do so, on the advice of Mr. Manbe a departmental proceeding was drawn up against the appellant in which he was found to be guilty and despite the pursuing and vindictive attitude of Mr. Manbe, he was appointed as Judge to inquire into the conduct of the appellant. In view of the documentary evidence appearing in the case and placed before Their Lordships it was held by Their Lordships that in view of the unimpeachable documentary evidence there was a likelihood of bias existing in the mind of Mr. Manbe and hence there would be a reasonable apprehension in the mind of the appellant that bias existed in the mind of Mr. Manbe. On this principle of law there can never be any dispute. Learned Advocate General has also relied upon the judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 454 (Ashok Kumar Yadav versus State of Haryana). In the said case Their Lordships were pleased to observe as follows :

" We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own case and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of

bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.

xx

xx

xx

The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great so as to give rise to reasonable apprehension of bias on the part of the authority making the selection."

In regard to existence of relationship between any of the members of the Screening Committee with that of any of the officers coming within the consideration zone, or proprietary interest or hostility several other judgments were relied upon by learned Advocate General, which are reported in AIR 1984 SC 1572(M/s.J.Mohapatra & Co.vrs. State of Orissa),AIR 1970 SC 150 etc. Those judgments need not be dealt in detail because all the above mentioned judgments on this particular subject lay down practically the very same principles which are as follows :

- i) No person can become Judge of his own case.
- ii) If there is any relationship between any of the member of a particular committee judging the conduct of performance of several officers it would not be justified for that particular member of the Screening Committee to abstain himself from attending the committee when his relation appears but he should totally dissociate himself from the committee.
- iii) If there is enmity or illfeeling existing between a particular member of the committee and a particular officer that particular member should completely dissociate himself from the Committee.

There is no necessity in further dilating on this point because there has

Ans

been no allegation to the above effect against any of the members of the Screening Committee including the Chairman and therefore we have to now find out as to whether the case of Parthasarathy(supra) relied upon by learned counsel for the applicant has any application to the facts of the present case. Without least hesitation in our mind we would say that if there is any evidence before us indicating any circumstance from which it could be reasonably inferred that there is likelihood of bias existing in the minds of any of the members of the Screening Committee or in the mind of the Chairman, the recommendation of the Screening Committee and appointment in pursuant thereto are bound to be struck down. Apart from the fact that the plea of bias having been taken up at a very belated stage there is absolutely no iota of evidence going in par with the case of Parthasarathy. There is no iota of evidence before us that at any time prior to the August meeting of October meeting there has been any act or omission on the part of the Chairman or members of the Screening Committee or Mr.R.N.Das(Home Secretary)to even indicate in the feablest form that any of them had done anything from which it could be reasonably inferred that any of them had any bias against the applicant. There is also no iota of evidence that either the Chairman or any of the members of the Screening Committee have acted in any manner to the detriment of the interest of the applicant in the past. We may repeat that the applicant's allegation of bias is mainly based on the ground of deviation committed by the Screening Committee from the directives of the Government of India in following a particular procedure and from that we cannot persuade ourselves to jump into a conclusion that either the Chairman or any of the members of the Screening Committee had entertained any bias or malafide against the applicant. The infirmities appearing in the matter of consideration of the case of the applicant discussed above, may at best amount to non-application of one's mind and in no circumstances we can hold that there was any bias or malafide existing in the mind of the Chairman or

the members of the Screening Committee against the applicant and therefore there is no scope or necessity to investigate as to whether allegations of bias or malafide have been proved to the hilt.

