

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Lucknow Circuit Bench
Registration O.A. No.112 of 1990(L)

Devendra Kumar Tewari Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. M.M. Singh, A.M.

(By Hon.Mr.Justice K.Nath, V.C.)

This petition under Section 19 of the Administrative Tribunals Act, 1985 is for a declaration that the applicant has been selected in the select list of the IPS of the year 1976 and to order promotion with effect from the date from which the next junior officer to the applicant in the State Police Service Gradation List was placed in select list and was promoted. There is also a prayer for the consequential benefits of seniority on the basis of continuous officiation to the post of S.P. Police with effect from September, 1973.

2. The applicant was appointed as Dy.S.P. in the U.P. Police Service in the year 1959 as a direct recruit. In September, 1973 he was posted as S.P. Balla in temporary and adhoc capacity. Since then he has been working on the post of S.P. ~~202402~~ or equivalent post till the filing of the present case.

3. His case was considered for promotion to the IPS by the Selection Committee for the year 1976. On the basis of certain adverse remarks in his Character Roll for the years 1974-75 and 1975-76, he was found unsuitable

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for placement in the select list. After his representation against the adverse entries had been considered and dealt with by the State Govt. he made a claim petition before the U.P. Public Services Tribunal which was decided by the Tribunal on 7.5.84 by judgement, Annexure-A4. Of the adverse entries for the year 1974-75 the Tribunal expunged the following portion :-

"He remained popular with only some sections of political leaders" and "this ~~is~~ obviously affected district administration now and then".

Of the entry of 1975-76 the Tribunal expunged the following portion recorded by the Commissioner :-

"Which reflected in the administration now and then" ;

and also expunged the following remarks of the Inspector General of Police :-

"and both were to blame for this".

4. The Tribunal directed that the State Govt. would constitute a Selection Committee to consider the applicant's case again for the select list for the year 1976. It was held that in case the applicant was found fit for placement in the select list of 1976, the date from which he shall be deemed to be on probation in the IPS will be determined with reference to the date from which the first officer who was junior in the State Service gradation list and ~~he~~ had found a place in the select list for 1976, had commenced to be on like probation .

5. The applicant as well as the State of U.P. filed cross writ petitions before the Hon'ble High Court. The

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applicant filed petitions in respect of so much of the adverse entries as had been sustained by the Tribunal; the State Govt. filed a petition in respect of so much of the adverse entries as has been expunged by the Tribunal, and also against a direction to constitute a fresh Selection Committee to consider the case of the applicant. Those Writ Petitions were decided by a common judgement dated 13.12.88, Annexure-A6. The Hon'ble High Court upheld the judgement of the Tribunal in so far as it expunged portions of adverse entries for the years 1974-75 and 1975-76 and further expunged the Home Secretary's adverse remarks for the year 1975-76 which said ^{that} ~~the~~ applicant was an ⁴adverage officer. The Tribunal's direction to constitute a Selection Committee to reconsider the case of the applicant for the select list of the year 1976 was upheld, but the further direction that if the applicant was found fit for placement in the select list of 1976 then he would also be deemed to be on probation from the date of the junior select list officer was placed on like probation was set aside; instead the Hon'ble High Court directed that in case the applicant was found fit for promotion, his promotion must be made in accordance with law.

6. Accordingly, a Review Selection Committee was constituted under Regulation 3 of the IPS (Appointment by Promotion) Regulation, 1955 to reconsider the case of the applicant for inclusion in the select list of 1976 for promotion to the IPS. The Committee met

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on 21.11.89. The minutes of the Committee have been placed before us on our directions. It mentions that the Selection Committee examined the records of the applicant after ignoring the expunged adverse remarks in his A.C.R. for the years 1974-75 and 1975-76 and came to the conclusion that the applicant was not suitable for inclusion in the select list prepared in 1976 for promotion to the IPS. The Selection Committee recorded the following reasons :-

- "(1) 1974-75 - His relations with the magistracy including District Magistrate did not remain cordial.
- (2) 1973-74 - He could not maintain good relations with the District Police. The work as S.P. Railways was just satisfactory. Probably he was handicapped due to his ill health.
- (3) 1969- 70 - His disposal of papers and enquiries was very slow and needed constant goading."

In view of these findings of the Review Selection Committee, the applicant was not placed on the select list of 1976 and therefore was not given promotion to the IPS on that basis. Counter Affidavit, Rejoinder, Supplementary Counter and Supplementary Rejoinder have been exchanged between the parties and we have heard Km.Vishwamohini, Advocate for the applicant and Dr.Dinesh Chandra and Anup Kumar, Advocates for the respondents.

7. In respect of the remarks of 1974-75, the learned counsel for the applicant contended that the

Hon'ble High Court had found similar remarks for the year 1975-76 to be only 'factual and not adverse'. We do not think that only because a remark is stated to be factual it ceases to be adverse. On the contrary the Hon'ble High Court having described the remark to be factual chose to maintain it and did not expunge it. However, the Hon'ble High Court proceeded to observe further in respect of these remarks as follows :-

" The effect of this remark was diluted by the I.G.-cum-Director General of Police who observed :

‘ However his relations with the District Magistrate for which he was not much to blame. stood in the way of smooth administration.’ In this way the Inspector General made both the parties responsible for it."

Therefore it is a pressing contention of the learned counsel for the applicant that, the Inspector General-cum-Director General having observed that the applicant was not much to blame for the nature of relations with the District Magistrate, the effect of the adverse remark was much diluted, and it was expected that the Review Selection Committee would appreciate that angle of the adverse entry of the year 1974-75.

8. In respect of adverse entry for the year 1973-74, the contention of the applicant's learned counsel is that the entry remained uncommunicated till date. The learned counsel for the respondents contended

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that the entry had been communicated by AIG's D.O. dated 17.11.75; however the learned counsel for the respondents said that further records about the communication of the remark to the applicant are not traceable. The learned counsel for the applicant urged that in the applicant's rejoinder filed in the claim petition before the U.P. Public Services Tribunal, the applicant had stated that the remark was not communicated. A copy of the rejoinder or of the claim petition before the U.P. Public Services Tribunal has not been produced before us. The applicant's learned counsel relied upon observations of the U.P. Public Services Tribunal at page 8 of their judgement, Annexure-4. The observations mentioned that according to the opposite parties there, the A.C.R. of the applicant for several years including 1969-70, 1973-74, 1974-75, 1975-76 and 1977-78 had adverse remarks. The observations then mentioned the petitioner's stand regarding the entries of different years and mentioned that according to the applicant the remarks for the years 1974-75 and 1975-76 had not been communicated to the applicant at the time of the meeting dt. 29.12.76 of the Selection Committee which did not find him suitable at that time. It is noticeable that the observation had not mentioned that the remarks for the year 1973-74 had not been communicated. It is a normal expectation of the Rules that an adverse remarks is communicated to the concerned officer. Indeed, the communication of several other years' remarks is not disputed. In the normal course of official business

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the presumption is that the official routine has been carried out. There would have been worth in the contention of the learned counsel for the applicant if the applicant was able to prove by documents, in particular his pleadings, in the claim petition before the Public Services Tribunal, that he had claimed even at that time, that is round about the year 1981, that the adverse entries of the 1973-74 had not been communicated to the applicant. In the absence of such a material on the record it is not possible for us to hold that the Review Selection Committee committed any error or illegality in considering the adverse remarks for the year 1973-74.

9. But at the same time, it is noticeable that the remarks for the year 1973-74 as considered by the Review Selection Committee itself recorded that "probably he was handicapped due to his ill health". The learned counsel for the applicant again urged that this assessment considerably watered down the ill effect of the entry even as the remarks of the I.G-cum-Director General of Police diluted the effect of the adverse entry for the year 1974-75 as observed by the Hon'ble High Court and mentioned by us above.

10. In respect of the year 1969-70 the contention of the learned counsel for the applicant is that inspite of that adverse entry the applicant had been given promotion as an Adhoc S.P. in September, 1973 and therefore in the eyes of law the entry must be deemed to have been wiped off. The learned counsel for the applicant placed reliance on the decision of the Supreme Court in the case of Regional Manager and Another Versus Pawan Kumar Dubey 1976 SC 1766 and a Division Bench

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decision of the Allahabad High Court in the case of Dr. Girish Bihari Versus State of U.P. reported in 1984 UPLBEC 953.

11. The learned counsel for the applicant raised the following points in the course of arguments :-

(i) The Review Selection Committee considered the applicant's case in isolation which contravenes clauses (4) and (5) of Regulation 5 of IPS (Appointment by Promotion) Regulations, 1955; the applicant's merit should have been compared with that of the other officers who were included in the select list originally prepared for the year 1976.