15. At this stage it is appropriate to note another submission made on behalf of the applicant. It was contended on behalf of the applicant that in case, the Bench comes to the conclusion that the Screening Committee had committed deviation from the administrative instructions and if it is further found by the Bench that the case of the applicant was not properly and adequately considered by the Screening Committee, after perusal of the confidential rolls of all the three officers, the Bench should direct promotion of the applicant. In order to substantiate this contention learned counsel for the applicant relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 479 (State of Gujarat v. S.Tripathy and others). In this case the respondent i.e. S.Tripathy was not given due promotion to the selection grade and to the supertime scale. Later though he was given promotion to the selection grade, yet promotion to the supertime scale was denied on account of certain adverse entries made in his confidential rolls by the Chief Secretary Sri H.K.L.Coopor. A writ application was filed by Mr.Tripathy in the High Court of Gujarat. The allegations made against the Chief Secretary Mr.Coopor were not controverted by Mr.Coopor in the form of an affidavit, before the High Court and therefore the High Court came to the conclusion that out of vindictiveness the case of Mr.Tripathy was bypassed and therefore the High Court directed the State of Gujarat to consider afresh the question of promotion of Mr.Tripathy to the selection grade as well as to the supertime scale and give monetary benefits to which Mr.Tripathy was entitled to. The State of Gujarat carried the matter to the Hon'ble Supreme Court. Before the Hon'ble Supreme Court affidavits were filed by Mr.Coopor (the Chief Secretary) and the Hon'ble Supreme Court after considering all the matters relevant to the case

concluded as follows:

" We are clear in our minds that no justifiable grounds have been made out warranting an interference under Art.136 of the Constitution with the conclusion of the High Court that there was no material to warrant overlooking the respondent for promotion to the Selection Grade and supertime scale. We propose to consider the limited question whether Shri H.K.L.Capoar acted bona fide and whether the High Court would or would not have passed the strictures that it did against Shri Capoorin its judgment, if the affidavit now filed before us by Shri Capoor was before the High Court. We do think that there is no reason to doubt the bona fides of Shri Capoor and we agree with the statement in the affidavit of Shri Capoor that the High Court might not have passed the strictures had the affidavit of Shri Capoorbeen before them. We do not desire to launch into a discussion of the various submissions made by Shri Tripathy as we are generally satisfied about the bona fides of Shri Capoor. We, however, hasten to add that we do not thereby mean that Shri Tripathy was rightly passed over for promotion to the Selection Grade and to the supertime scale. We agree with the High Court that Shri Tripathy was wrongly passed over. However, instead of directing the Government of Gujrat to consider afresh the claim of Shri Tripathy for promotion to the Selection Grade and the super time scale, we declare that the respondent should have been given selection grade xx xx ."

The facts of this case are clearly distinguishable from the facts of the present case. In the case before Their Lordships there was no screening committee to consider the suitability or otherwise of Mr.Tripathy to get the selection grade or super time scale. In the present case we have already held that the case of the applicant was not appropriately considered according to law and therefore, adjudication of the suitability or otherwise of the present applicant purely lies within the ambit of the screening committee and its recommendations either to be accepted or rejected lies within the province of the State Government. Add to all this, we have only indicated the infirmities appearing in the procedure adopted by the Screening Committee without saying a word about the competency, efficiency and suitability of any of the officers who were being considered by the Screening Committ-

ee. The case of Mr. Tripathy did not require any comparision with anybody as in this case. The case of Mr. Tripathy being clearly distinguishable we think in a case of this nature the observations of the Hon'ble Supreme Court reported in AIR 1974 SC 460 (State of Mysore v. C.R. Seshadri) appropriately applies to the fact of the present case. The case of C.R. Seshadri originally came up before the High Court of Mysore challenging the order of supersession passed against him. The High Court of Mysore held that Seshadri had been wrongly superseded and further directed the Government of Mysore to give Seshadri notional promotion as Deputy Secretary with effect from the date on which one R. Venkataraman, next below him, secured such promotion. Hon'ble Supreme Court in their judgment, affirmed the finding of the High Court of Mysore that Seshadri had been wrongly superseded but set aside the order of the High Court in directing the Government to give notional promotion to Seshadri. Hon'ble Mr. Justice Krishna Iyer speaking for the Court was pleased to observe as follows :

" In our constitutional scheme, a broad three-fold division exists. The power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the Executive. The Court may issue directions but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles."

This view was taken in the case of Seshadri while relying upon two other judgments of the Hon'ble Supreme Court laying down the very same principles and those cases are reported in AIR 1968 SC 1113 (State of Mysore v. Syed Mahmood) and in the case of State of Mysore v. P.N. Munjundiah reported in (1969) 3 SCC 633. In view of the aforesaid observations of the Hon'ble Supreme Court and in view of the fact that there is no distinguishing feature appearing in all the above mentioned cases, we think that the dictum laid down by Their Lordships in the aforesaid cases apply mutatis mutandis to the facts of the present case and the case of State of Gujarat v. S. Tripathy

(supra) being distinguishable and having no application to the facts of this

case we would hold that it is beyond our ambit and jurisdiction to direct the State Government to give promotion to the applicant. Hence, we find no merit in the aforesaid contention of learned counsel for the applicant.

16. Finally, our conclusions are as follows :

- i) Section 20 of the Administrative Tribunals Act,1985 is no bar to entertain this application under the peculiar facts and circumstances of this case.
- ii) There is no question of bias or likelihood of any bias existing in the minds of the Chairman and any of the members of the Screening Committee including the special invitee,Mr.R.N.Das.
- iii) The guidelines/administrative instructions issued by the Government of India in Ministry of Home Affairs have not been followed and there has been certain violations for which the applicant stands prejudiced.
- iv) The case of the applicant has not been properly considered according to law as to whether he should be superseded or not.

Under the circumstances stated above we are of opinion that the recommendation of the Screening Committee is not sustainable and consequently promotion of Mr.R.N.Das(Respondent No.3) forming subject matter of Annexure-5 is liable to be quashed . Accordingly, we do hereby quash the promotion of Mr.R.N.Das(Respondent No.3) to the rank of Director General of Police.

17. Lastly, it was submitted by learned Advocate General that without least prejudice to his contentions,if rejected and if the Bench takes a view that promotion of Mr.R.N.Das (Respondent No.3) to the rank of Director General of Police is not sustainable,some time should be granted to the State Government to regularise the matter and pending such regularisation Mr.R.N.Das(Respondent No.3) should be allowed to continue as the

Director General of Police. In support of this contention, learned Advocate General relied upon a Division Bench decision of the Hon'ble High Court of Orissa forming subject matter of O.J.C.No.282 of 1981 disposed of on 11.11.1986 (unreported). We have already referred to that judgment while dealing with the constitution of the Screening Committee and while dealing with that aspect detailed facts relating to the case decided by Their Lordships have been stated and it needs no repetition. In the said case the Division Bench allowed the clerks who had already been appointed and were doing the work of the Board occupying different seats, because asking them to vacate those seats due to the illegal constitution of the Interview Board would make the Board to land itself in great difficulties because the day to day administration may be affected as fresh interview and consequent appointments would take some time. But in the present case the same person now working as the Director General of Police (Vigilance) namely Respondent No.3 could function as Inspector General of Police (Vigilance) and the Government work would not at all be affected. Had there been any chance of the Government work being affected we would have readily acceded to the request of learned Advocate General because we would not like to create any difficulty in the administration of the Government. In the case decided by Their Lordships the work of the Board would have been affected but in the present case if we do not accede to the request of learned Advocate General the person concerned may be affected but not the Government work. In view of this distinguishing feature, we are unable to accede to the aforesaid request of learned Advocate General.

In view of the aforesaid discussions, promotion of Mr. R.N. Das (Respondent No.3) vide notification No.50580/P dated 30th August, 1986 to the rank of Director General of Police forming subject matter of Annexure-5

is hereby quashed.

18. Thus, this application stands allowed leaving the parties to bear their own costs.

Leave APB
14/8/87
Member(Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



Prashant
14/8/87
Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH : CUTTACK.

AUGUST 14, 1987/S.SARANGI.