(ii) The Review Selection Committee did not record reasons for superseding the applicant as required by clause (7) of Regulation 5.

(iii) The Review Selection Committee failed to appreciate that the adverse remarks for the years 1973-74 and 1974-75 were considerably watered down and those for the year 1969-70 were deemed to have been washed off.

12. In respect of point No(i) we find that the contention of the learned counsel for the applicant finds support from a decision of the Principal Bench of this Tribunal in the case of R.C.Kohli Versus Union of India and Others (1988) 6 ATC 228. That was the case of a Review D.P.C. which considered the petitioner's case in isolation. The Bench held that while considering the case of an individual officer, whose case was deferred at an earlier regular D.P.C. due to representations pending against the adverse remarks, the Review D.P.C. must not consider his case in isolation but comparatively with other officers who were considered by the earlier

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regular D.P.C. The Bench observed as follows :-

"Surely adoption of such a method has resulted in grave prejudice to him inasmuch as his comparative merit was not assessed by the Screening Committee and he was considered to be unfit for promotion on the basis of his own A.C.Rs."

13. The learned counsel for the applicant has referred to the decision of the Supreme Court in the case of Gurdial Singh Fijji Versus State of Punjab and Others 1979 SC 1622 where the Supreme Court have pointed out in para 20 about the manner in which a Review D.P.C. should proceed. It was observed that the question whether the officer should be included in the select list as on due date has to be decided in accordance with the relevant Regulations by applying the test of merit and suitability-cum-seniority (as the Regulations stood on 11.5.73 when the Selection Committee met), that the Selection Committee must consider the officer's service record upto date and if it finds him not suitable it must record reasons for supersession. It was further observed that if the Review Selection Committee finds him suitable the officer will be entitled to rank in the select list in accordance with the seniority as on 11.5.73 (that is, the due date) unless in the opinion of the Committee there is junior officer of exceptional merit and suitability who may be assigned a higher place. It may be seen that the Review D.P.C. has not only to apply the relevant Regulations for determining a merit of the officer concerned on a perusal of the service record, but have also to judge whether there is a junior officer of exceptional merit and suitability

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who may be assigned a higher place in the select list than the officer under consideration. These are the clear provisions contained in clauses (4) and (5) of Regulation 5 of the Appointment by Promotion, Regulations 1955. Since the merit and suitability of the junior officer has also to be considered, there can be no manner of doubt that even the Review D.P.C. must examine the case of an officer not in isolation but in comparison with the officers who have been included in the select list. The Selection Committee in the case before us, has admittedly not examined the applicant's case in comparison with those included in the year 1976 and therefore the recommendations^{of} the Review Selection Committee cannot be sustained. The contention of the learned counsel for the respondents that the case of the applicant has to be considered in isolation because of the previous judgement of the Hon'ble High Court is not acceptable.

14. Points (ii) and (iii) raised by the learned counsel for the applicant may be considered together because they are concerned with the appreciation of the applicant's service record in respect of which the Review Selection Committee was expected to record reasons. It is not disputed that in accordance with the Regulations as they stood at that time, a Review Selection Committee which supersedes an officer or finds him to be unsuitable, has to record reasons. There is the specific requirement of clause (7) of Regulation 5 that in the ~~case of~~ case of proposed supersession, the Committee shall record its reasons for the proposed supersession. The reasons recorded

by the Selection Committee in this case are set out by us in para 6 of this judgement. The question is whether they satisfy the requirements of the reasons as contemplated by the rules. The learned counsel for the applicant has correctly relied upon the decision of the Supreme Court in the case of Union of India Versus M.L.Capoor 1974 SC 87 in para 28. The Supreme Court observed as follows :-

"..... It was incumbent upon the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded^{stood} in relation to the record of others who were to be preferred..... If that had been done facts on service record 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, and whether it is purely administrative or quasi judicial. Only in this way , can opinions or decisions recorded be shown to be manifestly just and reasonable."

15. Following these observations of the Hon'ble Supreme Court in M.L.Capoor's case the Supreme Court went on to say in Gurdial Singh Fijji's case (supra), para 18 as follows :-

" Though it is not expected that the Selection Committee should give anything approaching the judgement of a Court, but it must atleast state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the select list."

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16. We may add that these observations were again followed by the Supreme Court in the case of Uma Charan Versus State of Madhya Pradesh and Others 1981 SC 1915. It is true that the Review Selection Committee mentioned that it had examined the record of the applicant after ignoring the expunged adverse remarks in his A.C.R. for the years 1974-75 and 1975-76 and then it had arrived at the conclusion of the applicant's unsuitability for reasons of the entries which we have set out in para 6 of this judgement. We have pointed out that in respect of the remarks for the year 1974-75 the High Court had observed that the effect thereof was diluted by the observations of the I.G-cum-Director General of Police; we have reproduced the extract of the judgement at this point in para 7 of this judgement. The Minutes of the Review Selection Committee do not mention that they considered either the remark of the I.G-cum-Director General of Police or the observations of the Hon'ble High Court on the entry in question. In respect of the entry for the year 1973-74 the Committee did mention the portion which recorded that the applicant was probably handicapped due to his ill health; but it is not indicated how the factor of handicap^{due} to ill health was appreciated by the Committee. There is room for the learned counsel for the respondents to contend that inasmuch as the Review Selection Committee mentioned that they had examined the record of the applicant they may have considered these aspects of the entries of 1973-74 and 1974-75, but the contention would only be arguable, because the Minutes themselves do not reflect an application of mind in that direction. The

Committee, of course, was not expected to record something like a judgement of a court, but it was certainly expected to state as briefly as it might to show why they considered the entries as they produced in their Minutes to justify their finding of the applicant being unsuitable even if the entries could be considered to be watered down. Indeed, it is not quite clear that the Committee at all considered whether the entries stood watered down or not; this aspect of the entries has remained indeterminate. In this view of the matter, the reasons recorded cannot be said to ~~be~~ satisfy the standard of reasons expected to be recorded as indicated by the Supreme Court. Point No.(ii) raised by the learned counsel for the applicant, in these circumstances, must be answered in favour of the applicant. There is considerable controversy between the parties regarding the admissibility of the adverse entry for the year 1969-70. According to the learned counsel for the applicant, it must be deemed to have been washed off as soon as the applicant was given an adhoc promotion as S.P.; according to the respondents a mere adhoc promotion is not enough to wash off the entries when the case is to be considered for promotion to a selection post on the merits. We may consider the case law on the subject. In the case of Regional Manager Versus Pawan Kumar Dubey (supra), Pawan Kumar Dubey was given an adhoc promotion on 7.3.72. There were adverse entries in his Character Roll before that date; he was also awarded adverse entries in September and October, 1972 and January, 1973 which the Supreme Court considered to have been recorded by one particular superior officer. He was reverted by an order dt.20.2.73.

On an examination of the various adverse entries, the Hon'ble Supreme Court held that in respect of the entries after 7.3.72 proceedings under Article 311(2) of the Constitution of India should have been initiated and since that was not done the impugned reversion was hit by Article 311 of the Constitution. That should have been the end of the case. However, the Supreme Court also observed that on adhoc promotion on 7.3.72 the old adverse entries must be deemed to have been washed off. Perhaps that was an abitor; but even if it may not be considered to be an abitor the unmistakable position is that the Hon'ble Court was dealing with a case of reversion as contra-distinguished from the case of promotion to a selection post on merits. There can be absolutely no doubt that there are fundamental distinctions in the criteria for ordering reversion of a person as from those for promoting a person on merit to a selection post. When a person holds a post by virtue of an adhoc promotion all that has to be seen in a matter for his reversion is to consider whether he deserves better to be retained in the adhoc promotion post or must be reduced to his original substantive post and for that purpose such of the adverse entries which he has crossed over in order to be given adhoc promotion may not be given much weight; but when the same person has to be considered for promotion to a selection post on the criterion of merit there is no reason why the entire record and the background of his work and conduct in the past may not be considered. When entry is made in a Character Roll it has to stay there, unless it is expunged

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in accordance with law. It may be expunged either on a representation administratively or by a Court of Law judicially. An entry in order ^{to be} ~~expunged~~ has to be challenged on its own merits in a properly constituted case where the Department also gets an opportunity of meeting the challenge. The expression that an entry is deemed as wiped off only signifies its relative value in consequence of the development of promotion; it cannot cease to exist - only its value is reduced relatively. When it is said therefore that an entry is deemed to be washed off, it only means that under different circumstances it has to be appreciated in the light of the developments. Thus an entry may appear to be watered down by certain features of the case or by the observations of the Court; nevertheless, the entry does not cease to exist. It is not disputed that a case of adhoc promotion essentially rests on the concept of seniority. The applicable rules or criteria for adhoc promotion neither figured in Pawan Kumar Dubey's case nor have been placed before us; but there is no dispute that the criterion on merit as applicable to a selection post has absolutely no application to an adhoc promotion. We feel, therefore, that while for the purposes of appreciating a case of reversion, the effect of adhoc promotion may considerably water down the adverse entries prior to the date of promotion, — we do not think that anything worst than that ~~does~~ happens to the entries; they do continue to exist on the service record and therefore had to be looked into if for the purposes of promotion to a selection post on merits the rules require the record to be considered and assessed as a whole.

17. In this connection, the learned counsel for the applicant has strongly relied upon the decision of the Division Bench of the High Court of Allahabad in the case of Dr. Girish Bihari Versus State of U.P. (supra) in which reliance has also been placed on the case of Regional Manager Versus Pawan Kumar Dubey (supra). That was the case of an officer who had been selected and promoted to the selection grade on merit but had been superseded by the Selection Committee for promotion to the Super Time Scale post which was also a selection post on the criterion of merit. Since the officer had certain adverse entries in his Character Roll for the period prior to his selection and promotion to the selection grade, the Selection Committee did not find him suitable for promotion to the selection post in the Super Time Scale and superseded him by his juniors. It would appear from the facts stated in para 1 of the judgement that the officer had been promoted to the selection grade by order dated 28.11.75 with effect from 15.11.74 and was denied Super Time Scale by the State Govt's order dated 2.12.80. It would appear from para 3 of the judgement that the Selection Committee considered the adverse entries awarded to the applicant for several years upto 1974-75 and 1975-76. It would appear from para 5 of the judgement that selection grade was given in 1975 despite the adverse entry upto 1974-75. The Hon'ble High Court took the view that since the applicant had been awarded selection grade by orders passed in 1975 the adverse entries upto 1974-75 would be deemed to have been washed off. The Hon'ble High Court referred to the cases dealing with the effect

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of crossing Efficiency Bar on the earlier entry and with the cases of compulsory retirement; none of the cases appears to be concerned with the situation in which a person given an adhoc promotion was examined for promotion to a selection post by merit. Para 12 of the judgement mentions the rulings which had been relied upon by the Chief Standing Counsel to show that the principle of wiping out of the adverse entries on the ground of crossing Efficiency Bar or on the ground of promotion to a higher post does not apply where a question of selection to a higher post by promotion on merits is under consideration. The Supreme Court case of Mir Ghulam Hasan Versus Union of India 1973 SC 1138, a five Judge Bench decision of Orissa High Court in the case of Ramesh Prasad Mahapatra Versus State of Orissa 1980 SLJ 566 and Other cases were referred to. The Division Bench considered these matters. We think that the crux of the view ultimately taken by the Division Bench is contained in the following words of para 9 of the judgement :-

" After promotion by selection despite adverse entry the adverse entries lose all value and they cease to be of any relevant material for consideration for further promotion."

This we may say with great respect is the true legal position applicable to the particular facts of the case of Dr. Girish Bihari. Dr. Girish Bihari had been granted promotion to a selection post in the selection grade on the criterion of merit in 1974 and therefore the entries which had been recorded upto the year 1974-75 were considered not to have been wiped off but to have lost value and to be ceased to be material for consideration

for further promotion to the selection post in the Super Time Scale again on the criterion of merit. Dealing with the case of Mir Ghulam Hasan Versus Union of India (supra) the Division Bench observed in para 30 as follows :-

"It cannot be disputed that where selection is made on the basis of merit, absence of adverse entries does not show positive merit of an officer but presence of adverse entries is bound to affect the selection of an officer on merit."

18. Clearly the Court recognized the effect of an adverse entry as and when a question of promotion to a selection post on merits arises. Dealing with the five Judge Full Bench decision of the Orissa High Court in the case of Ramesh Prasad Mahapatra Versus State of Orissa and others the Division Bench of the Allahabad High Court expressed their dissent in para 16. In our opinion the decision of the Division Bench of the Allahabad High Court may properly be confined to those cases where a person having adverse entries has been given promotion to a selection post on the criterion of merit and thereafter his case is again considered for further promotion to a still higher selection post on the criterion of merit. In those cases the adverse entries recorded during the period prior to the grant of the earlier promotion lose much of their value; even there they do not get wiped off completely. It is for the selection committee to make a proper appreciation of such entry and then arrive at an assessment of the merit of the concerned officer and compare the same with

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the merit of the other officers¹ who had been included in the select list. This being the position, in our view, the adverse entry of the applicant for the year 1969-70 was rightly considered by the Review Selection Committee.

19. However, in view of what we have stated on points (i) and (ii), the order of supersession of the applicant cannot be sustained and must be quashed. The learned counsel for the applicant then urged that since the respondents had ^{occasion} an / to consider the case of the applicant by a Review D.P.C. and comply with the orders of the Hon'ble High Court in the previous litigation but they had failed to do so, this Tribunal must direct the applicant to be promoted; the learned counsel for the respondents contends that the function of granting promotion does not rest with this Tribunal but with the Selection Committee and the Govt. and therefore at best this Tribunal may direct a fresh Review D.P.C.

20. The learned counsel for the applicant has referred to the cases of State of Madhya Pradesh Versus Bani Singh and Another 1990 SC 1308 and the State of Mysore and Another Versus Syed Mahmood and Others 1968 SC 1113; the learned counsel for the respondents have referred to the case of State Bank of India and Others Versus Mohd. Mynuddin 1987 SC 1889. We do not think it necessary to go into much detail of the judgements because in our opinion ~~that~~ since the respondents have not recorded reasons as required by the law and since

they have not made a comparative assessment of the merits of the applicant qua those officers who were included in the list of 1976, this Tribunal is not in a position to find affirmatively whether or not the applicant should be promoted and placed in the select list. That function has to be discharged by the Selection Committee. The general practice recognized judicially in this respect is that reflected in the case of State Bank of India Versus Mynuddin(supra), that is, "in the first instance" direction should issue to the Govt. to have a proper D.P.C. proceedings conducted and then to take a decision; but that is only a direction in the first instance. In other words, where an opportunity has been given to the Govt. and a Selection Committee to reconsider the case of an officer by holding a Review D.P.C. and yet the Govt./ the Review D.P.C. does not comply fully with the directions of the Court or requirements of the law, the hands of the Court are not tied down to a repeat direction to the concerned authorities to undergo the exercise once again. In a given case where the rights are clear and well established after the process of a Screening Committee has been gone through the Court may still direct a promotion to be given. This is not only on the general principle that a defaulting respondent is not entitled to have opportunity after opportunity with liberty to continue to commit mistakes but also because it is a judicially recognised principle that in the ultimate analysis the Court may have to interfere in the particulars facts and circumstances of a case. That is what clearly follows from the observations of the

Supreme Court in the case of State Bank of India Versus Mynuddin (supra) para 5 where it was held that the High Court ought not to have issued a Writ without giving State Govt. "an opportunity in the first instance to consider their fitness for promotion" and that the Court should not "ordinarily" issue a Writ to promote an officer straightway. Para 5 of the judgement of the Hon'ble Supreme Court in the case of State of Mysore and Another Versus Syed Mahmood (supra) is more explicit when it states :

" We are of the opinion that the State Govt. should be directed at this stage to consider the fitness of Syed Mahmood and Bhau Rao for promotion in 1959. If on such examination the State Govt. arbitrarily refuses to promote them, different considerations would arise. The State Govt. would, upon such consideration, be under a duty to promote them ^{as} from 1959 if they were then fit to discharge the duties of the higher post and if it fails to perform its duty, the Court may direct it to promote them as from 1959 ."

21. It is clear therefore that this Tribunal is not entirely powerless to direct a person to be included in a select list and to be promoted, but that is an exceptional situation depending upon the particular facts of the case and the findings recorded by the Selection Committee and the orders of the Govt. We think that in the particulars facts of this case the case should be reconsidered by the Selection Committee.

22. For the reasons recorded above, the Minutes dated 21.11.89 and the recommendations of the Review

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Selection Committee in the case of the applicant and consequential orders of the respondents are quashed. The respondents are directed to constitute a Review Selection Committee within a period of one month from the date of receipt of a copy of this judgement, the Committee shall consider and make recommendations in the case of the applicant for inclusion or otherwise in the select list of the I.P.S. for the year 1976 within two months from the date of its being constituted bearing in mind the observations contained in the body of this judgement, and the respondents shall thereafter pass appropriate orders in the matter of the applicant's promotion and other benefits, if any, from the appropriate date in accordance with law within one month from the date of receipt of the recommendations of the Review Selection Committee. Parties shall bear their costs of this case.

M. M. Sengupta
Member (A)


Vice Chairman

Lucknow.
Dated the 18th February, 1991

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